Critical issues for the implementation of a mutual fund compensating for production loss under Article 38 of Reg. (EU) No. 1305/2013

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Study on risk management in EU Agriculture

Annex 5 - Case study 5

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Foreword

This case study report has been prepared within the "Study on risk management in EU Agriculture" which has been implemented by Ecorys and Wageningen Economic Research between December 2016 and October 2017.

The case study has been prepared by individual expert. The authors of each case studies were selected because of their specific subject expertise. It should be noted that the case studies reflect the opinion and personal style of these experts. The findings in these case studies are used to illustrate and triangulate the outcomes of the data collection in the main report.

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Executive summary

Main findings with respect to the specific questions of the case study

The case study analyses the development of Mutual Funds (MFs) designed under Article 38 of Regulation (EU) No. 1305/2013. Three Member States planned expenditures in their Rural & Development programmes 2014-2020 on such MFs for compensating production losses due to climatic, sanitary and environmental events, namely Romania, Italy and France. At the end of 2016, Romania and Italy failed to implement such MFs. France is supporting a national MF, called *Fonds national agricole de Mutualisation Sanitaire et Environnemental* (FMSE), created under the former Regulation (EC) no 73/2009.

The case study objective is to answer to two main questions:
- What are the difficulties encountered in the development of a mutual fund under Article 38 in Italy and in Romania?
- What can be learnt from the FMSE development?

Difficulties encountered in Italy and Romania are related to pre-implementation issues:
- Italy:
  - Questions on the design and practical implementation of a MF under Article 38 (sectorial or multi-sectorial, initial capital stock and organisation);
  - Lack of national dedicated legislation;
  - Questions on benefits and limits from the farmers' side. Therefore there is no pressure from farmers' unions and no leadership to build an MF.

- Romania:
  - No guideline for implementing an MF under Article 38, therefore multiple questions from all the administrative chains (Ministry of Agriculture and Rural Development, Payment Agency). Too many questions arose, starting with the accreditation process, that induce precautionary practices from administrative bodies;
  - Competition between farmers' unions to create their own funds with limited knowledge on risk assessment, evaluation of a farmer's individual contribution, potential of compensation for each type of risk and valid rules of governance;
  - Lack of trust in mutual funds.

- France:
  The main positive lesson from the FMSE in France after four years of development may be considered as an answer to most of the difficulties encountered in Italy and Romania:
  - The FMSE found working methods based on a synergy between the public services of the Ministry of Agriculture for loss evaluation and the management of financial compensation by representative of farmers' unions;
  - The process of unifying efforts to manage sanitary risks is satisfactory.

  The negative lessons are stemming to potential improvement in the design of the instrument:

- The current Article 38 does not fit the real issue of preventing plant and animal diseases. The 30 % threshold is inadequate. Mandatory practices to eradicate diseases are managed at the first loss occurred and cannot wait for a 30 % loss;
- Articles 36 and 38 deal with "declared diseases" with an ambiguity for "suspicious diseases". Therefore, indemnities paid by FMSE could not benefit from EAFRD contribution (problem of text interpretation solved in April 2017);
- Another ambiguity is found in the interpretation of "environmental incident" inducing "precautionary practices" (or "umbrella practices") from the administration. More generally, the national administration tends to reject demands of payment of European subsidies by the MF when text interpretation is possible.

As a consequence, the FMSE is developing quite well as the mutual fund is useful but without the full capacity to benefit from the EU subsidies. The positive but late discussion in April 2017 between FMSE and DG AGRI to interpret mutual fund regulation and limit "administrative precautionary practices" is an illustration of a required learning curve development.

The necessary conditions to implement successfully an Article 38 mutual fund, as presented by stakeholders in France are (1) the political support of a leading farmers' union and (2) a collaborative work between the Ministry and the farmers' union(s). Failure to do so is mainly linked to the absence of these two conditions. In addition, practical reasons are also of importance, including lack of practical knowledge and legal uncertainty.

Main implications with respect to public policy

Mutual funds under Article 38 are still in limbo:

- How should they work? How to organise synergies between the "private" fund governed by farmers' unions (multi-sectorial or sectorial unions or dedicated organisation of farmers usually derived from farmers' unions) and the services of the Ministry of Agriculture?
- There is no real framework for designing an Article 38 mutual fund;
- There is no template for fund accreditation at the MS level. The tentative manual of fund accreditation in Romania could be again part of a required learning curve for MF development;
- Collective action has benefits but also limits. Several interviews in different Member States suggest that individual farmers may be reluctant to such tool compared with individual instruments (direct payments) and therefore that farmers' unions are the key for such mutual development in providing the adequate message and even incentives for farmers participation.

Three levels of public action should be required:

1. At the EU level

   Mutual funds should not be just an article in an EU regulation with few constraints of management. Their positive context should be explained as well as their potential, limits and difficulties of implementation. The DG AGRI should therefore invest in explicating these issues.

First of all, it is necessary to improve the regulation (Article 38) and sometimes interpret concepts with the experience of the only mutual fund implemented. Then, guidelines should be elicited for optimal general design but also to explain the full mechanism of the fund (from risk description, to compensation and control of EU and Member State public funds). Very practically, a FAQ document would be useful and practical issues to be documented in national documents for mutual fund accreditation should be provided by the DG AGRI.

Technical seminars are required for preparing the three MS key stakeholders, the Ministry of Agriculture, the Payment Agency and the farmers' unions to the national phase of discussion.

2. At the MS level

   There is a need for a specific and common work between farmers' unions and the Ministry. The EU information, including templates for fund accreditation, should be shared by Member State key stakeholders. All questions related to the need, constraints and perspectives should be discussed before any effort to design a national Article 38 mutual fund:

   - Do we need such a mutual fund or do we have adequate instruments to deal with all climatic, sanitary and environmental risks?
   - If we need a mutual fund on all or some production risks, how to organise its design and implementation?
   - What is the right level of mutualisation? Multi-sectorial, sectorial (and which ones). The current EU regulation does not allow subsidies to sectorial funds but this issue could be pertinent to be studied as practical management of sectorial risks is much easier to be performed. The Omnibus Regulation as proposed by the DG Agri in September 2016 will support sectorial mutual funds when voted;
   - Is the mutual fund mandatory or voluntary?
   - How to fill accreditation forms?

3. At the production sector level

   If the need of an Article 38 mutual fund is validated, when the level of mutualisation is decided, a technical work is required for describing the risks to be shared by the mutual fund, the full cycle of its management (indicators, thresholds, information on the outbreak, decision and modalities of compensation, method and delays of payment, control, etc.) and the governance bodies.

1 Introduction

1.1 What is an Article 38 mutual fund of EU Regulation No. 1305/2013?

The new RD Regulation for the CAP 2014-2020 addresses six economic, environmental, and social "priorities". Within priority no. 3, "Promoting food chain organisation and risk management in agriculture", Measure 17 focuses on the agricultural risk management issue. Embedded in Articles 36 to 39 of Regulation no. 1305/2013, Measure 17 is composed of three sub-measures: sub-measure 17.1 for financial contribution to insurance contracts (Article 37), sub-measure 17.2 for financial contribution to mutual funds compensating production losses due to climatic, sanitary and environmental risks (Article 38) and sub-measure 17.3 for financial contribution to mutual funds compensating income losses due to production and price risks (Article 39). The mutual fund of sub-measure 17.3 is usually called IST, which is short for Income Stabilisation Tool.

A Measure fiche[1] on risk management has been provided in 2013 to all Member States in order to explain the Articles 36-39 and to be a guidance support to the development of the related instruments.

1.1.1 Characteristics of the Article 38 mutual fund

Article 38 of EU Regulation No. 1305/2013 is related to production risk management. The instrument proposed is a mutual fund to compensate for losses due to "adverse climatic events, animal and plant diseases, pest infestation and environmental incidents". The instrument has been proposed to Member States in the previous EU Regulation No. 73/2009, Article 71, with quite similar features. The unique but main change is the inclusion of climatic events in the 2013 regulation.

The fund creates a financial reserve by annual farmer contributions. In case of adverse events causing an eligible production loss beyond a threshold of 30 % loss as compared to an average annual production[2], the fund compensates losses upon its internal rules and under Article 38 constraints. The compensation then benefits from a public financial contribution limited to maximum 65 %[3] of the compensations granted to farmers, shared between the EAFRD (75 %)[4] and the Member States (25 %).

1.2 Positioning of the instrument in the two-axis map of agricultural risk

The instrument is positioned in Figure 1 at the upper level of the layer of private tools for non-insurable or non-insured risks with an intermediate level of systemic risk. The mutual fund should therefore deal with risks too complex to be insured (low level of information for stabilising an actuarial model, i.e. indirect costs of sanitary events for

[1] Fiche "Risk Management. Measures 17. Articles 36-39 of Council EU Regulation No 1305/2013", Version 31/01/2013, 19 pages

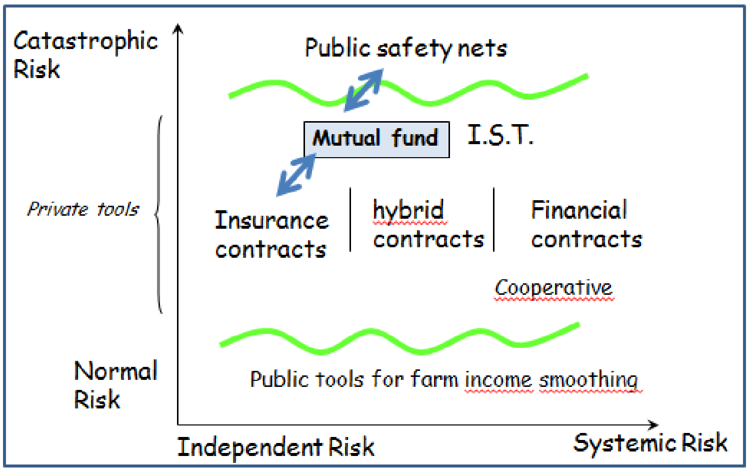
[2] The crisis event shall destroy more than 30 % of the average annual production of the farmer in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and lowest entry

[3] Reg. 1305/2013 Annex II

[4] Reg. 1305/2013. Article 59. Paragraph 3.b : "for all regions whose GDP per capita for the 2007-2013 period was less than 75 % of the average of the EU-25 for the reference period but whose GDP per capita is above 75 % of the GDP average of the EU-27"

livestock), or collective risks that should be better handled by professional organisations (for limiting potential of moral hazard), or with a systemic component too high for local insurers.

Figure 1: Positioning of the Article 38 mutual fund



Source: adapted from Cordier and Guinvarc'h 2002

The positioning of the Article 38 mutual fund on the two-axis map suggests to define synergies, limits and eventually (acceptable) overlapping between this instrument and insurance contracts and public safety nets, in particular ex-post disaster payments. The limits with insurance contracts is related to the capacity and the willingness of insurers to deal with some climatic or sanitary risks. It is also the question of collective preventive actions for sanitary risks. The potential limit between mutual fund and safety net is related to the financial capacity of a mutual fund to deal with extreme events, climatic or sanitary. The level of contribution may be targeted for a set of adverse events for an acceptable willingness-to-pay, but excluding catastrophic events with low probability of occurrence. It is also related to the very specific question of "environmental incidents". Is it also possible for a mutual fund to deal with such incidents when the cause is very old (i.e. land polluted by war, polluted industrial plants) or not very clear (i.e. interpretation of regulation by a supplier). The mutual fund may be obliged to prove the origin of the adverse event, which is a very complex and long process. As a consequence, the mutual fund can suffer from an obligation to compensate without the possibility to be subsidised.

1.3 Main question and related objectives of the case with expected contribution to the portfolio of cases

One Member State only, France, has created such a mutual fund before 2014, therefore under the previous 2009 regulation limited to sanitary and environmental adverse events. The fund is called *Fonds national agricole de Mutualisation Sanitaire et Environnementale* (FMSE). Three Member States only have planned expenditures within their Rural Development programmes (EP 2016, p. 74) for the period 2014-2020. As indicated in Table 1, France has planned € 60 million of expenditures for the FMSE, Italy € 97 million and Romania € 200 million.

Table 1: Planned expenditures on risk management measures under Rural Development Programmes (2014-2020)

	Insurance premium	Mutual funds	Income stabilisation tool	TOTAL (€ million)	EU contribution (%)
Belgium - *Flanders*	5.1	0	0	**5.1**	**63**
Spain - *Castilla y León*	0	0	14	**14**	53
France	540.7	60	0	**600.7**	**97.85**
Croatia	57	0	0	**57**	**85**
Italy	1396.8	97	97	**1590.8**	**45**
Latvia	10	0	0	**10**	**68**
Lithuania	17	0	0	**17**	**85**
Hungary	76.3	0	19	**95.3**	**82**
Malta	2.5	0	0	**2.5**	**75**
Netherlands	54	0	0	**54**	**27**
Portugal - Mainland - Azores - Madeira	 50 2.4 0.8	 0 0 0	 0 0 0	 **50** **2.4** **0.8**	 **82** **85** **82**
Romania	0	200	0	**200**	**85**
Total	**2212.6**	**357**	**130**	**2699.6**	**63**

Source: PE (2016)

France and Italy have indicated a low percentage of expenditure for Sub-measure 17.2 with respect to the whole Measure 17, respectively 10 % and 7 %, while Romania is supposed to use 100 % of the Measure 17 budget on it.

The objective of the case study is to elicit the constraints of development of the FMSE in France and the factors that explain the failure (to the present time) to initiate an Article 38 mutual fund in Italy and in Romania.

2 Main outputs of the desk study

The main documents available on Article 38 mutual funds are related to the FMSE in France and a study from the World Bank in Romania. Legislative texts in France and Romania are also available.

France

FMSE documents are descriptive of the objectives of the fund, its organisation and governance, its resources. There are documents and information, internal documents with all details of risks covered, rules of governance but also official law imbedded in the Code Rural.

The FMSE is a mutual fund created by two farmers' unions (practically one as the unions are closely linked) liable to compensate the economic losses resulting from the sanitary events defined in Article R 361-51 of the Code Rural:

- Animal diseases included in the list drawn up by the World Organization for Animal Health or in Annex I to Council Decision 2009/470/EC of 25 May 2009 on expenditure in the veterinary field;
- Organisms harmful to plants listed in application of Article L. 251-3 of the Code Rural, which are subject to compulsory control measures or are of an abnormal or exceptional nature.

It is also liable to compensate the economic costs and losses resulting from the environmental incidents as first defined in Article 71 of Council Regulation (EC) No. 73/2009 of 19 January 2009 and specified by the decree of 8 August 2012 in force of Article R. 361-52 of the Code Rural. The environmental incidents are now defined in Article 2(j) of EU Regulation No. 1305/2013.

Only the costs and losses defined by the decree of 12 April 2012 made pursuant to Article R. 361-53 of the Code Rural may be eligible. The list of costs and losses identified as potentially eligible by the FMSE is laid down in Articles 6 and 7 of the Rules of Procedure.

The FMSE includes two sections: one common to all agricultural producers and one specialised sections per type of production. The common section and the specialised sections have national mandate. It is "almost" a mandatory system as the contribution to the common section is mandatory and the non-contribution to specialised sections by farmers requires an administrative procedure.

The common section is administered by the Management Board of the FMSE and managed by its staff. The management tasks of the specialised sections may be delegated to third parties by agreement.

The FMSE derives its resources from the contributions paid by the farmers to its common section and to the specialised sections. The levy of this contribution of the common section is delegated to the "*Mutualité Sociale Agricole*", the social security system for French farmers. For the last years, the contribution has been set at €20 per farm. The specialised sections levy contributions in accordance with their own arrangements[5]. The resources of the specialised sections, deriving from the farmers' contributions, are used to compensate only their affiliates and cannot be mixed.

[5] The current levels of farmers' contribution per specialised sections are provided on the website of the MSA: http://www.msa.fr/lfr/exploitants/cotisation-fmse

The specialised sections define the compensation programmes and propose them to the Management Board. Each programme specifies:

- the nature of the damages that can be compensated;
- the method of calculation which makes it possible to know the amount;
- the method used to estimate the losses;
- the scale of compensation;
- the manner in which claims are processed.

The specialised sections investigate claims validated by specialised public services and propose to the Board of directors the rate of compensation to the production loss. They define technical specifications listing compulsory control measures and measures to prevent the emergence of animal diseases and plant pests on farms (FMSE 2012). These rules of processing claims will be presented in practice in Chapter 3, as an output of the FMSE interview.

The governance of the FMSE is performed by a Board of Directors composed of:

- 18 members designated by the farmers' union organisations representative of agricultural production at the national level. The representation of the different unions is based on national elections;
- 1 representative of each specialised section;
- 4 members representing respectively GDS France (livestock sanitary organisation), FREDON France (plant sanitary organisation), the national cooperative association and the national association of "C*hambres d'Agriculture*".

Romania

Currently, farmers in Romania are exposed to growing economic and environmental risks as a result of climate change and high volatility in prices (Cordier, Hurduzeu and Bucik 2014). In this context, effective risk management gained increasing importance for farmers, farmers' unions and Ministry of Agriculture and Rural Development (MARD).
As private insurers did not use to offer insurance policies for farmers to cover more systemic risks such as droughts, floods, frost, some plant and livestock diseases, and quarantine pests, the MARD considered the opportunity to create mutual funds under the 2009 EU regulation and initiated therefore a national regulation in 2013.

Italy

The legislative process is slow due to friction between different requirements of stakeholders. Several documents, however, have been officially approved and testimony the ongoing activity toward the establishment of mutual funds.
In particular, it is worth noting the approval, in December 2015 and May 2016, of the legislative decree that establishes the maximum unit price to determine the insurable values for the subsidised crop insurances and for the adhesion to mutual funds. In addition, in December 2016, the Ministry has approved a decree that is establishing benchmark yields at crop and regional level. The benchmark yields are primarily set in order to determine the maximum insurable quantities under subsidised crop insurance schemes, but also represent a key step toward the definition of MFs at national level.
The benchmark yields are computed by multiplying each yield by an area coefficient, computed as ratio of the sum of certified quantities over the sum of insured quantities. The coefficients are computed at different level of aggregation: at sub-provincial, provincial, regional and national levels.

Next steps towards the implementation of mutual funds as regulated by Article 38 will be the definition of the nature of the MF (sectorial or transversal) and the conditions to adhere to the MF (i.e. whether it will have to be voluntary or mandatory). On these aspects, reflections are needed, as the trade-off between efficiency and political consensus, as well as past experiences in more mature markets in terms of risk management interventions (Ramsey and Santeramo, 2017) should be carefully taken into consideration.

3 Main outputs of the interviews of key stakeholders

3.1 Romania

Interviews have been performed at farmers' unions, Ministry of Agriculture and Rural Development (MADR) and the Agency for Payments and Intervention in Agriculture (APIA). Agricultural economists provided also opinions.

3.1.1 The context

Romanian farmers are facing large production risks

The agricultural sector in Romania is generally exposed to the following risk categories:

- Adverse climatic events such as drought, excessive rain, hail, thunderstorms, strong winds, exposure to heat or extreme cold and extreme temperature variations high and low. The MADR considers the climatic risk as very high, the most affected regions being South-East, South-Muntenia Bucharest-Ilfov and South-West Oltenia;
- Health risk for plants and livestock is a threat to farmers' income, in particular with the situation of endemic diseases;
- Environmental incidents are rare and have a limited area of impact, therefore the risk of environmental incidents is generally reduced at country-level. However, for regions or some areas, a greater risk could be assessed given the proximity to the industrial activities.

The need for an Article 38 mutual fund

Agricultural production is deeply dependent on climatic events (floods, drought, winter frost). It is considered that climate change will have a high impact on the Romanian agriculture in the medium and long term. Facilitating farmers' access to a mutual fund to compensate losses incurred as a result of natural disasters or other adverse events has been considered for years as a priority for the MARD.

The insurance system is private. The number of participating insurers is large enough, but the insurers are concentrating on independent risks and do not insure more systemic risks such as droughts or floods from overflowing rivers, heavy persistent and excessive low temperatures. Farmers' unions (LAPAR, PROAGRO and smaller ones) are therefore supporting the concept of mutual fund, with subsidised compensations by the EU and the Romanian budget.

The "long search" for implementing a mutual fund Article 38

The MADR was aware of the FMSE implementation in France in 2012-2013 and tried to benefit from this very first practical experience. Several missions in France were performed for taking advantage of the French experience. The first move has been to create an adequate legislation, which has been done with the Government Emergency Ordinance (GEO) no. 64/2013 *"regarding the establishment and accreditation of mutual funds for risk management in agriculture and granting of financial compensation for economic losses caused by animal diseases, plant or environmental incidents to members".*

Ordinance has been followed by several official texts for support and improvement, such as the Government Decision (GD) No. 570/2013 approving the Methodological Norms for the application of the ordinance, the Law No. 2/2014 approving the GEO No. 64/2013 and the Emergency Ordinance No. 63/2014 amending GEO No. 64/2013.

3.1.2 The main provisions of the current legislation

According to the national regulations, a mutual fund is an open, apolitical, non-profit nongovernmental organisation, a legal entity to be established. It is organised and operates in accordance with Romanian law.

Under Article 7 of GEO No. 64/2013, a mutual fund should be accredited by the MADR for a period of five years, with the possibility of renewing accreditation for periods of three years on the re-examination of a simplified file.

A mutual fund, as governed by the GEO No. 64/2013, should cover the entire national territory and all activities which include agriculture, according to the legal production, rearing or growing of agricultural products including harvesting, milking, breeding and keeping animals for farming purposes or maintaining land in good agricultural and environmental conditions. The ordinance of 2013 is limited to grant financial compensation to its members for production losses caused by sanitary adverse events, pest infestation and environmental incidents. The Emergency Ordinance No. 63/2014 amending GEO No. 64/2013 includes climatic events as origins of compensation.

The economic losses to be compensated are now determined by the following events: a) climatic events, b) animal disease which are listed by the World Organization for Animal Health and/or in Annex I to Council Decision 2009/470/EC of May 25, 2009 on expenditure in the veterinary field; c) plant pests and plant diseases subject to obligatory control measures or representing an exceptional character; d) environmental incident.

The support, in the form of financial contributions granted to a mutual fund, represents 65 % maximum of the compensation paid to farmers. Financial public support is financed from the European Agricultural Guarantee Fund (EAFRD) and the state budget, respectively 75 and 25 % as explained above.

The accreditation of a mutual fund is subject to several conditions, including the ability of technical expertise and financial management of the fund and a requirement of representativeness: all agricultural activities, all counties, more than 30 %[6] of the arable surface in Romania, including an equivalent of the animal held (equivalent in livestock units per hectare of pasture) and at least 20 % of the number of beneficiaries registered at the Paying Agency APIA.

For the accreditation of a mutual fund, an application to the MADR should be submitted, accompanied by a dossier containing its presentation, technical file and accounting documents. The content of the documentation to be provided is established by the Minister of Agriculture and Rural Development[7].

The technical dossier must present the methodology of calculation of economic losses which can be compensated. The accounting dossier must contain an estimate of revenue and expenses, including operating expenses. Accounting and management books are required.

Financial compensations are paid by the mutual fund to the affiliated farmers who have claimed economic losses. To become a member of the mutual fund, the natural or legal persons must be registered legal “active farmer” and pay the required mutual fund's contribution.

[6] Later decreased to 20% of the arable surface
[7] The MARD asked a local consulting company for developing a manual for mutual fund accreditation

3.1.3 Issues supported by key stakeholders for the delay of implementation

The initial plan of the Ministry was to initiate mutual fund(s) at the end of 2013 as the GEO No. 64/2013 was creating penalties for non-adherence of farmers to a mutual fund until March 1, 2014.

However, the funds have not been created as the initial legislation had a number of ambiguities that delayed the development of these tools. Other issues for the delay of development have been suggested during interviews, as the following:

1. The lack of trust of potential beneficiaries
   Association of farmers (or unions) should lead the project of mutual fund Article 38 but many farmers are reluctant to trust such collective instruments by fear of former CAPs[8]. In addition there are fears that individuals in control will represent their own interests and not the fund ones;

2. The capacity of a mutual fund to cover agricultural climatic adverse events, given the extent of damage and their frequency[9]. Extent of damage is raising the issue of the right level and capacity of mutualisation. High frequency is raising the issue of average production and the threshold of loss compensated. An expected high threshold for compensation should decrease the willingness-to-contribute and therefore the survival capacity of the mutual fund. Furthermore, their potential stakeholders are questioning the capacity of the public budget to subsidise compensation on extreme farmers' losses;

3. The possibility of reinsurance of the mutual fund:
   Is there a need and a possibility of a reinsurance mechanism, private or public?

4. The fund implementation:
   To be accredited under the last law, a fund must be representative and must demonstrate that its members operate more than 20 % (latest national regulation) of total agricultural area and livestock recorded nationally. How to start a fund when no farmers' union or association of farmers is able to prove ex ante that the 20 % threshold will be reached? And ex post issues with the members of the fund can be extremely complex if the fund is not accredited by the MADR;

5. The start-up of the fund:
   How to start a mutual fund if, in the first years, the loss to be compensated is greater than the contributions and the related subsidies? How to keep trust if the mutual fund indemnifies at very low rates?

6. What are the production risks covered?
   Questions arose during interviews on the climatic risks, livestock and plan diseases as well as environmental risks that would be practically covered by a mutual fund. Where are the limits between the insurable and non-insurable climatic risks, the public coverage system of epidemic diseases, and the diseases that should be managed on-farm by preventive actions of the producers? Who decide what are the risks covered?

[8] *Cooperative Agricole de Production (CAPs) - Agricultural Production Cooperative - former socialist agricultural associative structure imposed by the communist regime. They forced (expropriation, deportation and even armed force) all the farmers to give their land to the state and form CAPs. Actually, the farmers lost their right to property for the land they held.*

[9] Five years of drought since 2009 in Romania

Causes of eligible economic losses defined in the law, such as "*unfavourable factors that affected plants on an area*", are unclear and may create disputes between the affiliated members and their mutual fund;

7. One or several funds?

   The issue is related to the number of mutual funds to be accredited. The MADR was looking for a national fund with specialised sections identical to the FMSE in France when farmers' unions were willing to implement their own mutual funds.

   A World Bank study (2014) that completed an overview of risk management instruments in Romania and provided recommendations that supported the unique mutual fund as opposed to competing funds on farmer contribution and expected compensation rates, and with limited pooling capacities. But the legislation was unclear (and changing) in the accreditation constraints. The coverage was first set at 30 % of the national acreage (with adjustments for livestock production) and was then reduced to 20 %. Constraints in the geographical localisation of members were also lifted.

   As a consequence, some farmers' unions and associations are supporting their own fund when some others are willing to keep the former system of ex-post payments that is managed on national payments.

   The Minister of Agriculture provided in 2016 a project of new law aiming at creating a unique fund, with a public-private organisation and governance (see Project of Governmental Emergency Ordinance 2016) but has not been validated due to political changes;

8. Who should technically manage the fund?

   Farmers want to know who will manage the fund. The law states that members of the Board of management should represent at least 5 % of the agricultural area of the fund or equivalent in livestock production. Such a provision, which is supposed to be beneficial to representativeness is not clear enough for insuring a fair coverage of all agricultural sectors and all types of agriculture (small, medium and large farms);

9. Who should financially manage the fund?

   The legislation is unclear on the financial management of the fund(s). Should it be directly by the fund management, by a private bank or insurer or by a public actor?

10. Mandatory or voluntary?

    In the very first legislation, it was mandatory for farmers to join a mutual fund. The Romanian regulation initially set as penalties for not participating to a mutual fund until March 1, 2014. But this constraint and related sanction was lifted by the Law No. 2/2014 approving the former ordinance;

11. How long should a farmer pay contributions to receive certain compensation and/or incentives?

    GEO No. 64/2013 stipulates that a farmer receiving financial compensation from the fund is bound to remain a member of that fund for a period of three consecutive years. This constraint is aims at providing for financial stability and continuity of the mutual fund. On the other hand, in case of breach of the obligation, the legislator has failed to specify a penalty.

    In the same context, it is envisaged that the National Agency for the Management of Agricultural Mutual Fund can provide incentives for farmers that contributed more than five years in setting up the compensation fund. The provision of incentives and their amount would be approved by the Board of Directors if the financial reserve of the compensation fund exceeded by at least 20 % the maximum amount necessary to cover possible risks.

3.2 Italy

Interviews have been performed at farmers' unions and Ministry of Agriculture, and several conclusions can be made on the current situation of Article 38 in Italy. First, it is evident that no Article 38 mutual fund is currently in place in Italy. Indeed, there are several mutual funds that run without subsidies (i.e. do not comply with the constraints of Article 38 and do not benefit from EU subsidies) and are financed by farmers. The existing mutual funds are dedicated to specific risks and are active in several parts of Italy: Province of Trento, Veneto, Friuli Venezia Giulia, and Emilia Romagna.
The rationale behind the allocation of a budget for article 38 is the willingness to promote a new instrument capable of increasing the number of current mutual funds and possibly act as an "umbrella" MF, and therefore capable of improving the coverage of climatic, sanitary and environmental risks.
There is still no complete national legislation that allows and supports the development of an Article 38 mutual fund. The Ministry indicates the lack of EU guidelines for designing an effective mutual fund (i.e. mono or multi-sectorial, based or not on price index for the determination of revenues), and several challenges are still unresolved. First, it is unresolved if the MF will be sectorial or transversal: the former seems more attractive for farmers, but less efficient in terms of capacity of covering risk. In addition, it has not been established whether a unique or multiple funds with a sufficient pooling capacity will be promoted. Last but not least, the voluntary or mandatory nature of the mutual fund that will be put in place is still under debate: the lack of regulations makes these challenges even more complicated. A tentative, and transitory solution, is likely to be the launch of a mutual fund without the public funding as a start-up process that should catalyse the adhesion to the fund and stimulate the activation of further funds. It is also worth noting that the frictions described above may be corroborated by the lack of leadership from farmers' unions, not all fully favourable to the introduction of new instruments and rather oriented to put efforts to increase participation to and subsidies for the crop insurance scheme. A further aspect of relevant importance is the reluctance of farmers in forecasting a benefit from the adhesion to mutual funds. In particular, farmers are questioning the level of solidarity within a mutual fund and raising questions such as who is paying for whom, who is benefiting and who is losing. More specifically, there is fear of transfer or resources from wealthier areas (i.e. from the north of Italy) where insurances against climatic risks are largely adopted, to poorer and riskier areas (i.e. the southern part of Italy) where crop insurance is less adopted (see case study no 2). The fear is however not well supported by data and evidence, in that, while a gradient of risk profiles exist, it mainly pertains to the farm activities rather than to the geographical location (ISMEA 2011, Santeramo et al. 2016). Apart from this speculation, an intrinsic issue remains: the basic idea of risk mutualisation between the north and the south is not straightforward and the adhesion to a mutual fund, if voluntary, will not be automatic.

It is worthwhile to present the successful case of the mutual fund CODIPRA created by the *Consorzio di Difesa* in the province of Trento, north of Italy, and managed without public subsidies.

Table 2: Performance of the CODIPRA mutual fund

Year	Liquidity	Payments	Reparametrisation	Savings
2009	1 940 973	1 940 973	–	–
2010	1 906 975	1 154 669	–	752 128
2011	2 241 444	2 899 260	–	93 909
2012	3 360 626	5 054 200	7.70	–
2013	3 728 714	2 030 470	–	1 114 113
2014	3 984 056	4 206 977	–	754 530
2015	1 855 078	2 861 549	–	433 753
2016	2 675 288	2 019 767	–	730 524
Total	21 692 790	21 712 460		730 524

Data provided in Table 2 are referring to the MF that compensates with a 30 % threshold of loss. The fund is collecting contributions from members and compensates farmers when current revenue is lower than 70 % of the historical one. The payments of the MF are limited to the available liquidity. If payments due are lower than the available liquidity, the excess of liquidity is saved for subsequent years. An interesting feature of the CODIPRA mutual fund is the differentiated methodology for computing revenues and costs. Revenues are computed by using data provided by each individual farm (i.e. revenues are computed as sum of all gross value of farm production) whereas costs are computed at aggregated level (i.e. by using crop-based indexes obtained as average costs of the efficient farms of the area). The data show that in all but one year the MF has been able to fully compensate losses experienced by farmers, thus proving to be a promising tool.
The mutual fund CODIPRA is working well for several peculiar reasons: (i) the vast majority of members of the mutual fund are specialized producers of apples, a high added-value production (as most of the productions in Trento), (ii) subject to well-known idiosyncratic risks (hail) and (iii) with a high level of common trust between members. Such conditions could support the development of crop insurance, but mutual trust between producers had induced the creation of a mutual fund.

Other dedicated MFs in the Province of Trento have been created to help farmers to cope with different types of risk: risky areas, production structures and for income stabilisation under a similar scheme. The first MF is particularly devoted to areas in which risks are higher than the average with deductibles in a 15 % to 30 % range. This MF covers therefore damages that fall above the minimum threshold of loss that makes the MF eligible for EU subsidies. The second MF (dedicated to production structures) has been established to cover the losses due to the obligation of explant. The third MF dedicated to income stabilisation is a precursor of the Income Stabilisation Tool (IST) under Article 39 of EU Regulation No. 1305/2013 and has been implemented to provide the highest coverage in terms of risk exposure.

In conclusion, Italy is a Member State wishing to implement an Article 38 mutual fund, as benefits are foreseen in complement with the development of crop insurance and the current livestock public sanitary system. But recurrent questions on practical organisation, conditions to start a fund and mixed feelings of farmers' unions on the capacity to manage an efficient mutual fund(s) maintain the issue as a secondary priority of investment. Finally, there is a gap between the information needed for presenting the benefit, the limits, the organisation and the governance of a large multi-sectorial mutual fund and the current state of art. As a consequence, a slow process development of Article 38 mutual funds can be expected.

3.3 France

Interviews have been performed at the FMSE, at representatives of specialised sections of the FMSE, at representatives of farmers' unions and at the Ministry of Agriculture.

The FMSE is considered as a success by its Members, the professional organisations, the farmers' unions and the Ministry. Created by one large farmers' union (FNSEA) and its dedicated union for young farmers "*Jeunes Agriculteurs*" (JA), the other unions have been invited to the Board of management. The eighteen seats of the Board are filled proportionally by all unions with respect to results of the national elections. Therefore, all unions are participating efficiently in the FMSE governance. The governance rules have been considered by all key stakeholders as determinant for the success of FMSE.
The FMSE is an instrument to complete the national crop insurance scheme (with insurable and non-insurable risk dichotomy defined by the *Comité National de Gestion des Risques Agricoles*) and the national scheme for livestock sanitary risk management. The FMSE was able to aggregate some "local" mutual funds including the well-organised GDS funds for sanitary risks (diseases of 3rd category and some direct and consequential losses). Table 3 presents the FMSE development since 2013 where compensated file numbers are increasing (even though 2016 number as estimated will be lower). The activity is basically related to sanitary risks for plants and livestock. The practical activity is based upon programmes approved by the Ministry of Agriculture and managed by specialised sections. The fundamental task to evaluate farmer losses is performed by the specialised public services (*Service Régional de l'Alimentation* in charge of defining outbreak of diseases, specialised organisations such as Groupement de Défense Sanitaire (GDS) for livestock diseases and *Fédérations Régionales de Défense contre les Organismes Nuisibles* (FREDON) for plant diseases or *Direction Départementale des Territoires* (DDT) and the *Direction Départementale de la Cohésion Sociale et de la Protection des Populations* (DDCSPP) at the regional *Préfecture*). These organisms are in charge of controlling endemic diseases and information on outbreaks of epidemic diseases. In particular, they are responsible for mandatory measures for culling, transportation and other constraints.

Table 3 is presents the FMSE in terms of file numbers and events that induced compensations. The last line of Table 3 covers expected data by the FMSE. The tendency is upward since 2013. Most of the compensated events are related to sanitary events on crops: 100 % in 2013, 91 % in 2014, 55 % in 2015 and 84 % expected in 2016. The other compensated events are mainly sanitary events on livestock as environmental incidents are quite absent. There is no climatic event compensated by FMSE as the mutual fund is strictly dedicated to sanitary and environmental events.

Table 3: FMSE activity, 2013-2016

	File numbers	sanitary/crops % compensation value	sanitary/livestock % compensation value	environmental % compensation value	Public subsidies (EAFRD + FR)	% of EAFRD subsidies
2013	444	100%	-	-	2,65 M€	100%
2014	604	91%	7%	2%	4,00 M€	8%
2015	6272	55%	45%	-	6,47 M€	5%
2016F	2875	84%	16%	-	6,97 M€	6%
				Total	20 M€	12%

Source: FMSE

It must be noted that the percentage of EAFRD subsidies is very low, an estimated 5-6 % of total public subsidies. The 100 % of EAFRD subsidies in 2013 are linked with the 2009 regulation that changed with the 2013 regulation. As a consequence, the 2013 programme for eliminating the plum pox virus (*sharka*) has been fully subsidised by the EAFRD for about € 2 million when the same programme in 2014 has been subsidised by national subsidies for € 2.8 million.
At the end of 2015, over €15 million of cumulated indemnities have been paid, benefiting from about € 10 million of public subsidies. It is estimated by the FMSE that the EAFRD contribution is 10 % of the total public subsidies but, if dropping year 2013 managed under former 2009 regulation, this percentage is dropping to 5-6 %. EAFRD pay-outs are a very small part of the total public subsidies to the FMSE.

The interview of stakeholders of FMSE indicated three explanations for such situation that constrains the development of the fund using EAFRD subsidies as proposed in Article 38:

1. The 30 % threshold of the EU regulation
The FMSE acts on the first disease outbreak for plants or livestock to prevent the spread of the disease. As a consequence, the 30 % threshold is never or barely reached. This explains first why compensations are not eligible for EAFRD subsidies[10]. The current EU regulation is not well adapted to the principle of acting against a disease outbreak.

2. Article 36 (1b) and article 38 (2)
Article 36(1b) stipulates about "financial contributions to mutual funds to pay financial compensations to farmers, for economic losses caused by adverse climatic events or by the outbreak of an animal or plant disease", whereas Article 38(2) states that "The occurrence of incidents mentioned in point (b) of Article 36(1) must be <u>formally recognised</u> as such by the competent authority of the Member State concerned".

In France, livestock and plants are blocked and destroyed on the suspicion of disease (under the precautionary principle). The producer is therefore suffering a real loss but the indemnity provided by the FMSE is not subsidised practically by the French Ministry of Agriculture under the constraint of the Article 38(2) and possible retaliation of the EU administration. This is a practical illustration of the "umbrella" or precautionary practice of a MS administration.

As a consequence, livestock producers are angry with respect to beef tuberculosis and other "suspicious diseases" that create major problem in the development of prophylaxis measures and symptoms are no more declared by farmers.

The European regulation was requiring practical explanations to avoid uncertainties and keep trust in the instrument and therefore payment of farmer contributions. A meeting between the FMSE, the French farmers' union FNSEA and DG AGRI has been organised in April 2017 in Brussels, four years after the FMSE wrote a document to explain the problem. DG AGRI addressed the issue in a letter to the French Ministry of Agriculture "interpreting" Article 36 paragraph 3 in a way that losses due to suspicious disease in a

[10] This issue is not related to "financing sanitary prevention" versus "compensation to declared diseases" but compensation to the first loss before reaching the 30% threshold of loss.

farm should be compensated and subsidised by the EAFRD. This letter is clear and the Ministry should now provide public subsidies to FMSE using EAFRD funds[11].

3. Environmental incident

Article 2(j) of EU Regulation No. 1305/2013 is defining an environmental incident as "*a specific occurrence of pollution, contamination or degradation in the quality of the environment which is related to a specific event and is of limited geographical scope; but does not cover general environmental risks not connected with a specific event, such as climate change or atmospheric pollution".*

These incidents are therefore accidental pollutions with contaminants such as dioxin, lead, other heavy metals or pyralene (polychlorobiphenyls) in livestock fat content. As a consequence the products can no more be sold on the market.

The possible origins of contamination translated from the EU regulation in the French Code Rural, following the governmental regulation of 08/08/2012 are:

- Fire;
- Accident of dangerous goods (train, truck);
- Accidental pollution from an industrial plant.

Fire and accident of dangerous goods have no practical interest, as the probability of event is very low and the value of the loss very limited. Practically, not a single-event has been claimed since the setting up of the FMSE. And the third origin is not accepted by the Ministry of Agriculture for public subsidy as, very often, there is no observable "specific event" with a specific time of occurrence as required in the Article 2 definition. The French administration is therefore opening an "umbrella", meaning opposing a precautionary attitude, with respect to the European administration, as presented in the "suspicious versus declared" disease case above. It is a pure text interpretation by the French administration but this is a real situation.

The environmental risk is a tricky issue and can be very costly. The FMSE went to court several times against an industrial firm as the pollution was quite certain but the procedure is long, costly and without clear evidence of success. Environment becomes a media, political, economic and human issue when a farm must stop its activities due to a pollution event.

A question arises as the conclusion of the FMSE gained experience: is the Article 38 of the EU regulation no 1305/2013 adequate to manage really all aspects of environmental risks?

[11] The letter is quoting Article 36 paragraph 3 when the "real" concern is more Article 36 paragraph 1.b and Article 38 paragraph 2.

4 Conclusion: implications of the case study in terms of public policy

Mutual funds are not a trivial issue. They have been in place for years in some Member States, with or without public support, and absent in others. Creating a mutual fund requires a great leadership of a farmers' union or from a farmers' organisation and the Ministry of Agriculture. To the very first question of mutualisation level come the two basic possibilities, mandatory or voluntary participation. A clear individual benefit must be elicited for a voluntary participation. That is the main reason of the FMSE success and the failure of Romania to implement an Article 38 mutual fund. The example of Romania but also Italy, and potentially, other MS that would benefit from such a mutual fund, demonstrate that it is necessary to attract farmers, and indirectly, farmers' unions[12], with specific techniques if the farmer participation is not mandatory.

France and Italy are Member States that developed subsidised mutual funds against climatic risks for more than fifty years[13]. They were mandatory. France chose to move from a mutual fund for climatic risks with many limitations due to questionable mutualisation level (north paying the south and grain sector paying for fruits and vegetables) to a private insurance system with a timely transfer of risk to "insurable risks". And finally, France initiated a mutual fund for sanitary and environmental risks that were not insured and not fully subsidised as, for example, direct costs on contagious livestock diseases.
In Italy the process of activating Article 38 mutual funds (as well as Article 39 mutual fund(s) called Income Stabilisation Tool) is slowly proceeding: the Ministry of Agriculture has intentionally allocated budget on these interventions to put high priority on them. Several impediments need to be solved in that there is no agreement on the realisation of a unique or of several funds, as well as on the necessity to realise sectorial (e.g. in the dairy sector of in the fruits and vegetables sector) or multi-sectorial funds. Indeed, in Italy there has been the emergence of several local, limited and unsubsidised funds. These funds are private initiatives that may prove to be interesting case study for the implementation of a national fund under Article 38 and also 39.

The key of success of the FMSE in France is, first, the capacity of all farmers' unions to create a unified governance body, able to design a new common mutual instrument with an innovative organisation (a common section and specialised sections). The development of the FMSE is now pending upon (i) improved regulation in the threshold of loss for preventive actions for sanitary risks and (ii) improved regulation for environmental risks for reducing the legal uncertainty on complex issues.
The second key of success, as explained by the FMSE management, is the support of the services of the Ministry of Agriculture and to implement the compensation process. Basically losses incurred by farmers, direct and consequential, are estimated by the services of the Ministry. The financial implications are managed by the FMSE (after

[12] Farmers' unions have a comparative advantage with respect to other forms of farmers' organization. They are able to initiate and support a national legislation for creating incentives to a mutual fund participation of farmers

[13] Fonds National de Garantie des calamités Agricoles in France (loi 10 juillet 1964) and Fondo di Solidarietà Nazionale in Italy since 1970 (legge 25 maggio 1970, no 364)

validation by a mixed public-private Committee for Agricultural Risk Management[14] as presented in case study no. 1).
In addition, interviews of insurers brought the idea that sanitary risks managed by the FMSE could be considered as "experimental coverage", meaning the data produced by the FMSE could be used to design additional insurance contracts on sanitary risks.

The current failure to implement an Article 38 mutual fund in Romania, since 2013 when governmental ordinance gave the political signal, is mainly due to the lack of leadership in the farmers' unions and a lack of cooperation between the Ministry and the farmers' unions. It is a necessary condition. All issues become real problems when key stakeholders do not share the same political and technical vision.

But these conditions are not sufficient. The public policy must explain and guide the key stakeholders in their project of development of a MF under Article 38. The very first document to be proposed should be a clear template for the MF accreditation[15].

At the EU level, it is required to build more efficient guidelines. The Measure Fiche does not provide clear explanations and interpretation of the current regulation. The DG should work on the guidelines through working groups and seminars including key stakeholders, with and without practical experience, to raise all pertinent questions and bring adequate answers. This plan would limit the legal uncertainty that block the national administration. The Measure fiche could start with the usual "Frequently Asked Questions" (FAQ) derived from these working groups.

The EU level should develop a "learning curve[16]" on the efficiency of mutual funds in order to promote their development among MS, even in countries with adverse experience of obligatory mutualisation.

At the MS level, there is a need for a specific and common work between the leading farmers' organisation (mainly a farmers' union as explained in footnote 12), the Ministry and the Payment Agency. The EU information, as produced in technical seminars, should be shared among MS key stakeholders. All questions related to the need, constraints and perspectives should be discussed before any effort to design a national mutual fund article 38.

- Is there a need for such a mutual fund or do current instruments able to deal with full climatic, sanitary and environmental risks?
- How to organise the design and the implementation of the mutual fund if needed?
- What is the right level of mutualisation? Multi-sectorial, sectorial (which ones);
- Is the mutual fund mandatory or voluntary? If voluntary, what are the incentives par adequate participation?

At the production sector level,
A technical work is required for defining the risks to be shared by the mutual fund, the full cycle of its management (indicators, thresholds, information on the outbreak, decision and modalities of compensation, method and delays of payment, control, etc.) and the governance bodies.
The technical support of the MS administration as well as of the EU administration, through the learning curve, should be provided.

[14] In French, Comité National de Gestion des Risques Agricoles (CNGRA)
[15] Such tentative template has been created in Romania. It should be part a European learning curve as required for the development of MFs under Articles 38 and also 39.
[16] The more you do, the more you learn and the better you are

To conclude the role of public policy, a vertical cooperation from the local risks faced by farmers to the DG AGRI guidelines, is required for piloting the development of mutual funds as a new mean for production risk management or for integrating former mutual funds based on “viable risk” and allowing additional “experimental” risks.

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- Mrs Cécile Sablou, Director of FMSE, Paris
- Mr Thierry Roquefeuille, Chairman of FNPL, Dairy section of FMSE
- Mr Eric Lainé, Chairman of CGB, Sugar beet section of FMSE
- Mrs Catherine Lion, Director of FNSEA, Paris
- Mr Jacques Pasquier, Confédération Paysanne, Montreuil
- Mr Julien Turenne, Ministry of Agriculture, Paris

Romania

- Mr Achim Irimescu , Minister Plenipoteniary, Permanent Representation of Romania to the European Union, Brussels, former Ministre of Agriculture
- Mrs Daniela Giurca, former Secretary of State, Ministry of Agriculture and Rural Development, Bucarest
- Mr Radu Lupu, FSA
- Mrs Florentina Almajan, CEO, The Natioanl Association of Insurance and Reinsurance Companies in Romania
- Mr Calin Matei, Deputy Chief Executive, Groupama, Bucarest
- National Federation PRO AGRO
- LAPAR – League of Associations of Agricultural Producers of Romania
- Several academics and researchers (Mr Dinu Toma, Dean Faculty of Management, Economic Engineering in Agriculture Rural Development, Ion Dona, Department head Faculty of Management, Economic Engineering in Agriculture Rural Development, Iuliana Ionel, Camelia Gavrilescu and Cristian Kevorchian, researchers Romanian Academy - Institute of Agricultural Economics)

Italy

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