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NOTE

From: Presidency
To: Special Committee on Agriculture
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Subject: Regulation on CAP Strategic Plans
- *Financial flexibility*

Delegations will find in the [Annex](#) a Presidency discussion paper on the abovementioned subject for an exchange of views at the Special Committee on Agriculture on 21 October 2019.

On 16 September, the Special Committee on Agriculture (SCA) discussed Presidency drafting suggestions on financial flexibility in direct payments. Member States welcomed the suggested flexibility, which they considered to go into the right direction. However, some Member States requested the possibility to widen its scope to rural development interventions in Articles 65, 66 and 67 as well as sectoral types of interventions.

As the Presidency highlighted during the discussion at the SCA, the main concern is the difficulty to **plan in advance** the funds to be reserved for eco-schemes - particularly because it is a "new" scheme, thus without prior experience in its implementation - and the young farmers' scheme. The cases of under- and over-execution were discussed, as they could lead respectively to a loss of financial resources or insufficient funding for particularly "successful" schemes, both representing a concern for Member States.

Cases of under- and over-execution can also occur in **rural development interventions** especially under Article 65 (executions in interventions under art. 66 and 67 are easier to estimate). The multiannual financing of rural development measures provides well known possibilities to handle under-execution. However, over-execution may also lead in the European Agricultural Fund for Rural Development (EAFRD) to lower than promised payments if there are no interventions from where funds could be transferred.

In **sectoral types of interventions**, there is no risk of over-execution since Member States can only accept demands up to the amount available. However, under-execution may also happen in these types of interventions.

The Presidency suggested to create additional flexibility by allowing Member States in **Article 89(1)** to fix not only maximum, but also minimum unit amounts.

To tackle possible **cases of over-execution** of certain interventions, the possibility to allow the realised unit amount also to be *lower* than the planned unit amount would give Member States the flexibility they are requesting. Thus, for example in cases of higher than anticipated uptake of eco-schemes, the Member States could reduce the unit amount of BISS (until the lower limit is reached) in order to shift funds for the eco-schemes.

As stated in the Presidency paper on 16 September (12045/19), the suggested flexibility requires corresponding technical changes also to **Article 99(g)** concerning the description of the unit amounts of interventions in the Strategic Plans. A drafting suggestion can be found in the Annex to this document. In addition, a specification concerning result indicators has been inserted as point (da) of Article 99.

Article 88(3) has been redrafted to better describe the possibilities and limits of using funds for other interventions than the ones for which they have initially been allocated without amending the CAP Strategic Plan, in full respect of the relevant provisions of the CAP Strategic Plans Regulation (SPR) and the Horizontal Regulation (HzR). For example, funds for direct payments interventions could be transferred, but only to other direct payments interventions. The same would apply to funds for rural development interventions, which could only be transferred to other rural development interventions. Funds for sectoral interventions could be transferred to other sectoral interventions as long as they would stay within the same sector or within 'other sectors' (redrafted Art. 88(3)).

In **Article 89(1)**, a new provision has been added. Where the realised output exceeds the planned output, the unit amount may decrease below the minimum provided that this decrease is proportionate to the additional realised output. This kind of provision would be needed, for example, if the number of applicants for eco-schemes is much higher than expected and no further funds from other direct payments interventions can be transferred to avoid that a part of the applicants are left without any support. This provision would allow all applicants to get support, but less than originally planned.

With regard to **cases of under-execution**, many Member States have expressed concerns regarding unused funds. In the Presidency's view, the limits of the variation to the planned unit amount would play a central role to address this issue. In case the realised output is lower than planned, the unit amount could be raised to the maximum, which would reduce the amount of unused funds. If unused funds, for instance for eco-schemes, still remain, they could be transferred to other interventions, such as the basic income support for sustainability (as per Article 88(3)) until the upper limit of those interventions is reached. Therefore, it is important that the amount of variation is planned carefully in advance in order to cater for different eventualities which may rise.

The Presidency had already proposed the deletion of points (b) and (c) in Art. 89(1). In response to this, many Member States asked in the Working Party on Horizontal Agricultural Questions (WP HAQ) on 10 October to reintroduce them arguing that the financial flexibility under Article 89 should also cover also Articles 65, 66 and 67. In the Presidency's view this question needs further consideration still.

Question for debate:

Is the Presidency's suggested approach on Articles 88 and 89 sufficient to ensure enough flexibility and limit the risk of losing funds? Would any further change be necessary?

Drafting suggestions to Art. 88, 89 and 99

Article 88

Indicative financial allocations

1. Member States shall set out, in their CAP Strategic Plan, an indicative financial allocation for each intervention. For each intervention, **this indicative financial allocation shall equal** the multiplication of the planned unit amount, without the application of the ~~percentage of~~ variation referred to in Article 89, and the planned outputs, ~~shall equal this indicative financial allocation~~.
2. Where different unit amounts are planned within an intervention, **the indicative financial allocation referred to in paragraph 1 shall equal** the sum of the multiplications of the planned unit amounts, without the application of the ~~percentage of~~ variation referred to in Article 89 and the corresponding planned outputs. ~~shall equal this indicative financial allocation referred to in paragraph 1~~.
3. **The indicative financial allocations set out by Member States in accordance with paragraph 1 shall not prevent Member States from using funds from these indicative financial allocations as funds for other interventions, without amending the CAP Strategic Plan as referred to in Article 107, subject to compliance with the provisions of this Regulation[, and in particular with Articles 81, 82, 83, 84, 86 and 89,] and with the provisions of Regulation (EU) No .../... [HzR Regulation][, and in particular with Article 30(6)(b),] and subject to the following:**
 - **financial allocations for direct payments interventions are used for other interventions in the form of direct payment;**

- **financial allocations for rural development interventions are used for other interventions in the form of rural development;**
- **financial allocations for interventions in the fruit and vegetable sector, the apiculture sector, the wine sector, the hops sector, the olive oil and the table olive oil sector are only used for other interventions in the same sector and the use does not affect approved operational programmes; and**
- **financial allocations for interventions in other sectors referred to in point (f) of Article 39 are used for interventions in other sectors referred to in point (f) of Article 39 laid down in the CAP Strategic Plan and the use does not affect approved operational programmes.**

Article 89

Variation of the unit amount

1. ~~Without prejudice to the application of Article 15,~~ Member States shall **may** set a maximum **or minimum unit** amounts of support per unit, **or both** or a percentages of **lower or upper** variation, **or both** for each intervention **in the form** of the following types of interventions

~~(a) decoupled direct payments and coupled income support referred to in Chapter II of Title III.~~

(b) payments for management commitments referred to in Article 65;

(c) payments for natural constraints or other area-specific disadvantages referred to in Articles 66 and 67.^{*}

The Percentages of **lower or upper** variation is **are** the percentages by which the realised average or uniform unit amount may **be lower than, or** exceed the planned average or uniform unit amount referred to in the CAP Strategic Plan.

For each intervention in the form of direct payments, the realised average or uniform unit amount shall never be lower than **the minimum unit amount or** the planned unit amount **after application of the lower percentage of variation**, unless the realised output exceeds the planned output as established in the CAP Strategic Plan. **Where the realised output exceeds the planned output, the realised average or uniform unit amount may decrease below the minimum unit amount or the planned unit amount after application of the lower percentage of variation provided that this decrease is proportionate to the additional realised output.**

^{*} The Presidency will review the part in curly brackets in the light of further discussions, including on 'option 1' of the new delivery model.

Where different unit amounts have been ~~defined within~~ **established for** an intervention, this subparagraph shall apply to each uniform or average unit amount of that intervention.

2. For the purposes of this Article, the realised average or uniform unit amount is **shall be** calculated by dividing the annual expenditure ~~paid~~ by the corresponding realised output for each intervention.

*Article 99**

Interventions

The ~~description of~~ **section on** each intervention specified in the strategy referred to in point (d) of Article 95(1) shall include:

- (a) the type of interventions it belongs to;
- (b) the territorial scope;
- (c) the ~~specific design or requirements of that intervention; that ensure an effective contribution to the specific objective(s) set out in Article 6(1). For~~ environmental and climate interventions, articulation with the conditionality requirements shall show that the practices **are complementary and** do not overlap;
- (d) the eligibility conditions;

(da) the result indicator(s) to which the intervention contributes;

- (e) for each intervention which is based on the types of interventions listed in Annex II to this Regulation, how it respects the relevant provisions of Annex 2 to the WTO Agreement on Agriculture as specified in Article 10 of this Regulation and in Annex II to this Regulation, and for each intervention which is not based on the types of interventions listed in Annex II to this Regulation, whether and, if so, how it respects relevant provisions of Article 6.5 or Annex 2 to the WTO Agreement on Agriculture;

* The drafting suggestions highlighted in grey in Article 99 were already presented to delegations at an earlier stage. However, they are still highlighted here for illustrative purposes.

- (f) the annual planned outputs for the intervention, and where relevant, a breakdown per uniform or average unit amount of support;
- (g) the annual planned **uniform** unit amount of support **or, where the setting of a uniform unit amount of support is not possible, the planned average unit amount of support.** ~~its~~ **The** justification **of the unit amount** and, **where relevant,** a justified maximum upper **and lower** variation of that unit amount as referred to in Article 89 **shall be provided.** Where applicable, the following information shall also be provided:
- (i) the form and rate of support;
- (ii) the **method for** calculating ~~on~~ ~~of~~ the unit amounts ~~s~~ of support and ~~their~~ **its** certification as referred to in **accordance with** Article 76;
- g(iii) the different uniform **or average** unit amounts of support within that intervention, notably for groups of territories defined in Article 18(2);
- ~~(iv) where Member States decide to differentiate the amount of the basic income support per hectare in accordance with Article 18(2) for each group of territories;~~
- (h) the resulting annual financial allocation for the intervention, as referred to in Article 88. Where applicable, a breakdown on amounts planned for grants and amounts planned for financial instruments shall be provided;
- (i) an indication as to whether the intervention falls outside the scope of Article 42 TFEU and is subject to State aid assessment.