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From:	Presidency
To:	Special Committee on Agriculture
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 - <i>Presidency progress report</i>

With a view to the meetings of the Special Committee on Agriculture (SCA) on 12 November and the Agriculture and Fisheries Council on 19-20 November 2018, delegations will find in Annex I a draft Presidency progress report on the examination of the Commission proposal for a new 'Horizontal Regulation'.

The Presidency has also drawn up, under its sole responsibility, a summary of the technical examination of the proposal as carried out in the WP AGRIFIN, and which, in its view, broadly reflects the key comments, questions and preliminary views made by the delegations.

A draft version of this summary was discussed in the WP AGRIFIN meeting on 6 November and, following this meeting, the Presidency introduced some changes to accommodate the comments of delegations while maintaining, however, the overall balance of views in the report.

The SCA is invited to take note of the attached draft Presidency Progress Report, which sets out the progress made with the examination of the proposal in the Council and which describes the main new elements in the proposed Regulation.

**PRESIDENCY PROGRESS REPORT ON THE EXAMINATION OF THE PROPOSAL
FOR A REGULATION ON THE FINANCING, MANAGEMENT AND MONITORING OF
THE CAP**

I. INTRODUCTION

1. Following the adoption by the Commission on 2 May 2018 of a package of proposals on the Multiannual Financial Framework for the years 2021-2027, the Commission published on 1 June 2018, as part of a number of sectoral legislative proposals implementing European policies, a proposal for a Regulation on the financing, management and monitoring of the CAP (hereinafter: Horizontal Regulation).¹
2. The proposed new Horizontal Regulation forms part of a package of three legislative proposals for agriculture in the period 2021-2027. The other two proposals concern the CAP Strategic Plans Regulation², which covers direct payments and rural development and which establishes rules on support for Strategic Plans to be drawn up by Member States under the CAP. The other proposal concerns the Common Market Organisation (CMO) of agricultural products.³

¹ Doc. 9634/18

² The "CAP Strategic Plans Regulation" (doc. 9645/18) will repeal the current Regulations on direct payments (Regulation 1307/2013) and on rural development (Regulation 1305/2017).

³ Doc. 9556/18

II. STATE OF PLAY IN THE COUNCIL

3. The Bulgarian Presidency, in coordination with the future Austrian and Romanian Presidencies, allocated the examination of the proposed Horizontal Regulation, as well as the so-called financial legislative statement accompanying the three CAP proposals, to the Working Party on Financial Agricultural Questions (hereinafter: WP AGRIFIN). The Working Party on Horizontal Agricultural Questions (hereinafter: WP HAQ) deals with the proposed CAP Strategic Plans Regulation as well as with the Impact Assessment covering the three proposals⁴ whereas the Working Party on Agricultural Products deals with the proposed CMO Regulation. The three proposals and their Impact Assessment were also presented by the Commission to the Special Committee on Agriculture (SCA). Finally, the Ad-hoc Working Party on the MFF examines the financial and budgetary implications of MFF-related provisions in sectoral legislative proposals, including as regards the CAP.⁵
4. A first discussion on the proposed Horizontal Regulation took place in AGRIFIN on 8 June, where the Commission presented the legislative financial statement accompanying the three CAP proposals.⁶ A full presentation of the operational provisions of the proposal was given in the AGRIFIN meeting of 4 July⁷ and at this occasion, the Austrian Presidency set out its approach⁸ towards examining the proposal on the basis of 8 Blocks of interrelated issues covering all articles of the proposal with the exception of the provisions dealing with the Integrated Administration and Control System (IACS, Articles 63-73) and penalties in relation to conditionality (Articles 84-87), which are examined by the responsible experts in the WP HAQ.

⁴ Doc. 9646/18

⁵ Certain provisions in the proposed Horizontal Regulation have been "bracketed", meaning that these provisions/elements will most likely form part of the horizontal negotiations on the MFF; however, this would not prevent AGRIFIN to examine the technical details of such provisions. See doc. WK 8969/2018.

⁶ Background doc. WK 6815/2018 and slides Commission presentation WK 7012/2018.

⁷ WK 8124/2018

⁸ WK 8106/2018 REV3

5. Since July, 7 WP AGRIFIN meetings took place, where all 8 Blocks of interrelated issues were discussed. After each meeting, delegations were invited to submit written comments on the issues discussed. The Commission provided written contributions on the issues raised by delegations in their written comments⁹ as well as non-papers on key issues in the proposal.¹⁰ On the basis of the comments heard and received, the Presidency has put together the text set out below, which summarises the key comments, questions and preliminary views from delegations on the different Blocks of the proposal examined by the WP AGRIFIN.
6. Following the Agriculture and Fisheries Council of 19-20 November and at the forthcoming meetings of the WP AGRIFIN on 21 November and 4 December, the Presidency intends to make a first attempt with delegations at identifying those articles in the proposal, where the Council sees a need to amend the text and to possibly discuss how such amendments could look like.

III. STATE OF PLAY IN THE EUROPEAN PARLIAMENT

7. On 4 July 2018, the EP Committee on Agriculture and Rural Development (COMAGRI) appointed Mrs. Ulrike Müller (ALDE, DE) as rapporteur on the file as well as co-rapporteurs of each of the other political groups. The EP deals with the three CAP proposals as a package, i.e. they are presented and discussed in the EP bodies at the same time. The EP Committees on Budgets, on Budgetary Control, and on Regional Development are expected to deliver opinions on the proposed new Horizontal Regulation.

⁹ WK 8521/2018, WK 12629/2018, WK 12630/2018, WK 12631/2018, WK 13232/2018.

¹⁰ WK 8875/2018, WK 11877/2018, WK 11881/2018, WK 12495/2018.

8. In terms of timing, Rapporteur Müller's draft report¹¹ will be presented to COMAGRI on 21 November and, following submission of further amendments by the Committee members, a vote in COMAGRI is tentatively scheduled for 18-19 February 2019. The EP has not yet taken a decision whether to take a Plenary vote on the COMAGRI report before the end of its current legislative term¹², considering that, even if a Plenary vote takes place under the current EP, the newly-elected EP may revisit its initial position, in particular in the light of the MFF negotiations.

IV. **MAIN NEW ELEMENTS IN THE PROPOSED REGULATION**

9. Similar to the current Horizontal Regulation in force (Regulation 1306/2013), the proposal sets out the general rules on the financial management and budgetary aspects of the two pillars of the CAP: the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD). The proposal concerns financial corrections and controls as well as procedures for the prevention, detection and correction of irregularities and the application of penalties in the area of agriculture.

¹¹ Available at: <http://www.europarl.europa.eu/committees/en/agri/draft-reports.html>

¹² EP's second Plenary session on 25-28 March 2019 is largely seen as the last opportunity for EP Plenary votes on legislative files with the 15-18 April session being regarded as a very last option ahead of the European elections on 23-26 May.

10. The proposal introduces a number of new elements deemed necessary to adapt the Horizontal Regulation to the proposed new delivery model¹³ and the CAP Strategic Plans¹⁴, which should offer Member States more flexibility in implementing CAP policy in line with their local needs, result in less bureaucracy for beneficiaries and shift the emphasis from assurance on legality and regularity of the underlying transactions to assurance on performance and the respect of basic Union requirements (e.g. IACS, conditionality, genuine farmer, WTO requirements, public procurement) and the governance bodies (paying agencies, coordinating bodies, competent authorities, certification bodies).
11. The proposed Regulation:
- a) aligns provisions on general principles for checks and penalties, checks for conditionality and the IACS to the new delivery model approach. A new system of conditionality shall link all farmers' income support and other area- and animal-based payments to the application of environment and climate-friendly farming practices;
 - b) establishes a new, multi-annual agricultural reserve of *at least* EURO 400 million in the EAGF to provide additional support for the agricultural sector, i.e. safety-net measures in the context of market management or stabilisation and/or in case of crises affecting agricultural production or distribution. The reserve will be filled by rolling over the 2020 crisis reserve from the current CAP/MFF into 2021. Thereafter, all unused funds from the agricultural reserve will be rolled over rather than reallocating money to the Member States and final beneficiaries;

¹³ The new delivery model should bring a fundamental shift in the CAP, moving away from compliance with detailed EU-level rules towards placing more emphasis on achieving results against the policy's common objectives, defined and agreed at EU level.

¹⁴ CAP Strategic Plans will be drawn up by each MS and should cover interventions planned under both CAP pillars to meet quantified targets (based on the result indicators set out in EU legislation) linked to EU-level CAP objectives.

- c) lays down rules on financing, management and control systems, on the processes for annual financial clearance and annual performance clearance and on the conformity procedure. The annual performance clearance relates to the eligibility of expenditure and shall: review the reporting on the outputs; check the opinion of the Certification Body (CB) on the reliability of the performance reporting and determine if expenditure is supported by the related outputs reported. Where the declared expenditure is not supported by the reported outputs and no due justification can be provided, a mechanism for a reduction in payments shall apply. In cases of deficiencies identified in the governance structure, a suspension of payments and in the last resort a conformity clearance mechanism may be triggered;
- d) would result in a reduction in the number of paying agencies (one per country or region for managing both EAGF and EAFRD expenditure) and strengthen the role of the coordinating body and the CB and introduces the single audit approach: CBs should provide the necessary assurance that the governance structures are in place, the EU rules have been respected at Member States' level and the reporting systems are reliable. The Commission will then assess the work of the CBs. The focus of Commission audits will shift from checking compliance with rules at the level of the beneficiary to assessing the delivery of outputs with the necessary governance structures in place and this should result in a reduction of audits to be carried out by the Commission;
- e) seeks further optimization of emerging technologies and better data sharing in the context of CAP financial management and controls by increasing the role of satellite programs such as Galileo and Copernicus and by providing for geo-spatial applications in monitoring and on-farm controls. This should improve monitoring, simplify procedures, reduce errors and also reduce the number of on-the-farm checks;

- f) provides for the use of financial instruments to facilitate access to working capital to assist farmers overcome a temporary cash-flow problem caused by an unexpected crisis; and
 - g) allows Member States to design their own control and penalty system, including making decisions about control methods and levels, types of sanctions, etc. and Member States will also be allowed to move away from the system of payment entitlements, which could be an important source of reduction of administrative burden.
12. The Presidency has drawn up, under its sole responsibility, a summary of the technical examination of the proposal as carried out in the WP AGRIFIN (see below). This summary broadly reflects the key comments, questions and preliminary views made by the delegations on the main issues in the proposed Regulation mentioned above.

Key comments, questions and preliminary views from delegations

BLOCK (1): scope and definitions (Arts. 1-3); general provisions on agricultural funds (Arts. 4-7)

1. Although minor changes are introduced on the **scope, definitions and exemptions in cases of force majeure** (Arts. 1-3), delegations seek further clarification on what the new terms '*governance systems*' and, particularly, '*basic Union requirements*' would exactly cover (e.g. IACS, conditionality, genuine farmer, WTO requirements, public procurement, etc.). They believe that the '*basic Union requirements*' should be further specified as Paying Agencies (PAs) and Certification Bodies (CBs) need to be clear on the rules. Some delegations plea for an extension of subsidiarity and of the scope of the proposed new delivery model.
2. Delegations regret that two cases of **force majeure** have been removed in the new proposal ('*death of the beneficiary*' and '*long-term professional incapacity*'), although they acknowledge that the list (in Art. 3) is non-exhaustive and MS are free to add situations/cases. Some delegations either want to see the entire list deleted, thereby leaving decisions on force majeure to MS, whereas others suggest to have a more comprehensive list (similar to the one in the current Regulation).

3. Although minor changes are introduced to the provisions dealing with the **funds financing agricultural expenditure, EAGF and EAFRD expenditure and other expenditure, including technical assistance** (Arts. 4-6), delegations have questions on the new sectoral interventions set out in the CAP Strategic Plans Regulation (**Art. 5(2)(b)**) and specific measures for agriculture in the outermost regions and the smaller Aegean islands (**Art. 5(2)(e)**). Delegations took note of the Commission's explanation that EAFRD should continue to finance technical assistance in shared management (**Art. 6**). With regard to the types of CAP expenditure (**Art. 7**), delegations raise particular questions on Technical Assistance (TA), financed at the initiative of, and directly managed by, the Commission, including studies, monitoring, information exchange, surveys, information technology and systems, acquisition of satellite images (in future data), audit, etc., and how this would relate to TA at the initiative of the MS, which can only be financed under the EAFRD (**Arts. 112 & 86(3)** of the proposed CAP Strategic Plans Regulation) and can be used for the implementation of the Plan as a whole. Some delegations suggest that TA under the EAGF should allow for the financing of expenditure by the MS where common EU assistance is needed. The Commission provided a non-paper on this matter.¹⁵

¹⁵ WK 11881/2018

BLOCK (2): governance bodies (Arts. 8-11); transmission of information (Arts. 88-90)

4. Delegations agree that the CAP **governance structure, comprising a PAs and Coordinating Bodies (Coor. B.), CBs and the Competent Authority (CA)** (Arts. 8-11) is maintained but some have difficulties with the proposed reduction in the number of PAs, especially where constitutional conditions in the MS are affected. Delegations also have questions which bodies in the '*governance system*' are responsible for what, e.g. PAs, CBs and Managing Authority's (MAs) roles with regard to Annual Performance Reporting (APR) and Annual Performance Clearance (APC). Delegations are concerned that the proposed reinforcement of the roles of the Coor.B and CB would require additional resources and would lead to additional administrative burden. A number of delegations underline the need for the governance structure to clearly respect the constitutional provisions of each Member State (as acknowledged in Recital 9) and to allow for national solutions where required, e.g. to establish a CB at a national level with a coordinating role.

5. With regard to the **Annual Performance Report** (APR) to be provided by the PA (Art. 8(3) & (4)), delegations seek clarification how this article relates to the roles of the Managing Authority (MA) and Monitoring Committee (MC), as defined in the CAP Strategic Plan Regulation (Art. 110(2)). Delegations have many inquiries about the content, the timing and the use of the APR; as regards the on-going result indicators, the Commission explained that the state of play up to 15 October of N-1 would need to be reported in the APR.

6. The Commission provided a non-paper on the drawing up and submission of the APR.¹⁶ However, delegations still have questions regarding the drawing up by the Coor. B. of the APR, the transmission of which shall be accompanied by **one management declaration covering the entirety of that report** (Art. 8(4)); some delegations point out that there is no legal base for this in the new Financial Regulation.¹⁷ The Commission explained that respect of eligibility conditions by individual beneficiaries should not be included in the analysis of the nature and extent of errors and weaknesses identified in the governance systems, which should be addressed in the management declaration (Art. 8(3)(iii)).
7. The process of **Annual Performance Clearance** (APC) is not yet entirely clear to delegations, e.g. with regard to the role CBs are to play therein, and they fear that the APC will imply additional administrative burden at national level. With regard to this new task for the PA and CB, some delegations point out that it will be difficult to meet the deadline, as set out in the Financial Regulation, of 15 February of the year following the financial year concerned for transmitting the APR.
8. With regard to the **communication of information, confidentiality and implementing powers** (Arts. 88-90), delegations note that these articles are similar to the corresponding ones in the current Regulation and acknowledge that, in the light of the new delivery model, some adaptations will be required.

BLOCK (3): financial management EAGF/budget discipline, incl. the agricultural reserve (Arts. 12-17); financial management EAGF/financing of expenditure (Arts. 18-24); information measures (Art. 44)

9. With regard to the **budget ceiling** (Art.12) **and compliance with the ceiling** (Art. 13) - delegations note that these articles are similar to the corresponding ones in the current Regulation.

¹⁶ WK 8875/2018

¹⁷ Regulation (EU, Euratom) 2018/1046 (see: Article 63 on shared management)

10. In the context of the new **agricultural reserve** (Art. 14), the amount of at least EURO 400 million and the roll-over system has been set in brackets and will be discussed in the MFF context. In general, delegations are open to discuss the roll-over system as a matter of simplification, i.e. to carry over the unused amounts in 2020 to the following years. However, some delegations are not sure if the earmarked amount will be sufficient to cover the crises in the agricultural sector whereas other delegations would favour refilling the reserve with assigned revenues rather than taking over the unused amount of the crisis reserve from the year 2020, which, they believe, should be reimbursed to the beneficiaries. It was also noted by some delegations that, if the needs for expenditure resulting from Article 14(1) would exceed the earmarked amount, the mechanism of financial discipline would then still have to be used to a large extent and this would create a considerable administrative burden. Finally, several delegations seek more guarantee in the basic act that financial discipline will only be used as a *last resort*.
11. On **financial discipline** (Art. 15), the text referring to the possibility for MS to apply a minimum threshold of the amount to be reimbursed per final beneficiary in accordance with objective and non-discriminatory criteria has been set in brackets. Nevertheless, a number of delegations see a need for a clear definition of '*objective and non-discriminatory criteria*' whereas the Commission argues that MS can define this themselves (subsidiarity). There is a divergence of views among delegations on the deletion of the current threshold of EURO 2000,00 where financial discipline would not apply.
12. Delegations note that the provisions in the proposal on the **budget discipline procedure** (Art. 16) and on the **early-warning and monitoring system** (Art. 17) are similar to the ones in the current Regulation and also note that the provisions on **monthly payments** (Art. 18), the **procedure for monthly payments** (Art. 19), on **administrative and personnel costs** (Art. 20), and on **public intervention expenditure** (Art. 21) are broadly similar to the corresponding ones in the current Regulation.

13. As to the **procedure for monthly payments** (Art. 19), some delegations wish to maintain the current Committee procedure in order for all MS to know what's happening in individual MS. The Commission explained that the Committee procedure for overrun is maintained.
14. A recurring point of discussion is whether the provision on **administrative and personnel costs** (Art. 20) is related to TA, which is, however, not the case according to the Commission; TA, at the initiative of the Commission, is only covered under the EAFRD (see Arts. 68 & 112 of the CAP Strategic Plans Regulation).
15. With regard to the **acquisition of satellite data** (Art. 22) and the **monitoring of agricultural resources** (Art. 23), delegations do not yet fully comprehend how this article relates to IACS (Art. 64), which images/data the Commission will make available free of charge, what exactly the MS are supposed to do with such images/data and under which conditions the data recovered from the MS can be used by the Commission. Some delegations also seek clarification if satellite images used by MS for on-the-spot controls will continue to be financed by the EU budget; on this, the Commission explained that satellite images are part of satellite data.
16. Finally, delegates note that there is no change to the current regulation as far as **information measures** are concerned (Art. 44).

BLOCK (4): financial management EAFRD/gen. provisions/financing under the CAP SP/rural development interventions (<u>Arts. 25-32</u>)
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17. Delegations note that the proposed **provisions applying to all payments** (Art. 25), to the **financial contribution from the EAFRD** (Art. 26), to **budget commitments** (Art. 27) and to **payments for rural development interventions** (Art. 28) are necessary to adapt the Horizontal Regulation to the new CAP Strategic Plans Regulation.

18. Some delegations commented that the **proposed amount for pre-financing** of 1% for 2021-2023 is too low and some would like to see an increase (to 5%) of the amount (Art. 29); delegations acknowledged, however, that this (paragraphs 1(a), (b) & (c)) should be addressed in the negotiations on the next MFF.
19. Delegations have a number of technical questions with regard to the newly introduced provisions on **interim payments** (paragraphs 3-5 & 10 of Art.30), such as in case of financial instruments, or on the legal meaning of '*unsatisfactory*' response in the context of the procedure for payment deadlines.
20. With regard to the **automatic de-commitment for CAP Strategic Plans** (Art. 32), a number of delegations wish to maintain the current "N+3" practice here, or some flexibility should be offered to MS in a transitional period at the beginning of the next programming period, instead of the proposed "N+2" as this will offer Member States some stability in the new CAP post-2020 implementation period; delegations do also acknowledge here that paragraph 4(a) of this Article should be addressed in the negotiations on the next MFF.

BLOCK (5): financial management of the Funds/common provisions, incl. suspension of payments (Arts. 33-42 & 45); use of the Euro and reporting (Arts. 91-95)

21. The provision on the **agricultural financial year** (Art. 33) remains unchanged as compared to the current Regulation.
22. With regard to **double funding** (Art. 34), delegations note that the terms "EAGF" and "ESI-Funds" have been inserted in the Articles but they are not yet entirely clear how things will change as compared to the current programming period, e.g. how double funding can be avoided, especially in the cases of support from the EAFRD and EAGF within the same CAP Strategic Plan.

23. A provision on the **eligibility of expenditure incurred by PAs** (Art.35) has been introduced in line with the new delivery model and the CAP Strategic Plans Regulation. Although delegations generally welcome the provision, they seek clarification on in particular paragraphs (b) and (c) concerning the corresponding reported output and eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans. For its part, the Commission explained that a transitional Regulation will set out how "old rules/fresh money" would work and that the current eligibility criteria will continue to apply for the remaining of the programming period.
24. Delegations note that the proposed provisions on the **compliance with payment deadlines** (Art. 36) and on the **reduction of monthly and interim payments** (Art. 37) are broadly similar to those in the current Regulation.
25. Delegations have various concerns regarding the newly proposed articles on the **suspension of payments in relation to the annual clearance, the multi-annual performance monitoring and the governance systems** (Arts. 38-40): in general, some delegations believe the suspension rates should be set out in the basic act (and not in a Delegated Act, as is currently the case), others believe that "30 days" is too short to respond to the Commission on a forthcoming Implementing Act on suspension, and yet other delegations plea for a transition period without suspensions or propose to delete Arts. 38-40 altogether. Some delegations fear an increase of administrative burden where the Commission may ask a MS to implement the necessary remedial actions in accordance with an "action plan with clear progress indicators" and others wonder how these action plans relate to the possible Delegated and Implementing Acts on suspensions. The Commission provided a non-paper on reductions, suspensions and final corrections.¹⁸

¹⁸ WK 11877/2018

26. Specifically, the new provision on the **suspension of payments in relation to the annual clearance** (Art. 38), has been introduced in order to take into account the new CAP delivery model. Delegations are concerned, however, that a suspension of payments will already occur if the Commission does not receive the requested documents in time from the concerned MS (Art. 38(1)). Another concern relates to the new annual performance clearance (Art. 38(2) in conjunction with Art. 52), according to which the Commission may suspend payments to a MS if there is a difference of more than 50% between the expenditure declared and the amount corresponding to the relevant reported output. Also, MS have a deadline to submit any justification within a period of at least 30 days and if this justification is not acceptable to the Commission, a reduction may be applied (according to Art. 52). Some delegations are of the opinion that, since the criteria needed for MS' justifications are not specified, the discretion to the Commission for making decisions is too broad. Delegations note that a deadline of 30 days might be too short for justification and that this provision might have a real impact on the budgets of the MS. Therefore, delegations ask for more clarification and to have at least the criteria for determining the duration and the rate of suspension of payments in the basic act. Some delegations share the view that the conformity procedure (Art. 53) should also to be applied to the Annual Performance Clearance.
27. With regard to the **suspension of payments in relation to the multi-annual performance monitoring** (Art. 39), delegations note that in case of insufficient progress towards targets, as set out in the national CAP Strategic Plan and monitored in accordance with Arts. 115 & 116 of the CAP Strategic Plan Regulation, the Commission will ask for an "action plan" with clear progress indicators to be established in consultation with the Commission. Where the MS fails to achieve progress, the Commission will request the MS for an action plan. If the MS fails to submit or to implement the action plan, there may be a suspension, and possibly final reduction at closure, of the amount concerned. In the absence of clear criteria pertaining to the functioning of the multi-annual performance monitoring system, MS fear that this provision might have a serious financial impact on the national budget, some delegations ask for more clarification on the procedure for the establishment of agreement on the action plan, including on its duration. In general, several delegations expect that the proposed article will result in additional administrative burden and will not lead to simplification.

28. Finally, it should be noted that the whole proposed provision on the **suspension of payments in relation to deficiencies in the governance system** (Art. 40) is subject to discussion in the context of the MFF negotiations. Delegations would like to have more clarification about the term “*serious deficiencies* in the functioning of the governance system” as there are implications on suspensions and final financial correction.
29. Delegations note that only minor changes have been made to the provisions dealing with **keeping separate accounts** (Art. 41), **payment to beneficiaries** (Art. 42) and **Commission powers** (Art. 45). However, as far as advanced payments are concerned (Art. 42(3)), some delegations argue that such advances should also continue to be used for sectorial programmes, as is possible under the current Regulation.
30. It is noted that the proposed text on the **use of the Euro** and on **reporting** (Arts. 91-95) is broadly similar to the current Regulation.

BLOCK (6): financial management of the Funds/assignment of revenue (Art. 43) and clearance of accounts (Arts. 46-56)

31. With regard to the **assignment of revenue** (Art. 43), covering both EAGF and EAFRD-funds, delegations appreciate the presentation from the Commission showing the assigned revenue in the current Regulation 1306/2013 and in Art. 43 of the new proposal.¹⁹
32. Delegations generally support the proposed **single audit approach** (Art. 46) although some delegations believe that the basic act should further clarify the criteria and methods used by the Commission to assess the reliability of the work carried out by the CB.

¹⁹ WK 12019/2018

33. The proposed provisions on **checks by the Commission** (Art. 47), **access to information** (Art. 48) and **access to documents** (Art. 49) are broadly similar to the ones in the current Regulation. However, delegations question why there is still the possibility for the Commission to carry out (on-the-spot) checks in the MS even though there will be the single audit approach. Delegations also seek further clarification on the information to be provided by the MS to OLAF (Regulation 2988/95); some delegations suggest that the reference to OLAF in Art. 50 (Commission powers) should be deleted.
34. With regard to the **annual financial clearance** (Art. 51), delegations note that this provision has not changed much as compared to the current Regulation.
35. The proposed new **annual performance clearance** (APC) (Art. 52) is a major element in the context of the annual clearance. This Article takes into account the new delivery model in combination with the CAP Strategic Plans. Delegations wonder how this Article relates to the corresponding Arts. 38 and 39 in the context of the APC. Several delegations believe that the procedures leading towards reductions via clearance need further detail. A main concern to delegations is the financial impact to their national budget in case the expenditures declared do not have corresponding outputs and/or fail to show sufficient progress towards the targets, as set out in the national CAP Strategic Plans. As there will not be 2 months to provide the Commission with any justification and since there will be no conformity procedure anymore, several delegations request for the inclusion in the basic act of a clear procedure (deadlines, methods for calculation etc.).
36. Regarding the **conformity procedure** (Art. 53), several delegations are concerned about the term "*serious deficiencies*" in the functioning of the governance systems (Art. 53(1)) as such "serious deficiencies" could lead to amounts to be excluded from Union financing or lead to suspension and/or to final reduction. Therefore, delegations ask for a clear definition of this term in the basic act. Delegations also believe that the methods for calculation should be regulated in an Implementing Act rather than in a Delegated Act; the Commission explained that it is currently done in a Delegated Act and that no change is being proposed here.

37. With regard to the **provisions specific to the EAGF** (Art. 54) **and EAFRD** (Art. 55), delegations note that the Commission approach remains more or less the same as compared to the current Regulation, i.e. recoveries related to irregularities for EAGF are still to return to the EU budget, while those for EAFRD can be reused. Some delegations also plea for the reuse of recoveries for EAGF. Delegations note that the provisions in the current Horizontal Regulation (Art. 54 of Regulation 1306/2013) concerning recovery are no longer part of the basic act. However, they ask for clear provisions to be included to ensure that, in the new financial period, "old recovery cases" are to be handled according to the current rules in force. With regard to the deletion of the so-called 50/50-rule, the Commission explained that its deletion means that it will no longer require detailed debtor's ledger reporting or actively seeking reimbursement to the EU budget of amounts not yet recovered. Some delegations also suggest to include a *de minimis* rule in the basic act (with a view to the off-setting and recovery by MS of outstanding debts of beneficiaries).

<u>BLOCK (7): control systems and penalties/general rules (Arts. 57-62) and scrutiny of transactions (Arts. 74-83)</u>

38. Regarding the **protection of the financial interests of the Union** (Art. 57), some delegations suggest to delete paragraph 3 on appropriate precautions ensuring the penalties applied by the MS as a whole whereas other delegations suggest to add the notion of 'obvious error' to the list of cases where no penalties shall apply. Delegations also ask for clarification of the meaning of "complaints" in paragraph 4; the Commission explained that this term is used in line with the current Art. 74 of Regulation 1303/2013 and it is also defined in Art. 63 of the proposed new CPR.
39. Delegations note that more flexibility seems to be left to the MS as regards the **rules on checks to be carried out** (Art. 58).

40. Delegations note that the following proposed provisions are similar to the ones in the current Regulation: **non-compliance with public procurement rules** (Art. 59), **circumvention clause** (Art. 60), **compatibility of interventions for the purposes of checks in the wine sector** (Art. 61), and **securities** (Art. 62). However, some delegations propose to delete (certain provisions of) the circumvention clause (Art. 60) as it is quite general and its implementation is complex.
41. As far as the **scrutiny of transactions** (Art. 74-83) is concerned, delegations note that there is almost no change to the current Regulation. However, a very large number of delegations call for the deletion of those provisions, which were primarily designed for scrutiny of undertakings receiving export refunds. The present situation is reflected by the fact that in the proposal for a Regulation amending Regulation No. 1308/2013 it is proposed to delete Articles 196-204 concerning export refunds (see also Recital 26 in COM (2018) 394 final). Delegations generally believe that maintaining the administrative control set up is out of proportion as compared to the expected results. For its part, the Commission takes the view that these provisions are still needed for existing public and private storage as well as for school programs.

BLOCK (8): common provisions/transparency/protection of personal data (Arts. 96-99); delegated and implementing acts (Arts. 100-101; final provisions (Arts. 102-104)

42. As regards to the **publication of information relating to beneficiaries** (Arts. 96-98), delegations have concerns about the reference in Art. 96(1) to the Common Provisions Regulation (CPR) as Art. 44, point 3 is applicable to the EAGF and EAFRD. Some delegations identified inconsistencies between the CPR and the proposed Horizontal Regulation: the CPR provides for the updating of information at least every three months, while the Horizontal Regulation provides for the annual publication of data. The Commission confirmed that the intention is for the annual publication of data; this needs to be further clarified in the text of the Regulation.

43. Regarding the **processing and protection of personal data** (Art. 99), delegations note that this provision has been updated.
44. With regard to **Delegated Acts and Implementing Acts** (Arts. 100 & 101), several delegations call for a reduction in the number of proposed Delegated Acts and for more Implementing Acts instead.
45. In the context of the **final provisions** (Arts. 102-104), some delegations ask for transitional provisions and for flexibility with a view to adapting to the new CAP framework and programming period.

Integrated administration and control system (IACS) (Arts. 63-73) and Control system and penalties in relation to conditionality (Arts. 84-87) (as examined in the responsible WP on Horizontal Agricultural Questions on 19 September)

46. With regard to the **Integrated Administration and Control System (IACS)** (Art. 63-73) and while the proposed additional subsidiarity was appreciated, clarification is requested on certain definitions (e.g. "to the extent necessary", "agricultural parcel", "claimless system"), on whether and to which extent IACS should apply to the wine sector (Art. 63) and on the appropriateness to maintain all IACS-related provisions in the light of subsidiarity.
47. Delegations seek further clarification on the **elements of the integrated system** (Art. 64), such as regarding the formulation "where applicable" and the announced assistance by the Commission.
48. With regard to **data keeping and sharing** (Art. 65), delegations have misgivings on the proposed obligation for MS to keep the data on the annual outputs reported in the context of the annual performance clearance for ten years, which is considered as being too long and burdensome, and the retroactive application is criticised as well.

49. On the **identification system for agricultural parcels** (Art. 66), further clarification is needed of the proposed requirement for the Land Parcel Identification System (LPIS) to include information relevant for the reporting on the indicators according to Art. 7 of the CAP Strategic Plans Regulation.
50. Clarification is also required on the functioning of a "claimless system" for applications as regards area-based and animal-based interventions in the provision dealing with the **geo-spatial and animal-based application system** (Art. 67).
51. Delegations believe that the proposal for an obligatory annual quality assessment of GSAA and an **area monitoring system** (Art. 68) would increase administrative burden and should therefore be reconsidered. Moreover, the deadline of 15 February for submitting the assessment report, which is too tight (Arts. 66-68) should be revised as well. Delegations express concern on the area monitoring system as regards eligibility conditions for environmental-climate measures and small parcels. A voluntary application and a transitional period should be considered. In addition, the Commission's targeting regarding the area monitoring system has to be clarified.
52. In general, the proposed subsidiarity concerning the **control and penalties system** (Art. 70) is welcomed although some delegations underline the need for some coordination in terms of implementation by the MS in order to ensure a level playing field across the EU.
53. Any Commission empowerments to adopt **Delegated or Implementing Acts** (Arts. 72 and 73) should be strictly circumscribed, according to the delegations.
54. With regard to the **control system and penalties in relation to conditionality** (Arts. 84-87), delegations fear that applying conditionality to small farmers would significantly increase administrative burden for both the farmers concerned and national authorities; small farmers should therefore continue to be exempted from conditionality and some delegations believe that this should be provided for in the basic act rather than in the national CAP Strategic Plan. There is a need to clarify the scope, functioning and purpose of the proposed new obligation for the Member States to review their control system once per year.

55. With regard to the **control system for conditionality** (Art. 84), delegations need further reflection on the minimum rate of the control sample and on the need of establishing the control sample on the basis of a risk analysis.
56. On the **system of administrative penalties for conditionality** (Art. 85) to the discretion of the MS, doubts exist among delegations on the possibility to use an intentionality criterion for calculating penalties.
57. As regards the **calculation of the penalty** (Art.86) and instead of a general reduction percentage (3%), delegations would prefer to have more flexibility when calculating payment reductions in the case of non-compliances due to negligence. While an early warning system could help to address individual cases of minor non-compliances occurring for the first time, the retroactive application of reductions needs to be revisited. The calculation of penalties in cases of reoccurrence of non-compliance should disregard cases outside the CAP Strategic Plan period concerned. Delegations believe that all the main elements should be laid down in the basic act and any empowerments to the Commission to adopt delegated acts should be clearly confined.
58. On the **amounts resulting from the administrative penalties on conditionality** (Art. 87), some delegations plea to continue to retain 25% of the reductions imposed in cases of non-compliance whereas some other delegations suggest to retain 100% of the reductions in cases of non-compliance and reuse it for interventions beneficial for climate- and environmental objectives.
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