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Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network

- Comments from the German delegation

Delegations will find in the annex further comments from the German delegation on the above-mentioned proposal.

Remarks by the German delegation**on the****Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1217/2009 as regards conversion of the Farm Accountancy Data Network into a Farm Sustainability Data Network**

The German Delegation is grateful for the opportunity to further elaborate on the questions raised during the previous consultations on the above-mentioned proposal. As we emphasized in previous meetings of the CVA and the CWP, Germany supports the objective of assessing and comparing the implementation of the F2F-Strategy throughout the EU and consequently obtaining a better overview of the contributions to sustainability made by agricultural enterprises. However, the proposed regulation raises a number of issues that touch on certain principles, which should be taken into account. Hence, the Proposal requires thorough examination during further consultations in European Council bodies.

In response to the questions formulated by the German delegation in their remarks and comments provided on 29 September 2022, the Legal Service of the Council asked for clarification on the following:

1. Why is the German delegation so eager to clarify the Proposal's legal basis is appropriate and complete (s. comments on articles 1, 2)?
2. How could the requested clarification on essential elements, e.g. purpose of the Proposal or type, scope and number of variables, look like (s. comments on articles 1, 4, 16)?

Comments on point 1

The German delegation understands the inclusion of environmental and social data as a fundamental change in the Regulation's nature. The reason for this is that environmental and social data are inherently different from economic data. Therefore, from a German point of view, it is inevitable that the future FADN regulation is rested on a legal basis that reflects these fundamental changes. Part of that adjusted legal situation is the integration of the EASS, e.g. Regulation 223/2009.

Furthermore, the desirable application of the principle of "collect data once and re-use it multiple times" moves the proposed regulation much closer to the regulatory area of official statistics than the current FADN-regulation. In addition, the application of the principle requires the thorough examination of data protection aspects, since data evaluation takes on a new dimension, which is based on the flexibility of data linkage.

This development and its implications for the legal basis (i.e. integration into the EASS) also needs to be taken into account.

Not only does the German delegation advocate for the recognition of the different nature of environmental and social data on the one hand and economic data on the other hand but also does it aim at avoiding a precedent of unrestricted expansion. This concern is also closely linked to the second point of question.

Comments on point 2

Article 290 (1) of the Treaty stipulates that the **essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.**

Germany would be grateful for an opinion of the legal service whether the Commission proposal complies with this principle, especially with regard to the introduction of new variables on the ecologic and social dimension of sustainability. Although this expansion is the main motivation and the main new element of the regulation, not a single concrete determination on the new variables (type, scope and number) can be found in the basic legislative act.

From a German point of view, the following elements could be inserted in the legislative act to find a remedy (similar to SAIO regulation):

- Determination of the initial number of new variables.
- Clear priority for use of variables available from other data sources with obligation for Commission to duly justify any exception from this principle.
- Clarification that only those variables can be part of the survey where relevance for the measurement of sustainability is undisputed.
- Limitation for any increase in number of variables in following years.
- Ensuring that no significant additional burden or costs are imposed on MS and concerned stakeholders.

These (non conclusive) elements would contribute to bring the proposal better in line with Art. 290 and at the same time would give Member States at least some certainty on the resources needed for future implementation.