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Subject: Post-2020 CAP reform package

a) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council

b) 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

c) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands

- *Presidency progress report*

I. INTRODUCTION

1. The proposals for a reform of the Common Agricultural Policy (CAP) related to the EU's multiannual financial framework (MFF) 2021-2027 consist of the following three Regulations:

- A centre-piece **Regulation on CAP Strategic Plans (CAP SPR)**, encompassing direct payments, interventions in certain sectors and rural development;
- A Regulation on the financing, management and monitoring of the CAP (hereinafter: "**Horizontal Regulation**"), updating and replacing the current Regulation with the same name;
- A Regulation on common market organisation (CMO) of agricultural products, which amends and updates Regulations (EU) No 1308/2013 on CMO, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on aromatised wine products, (EU) No 228/2013 on the outermost regions and (EU) No 229/2013 on the smaller Aegean islands (hereinafter: "**Amending Regulation**").

2. In the Council, work on the three proposed Regulations was launched under the Bulgarian Presidency after their publication on 1 June 2018, and has been pursued by all the following Presidencies since then.

3. Following a first read-through of the three proposed Regulations by the responsible Council Working Parties and further discussions in the Special Committee on Agriculture (SCA) and "Agriculture and Fisheries" Council, the Austrian Presidency submitted a first set of drafting suggestions on the three proposals (15058/18 + ADD1, 15046/18, 14195/18); it also presented a Progress Report on the state of work (15027/18).

4. With a view to further aligning the proposed Regulations with Member States' views, the Romanian Presidency continued work in the Council and its preparatory bodies, and submitted revised drafting suggestions (including consolidated versions set out in 10103/19 REV1, 10135/19, 7451/1/19 REV 1 + COR 1); it also prepared a Progress Report reflecting the state of progress (10008/19).
5. Building on the work done by the previous Presidencies, the Finnish Presidency made another important step forward by further adjusting the three proposed Regulations to the views expressed by delegations in the responsible Working Parties, the SCA and the Council. The Finnish Presidency also sought to improve the readability of the texts and their legal consistency. Consolidated versions of the revised drafting suggestions for the three legal acts are set out in 14824/19 + ADD 1, 14465/19 and 14535/19.
6. It should be noted that some elements of the three proposed Regulations are part of the horizontal MFF negotiations, and thus an agreement on the MFF is needed for the Council to establish its overall position on the post-2020 CAP reform.

II. STATE OF PLAY WITH THE REGULATION ON CAP STRATEGIC PLANS

7. The Finnish Presidency organised seven meetings of the Working Party on Horizontal Agricultural Questions (WP HAQ) covering a total of 10 working days to examine the proposal further, mainly on the basis of Presidency drafting suggestions and input from Member States and the Commission. In-depth discussions on specific elements of the proposal were also held at 11 SCA and four "Agriculture and Fisheries" Council meetings on the basis of Presidency policy papers. The Finnish Presidency focused its efforts in particular on the following elements:

New delivery model (NDM)

8. Based on Member States' broad support in principle for a switch from a compliance to a performance based system, the Finnish Presidency developed the Commission proposal further to accommodate Member States' concerns on the implementation of the NDM, especially as regards quantitative information to be included in the annual performance reports for the purpose of the performance clearance. To reduce administrative burden, the need for providing justifications and the risk of losing funds, the Presidency continued in particular the work launched by the Austrian and Romanian Presidencies on adapting the provisions to the specificities of **non-area-/animal-based interventions**. The drafting suggestions discussed would aim to reduce the likelihood of actual unit amounts deviating from planned unit amounts, and hence the number of cases where Member States would have to provide justifications, risking reductions or suspensions of funds. The discussions in the WP HAQ and the SCA showed that further work on this topic is needed to ensure both a smooth implementation of the new system and the correct use of EU funds. Further consideration is also needed in particular on the precise content of the CAP Strategic Plans and of the annual performance reports, as well as on the frequency of milestones and of the performance review.

9. To counter the difficulty of planning in advance the funds to be reserved for the different interventions and to address possible cases of over- and under-execution, the Presidency strived to increase **financial flexibility**. The Presidency suggested for instance to allow Member States to establish not only maximum, but also minimum unit amounts. This would especially be relevant for new schemes, such as eco-schemes (*see also paragraph 15*), and for the pillar I part of the young farmers' scheme since it would allow the unit amounts for direct payment interventions to be lowered and the funds freed up to be used for the new schemes if they proved to be more successful than expected. The Presidency also clearly spelt out the possibilities and limits for Member States to transfer funds between interventions without amending their CAP Strategic Plan. Furthermore, the Presidency introduced the possibility for the unit amounts to decrease below the minimum under certain conditions, especially when the up-take is higher than expected and no funds can be transferred from other direct payment interventions. While the suggestions were broadly welcomed, further work is needed in particular on the possibility to use funds for interventions other than those initially planned and on interventions for which the variation of unit amounts would be allowed.
10. In-depth discussions on **indicators** both in the WP HAQ and the Commission Expert Group for monitoring and evaluating the CAP resulted in a better understanding of Member States' positions, allowing the Presidency to clarify the Commission's proposal and further align it with delegations' views. The Commission informed the WP HAQ about the work done in its Expert Group and the Presidency took on board the suggestions of technical nature with a view to improving Annex I to the proposal. However, further work is needed, including coordination of work between WP HAQ and the Commission Expert Group, to ensure that indicators are fit for purpose and easy to apply.
11. In a joint initiative of the Presidency and the Commission, a **seminar on CAP Strategic Planning** was held on 4 December to allow Member States and the Commission to exchange experience on the preparatory work for the future CAP. This seminar focused in particular on the overall strategic approach, notably the SWOT and needs assessment, the links with the intervention logic, the design of interventions and the preparation of the CAP Strategic Plans.

Environmental and climate-related aspects

12. The environmental and climate-related aspects of the CAP reform constituted a clear priority for the Finnish Presidency, which dedicated two Council meetings (in July and November) to this subject, in addition to its ongoing examination in the WP HAQ and the SCA. The Presidency noted that, in principle, Member States were in favour of a **higher environmental and climate ambition** compared to the current period, provided that: i) appropriate financial resources for the future CAP were available; ii) administrative burden was kept to a minimum, particularly with regard to the controls on the compliance with the environmental standards; iii) enough flexibility was ensured to adapt the "green architecture" to regional and local needs. Further discussions on this subject will be needed once an MFF agreement is reached.
13. Several discussions were held on the proposed **conditionality** system, particularly on:
- The formulation of certain **standards for good agricultural and environmental condition of land** (GAEC standards) in Annex III (in particular GAEC standards 1, 2, 7, 8 and 9), on which the Presidency considers that a balanced compromise has been found. However, further work is necessary on the scope of GAEC standard 9 and its conditions, which have an impact on the definition of "eligible hectare" - *see paragraph 17*);
 - The possible deletion of some **statutory management requirements** (SMRs) linked to identification and registration of animals in the same Annex. On this issue, Member States hold different views, mostly in light of the impact that administrative penalties following insignificant non-compliance with such requirements would impose on farmers and the burden of controls of such requirements on national administrations;

- The **Farm Advisory Tool for Nutrients** (FaST), initially included in the Commission's proposal as GAEC standard 5 but moved by the Austrian Presidency to Article 13 ('Farm advisory services'). On 29 October, a workshop was also organised jointly by the European Commission and the Finnish Presidency to discuss the main technical features of this tool. Member States welcomed the possibility to use, as an alternative to the FaST, other tools already in place, but most Member States still requested to make the provision less detailed.
14. Another key issue was the question whether **small farmers** should benefit from any derogation from conditionality or at least from the related controls and penalties. While a suggestion of a number of Member States to have a full exemption from controls and penalties divided delegations, there was broad agreement on the need to provide for a "lighter" system of controls and proportionate administrative penalties for the sake of simplification, as suggested by the Presidency (Articles 84 and 85 of the Horizontal Regulation). This option should be further considered as it might provide grounds for a suitable compromise without impairing the environmental and climate ambition of the future policy.
15. The Presidency noted a wide interest among Member States in the possibilities offered by **eco-schemes**. Several discussions on this new instrument took place, focusing particularly on:
- Their mandatory or voluntary character, on which delegations still have divergent views;
 - The difficulties in planning these new instruments in advance as Member States fear that an excessive (or insufficient) uptake of eco-schemes by farmers might result in a loss of funds;
 - The Presidency clarified earlier suggestions to provide support not only per hectare but also per livestock unit, as well as to allow to cover transaction cost; these suggestions were well received by delegations.

16. The Presidency suggested to replace the minimum 30% of environmental and climate-related expenditure under the EAFRD with a **single percentage or fixed amount** under the whole CAP Strategic Plan budget (while maintaining a ring-fencing for interventions in the fruit and vegetables schemes, *see paragraph 19*). This suggestion is aimed at ensuring a higher environmental ambition while increasing flexibility for Member States on how to fulfil it with different interventions. Most delegations at the November "Agriculture and Fisheries" Council welcomed this approach, considering it an appropriate basis for discussion, while some delegations entered a reservation or requested more information before taking a final view. The Presidency therefore believes that this idea could be further explored and technical work should be dedicated to make it implementable. However, the actual percentage (or fixed amount) could be set only once an agreement on the next MFF is reached. Consideration should be given to how to ensure that the list of interventions counting towards the single percentage or fixed amount only includes interventions appropriately targeting environmental and climate objectives, as well as how to make sure that the percentage or fixed amount of funding is met.

Other elements

17. Following extensive discussions on some definitions and conditions, the Presidency presented new drafting suggestions to address Member States' concerns. The most discussed definitions were: "genuine farmer", where the Presidency suggested keeping a voluntary application and to let Member States to fully determine themselves the concept of "genuine farmer" on the basis of objective and non-discriminatory criteria; "permanent grassland", where an approach based on Omnibus-Regulation has been maintained; "eligible hectare", where the Presidency has suggested extending its scope to include certain areas which are beneficial for the environment, such as landscape features or non-productive features covered under GAEC standard 9 or areas covered by eco-schemes, provided that the agricultural activity is not hampered.

18. In relation to the **types of interventions in the form of direct payments**, the Presidency drafting suggestions would allow Member States to better target support according to Member States' needs. Further suggestions were made in relation to the young farmer payments, for which the Presidency suggested to give Member States the flexibility to set a maximum of hectares per young farmer. As regards **coupled income support**, the Member States had divergent opinions, and therefore the current text seemed to be in balance.
19. The main changes on types of interventions in certain sectors were:
- A closed list of sectors to be covered under interventions for "other sectors" to be included as an annex to the Regulation;
 - The scope of forms of cooperation under "other sectors" (Article 60a) required substantial discussion and the Presidency presented an alternative approach to provide support to producers groups or cooperatives not yet recognised as producer organisations. This approach gained support from the majority of Member States and is worth further consideration;
 - An element still under discussion is the percentage of support under the fruit and vegetable schemes to be ring-fenced to environment and climate related purposes.
20. As regards the types of interventions for **rural development**, following the discussions held at the SCA and the WP HAQ, the Presidency suggested changes that were welcomed by most delegations. These included the possibility to support units other than hectares under certain "environmental, climate and other management commitments" and the development of small farms in addition to start-up support for young farmers and rural business. However, other elements will require further discussion, particularly the aid intensity for investments, the exceptions for land purchase and investments in irrigation.

21. The Presidency also analysed the **administrative elements** of the proposal, particularly those referring to the governance structure of the CAP Strategic Plan, to respond to the concerns of regionalised countries that would like to have regional managing authorities involved in the preparation and implementation of the CAP Strategic Plan. Further work might still be necessary on these elements to ensure a good governance of the CAP Strategic Plans.
22. The Presidency updated provisions on **financial instruments** to ensure alignment with the changes introduced to the Common Provisions Regulation (CPR) and with the InvestEU Regulation. However, it is necessary to come back to these provisions once the CPR is sufficiently stabilised.
23. In close cooperation with the Council Legal Service, the Presidency reviewed the **Commission empowerments** to clarify their precise purpose and, where needed, redefine their scope and specify the main elements to be included in the secondary legislation.

III. STATE OF PLAY WITH THE HORIZONTAL REGULATION

24. With regard to the **proposed Horizontal Regulation** and during the Finnish Presidency, the Working Party AGRIFIN met five times and examined in particular the following issues: Single audit approach and Checks by the Commission (Articles 46 & 47); Scrutiny of transactions (Articles 74-83); Non-area and non-animal-based interventions in the new delivery model; Annual clearance package and annual performance clearance in the new delivery model; Articles relevant to the new delivery model (Articles 8, 38-40, 52) and Conformity procedure (Article 53). On the basis of the discussions, the Presidency put together a Presidency text of the proposed Horizontal Regulation (14465/19), which reflects all drafting suggestions done under the Austrian¹, Romanian² and Finnish Presidencies.³ This text, accompanied by a cover Note explaining the main issues and positions of delegations, was generally welcomed by the SCA.⁴

¹ See WK 13742/2018.

² See WK 6442/2019 REV 1.

³ Explanations for these drafting suggestions can be found in docs. 13478/19 and 14111/1/19 REV 1.

⁴ See State of play report 14465/19

25. Delegations broadly agree to these amendments to the Commission's proposal in the understanding that a final position on the text can only be taken once an agreement on the MFF has been established, when the consequences of the final wording of relevant provisions in the proposed CAP SPR on corresponding provisions in the Horizontal Regulation have been examined, and on the condition that agreement on the Horizontal Regulation will be part of the overall agreement on all three CAP post-2020 legislative proposals.

Specific issues in the Horizontal Regulation

26. As concerns the new provisions in the Horizontal Regulation, which are relevant in the context of the new delivery model⁵, discussions under the Finnish Presidency mainly focussed on the content of the **annual clearance package** and the procedure for **annual performance clearance**. In this regard, Articles 38 and 39 on the **suspension of payments** and Article 52 on the annual performance clearance in the proposed Horizontal Regulation have been amended pending finalisation in the WP HAQ of the relevant NDM-related Articles in the CAP SPR, such as Article 121 on annual performance reports and Article 121a on biennial performance review. Some delegations also consider that Article 8 on **paying agencies** and coordinating bodies, Article 40 on Suspension of payments in relation to deficiencies in the **governance systems** and Article 53 on the **conformity procedure** may possibly require further consideration once the discussion on the NDM related Articles in the CAP SPR has been finalised.

⁵ See Commission non-papers WK 10172/2019 and WK 10731/2019.

27. With regard to the **single audit approach** (Article 46), some delegations still ask that the single audit approach be more clearly framed in the Regulation as regards the Commission's commitment to take assurance from the work of the **Certification Bodies** and how this would actually lead to a limitation of the **checks carried out by the Commission** in the Member States (Article 47) as compared to the present situation, which is generally regarded as administratively burdensome for both administrations and beneficiaries.⁶ The importance of implementing the single audit approach could possibly, as some delegations suggested, be reflected at a later point in time in the Recitals of the Regulation or in a Commission statement.
28. The Chapter in the Horizontal Regulation on the **scrutiny of transactions** (Articles 74-83) has been amended considerably to reflect the wish of a large number of delegations to achieve **simplification** while respecting the demand of an equal number of delegations to maintain provisions in the basic act **ensuring an appropriate control environment**, including with regard to commercial documents and mutual assistance. The text as it now stands seeks to minimise as far as possible the costs and administrative burden for the Member States and should be seen as a compromise between complete deletion of this Chapter and maintaining the provisions as proposed by the Commission. However, some delegations would still wish to seek further simplification as regards scrutiny.

⁶ See for an explanation of the Commission's obligations in regard of the implementation of the budget and its views on the single audit approach: WK 9669/2019 and WK 5888/2019.

29. The proposed provisions on the **Integrated Administration and Control System (IACS)** (Articles 63-73) and the **control system and penalties in relation to conditionality** (Articles 84-87) have been further examined in the WP HAQ. As compared to the previous consolidated text of the proposed Horizontal Regulation (doc. 10135/2019), some further changes have been introduced by the Finnish Presidency in these chapters of the Horizontal Regulation, which delegations could broadly accept. The changes introduced in the Chapter on IACS are mainly meant to provide additional clarification in the text but the various elements of IACS (Art. 64) and the identification system for agricultural products (Art. 66) may need to be considered further. The same accounts for the changes introduced in the Chapter on the Control system and penalties in relation to conditionality (Articles 84 and 85). In Article 86 on the **Calculation of the penalty** in case conditionality rules are breached amendments were introduced to allow for a gradation of penalties, depending on the consequences of non-compliance on the achievement of objectives and on reoccurrence. Due to this modification the early warning system of conditionality was deleted. On the control system for conditionality (Art. 84) and penalties (Art. 85), delegations are still divided on the issue of possible exemptions for small farmers. These provisions may need further consideration as well as the application and calculation of the penalty (Art. 86(2a)), and the notion of "insignificant consequences".

30. Certain aspects related to Paying Agencies and coordinating bodies (Article 8), Commission powers (Articles 45 & 50), and the Control system for conditionality (Article 84) require further examination. In Article 8 this concerns the added text suggesting a general waiver from the obligation to restrict the **number of accredited paying agencies**, which text is not sound for legal reasons. In Articles 45 and 50, and as required by Article 290 of the TFEU, the **objectives, content, scope and duration of the Commission's empowerment** need more specific framing than is currently the case. Finally, as noted in Article 84, the consistency of the use of the **terms "aid", "support" and "payments"** throughout the whole Regulation should be checked at the appropriate moment. Finally, it should be noted that the following **MFF-related issues** (so-called bracketed text) have not been redrafted by the WP AGRIFIN as they are under the remit of the Ad Hoc Working Party on the MFF: Article 14 on the **Agricultural reserve**; Article 15 on **Financial discipline** (including the EUR 2000 threshold added to Art. 15(1)); Article 29 on **Pre-financing arrangements**; and Article 32 on **Automatic de-commitment** for CAP Strategic Plans.

IV. STATE OF PLAY WITH THE AMENDING REGULATION

31. The "Amending Regulation" includes amendments to five regulations:

- Regulation (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products;
- Regulation (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs;
- Regulation (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products;

- Regulation (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union; and
 - Regulation (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands.
32. Following discussions during the Austrian and Romanian Presidencies, most delegations agreed at the October "Agriculture and Fisheries" Council meeting with the assessment of the Finnish Presidency that the text of the Amending Regulation was largely stable. However, some delegations wished to widen the discussion to issues not included in the Commission's proposal (e.g. to public intervention).
33. Consequently, only one Working Party meeting took place during the Finnish Presidency. The Working Party on Agricultural Products met on 25 October 2019. It focussed on issues concerning wine labelling: both the rules on labelling themselves (Articles 119 and 122 of the CMO Regulation) and those on checks and penalties in relation to labelling (Article 90a).
34. In the light of the discussions on **wine labelling**, the Presidency has modified the relevant provisions of Regulation 1308/2013 as follows:
- returning Article 90(0a) the wording that current appears in Article 89(1) of Regulation 1306/2013, while expanding recital 19a to clarify that wine can be returned to the market if a label that is not in conformity with the rules is corrected; and
 - clarifying in the labelling rules in Article 119 that the option to make the list of ingredients available by electronic means does not apply to allergens and that consumers consulting such lists should not have their data collected or tracked and should not be targeted with marketing material.
 - adding a transitional rule to Article 6 for existing wine stocks.

35. The Presidency has also made two changes to other provisions to give effect to non-controversial requests from delegations:
- to avoid any ambiguity, to remove the remaining reference to a standard quality of sugar beet from Annex X to Regulation 1308/2013; and
 - to add a new sales denomination for aromatised wine-based drinks - Wino ziołowe (herbal wine) - to the list in Annex II to Regulation 251/2014.
36. Within the SCA, delegations broadly welcomed the Finnish Presidency's text. A majority of delegations could accept all the suggested modifications on the issue of wine labelling.
37. Some delegations also took the opportunity to confirm that they continued to have concerns on issues where the Presidency had not suggested changes to the legal text, in particular: the role of producer organisations, safety nets under market provisions e.g. measures to address market disruptions and the financial envelopes for the school schemes. Discussions on these issues will be necessary in 2020, once there is more clarity on the position of the European Parliament.
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