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NOTE

From:	Presidency
To:	Delegations
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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 - Articles 96 and 57 - Preparation for the Council debate

1. At the SCA meeting on 8 March 2021, the Presidency would welcome comments from the SCA on two issues, which have come up during the inter-institutional negotiations on the Horizontal Regulation (HZR). These issues relate to Articles 96 and 57 of the HZR. The Presidency is also considering to submit these questions to Ministers at the forthcoming agriculture Council.

HZR Article 96 - Publication of information relating to beneficiaries

2. In Article 96, the EP proposes the inclusion of a new paragraph (see ANNEX 1, Line 842a), according to which Member States shall ensure that beneficiaries of Funds provide them with the information necessary for their identification, including, where applicable, the identification of the group they belong to. Also, according to the EP (see ANNEX 1, Line 843 "EP new proposal"), Member States shall ensure annual ex-post publication of the beneficiaries of the Funds, including, where applicable, the information on the groups they belong to.

3. The EP's original amendment (see ANNEX 1, Line 843 "Voted EP amendment") would have put an additional administrative burden on Member States because it would have been for the Member States to identify the group that 'owns' the beneficiary. When consulted on EP's original amendment, a number of delegations rejected EP's amendment for the reason that it would lead to increased administrative burden (see WK 12770/2020 ADD 1-13).
4. The recently proposed compromise text of the EP alleviates this administrative burden by stating that it is the beneficiaries themselves who must provide the Member States with the information necessary for their identification and for the identification of the group and that it is upon the Member States to ensure that they get this information from the beneficiaries.
5. Taking the above mentioned into account, the SCA is invited to give its views on the following question:

Would the EP's recently proposed compromise text be acceptable, taking into account that the obligation to provide information mainly falls on beneficiaries and excessive administrative burden for Member States' administrations will be limited?

Article 57 - Protection of the financial interests of the Union

6. The European Council conclusions of 21 July 2020 invited the Commission to present *measures to ensure the collection and comparability of information on the final beneficiaries of EU funding for the purposes of control and audit to be included in the relevant basic acts.*
7. In reply to the European Council's request, the Commission presented in October 2020 a proposal (see WK 10645/2020), according to which Member States would be required, through the compulsory use of the ARACHNE system or a single data mining tool, to verify, record and store information on the organisations or natural persons ultimately benefitting (directly or indirectly) from EU funding. The compulsory use of a single data-mining tool for all CAP expenditure would be achieved, according to the Commission, by amending Article 57 of the HZR, as set out in ANNEX II, Lines 538a and 551. The Commission's proposal comprises a general requirement in the basic act (see Line 538a) with an empowerment to lay down further details in an implementing act (see Line 551).

8. Following the Commission's proposal and detailed explanations¹, 17 Member States submitted written comments.² In their written comments, Member States do not support the mandatory use of ARACHNE but do not reject the voluntary implementation of the single data-mining tool. Some Member States call for a transitional period before the use of the tool can be made compulsory and concerns were also expressed about the possible significant administrative burden associated in developing systems to feed in the relevant information to ARACHNE.
9. The Council did not yet reach a formal position on the Commission's proposal and it is not covered in the Council's General Approach on the HZR. As this matter has come up in the ongoing inter-institutional negotiations with the EP, the Presidency needs guidance from the SCA on the position to take on the Commission's proposal.
10. Taking the above mentioned into account, the SCA is invited to give its views on the following question:

Would the Commission's proposal to amend Article 57 be acceptable to delegations, taking into account that data interoperability and comparability can only be achieved by the use of a common, single data-mining tool?

¹ For a detailed explanation of the Commission's proposal, see WK 12512/2020.

² See WK 10645/2020 ADD 1-17.

Article 96 - Publication of information relating to beneficiaries

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 96(1)				
842a		<p><u>New EP proposal paragraph 0</u></p> <p>Member States shall ensure that beneficiaries of Funds provide them with the information necessary for their identification, including, where applicable, the identification of the group, as defined in Directive 2013/34/EU.</p>		
843	<p>1. Member States shall ensure annual ex-post publication of the beneficiaries of the Funds in accordance with [Article 44(3)-(5) of Regulation (EU) .../... CPR Regulation] and paragraphs 2, 3 and 4 of this Article.</p>	<p><u>New EP proposal paragraph 1</u></p> <p>1. In accordance with [Article 44(3)-to (5) of Regulation (EU) .../... CPR Regulation] and paragraphs 2, 3 and 4 of this Article, Member States shall ensure annual ex-post publication of the beneficiaries of the Funds, including, where applicable, the information on groups, as referred to in paragraph 0 of this Article, as provided to them by those beneficiaries in accordance with that paragraph.</p>	<p>1. Member States shall ensure annual ex-post publication of the beneficiaries of the Funds in accordance with for the purposes of [Article 44(3)-(5)(4) of Regulation (EU) .../... CPR Regulation] and in accordance with paragraphs 2, 3 and 4 of this Article.</p>	<p>1.</p>

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
		<p><u>Voted EP Amendment</u></p> <p>1. Member States shall ensure annual ex-post publication of the beneficiaries of the Funds <u>in accordance</u>in accordance with [Article 44(3)-to (5) of Regulation (EU) .../... CPR Regulation] and paragraphs 2, 3 and 4 of this Article. <u>Where beneficiaries are part of a group within the meaning of point 11 of Article 2(1) of Directive 2013/34/EU, the published information shall allow for the identification of that group.</u></p>		

Article 57 - Protection of the financial interests of the Union

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement
Article 57(1), point (d)				
538	(d) imposing penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;	(d) imposing penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary;		
538a	<i>(da) use of a data mining tool, to be made available by the Commission, to assess risks of projects, beneficiaries, contractors and contracts ensuring minimal administrative burden and effective protection of the EU financial interest. This data mining tool could also be pertinent to avoid circumventions of rules as per Article 60 of the Horizontal Regulation;</i>			
Article 57(6), first subparagraph, introductory part				
550	6. The Commission may adopt implementing acts, laying down rules necessary for the uniform	6. The Commission may adopt implementing acts, laying down rules necessary for the uniform		

	Commission Proposal	EP Mandate	Council Mandate	Draft Agreement	
	application of this Article relating to the following:	application of this Article relating to the following:			
	Article 57(6), first subparagraph, point(a)				
Y	551 (a) the procedures, deadlines, exchange of information, <i>requirements for the data mining tool</i> , in relation to the obligations as set out in paragraphs 1 and 2;	(a) the procedures, deadlines, exchange of information in relation to the obligations as set out in paragraphs 1 and 2;	(a) the procedures, deadlines, and exchange of information in relation to the obligations as set out in paragraphs 1 and 2;		Y