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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 - *Preparation of the Council debate*

I. INTRODUCTION

1. On 1 June 2018, the Commission proposed a reform of the Common Agricultural Policy (CAP). The reform package includes a proposal for a new Regulation on the financing, management and monitoring of the CAP (hereinafter: Horizontal Regulation). Taking the positive experience with the functioning of the current Horizontal Regulation 1306/2013 into account, the proposal would essentially maintain the elements, which are working well, such as the governance bodies in the Member States. However, the Regulation needs to be amended in order to align it with the proposed New Delivery Model (NDM) and the policy shift towards 'performance', which are objectives the Council supports.

2. On 21 October 2020, the "Agriculture and Fisheries" Council agreed a General Approach on the CAP reform, including on the Horizontal Regulation.[1] On 23 October 2020, the European Parliament concluded the vote on its negotiating position. With the mandates obtained, the institutions engaged in the process of informal negotiations.

3. On 10 November 2020, a first trilogue took place on all three CAP reform proposals and since then, four dedicated trilogues on the Horizontal Regulation took place on 4 and 18 December 2020, and on 29 January and 2 March 2021. A fifth trilogue is planned to take place on 25 March.

4. The negotiations with the European Parliament are based on 8 clusters of inter-related Articles related to the following topics: (1) Governance bodies, (2) Financial management, (3) Performance framework and New delivery model, (4) Commission checks, control systems and penalties, (5) Transparency and audit, (6) Agricultural reserve, (7) Conditionality, and (8) Others.

II. STATE OF PLAY

5. In general, good progress has been made in the trilogue discussions with the European Parliament and the Commission. Provisional agreements have been reached on the following clusters in particular:

   - Broad agreement was reached on the cluster on Governance Bodies. Considering that the governance bodies in the Member States have proven to be functioning well, the institutions generally share the objective of maintaining the status quo here and to provide for continuation of the current arrangements. However, for legalistic reasons, the EP insisted on a new order for the relevant articles whereby each body would be addressed in a separate article.

[1] See doc. 12151/20.

- With regard to the cluster on Financial Management, there is agreement in principle on the EUR 2000 threshold for financial discipline. However, the general scope of financial discipline will need to be discussed further as the EP calls for an exemption from financial discipline for the outermost regions, which the Council cannot support. The Parliament agreed to the Council's position on the payment of advances as it provides for flexibility. As regards the MFF-related amendments proposed by the EP concerning pre-financing rates and automatic de-commitment rules, the Council is not prepared to re-open the debate on the European Council's conclusion on the MFF from July 2020 although the EP is of the opinion that specific, sectoral provisions are not part of the MFF package.

- With regard to the cluster on Transparency and Audit, agreement was reached on the Council's proposals to technically align the transparency provisions in the Horizontal Regulation with the Strategic Plans Regulation and the Common Provisions Regulation. With the aim of providing more transparency, the Parliament wants to make provision in the Regulation to allow for the identification of beneficiaries and the groups/holdings they belong to, where appropriate. The Council understands the political importance of this demand but pointed out that EP's demand should not result in a high administrative burden for the Member States. Further discussion is needed here, also in relation to the Commission proposal on Article 57 on the Protection of the EU's financial interests (which is part of the cluster on Commission checks, control systems and penalties).

- On the cluster Conditionality, the challenge is to get the EP's support for the Council's approach on Articles 84 to 87 of the Horizontal Regulation. The Council's amendments aim to strike the right balance between the *conditionality control effort* with the need to keep things simple and administratively light. Most importantly, and in line with the New Delivery Model, the *conditionality control effort* should be the responsibility of the Member States. The Parliament shows willingness to possibly accept the Council's approach in return for certain concessions from the Council with regard to the control sample, the amount when no penalty shall be applied, the intentionality of the non-compliance, and the percentage(s) to be applied to reductions.

- Further preparatory work is currently carried out at the level of technical experts on the cluster on Commission checks, control systems and penalties, which should help achieving concrete results at the 5th trilogue on 25 March. The cluster on Performance framework and the New delivery model has been addressed to a certain extent but at a general level in each of the last three trilogues. However, it is expected that this cluster will be the focus of concrete discussions at the trilogues of 25 March on the Horizontal Regulation and of 26 March on all three CAP reform proposals. The cluster on the Agricultural reserve will be discussed in the next few weeks.

- Some elements of the cluster on Performance and the New Delivery Model have already been addressed in the negotiations and showed that sharp differences exist between the EP and the Council. The Parliament believes that the proposed performance-based system cannot provide the necessary assurance for CAP expenditure and it lacks the commonality regarding CAP implementation in the Member States. The EP therefore advocates the re-introduction of the current compliance-based system: the eligibility of expenditure for reimbursement by the EU budget should be dependent on compliance with the eligibility conditions for final beneficiaries laid down in the CAP Strategic Plans. At various occasions, the Council has taken the view that it cannot accept a *2-layer system* where performance would come on top of the current compliance-based system as this would increase the administrative burden for Member States to an unacceptable level. The Council supports the performance-based system and the New Delivery Model although we propose certain modifications to the Commission's proposal for reasons of simplification and avoidance of administrative burden.

  The challenge in the negotiations will be to strike the right balance between EP's demands for reinforced assurance and CAP commonality and the Council's wish for a simplified and less bureaucratic New Delivery Model for the CAP. The Presidency has formulated a number of suggestions, involving further work on Articles 8, 11, 39, 40, 47, 57, 57a in order to meet Parliament's demands to a certain extent, while in return no changes will be made to the proposal on Article 35 on the eligibility of expenditure for Member States, i.e. *basic Union requirements* will not include eligibility at beneficiary level.

III. WAY FORWARD

6. The Council's General Approach on the Horizontal Regulation is based on the following principles: first, the current Horizontal Regulation is functioning well and has proven to be a solid basis for the financing, management and monitoring of the CAP. In other words, there is no need to change what is already working well. Second, the Council supports the paradigm shift towards Performance by means of a New Delivery Model (NDM). However, in order to limit the administrative burden for farmers and administrations alike and to keep things as simple as possible, the Council proposes a number of amendments to the Commission's proposal. Third, the Council opposes a *2-layer system* as this would increase the administrative burden for Member States to an unacceptable level and go counter to the objective of the simplification of the CAP.

7. The Presidency intends to continue to defend the above mentioned principles in the further negotiations on the Horizontal Regulation on politically sensitive matters, such as performance and the NDM, conditionality controls and penalties and the agricultural reserve.

8. At the meeting of the Special Committee on Agriculture (SCA) on 8 March, Member States expressed themselves on three specific issues. On the basis of the discussions in the SCA, and with a view to approximate positions in the inter-institutional negotiations, the Presidency has made a number of suggestions with the aim to provide a basis for progress towards an overall compromise package. At the Council, and taking the above mentioned explanations into account, Ministers are invited to give their views on the Presidency's suggestions, which would help to establish the positions to take in the further negotiations on the Horizontal Regulation:

   - The EP compromise proposal (Article 96), which would oblige beneficiaries of Funds to provide all information necessary for their identification, including, where applicable, the identification of the group they belong to. [2] Taking into account that the obligation to provide information would mainly fall on beneficiaries with limited administrative burden for Member States, the Presidency suggests to take a positive stance towards EP's recent compromise proposal.

[2] See doc. 6704/21 for a detailed explanation of the Parliament's compromise proposal.

- The Commission proposal (Article 57), which would make the use of the ARACHNE system as a single data mining tool mandatory in order to verify, record and store information on the organisations or natural persons ultimately benefitting from EU funding. [3] Whereas the use of a common, single data-mining tool would allow for data interoperability and comparability, and consequently support the protection of EU financial interests, but considering that more time is needed to test the tool in the specific CAP context, the Presidency suggests that, in first instance, the use of that tool should be voluntary for Member States during a transitional period.
- The issues involved in relation to the conditionality control effort by the Member States (Articles 84 - 87) and the concessions the Parliament expects the Council to make with regard to the control sample, the amount when no penalty shall be applied, the intentionality of the non-compliance, and the percentage(s) to be applied to reductions. With regard to those EP demands, the Presidency suggests to: stick to the 1% of beneficiaries for the control sample, as proposed by the Commission (Article 84(3); to accept the amount of EUR 100, as originally proposed by the Commission (Article 85(2)); to accept Article 86(1) as originally proposed by the Commission and to drop the words "*if Member States so decide*"; to)); to accept Article 86(2) as originally proposed by the Commission, i.e. a "3% reduction as a general rule".

[3] For a detailed explanation of the Commission's proposal, see doc. 6704/21 and WK 12512/2020. The comments of the Member States on the Commission's proposal are given in WK 10645/2020 ADD 1-17.