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NOTE

From: General Secretariat of the Council
To: Council

Subject: Post 2020 CAP reform package:
Proposals to make CAP implementation simpler
- Information from the French delegation, on behalf of the Austrian, Cyprus, Czech, Danish, Finnish, French, Greek, Hungarian, Irish, Italian, Luxembourg, Polish, Romanian and Spanish delegations

Delegations will find in the [Annex](#) a non-paper from Austria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Romania and Spain containing proposals to make the CAP implementation simpler, to be dealt with under "Any other business" at the "Agriculture and Fisheries" Council on 22-23 March 2021.

Non-paper from Austria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Romania and Spain

Proposals to make CAP implementation simpler

While the negotiation of the three basic acts of the future CAP is being finalised in trilogues, one of the main challenges is to set out a better performing future CAP without increasing the administrative burden for beneficiaries and administrations nor creating insecurity in the use of funds.

The legal framework needs to be made more secure for Member States, which would otherwise risk lowering their level of ambition, particularly with regard to environmental and climate objectives, to limit the risk of financial penalties.

This could also create uncertainties for farmers, reducing the range of available measures in order to limit the administrative burden, or extending the payment of aid, if the processes are more cumbersome.

Austria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Romania and Spain therefore request that the final CAP compromise should include the most relevant proposals of the Council and the European Parliament concerning (1) the recognition of the possibility to correct errors by beneficiaries, (2) the clarification and simplification of the new delivery model (NDM), (3) the content of the CAP Strategic Plans and (4), the simplicity of delegated acts or Commission working documents, which is also a challenge, given its implications for the operational implementation of the policy, including required controls and more proportionate sanctions.

I. Recognising the possibility of correcting errors will allow to avoid penalties for errors made in good faith

Acknowledging the possibility of correcting errors is essential to strengthen the bond of trust between the administration and the beneficiary, and to avoid financial penalties that can be very heavy for a mistake made in good faith. It should be possible to modify aid applications in some situations (including after deadlines) so that the declaration is in line with the reality on the field, without risking Union funds. Depending on the information systems used in the Member States, the risks of error and the needs for allowing the correction of errors are not the same, but the conditions for its recognition must be common and could be as follows:

- Cases of obvious errors: it is proposed to maintain the current provisions for these cases, which can be detected in the aid application without further investigation.
- Cases of errors requiring further investigation: these are errors which cannot be detected automatically in the aid application and are therefore not covered by the current definition of obvious error. They require exchanges with the beneficiary, on his/her request, or based on the detection by the aid instructing services of a possible error by the beneficiary or a small variation in the measurements, without intent to fraud. A large proportion of these errors can currently be corrected using the system of preliminary controls, in Member States that implement it. For the next CAP, we need a similar system, allowing to correct the same type of errors, but on a larger scale, and according to each Member State's internal procedures, consistent with its implementation methods.

Examples of situations where the possibility for correcting error would apply:

- forgetting to tick an aid application (basic payment, ANCs...) although this aid has been applied for in previous years or if the application contains the necessary supporting documents to apply for the aid;

- forgetting to send a supporting document or a failure to fill it in completely;
- failure to declare the number of animals for area-based payment aid with density livestock obligations, the latter being declared for animal-based aid;
- error in a crop code (in this case, the beneficiary will have to provide a justification);
- error in animal code;
- small variations in the measurement of parcel size (where no actual change in the field has taken place).

Elements corroborating the request for modification must be present in the aid application (current or previous years), or through information transmitted by the beneficiary (geo-localised pictures, invoices, supporting documents, etc.).

These errors must be considered on a case-by-case basis, in order to take into account the diversity of situations that may arise.

To avoid any risk of abuse, any request for an amendment subsequent to the notification of an on-the-spot check, or any request for a substantial amendment to the declaration after the period of on-the-spot checks, would be excluded from the possibility of correcting an error.

II. The new delivery model must be clarified and simplified

While the clearance of expenditure is now primarily performance-based, the elements expected from the paying agencies and certification bodies in both Council and Parliament proposals lead to maintaining compliance procedures, deriving from the accreditation criteria for paying agencies and the checks on the proper functioning of governance systems: individual controls to ensure compliance with requirements, verification of the claims eligibility, compliance with CAP Strategic Plan. While compliance is no longer systematically verified at European level, the pressure of audits and controls on the Member State, and therefore on farmers, will remain high, due to the obligations of the paying agencies and certification bodies, and possibly additional controls by the Commission.

In these circumstances, it is essential that the Commission's expectations towards the certification body be clarified without further delay and that the flexibilities included in the Council's position be maintained in the trilogue agreement.

II.1 - Securing procedures

Amendments and clarifications are needed to the regulations (basic or future delegated and implementing acts) in **order to secure the elements relating to the compliance procedure** and to limit the risks of financial corrections:

- **Clarify the requirements in relation to the certification body**

In collaboration with the Court of Auditors, the Commission should reply to Member States before the end of the negotiations regarding:

- the criteria for certifying the proper functioning of governance systems (audit of the file processing chain, audit of the information system, check on the basis of individual aid application);
- the definition of a serious deficiency, taking into account the definition proposed by the Council and specifying in particular the conditions that may lead to the recognition of a serious deficiency;
- the check conditions for the output indicators;
- the explicit exclusion from the scope of the certifying body's checks on the compliance with the national rules of eligibility established in the CAP Strategic Plan.

On this last subject, while the text indicates that the check of eligibility rules does not fall within the scope of the Commission's checks (Article 35 - Eligibility of expenditure - and Article 53 - Compliance procedure), nothing is said on the detailed checks that will have to be carried out by the certification body. These checks may result in an increased control pressure on beneficiaries. **The certification body's checks must therefore be in line with Articles 35 and 53 and not extended to the respect of the specific requirements of the CAP Strategic Plan or national rules, but only to the respect of European rules.** These clarifications should be made in the Horizontal Regulation (article 11).

In addition to the amendments to the basic acts, which will necessarily not be very detailed, it is important that the expectations towards the certification bodies, as well as the certification of the reporting system, be clarified at this stage within the framework of the trilogue discussions, for example with draft guidelines.

- **Better supervision of the procedure for determining the amounts to be excluded from Union financing**

A more detailed framework of possible financial penalties must be provided for in Article 53, **in line with the current programming period to take into account "the nature of the infringement and the financial damage caused to the Union"**. In particular, the possibility of quantifying the impact of irregularities should be included to be able to circumscribe the irregularity and limit its amount. The procedures for excluding expenditure once a failure has been established should also be specified, particularly in the case of a deficiency in the system of governance (what would be the level of exclusion: operation, measure, or type of intervention?) or an inconsistency in the output indicator associated with this expenditure.

- **Better supervision of contradictory procedures in the case of risk of suspension or reduction of payments**

The nature and timing of the exchanges planned between the Commission and the Member States must be specified for the various cases, which may lead to a suspension or reduction of payments. Some of the Parliament's drafting proposals (AM 224 and 278 in part) should be included for Articles 39 (Suspension of payments in relation to the multi-annual performance monitoring) and 40 (Suspension of payments in relation to deficiencies in the governance systems). They also could be extended to Article 38 (Suspension of payments in relation to the annual clearance), and 52 (Annual performance clearance).

II.2 - Preserve the flexibilities and the limited number of indicators agreed in the Council's mandate

With regard to the planning of payments, it is essential to maintain the flexibilities in the Council's mandate on unit amounts, and in particular the possibility for Member States to introduce a maximum unit amount and an average unit amount for all types of intervention (article 89).

The flexibilities introduced for the management of direct payments should also be maintained, with the possibility to determine a minimum/maximum unit amount which takes into account the need for reallocation of funds in case of under-use of certain interventions (Articles 88.3 and 89.1a in the Council's position). In particular, the possibility to make budget reallocations between the BISS and the eco-schemes during the programming period should be maintained, with the necessary provisions to ensure implementation including by Member States using a system of payment entitlements (Article 88). In this sense the last paragraph of Article 88 must be maintained as proposed by the Council, in line with the Council's proposals made in Article 89(1a). It is also very important to defend the flexibility provided for in Article 86(6c), i.e. to allow excess amounts of Pillar II environmental spending to be taken into account for the 20% minimum spending requirement.

Maintaining these flexibilities is a prerequisite for the deployment of a high environmental ambition by Member States. Additionally the proposals of the Council in Article 121(4b) and (5a) for establishing benchmarks for the performance clearance purpose should be maintained unchanged.

With regard to result indicators, it is of paramount importance to maintain the major simplification introduced in the Council mandate to limit the number of mandatory indicators for the performance review to a limited number of result indicators, as identified in Annex I of the Council compromise. It must be acknowledged that Member States have different starting points and specific challenges for their agricultural sector. Therefore, they should be allowed to decide for appropriate additional indicators, keeping only a limited number of mandatory indicators, to fulfil their needs and CAP's expectations. The output indicators already cover the whole expenditure of interventions under the CAP Strategic Plans. The result indicators used for the performance review, and which may therefore lead to financial corrections, must correspond to the indicators that will be common to all Member States, and which are the most relevant and understandable for European citizens.

In addition to these efficiency indicators (output, results), which may have financial consequences, Member States will provide impact indicators that will allow to present the effects of the policy to the citizens, but without financial penalties. Austria, Cyprus, Czech Republic, Denmark, Finland, France, Greece, Hungary, Ireland, Italy, Luxembourg, Poland, Romania and Spain do not support any additional implementation of a reporting structure which requires numerous and very detailed data. Indeed, the data that can be requested by the European Commission for monitoring purposes should be strictly limited to the minimum necessary. For the next CAP, the Commission is planning to establish through delegated acts a reporting of very fine data, for instance at the level of a single project (type of beneficiary, geospatialisation, etc.) which will lead to a disproportionate administrative burden and implementation costs and it is seen by Member States as a second control layer additional to the NDM. This reporting is not in line with a CAP moving towards a simplified and more result-oriented policy.

Specifically, under the NDM, it should be no longer necessary to send individual beneficiary data to the European Commission and the monitoring of strategic plan interventions has to be done solely and exclusively through the aggregated output and result indicators outlined above. So, Article 129 of the Strategic Plans Regulation should be modified to exclude the communication of individual beneficiaries' data.

III. National CAP Strategic Plan must remain strategic programming documents

The Commission is invited to stick to its own words in the context of the level of detail in the CAP Strategic Plans: “Need to know, not nice to know”. The concept of one single CAP Strategic Plan per Member State as proposed by the Commission will not provide e.g. as detailed regional information as the current RDP’s. The first versions of the CAP Strategic Plans are currently being drafted by the Member States. Early exchanges with the Commission confirm that it expects an extremely high level of detail and justification, sometimes higher than in the current programming period documents for the second pillar. The CAP Strategic Plans must remain strategic programming documents reflecting the political choices of Member States in the implementation of the CAP.

These documents are therefore not intended to detail too accurately the conditions of implementation of interventions and eligibility as well as control of beneficiaries, which are strictly a matter of national implementation and which will have to be controlled at national level. The description of the selection criteria should be made separately from the intervention forms in order to avoid modifying the forms too frequently; calls for projects launched at national or regional level will specify the target populations (which may change according to the themes or actions that can be financed).

During the last programming periods, the details of the selection criteria were not included in the national rural development programme, but in national or regional implementation documents. It is desirable that the structure and content of future national strategic plans remain at a strategic level and take into account the role entrusted to the Regions in certain Member States. The details should be referred to Member State internal documents.

IV. Delegated legislation and interpretative notes must be simplified

The complexity of the current CAP sometimes results from the rules prescribed in delegated acts or their interpretation by the Commission services. Guidelines or working documents may also be required from Member States as they serve as a basis for the work of the certification body which assesses the error rate in the implementation of aid each year. Consequently, in order to reduce the administrative burden, it is necessary to adapt the numerous provisions currently laid down in delegated acts and to avoid creating new requirements, in the light of the need for simplification but also for readability in the eyes of beneficiaries. It must also be possible to ensure a better understanding of European regulations.
