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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	9645/18 + COR 1 + ADD 1
Subject:	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 <i>- European Parliament's non-paper on the social dimension of the CAP</i>

Delegations will find in the Annex a non-paper received from the European Parliament on the social dimension of the CAP.

## **A New Social Dimension for the CAP**

*Building best practice for employment conditions, employer obligations and occupational health and safety into the CAP*

### **1. Background - the problems to be addressed**

The COVID-19 pandemic revealed, more than ever before, failings in the social dimension of agriculture, with serious consequences for essential workers. Poor wages, a high proportion of undeclared work, deplorable housing, and an extremely high incidence of accidents are just some of the daily challenges many agricultural workers have to face in Europe. This exploitative condition encourages social dumping which affects all workers and farmers in the agriculture sector. In addition, unacceptable working and living conditions enabled the rapid spread of the COVID-19 virus to the population at large, resulting in loss of life and illness which could have been avoided. Pre-existing failings came to light most starkly, and were worsened, in early 2020, long after the Agriculture Committee voted on the CAP regulations in 2019, and years after the Commission's initial proposal. To begin to address these failings, in October 2020 the Parliament approved an essential set of amendments in its negotiating mandate.

The aim of Parliament's amendments is to incorporate a safeguard in the Common Agriculture Policy to make sure that one of the main EU policies contributes to raising labor standards in one of the most precarious sectors of our economy and reassures European taxpayers that their money is not going to support businesses or individuals which do not respect workers' rights or put at risk their lives or their health.

Support for incorporation of the social dimension has been expressed at the political level by the European Commission on several occasions. Likewise, Presidency and Council have also indicated that this is a serious issue, which should be addressed.

## 2. The Presidency's proposal

The Presidency submitted a document, with a two stage proposal, firstly with compulsory incorporation of these issues into Member State farm advisory services from 2023, to be followed by an evaluation report by the Commission in 2026 on the impact of those advisory services on working conditions, to ascertain whether other initiatives, possibly legislative, would then be needed to improve the CAP's social dimension. From Parliament's perspective, this two stage proposal, **doesn't cover the urgent need to create a link between CAP subsidises and the respect of the applicable working and employment conditions through a binding mechanism, as the Parliament proposes.** The proposal from the Council's presidency is therefore not fit for purpose and effectively postpones until the next programming period post 2027 any decision to address the well-known challenges on the ground.

In addition, this proposal entails the following weaknesses:

- The Farm Advisory Services are resourced at different levels in different Member States and do not all operate in the same way. CAP funds support them but at low levels and the strength of any FAS depends on the level of finance added by national authorities. This means that they do not constitute a sufficiently strong and efficient tool for disseminating information about legal obligations for employers in the sector. Consequently, it is not an appropriate mechanism to check if the legislation is actually complied with and enforced on the ground. Furthermore as the service is voluntary and the uptake varies from MS to MS, any evaluation report would not be comprehensive in providing information on all Member States in an adequate or meaningful way to inform the next steps, whether legislative or not.

- Articles 71 (support for co-operation measures), and 72 (support for knowledge exchange and information) are both voluntary articles and do not form a solid or consistent basis for improvement of working conditions including health and safety, in the agriculture sector across the EU. Non- application of these articles in a Member State would leave operators without support in this area and consequently more likely to undercut others through poor employment practice. In addition, without mandatory provisions in the relevant sector, these articles would neither constitute a solid or consistent basis for future change, nor contribute to a level playing field.

### **3. EP proposal to tackle employment/working condition infringements**

The Parliament proposes an approach to cover employment issues, under which an administrative penalty shall be imposed on beneficiaries who do not comply with the applicable working and employment conditions resulting from collective agreement, national and Union law, relating to different aspects of working conditions, such as occupational health, and safety, equal treatment and declared employment. The respective legislation to comply with will be listed in Annex XX.

Under this approach, and without creating any additional administrative burden, Member States shall simply ensure compliance with the rules on social conditionality through checks performed by their existing control systems. CAP beneficiaries found to be in breach of employment standards or social requirements, would be penalised so that EU funds do not support illegal and exploitative practices. The credibility of the policy and of the sector would significantly benefit from such provisions being added to the legislation in the current reform.

Agricultural workers have the same right to protection as others, and numerous EU legal instruments in the social field already apply to workers in agriculture, just as they do in other domains. The Annex to this document lists a number of them. These legal acts establish a level playing field and common standards across the EU, which would benefit employers: currently, farmers complying with the applicable labour standards, are disadvantaged compared to those breaking the law or collective labour agreements and this unfair competition must be stopped.

In order to integrate a social dimension, legislation can easily build on existing systems so that the respective employment and social standards, which are already the subject of normal checks by the competent enforcement authorities - responsible for controls on social security, occupational health and safety and other working and employment conditions, as well as those responsible to tackle undeclared work - can be taken into account in the way that other controls already have been since 2003. Relevant controls have been delegated to veterinary authorities where they relate to animal health, or to environmental agencies for environmental legislation. This can be paralleled for controls via the competent enforcement authorities responsible to deal with applicable working and employment conditions, without the need to create any new structures at EU and national level. The compliance with the scope of social conditionality shall be ensured by Member States through their existing control systems and relevant competent enforcement authorities in an easy and un-bureaucratic manner. This should apply in full respect of national industrial relations systems and the role and autonomy of social partners.

The Commission has already envisaged this possibility, indicating that in such a system, the paying agency could rely on existing competent national safety, social and health control authorities to check the compliance with the necessary requirements. Under conditionality, the corrective system indicated in the Horizontal Regulation could be extended to the social dimension.

These elements constitute the precondition for an efficient system which would not imply any additional administrative burden, while creating a strong dissuasive effect, bringing real benefits to workers in the sector, tackling undeclared work, contributing to improving working conditions, ensuring equal treatment for all workers in agriculture, as well as preventing unfair competition in our common market.

Parliament's proposal seeks to include a broad range of existing EU legal acts (starting from an initial list proposed by the Commission) setting common standards that establish a level playing field throughout the EU on worker's rights. These are minimum standards of adopted Directives relevant to this situation, which shall already be enforced by MS. Furthermore, there are no additional control requirements either for the Commission or for the national Paying Agencies since Member States may rely on existing control authorities for this task.

In such a major policy and budgetary area as the CAP, we need European level tools in place to ensure that exploitation or illegal practices cannot be adopted as a way to meet needs identified in the SWOT analysis for one or other CAP Strategic Plan, nor by operators who wish to undercut competitors by violating workers' rights and disrespecting applicable working and employment conditions.

Conditionality has already been in place in the CAP for a number of years for environmental aspects, animal welfare and public, animal and plant health; in parallel, various other types of conditionality (ex-ante, enabling conditions) also exist in Cohesion policy, and have to be met before investments can be made, so considering social conditionality is not a new or unique type of policy proposal at EU level. There are long-standing and systemic issues affecting workers in the agriculture sector, and the CAP has the potential to contribute in addressing them in an effective manner, without incurring in new administrative burdens. Yet this objective can only be achieved with social conditionality and certainly not only with voluntary measures, awareness raising or other soft instruments that would not be able to deliver tangible improvement. The proposed system would help promoting decent work in agriculture while also tackling unfair competition in the sector, in the interest of all farmers.

#### 4. Annex 1 - Legislation and legislative texts in SPR (Article 11a + Annex XX)

##### Article 11a

##### Principle and scope on the social conditionality

1. Member States shall include in their CAP Strategic Plans a system of conditionality, under which beneficiaries receiving direct payments under Chapter II and Chapter III of this Title or the annual premiums under Articles 65, 66 and 67 shall be subject to an administrative penalty if they do not comply with the applicable working and employment conditions and/or employer obligations resulting from all relevant collective agreements, national and Union law as listed in Annex XX.
2. When including a system of social conditionality in their CAP Strategic Plans as referred in paragraph 1, Member States shall consult national social partners, representing management and labour in the agriculture sector and shall fully respect their autonomy, *[as well as their right to negotiate and conclude collective agreements]*.
3. The rules on an effective and proportionate system of administrative penalties to be included in the CAP Strategic Plan shall respect the requirements set out in Chapter IV of Title IV of Regulation (EU) [HzR]

## ANNEX XX

1. Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on **transparent and predictable working conditions** in the European Union
2. Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on **freedom of movement for workers** within the Union
3. Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage **improvements in the safety and health of workers at work (framework)**. Directive 2009/104/EC of the European Parliament and of the Council of 16 September 2009 concerning the **minimum safety and health requirements for the use of work equipment** by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
4. Council Directive 2000/78/EC of 27 November 2000 establishing a **general framework for equal treatment** in employment and occupation.
5. Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and **equal treatment of men and women in matters of employment and occupation** (recast)
6. Council Directive 2000/43/EC of 29 June 2000 implementing the principle of **equal treatment between persons** irrespective of racial or ethnic origin
7. Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on **work- life balance** for parents and carers and repealing Council Directive 2010/18/EU



8. Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the **posting of workers** in the framework of the provision of **services**; Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the **posting of workers** in the framework of the provision of services; Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on **the enforcement of Directive 96/71/EC concerning the posting of workers** in the framework of the provision of services
  9. Directive 2009/52/ec of the European parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of **illegally staying third-country nationals**
  10. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the **conditions of entry and stay of third-country nationals** for the purpose of employment as seasonal workers
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