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WORKING PAPER

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NOTE

From:	Presidency
To:	Working Party on Financial Agricultural Questions
N° Cion doc.:	9634/18 + ADD1 + COR1
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 - Examination of Presidency drafting suggestions

Delegations will find attached a note from the Presidency on the above-mentioned proposal.

1. As announced in document WK 9697/2020, there is a need to review certain provisions in the proposed Horizontal Regulation, which deal with the empowerment of the Commission. Some of these provisions, set out in the Annex, require further framing. What is meant by "framing"? Under the TFEU, the conferral of delegated powers on the Commission must be effected in accordance with Article 290 of the Treaty. Article 290(1) TFEU allows the legislator to delegate to the Commission the power to amend or to supplement non-essential elements of legislative acts through the adoption of delegated acts. That provision requires that the objectives, content, scope and duration of the delegation of power be explicitly defined in the legislative acts. It is in other words a power given by the Treaty to the co-legislators. Moreover, also according to the case law of the Court of Justice, "[...] *when the Community legislature wishes to delegate its power to amend aspects of the legislative act at issue, it must ensure that that power is clearly defined and that the exercise of the power is subject to strict review in the light of objective criteria* [...]".
 2. In the Annex, the Presidency has listed a number of provisions in the proposal, where, as compared to the current Horizontal Regulation (1306/2013), the framing of the delegated power to the Commission is considered to be insufficient. The Presidency has therefore formulated a number of drafting suggestions, which would basically align the framing of the delegated power in the proposal with the framing in the current Horizontal Regulation. Delegations are invited at the forthcoming videoconference of the WP AGRIFIN on 7 October to comment on and endorse the Presidency's drafting suggestions on empowerment set out in the Annex.
 3. Although issues related to the empowerment of the Commission in legislative proposals are often subject to intense negotiations between the European Parliament and the Council during the trilogue-phase, the Presidency would consider it helpful if the technical matters described in paragraph 2 above and in the Annex can be discussed so that appropriate wording can be introduced in the Council's general approach on the proposal, subject of course to the advice of the Council's Legal Service and to the legal provisions in force (TFEU).
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PRESIDENCY DRAFTING SUGGESTIONS ON THE EMPOWERMENT OF THE COMMISSION

OVERVIEW

Alignment according to 1306/13
New proposal by PRES (grey shaded)

Art.	Empowerment of the Commission for	Presidency suggestions for technical adjustments
10(1)	Minimum conditions PA/Coord.B.; PA obligations for public interventions	Alignment according to 1306/13
15(6)	Rules for calculating financial discipline by MS to farmers	New article, adjusted in same way as 1306/13
21(2)	Types of measures and calculation methods for public interventions	Alignment according to 1306/13
21(3)	Rules on valuation of operations (public interventions), corrective measures	Alignment according to 1306/13
36 subpara. 2	Exceptional eligibility of payments made before and after deadlines	Alignment according to 1306/13
42(4) subpara. 1	Allowment of advance payments	New article, adjusted in same way as 1306/13
42(4) subpara. 2	Conditions for advance payments	New article, adjusted in same way as 1306/13
45(1) subpara. 1	Conditions of compensations (revenues / expenditure)	Alignment according to 1306/13
45(1) subpara. 2	Transitional provisions for delayed budget approval for a financial year	Alignment according to 1306/13
50(1)	Criteria for determination of irregularities / non-compliance	Alignment according to 1306/13
58(3)	Additional provisions for checks	Alignment according to 1306/13
62(3)	Arrangements for system of securities	Alignment according to 1306/13

74(2)	Exceptions for interventions, not under the scope of scrutiny of transactions	Alignment according to 1306/13
75(6)	Further amendments of 40.000 EUR threshold for exception of scrutiny of transactions	Deletion
92(5)	Provisions for exchange rates	Alignment according to 1306/13
92(6)	Provisions for exchange rates	Alignment according to 1306/13
103	Transitional measures	Alignment according to 1306/13

DETAILS

Article / paragraph	Current text (8794/20)	Presidency suggestions	Presidency's explanations
Article 10(1) (Commission powers)	<p>1. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on:</p> <p>(a) the minimum conditions for the accreditation of the paying agencies referred to in Article 8(2) and of the coordinating bodies referred to in Article 8(4);</p> <p>(b) the obligations of the paying agencies as regards public intervention, as well as and the rules on concerning the content of their management and control responsibilities.</p>	<p>1. The Commission is empowered to adopt delegated acts in accordance with Article 100 <u>to ensure the sound operation of the system provided for in Article 8,</u> supplementing this Regulation with rules on:</p> <p>(a) the minimum conditions for the accreditation of the paying agencies referred to in Article 8(2) and of the coordinating bodies referred to in Article 8(4);</p> <p>(b) the obligations of the paying agencies as regards public intervention, as well as and the rules on concerning the content of their management and</p>	<p>In the third column, text has been added to reflect the same "framing" of <u>the empowerment</u>s as under the current regulation <u>1306/2013</u>.</p>

		control responsibilities.	
Article 15(6) (Financial discipline)	6. The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules for calculating the financial discipline to be applied by Member States to farmers.	6. The Commission is empowered to adopt delegated acts in accordance with Article 100, <u>where necessary in order to ensure a coherent application of the financial discipline in the Member States,</u> supplementing this Regulation with rules for calculating the financial discipline to be applied by Member States to farmers.	The Presidency proposes to include a framing component to comply with the obligation by the Treaty.
Article 21(2) and (3) (Public intervention expenditure)	2. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on: [...]	2. The Commission is empowered to adopt delegated acts in accordance with Article 100 <u>to ensure the funding by the EAGF of the public intervention expenditure,</u> supplementing this Regulation with rules on: [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013.</u>
	3. The Commission is empowered to adopt delegated acts [...]	3. The Commission is empowered to adopt delegated acts <u>where necessary to ensure the proper management of the appropriations entered in the Union's budget for the EAGF</u> [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013.</u>

<p>Article 36</p> <p>(Compliance with payment deadlines)</p>	<p>[...]</p> <p>The Commission is empowered to adopt delegated acts [...]</p>	<p>[...]</p> <p><u>Where necessary in order to make expenditure effected before the earliest possible date of payment or after the latest possible date of payment eligible for Union financing, while limiting the financial impact of doing so, T</u>the Commission is empowered to adopt delegated acts [...]</p>	<p>In the third column, text has been added to reflect the same "framing" of the <u>empowerments as under the current regulation 1306/2013.</u></p>
<p>Article 42(4)</p> <p>(Payment to beneficiaries)</p>	<p>4. The Commission is empowered to adopt delegated acts in accordance with Article 100 amending this Article by adding supplementing this Regulation with rules allowing Member States to pay advances as regards on the interventions or measures referred to in Chapter III of Title III of Regulation [CAP Strategic Plan Regulation] and as regards measures regulating or supporting agricultural markets as laid down in Regulation (EU) No 1308/2013 for which the Member States may pay advances.</p> <p>The Commission is empowered to adopt delegated acts in accordance with Article 100</p>	<p>4. The Commission is empowered to adopt delegated acts in accordance with Article 100 amending this Article by adding supplementing this Regulation with rules allowing Member States to pay advances as regards on the interventions or measures referred to in Chapter III of Title III of Regulation [CAP Strategic Plan Regulation] and as regards measures regulating or supporting agricultural markets as laid down in Regulation (EU) No 1308/2013 <u>in order to ensure a coherent and non-discriminatory payment of advances</u> for which the Member States may pay advances.</p>	<p>The Presidency proposes to include a framing component to both subparagraphs to comply with the obligation by the Treaty.</p>

	<p>supplementing this Article by setting up specific conditions for the payment of advances.</p>	<p>The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Article by setting up specific conditions for the payment of advances, <u>to ensure a coherent and non-discriminatory payment of advances.</u></p>	
<p>Article 45(1) (Commission powers)</p>	<p>1. The Commission is empowered to adopt delegated acts [...]</p> <p>If the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 11(2) of the Financial Regulation, the Commission is empowered to adopt delegated acts [...]</p>	<p>1. The Commission is empowered to adopt delegated acts <u>taking account of revenue collected by paying agencies for the Union's budget when making payments on the basis of the expenditure declarations submitted by Member States,</u> supplementing this Regulation [...]</p> <p>If the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 11(2) of the Financial Regulation, the Commission is empowered to adopt delegated acts <u>enabling the equitable distribution of the appropriations</u></p>	<p>In the third column, text has been added to reflect the same "framing" of the empowerments as under the current regulation 1306/2013.</p>

		<u>available between the Member States, [...].</u>	
Article 50(1) (Commission powers)	1. The Commission is empowered to adopt delegated acts [...]	1. <u>Where necessary to ensure the correct and efficient application of the provisions relating to on-the-spot checks and access to documents and information set out in this Chapter,</u> The Commission is empowered to adopt delegated acts [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013.</u>
Article 58(3) (Rules regarding checks to be carried out)	3. The Commission is empowered to adopt delegated acts [...]	3. <u>Where necessary to ensure that the checks are carried out correctly and efficiently and that the eligibility conditions are verified in an efficient, coherent and non-discriminatory manner which protects the financial interest of the Union,</u> The Commission is empowered to adopt delegated acts [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013.</u>
Article 62(3)¹ (Securities)	3. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on:	3. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules <u>on: (a) which</u> ensure a	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current</u>

¹ Linguistic revision as alignment to Article 66(3) of regulation 1306/2013.

	<p>(a) which ensure a non-discriminatory treatment, equity and the respect of proportionality when lodging a security;</p> <p>(b) specifying the responsible party in the event that an obligation is not met;</p> <p>(c) laying down the specific situations in which the competent authority may waive the requirement of a security;</p> <p>(d) laying down the conditions applying to the security to be lodged and the guarantor and the conditions for lodging and releasing that security;</p> <p>(e) laying down the specific conditions related to the security lodged in connection with advance payments;</p> <p>(f) setting out the consequences [...].</p>	<p>non-discriminatory treatment, equity and the respect of proportionality when lodging a security; and: (ba) specifying the responsible party in the event that an obligation is not met; (eb) laying down the specific situations in which the competent authority may waive the requirement of a security; (dc) laying down the conditions applying to the security to be lodged and the guarantor and the conditions for lodging and releasing that security; (ed) laying down the specific conditions related to the security lodged in connection with advance payments; (fe) setting out the consequences [...].</p>	<p><u>regulation 1306/2013.</u></p>
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Article 74(2) (Scope and definitions)	2. This Chapter shall not apply to interventions covered by the integrated system referred to in Chapter II of this Title and by Chapter III of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]. The Commission is empowered to adopt delegated acts [...]	2. This Chapter shall not apply to interventions covered by the integrated system referred to in Chapter II of this Title and by Chapter III of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]. The Commission is empowered to adopt delegated acts <u>to respond to changes in sectoral agricultural legislation and to ensure the efficiency of the system of ex-post controls established by this Chapter</u> [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013</u> .
Article 75(6) (Scrutiny by Member States)	6. The Commission is empowered to adopt delegated acts in accordance with Article [100] amending the threshold set out in the paragraph 4.	6. The Commission is empowered to adopt delegated acts in accordance with Article [100] amending the threshold set out in the paragraph 4	The Presidency proposes the deletion of this paragraph as there should not be a need to amend the threshold provided for in Art. 75(4).
Article 92(5) & (6) (Exchange rate and operative event)	5. The Commission is empowered to adopt delegated acts [...]	5. The Commission is empowered to adopt delegated acts <u>to specify the operative event referred to in paragraph 2 or to fix it for reasons peculiar to the market organisation or the amount in question</u> [...]	In the third column, text has been added to reflect the same "framing" of <u>the empowerments as under the current regulation 1306/2013</u> .

	6. The Commission is empowered to adopt delegated acts [...]	6. <u>Where necessary to avoid the application by the Member States which have not adopted the euro of different exchange rates in accounts of revenue received or aid paid to beneficiaries in a currency other than the euro, on the one hand, and in the establishment of the declaration of expenditure drawn up by the paying agency, on the other,</u> The Commission is empowered to adopt delegated acts [...]	In the third column, text has been added to reflect the same "framing" of the <u>empowerments as under the current regulation 1306/2013.</u>
Article 103 (Transitional measures)	The Commission is empowered to adopt delegated acts [...]	<u>Where necessary to ensure the smooth transition from the arrangements provided for in Regulation (EU) No 1306/2013 as referred to in Article 102 to those laid down in this Regulation,</u> The Commission is empowered to adopt delegated acts [...]	In the third column, text has been added to reflect the same "framing" of the <u>empowerments as under the current regulation 1306/2013.</u>