



Council of the European Union
General Secretariat

Brussels, 27 September 2019

**Interinstitutional files:
2018/0217(COD)**

WK 10481/2019 INIT

LIMITE

**AGRI
AGRIFIN**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
To:	Working Party on Financial Agricultural Questions
N° Cion doc.:	9634/18 + COR 1 + ADD 1
Subject:	Proposal for a Regulation on the financing, management and monitoring of the CAP - Scrutiny of transactions (Articles 74-83) : Presidency drafting suggestions

With a view to the meeting of the Working Party AGRIFIN on 2 October, delegations find attached Presidency drafting suggestions on the scrutiny of transactions.

Scrutiny of transactions: Articles 74-83

of the proposed Horizontal Regulation

Presidency drafting suggestions

1. At the meeting of the WP AGRIFIN on 19 September and on the basis of a non-paper from the Presidency (WK 9846/2019), an exchange of views took place on the Articles in the proposed Horizontal Regulation dealing with the scrutiny of transactions (Articles 74-83).
2. Following the exchange of views, the Presidency has arrived at the following views:
 - a. The Commission proposal for a new Horizontal Regulation maintains the provisions for the scrutiny of transactions as contained in the current Regulation 1306/2013. However, since export refunds do not exist anymore, the number of transactions to be scrutinised nowadays is significantly lower than before.
 - b. A considerable number of delegations in the WP AGRIFIN therefore plea for a simplification of the proposed provisions on the scrutiny of transactions. Whereas some delegations believe that simplification is already sufficiently reflected in the latest consolidated text of the proposal (doc. 10135/19), other delegations consider that further simplification could be achieved by deleting Articles 74-83 and instead to provide for a legal basis in Article 58 (Rules regarding checks to be carried out) of the proposal (in line with the DK proposal in WK 9963/2019), which would allow for mutual assistance between Member States in control matters and which would secure *ex post* access to information held by third parties.
 - c. A number of other delegations, on the other hand, point out that scrutiny of certain types of expenditure (exceptional market measures, school schemes) will remain needed also in future. They therefore wish to maintain the scrutiny provisions as proposed by the Commission although most of those delegations would be able to accept the simplified text on scrutiny as contained in the latest Presidency consolidated text of the proposal (doc. 10135/19).
 - d. According to the Commission, market measures necessitate a certain established control environment, particularly taking into account that a number

of Member States identified significant errors in this area in the past. As possible future exceptional market measures may need to be implemented within a short time frame, robust *ex-ante* control environments remain necessary. The Commission does seem to acknowledge, however, that the text on the scrutiny of transactions in doc. 10135/19 would result in a significant simplification of the control environment while maintaining the minimum necessary scrutiny functions.

3. On the basis of the above mentioned, the Presidency believes that the majority of delegations could support a simplification of the text on the scrutiny of transactions but that views differ on the extent of such simplification. With the aim to find a compromise on the various positions taken and bearing the shared objective of simplification in mind, the Presidency has analysed the text on the scrutiny of transactions further and has identified certain provisions, which could be deleted or amended while maintaining an appropriate control environment. The Presidency also believes that keeping these simplified provisions on the scrutiny of transactions in the basic act would give more certainty to the Member States.
4. The Presidency would therefore invite delegations in the WP AGRIFIN to indicate if the following compromise amendments to the text could be acceptable:
 - a. In Article 74(2) (Scope and definitions), the second sentence could be deleted. As Article 74(1) already excludes rural development types of interventions and Article 74(2) excludes IACS-interventions (i.e. types of interventions in the form of direct payments) and sectoral types of interventions, there is no need for the Commission to exclude further measures from the application of scrutiny. There is therefore no need to empower the Commission to adopt delegated acts in relation to interventions unsuited for scrutiny of commercial documents. Finally, it would mean a reduction in the empowerments to the Commission.
 - b. In Article 75(4) (Scrutiny by Member States) and Article 79 (Planning and reporting), the word "programme" shall be replaced by "control plan" to reflect that the overall number of transactions to be scrutinised might be very limited indeed and that this would not require the drawing up and communication to the Commission of any specific criteria.

- c. A final amendment is introduced in Article 82(3) in order to make this paragraph consistent with the previous one.

The above mentioned amendments are reflected in the latest text on scrutiny (doc. 10135/19) in **bold** and ~~striketrough~~.

Chapter III

Scrutiny of transactions

Article 74

Scope and definitions

1. This Chapter lays down specific rules on the scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the system of financing by the EAGF, or representatives of those entities (hereinafter 'undertakings') in order to ascertain whether transactions forming part of the system of financing by the EAGF have actually been carried out and have been executed correctly.
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 in accordance with Article 100 supplementing this Regulation with the establishment of a list of interventions which, due to their design and control requirements, are unsuited for additional ex post controls by way of scrutiny of commercial documents and, therefore, are not to be subject to such scrutiny under this Chapter.~~
3. For the purposes of this Chapter the following definitions shall apply:
 - (a) "commercial document" means all books, registers, vouchers and supporting documents, accounts, production and quality records, correspondence relating to the undertaking's business activity, and commercial data, in whatever form they may take, including electronically stored data, in so far as these documents or data relate directly or indirectly to the transactions referred to in paragraph 1;
 - (b) "third party" means any natural or legal person directly or indirectly connected with transactions carried out within the financing system by the EAGF.

Article 75
Scrutiny by Member States

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of the nature of the transactions to be scrutinised. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities. The selection shall take account, inter alia, of the financial importance of the undertakings in that system and of other risk factors.
2. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with whom undertakings are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 76.
3. The body or bodies responsible for the application of this Chapter shall be organised in such a way as to be independent of the departments or branches of departments responsible for the payments and the checks carried out prior to payment.
4. Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 shall be scrutinised in accordance with this Chapter only for specific reasons to be indicated by the Member States in their annual **programme control plan** referred to in article 79(1).
5. The scrutiny carried out pursuant to this Chapter shall not prejudice the checks undertaken pursuant to Articles 47 and 48.
6. The Commission is empowered to adopt delegated acts in accordance with Article [100] amending the threshold set out in the paragraph 4.

Article 76
Cross-checks

1. The accuracy of primary data under scrutiny shall be verified by a number of cross-checks, including, where necessary, the commercial documents of third parties, appropriate to the degree of risk presented, including:
 - (a) comparisons with the commercial documents of suppliers, customers, carriers and other third parties;
 - (b) physical checks, where appropriate, upon the quantity and nature of stocks;

- (c) comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGF;
 - (d) checks, in relation to bookkeeping, or records of financial movements showing, at the time of the scrutiny, that the documents held by the paying agency by way of justification for the payment of aid to the beneficiary are accurate.
- 2. Where undertakings are required to keep particular book records of stock in accordance with Union or national provisions, scrutiny of those records shall, in appropriate cases, include a comparison with the commercial documents and, where appropriate, with the actual quantities in stock.
- 3. In the selection of transactions to be checked, full account shall be taken of the degree of risk presented.
- 4. The persons responsible for the undertaking, or a third party, shall ensure that all commercial documents and additional information are supplied to the officials responsible for the scrutiny or to the persons authorised to carry it out on their behalf. Electronically stored data shall be provided on an appropriate data support medium.
- 5. The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

[...Article 77 deleted...]

Article 78 ***Mutual assistance***

Member States shall assist each other on their requests for the purposes of carrying out the scrutiny provided for in this Chapter in the following cases:

- (a) where an undertaking or third party is established in a Member State other than that in which payment of the amount in question has or should have been made or received;
- (b) where an undertaking or third party is established in a Member State other than that in which the documents and information required for scrutiny are to be found.

Article 79

Programming Planning and reporting

1. Member States shall draw up **programmes control plans** for scrutiny to be carried out pursuant to Article 75 during the subsequent scrutiny period.
2. Each year, before 15 April, Member States shall send the Commission:
 - (a) their **programme control plan** as referred to in paragraph 1 and shall specify **the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them:**
 - i. ~~the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them;~~
 - ii. ~~the criteria adopted for drawing up the programme;~~
 - (b) a detailed report on the application of this Chapter for the previous scrutiny period, including the results of the scrutiny carried out under Article 78.
3. The **programmes control plans** and their amendments established by the Member States and forwarded to the Commission shall be implemented by the Member States, if, within eight weeks, the Commission has not made known its comments.

[...Articles 80 & 81 deleted...]

Article 82

Access to information and scrutiny by the Commission

1. In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organised under this Chapter and to the data held, including those stored in the data-processing systems. That data shall be provided upon request on an appropriate data support medium.
2. The scrutiny referred to in Article 75 shall be carried out by the officials of the Member States. Officials of the Commission may participate in that scrutiny. Officials of the Member State requesting mutual assistance in accordance with Article 78 may participate with the agreement of the requested Member State. Officials of the Commission and of the requesting Member State may not themselves exercise the powers of scrutiny accorded to national officials. However, they shall have access to the same premises and to the same documents as the officials of the Member States.

3. Without prejudice to the provisions of Regulations (EU, Euratom) No 883/2013, (Euratom, EC) No 2988/95 (Euratom, EC) No 2185/96 and (EU) 2017/1939, where national provisions concerning criminal procedure reserve certain acts for officials specifically designated by the national law, neither the officials of the Commission, nor the officials of the **requesting** Member State referred to in paragraph 2, shall take part in these acts. In any event, they shall, in particular not take part in home visits or the formal interrogation of persons in the context of the criminal law of the Member State concerned. They shall, however, have access to information thus obtained.

Article 83

Implementing powers

The Commission shall adopt implementing acts laying down rules necessary for the uniform application of this Chapter and in particular relating to the following:

- (a) the performance of the scrutiny referred to in Article 75 as regards the selection of undertakings, rate and the timescale for the scrutiny;
[...]
- (c) the performance of the mutual assistance referred to in Article 78;
[...]
- (g) the content of reports referred to in Article 79(2)(b) and any other notification needed under this Chapter.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).
