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WORKING PAPER

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Financial Agricultural Questions
N° Cion doc.:	9634/18 + ADD 1 + REV 1
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 - Comments from the Finnish delegation on the drafting suggestion from the Commission

Delegations will find attached comments from the Finnish delegation on the drafting suggestion and explanations from the Commission services related to Articles 57 (Protection of the financial interests of the Union) in the proposed Horizontal Regulation.



14.10.2020

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Article 57 (Protection of the financial interests of the Union) in the proposed Horizontal Regulation and data mining tool (WK 10645/2020 INIT)

Finland thanks the Presidency for the opportunity to comment on this proposal in writing and expresses its support for the general objectives of the proposal. However, many open issues remain on the rules governing the article text and its practical implementation, which require thoughtful consideration.

With regard to the discussion in the informal WP Agrifin videoconference on 7 October and having considered the Commission's proposal included in the document WK 10645/2020 INIT further, Finland believes that more information is needed to better understand how this data mining tool would function in practice, and what it would demand from the Member States. Finland supports organizing a technical working group to demonstrate the ARACHNE system to Member States who are not part of the pilot.

One of our first impressions is that some of the tasks and responsibilities given to the paying agencies in this proposal are quite far away from their basic tasks. It would help to have more information about the roles and responsibilities of the Member States concerning this data mining tool, for example as regards the ways Member States can verify indirect beneficiaries of EU funding. The national authorities can of course ask the beneficiaries to provide this information, but at this point, we do not foresee that to be sufficient without also verifying the information provided. Should a Member State not have comprehensive records from where to verify the information, a further question arises concerning the kind of sources those Member States are expected to use for verification.

As a key concern, Finland highlights a situation where the audit results might later deem that the information received and then verified was not comprehensive. Similarly, a Member State might be seen as not having found enough cases through the tool, implying that the system in the Member State is not effective.

Understanding the full scope and details of the system is a prerequisite for a more accurate analysis. Among the relevant open questions are, for example, whether this would cover all forms and all amounts of direct and indirect aid. A practical example to consider would be the system for farm advisory services, where the payments are made to the service provider. There may be hundreds of farmers receiving training and advice, and they all of course receive indirect benefits from EU funding. Is a Member State to ask and verify the connections for all of them? Finland believes that, for the purposes of proportionality, there is a need for some exceptions or derogations to the proposal.

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How far up the chain are the beneficiaries required to provide, and authorities asked to verify, the information on the organisations or natural persons ultimately benefitting (directly or indirectly) from EU funding? If we have information about the legal entity (A), and natural persons (x and y) and legal entities (B and C) who ultimately own or control that legal entity (A) (second stage), is the Member State liable to check and verify who are behind those legal entities (B and C) (third stage) etc.?

Finland supports further discussions on whether there should be some limit for the ownership interest or shareholding percent – for example, 25 % – beyond which the requirement to verify would not be introduced. This could be necessary to limit the work needed and the administrative burden created.

Careful drafting of the details and implementing provisions is essential for an effective and functioning system. Account should be taken of the different national elements underlying the data in question. For example, what about situations where the national legislation does not require a VAT-number from all natural persons? The beneficiaries in EAGF and EAFRD may for example include estates of the deceased or individuals under the VAT-registration threshold.

Two potentially significant concerns relate to the demands placed on the Member States regarding the storing and verifying of the information. One issue is the costs – all this may be very expensive. Another point to raise are the data protection rules, which might not easily allow linking all the relevant information from the different databases. There may also be certain knock-on effects from such linking, if the IACS-database would consequently also contain confidential information, and therefore be subject to higher data handling standards in the future. Clarity is needed on whether the tool, and its links with other databases, fulfill the relevant data protection rules and whether the data protection aspect is ultimately the Commission's responsibility or the Member States'.

The Commission commented in the WP videoconference on the European Data Protection Supervisor's (EDPS) approval of the use of ARACHNE and its compliance with the rules of the GDPR. It would be beneficial to provide this assessment to the Member States to aid with further analysis of these questions.

Given that the Anti-Money Laundering Directive ('AML') is mentioned in the proposal, it is pertinent to know if ARACHNE can access information from anti-money laundering authorities and banks. Without that information, the effect of the system would only be minor. More information is also needed on the relationship between ARACHNE and other systems in use, for example on the links between the data mining tool and the EDES (Early Detection and Exclusion System) and its data.

In the working document, it is mentioned that information would be made accessible through a single data mining and risk-scoring tool to Member States and the Commission. However, the proposed article text omits mention of the Commission as a user of the data in its phrasing – why? Does the data protection equation change given that the data is also intended to be made available to the Commission? Has this been assessed by EDPS?

As demonstrated above, many open questions still remain on how this would be put into practice and what it would entail for the Member States responsible for the implementation. Given those questions, it's also relevant to ask if there would – and should – be an additional transitional period (aside from the CAP transitional period foreseen) for the use of this tool before full mandatory implementation.

Finland welcomes the opportunity to provide further comments to the Presidency on the proposal once more details emerge on the requirements and implementation details, and as the Member States' initial questions are answered.