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WORKING PAPER

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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 - Drafting suggestion from the Commission

Delegations find attached a 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.

In its conclusions of 21 July 2020, the European Council underlined the importance of the protection of the Union's financial interests and of the respect of the rule of law. Point 24 of the conclusions reads as follows :

The Commission is invited to present further measures to protect the EU budget and Next Generation EU against fraud and irregularities. This will include measures to ensure the collection and comparability of information on the final beneficiaries of EU funding for the purposes of control and audit to be included in the relevant basic acts. Combatting fraud requires a strong involvement of the European Court of Auditors, OLAF, Eurojust, Europol and, where relevant, EPPO, as well as of the Member States' competent authorities.

On that background it is proposed to improve the information currently collected by the Member States on beneficiaries of certain EU funding implemented under shared management and the way such information is analysed and used for control and audit purposes by the Member States and for supervision by the Commission. Progress in that area would create the conditions for more efficient controls on conflict of interests, or on circumvention of rules on SME status, thereby fostering the trust of Europeans citizens in EU and national administrations. Moreover, the compulsory use of the ARACHNE system or a single data mining tool, would enhance control mechanisms for shared management funds.

In practice, each Member State, on top of the existing requirements, would be required to be able to verify, record and store information on the organisations or natural persons ultimately benefitting (directly or indirectly) from EU funding. Such information would be made accessible through a single data mining and risk-scoring tool to Member States and the Commission.

As part of the fight against fraud (and irregularities), the Commission developed ARACHNE, a data mining and risk-scoring tool, and offered it free of charge to Member State authorities for their voluntary use. ARACHNE contains a comprehensive database of co-funded operations, based on data provided by programme managing authorities. It enriches this data with publicly available information (from Orbis and World Compliance databases, accessible through specific licences bought by the Commission) in order to identify, based on a set of pre-determined risk indicators, the operations, projects, beneficiaries, contracts and contractors that might entail risks of irregularities, fraud and conflicts of interest. In particular, ARACHNE can retrieve information on direct and indirect ownership, as well as ultimate ownership, of entities, similar to the concept of 'beneficial ownership' contained in the Anti-Money Laundering Directive ('AML')¹. ARACHNE accesses that information in Orbis, which in turn browses national registers, including those set-up to comply with the obligations under the AML. ARACHNE identifies risks based on more than one hundred pre-determined risk indicators, which are grouped into seven risk categories such as public procurement, contract management, eligibility

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC, OJ L 141, 5.6.2015, p. 73. See, in particular, Article 3(6) and Chapter III.

rules, performance, funding, concentration, reputational and fraud alerts. ARACHNE is currently being used by 9 Member States in a pilot project for the EAFRD.

It should also be noted that the European Parliament in its discharge resolution for 2018 has called for a similar tool.

CAP proposal

The compulsory use of a single data-mining tool for CAP expenditure could be set out in the horizontal proposal by amending Article 57 (Protection of the financial interests of the Union) so to cover all of CAP expenditure.

It is proposed to have a general requirement in the basic act and with an empowerment to lay down further details in an implementing act.

The text for the CAP expenditure could be done as follows (proposed changes in bold):

Article 57 Protection of the financial interests of the Union

1. Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure effective protection of the financial interests of the Union. Those provisions and measures shall relate in particular to:

[...]

(da) use of a data mining tool, to be made available by the Commission, to assess risks of projects, beneficiaries, contractors and contracts ensuring minimal administrative burden and effective protection of the EU financial interest. This data mining tool could also be pertinent to avoid circumventions of rules as per Article 60 of the Horizontal Regulation,

[...]

6. The Commission may adopt implementing acts, laying down rules necessary for the uniform application of this Article relating to the following:

*(a) the procedures, deadlines, exchange of information, requirements for the **data mining tool**, in relation to the obligations as set out in paragraphs 1 and 2;*

(b) the notification and communication to be made by the Member States to the Commission in relation to the obligations set out in paragraphs 3 and 4.

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