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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

1. Following the publication of the Presidency paper WK 7147/2020, which identified a number of outstanding issues in the proposed Horizontal Regulation requiring further consideration, and with a view to finalise the Council's position on the Horizontal Regulation at the video-meeting of the WP AGRIFIN on 7 October, WK 9697/2020 was published, which set out Presidency drafting suggestions on a number of outstanding MFF- and policy-related issues. Also, WK 10385/2020 was published, containing Presidency drafting suggestions related to the empowerment of the Commission.

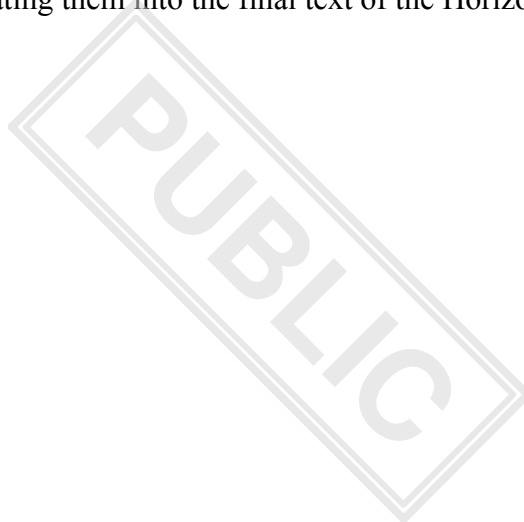
2. As announced in WK 7147/2020, the WP AGRIFIN will also need to address a number of technical adjustments and clarifications changes in the Horizontal Regulation resulting from the deliberations in the Working Party on Horizontal Agricultural Questions (WP HAQ) of provisions related to the New Delivery Model in the CAP Strategic Plan Regulation (CAP SPR). In the Annex to this Note, the Presidency, in close collaboration with the Commission and the Council Secretariat and assisted by

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the Council's Legal Service, has put together a number of further drafting suggestions related to the following articles: 2, 38 (1)&(2), 39(1), 40, 53(1), and 96(2)&(3). The WP AGRIFIN will be requested to examine these drafting suggestions with a view to incorporating them into the final text of the Horizontal Regulation reflecting the Council's position.



OUTSTANDING ISSUES IN THE PROPOSED HORIZONTAL REGULATION:**PRESIDENCY DRAFTING SUGGESTIONS ON ARTICLES 2, 38-40, 52, 53, 96 ¹****(related to the New Delivery Model and relevant provisions in the CAP SPR)**

Article / paragraph	Current text (8794/20)	Presidency proposals	Presidency's explanatory comments
Article 2 (Definitions)	For the purposes of this Regulation, the following definitions apply: (a) "irregularity" [...]; (b) "governance systems" [...]; (c) "basic Union requirements" [...].	For the purposes of this Regulation, the following definitions apply: (a) "irregularity" [...]; (b) "governance systems" [...]; (c) <u>"serious deficiencies in the functioning of the governance systems" means the existence of a systemic weakness, taking into account its recurrence, gravity and</u>	Clarification placed under Article 2 instead of Article 40 according to advice of Legal Service of the Council. The proposal's wording takes into account the input of the Commission.

¹ New changes are indicated in **bold/underlined**.

		<u>compromising effect on the correct declaration expenditure, the report of outputs and results, or the respect of the Union law;</u> <u>(d)</u> "basic Union requirements" [...].	
Article 38(1) & (2) (Suspension of payments in relation to the annual clearance)	1. Where Member States do not submit the documents referred to in Articles 8(3) and 11(1) by the deadlines, as provided for in Article 8(3), the Commission may adopt implementing acts suspending the total amount of the monthly payments referred to in Article 19(3). The Commission shall reimburse the suspended amounts when it receives the missing documents from the Member State concerned, provided that the date of receipt is not later than six months after the deadline. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2). As regards the interim payments referred to in Article 30, declarations	1. Where Member States do not submit the documents referred to in Articles 8(3) and 11(1) by the deadlines, as provided for in Article 8(3), the Commission may adopt implementing acts suspending the total amount of the monthly payments referred to in Article 19(3) <u>and the interim payments referred to in Article 30.</u> The Commission shall reimburse the suspended amounts when it receives the missing documents from the Member State concerned, provided that the date of receipt is not later than six months after the deadline. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).	Clarification.

	of expenditure shall be deemed inadmissible in accordance with paragraph 6 of that Article.	<u>As regards the interim payments referred to in Article 30, declarations of expenditure shall be deemed inadmissible in accordance with paragraph 6 of that Article.</u>	
	2. [...] The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced by means of the implementing act referred to in Article 52. [...]	2. [...] The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced <u>at the latest</u> by means of the implementing act referred to in Article 52 <u>relating to the year for which the payments were suspended.</u> <u>However, if Member States demonstrate that the necessary corrective actions have been taken, the Commission may lift the</u>	Clarification.

		<u>suspension earlier in a separate implementing act.</u> [...]	
Article 39(1) (Suspension of payments in relation to the multi-annual performance monitoring)	1. In case of delayed or insufficient progress towards targets, as set out in the national CAP Strategic Plan and monitored Where in accordance with Articles 121a(2) 115 and 116 of Regulation (EU) .../...[CAP Strategic Plan Regulation], the Commission may asks the Member State concerned to submit implement the necessary remedial actions in accordance with an action plan, the Member State shall establish, in consultation with the Commission, the intended remedial actions, including with clear progress indicators and the timeframe during which the progress has to be achieved, to be established in consultation with the Commission. [...]	1. In case of delayed or insufficient progress towards targets, as set out in the national CAP Strategic Plan and monitored Where in accordance with Articles 121a(2) 115 and 116 of Regulation (EU) .../...[CAP Strategic Plan Regulation], the Commission may asks the Member State concerned to submit implement the necessary remedial actions in accordance with an action plan, the Member State shall establish, in consultation with the Commission, the intended remedial actions, including with clear progress indicators and the timeframe during which the progress has to be achieved, to be established in consultation with the Commission. <u>That timeframe may extend beyond one financial year.</u> [...]	Clarification.

Art. 40 (Suspension of payments in relation to deficiencies in the governance systems)		No changes proposed.	The Presidency's proposal on Art. 2 point (c) contains a definition of "serious deficiencies in the functioning of the governance systems" which was placed there according to the advice of the Legal Service of the Council (see above). The proposal's wording takes into account the input of the Commission.
Article 52 (Annual performance clearance)		No changes proposed.	
Article 53(1) (Conformity procedure)	1. Where the Commission finds that the expenditure referred to in Article 5(2) and Article 6 has not been effected in conformity with Union law, the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing. [...]	1. Where the Commission finds that the expenditure referred to in Article 5(2) and Article 6 has not been effected in conformity with Union law, the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing. <u>The decision of the Commission shall be based on the account certification report by paying agencies, on the</u>	Clarification.

		<u>audits led by the Commission, the findings of the European Court of Auditors, findings of OLAF or on the information communicated by the Member State.</u> [...]	
Article 96(2) & (3) (Publication of information relating to beneficiaries)	2. [Article 44(3) points (a), (b), (d), (e), (h), (i), (l) and Article 44(45) of Regulation (EU) .../...CPR Regulation] shall apply in respect of beneficiaries of EAFRD and EAGF. Article 44 (3) point (k) of Regulation (EU) .../...CPR Regulation shall apply to EAFRD , where relevant; however, the amounts corresponding to the national contribution and the Union co-financing rate, as provided for in points (h) and (ki) of Article 44(3) of that Regulation shall not apply to EAGF.	2. [Article 44(3) points (a), (b), (d), (e), (h), (i), (l) and Article 44(45) of Regulation (EU) .../...CPR Regulation] shall apply in respect of beneficiaries of EAFRD and EAGF. <u>The application of point (e) of Article 44(3) Regulation (EU) .../... CPR Regulation shall be limited to the purpose of the operation.</u> Article 44 (3) point (k) of Regulation (EU) .../...CPR Regulation shall apply to EAFRD , where relevant; however, the amounts corresponding to the national contribution and the Union co-financing rate, as provided for in points (h) and (ki) of Article 44(3) of that Regulation shall not apply to EAGF.	Technical adjustment to ensure maintaining the status quo of rules on transparency, as transparency provisions in the framework of the reform are included in two different legal proposals.
	3. For the purposes of this Article: "operation" means measure or type of interventions;	3. For the purposes of this Article: "operation" means measure, <u>sector</u> , or type of interventions;	

	“total cost of the operation” means the amounts of payment corresponding to each measure or type of interventions financed by the EAGF or the EAFRD received by each beneficiary in the financial year concerned. As regards the payments corresponding to the types of interventions financed by the EAFRD, the amounts to be published shall correspond to the total public funding, including both the Union and the national contribution; [...]	“total cost of the operation” means the amounts of payment corresponding to each measure, <u>sector</u>, or type of interventions financed by the EAGF or the EAFRD received by each beneficiary in the financial year concerned. As regards the payments corresponding to the types of interventions financed by the EAFRD, the amounts to be published shall correspond to the total public funding, including both the Union and the national contribution; [...]	
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