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**Brussels, 28 September 2018**

**WK 10820/2018 ADD 1**

**LIMITE**

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**WORKING PAPER**

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**WORKING DOCUMENT**

From:	General Secretariat of the Council
To:	Working Party on Horizontal Agricultural Questions (CAP Reform)
N° Cion doc.:	9634/18 + COR 1 + ADD 1
Subject:	Proposal for a Regulation on Financing, management and monitoring of the CAP - Comments received from Member States (Title IV, Chapters II and IV)

Following the request from the Presidency on 19 September 2018 (WK 10820/2018 INIT), delegations will find in the Annex the comprehensive set of contributions received from the following delegations: Belgium, Croatia, Cyprus, Czech Republic, Finland, Germany, Hungary, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

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**BELGIUM**

DATE	MEMBER STATE
19/09/2018	Belgium

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>	Can the resourced devoted to technical assistance (article 7) be used for the furter development of the IACS?	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	(b) „area monitoring system“ <ul style="list-style-type: none"> <li>- could the Commission specify her expectations concerning this area monitoring system and the regular en systematic observation?</li> <li>- language – French version: In article 63(4)(b) and article 64(1)(c) the same wording should be used (first a “système de contrôle des surfaces” is mentioned, further in the text “un système de suivi des surfaces” is mentioned).</li> </ul>	
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 65</b>		
<i>Paragraph 1</i>	<ul style="list-style-type: none"> <li>- Can the Commission explain the scope of the requirement of data sharing for environment-climate purposes (cfr. presentation of the Commission)?</li> <li>- Language – French version: “productions annuelles” should be replaced by “réalisations annuelles”.</li> </ul>	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Regarding the required annual quality assessments (art. 66 to 68): which kind of information should be delivered? Depending on the expectations of the Commission and the obligation to assess several systems the date of 15 February should be reconsidered (administrative burden).	
<b>Article 67</b>	The geo-spatial application system and animal-based application system can be two different systems. Therefore the title of this article should be adjusted to “geo-spatial application system and animal-based application system” or at least it should be clear that not a single application system is meant.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Why is (annually) quality assessment necessary? How the quality should be assessed? Which methodology should be used? Is rotation with the other quality assessments possible (quality assessment of system x in year 1, quality assessment of system y in year 2,...) or	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	can a good result of the quality assessment lower the need to repeat the assessment the following year?	
<b>Article 68</b>		
<i>Paragraph 1</i>	<ul style="list-style-type: none"> <li>- Is control by monitoring an obligation from 1 January 2021 onwards?</li> <li>- Does the Commission expect that all the measures and interventions can be controlled by monitoring?</li> <li>- Does the Commission expect that controls on conditionality will/can be done by area monitoring? What about the maintenance of grassland?</li> <li>- Depending on the expectations of the Commission a transition period is necessary.</li> </ul>	
<i>Paragraph 2</i>	<ul style="list-style-type: none"> <li>- Why is (annually) quality assessment necessary? How the quality should be assessed? Which methodology should be used? Is rotation with the other quality assessments possible (quality assessment of system x in year 1, quality assessment of system y in year 2,...) or can a good result of the quality assessment lower the need to repeat the assessment the following year?</li> <li>- Depending on the expectations of the Commission and the obligation to assess several systems the date of 15 February should be reconsidered (administrative burden).</li> <li>- Language – French version: “système de demande géospatialisée” should be “un système de suivi des surfaces” or “un système de surveillance des surfaces” (cfr. remark article 63(4))</li> </ul>	
<b>Article 69</b>		
<b>Article 70</b>	<p>This provision seems redundant (cfr. article 57(2))</p> <p>Can the current control and penalty system be used ?</p>	
<b>Article 71</b>		
<b>Article 72</b>		
<b>Article 73</b>		

## Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	What does “the yearly review of the control system” mean? Why is it necessary? What is the link with control statistics? Is rotation with the other quality assessments possible (quality assessment of system x in year 1, quality assessment of system y in year 2,...) or can a good result of the quality assessment lower the need to repeat the assessment the following year?	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Can the Commission specify her expectations: in what respect will the new legislation allow differences in implementation in comparison to the current legislation?	
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>	As is the case in the current legislation “intentionality” has to be taken into account. However “intentionality” is difficult to define, to control and to prove.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Paragraph 3 and 4: In contrast to the current legislation, minimum and maximum percentages are no longer determined. Does the Commission foresee delegated acts? The most important elements should be included in the basic act.	
<i>Paragraph 4</i>	<ul style="list-style-type: none"> <li>- Paragraph 3 and 4: In contrast to the current legislation, minimum and maximum percentages are no longer determined. Does the Commission foresee delegated acts? The most important elements should be included in the basic act.</li> <li>- Language – French version: paragraph 1 “la préméditation du non-respect” and paragraph 4 “non-respect volontaire” : the wording should be harmonized.</li> </ul>	
<i>Paragraph 5</i>		

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 87</b>	Why the retain percentage is lowered from 25% to 20%? We argue for the maintenance of at least the actual percentage of 25%. The proposal suggested in the working party of 19 September, i.e. a percentage of 100% if used for ecoschemes or environmental or climate commitments, has our support.	

**CROATIA**

DATE	MEMBER STATE
24/09/2018	Croatia

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 64</b>		
<i>Paragraph 1</i>	The introduction of an area monitoring system will have a different impact on the reduction of the existing costs of on-the-spot checks in the Member States with regard to the number and size of the LPIS parcels in certain countries. Member States with a large number of small parcels, such as Croatia, will benefit less from the cost reduction of on-the-spot checks due to the inability to control small parcels solely by the monitoring system. Likewise, Member States with large areas of grazing pastures will still have significant costs of on-the-spot checks since maintenance of such surface can not be controlled solely by monitoring. Therefore, it is necessary to consider the possibility of introducing technical assistance to co-finance the introducing of the new monitoring system.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		



*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 4</i>		
<b>Article 65</b>	We express our concern about the new obligation to record and keep the data and documentation in the context of the annual performance clearance, particularly in respect to the 10-year retroactive period. It will be necessary to increase the storage capacity of payment agencies for storing data and documentation in digital databases, which is a part of new financial costs, and it increases the administrative burden for Member States. The clarification which exact documents should be kept is needed.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Annual quality assessment of geo-spatial application system with the reporting obligation is a new requirement for the Member States, with the new financial and administrative burden. The QA methodology is not known, and the proposed deadline for reporting may well be unrealistic.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 68</b>		
<i>Paragraph 1</i>	We express our concern because of a possible increase of administrative burden that this provision may cause. See also comment on Article 65. Seeing the complexity of the new requirement, the transitional period prior to its full function might be envisaged.	
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>	It should be made clear whether the control and penalties system will be a part of strategic plan and as such, a subject of approval by the EC.	
<b>Article 71</b>		
<b>Article 72</b>	Delegated powers should be more clearly specified.	
<b>Article 73</b>	Implementing powers should be more clearly specified.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	The introduction of the small-farmer derogation is necessary. The explanation of the new requirement (“yearly review of the control system”) and its link with the certification audit is needed.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	First sub-paragraph: The percentage reduction in the case of non-compliance due to negligence should be set in a flexible manner, i.e. “1-3%.” Second subparagraph: “early warning system” (applicable only to minor non-compliances due to negligence) should be simplified by leaving out the “three consecutive years checks”.	
<i>Paragraph 3</i>	The confirmation is needed that the concept of “reoccurrence” is linked with the beginning of the implementation of the new conditionality system (and not as continuation of similar obligations prior to the new programming period).	
<i>Paragraph 4</i>	“Intentional non-compliance” is legally not well defined and is, most often, difficult to identify.	
<i>Paragraph 5</i>	Seeing that the draft regulation does not contain provisions on the timing of the controls, the explanation is needed as to the principle of controls in the year of application and to the link between the timing of controls and payments.	
<b>Article 87</b>	Croatia does not support the reduction of amount of administrative penalties that Member States may retain.	

**CYPRUS**

DATE	MEMBER STATE
Click or tap to enter a date.	Choose an item.

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	<p>Εντοπίζεται ανάγκη για περαιτέρω εξηγήσεις αναφορικά με τη συμπερίληψη του Αμπελοοινικού Τομέα στο ΟΣΔΕ και εκφράζεται ανησυχία για επιπρόσθετο διοικητικό κόστος.</p> <p>There is a need for further explanation regarding the inclusion of the wine sector at the integrated administration and control system ( IACS) and a concern about additional administrative cost (effort ), is expressed.</p>	
<i>Paragraph 4</i>	<p>(στ) Εντοπίζεται ανάγκη για περαιτέρω εξηγήσεις και διευκρινήσεις για το Σύστημα χωρίς υποβολή αιτήσεων</p> <p>(f) There is a need for further explanation and clarification on the "claimless system"</p>	
<b>Article 64</b>		
<i>Paragraph 1</i>	(ζ): Εντοπίζεται ανάγκη για περαιτέρω διευκρινήσεις αναφορικά με την έννοια “κατά	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	περίπτωση” για το σύστημα αναγνώρισης και καταγραφής των ζώων  There is a need for further clarification on the “where applicable”, for the system for the identification and registration of animals	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>	Γίνεται εισήγηση όπως τα δεδομένα και τα έγγραφα να είναι προσβάσιμα για τα προηγούμενα πέντε ημερολογιακά έτη (και όχι δέκα)  The data and documentation should be accessible for the current calendar year or marketing year and only for the previous <b>five</b> (and not ten) calendar years or marketing years.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	(δ): Εντοπίζεται ανάγκη για περαιτέρω διευκρινήσεις ως προς τις πληροφορίες που θα πρέπει να είναι διαθέσιμες για τους δείκτες που αναφέρονται στο σημείο αυτό.  (d) There is a need for further clarification on information relevant for the reporting on the indicators	
<i>Paragraph 3</i>	Εκφράζεται προβληματισμός για την ετήσια αξιολόγηση ποιότητας του Συστήματος Αναγνώρισης Αγροτεμαχίων η οποία θα επιφέρει επιπλέον διοικητικό κόστος.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	There is a concern about the annual quality assessment of the Identification system for agricultural parcels. This could lead to additional administrative cost.	
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	<p>Θεωρούμε ότι θα πρέπει να είναι ξεκάθαρα απόφαση του Κράτους Μέλους η επιλογή για εφαρμογή Συστήματος χωρίς υποβολή αιτήσεων για οποιοδήποτε Μέτρο</p> <p>It should be up to the Member States to decide to implement a claimless system.</p>	
<i>Paragraph 5</i>	<p>Εκφράζεται προβληματισμός για την εφαρμογή ετήσιας αξιολόγησης ποιότητας του Συστήματος Υποβολής Αιτήσεων Γεωχωρικών Πληροφοριών, η οποία αναμένεται να επιφέρει επιπλέον διοικητικό κόστος.</p> <p>There is a concern for the annual quality assessment of the “Geo-spatial and animal-based application system” and the additional administrative cost that this could produce.</p>	
<b>Article 68</b>	<p>Εκφράζεται ανησυχία για την εφαρμογή του Συστήματος Παρακολούθησης Εκτάσεων (Monitoring) λόγω του μεγάλου αριθμού και ποσοστού των μικρών αγροτεμαχίων. Αυτό θα έχει ως αποτέλεσμα επιπλέον διοικητικό κόστος λόγω της ανάγκης follow up των περιπτώσεων οι οποίες δεν καλύπτονται από την παρακολούθηση μέσω εικόνας.</p> <p>Concern is expressed about the implementation of the Area Monitoring System due to the large number and percentage of small agricultural parcels.</p> <p>This will result to additional administrative cost due to the obligation that Member States have to perform follow up activities for small parcels to ensure eligibility.</p>	
<i>Paragraph 1</i>	Γίνεται εισήγηση εισαγωγής Μεταβατικής Περιόδου τριών ετών, για την εφαρμογή του Συστήματος Παρακολούθησης Εκτάσεων, η οποία θα καταγράφεται στον Κανονισμό.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	A three year transitional Period for the implementation of the Area monitoring system is needed.	
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>	Θεωρούμε ότι η Βασική Πράξη πρέπει να περιέχει όσο το δυνατόν περισσότερες λεπτομέρειες και σαφείς κανόνες για τα θέματα ελέγχων The Basic Act should contain as much detail as possible as well as clear rules on control issues	
<b>Article 73</b>	Θεωρούμε ότι η Βασική Πράξη πρέπει να περιέχει όσο το δυνατόν περισσότερες λεπτομέρειες και σαφείς κανόνες για τα θέματα ελέγχων. The Basic Act should contain as much detail as possible as well as clear rules on control issues.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 85</b>		
<i>Paragraph 1</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	<p>Θεωρούμε ότι η Βασική Πράξη πρέπει να περιέχει όσο το δυνατόν περισσότερες λεπτομέρειες και σαφείς κανόνες για την επιβολή και τον υπολογισμό των κυρώσεων.</p> <p>The Basic Act should contain as much detail as possible and clear rules on the imposition and calculation of penalties.</p>	
<b>Article 87</b>	<p>Θεωρούμε ότι πρέπει να κατακρατείται τουλάχιστον το 25% από τα Κράτη Μέλη.</p> <p>Member States may retain <b>at least 25 %</b> of the amounts resulting from the application of the reductions and exclusions.</p>	



**CZECH REPUBLIC**

PUBLIC

DATE	MEMBER STATE
24/09/2018	Czech Republic

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>	In general, regarding the definitions in this article the Czech Republic would appreciate a more detailed specification and criteria from the Commission.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	<p><u>To point (a)</u> It is stated here that an electronic application form includes an IT application based on a geographic information system.</p> <p>What is the relation between this system further defined in (e) and the geographic information system referred to in Article 66 which defines the identification system for agricultural parcels (LPIS)?</p> <p><u>To point (f)</u> This article defines the “claimless system” as an application system for area- or animal-based interventions in which necessary data required by the administration on at least individual areas or animals claimed for aid is available in official computerised databases managed by the Member State.</p> <p>What is the expected level of involvement of the applicant within the above mentioned</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	system? Is the applicant expected only to confirm/submit the application or is he expected to enter the basic data (account number, telephone)?	
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>We assume that the EC should determine the way of assessing whether or not the remedial actions are appropriate. With regard to the seriousness of the risk of suspension of payments, we believe that the procedure of invoking Article 40 should be better described and it should also be better defined what are the appropriate steps to prevent the risk of different interpretation by the MS and EC. The same issue arises with respect to Articles 67 and 68.</p> <p>We also believe that it would be appropriate to set a “transition period“ for quality assessment of the area monitoring system in order to optimise the setup of the system. The area monitoring system will be put in place in the MS for the first time with no prior experience, not to speak of the fact that the criteria to assess this system are still unknown and the requirements for this system are not specified in the EC regulation either since it</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	only provides references to Copernicus Sentinels satellite data in Article 63.	
<i>Paragraph 3</i>		In sub-paragraph 3, we propose the deadline of 15 June
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	<u>Sub-paragraph 3</u> The deadline of 15 February is too short. We propose to consider the introduction of a transition period	We propose the deadline of 15 June
<b>Article 68</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<u>Sub-paragraph 3</u> The deadline of 15 February is too short. We propose to consider the introduction of a transition period	We propose the deadline of 15 June
<b>Article 69</b>	This article stipulates an obligation that the system for recording the identity of each beneficiary of the interventions and measures as referred to in Article 63(2) shall guarantee that all applications submitted by the same beneficiary can be identified as such. Does it mean an obligation for the MS to introduce a system which will detect potential connections of the beneficiary with respect to his involvement in multiple undertakings?	
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>	To point (b) Will it also apply to a geospatial application?	
<b>Article 73</b>		

## Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	<p>We request further specification as to what exactly the control systems comprise and whether the systems for the identification of animals will be included in the IACS.</p> <p><u>To sub-paragraph 3</u></p> <p>In order to ensure equal conditions for the MS, we propose that the EC may adopt delegated acts that will further specify the conditions laid down in this article.</p>	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	<p><u>To point (d)</u></p> <p>Are we correct in assuming that the control system as concerns the methods for selection of control samples e.g. the ratio of randomly selected samples to risk-based selected samples, the scope of controls to be carried out or the control reports shall be set out by the Members States at the national level so that the control system is an efficient tool in promoting the achievement of the set-out objectives.</p>	
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	To letter (a) We believe that it is not entirely clear in the article what is meant by the equitable attribution of liability for non-compliances among transferors and transferees in the cases when land is transferred.	
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	The 3% penalty is perceived by us as making the conditions stricter compared to the currently applicable system unless the Commission provides for a range of options in the follow-up acts, namely 1 or 5 % reduction due to negligence.	
<i>Paragraph 3</i>		

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 87</b>	We disagree with the proposal to retain 20% of the amounts.	We propose that there is a possibility to retain 25% of the amounts as is the case in the current period under Article 100 of Regulation (EU) No 1306/2013

**FINLAND**

DATE	MEMBER STATE
24/09/2018	Finland

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	"system for the identification and registration of animals" concerns bovines and ovine and caprine animals – why are porcine animals still excluded? Other databases for animals established by Member States should also be used even if they are not based on individual animals to avoid communication of the same information twice.	(c) "system for the identification and registration of animals" means the system for the identification and registration of bovine animals laid down by Regulation (EC) No 1760/2000 of the European Parliament and of the Council or the system for the identification and registration of ovine and caprine animals laid down by Council Regulation (EC) No 21/2004 <b>and the system for the identification and registration of pigs laid down by Council Directive 2008/71/EC and other databases for animals in use.</b>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	"claimless system" is very welcome. Does claimless system include the possibility for MS to ask the farmer to provide the details on the parcel, the area and the crop, so that the administration could make the payments concerning all interventions and measures based on these details after cross checks and monitoring.	(f) "claimless system" means an application system for area- or animal-based interventions in which necessary data required by the administration on at least individual areas or animals claimed for aid is available in official computerised databases managed by the Member State. <b>Claimless system enables the administration to make the payments to the farmers concerning all interventions and measures based on details in the official computerised databases that show the farmer is eligible to added with additional information from the farmer, when necessary</b>
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>	We have some concerns relating to the costs of all data keeping required. For planning the data system it is very important to know beforehand what kind of information and communication obligations Member States will have in future. We would like to ask if it is necessary to keep every document sent by the farmer or whether some kind of summaries could be used?	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Could you clarify what kind of data is relevant for the purposes of Directive 2007/2/EC? Does this mean all data collected through the integrated system or only data relevant in terms of environment and climate?	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>Point d states that the LPIS shall contain any information relevant for the reporting on the indicators referred to in Article 7 of Regulation (EU) .../...[CAP Strategic Plan Regulation. Does this mean that there must be layers in the LPIS for every year which must be kept for 10 years?</p> <p>In future, will the LPIS also be the place to include statistical information, which would not be cost effective?</p> <p>Technically better way would be to store the data in separate databases that are connected to LPIS. No statistical etc. data should be stored to the LPIS-system itself.</p> <p>Why does Article 112 of CAP Strategic Plan Regulation also include rules on the LPIS and its statistical information. Why are these rules concerning LPIS not in HZR and why should the LPIS include statistical information?</p>	<p>2e identification system for agricultural parcels:</p> <p>... Member States shall ensure that th</p> <p>(d) contains any <b>background</b> information <b>related to area ready to be transferred to other databases</b> relevant for the reporting on the indicators referred to in Article 7 of Regulation (EU) .../...[CAP Strategic Plan Regulation];</p> <p>Delete rules concerning LPIS from CAP Strategic Plan Regulation.</p>
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>	Do these rules imply that paper applications are not possible in the future? Is this the right interpretation?	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Why is claimless system related to pre-filled applications? Why are those needed if the farmer has up to date information from the database or from the communication system offered by the Member State?	
<i>Paragraph 4</i>		



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 5</i>		
<b>Article 68</b>		
<i>Paragraph 1</i>	<p>Area monitoring system will be compulsory. Does that mean that area-based interventions must be planned by MS in a way that monitoring is suited to the control system? Should area monitoring system be used in every area-based intervention? Has the prefix "area" to the term "monotoring" some special reason?</p> <p>We hope that there could be a transitional period regarding area monitoring system for Member States that have not used a remote sensing system to give them the opportunity to finalise the system and make it work in practice.</p>	<p>1. Member States shall set up and operate an area monitoring system. <b>On duly justified grounds, the Commission may grant a transitional period regarding area monitoring system for Member States that have not used a remote sensing system during the recent years.</b></p>
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>	<p>We warmly welcome the subsidiarity for Member States which this article seems to imply.</p> <p>We hope that the delegated and implementing acts about controls and penalties will also be based on subsidiarity and proportionality and will not lay down detailed provisions for Member States concerning the control and penalty system. We have some doubts about implementing acts concerning area monitoring system and its basic features and rules, and how much these rules limit the subsidiarity of Member States in setting up the control system. Another worry concerns the fact that the control and penalty rules relating to conditionality are not based on subsidiary, but they are laid down in considerable detail in the Horizontal Regulation.</p> <p>We suppose that Regulation 2988/95 continues to apply to penalties and concerns penalties, for example relating to retroactive penalties, also in future even if many details relating to penalties will be up to Members States? Regulation 2988/95 is one limitation to the subsidiarity of Member States?</p> <p>Concerning IACS there could be new ideas based on subsidiarity concerning controls, for example conrtol very extensively some items, for example river strips, that are relevant for</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	the environmental results in the new CAP-model. IACS-controls could be done that way, but control rules concerning conditionality make that idea not cost-effective and limit the subsidiarity of Member States.	
<b>Article 71</b>		
<b>Article 72</b>	What kind of plans does the Commission have concerning these delegated acts? We hope that all the required reports are known beforehand in order to plan the IT systems to cover such reports.	
<b>Article 73</b>	What kind of plans does the Commission have concerning these implementing acts? Will these acts lay down details for Member States concerning the control and penalty system? We have some doubts about implementing acts concerning area monitoring system and its basic features and rules, and how much these rules limit the subsidiarity of Member States in setting up the control system.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Article 84(2)(a): In order that the wording of the definition of “requirement” would be the same as in Article 11(4) of the CAP Strategic Plan Regulation, the word ”legal” should be inserted before the word “act”.	Article 84(2)(a) "requirement" means each individual statutory management requirement under Union law referred to in Article 11 of Regulation (EU) .../[CAP Strategic Plan Regulation] within a given <b>legal</b> act, differing in substance from any other requirements of the same act;
<i>Paragraph 3</i>	Article 84(3)(d): It should be possible in the system of conditionality to reduce minimum control rate of 1% if small amount of non-compliances has been found in the previous years. Thus, the new subparagraph should be inserted after the first subparagraph of subpoint d).	Article 84(3)(d): The new subparagraph should be inserted after the first subparagraph of subpoint d):

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<p>(d) establish the control sample for the checks referred to in point (a) to be carried out each year on the basis of a risk analysis and shall include a random component and shall provide the control sample to cover at least 1% of beneficiaries receiving the aid provided for in Section 2 of Chapter 1 of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation].</p> <p><b><u>By way of derogation from the previous point, Member States may decide to reduce the minimum control rate to 0,5 % at the level of each act or standard or group of acts or standards, if the rate of non-compliances found in the random sample checked on the spot shall not exceed 2 % in the preceding two claim years.</u></b></p>
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>Article 85(2)(c) states that no administrative penalty is imposed where the non-compliance is due to force majeure. Article 57(3) lists also other cases where penalties are not imposed, e.g. where the non-compliance is due to an error of an authority. In our view all these other points in Article 57(3) should also be applicable to the system of conditionality</p>	<p>(c) shall provide that no administrative penalty be imposed <b><u>in the following cases:</u></b></p> <p><b><u>i)</u></b> where the non-compliance is due to force majeure.</p> <p><b><u>ii) where the non-compliance is due to an error of the competent authority or another authority, and where the error could not reasonably have been detected by the person concerned by the administrative penalty;</u></b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<b><u>(e) iii) where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance with the obligations referred to in paragraph 1 or if the competent authority is otherwise satisfied that the person concerned is not at fault.</u></b>
<i>Paragraph 3</i>	The meaning of this paragraph is not quite clear for us. Could the Commission give some more details as to the meaning of this paragraph?	
<b>Article 86</b>		
<i>Paragraph 1</i>	<p>1) Article 86(1), first subparagraph: Article 86(1) states that reduction or exclusion of the total amount of the payments will be imposed to the calendar year of the finding. However, it would be clearer for the farmers and for the administration if the reduction were imposed to the calendar year of the non-compliance.</p> <p>Is it so that "the total amount of the payments" means the amount to which all other reductions based on eligibility controls have already been applied?</p> <p>2) At the moment the penalties relating to cross compliance are not equitable and proportionate, especially for farmers in different production sectors (animal husbandry/crop production). When for example, farms only with a few animals but hundreds of hectares have a non-compliance in animal-related cross compliance requirements and the penalty is applied to all area-based direct payments and rural development payments, the penalty seems to be too big in relation to the animal number. And, vice versa, when there are just a few hectares and lot of animals and an error concerning the area-related cross compliance rules leads to a cutting of the animal related payments. This unfair situation should be changed in the system of conditionality. Therefore, the new subparagraph should be inserted after the first subparagraph of Article 86(1) for those Member States where animal-</p>	<p>1. The administrative penalties provided for in Section 2 of Chapter 1 of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] shall be applied by means of reduction from or exclusion of the total amount of the payments listed in that Section of that Regulation granted or to be granted to the beneficiary concerned in respect of aid applications he has submitted or will submit in the course of the calendar year of the finding <b><u>non-compliance</u></b>.</p> <p><b><u>In those Member States where animal-related voluntary coupled support and animal-related rural development support are applied, an administrative penalty based on non-compliance of animal-related statutory management requirements should apply only to animal-related voluntary coupled support and animal-related rural development support of the beneficiary. Likewise, an administrative</u></b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>related voluntary coupled support and animal-related rural development support are applied,</p> <p>3) Assessing intent has proven extremely difficult. It might lead to different interpretations in different cases, which means that farmers are not treated equally. It should also be taken into account that the definition of “intentionality” does not apply to the aid schemes (see Article 57(3), first subparagraph where intentionality is not mentioned).</p>	<p><b><u>penalty based on non-compliance of area-related statutory management requirements and/or good agricultural and environmental standards should apply only to area-related direct payments and area-related rural development support of the beneficiary.</u></b></p> <p>For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence, <del>or</del> reoccurrence <del>or intentionality</del> of the non-compliance determined. The penalties imposed shall be dissuasive and proportionate, <del>and compliant with the criteria set out in paragraphs 2 and 3 of this Article.</del></p>
Paragraph 2	<p>1) <b>In general</b>, Articles 86(2), 86(3) and 86(4) set out a number of detailed rules on the penalty system for conditionality, thus limiting the possibilities for Member States to simplify their systems. <b>The rules for conditionality should also be based on subsidiarity</b>, as is the case in respect of the rules concerning IACS. Real simplification in this area will require that the implementation of penalties of different interventions and other eligibility criteria, including conditionality, are as uniform as possible, as well as based on subsidiarity and proportionality. When we compare the IACS rules and rules concerning controls and penalties for conditionality in the proposal, this seems not to be the case. Therefore, <b>the following paragraphs in Article 86 should be deleted: 86(2), first subparagraph, 86(3) and 86(4).</b></p> <p>2) Article 86(2), first subparagraph: <b>If the first subparagraph cannot be deleted, at the very least the following amendments should be made:</b> No general rule 3% for penalties should be given because a general rule 3% is unclear and too strict. It would be clearer to state the penalties as 1%, 3% and 5 %.</p>	<p><del>2. In the case of non-compliance due to negligence, the percentage of reduction shall be as a general rule 3% of the total amount of the payments referred to in paragraph 1 of this Article.</del></p> <p><b>If the first subparagraph cannot be deleted, at the very least the following amendments should be made:</b></p> <p>In the case of non-compliance due to negligence, the percentage of reduction shall be as a general rule <b>1%, 3% or 5%</b> of the</p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>3) Article 86(2), second subparagraph: As regards, early warning system administrative penalties should not be applied retroactively, because the retroactive penalties are complicated both for the farmers and for the administration. Thus, it should be enough to apply a penalty only for the year when the non-compliance was found not to have been remedied.</p>	<p>total amount of the payments referred to in paragraph 1 of this Article.</p> <p>Member States may set up an early warning system that applies to individual cases of non-compliance occurring for the first time and which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. Where a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied <b><u>retroactively for the year when the non-compliance was found not to have been remedied.</u></b></p>
Paragraph 3	<p>As mentioned in the previous point, Articles 86(2), first subparagraph, 86(3) and 86(4) set out a number of detailed rules on the penalty system for conditionality. The rules for conditionality should also be based on subsidiarity, as is the case in respect of the rules concerning IACS. Therefore, Article 86(3) should be deleted.</p>	<p><del>3. In case of reoccurrence, the percentage reduction shall be higher than the one to be applied in case of non-compliance due to negligence and sanctioned for the first time.</del></p>
Paragraph 4	<p>As mentioned in the previous point, Articles 86(2), first subparagraph, 86(3) and 86(4) set out a number of detailed rules on the penalty system for conditionality. The rules for conditionality should also be based on subsidiarity, as is the case in respect of the rules concerning IACS. Therefore, Article 86(4) should be deleted.</p> <p>Article 86(4) on intentional non-compliance should be deleted also because assessing intent has proven extremely difficult. It might lead to different interpretations in different cases, which means that farmers are not treated equally. It should also be taken into account that the definition of “intentionality” does not apply to the aid schemes (see Article 57(3), first subparagraph where intentionality is not mentioned).</p>	<p><del>4. In case of intentional non-compliance, the percentage shall be higher than the one applied in case of reoccurrence pursuant to paragraph 3 and may go as far as total exclusion from payments and may apply for one or more calendar years.</del></p>
Paragraph 5	<p>Article 86(5) empowering the Commission to adopt delegated acts should be deleted because all rules on the administrative penalties should be known to Member States as from</p>	<p><del>5. In order to ensure a level playing field between Member States and the effectiveness and dissuasive effect of the penalty system,</del></p>

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	the moment when the Horizontal regulation is adopted. Further regulation through delegated acts does not support subsidiarity and also complicates the process of drafting the CAP Plan.	<del>the Commission shall be empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with further rules on the application and calculation of penalties.</del>
<b>Article 87</b>	Why is the percentage just 20%, instead of 25% as it is at present? We see no reason why the percentage should be lowered. We suggest that the percentage should be 25%.	Member States may retain <del>20</del> <b>25</b> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

GERMANY

DATE	MEMBER STATE
25/09/2018	Germany

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Es ist zu überprüfen, ob es tatsächlich erforderlich ist, das Integrierte System auf alle flächenbezogenen Maßnahmen anzuwenden. Dies gilt insbesondere für die waldbezogenen Maßnahmen. Zumindest bedarf es hier deutlicher Vereinfachungen, was die Anforderung an die Genauigkeit der Flächenabgrenzung betrifft, da die Vorgaben für landwirtschaftliche Flächen bei waldbestandenen Flächen nicht erfüllt werden können.	
<i>Paragraph 3</i>	Gemäß Artikel 63 Abs. 1 Unterabsatz 3 soll das Integrierte Verwaltungs- und Kontrollsystem auch für die <b>Verwaltung und Kontrolle</b> der Konditionalität genutzt werden. In der Verordnung (EU) Nr. 1306/2013 heißt es, dass das Integrierte System für die <b>Kontrolle</b> von Cross-Compliance gilt. Die Formulierung „Verwaltung und Kontrolle“ ist daher zu überprüfen.	
<i>Paragraph 4</i>		



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 64</b>		
<i>Paragraph 1</i>	Die Einführung des Flächenmonitorings ist sehr aufwändig und derzeit technisch noch nicht ausgereift. Das Flächenmonitoring sollte daher für die MS optional sein. Darüber hinaus stellt sich die Frage, ob das Flächenmonitoringsystem nur der Berichterstattung über die Indikatoren im Rahmen der Strategiepläne dient oder ob es auch - als Option oder verbindlich - in das von den Mitgliedstaaten einzurichtende Kontroll- und Sanktionssystem einzubeziehen ist. Hierzu sollte eine Klarstellung erfolgen. Auch für das Kontroll- und Sanktionssystem sollte es optional sein	Artikel 64 Absatz 1: Das integrierte System umfasst. a) ... b) ... c) ein Flächenmonitoringsystem, <b>sofern der Mitgliedstaat dessen Einführung beschließt</b>
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>	In Artikel 65 Absatz 1, letzter Unterabsatz ist auch in Bezug auf das Flächenmonitoringsystem klarzustellen, dass nur die Ergebnisse aufzubewahren sind. Die Aufbewahrung des kompletten Bildmaterials über 10 Jahre wäre viel zu aufwändig	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Paragraph 4	Artikel 65 Abs. 4 ist zu ergänzen: Erfasst werden muss auch die unentgeltliche Zurverfügungstellung von Datensätzen, die gemäß der Verordnung (EG) Nr. 1217/2009 für das Informationsnetz landwirtschaftlicher Buchführungen erforderlich sind.	Artikel 65 Absatz 4 ist wie folgt zu fassen: Die Mitgliedstaaten stellen sicher, dass die im Rahmen des integrierten Systems erfassten Datensätze, die für die Erstellung europäischer Statistiken gemäß der Verordnung (EG) Nr. 223/2009 <sup>36</sup> <b>wichtig erforderlich</b> sind, der statistischen Stelle der Gemeinschaft, den nationalen statistischen Ämtern und – wenn erforderlich – anderen für die Erstellung europäischer Statistiken verantwortlichen nationalen Behörden unentgeltlich zur Verfügung gestellt werden. <b>Ebenso stellen die Mitgliedstaaten sicher, dass die im Rahmen des integrierten Systems erfassten Datensätze, die für die Ergänzung von Buchführungsdatensätzen, welche gemäß der Verordnung (EG) Nr. 1217/2009 an die EU Kommission zu liefern sind, erforderlich sind, den im Informationsnetz landwirtschaftlicher Buchführungen verantwortlichen nationalen Behörden unentgeltlich zur Verfügung gestellt werden.</b>
Paragraph 5	Artikel 65 Absatz 5 ist zu streichen. Der Inhalt ergibt sich bereits aus der Datenschutz-Grundverordnung. Eine doppelte Regelung ist nicht erforderlich.	
<b>Article 66</b>		
Paragraph 1		
Paragraph 2		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 3</i>	Für die vorgesehene Berichtspflicht ist der 15. Februar, der auf das betreffende Kalenderjahr folgt, zu kurz bemessen. Hier wird der 15. April vorgeschlagen.	
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Für die vorgesehene Berichtspflicht ist der 15. Februar, der auf das betreffende Kalenderjahr folgt, zu kurz bemessen. Hier wird der 15. April vorgeschlagen.	
<b>Article 68</b>		
<i>Paragraph 1</i>	Die Einführung des Flächenmonitorings ist sehr aufwändig und derzeit technisch noch nicht ausgereift. Das Flächenmonitoring sollte daher für die MS optional sein. Darüber hinaus stellt sich die Frage, ob das Flächenmonitoringsystem nur der Berichterstattung über die Indikatoren im Rahmen der Strategiepläne dient oder ob es auch - als Option oder verbindlich - in das von den MS einzurichtende Kontroll- und Sanktionssystem einzubeziehen ist. Hierzu sollte eine Klarstellung erfolgen. Auch für das Kontroll- und Sanktionssystem sollte es optional sein	Artikel 68 Absatz 1 Die Mitgliedstaaten <del>errichten und betreiben</del> <b>können</b> ein Flächenmonitoringsystem <b>einrichten und betreiben</b> .
<i>Paragraph 2</i>	Für die in den Artikeln 66 bis 68 vorgesehenen Berichtspflichten ist der 15. Februar, der auf das betreffende Kalenderjahr folgt, zu kurz bemessen. Hier wird der 15. April vorgeschlagen.	
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 72	Die Ermächtigungen sind zu weitgehend. Grundlegende Anforderungen z.B. zum System zur Identifizierung landwirtschaftlicher Parzellen sind im Basisrechtsakt festzulegen. Die Ermächtigungen sind daher zu streichen oder auf das unbedingt erforderliche Maß einzuschränken.	
Article 73	Die Ermächtigungen sind zu weitgehend. Die Ermächtigungen sind daher zu streichen oder auf das unbedingt erforderliche Maß einzuschränken.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 84		
Paragraph 1	<p>Die Formulierung in Absatz 1 Satz 1 ist anzupassen, da ein Kontrollsystem nicht <u>gewährleisten kann</u>, dass kein Begünstigter gegen die Regeln verstößt.</p> <p>Die Formulierung in Absatz 1 Unterabsatz 2 ist unklar. Welche Kontrollsysteme sind gemeint? Nur das InVeKoS System oder auch weitere Systeme. In Absatz 1 Unterabsatz 3 ist näher zu definieren, was unter den Worten „kompatibel sein“ zu verstehen ist.</p> <p>Absatz 1 Unterabsatz 4 ist zu streichen, es besteht hier kein Regelungsbedarf.</p>	<p>Artikel 84 Absatz 1:</p> <p>Die Mitgliedstaaten richten ein Kontrollsystem ein, <b>durch das die Einhaltung der Verpflichtungen gemäß Titel III Kapitel 1 Abschnitt 2 der Verordnung (EU) ... (Verordnung über die GAP Strategiepläne) gewährleistet wird</b>, durch das die Begünstigten der Beihilfen gemäß Artikel 11 der Verordnung (EU) ... (Verordnung über die GAP Strategiepläne) sowie gemäß Kapitel IV der Verordnung (EU) Nr. 228/2013 und Kapitel IV der Verordnung (EU) Nr. 229/2013 <b>in ausreichender und angemessener Weise überprüft wird. die Verpflichtungen gemäß</b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		Titel III Kapitel 1 Abschnitt 2 der der Verordnung (EU) ... (Verordnung über die GAP Strategiepläne einhalten
Paragraph 2		
Paragraph 3	<p>In Absatz 3 Buchstabe b ist folgender Punkt unklar: Unter welchen konkreten Bedingungen kann davon ausgegangen werden, dass diese Kontrollen ebenso wirksam sind wie die Vor-Ort-Kontrollen.</p> <p>In Absatz 3 Buchstabe d ist es ausreichend einen Mindestkontrollsatz festzulegen. Weitere Details etwa zu Zufallskomponenten - sind zu streichen.</p>	<p>3...</p> <p>a)...</p> <p>b)...</p> <p>c)...</p> <p>d) die Mitgliedstaaten legen die Kontrollstichprobe für die gemäß Buchstabe a jährlich durchzuführenden Kontrollen auf der Grundlage einer Risikoanalyse fest, beziehen auch eine Zufallskomponente mit ein und sorgen dafür, dass die Kontrollstichprobe mindestens 1% der Begünstigten der Beihilfen gemäß Titel III Kapitel 1 Abschnit 2 der Verordnung (EU) ... (Verordnung über die GAP Strategiepläne) umfasst</p>
Article 85		
Paragraph 1	<p>Bei den Artikeln 85 Absatz 1 und 86 Absatz 1 sind die Formulierungen unter Berücksichtigung des Urteils des EuGH in der Rechtssache C- 239/17 so zu wählen, dass klar ist, auf der Grundlage welchen Jahres eine Sanktion zu berechnen ist und mit den Zahlungen welches Jahres diese Sanktion ggf. zu verrechnen ist.</p> <p>Außerdem sollte in Artikel 85 Absatz 1 eine Formulierung aufgenommen werden, nach der der Begünstigte auch für Verstöße haftet, die ein Angestellter oder ein beauftragter Lohnunternehmer schuldhaft begangen</p>	<p>..“</p> <p>Artikel 85 Absatz 1 Unterabsatz 2</p> <p>Im Rahmen dieses Systems werden die Verwaltungssanktionen gemäß Unterabsatz 1 nur dann verhängt, wenn der Verstoß das Ergebnis einer Handlung oder Unterlassung ist, die unmittelbar dem betreffenden Begünstigten <b>oder Personen oder</b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	hat, um hier eine Lücke zu schließen	<b>Unternehmen, deren sich der Begünstigte zur Durchführung der Tätigkeit bedient, anzulasten ist und mindestens eine der beiden folgenden Bedingungen erfüllt ist:...</b>
<i>Paragraph 2</i>	In Absatz 2 sollte nicht nur die Übertragung landwirtschaftlicher Flächen einbezogen werden, sondern auch die Übertragung sonstiger Betriebstätten wie Ställe oder Biogasanlagen.	
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>	Bei den Artikeln 85 Absatz 1 und 86 Absatz 1 sind die Formulierungen unter Berücksichtigung des Urteils des EuGH in der Rechtssache C- 239/17 so zu wählen, dass klar ist, auf der Grundlage welchen Jahres eine Sanktion zu berechnen ist und mit den Zahlungen welches Jahres diese Sanktion ggf. zu verrechnen ist.	
<i>Paragraph 2</i>	Die bisherige Regelung zum Frühwarnsystem hat sich nicht bewährt, sondern führte oftmals zu unverhältnismäßigen Sanktionen. Die Regelungen in Artikel 86 Abs. 2 Unterabsatz 2 und 4 sind daher zu streichen. Sie sind durch eine allgemeine Formulierung zu ersetzen. Diese muss dann den MS erlauben, bei geringfügigen Verstößen von einer Sanktionierung abzusehen.	<p>Artikel 86 Absatz 2</p> <p><del>Die Mitgliedstaaten können ein Frühwarnsystem einrichten, dass auf individuelle Verstöße Anwendung findet, die erstmals auftreten und angesichts ihrer geringen Schwere, ihres begrenzten Ausmaßes oder ihrer geringen Dauer nicht mit einer Kürzung oder einem Ausschluss geahndet werden. Wird bei einer späteren, innerhalb von drei aufeinanderfolgenden Kalenderjahren vorgenommenen Kontrolle festgestellt, dass der Verstoß nicht behoben wurde, wird die Kürzung gemäß Unterabsatz 1 rückwirkend vorgenommen.</del></p> <p><b>Die Mitgliedstaaten können vorsehen, dass bei Verstößen, die aufgrund ihrer geringen Schwere, ihres begrenzten Ausmaßes oder</b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<p><b>ihrer geringen Dauer als geringfügig einzustufen sind, keine Sanktion verhängt wird.</b></p> <p>Verstöße, die eine direkte Gefährdung der Gesundheit von Mensch oder Tier bedeuten, werden jedoch immer mit einer Kürzung oder einem Ausschluss geahndet.</p> <p><del>Die Mitgliedstaaten können für die Begünstigten, die eine Frühwarnung erhalten haben, eine obligatorische Schulung im Rahmen des Systems der landwirtschaftlichen betriebsberatung gemäß Titel III Kapitel 1 Abschnitt 3 der Verordnung (EU) .../... (Verordnung über die GAP Strategiepläne) durchführen.</del></p>
<i>Paragraph 3</i>	In Absatz 3 ist klarzustellen, dass sich Wiederholungen nur auf die Verstöße beziehen, die ab Inkrafttreten dieser Verordnung begangen werden	Bei wiederholten Verstößen seit <b>..[einsetzen: Tag des Inkrafttretens dieser Verordnung]</b> fällt die prozentuale Kürzung höher aus als bei Verstößen aufgrund von Fahrlässigkeit, die erstmals geahndet werden.
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Absatz 5 ist zu streichen. Eine Ermächtigung zu delegierten Rechtsakten ist unvereinbar mit einem System, das von den MS einzurichten ist. Wesentliche Anforderungen sind soweit erforderlich im Basisrechtsakt zu regeln.	
<b>Article 87</b>	In Artikel 87 ist es bei dem bisherigen Satz von 25% zu belassen	

**HUNGARY**

DATE	MEMBER STATE
24/09/2018	Hungary

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	<p>4. b) “area monitoring system”: In our opinion, it is not realistic and feasible to apply an area monitoring system on the basis of Copernicus Sentinels satellite data as of 2021. Even though Hungary has already launched a relevant pilot project, the tests and examinations have not yet been finished. It would require a considerable IT development in a short period of time. We propose therefore that the future system should be built on the basics of the present IACS. We consider the 2021 introduction of full monitoring too early; consequently, a solution has to be worked out, in the form of a transitional period or derogation.</p> <p>4. f) (+ Art. 67) Further clarification is necessary in relation to the claimless system. First of all, it has to remain optional (as the Commission confirmed during the WP HAQ of 19-20th September). Secondly, a number of practical questions arise concerning the substance of computerized databases. E.g.: What if the database is not up-to-date or inappropriate? It has to be ensured that the farmer takes full</p>	



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	responsibility for its application. Claimless system is not operable in all Member States, since the proper handling of deviations in databases for animals is not resolved.	
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	It would seem to be appropriate to mention, in addition to technical assistance, the financial support the Commission may provide for such purposes.	
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>	(1) Subparagraph 2: The annual performance report defined in the CAP Strategic Plan Regulation requires data for financial years. In contrast, calendar and marketing year is mentioned in this Article. It is necessary to create consistency among different provisions for collecting and supplying data.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	2. d) Further explanation is required on what “any information relevant for reporting” means, because Article 7 of the CAP Strategic Plan Regulation contains all the indicators in Annex I.	
<i>Paragraph 3</i>		
<b>Article 67</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	Further clarification is necessary in relation to the claimless system. First of all, it has to remain optional (as the Commission confirmed during the WP HAQ of 19-20th September). Secondly, a number of practical questions arise concerning the substance of computerized databases. E.g.: What if the database is not up-to-date or inappropriate? It has to be ensured that the farmer takes full responsibility for its application. Claimless system is not operable in all Member States, since the proper handling of deviations in databases for animals is not resolved.	
<i>Paragraph 5</i>	<i>We propose to delete this Paragraph.</i>	<del>5. Member States shall annually assess the quality of the geo-spatial application system in accordance with the methodology set up at Union level. Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested by the Commission to set up an action plan in accordance with Article 40. An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year concerned.</del>
<b>Article 68</b>	In our opinion, it is not realistic and feasible to apply an area monitoring system on the basis of Copernicus Sentinels satellite data as of 2021. (See our comments for Art. 63. 4. b))	
<i>Paragraph 1</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Paragraph 2	We propose to delete this Paragraph.	<del>2. Member States shall annually assess the quality of the area monitoring system in accordance with the methodology set up at Union level. Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested to set up an action plan in accordance with Article 40. An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year concerned.</del>
Article 69		
Article 70		
Article 71		
Article 72	The Commission is willing to create the possibility to complement the basic act by modifying essential elements of it (e.g. definitions, basic features and rules on the identification system for agricultural parcels, rules on the quality assessment). We believe that it goes against the principle of legal certainty.	
Article 73		

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 84	To what extent can the future system be deemed as the continuation of the present?	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>We do not see the point in annual assessments.</p> <p>As already expressed in our previous written contributions, small farmers should be excluded from (at least certain) requirements of conditionality. The different exemption categories established during the 2014-2020 greening scheme must be carried over to the post 2020 conditionality rules.</p> <p>In principle, the extent of subsidiarity is of key importance with regard to the control systems. With the increasing number and scope of obligations, the administrative burden on authorities grows, while farmers face greater and greater risks of breaching the conditionality standards; which automatically leads to a loss of financial sources.</p>	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	<p>In our view, Paragraph 3 shrinks the possibilities provided for in Paragraph 1, as it fails to mention an essential set of data (i.e. administrative registers that are not necessarily subject of a given year's non-paying-agency control agenda), although in most of the cases these data are directly available for the Paying Agency. Having that said, a slight contradiction is also present as regards Art. 63, where a direct reference is made to the IACS, as a generic tool for conditionality checks.</p> <p>Hence, it would seem reasonable to add a point in this Paragraph where an obvious reference is made to all types of administrative checks, as legitimate substitutions for OTSC.</p>	
<b>Article 85</b>	We propose to clearly define “administrative penalty”.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	It is not clear, requires further clarification.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 86</b>	We do not see the real simplification in the system.	
<i>Paragraph 1</i>	A confirmation is necessary from the Commission that administrative penalties do not affect any applications other than those the applicant has submitted or will submit in the course of the calendar year of the finding. Furthermore, a more obvious wording is needed.	
<i>Paragraph 2</i>	2. Subparagraph 2. It should be ensured that reductions in relation to subsequent non-compliances only apply retroactively as of the date of entry into force of this regulation.	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Delegated powers should be kept to the minimum and should not interfere with arrangements already made by MSs, acting along the provisions of the basic regulations and their Strategic Plans in good faith.	
<b>Article 87</b>	As almost all other Member States, Hungary proposes that Member States should be able to retain 25% of the amounts resulting from the application of the reductions and exclusions referred to in Article 86, as it is in Article 100 of Regulation 1306/2013/EU.	Member States may retain <b>205</b> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**LATVIA**



DATE	MEMBER STATE
21/09/2018	Latvia

**TITLE IV: CONTROL SYSTEMS AND PENALTIES**

**Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>	Regarding data storage we believe that 10 calendar years period should be shortened. Taking into account that according to CAP strategic plans regulation all the outputs and other indicators for the next period will be reported regarding financial years, the paragraph should be reviewed and calendar years should be replaced by financial years.	The data and documentation referred to in the first subparagraph relating to the current <del>calendar</del> <b>financial</b> year or marketing year and to the previous <del>ten</del> <b>five</b> calendar years or marketing years shall be accessible for consultation through the digital databases of the competent authority of the Member State.
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	Claimless system is currently used in Latvia in regards to animal support. Paragraph 4 provides for the possibility of wider application of the system, so it would require the Commission's explanation how it proposes the application of the claimless system for area payments.	
<i>Paragraph 5</i>	Annual assessment of the quality of the geo-spatial application system will create an additional administrative burden, it is not clear why such assessment is necessary.	<del>An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the</del>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<del>calendar year concerned.</del>
<b>Article 68</b>		
<i>Paragraph 1</i>	It is provided that Member States shall set up and operate an area monitoring system, although no additional information is provided on the elements to be included in the monitoring system as well as on which payments this system shall be applied mandatory. Article also should provide a solution for monitoring of small fields.	1. Member States shall set up and operate an area monitoring system <b><u>including following elements:</u></b> <b>...</b>
<i>Paragraph 2</i>	Paragraph 2 provides for an annual assessment of the the quality of the area monitoring system - more detailed explanation and information is needed on how Member States shall assess the area monitoring system. Is it supposed to be a comprehensive audit? Does Commission plan to provide an elaborated guidance for Member States to follow during the system assessment? We also are quite skeptical regarding the requirement for annual system quality assessment as it will create an unnecessary administrative burden.	Member States shall <del>annually</del> assess the quality of the area monitoring system in accordance with the methodology set up at Union level.
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>		
<b>Article 73</b>		

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	Last sentence of paragraph 1 provides for an annual review of the control system. The Commission should provide an explanation on this procedure: how this review of the control system will be different from current procedures? The control statistics are already reported to the Commission and we consider it to be sufficient. We are concerned that yearly throughout review of control system will lead to additional burdens and costs.	<del>Member States shall conduct a yearly review of the control system referred to in the first subparagraph in light of the results achieved</del>



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	Basically, the condition for review should be deleted.	
Paragraph 2		
Paragraph 3	<p>1) Paragraph 3(d) provides for a minimum control rate of 1%. Currently there is a similar provision in the regulation, although with an exception for minimum control rate for animal identification and registration requirements which is 3%. Which minimum control rate will be applicable to animal identification and registration requirements under this paragraph?</p> <p>2) The regulation should provide an exemption for participants of small farmer scheme as regards the controls and penalties under conditionality system.</p>	<p><i>New subparagraph should be added:</i></p> <p><b><u>(e) shall exclude beneficiaries receiving round sum payment for small farmers as referred to in article 25 of [draft SP regulation]</u></b></p>
Article 85		
Paragraph 1		
Paragraph 2	The regulation should provide an exemption for participants of small farmer scheme as regards the controls and penalties under conditionality system.	<p><i>New subparagraph should be added:</i></p> <p><b><u>(d) shall provide that no administrative penalty be imposed to beneficiaries receiving round sum payment for small farmers as referred to in article 25 of [draft SP regulation]</u></b></p>
Paragraph 3		
Article 86		
Paragraph 1		
Paragraph 2	<p>1) The minimum percentage of reduction of support should be maintained at 1% as provided by current legislation</p> <p>2) Paragraph 2 provides for the application of a retroactive reduction if minor non-</p>	In the case of non-compliance due to negligence, the percentage of reduction shall be as a general rule <del>31</del> % of the total amount of the payments referred to in paragraph 1 of this Article.

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	compliances have not been remedied. Retroactive application of reductions and adjusting of aid amounts is a complicated procedure that creates a disproportionate burden. Therefore application of retroactive reductions should be abandoned and all sanctions should only be applied to amounts resulting from aid application in the current or following year(s), possibly to some greater extent.	Member States may set up an early warning system that applies to individual cases of non-compliance occurring for the first time and which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. Where a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied <del>retroactively</del> <b><u>to amounts resulting from aid application of the current year</u></b> .
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	Regarding intentional non-compliance, we believe that the term should be replaced by ' <b>severe and substantial non-compliance</b> '. In general, it is very difficult to assess the motives of the farmer's activities and to determine whether the infringement was committed intentionally and deliberately.	In case of <del>intentional</del> <b><u>severe and substantial</u></b> non-compliance, the percentage shall be higher than the one applied in case of reoccurrence pursuant to paragraph 3 and may go as far as total exclusion from payments and may apply for one or more calendar years.
<i>Paragraph 5</i>		
<b>Article 87</b>	25% should remain as a percentage applied to retained amounts resulting from the application of the reductions, similar to the provisions in the current regulation	Member States may retain <del>20</del> <b>5</b> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**LUXEMBOURG**

PUBLIC

DATE	MEMBER STATE
25/09/2018	Luxembourg

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	In general, we want assurance from the Commission that the proposed definition does not introduce restrictions to the current legislation (see definition of monitoring, agricultural parcel, ...). Furthermore, we propose to add the definition of holding (at least a reference to the definition given in the CAP Strategic Plan Regulation).	
<b>Article 64</b>		
<i>Paragraph 1</i>	In the current state, we lack of large scale experiences in monitoring. First MS will start their pilots only in 2019. Therefore, we believe that the proposal should at least foresee a transitional period for the mandatory introduction of monitoring as a part of IACS. Alternatively, monitoring could be seen as an option for MS.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 65</b>	In principle, we wonder what further requirements have to be fulfilled to comply with the new data keeping and sharing provisions. We want to limit any possible additional workload for the paying agencies.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Could the Commission specify which data sets are considered as being relevant for the purpose of Directive 2007/2/EC?	
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Letter d): What does the Commission have in mind? What would be the impact on LPIS data? We believe that information relevant for the reporting of indicators should be stored/managed in the framework of claim data in IACS data bases (not at level of reference data).	
<i>Paragraph 3</i>	LU acknowledges that a quality assessment can be useful, but has a reserve as regards the additional administrative burden of an annual assessment.	
<b>Article 67</b>		
<i>Paragraph 1</i>	We understand that the implementation of monitoring needs a paperless claim procedure. What about farmers who are not able to make an electronic claim? May we still send paper forms to these farmers (as it is the case today)?	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	What about the requirements for the annual assessment? What does "quality" mean in this framework? How quick should MS react to adapt their GSAA, given the limited resources they may have (especially small MS)? We need more information.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 68</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	We have the same request as under paragraph 5 of article 67. Furthermore, we do not understand the deadline of 15/02. It seems too early, if it is to be in the calendar year following the claim year.	
<b>Article 69</b>		
<b>Article 70</b>	With reference to article 57, we believe that the concept of obvious error should be reintroduced in that article. We have a reserve as regards the deletion of thresholds for triggering sanctions/reductions.	
<b>Article 71</b>		
<b>Article 72</b>	LU would like to get all the information on quality assessment in the basic act and not in a delegated act.	
<b>Article 73</b>		

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	<p>Last subpara: What does the Commission envisage by "yearly review of the control system". Does it go beyond the current provision to assess selection criteria and sample size? What covers "control system" in this framework (OTSC, administrative controls, sanction matrix, ...)?</p> <p>What about notification of yearly control statistics as currently foreseen? Will it remain obligatory?</p>	
<i>Paragraph 2</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 3</i>	Are administrative controls still possible? Is it still left to MS?	
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>We should foresee the possibility to define human error (without sanctions). Furthermore, we need thresholds for the applications of sanctions in case of minor infringements.</p> <p>Early warning sanction: Instead of retroactive reduction, we prefer to apply a higher reduction for the following infringements, in order to avoid burdensome recalculation and recovering of amounts already paid.</p>	
<i>Paragraph 3</i>	Reoccurrence: We ask to start management of infringements and sanctions from the first year of implementation of the new enhanced conditionality. So, no link between current cross compliance and new enhanced conditionality (infringements in cross compliance before implementation of the reform are not to be taken into account).	
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 87</b>		

**MALTA**



DATE	MEMBER STATE
Click or tap to enter a date.	Choose an item.

## **TITLE IV: CONTROL SYSTEMS AND PENALTIES**

### **Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 64</b>		
<i>Paragraph 1</i>	Paragraph 1(c) – states that the integrated system to be set up and operated by MS shall comprise a number of obligatory elements, which include an area monitoring system. Malta is actively working on the development of a monitoring system together with the development of two mobile applications. These applications include a communication system between the paying agency and the farmer, as well as an application to capture and upload geotagged photos by the farmer, farmer representatives and also inspectors.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	<p>This paragraph refers to a quality assessment to be carried out by MS of the data generated by the GSAA. The GSAA is a GIS system that allows the spatial declaration of agricultural parcels which are compiled each year from the area declared in the previous year of areas updated by administrative processes such as OTS and LPIS updates. The process in Malta is carried out yearly and created from LPIS data which means that in practice the LPIS QA results would be equivalent to the GSAA QA results. In view of this, all efforts should be made to maintain the GSAA QA methodology as cost effective as possible.</p> <p>While Malta agrees that such assessment is imperative in order to ensure the quality of the data being generated, it should be noted that the definition of rules for such assessment mentioned in Articles 67 and 72 must consider the differing implementation practices in MS of the GSAA.</p>	
<b>Article 68</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 69		
Article 70	This Article stipulates that a control and penalty system is to be set up by Member States. In this regard, more information/details from the EC are required with respect to the general rules on penalties. The required information includes minimum thresholds for penalties and also a clear overview of what the EC is expecting to see.	
Article 71		
Article 72	Same comment raised under article 67 applies for this.	
Article 73		

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 84	<p>Malta reiterates that the new conditionality being proposed is one of its main concerns, especially with the introduction of the conditionality principle as an eligibility condition. Furthermore, in principle, MT is against the introduction of an administrative penalty to be imposed on beneficiaries who do not comply with statutory management requirements as it feels that there are other ways that may be adopted to ensure such compliance. The application of penalties, if anything, should be included as a last option in instances of continued non-compliance.</p> <p>With respect to small farmers, Malta's position is that these should be exempt from conditionality checks as the proposed system as is would generate significant administrative burden on Member States and will also result in a disproportionate</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	increase in burden for such small farmers. This may dissuade them from further benefitting from EU financial support, and may also bring about other environmental socio-economic risks, particularly land abandonment.	
<i>Paragraph 1</i>	The last part of Paragraph 1 states that ‘Member States shall conduct a yearly review of the control system referred to in the first sub paragraph in light of the results achieved’. Clarification is being requested as to what kind of review is being expected and by the EC what results are to be achieved on a yearly basis by Member States.	
<i>Paragraph 2</i>	Malta strongly maintains that SMR 5, and GAECs 5 and 10 (as stipulated in Annex III of the proposed CAP Strategic Plan Regulation) are made voluntary for Member States.	
<i>Paragraph 3</i>		
<b>Article 85</b>		
<i>Paragraph 1</i>	The wording of Paragraph 1 seems to imply that the conditionality principles to be set at an administrative level are only related to land. Does this mean that only the SMRs and GAEC applicable to land are set as administrative penalties, while the rest are only checked at control sample level? Confirmation/clarification is required as to whether this understanding is correct.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	The 3% sanction as a general rule is considered to be high. The % sanction is to be	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>set between 1% and 5% as per current arrangements taking into consideration the gravity of the breach of obligation in question. Member States should have the flexibility to be able to evaluate the different obligations and impose sanctions according to the weighting of each of them; sanctions should be set at 1%, 3% and 5%.</p> <p>The proposal stipulates that Member States are to apply a sanction in relation to the early warning system retrospectively if the minor infringement is repeated for 3 consecutive years. In this regard, Malta believes that the early warning system should only be applied for the control year in question, and if a beneficiary takes remedial action in that same control year no sanction is imposed. To explain better, the beneficiary that is found to have a minor infringement will be given notice to remedy such breach and if the period for remedial action is not abided with then a sanction will be given.</p>	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 87</b>	<p>The percentage should be kept at 25% in line with current arrangements, as such funds are required by Member States to alleviate administrative burden and cover costs related to control procedures.</p>	

**POLAND**



DATE	MEMBER STATE
24/09/2018	Poland

#### **TITLE IV: CONTROL SYSTEMS AND PENALTIES**

##### **General comments**

In Poland's opinion, general conditions regarding control and penalty system (amount of sanctions, percentage of controls etc.) both in relation to direct payment (I pillar) and area-based interventions (II pillar), should be determined in basic regulations, similarly to EC proposal for conditionality. Leaving this issue completely to MSs' own decision gives flexibility in the context of setting out these provisions on the one hand but triggers significant risk of uneven implementation of provisions across MSs on the other hand. This can result in lack of equal conditions for farmers in the EU (e.g. the same non-compliance can be differently assessed on MS level).

Furthermore, it should be noted that in accordance with draft regulation on CAP Strategic Plans, MSs are obliged to include information on control and penalty system in their Strategic Plans. However, the EC will not approve these information. Additionally, the draft regulation obliges MSs to annually assess the quality of the set IACS system (art. 66, 67, 68) and to yearly review the control system for conditionality (art. 84). Firstly, such obligation constitutes excessive administrative burden. Secondly, in case of the need to improve the system, this will trigger the need to adapt the Strategic Plan. However, in terms of the procedure regarding submission and approval of the CAP Strategic Plans proposed by the EC i.e.:

- i. a request for amendment of the CAP Strategic Plan may be submitted no more than once per calendar year after collecting all amendments to the Plan,
- ii. the approval of each CAP Strategic Plan shall take place no later than eight months following its submission by the Member State concerned and in case of amendments -within three months,
- iii. necessity to implement adequate national legislation

it is not realistic to implement those amendments in short term for the following year after such review. Therefore, it is so important to provide for solutions guaranteeing MSs legal certainty already at the level/stage of basic acts, so that provisions implemented by MSs at national level will be determined properly and will not be undermined by the EC and ECA audits.

Including the general framework in the basic regulation on the basis of which MSs will define their control and sanctioning systems fulfils this postulate. It also guarantees, at the very beginning of implementation of the provisions to the national order, the legal certainty.

Another issue which, in Poland's view, should be regulated at the level of EU legislation concerns the exclusion of small farms from conditionality control. Small farms already serve an important role in environmental protection and climate change, and in the current period they are exempted from cross-compliance and greening controls. The possibilities of determining less requiring rules for small farmers within conditionality (risk analysis, de minimis principle) indicated by the Commission, or their exclusion at the level of the strategic plan, do not fulfill this postulate. In addition, in the draft provisions there is no legal basis for the exclusion of small farms from control of conditionality. Poland would like to underline once again that Member States should have legal certainty in this regard. In case of doubts that such block exclusion will result in unequal treatment in the EU (because system for small farms is voluntary for Member States and not all of them may implement it), Poland proposes excluding from control of conditionality farms up to a specific surface threshold, just like this is currently applied for greening.

## **Chapter II: Integrated administration and control system**

<b>COMMISSION PROPOSAL</b>	<b>COMMENTS</b>	<b>DRAFTING SUGGESTIONS</b>
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 64</b>		

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 68</b>	Poland is open to the possibility of using new technologies to implement and monitor support instruments under the CAP, including the proposed implementation of the monitoring system of agricultural land based on Sentinel satellites. However, it should be emphasized that in order to fully benefit from this proposal, it is necessary to develop	

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	solutions at the EU level that ensure its proper implementation across the EU, taking into account the specific conditions characterizing the structure of agriculture in respective Member States. Some technical conditions of Sentinel products, in particular spatial resolution, hinder the use of this technology, inter alia for agricultural parcels that are small, narrow or irregular in shape. Therefore, it is important to develop adequate solutions in advance in relation to such plots.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>		
<b>Article 73</b>		



**Chapter IV: Control system and penalties in relation to conditionality**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	It is indicated in Art. 84(3) point (c) that, where appropriate, remote sensing could be used to carry out on-the-spot checks concerning conditionality. Will the remote sensing (VHR) imaging, as so far, be financed by the EC? It seems that the provisions of the regulation indicate that the EC supplies free of charge only the satellite data for the use of monitoring system (Art. 7 point (c) and Art. 22).	
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 87</b>		Member States may retain <del>20 %</del> <b>25 %</b> of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**PORTUGAL**

DATE	MEMBER STATE
24/09/2018	Portugal

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	PT considers it necessary to continue to provide for the current exceptions to the implementation of the IACS, as laid down in Article 67(2) of Regulation 1306/2013, in particular with regard to interventions related to improving genetic resources, setting up agroforestry systems and planting or reforesting wooded areas.	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	<p>Subparagraph b) - Clarification is required on which type of agricultural activities and practices are included under this monitoring system. We have doubts as to whether such a system can monitor the vast majority of environmental management commitments, including many of the conditionality obligations, which can only be monitored through on-the-spot physical checks.</p> <p>On the other hand the JRC document “<i>Discussion document on the introduction of monitoring to substitute OTSC</i>” (page 31), states that it’s not possible to monitor agricultural parcels with areas below 0.5 ha. In mainland Portugal, more than 60% of the agricultural parcels have areas below 0.5 ha (this proportion is even higher in the Outermost Regions). Clarification is required on how the Commission sees the implementation of such system in this type of small plots.</p> <p>In this context, if the alternative solution to the use of satellite imagery in these situations is</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>100% on-the-spot physical checks, the implementation of the Area monitoring system should be reassessed, given the high control costs associated. It should be recalled that control costs currently derive from a sample consisting of only 5% of the beneficiaries.</p> <p>Therefore, Portugal considers that the implementation of the Area monitoring system should be optional for Member States, or else a mixed system should be implemented where situations that cannot be monitored using satellite imagery may be so through sampling controlled on the spot as is currently the case.</p>	
<b>Article 64</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>	<p>2nd subparagraph - Portugal has doubts about the obligation to maintain data and documentation regarding the annual performance clearance in digital format and to ensure immediate access for a period of 10 calendar years, a requirement that involves high administrative costs and does not meet the simplification objective. Clarification is required as to the retroactive implementation of this provision, since its aim is to safeguard the elements used for the purpose of the annual performance clearance under the future CAP.</p>	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	The deadline of 15 February should be extended, given that it is proposed that on this date	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	the Paying Agency submits three reports to the Commission: Identification system for agricultural parcels, Geo-spatial and animal-based application system and Area monitoring system, in addition to the annual performance report itself.	
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	The deadline of 15 February should be extended, given that it is proposed that on this date the Paying Agency submits three reports to the Commission: Identification system for agricultural parcels, Geo-spatial and animal-based application system and Area monitoring system, in addition to the annual performance report itself.	
<b>Article 68</b>		
<i>Paragraph 1</i>	See comments article 63, Paragraph 4	
<i>Paragraph 2</i>	The deadline of 15 February should be extended, given that it is proposed that on this date the Paying Agency submits three reports to the Commission: Identification system for agricultural parcels, Geo-spatial and animal-based application system and Area monitoring system, in addition to the annual performance report itself.	
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>	Portugal considers that the delegated act requires a better definition of its scope. Therefore, Portugal considers that basic rules and principles to be used in delegated acts should be stated in the basic act.	
<b>Article 73</b>		

## Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>	As regards the Control System of Conditionality, to obligate beneficiaries of round-sum small farmers' payment to conditionality rules will lead to a disproportionate increase in control costs. These beneficiaries account for around 50% of the beneficiaries of Direct Payments and just over 5% of the IACS area. Therefore, Portugal considers that the regulation on the CAP Strategic Plan should contain a provision exempting these beneficiaries from the application of conditionality.	
<i>Paragraph 1</i>	Last subparagraph - This subparagraph requires Member States “ <i>to conduct a yearly review of the control system (...) in light of the results achieved</i> ”. Clarification is required on what type of results must be taken into account in this review (e.g. control reports?).	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Subparagraph d) - The on-the-spot control sample should “ <i>cover at least 1% of the beneficiaries receiving the aid</i> ”. Confirmation is required on the following: <ul style="list-style-type: none"> <li>Is the minimum control rate set for all beneficiaries who are obliged to comply with conditionality, and therefore not set for each competent control authority (Regulation 809/2014, Article 68(1), 1st and 3rd subparagraphs) ?</li> <li>In the current framework, if the specific legislation of the matter in question sets different minimum control rates, such rate shall be applied in cross compliance (Reg. 809/2014, Art. 68(1), 4th subparagraph). Is this rule maintained? Or will it be provided for in a delegated act?</li> </ul>	
<b>Article 85</b>		
<i>Paragraph 1</i>	2nd subparagraph - Clarification is required as to whether it is up to the Member State to decide to whom it will apply the administrative penalty, when the area where the non-compliance occurred is transferred to another farmer during the same calendar year.	
<i>Paragraph 2</i>	Subparagraph a) – see comment on paragraph 1.	
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>	This paragraph states that, “ <i>for the calculation of (...) reductions and exclusions, account</i>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p><i>shall be taken of (...) intentionality of the non-compliance determined”.</i></p> <p>In view of the difficulties in determining the intentionality of many types of non-compliance in the context of conditionality, and since it is only possible to determine that the non-compliance was intentionally committed following legal action, Portugal proposes that intentionality is defined via the successive repetition of the same type of non-compliance.</p> <p>It should also be noted that in the case of penalties applied under the IACS the concept of intentional non-compliance no longer applies.</p>	
Paragraph 2	<p>1st subparagraph - It is stated that “<i>in the case of non-compliance due to negligence, the percentage of reduction shall be as a general rule 3%</i>”. Clarification is required on how the criteria for severity, extent and permanence of non-compliance due to negligence apply for the purpose of determining the percentage of reduction (last subparagraph of paragraph 1).</p> <p>Portugal considers that the provision currently in force should be maintained in relation to the maximum % reduction for negligent non-compliance (Article 99(2) of Regulation 1306/2013 states that in the case of non-compliance due to negligence, the reduction may not exceed 5%).</p> <p>Can we expect a delegated act regarding the % of reduction for the negligent non-compliance?</p>	
Paragraph 3	<p>The proposal states that in cases of recurrent non-compliance, the reduction to be applied shall be higher than that applied in negligent non-compliance. Currently, Article 99(2) of Regulation 1306/2013 states that in the case of recurrence, the reduction may not exceed 15%. Is it up to the MS to set this/these level(s) or will it/they be set through a delegated act?</p>	
Paragraph 4		
Paragraph 5	<p>Clarification is required as to whether the Commission intends to define the concepts of the various types of non-compliance (negligent, recurrent and intentional) as well as the criteria of severity, extent and permanence by means of a delegated act? Portugal considers that they should be defined in the basic act.</p>	
Article 87	<p>Portugal considers that the current 25% retention rate in favour of MS under Article 100 of Regulation 1306/2013 should be maintained.</p>	

**ROMANIA**

DATE	MEMBER STATE
26/09/2018	Romania

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	We find necessary to define more clearly what is meant by "to the extent necessary "	
<i>Paragraph 4</i>	<p>In point (a) "application for geo-spatial information" means an electronic application form including a computerized application based on a geographic information system which enables the beneficiaries to declare by landing the farm parcels of the holding and the non-agricultural areas for which it requests payment".</p> <p>According to the text, does farmers have to declare the agricultural parcels and non-agricultural areas for which they require payments or which they use? It's different from the rules in force.</p> <p>The definition of the agricultural parcel should be clearly set out in one of the two proposed regulations.</p>	
<b>Article 64</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	How will the integration of the surface monitoring system with the control system and penalties be established by each MS, given that monitoring is also a control system?	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	How will mutual assistance be developed between MS for IACS?	
<b>Article 65</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	How do we treat personal data if the Community statistical authority, the national statistical institutes and other national authorities responsible for producing European statistics request such data? Can they be made available to them? What is the legal basis?	
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>	It is necessary to define “regularly updated “. What is time frame?	
<i>Paragraph 2</i>	At point a), Are we talking about each agricultural parcel or land plot? At point c), "the correct localisation of agricultural parcels and non-agricultural areas" should be more clear defined.	
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 2</i>	Can the application be unique - plant and livestock sectors?	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	<p>This is an additional requirement not provided by the current legislation. It requires enforcement rules, additional costs for the administration and we do not have the certainty that it will be implemented on time. We request exclusion or transition period.</p> <p>The date of February 15 must be deferred at the earliest on 1 June. The timing of quality control is short and overlaps with LPIS QA.</p>	
<b>Article 68</b>		
<i>Paragraph 1</i>	<p>Member States shall establish and operate an area monitoring system.</p> <p>It is difficult to implement. It should be determined from the outset what methodologies will be applied if agricultural plots with small areas can not be covered by monitoring. If these involve additional field checks, the administrative costs will be very high. In Romania, a significant number of agricultural parcels have areas of less than 0.5 ha, surfaces that can not be interpreted using the verification techniques proposed so far, due to the fact that they are less than 7-10 meters wide.</p> <p>We also request a transition period of 1-2 years for implementation at national level of the specific controls required by Art. 68.</p>	
<i>Paragraph 2</i>	<p>This is an additional requirement not provided by the current legislation. It requires enforcement rules, additional costs for the administration and we do not have the certainty that it will be implemented on time. We request exclusion or transition period.</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	The date of February 15 must be deferred at the earliest on 1 June. The timing of quality control is short and overlaps with LPIS QA and with the quality control requested by article 67 paragraph 5.	
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>	Delegated acts related to systems quality assessment should be adopted by the Commission in a timely manner for effective application by the MS. Adopting them less than two years before implementation is a major implementation risk as long as the proposed changes are fairly consistent and require the adaptation of IT systems and the establishment of strategic Plans.	
<b>Article 73</b>	Implementing acts must be approved at least 18 months before the reporting required by art. 67 and 68 in order to provide timely results of the controls. Any additional quality control involves a methodology, the development of an application and a reporting module according to the required standards.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	<p>Exceptions should be provided for certain categories of farmers or, at least, for certain requirements of the conditionality system. For example, small farmers should be provided with the derogation from the conditionality obligations. Romania has a large number of small farmers and their control would involve major costs for the administration.</p> <p>Member States shall carry out an annual examination of the control system referred</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	to in the first subparagraph in the light of the results obtained. Clarification is required for " Member States shall conduct a yearly review of the control system".	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	If the surface monitoring system is used according to provision in c), the control sample is still 1%?	
<b>Article 85</b>		
<i>Paragraph 1</i>	Point (f) should explain whether non-compliance may also be about breach of sanitary and phytosanitary rules, etc. Only non-conformities related to agricultural activity that do not include the sanitary veterinary rules, phytosanitary rules that may be violated within a farm are introduced.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>	For the purpose of calculating those reductions and exclusions, account shall be taken of the severity, magnitude, persistence, repetition or deliberate nature of the non-compliance found. Sanctions must be dissuasive and proportionate and comply with the criteria set out in paragraphs 2 and 3 of this Article. Definitions of severity, scope, persistence, deliberate non-compliance should be defined in order to have a unitary approach at Member State level.	
<i>Paragraph 2</i>	The percentage of reduction should be left to the choice of the Member State. As other Member States mentioned, the reduction should be between 1-5% depending on the severity of the negligence. However, cases of non-compliance which constitute a direct risk to public or animal health are always subject to a reduction or exclusion. Non-compliances constituting a direct risk to public or animal health	In the case of non-compliance due to negligence, the percentage of reduction shall be as a general rule <i>established by</i>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	should be established in order to have a unitary approach at Member State level.	<i>the Member State and it is between 1 and 3%</i> of the total amount of the payments referred to in paragraph 1 of this Article.
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Delegated acts and additional rules should be adopted in due course by the Commission, for the implementation by the MS.	
<b>Article 87</b>	Instead of 20% we propose 25%.	Member States may retain <b>25 %</b> of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**SLOVAKIA**

PUBLIC

DATE	MEMBER STATE
24/09/2018	Slovakia

**General comment:** Is it possible to use technical assistance from current period for the adjustments of the systems (IACS, LPIS etc.) for the purposes of next programming period?

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	What is understood by “extent necessary” when it comes to conditionality? Using IACS for the management and control of conditionality is problematic, taking into account also the fact that some of the conditions are not controllable administratively.	
<i>Paragraph 4</i>		
<b>Article 64</b>		
<i>Paragraph 1</i>	Pursuant to letter (b), IACS should comprise a geo-spatial and an animal-based application system, Does this mean that an animal module should be integrated into GSAA? Conditional upon the explanation, we suggest deleting part of letter (b).	The integrated system shall comprise the following elements: (a) an identification system for agricultural parcels; (b) a geo-spatial and an animal-based application system; <del>(c) an area monitoring system;</del> (c) a system for the identification of beneficiaries of the interventions and

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	We have serious reservations against the compulsory introduction of monitoring into IACS.	measures referred to in Article 63(2); ( <del>de</del> ) a control and penalties system; ( <del>ef</del> ) where applicable, a system for the identification and registration of payment entitlements; ( <del>fg</del> ) where applicable, a system for the identification and registration of animals.
Paragraph 2	What is understood by “exchange and integration of data”? Which electronic databases are meant here?	
Paragraph 3		
Paragraph 4	It is unclear why the Commission included the obligation of MS to assist each other in the legal text. Every MS is responsible for their national implementation, whereas the Commission should be responsible for advisory, help and assistance.	Member States shall take all measures required for the proper establishment and operation of the integrated system and <b>the Commission shall provide the give one another the mutual</b> assistance needed for the purposes of this Chapter.
Article 65		
Paragraph 1	What is the starting point for the calculation of 10 years in the second subparagraph? Should this be retroactively applied to the period prior to 2021, we are against this provision and request that it be deleted. There may be different requirements and data collected; digital databases may not necessarily exist for specific data for the purposes of yearly outputs. Conditional upon the explanation, we suggest that this part of the provision be deleted.	<del>The data and documentation referred to in the first subparagraph relating to the current calendar year or marketing year and to the previous ten calendar years or marketing years shall be accessible for consultation through the digital databases of the competent authority of the Member State.</del>
Paragraph 2		
Paragraph 3	There is a lack of legal certainty as regards data sets. On the basis of what should the data sets be made publicly available? It is not only the INSPIRE directive that is mentioned here, but also data “...or relevant for monitoring Union policies” – this is a very broad scope and it is unclear how this corresponds to the data protection? Conditional upon the explanation, we suggest that this part of the provision be deleted.	Member States shall ensure that data sets collected through the integrated system which are relevant for the purposes of Directive 2007/2/EC of the European Parliament and of the Council <del>or relevant for monitoring Union policies</del> , are shared free of charge between its public authorities and

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		made publicly available at national level. Member States shall also provide the institutions and bodies of the Union with access to these data sets.
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Who should assess whether public access would adversely affect the conditionality of personal data? There should be a clear methodology for the publication of personal data.	
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>What is understood by “up-to-date values” in letter (b)?</p> <p>We do not agree with the wording of letter (d), according to which the LPIS should contain any information relevant for the reporting on the indicators referred to in Art. 7 of draft Reg. on Strategic plans. The wording is too broad; Art. 7 covers all indicators and it is unclear which should be included in the LPIS and why. Such wording could mean that a significant adjustment of the LPIS be necessary, with potentially significant financial impact.</p>	<p>Member States shall ensure that the identification system for agricultural parcels:</p> <p>(a) uniquely identifies each agricultural parcel and units of land containing non-agricultural areas considered eligible by the Member States for receiving the aid for the interventions referred to in Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation];</p> <p>(b) contains up-to-date values on the areas considered eligible by the Member States for receiving the aid for the interventions referred to in Article 63(2);</p> <p>(c) enables the correct localisation of agricultural parcels and non-agricultural areas claimed for payment;</p> <p><del>(d) contains any information relevant for the reporting on the indicators referred to in Article 7 of Regulation (EU) .../... [CAP Strategic Plan Regulation];</del></p>
<i>Paragraph 3</i>		
<b>Article 67</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	What is understood by “any other relevant public database”?	
<i>Paragraph 4</i>	Clarifications are needed as regards the design of a claimless system for area-based interventions.	
<i>Paragraph 5</i>		
<b>Article 68</b>	Is the area monitoring system to be understood as the monitoring that was introduced into current system by Implementing Regulation (EU) No 2018/746? We have serious reservations against the compulsory introduction of monitoring into IACS. Currently, the monitoring system is voluntary, primarily due to the numerous administrative, technical, financial and legislative challenges. We are certain that this tool should be kept on a voluntary basis. We should also draw from our previous experience with the GSAA – it was very problematic to set it up and in some cases even derogations from its full introduction were needed.	Member States <b>may</b> <del>shall</del> set up and operate an area monitoring system.
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>	We do not agree with the proposed principle of full discretion as regards the setting up of the control and penalties system as it does not guarantee level playing field among MS. We do not agree with the proposition that Commission will not approve the system within the action plan, as this may undermine legal certainty.	
<b>Article 71</b>		
<b>Article 72</b>		
<b>Article 73</b>		



## Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	What should be understood by „existing control systems and administration“? Clarifications are need also as regards the yearly review of the control system in light of the results achieved.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	What checks are considered equivalent to OTSC pursuant to letter (b)? Is it checks pursuant to national legislation?  In letter (d), what share of the 1 % should be chosen randomly?	
<b>Article 85</b>		
<i>Paragraph 1</i>	Does the act or omission have to be intentional or does it suffice when the act or omission is not intentional? What is the difference between letter (a) and (b)? How should an act or omission be assessed when it is not related to the beneficiary's agricultural activity but does concern the area of their holding? Is it then attributable directly to the beneficiary concerned? Is it considered an act/omission (a) related to the beneficiary's agricultural activity or (b) related to non-agricultural activity at their holding?	
<i>Paragraph 2</i>	Does the force majeure have to be duly notified; including before a check was carried out resulting in the finding?	
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	An improvement to the wording is necessary; the “early warning system” is not flexible and it should not be applied retroactively. MS should have the possibility to decide whether to impose/not impose sanctions in the case of minor non-compliance.	
<i>Paragraph 3</i>	Should the second and next negligent act/omission be considered a reoccurrence? What percentage of reduction should be applied in the case of intentional non-compliance, mainly	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	with regard to the fact that no upper limit is set in this paragraph. It could be worth considering introducing an upper limit of the percentage of reduction, taking into account level playing field.	
<i>Paragraph 4</i>	It is unclear what situation can result in total exclusion of payments. What is considered intentional non-compliance? Can the total exclusion of payments be caused only by a reoccurring intentional non-compliance or also an intentional non-compliance of extreme severity and extent? What provision should apply in case of non-compliance resulting from negligence of extreme severity and extent?	
<i>Paragraph 5</i>	The scope of delegated powers is too broad; these issues should be stipulated in the basic act.	<del>In order to ensure a level playing field between Member States and the effectiveness and dissuasive effect of the penalty system, the Commission shall be empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with further rules on the application and calculation of penalties.</del>
<b>Article 87</b>	The possibility to retain 25 % of the amounts should be maintained.	Member States may retain <b>25</b> <del>20</del> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**SLOVENIA**

DATE	MEMBER STATE
26/09/2018	Slovenia

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>	Scope and terms used	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	<ol style="list-style-type: none"> <li>1. <u>"monitoring system"</u>: SI request additional clarification on definition "<u>other at least equivalent value</u>". Is the use of Copernicus Sentinel data mandatory if "other at least equivalent value" is used? If so, what "other at least equivalent value" should be used?</li> <li>2. <u>"claimless system"</u>: SI has extensive experiences with <u>claimless system</u> regarding the couple support payments for cattle. We would ask for additional explanation what databases should be available to perform <b>area</b> based aid applications and claims. Could the definition "<u>claimless system</u>" be understood as the system where updated reference parcel (in case of SI: farmer's block) is automatically transferred to GSA and where beneficiary perform further delineation of agricultural parcels within reference parcel where needed and specify the crop for individual agricultural parcel? We would ask additional clarification.</li> </ol>	
<b>Article 64</b>		

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 65</b>	Data keeping and sharing	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	We would kindly ask the Commission for the explanation what should be understood as “publicly available data on national level”. Should such be accessible to contain also personal data (personal name) or only as anonymized data?	
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 68</b>	Area monitoring system	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>	<p>In Slovenia almost 50% of the agricultural parcels is smaller than 0,5 ha (16% of the total agricultural area in Slovenia) and nearly 33% of parcels is smaller than 0,3 ha (7% of total agricultural area). On these areas, additional checks of eligibility will need to be performed (follow up actions).</p> <p>Are there any additional options for financial support for establishment and implementation of the monitoring, such as those defined in the article 22 for example?</p> <p>In Slovenia, some agricultural practices where monitoring system cannot be used are currently supported within Rural Development measures. Verification of eligibility will require different approach in such cases. Can be assumed that where Rural Development measure requirements cannot be monitored 5% control sample approach should be kept or 100% checks are required also on such measures?</p>	
<i>Paragraph 2</i>		
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>		
<b>Article 72</b>		
<b>Article 73</b>		

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>	The proposed frame of sanction system is too broad/general (we agree with Spain, Germany and other MS). We propose, that all basic provisions concerning conditionality are included in HZR and are not distributed among many delegated acts.	
<i>Paragraph 1</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 86</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	It is necessary to determine the base year of the finding of non-compliance and subsequent repetition (in the new perspective the baseline is broader; according to the information so far, the system of calculation of penalties allows for greater flexibility of MS).	
<i>Paragraph 4</i>	If the sanction system maintains intentional non-compliance, then it is necessary to clearly distinguish intentional non-compliances as such and repeated violations that eventually become intentional non-compliances. We believe that a clear definition of the various possible non-compliances in the basic regulation is needed.	
<i>Paragraph 5</i>		
<b>Article 87</b>		

**SPAIN**

DATE	MEMBER STATE
24/09/2018	Spain

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

As a general comment, remark the Spanish request that the description of the integrated system, especially the description of the system of controls and sanctions, must be subject to the approval of the strategic plan by the Commission (see comment of Spain on article 106 of the regulation of the CAP strategic plan)

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	Before Spain can decide on this section, it must be clarified and specified by the Commission, which means "To the extent necessary", as well as the relation of this section with article 61 and article 66, paragraph 2.a in regards of vineyard parcels.	
<i>Paragraph 4</i>	The definition of an agricultural parcel (paragraph d) is too vague. The Commission is asked to propose an alternative wording or ask the member states include it in their strategic plan	
<b>Article 64</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	The implementation of the new IACS elements, taking into account all the modernisation and digitization needed, specially regarding the area monitoring, will demand a lot of effort and resources from the MS. Thus this technical assistance provided by the Commission should be mandatory	Without prejudice to the responsibilities of the Member States for the implementation and application of the integrated system, the Commission <del>shall be assisted by</del> <i>may seek the assistance of</i> specialised bodies or persons in order to facilitate the establishment, monitoring and operation of the integrated system, in particular, with a view to providing the competent authorities of the Member States with technical advice.
<i>Paragraph 4</i>		
<b>Article 65</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Regarding the obligation to preserve the information for ten years, the Commission must clarify and specify the scope of this obligation, especially in consideration of the data of the area monitoring and the data of campaigns prior to the approval of the CAP strategic plans.	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	PARAGRAPH A The Commission should clarify and specify the scope of the obligation to use the LPIS in the management of the areas of sectoral intervention in Chapter III, Title III of the CAP Strategic Plan Regulation,	



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	Specifically, it must be clarified if the information of the wine registers can continue to be used for the management of the aid to the wine sector.  PARAGRAPH D The Commission should clarify and specify the scope of the obligation to include in the LPIS information necessary to obtain indicators. In this regard, remember that Spain has already requested that existing data sources should be used to obtain the indicators (see observation of Article 7 of the Strategic Plan Regulation)	
<i>Paragraph 3</i>		
<b>Article 67</b>	In relation to this article, the Commission is asked to clarify if the concept of a single application disappears for this period	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	The wording of this paragraph should be modified, adding the idea that the prefilled forms should be based on the data of the application and the result of the controls of the previous year.	
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	At present, the GSAA is already an element of the Integrated System. The GSAA is functioning reasonably well without the need for this new element of quality assessment that poses an additional administrative burden for the Member States. The cost-benefit ratio does not justify this measure. Thus it is proposed to delete this provision from the Regulation.	<del>Member States shall annually assess the quality of the geo-spatial application system in accordance with the methodology set up at Union level.</del> <del>Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested by the Commission to set up an action plan in accordance with Article 40.</del> <del>An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the</del>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<del>calendar year concerned.</del>
<b>Article 68</b>	The Commission must clarify and specify the purpose of the area monitoring in the text of the Regulation, as indicated in the presentation made in the working group of the council of September 19, 2018: “It may be used for controls” + “Purpose: policy monitoring (agri-env-clima)”	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	<p>Area monitoring can be considered a continuation of controls with remote sensing. Over the last 25 years the Member States have carried out these checks by remote sensing reasonably well without the need for this new element of quality assessment that poses an additional administrative burden for the Member States. The cost-benefit ratio does not justify this measure. Thus it is proposed to delete this provision from the Regulation.</p> <p>Technically, it must be added that the monitoring methodology itself is still very immature. To this day we do not have the final specific common techniques for monitoring provided by the JRC. Therefore, it is not realistic that there may be an adequate methodology for quality control of a process that has yet to be defined.</p> <p>And a final comment. Monitoring is a continuous process that in principle will cover the entire calendar year. Therefore, if the agricultural activities object of monitoring a given campaign ends on December 31st, and we must add several additional follow-up activities, it is impossible to provide results of a theoretical quality assessment before February 15th.</p>	<p><del>Member States shall annually assess the quality of the area monitoring system in accordance with the methodology set up at Union level.</del></p> <p><del>Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested to set up an action plan in accordance with Article 40.</del></p> <p><del>An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 February following the calendar year concerned.</del></p>
<b>Article 69</b>		
<b>Article 70</b>	It is not specified to which payment entitlements it refers exactly, which can cause confusion to the reader. A mention to basic income support in this article should be foreseen	
<b>Article 71</b>		
<b>Article 72</b>	In accordance with comments to articles 67 and 68	(a) further rules on the quality assessment referred to in Articles 66, <del>67 and 68;</del>
<b>Article 73</b>	In accordance with comments to articles 67 and 68	(a) the form, content and arrangements for transmitting or making available to the

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<p>Commission of:</p> <p>(i) the assessment reports on the quality of the identification system for agricultural parcels, <del>of the geo-spatial application system and of the area monitoring system;</del></p> <p>(ii) the remedial actions to be implemented by the Member States as referred to in Articles 66, <del>67 and 68;</del></p>

## TITLE IV: CONTROL SYSTEMS AND PENALTIES

### CHAPTER IV: CONTROL SYSTEM AND PENALTIES IN RELATION TO CONDITIONALITY

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	We suggest this amendment due to the fact that it is essential for simplification in order to maintain the current situation, in which there are no cross-compliance controls to beneficiaries under the Small Farmers Scheme, given its reduced risk.	Member States shall set up a control system to ensure that beneficiaries of the aid referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation] and in Chapter IV of Regulation (EU) No 228/2013 and in Chapter IV of Regulation (EU) No 229/2013 respectively, comply with the obligations referred to in Section 2 of Chapter 1 of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation].  <i>However, Member States could determine not to apply this control system to beneficiaries under Small Farmers Scheme referred to in the article 25 of Regulation (EU) no.../...</i>
<i>Paragraph 3</i>	This modification is an improvement of the initial text.	In their control system referred to in paragraph 1 Member States: (a) shall include on-the-spot checks to verify compliance by beneficiaries with the <b>applicable</b> obligations laid down in Section 2 of Chapter 1 of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation];
<i>Paragraph 4</i>	We request a clarification about the scope of the annual review of the control system, and its consequences.	
<b>Article 85</b>		
<i>Paragraph 1</i>	It seems to be redundant that both conditions are indicated when the breach of any of them is subject to sanctions.	[...] Under that system, the administrative penalties referred to in the first subparagraph shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned; and where one <del>or both</del> of the following conditions are met:
<b>Article 86</b>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>	It is proposed to eliminate the references that are made to intentionality, since the determination of it has been shown to be very complex. This would imply an important simplification both for the administration and for the farmers who would not have to initiate complex legal procedures to refute their intentionality	[...] For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence <b>or</b> reoccurrence <del>or intentionality</del> of the non-compliance determined. The penalties imposed shall be dissuasive and proportionate, and compliant with the criteria set out in paragraphs 2 and 3 of this Article.
<i>Paragraph 2</i>	Establishing the percentage of reduction "as a general rule of 3%" implies that the sanctions imposed by the MS must be placed in a similar or superior environment, without being taken into account when there is better compliance by the beneficiaries.	In the case of non-compliance due to negligence, the percentage of reduction shall be <b>between 1 and 5% as a general rule 3%</b> of the total amount of the payments referred to in paragraph 1 of this Article.
	The rapid alert system referred to in Article 86 should be simplified by removing the retroactive application of the reduction, and simplifying the follow-up of these cases, since it is considered that these are minor breaches	Member States may set up an early warning system that applies to individual cases of non-compliance occurring for the first time and which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. <del>Where a subsequent check within three consecutive calendar years establishes that the noncompliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied retroactively.</del>
<i>Paragraph 4</i>	In accordance with comment in paragraph 1.	<del>In case of intentional non-compliance, the percentage shall be higher than the one applied in case of reoccurrence pursuant to paragraph 3 and may go as far as total exclusion from payments and may apply for one or more calendar years.</del>
<i>Paragraph 5</i>	Reinforced Conditionality is a key element of the system and should be covered by the basic regulation, and therefore with the intervention of the co-legislators	<del>In order to ensure a level playing field between Member States and the effectiveness and dissuasive effect of the penalty system, the Commission shall be empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with further rules on the application and calculation of penalties.</del>
<b>Article 87</b>	It is proposed to maintain the status of the current regulation which is 25%. According to the legislative proposals, in which there is an increase in standards and requirements to be controlled, it is logical that the MS has a greater administrative burden, which is why this reduction indicated in the new regulation is not understood.	Member States may retain <b>25 20</b> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.

**SWEDEN**

DATE	MEMBER STATE
24/09/2018	Sweden

**TITLE IV: CONTROL SYSTEMS AND PENALTIES****Chapter II: Integrated administration and control system**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 63</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<b>Article 64</b>		
<i>Paragraph 1</i>	<p>Currently we do not have an area monitoring system in Sweden. We need a transition period to manage to get the system up and running. Sweden has quite a lot of small parcels and grazing parcels that make it difficult to use monitoring. Today we have many agri-environmental measures with commitments that can not, according to the current rules, be monitored by Sentinel. But we also foresee that this will be the case for future measures in the new CAP that we plan, in order to fulfil the objectives. Also several basic rules suggested in the conditionality will be hard to control through monitoring.</p> <p>We are optimistic about the new system but believe that MS need to decide when it is possible to use it.</p> <p>The EU legislation should be amended in order to allow flexibility for Member States and to create possibilities for a gradual introduction of new monitoring techniques. That is</p>	<p><b>Adding</b></p> <p><b>64.5.</b></p> <p><b>Member States may decide if or not to include an area monitoring system as referred to in art.63.4(b).</b></p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	allowing for the use of satellite based monitoring on Pillar I while for example maintaining OTSC on Pillar II, when needed.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	There should be a limitation of the extent of "all measures required". We would like to ask the COM to clarify this.	Member States shall take <del>all</del> measures required for the proper establishment and operation of the integrated system and shall give one another the mutual assistance needed for the purposes of this Chapter.
<b>Article 65</b>	It is important to make sure that information that is made easy available by new techniques is treated with cautiousness. Information should neither be treated by commercial actors so that the beneficiary of support is disadvantaged.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<b>Article 66</b>	SWE is positive about MS having more freedom to decide on detailed regulations.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<b>Article 67</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 4</i>		
<i>Paragraph 5</i>	Quality assessments are important to evaluate functions of systems. However, there must be a sense of cost-benefit of any additional measures that are introduced in the CAP. The Quality assessments require a lot of work for the administration. If the Quality assessment is introduced in order to replace the correspondent current auditing, SWE is positive to the change of principle. However, if the Quality assesment is added as an extra layer to evaluation and reporting, we encourage the COM to remove the request.	
<b>Article 68</b>		
<i>Paragraph 1</i>	We are optimistic about the new system but believe that MS need to decide when it is possible to use it. It should therefore be voluntary for MS.	Member States <del>may shall</del> set up and operate an area monitoring system.
<i>Paragraph 2</i>	<p>Since the controls in SWE are finished late in the year, it will be a too short time to complete and compile the results by the 15th of February. We would like to have more time until the assessment report would be submitted to the COM.</p> <p>Quality assessments are important to evaluate functions of systems. However, there must be a sense of cost-benefit of any additional measures that are introduced in the CAP. The Quality assessments require a lot of work for the administration. If the Quality assessment is introduced in order to replace some of the auditing, SWE is positive to the change of principle. However, if the Quality assessment is added as an extra layer to evaluation and reporting, we encourage the COM to remove the request.</p>	<p>68.2</p> <p>An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 31 March following the calendar year concerned.</p>
<b>Article 69</b>		
<b>Article 70</b>		
<b>Article 71</b>	It should be made clear that the article is not applicable in MS that do not have a system for payment entitlements.	
<b>Article 72</b>	<p>SWE is positive to the COM's will to decrease the number of delegated and implementing acts. This is very welcomed. Although, also the scope of the acts must be reviewed in order to reach real simplification.</p> <p>As far as possible, regulations should be set in the basic acts. Previous experience shows that also technical details in delegated acts may have big importance for the national control systems. Essential elements should not be decided in delegated or implementing acts. SWE</p>	



COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	consider that the suggested areas about IACS related matters concern essential elements and should therefore not be decided in delegated acts. Also, some of the suggested areas in delegated acts seem to fit better in implementing acts, e.g. how on the spot checks are performed	
<b>Article 73</b>	Essential elements should not be decided in delegated or implementing acts. SWE believes that, when possible, implementing acts are to prefer instead of delegated acts.	

#### Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<b>Article 84</b>		
<i>Paragraph 1</i>	SWE believes that there is a need for more information about what is included in the yearly review, before we can decide on the matter. If the yearly review is introduced in order to replace the corresponding current auditing, SWE is positive to the change of principle.	
<i>Paragraph 2</i>	The definition of "act" seems to be corresponding to the definition of "requirement" and may therefore be superfluous. If not, could the COM clarify in what context this term is to be used?	
<i>Paragraph 3</i>	Today the control sample for the checks of cross compliance is at least 1 %. However, the paying agency must also consider results from controls that are imposed in accordance with sectorial legislation. This is regulated in art.38.5 in the delegated act 640/2014. Is the COM's intention to include this regulation in a delegated act this period as well? In SWE, the control sample is in practice higher than 1 % because of this regulation. We believe that the regulation causes an unfair level playing field among farmers.	
<b>Article 85</b>		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>	Could the COM confirm that when it comes to transfer of land and animals, MS can continue to apply the same principles as today concerning transfer of responsibility of the	85.2. (c) shall provide that no administrative penalty be imposed where the noncompliance

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>conditionality and the consequent possible reduction?</p> <p>In point 85.2(c), there is no reference to “exceptional circumstances”. Is this a mistake or is it intentionally? Either way, SWE believes that it should be included.</p>	is due to force majeure <b>or exceptional circumstances</b> .
<i>Paragraph 3</i>	Could the COM explain the meaning of this paragraph?	
<b>Article 86</b>		
<i>Paragraph 1</i>	<p>SWE encourages the COM to regulate percentages only in the basic act. Can the COM confirm that this is their intention?</p> <p>Could the COM confirm that it is possible for the MS to apply the same calculation principles for reduction for conditionality as we do in today’s reduction for cross compliance? I.e that these principles are covered by the new principles in the proposal for the new HzR.</p>	
<i>Paragraph 2</i>	<p>The general rule on reductions of 3 % for negligent non-compliances is applicable regardless of the type of non-compliance. This might lead to assessments that are based on statistics instead of actual severity, extent and permanence. This 3 % rule should therefore be removed as we consider it contradictory to this other assessment. If instead, the aim is to put 3 % as a kind of center or middle value where it is possible to lower it to e.g. 1 % or increase it to e.g. 5 %, the wording should be clarified.</p> <p>SWE wants to be able to use to Early Warning System in a greater extension than today. We believe that it should be allowed in all cases concerning I&amp;R of animals. In order to do so, we would like to ask the COM to clarify whether there are any SMR’s or GAEC’s where non-compliances could never be considered as a minor? If there are SMR:s or GAEC:s where non-compliances automatically is to be considered as a direct risk to public or animal health, it should be clearly stated here. If not, it should be safe for the MS to assume that there are no such limitations.</p> <p>Regarding mandatory training SE would like to point out that it is important that this option is truly maintained as optional in the final proposal of this regulation.</p>	<p>86.2</p> <p>In the case of non-compliance due to negligence, the <b>median</b> percentage <b>value</b> of reduction shall be <del>as a general rule</del> 3% of the total amount of the payments referred to in paragraph 1 of this article.</p>
<i>Paragraph 3</i>	SE encourages the COM to regulate as much as possible in the basic act. Can the COM confirm that this is their intention?	
<i>Paragraph 4</i>	SWE is positive towards excluding the general reduction of a certain percentage in the case of intentional non-compliance.	

*CAP Strategic Plans Regulation - comments and drafting suggestions*

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 5</i>	As far as possible, regulations should be set in the basic acts. Previous experience shows that also technical details in delegated acts may have big importance for the national control systems. Essential elements should not be decided in delegated or implementing acts. As far as possible, required details concerning controls and sanctions should preferably be decided in implementing acts instead of delegated acts.	
<b>Article 87</b>	SWE believes that the percentage should stay 25 %.	Member States may retain <b>25</b> <del>20</del> % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.