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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 - Additional comments received from the Danish delegation (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 additional comments received from the Danish delegation.

DATE	MEMBER STATE
9/10/2018	Denmark

PUBLIC

TITLE IV: CONTROL SYSTEMS AND PENALTIES

Chapter II: Integrated administration and control system

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 63		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	There seems to a discrepancy between this paragraph where it is stated that integrated system to the extent necessary shall be used for the control of the conditionality and article 84, 3 (b), where it is stated that Member States may make use of area monitoring. Can the Commission clarify this?	
<i>Paragraph 4</i>		
Article 64		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>	It should be clearly stated how the Commission intends to seek assistance of specialised bodies or persons in order to facilitate the establishment, monitoring and operation of the integrated system.	
<i>Paragraph 4</i>		
Article 65		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 1</i>	It should be clearly stated which requirements there will be for the storage of data from Copernicus Sentinels satellite used in relation to the area monitoring system. It should be allowed that data used for the area monitoring system might be stored as raw data on an external server, i.e. Copernicus server via DIAS.	
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
Article 66		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 67		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
Article 68		
<i>Paragraph 1</i>	<p>Denmark supports the introduction of an area monitoring system. However, it should be further clarified in the text whether the use of the area monitoring system is compulsory in relation to control of area related interventions and/or if the Member State can choose to use the system for other purposes too.</p> <p>If the use of area monitoring system is compulsory for area related interventions there is a need for flexibility and a transition-period for the monitoring of Eco-Schemes and areabased schemes under Pillar II.</p>	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	<p>If the use of the area monitoring system is not compulsory, the provisions regulating the IACS should directly provide the legal framework to secure systematic checks by other means than monitoring. This is necessary in order to have legal certainty for the IACS framework.</p> <p>The rule about an introduction of an area monitoring system is not very detailed. Therefore further information is needed about the technical requirements that the Member State must comply with when using an area monitoring system.</p>	
<i>Paragraph 2</i>		
Article 69		
Article 70		
Article 71		
Article 72	The delegated power given in relation to Article 69 is acceptable. However for Articles 66, 67, 68 and 71 the Commission's empowerment should be restricted to only adopting implementing acts.	
Article 73	<p>It should be clarified which rules the Member States must comply with when using the geo-spatial application system and of the area monitoring system.</p> <p>As controls through a area monitoring system is a new control system, it is necessary with clear requirements in the basic act.</p>	

Chapter IV: Control system and penalties in relation to conditionality

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 84		
<i>Paragraph 1</i>	In order to simplify the administration further, we propose that the annual review of the control system in article 84 can be the annual report pursuant to Article 8 (3) or possibly part of the certification body's report pursuant to Article 11.	1. Member States shall set up a control system to ensure that beneficiaries of the aid referred to in Article 11 of Regulation (EU)

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		<p>.../... [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].</p> <p>Member States may make use of their existing control systems and administration to ensure compliance with the rules on conditionality.</p> <p>Those systems shall be compatible with the control system referred to in the first subparagraph of this paragraph.</p> <p>Member States shall conduct a yearly review of the control system referred to in the first subparagraph in light of the results achieved and submit as part of the report according to article 8 (3). For the purposes of this Chapter, the following definitions shall apply:</p> <p>(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 act, differing in substance from any other requirements of the same act;</p> <p>(b) "act" means each of the individual Directives and Regulations referred to in Article 11 of Regulation (EU) .../...[CAP Strategic Plan Regulation].</p>
Paragraph 2		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<p><i>Paragraph 3</i></p>	<p>Denmark would like the business regulation to be agile and adaptable to a rapidly changing society. We would like to ensure that the common rules allows us to exploit the technological opportunities, so we have an efficient management of EU funds. For this reason we find that, it would be useful if the regulation uses a broader definition of technologies.</p> <p>The proposal includes a requirement of a control rate for conditinality of 1% as in the present cross compliance system. However, the effective control rate may variate between Member States depending on how the control is organised. It should be made possible for Member States to respect the control rate of 1% irrespective of the national/regional organisation of controls.</p>	<p>3. In their control system referred to in paragraph 1 Member States:</p> <p>(a) shall include on-the-spot checks to verify compliance by beneficiaries with the obligations laid down in Section 2 of Chapter 1 of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]. However, on-the-spot checks will not be necessary if the obligations referred to in the first sentence of this point can be efficiently controlled administratively by use of data from computerised databases, or by other technologies</p> <p>(b) may decide, depending on the requirements, standards, acts or areas of conditionality in question, to use the checks carried out under the control systems applicable to the respective requirement, standard, act or area of conditionality, provided the effectiveness of these checks is, at least, equal to the on-the-spot checks referred to in point (a). When including these checks, the required minimum sample shall not rise above 1 % of beneficiaries cf. point (d);</p> <p>(c) may, where appropriate, make use of remote sensing, the area monitoring system or other technologies to carry out the on-the-spot checks referred to in point (a). The use of remote sensing or other technologies does not for non-areabased intervention change the size of the control sample for the checks referred to in point (d)</p> <p>(d) establish the control sample for the checks referred to in point (a) to be carried out each</p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		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]
Article 85		
Paragraph 1	We find that it is an advantage that the definition of holding now is the same in all areas. This simplifies the administration for farmers and for the Member States.	<p>1. Member States shall set up a system providing for the application of administrative penalties to beneficiaries referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation] who do not comply, at any time in the calendar year concerned, with the rules on conditionality as laid down in Section 2 of Chapter 1 of Title III of that Regulation ("penalty system").</p> <p>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 or both of the following conditions are met:</p> <p>(a) the non-compliance is related to the agricultural activity of the beneficiary;</p> <p>(b) the area of the holding referred to in Article 3 (1)(b) of Regulation (EU) .../... [CAP Strategic Plan Regulation] the beneficiary is concerned and includes all the production units used for agricultural activities and managed by the beneficiary</p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		<p>situated within the territory of the same Member State</p> <p>With regard to forest areas, however, the administrative penalty referred to in the first subparagraph shall not apply where no support is claimed for the area concerned in accordance with Articles 65 and 66 of Regulation (EU) .../[CAP Strategic Plan Regulation].</p>
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 86		
<i>Paragraph 1</i>	We would like to ensure legal certainty for the farmers	<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.</p> <p>For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence, reoccurrence or intentionality 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.</p> <p>The administrative penalties referred to in the first subparagraph of this paragraph is</p>

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		based on the control carried out according to article 84 (3)(a), (c) and (d).
<i>Paragraph 2</i>	<p>It is positive that Member States, where appropriate, may make use of remote sensing or the area monitoring system, cf. Article 84(3)(c). The area monitoring system is defined in Article 63(4)(b) as a procedure of regular and systematic observation, tracking and assessment of agricultural activities and practices on agricultural areas by Copernicus Sentinels satellite data. In IACS context the area monitoring system cover 100 pct. of the agricultural area in the Member State.</p> <p>If this implies in, case of applying the area monitoring system, that the control sample on conditionality would cover 100 pct. instead of the required 1 pct., it would give disincentives for using area monitoring in relation to conditionality. Hence, a solution has to be found how to equalise farmers in a system based on either of the two control sample systems.</p> <p>A possibility could perhaps be to select the 1 pct. sample within the 100% area monitoring sample, cf. Article 84(3)(d), and state that possible non-compliances established outside the 1 pct. control sample would have no consequences for farmers.</p>	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	In practice, it is very difficult to prove intentional non-compliance so we prefer to delete this paragraph and allow Member States who wish so to include it in their penalty system.	Delete
<i>Paragraph 5</i>	We recognize that there is a huge difference in the structure of our countries, so we are pleased with the Commission's approach with increased subsidiarity. However, we consider that there is scope for providing additional flexibility to Member States in relation to the sanctions system in the CAP plan.	Delete
Article 87	We believe that the current percentage of 25 % should be retained.	Amounts resulting from the administrative penalties on conditionality Member States may retain 20 5 % of the amounts resulting from the application of the reductions and exclusions referred to in Article 86.