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WORKING PAPER

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

Following the request from the Presidency on 12 October 2018 (WK 11762/2018 INIT), delegations will find in the Annex contribution received from the Hungarian delegation on Block (5) - Articles 91-95, Block (6) - Articles 43; 46-56, Block (7) - Articles 57-62; 74-83 and Block (8): Articles 96-99; 100-101; 102-104.

HUNGARY

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24.10.2018.	HUNGARY.

TITLE III: FINANCIAL MANAGEMENT OF THE FUNDS**Chapter III: Common provisions**

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 43		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

TITLE III: FINANCIAL MANAGEMENT OF THE FUNDS

Chapter IV: Clearance of accounts

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Articles 46-47	The single audit model is basically good, unless the COM intend to continue with its own audits creating an “over-bureaucratic” hybrid system. In the case of a sufficiently uniform operation, it may reduce the burden on the Commission and the PA, but the CB's tasks and administrative burdens may increase, precisely because it is transferred from these actors to the CB. In our view, the new model stops responding to the compliance with the regulatory framework established for EU intervention areas. It is therefore necessary to clearly state whether or not there is a need for checks at beneficiary level. At present, this is controversial. Our current understanding is that the CB will not carry out audits at the level of the final beneficiaries, and according to the new audit model, this will NOT be (can not) be expected. We do not agree that following the introduction of the principle of "single audit" (Article 46), it wishes to maintain its right to carry out large-scale inspections by Member States (Article 47), including individual producers, the paying agency , the certifying body, the managing authority and each participating institution. The proposal runs counter to the Commission's promise that audits of conformity / regularity will be done away with.	
Article 46		<i>Article 46</i> <i>Single audit approach</i> For the purposes of Article 127 of the Financial Regulation, the Commission shall take assurance from the work of the

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
		certification bodies referred to in Article 11 of this Regulation.
Article 47	Generally speaking COM checks conflict with the single audit approach thus only either one should be maintained.	
<i>Paragraph 1</i>	point b) should be deleted since it enables the COM to carry out wide range of audits covering the implementation of the CAP plan. This is contrary to what's been communicated.	
<i>Paragraph 2</i>		
Article 48		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 49		
Article 50	Since the aim is to move away from regulating and controlling non-compliance in depth, we believe that only some general principles of irregularity and non-compliance should be laid down in the basic act, everything else should be left to the MS.	
<i>Paragraph 1</i>	should be deleted	
<i>Paragraph 2</i>		
Article 51		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 52	Performance-based assessment could be a forward-looking concept, but we see implementation very problematic. A radically new concept requires MS to adjust the whole institutional set-up of implementation which leads to high administrative costs. Unfortunately the COM has not shared the details of the concept and its practical implementation, therefore COM action to initiate reductions appears to be arbitrary, the	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	whole process entails significantly more risk for the MS than the current one. We can't see the role of CB in the annual performance clearance either. We oppose the annual nature of reductions (clearance), because the proper implementation of some measures may take several years. Outputs lagging behind in the first years may be well compensated later on when the program gains momentum. In case of newly introduced voluntary measures (e.g. risk management) it is almost impossible to give an annual breakdown for expected outputs. MS are, therefore inclined to take a conservative approach to avoid risks and some otherwise useful measures may not be introduced at all. Performance should be measured at the end of the program but not against rigid pre-set output figures, but in the context of broader impacts.	
<i>Paragraph 1</i>	No threshold is indicated for missing out on outputs, thus severe cases of reductions are likely to occur. Paragraph should be dropped.	
<i>Paragraph 2</i>	Criteria for COM's assessment is entirely missing, action may be arbitrary. Although MS may provide justifications, however unclear what justifications may be accepted. We believe that delegated acts are not the right legal forms to lay down such criteria, legal certainty should be guaranteed on the level of the basic act.	
<i>Paragraph 3</i>		
<i>Paragraph 4</i>	The scope and content of the delegation are unclear, the whole procedure entails potentially uncalculable risks even if the overall performance of the implementation is satisfactory.	
<i>Paragraph 5</i>		
Article 53	We do not understand exactly the basis of the establishment of non-conformity by the COM when there are no checks at beneficiary level? If COM intends to investigate matters at a control level only, it is impossible to associate any exact amount with the findings. Consequently, flat-rate reductions will be the general practice necessarily overestimating the financial impact of the actual errors. Since MS may not have the proper means to actually quantify the real losses, overpenalization may be hard to avoid. Such approach is unfair, thus unacceptable.	

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
	The introduction of annual performance clearance and the maintenance of the conformity procedure result in a more complicated and financially risky situation for the MS, therefore either a performance-based or a conformity-based approach should be applied instead of a mixed system. In our opinion art 53 should be deleted.	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<i>Paragraph 6</i>		
<i>Paragraph 7</i>		
Article 54	Hungary welcomes all the simplification intentions of the Commission. We consider that the issue of non-compliance recovery can be further simplified by abolishing the amounts outstanding on 31 December 2020. Thus, a real administrative burden reduction can be achieved, as there is no further need to deal with the II and III Annexes of the current 908 regulation. As a reminder, for example, in the negotiation of the omnibus regulation, the Commission argued for the abolition of the 50-50% rule that these were small amounts. Hungary would prefer to have similar rules for EAGF and EAFRD recovered irregularities, thus the MSs to retain and reuse 100% of the irregularities collected under the 1st pillar. Question to the Commission: one of the meetings of AGRIFIN said that although the II. and III. Annexes will disappear, but some report should be given. In the new system, what kind of reporting (content, form, etc.) should be given by the Member States on the recovery, even in accordance with the requirements of OLAF?	

Regulation on financing, management and monitoring of the CAP

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 55		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 56		

TITLE IV: CONTROL SYSTEMS AND PENALTIES

Chapter I: General rules

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 57		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<i>Paragraph 6</i>		
Article 58		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
Article 59	Question to the Commission: Article 59 deals with non-compliance with public procurement rules, but the second sentence of this article is not clear. “Member States shall ensure that the legality and regularity of the transaction shall only be affected up to the level of the part of the aid not to be paid or to be withdrawn.” Please clarify in this regard, given that it is a new provision not covered by the current regulation and it is necessary to clarify it in order to establish appropriate national practice.	
Article 60		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 61		
Article 62		
Paragraph 1		
Paragraph 2		
Paragraph 3	In case of the d) and e) point of the article 62 it is necessary to clarify what is the intention of the Commission about the advances for the rural development investments. In the 2014-2020 period the rural development advances were lagging behind than the expected due to the strict Union legislation. The requirements for the agricultural advances are differ from any other operative programs. Bank guarantee required or equivalent security must be presented to claim the advance. This strict regulation hits the agricultural sector however this sector is far the best repayer, the proportion of the unpaid loans is the lowest here than any other sectors (eg construction, trade etc.) For the upcoming period (2021-2027) there should be a possibility for the application of the collateral-free advances for rural development investments.	
Paragraph 4		

TITLE IV: CONTROL SYSTEMS AND PENALTIES

Chapter III: Scrutiny of transactions

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Articles 74-83	We agree with the sections of the draft EAGF for ex-post control as it is in line with the Commission's ambition to ensure continuity in this area. We do not support the deletion of these articles as the ex-post controls at EAGF in Hungary provide a high level of added value in the control system and thereby contribute to the protection of the EU's financial interests.	
Article 74		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 75		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 76		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 77		
<i>Paragraph 1</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
Article 78		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
Article 79		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<i>Paragraph 6</i>		
Article 80		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
Article 81		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 82		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
Article 83		

TITLE V: COMMON PROVISIONS

Chapter II: Use of the euro

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 91		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 92	Question to the Commission: For Member States outside the euro area, the exchange rate to be used for planning will be regulated? What is the Commission's proposal, which exchange rate is best for the planning?	
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<i>Paragraph 6</i>		
Article 93		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 94		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

TITLE V: COMMON PROVISIONS

Chapter III: Reporting

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 95		

TITLE V: COMMON PROVISIONS

Chapter IV: Transparency

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 96		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
Article 97		
Article 98		
Article 99		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		

TITLE VI: DELEGATED ACTS AND IMPLEMENTING ACTS

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 100		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		
<i>Paragraph 4</i>		
<i>Paragraph 5</i>		
<i>Paragraph 6</i>		
Article 101		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
<i>Paragraph 3</i>		

TITLE VII: FINAL PROVISIONS

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 102		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 103		
Article 104		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

TITLE V: COMMON PROVISIONS

Chapter I: Transmission of information

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 88		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		
Article 89		
<i>Paragraph 1</i>		
<i>Paragraph 2</i>		

COMMISSION PROPOSAL	COMMENTS	DRAFTING SUGGESTIONS
Article 90	point b) For certification body reports, clearly define how the CB report should be electronically authenticated (as there is no paper-based report). Furthermore, we do not consider it acceptable that the EU regulation requires the CB to comply with PA rules, since the PA must have ISO27001 certification. Why would CB have such a strict condition?	

Recitals

Commission proposal	Comments	Drafting suggestions
Recital (42)	We would like to underline that the recital (42) in our understanding it is excessive and in the other hand we are concerned about the placement of this kind of wording in the recitals. Our question is related to this. Several Member States (Including Hungary) does not participate in the cooperation stated in the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'). How the Member States can understand the recital (42)?"	