



Council of the European Union
General Secretariat

**Interinstitutional files:
2018/0217(COD)**

Brussels, 08 October 2018

WK 11877/2018 INIT

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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Agricultural Questions
Subject:	Non-paper on reductions, suspensions and financial corrections

Delegations find attached a non-paper from the Commission Services concerning the reductions, suspensions and financial corrections, which the Commission will present at the AGRIFIN meeting of 10-11 October 2018.



Brussels, October 2018

NON-PAPER

Subject: Reductions, suspensions and financial corrections

This non-paper aims to clarify the Commission's intentions in the legislative proposals¹ in relation to:

- suspension of payments;
- reduction of payments;
- financial corrections;
- corrective action, taken or planned, in the context of the annual performance clearance and conformity procedure.

1. IN WHICH CASES MAY SUSPENSIONS, REDUCTIONS AND FINANCIAL CORRECTIONS BE APPLIED?

1.1. Suspension

Suspensions may be applied in the cases where

1. If **the clearance package**² for year N, due by 15/02, of year N+1 in accordance with Art. 8(3) and 11(1) HZR, **is not submitted**, the monthly payments as regards EAGF may be suspended - **Art. 38(1) of HZR and the declared EAFRD expenditure is deemed inadmissible for interim payments Art 30(7) of HZR.**

The trigger in this case is NON-SUBMISSION OF CLEARANCE PACKAGE.

2. When comparing the **declared expenditure and reported output** with the average cost per output (planned unit amount – e.g. an average amount of support per ha) **the difference is higher than 50%** for a given financial year N, the Commission no longer has ex-ante assurance the CAP Strategic Plan is being implemented appropriately, extending to the future expenditure. Then, the Commission may suspend payments for the declared expenditure in financial year N+1, in relation to the concerned intervention, if the Member State does not provide duly justified reasons for this difference. (**Art. 38(2) HZR**).

¹ COM(2018)393 and COM(2018)392

² Including as per Art. 8(3) HZR annual accounts, annual performance report, the management declaration, accompanied by the opinion from the certification body as per Art. 11 HZR.

Example: an average amount per hectare – if the amount paid is more than twice the planned unit amount, the Commission would say that it is not in accordance with what was planned (all of the estimates that the Member States have put in when determining the eligible amount per hectare in their CAP plans). Consequently it indicates that the output (e.g. number of hectares for which a specific decoupled direct payment intervention is paid) is too low in relation to the incurred expenditure.

In summary, the relevant indicator in this case is OUTPUT.

3. In cases when, in the performance review based on the annual performance report submitted for financial year N, the Commission determines that **result indicators deviate more than 25 %** from the respective annual milestone, and upon the Commission's request the Member State does not submit or implement an action plan, the Commission may suspend future payments in relation to the underlying interventions (**Art. 39 HZR and Art. 121(9) SPR**).³

In summary, the relevant indicator in this case is RESULT.

4. In case when **serious deficiencies in governance systems** with insufficient corrective action are detected and upon the Commission's request the the Member State does not submit or implement an action plan, the Commission may suspend future payments in relation to the underlying interventions (**Art. 40 HZR**).

In view of the new delivery model, whereby EU-eligibility rules are not fixed at individual beneficiary level (Art. 35 HZR), system's errors and weaknesses are any instances of non-compliance detected with regard to the governance systems i.e.

- governance bodies and
- basic Union requirements laid down in SPR and HZR such as IACS including LPIS, and including the reporting system put in place for the purposes of the annual performance

In the management declaration the head of the paying agency declares that governance systems function properly and reports any system's errors or weaknesses (Art. 8(3)(c)(iii) HZR). Likewise, the certification body assesses whether the governance systems function properly (Art. 11(1) HZR).

Suspensions may be applied to future payments of the relevant declared expenditure where the deficiencies exist.

In summary, the trigger in this case is serious deficiencies in GOVERNANCE SYSTEMS.

³ It is to be noted that the corrective action in form of an action plan can also mean to discontinue a certain type of intervention, and having it replaced with a more effective one, that would bring the results for targets back on track.

1.2. Reductions

Reductions will be applied in the following cases :

1. The realised output, linked with the realised expenditure, both reported by the paying agency and certified by the Certification Body will form the basis for the annual performance clearance by the Commission. In the performance clearance exercise, in case the declared expenditure does not have a corresponding output, and after having taken into account justifications provided by the Member State (**Art.52 HZR**) reductions will be applied.

Article 52(4) HZR provides empowerment to the Commission to adopt delegated acts on rules and criteria for justifying the ‘unmatched’ expenditure by the MS and for the Commission to apply reductions.

It is to be noted that the CAP SPR provides a certain flexibility, such as for the area/animal related interventions. Member States should set up as part of the CAP Plan a maximum amount of support per unit (i.e. higher than the planned (average) unit amount) or a percentage of variation of the planned (average) unit amount for each intervention (Art. 89 SPR). It is intended that all the expenditure beyond this maximum variation should be ineligible (one-to-one reduction).

In summary, the relevant indicator in this case is OUTPUT.

2. In cases when

- following a suspension of payments in year N+1 (see point 1.1 (2) above), resulting from a larger than 50% difference between output reported and expenditure compared to the planned unit amount for year N, and
- when in year N+1 this declared difference persists

a permanent reduction is applied as described in point 1.2 (1), (with the difference that the reimbursement to the Member States subject to this reduction, was never executed) (**Art. 38(2) HZR**).

In summary, the relevant indicator in this case is OUTPUT.

3. In case of **delayed or insufficient progress towards targets** and when the Member States fails to submit or implement an action plan and the situation is not remedied by the closure of CAP plan then amounts suspended as per point 1.1 (3) above may be definitively reduced, (**Art. 39 of HZR**).

The relevant indicator in this case is RESULT.

4. As in the current framework, in cases when **financial ceilings have been exceeded** the Commission shall, or if the **payment deadlines have not been complied with**, the Commission may reduce monthly or interim payments to Member States, (**Art. 37 of HZR**).

The trigger in this case is NON-RESPECT OF THE FINANCIAL CEILINGS OR PAYMENT DEADLINES.

1.3. Financial corrections

In the event that Certification bodies or Commission audits detect serious deficiencies in the governance systems, i.e. do not confirm the situation described in the management declaration as reported by the paying agency a conformity procedure will be opened.

In accordance with Art. 53 HZR, financial corrections have to be applied where

- expenditure has not been effected in conformity with Union law⁴, or
- for expenditure related to CAP plan interventions⁵, the cases of serious deficiencies in governance systems with insufficient corrective action.

In summary, the trigger in this case is **SERIOUS DEFICIENCIES IN GOVERNANCE SYSTEM** for all interventions under the CAP plan and **NON-RESPECT OF THE UNION LAW** for measures remaining outside the CAP plan.

2. CORRECTIVE ACTIONS TAKEN OR PLANNED IN RELATION TO SUSPENSIONS AND FINANCIAL CORRECTIONS

As in the current system, any corrective actions taken or planned are to address system's errors and weaknesses as to ensure a proper management of the Funds.

Such corrective action can be taken by Member States in advance of making final payments to beneficiaries or may also consist of financial corrective action in the annual declaration and reporting to the Commission if established in advance of drawing up the management declaration and should be reported in this declaration.

The HZR proposal is also explicit in referring to action plans in the context of performance – progress towards targets, namely corrective action in form of an action plan aiming at putting underperforming parts of the CAP plan back on track with clear progress indicators.

Action plans may be requested by the Commission where there is insufficient progress towards targets (**results**) and in the event of serious deficiencies in the **governance systems**. Where these are not submitted or implemented or if they are manifestly insufficient to remedy the situation, the Commission would not have sufficient ex-ante assurance to continue reimbursements. Therefore, payments may be suspended (**Art. 39 and 40 HZR**), to protect the Funds from any future risk, as well as to provide incentive for remedial actions.

3. TIMELINES AND PROCESSES: SUSPENSION PERFORMANCE CLEARANCE AND CONFORMITY

In principle, the application of suspension, reduction and a financial correction will be set in the context of an exchange between the Member State and the Commission:

- A “No less than 30 days” reply time - procedure is provided for assessing the need for suspension (Art. 38, 39 and 40 HZR).
- In case of reduction, the Commission shall also give the Member State an opportunity to submit its comments and justify any differences. This process will need to take

⁴ I.e. as it is currently provided for in Art 52 of Reg No 1306/2013

⁵ New reference in line with the New Delivery Model.

place between 15 February (submission of annual clearance package) and 15 October (adoption of any decision on reduction) of the year following the financial year in question (Art. 52 HZR). An implementing act setting out the rules on the information exchange is foreseen.

- A conformity procedure would be in place as to assess the level of the financial corrections (Art. 53 HZR). The timeline and process would be set out in an implementing act in line with the current procedure set out in Art. 34 R908/2014.

4. FINANCIAL CLEARANCE

The annual financial clearance (Art. 51 HZR) will be operated as today. Implementing acts on the decision on the clearance of the accounts of the accredited paying agencies will cover the completeness, accuracy and veracity of the annual accounts submitted and shall be without prejudice to the content of the implementing acts subsequently adopted pursuant to annual performance clearance (Art. 52 HZR) and conformity procedure (Art. 53 HZR). They will be adopted by 31 May of the year following the budget year in question.