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WORKING PAPER

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From: General Secretariat of the Council
To: Working Party on Financial Agricultural Questions

Subject: Proposal for a Regulation on Financing, management and monitoring of the CAP
- Non-paper from the Commission services on Block 4

Delegations will find attached a non-paper from the Commission services in reply to inquiries from Member States on Articles 25-32 of the proposed Horizontal Regulation.

REGULATION ON FINANCING, MANAGEMENT AND MONITORING OF THE CAP – BLOCK 4

TITLE III: FINANCIAL MANAGEMENT OF THE FUNDS

Chapter II: EAFRD

PUBLIC

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 25				
Article 26	LV	<p>According to the proposal for a CAP SPR, technical assistance is none of the EAFRD interventions. In the new period technical assistance will be calculated as percentage of the total contribution of the EAFRD, which is indicated in the Annex IX of the proposal for CAP SPR. Therefore, we note that the wording of this article is not accurate and should be reconsidered.</p> <p>At the same time, we draw attention of the Commission that a reconsideration of the definition of Article 6 of the HZR is needed. Taking into account that in the new period technical assistance will not be a separate intervention and noticing that Art.6 refers only to the types of EAFRD interventions referred in the Chapter IV of Title III of the proposal for a CAP SPR, it turns out that technical assistance will be excluded from the EAFRD expenditure at all.</p> <p>At the moment it looks like definition "Rural development plan" is mechanically replaced with</p>		<p>While technical assistance at the initiative of MS is not considered as an intervention, actions of technical assistance are covered by the EAFRD, as foreseen under Article 86(3) of the CAP Strategic Plan Regulation (SPR). It is to be understood that EAFRD as referred under Art. 6 shall finance Rural Development interventions referred to in Chapter 4 of Title III of the CAP plan regulation and technical assistance of MS referred to in Article 112 of that regulation.</p>

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		definition "CAP Strategic plan", therefore we point out that Commission should review articles 6, 26, 28, 29, 30, 35 and all the others, which includes definition "CAP Strategic plan". The CAP Strategic Plan cannot be considered as a synonym for Rural development plan, as it covers also EAGF, not only EAFRD.		
Article 27				
Article 28	LV	According to our comment on the Article 26, this article should be reconsidered by Commission.		See answer to question on Article 26 above.
Article 29	PL	29.1 Advance payments for intervention financed from EAFRD funds instead of 1% per annum, for the first three years, should be increased to 5% in the first year of implementation of the CAP strategic plan, ie in 2021. Such solution will enable smooth implementation of interventions financed from EAFRD especially that in case of possible delays in adopting strategic plans of the CAP, the EC proposal does not provide solutions enabling reallocation of 2021 allocation for subsequent years of implementation of the CAP strategic plan	1. Following its decision to approve the CAP Strategic Plan, the Commission shall pay an initial prefinancing amount to the Member State for the entire duration of the CAP Strategic Plan. <i>This initial pre-financing amount shall be paid in 5 % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan.</i> If a CAP Strategic Plan is adopted in 2022 or later, the earlier instalments shall be paid without delay following such adoption.	This is an MFF related question.
	CY	29.1 In the new regulation prefinancing is fixed for everybody in [1]% for the three first years. In the previous regulation under some circumstances a MS could receive an increased prefinancing. Cyprus used this option at the beginning of the current period and it was very helpful. An		This is an MFF related question.

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		increased prefinancing option should be available for MS's that might experience some economic difficulties.		
	IT	No comment, because it is a provision in brackets and will be part of horizontal negotiations on the MFF.		This is an MFF related question.
	EL	29.1 Due to the multiple of changes we would like prefinancing to be increased to 4.5%, as follows: 1.5% for 2021, 1.5% for 2022, 1.5% for 2023.		This is an MFF related question.
	LV	According to our comment on the Article 26 this article should be reconsidered by Commission.		See answer to question on Article 26 above.
	NL	29.3 It is not justified to calculate prefinancing on the initial EAFRD budget since the transfers between the two pillars may have substantial effect. For the Dutch situation it could lead to an increase of the budget by 400% . Either this paragraph should be adapted or in the MFF negotiations the percentage of paragraph 1 should be increased to 5%	No Additional prefinancing shall be paid or recovered where a transfer to or from the EAFRD has taken place in accordance with Article 90 of Regulation (EU) .../... [CAP Strategic Plan Regulation].	This is an MFF related question.
	ES	29. 1 The pre-financing shall be made in two years so that the second pillar starts as soon as possible	This initial pre-financing amount shall be paid in installments as follows: (a) in 2021: 1,5 % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan; (b) in 2022: 1,5 % of the amount of support from the EAFRD for the entire duration	This is an MFF related question.

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			<p>of the CAP Strategic Plan;</p> <p>(e) in 2023: 1 % of the amount of support from the EAFRD for the entire duration of the CAP Strategic Plan.</p>	
Article 30	LV	<p>According to our comment on the Article 26 this article should be reconsidered by Commission.</p> <p>According to Art. 86(3) of CAP SPR, technical assistance shall be reimbursed as a flat-rate financing in the framework of interim payments pursuant to Art.30 of HZR regulation. However, Art.30 of the HZR does not mention anything about the technical assistance at all. There are references to rural development interventions which however do not cover technical assistance. There is a lack of a clearly established mechanism for funding the technical assistance to Member States. The article should be supplemented by a new paragraph in respect to technical assistance.</p>		<p>Article 86(3) of the CAP Strategic Plan Regulation already specifies that technical assistance is reimbursed as a flat rate financing in the framework of the interim payments referred to in Article 30 of the HZ regulation and on the basis of Article 125(1)(e) of the financial regulation.</p>
	DE	<p>30.10 Germany asks for clarification with regard to any additional information which may be necessary for the smooth processing of interim payments.</p>		<p>The additional information may be necessary in case of an incomplete, unclear or inconsistent declaration of expenditure.</p> <p>The possibility to interrupt the EAFRD payment deadline exists currently under Article 22(4) of Implementing Regulation 908/2014. This possibility has now been introduced in Article 30(10). Therefore, there is no change compared to the current system.</p>

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	ES	30.10 This implies legal uncertainty for Member States. Furthermore, the articles establish suspension procedures and, for the purpose of simplification, there should not be different procedures with the same purpose.	Where the authorizing officer by sub-delegation requires further verification, owing to incomplete or unclear information provided or arising from disagreement, differences of interpretation or any other inconsistency relating to a declaration of expenditure for a reference period, arising in particular from a failure to communicate the information required under Regulation (EU) .../... [CAP Strategic Plan Regulation] and Commission acts adopted under that Regulation, the Member State concerned shall, upon request by the authorizing officer by sub-delegation, provide additional information within a period set in that request according to the seriousness of the problem.	The possibility to interrupt the EAFRD payment deadline exists currently under Article 22(4) of Implementing Regulation 908/2014. This possibility has now been introduced in Article 30(10). Therefore, there is no change compared to the current system. (Please note that provisions for interruption of payment deadline exists also for other ESI funds under CPR.)
	HR	30.10 The last sentence in paragraph 10 should be deleted or re-drafted. The term “unsatisfactory” may create legal uncertainty.	Where the authorising officer by subdelegation requires further verification, owing to incomplete or unclear information provided or arising from disagreement, differences of interpretation or any other inconsistency relating to a declaration of expenditure for a reference period, arising in	The wording of this article is the same as in the current article 22(4) of Regulation No 908/2014 (IA of 1306/2013). Based on the grounds indicated in Article 30(10) of the HZ regulation, Commission may take action based on articles 37 to 40 of the HZ regulation.

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			<p>particular from a failure to communicate the information required under Regulation (EU) .../... [CAP Strategic Plan Regulation] and Commission acts adopted under that Regulation, the Member State concerned shall, upon request by the authorising officer by sub-delegation, provide additional information within a period set in that request according to the seriousness of the problem. The time limit for interim payments laid down in paragraph 8 may be interrupted for all or part of the amount for which payment is claimed, for a maximum period of six months, from the date on which the request for information is sent and until receipt of the information requested which is deemed satisfactory. The Member State may agree to extend the interruption period for a further three months.</p> <p>Where the Member State concerned fails to respond to the request for additional information within the period set in that request or where the response is considered unsatisfactory or indicates that the applicable rules have not</p>	

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			been complied with or that Union Funds have been improperly used, the Commission may suspend or reduce payments in accordance with Articles 37 to 40 of this Regulation.	
	HU	31.1 Reference to the condition of availability of resources needs further clarification		The same formulation exists in Article 30 (2) of the HZ regulation and it exists in the current Regulation 1306/2013. It means simply that the Commission will pay MS, if there are sufficient resources for EAFRD in the EU budget of the respective year.
Article 32	PL	32.1 During the implementation of interventions financed from the EAFRD, the N+3 rule should apply, as it is the case for the period 2014-2020. The introduction of the N+2 rule, proposed by the EC, means limiting the flexibility of implementing CAP Strategic Plans and jeopardizing the loss of funds, which is particularly acute in the situation of a general reduction in the budget. In the event of any delays in adopting the CAP Strategic Plan, it will not be possible to speed up the implementation of expenses to a level that would allow the N+2 rule to be met. The wording of further points of that article should be adjusted accordingly.	1. The Commission shall automatically decommit any portion of a budget commitment for rural development interventions in a CAP Strategic Plan that has not been used for the purposes of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article 30(3) has been presented to it in relation to expenditure effected by 31 December of the second third year following that of the budget commitment.	This is an MFF related question.
	CY	32.1 The automatic decommitment should remain to three years following that of the budget commitment as in article 38 of Regulation 1306/2013. We were informed from colleagues that in MFF Negotiating Box several MS ask to retain the 3 years also for other	The Commission shall automatically decommit any portion of a budget commitment for rural development	This is an MFF related question.

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		Funds.	interventions in a CAP Strategic Plan that has not been used for the purposes of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article 30(3) has been presented to it in relation to expenditure effected by 31 December of the [third] year following that of the budget commitment.	
	IT	32.1 The automatic decommitment period decreases from year N+3 to year N+2. No comment, because it is a provision in brackets and will be part of horizontal negotiations on the MFF.		This is an MFF related question.
	ES	32.1 The release of the budget commitment is n+2 and it entails a reduction of one exercise to declare expenditure. In the first programmed years, fulfillment of a firmer requirement will be more difficult to meet. We consider that, in order to meet the commitments, it is necessary to keep the n+3 rule, as has been requested by Spain for the rest of structural funds	The Commission shall automatically decommit any portion of a budget commitment for rural development interventions in a CAP Strategic Plan that has not been used for the purposes of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article 30(3) has been presented to it in relation to expenditure effected by 31 December of the second third year following that	This is an MFF related question.

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			of the budget commitment.	
	CZ	As regards the automatic decommitment for CAP Strategic Plans, we do not agree with the change from n+3 to n+2. We consider the current rule to be more flexible and in view of the new delivery model the Czech Republic prefers to continue using the n+3 rule.	The Commission shall automatically decommit any portion of a budget commitment for rural development interventions in a CAP Strategic Plan that has not been used for the purposes of prefinancing or for making interim payments or for which no declaration of expenditure fulfilling the requirements laid down in Article (30)3 has been presented to it in relation to expenditure effected by 31 December of the second third year following that of the budget commitment.	This is an MFF related question.
	ES	32.3 The same as Paragraph 1	In the event of legal proceedings or of an administrative appeal having suspensory effect, the period for automatic decommitment referred to in paragraph 1 or 2 shall, in respect of the amount relating to the operations concerned, be interrupted for the duration of those proceedings or that administrative appeal, provided that the Commission receives a substantiated notification from	This is an MFF related question.

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			the Member State by 31 January of year N + 3 4	
	HU	N+3 rule is preferred over N+2 in sub-paragraph a)		This is an MFF related question.
	ES	32.4 The same as Paragraph 1	The following shall be disregarded in calculating the automatic decommitment: (a) that part of the budget commitments for which a declaration of expenditure has been made but for which reimbursement has been reduced or suspended by the Commission at 31 December of year N + 2 3;	This is an MFF related question.
	IT	32.4 The automatic decommitment period decreases from year N+3 to year N+2. No comment, because it is a provision in brackets and will be part of horizontal negotiations on the MFF.		This is an MFF related question.
	CY		The following shall be disregarded in calculating the automatic decommitment: (a) that part of the budget commitments for which a declaration of expenditure has been made but for which reimbursement has been reduced or suspended by the Commission at 31 December of	This is an MFF related question.

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			year N + [3];	
	FI	32.4 The Commission already has the information on the reductions and suspensions concerning the Member State under Article 32(4)(a), which means that it should be unnecessary to declare this again.	By 31 January, the Member State shall send to the Commission information on the exceptions referred to in point b of the first subparagraph concerning the amounts declared by the end of the preceding year.	Article 32(4) does not require MS to declare the suspensions and reductions but establishes the elements which should be taken into account or not in the n+2 calculation. Amounts reduced or suspended by the Commission by 31/12 of the year N+2 are not considered for the calculation of the automatic decommitment.
	EL	32.4 N+2 to be changed to N+3. We prefer the rule to remain the same as in the current programming period.		This is an MFF related question.