



Council of the European Union
General Secretariat

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

Brussels, 25 October 2018

WK 12872/2018 INIT

LIMITE

**AGRI
AGRIORG
AGRISTR
AGRIFIN
CODEC
CADREFIN**

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	Presidency
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 - PRESIDENCY REPORT on the examination of the proposed Horizontal Regulation in the Working Party AGRIFIN: key comments, questions and preliminary views from delegations

With a view to the meeting of the WP AGRIFIN on 6 November, delegations will find in Annex a 'draft Presidency report on the examination of the proposed Horizontal Regulation in the WP AGRIFIN: key comments, questions and preliminary views from delegations'.

This report has been drawn up under the sole responsibility of the Presidency and will be attached to the 'Presidency progress report on the examination of the Horizontal Regulation' for the meetings of the SCA on 12 November and of the Agriculture and Fisheries Council on 19-20 November.

The purpose of this report is to inform Ministers about the key issues in the proposed Horizontal Regulation under examination in the WP AGRIFIN rather than to reflect all positions of each delegation on all issues under consideration.

WK 12872/2018 INIT

LIMITE

EN

At the AGRIFIN meeting of 6 November, delegations will be offered the opportunity to provide the Presidency with general comments on the attached draft Presidency report.



PRESIDENCY REPORT

on the examination of the proposed Horizontal Regulation

in the Working Party AGRIFIN¹:

key comments, questions and preliminary views from delegations

BLOCK (1): scope and definitions (Arts. 1-3); general provisions on agricultural funds (Arts. 4-7)

1. Although minor changes are introduced on the **scope, definitions and exemptions in cases of force majeure** (Arts. 1-3), delegations seek further clarification on what the new terms '*governance systems*' and, particularly, '*basic Union requirements*' would exactly cover (e.g. IACS, conditionality, genuine farmer, WTO requirements, public procurement, etc.). They believe that the '*basic Union requirements*' should be further specified as Paying Agencies (PAs) and Certification Bodies (CBs) need to be clear on the rules.
2. Delegations regret that two cases of **force majeure** have been removed in the new proposal ('*death of the beneficiary*' and '*long-term professional incapacity*'), although they acknowledge that the list (in Art. 3) is non-exhaustive and MS are free to add situations/cases. Some delegations either want to see the entire list deleted, thereby leaving decisions on force majeure to MS, whereas others suggest to have a more comprehensive list (similar to the one in the current Regulation).
3. Although minor changes are introduced to the provisions dealing with the **funds financing agricultural expenditure, EAGF and EAFRD expenditure and other expenditure, including technical assistance** (Arts. 4-6), delegations have questions on the new sectoral interventions set out in the CAP Strategic Plans Regulation (Art. 5(2)(b)) and specific measures for agriculture in the outermost regions and the smaller Aegean islands (Art. 5(2)(e)). Delegations took note of the Commission's explanation that EAFRD should continue to finance technical assistance in shared management (Art. 6). With regard to the types of CAP expenditure (Art. 7), delegations raise particular questions on Technical Assistance (TA), financed at the initiative of, and directly

¹ WK 8106/2018 REV3

managed by, the Commission, including studies, monitoring, information exchange, surveys, information technology and systems, acquisition of satellite images (in future data), audit, etc., and how this would relate to TA at the initiative of the MS, which can only be financed under the EAFRD (Arts. 112 & 86(3) of the proposed CAP Strategic Plans Regulation) and can be used for the implementation of the Plan as a whole. The Commission provided a non-paper on this matter.²

<u>BLOCK (2): governance bodies (Arts. 8-11); transmission of information (Arts. 88-90)</u>
--

4. Delegations agree that the CAP **governance structure, comprising a PAs and Coordinating Bodies (Coor. B.), CBs and the Competent Authority (CA)** (Arts. 8-11) is maintained but some have difficulties with the proposed reduction in the number of PAs. Delegations also have questions which bodies in the '*governance system*' are responsible for what, e.g. PAs, CBs and Managing Authority's (MAs) roles with regard to Annual Performance Reporting (APR) and Annual Performance Clearance (APC). Delegations question whether the proposed reinforcement of the roles of the Coor.B and CB would require additional resources and would lead to additional administrative burden. A number of delegations underline the need for the governance structure to respect the constitutional provisions of each Member State (as acknowledged in Recital 9).
5. With regard to the **Annual Performance Report** (APR) to be provided by the PA (Art. 8(3) & (4)), delegations seek clarification how this article relates to the roles of the Managing Authority (MA) and Monitoring Committee (MC), as defined in the CAP Strategic Plan Regulation (Art. 110(2)).
6. The Commission provided a non-paper on the drawing up and submission of the APR.³ However, delegations still have questions regarding the drawing up by the Coor. B. of the APR, the transmission of which shall be accompanied by **one management declaration covering the entirety of that report** (Art. 8(4)); some delegations point out that there is no legal base for this in the new Financial Regulation.⁴

² WK 11881/2018

³ WK 8875/2018

⁴ Regulation (EU, Euratom) 2018/1046 (see: Article 63 on shared management)

7. The process of **Annual Performance Clearance** (APC) is not yet entirely clear to delegations, e.g. with regard to the role CBs are to play therein, and they fear that the APC will imply additional administrative burden at national level. With regard to this new task for the PA and CB, some delegations point out that it will be difficult to meet the deadline, as set out in the Financial Regulation, of 15 February of the year following the financial year concerned for transmitting the annual account.
8. With regard to the **communication of information, confidentiality and implementing powers** (Arts. 88-90), delegations note that these articles are similar to the corresponding ones in the current Regulation.

BLOCK (3): financial management EAGF/budget discipline, incl. the agricultural reserve (Arts. 12-17); financial management EAGF/financing of expenditure (Arts. 18-24); information measures (Art. 44)

9. With regard to the **budget ceiling** (Art.12) **and compliance with the ceiling** (Art. 13) - delegations note that these articles are similar to the corresponding ones in the current Regulation.
10. In the context of the new **agricultural reserve** (Art.14), the amount of at least EURO 400 million and the roll-over system has been set in brackets and will be discussed in the MFF context. In general, delegations are open to discuss the roll-over system as a matter of simplification, i.e. to carry over the unused amounts in 2020 to the following years. However, some delegations are not sure if the earmarked amount will be sufficient to cover the crises in the agricultural sector whereas other delegations would favour refilling the reserve with assigned revenues rather than taking over the unused amount of the crisis reserve from the year 2020, which, they believe, should be reimbursed to the beneficiaries.
11. On **financial discipline** (Art. 15). the text referring to the possibility for MS to apply a minimum threshold of the amount to be reimbursed per final beneficiary in accordance with objective and non-discriminatory criteria has been set in brackets. Nevertheless, a number of delegations see a need for a clear definition of '*objective and non-discriminatory criteria*' whereas the Commission argues that MS can define this themselves (subsidiarity). A few delegations object to the deletion of the current threshold of EURO 2000,00 where financial discipline would not apply.

12. Delegations note that the provisions in the proposal on the **budget discipline procedure** (Art. 16) and on the **early-warning and monitoring system** (Art. 17) are similar to the ones in the current Regulation and also note that the provisions on **monthly payments** (Art. 18), the **procedure for monthly payments** (Art. 19), on **administrative and personnel costs** (Art. 20), and on **public intervention expenditure** (Art. 21) are broadly similar to the corresponding ones in the current Regulation.
13. As to the **procedure for monthly payments** (Art. 19), some delegations wish to maintain the current Committee procedure in order for all MS to know what's happening in individual MS. The Commission explained that the Committee procedure for overrun is maintained.
14. A recurring point of discussion is whether the provision on **administrative and personnel costs** (Art. 20) covers TA, which is, however, not the case according to the Commission; TA is only covered under the EAFRD (see Arts. 68 & 112 of the CAP Strategic Plans Regulation).
15. With regard to the **acquisition of satellite data** (Art. 22) and the **monitoring of agricultural resources** (Art. 23), delegations do not yet fully comprehend how this article relates to IACS (Art. 64), which images/data the Commission will make available free of charge, what exactly the MS are supposed to do with such images/data and under which conditions the data recovered from the MS can be used by the Commission. Some delegations also seek clarification if satellite images used by MS for on-the-spot controls will continue to be financed by the EU budget; on this, the Commission explained that satellite images are part of satellite data.
16. Finally, delegates note that there is no change to the current regulation as far as **information measures** are concerned (Art. 44).

BLOCK (4): financial management EAFRD/gen. provisions/financing under the CAP SP/rural development interventions (<u>Arts. 25-32</u>)
--

17. Delegations note that the proposed **provisions applying to all payments** (Art. 25), to the **financial contribution from the EAFRD** (Art. 26), to **budget commitments** (Art. 27) and to **payments for rural development interventions** (Art. 28) are necessary to adapt the Horizontal Regulation to the new CAP Strategic Plans Regulation.

18. Some delegations commented that the **proposed amount for pre-financing** of 1% for 2021-2023 is too low and some would like to see an increase (to 5%) of the amount (Art. 29); delegations acknowledged, however, that this (paragraphs 1(a), (b) & (c)) should be addressed in the negotiations on the next MFF.
19. Delegations have a number of technical questions with regard to the newly introduced provisions on **interim payments** (paragraphs 3-5 & 10 of Art. 30), such as in case of financial instruments, or on the legal meaning of '*unsatisfactory*' response in the context of the procedure for payment deadlines..
20. With regard to the **automatic de-commitment for CAP Strategic Plans** (Art. 32), a number of delegations wish to maintain the current "N+3" practice here instead of the proposed "N+2" as this will offer Member States some stability in the new CAP post-2020 implementation period; delegations do also acknowledge here that paragraph 4(a) of this Article should be addressed in the negotiations on the next MFF.

BLOCK (5): financial management of the Funds/common provisions, incl. suspension of payments (Arts. 33-42 & 45); use of the Euro and reporting (Arts. 91-95)

21. The provision on the **agricultural financial year** (Art. 33) remains unchanged as compared to the current Regulation.
22. With regard to **double funding** (Art. 34), delegations note that the terms "EAGF" and "ESI-Funds" have been inserted in the Articles but they are not yet entirely clear how things will change as compared to the current programming period, e.g. how double funding can be avoided.
23. A provision on the **eligibility of expenditure incurred by PAs** (Art. 35) has been introduced in line with the new delivery model and the CAP Strategic Plans Regulation. delegations seek clarification on in particular paragraphs (b) and (c) concerning the corresponding reported output and eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans. For its part, the Commission explained that a transitional Regulation will set out how "old rules/fresh money" would work and that the current eligibility criteria will continue to apply for the remaining of the programming period.

24. Delegations note that the proposed provisions on the **compliance with payment deadlines** (Art. 36) and on the **reduction of monthly and interim payments** (Art. 37) are broadly similar to those in the current Regulation.
25. Delegations have various concerns regarding the newly proposed articles on the **suspension of payments in relation to the annual clearance, the multi-annual performance monitoring and the governance systems** (Arts. 38-40): in general, some delegations believe the suspension rates should be set out in the basic act (and not in a Delegated Act, as is currently the case), others believe that "30 days" is too short to respond to the Commission on a forthcoming Implementing Act on suspension, and yet other delegations plea for a transition period without suspensions or propose to delete Arts. 38-40 altogether. Some delegations fear an increase of administrative burden where the Commission may ask a MS to implement the necessary remedial actions in accordance with an "action plan with clear progress indicators" and others wonder how these action plans relate to the possible Delegated and Implementing Acts on suspensions. The Commission provided a non-paper on reductions, suspensions and final corrections.⁵
26. Specifically, the new provision on the **suspension of payments in relation to the annual clearance** (Art. 38), has been introduced in order to take into account the new CAP delivery model. Delegations are concerned, however, that a suspension of payments will already occur if the Commission does not receive the requested documents in time from the concerned MS (Art. 38(1)). Another concern relates to the new annual performance clearance (Art. 38(2) in conjunction with Art. 52), according to which the Commission may suspend payments to a MS if there is a difference of more than 50% between the expenditure declared and the amount corresponding to the relevant reported output. Also, MS have a deadline to submit any justification within 30 days and if this justification is not acceptable to the Commission, a reduction may be applied (according to Art. 52). Delegations note that this deadline might be too short for justification and that this provision might have a real impact on the budgets of the MS. Therefore, delegations ask for more clarification and to have at least the criteria for determining the duration and the rate of suspension of payments in the basic act. Some delegations share the view that the conformity procedure (Art. 53) should also to be applied to the Annual Performance Clearance.

27. With regard to the **suspension of payments in relation to the multi-annual performance monitoring** (Art. 39), delegations note that in case of insufficient progress towards targets, as set out in the national CAP Strategic Plan and monitored in accordance with Arts. 115 & 116 of the CAP Strategic Plan Regulation, the Commission will ask for an "action plan" with clear progress indicators. Where the MS fails to achieve progress, the Commission will request the MS for an action plan. If the MS fails to submit or to implement the action plan, there may be a suspension, and possibly final reduction at closure, of the amount concerned. As this provision might have a serious financial impact on the national budget, some delegations ask for more clarification on the procedure for the establishment of agreement on the action plan, including on its duration. In general, several delegations expect that the proposed article will result in additional administrative burden and will not lead to simplification.
28. Finally, it should be noted that the whole proposed provision on the **suspension of payments in relation to deficiencies in the governance system** (Art. 40) is subject to discussion in the context of the MFF negotiations. Delegations would like to have more clarification about the term "*serious deficiencies* in the functioning of the governance system" as there are implications on suspensions and final financial correction.
29. Delegations note that only minor changes have been made to the provisions dealing with **keeping separate accounts** (Art. 41), **payment to beneficiaries** (Art. 42) and **Commission powers** (Art. 45).
30. It is noted that the proposed text on the **use of the Euro** and on **reporting** (Arts. 91-95) is broadly similar to the current Regulation.

BLOCK (6): financial management of the Funds/assignment of revenue (Art. 43) and clearance of accounts (Arts. 46-56)

31. With regard to the **assignment of revenue** (Art. 43), covering both EAGF and EAFRD-funds, delegations appreciate the presentation from the Commission showing the assigned revenue in the current Regulation 1306/2013 and in Art. 43 of the new proposal.⁶
32. Delegations generally support the proposed **single audit approach** (Art. 46).

33. The proposed provisions on **checks by the Commission** (Art. 47), **access to information** (Art. 48) and **access to documents** (Art. 49) are broadly similar to the ones in the current Regulation. However, delegations question why there is still the possibility for the Commission to carry out (on-the-spot) checks in the MS even though there will be the single audit approach. Delegations also seek further clarification on the information to be provided by the MS to OLAF (Regulation 2988/95); some delegations suggest that the reference to OLAF in Art. 50 (Commission powers) should be deleted.
34. With regard to the **annual financial clearance** (Art. 51), delegations note that this provision has not changed much as compared to the current Regulation.
35. The proposed new **annual performance clearance** (APC) (Art. 52) is a major element in the context of the annual clearance. This Article takes into account the new delivery model in combination with the CAP Strategic Plans. Delegations wonder how this Article relates to the corresponding Arts. 38 and 39 in the context of the APC. A main concern to delegations is the financial impact to their national budget in case the expenditures declared do not have corresponding outputs and/or fail to show sufficient progress towards the targets, as set out in the national CAP Strategic Plans. As there will not be 2 months to provide the Commission with any justification and since there will be no conformity procedure anymore, several delegations request for the inclusion in the basic act of a clear procedure (deadlines, methods for calculation etc.).
36. Regarding the **conformity procedure** (Art. 53), several delegations are concerned about the term "*serious deficiencies*" in the functioning of the governance systems (Art. 53(1)) as such "serious deficiencies" could lead to amounts to be excluded from Union financing or lead to suspension and/or to final reduction. Therefore, delegations ask for a clear definition of this term in the basic act. Delegations also believe that the methods for calculation should be regulated in an Implementing Act rather than in a Delegated Act; the Commission explained that it is currently done in a Delegated Act and that no change is being proposed here.
37. With regard to the **provisions specific to the EAGF** (Art. 54) **and EAFRD** (Art. 55), delegations note that the Commission approach remains more or less the same as compared to the current Regulation, i.e. recoveries related to irregularities for EAGF are still to return to the EU budget, while those for EAFRD can be reused. Some delegations seek clarification and show concerns regarding the deletion of the so-called 50:50-rule and other delegations suggest to include a *de minimis* rule in the basic act.

The Commission explained that the deletion of the 50/50 rule means that it will no longer require detailed debtor's ledger reporting or actively seek reimbursement to the EU budget of amounts not yet recovered.

BLOCK (7): control systems and penalties/general rules (Arts. 57-62) and scrutiny of transactions (Arts. 74-83)

38. Regarding the **protection of the financial interests of the Union** (Art. 57), some delegations suggest to delete paragraph 3 on appropriate precautions ensuring the penalties applied by the MS as a whole. Delegations also ask for clarification of the meaning of "complaints" in paragraph 4; the Commission explained that this term is used in line with the current Art. 74 of Regulation 1303/2013 and it is also defined in Art. 63 of the proposed new CPR.
39. Delegations note that more flexibility seems to be left to the MS as regards the **rules on checks to be carried out** (Art. 58).
40. Delegations note that the following proposed provisions are similar to the ones in the current Regulation: **non-compliance with public procurement rules** (Art. 59), **circumvention clause** (Art. 60), **compatibility of interventions for the purposes of checks in the wine sector** (Art. 61), and **securities** (Art. 62).
41. As far as the **scrutiny of transactions** (Art. 74-83) is concerned, delegations note that there is almost no change to the current Regulation. However, quite a number of delegations call for the deletion of those provisions for the reason that export refunds, to which those provisions generally apply, are not important anymore; for its part, the Commission takes the view that these provisions are still needed for existing public and private storage.

BLOCK (8): common provisions/transparency/protection of personal data (Arts. 96-99); delegated and implementing acts (Arts. 100-101; final provisions (Arts. 102-104)

42. As regards to the **publication of information relating to beneficiaries** (Arts. 96-98), delegations have concerns about the reference in Art. 96(1) to the Common Provisions Regulation (CPR) as Art. 44, point 3 is applicable to the EAGF and EAFRD. Some delegations identified inconsistencies between the CPR and the proposed Horizontal Regulation: the CPR provides for the updating of information at least every three months, while the Horizontal Regulation provides for the annual publication of data.

The Commission confirmed that the intention is for the annual publication of data and that this needs to be further clarified in the text of the Regulation.

43. Regarding the **processing and protection of personal data** (Art. 99), delegations note that this provision has been updated.
44. With regard to **Delegated Acts and Implementing Acts** (Arts. 100 & 101), several delegations call for a reduction in the number of proposed Delegated Acts and for more Implementing Acts instead.
45. In the context of the **final provisions** (Arts. 102-104), some delegations ask for transitional provisions and for flexibility with a view to adapting to the new CAP framework and programming period.

Integrated administration and control system (IACS) (Arts. 63-73) and Control system and penalties in relation to conditionality (Arts. 84-87) (as examined in the responsible WP on Horizontal Agricultural Questions on 19 September)

46. With regard to the **Integrated Administration and Control System (IACS)** (Art. 63-73) and while the proposed additional subsidiarity was appreciated, clarification is requested on certain definitions (e.g. "to the extent necessary", "agricultural parcel", "claimless system") and on whether and to which extent IACS should apply to the wine sector (Art. 63).
47. Delegations seek further clarification on the **elements of the integrated system** (Art. 64), such as regarding the formulation "where applicable" and the announced assistance by the Commission.
48. With regard to **data keeping and sharing** (Art. 65), delegations have misgivings on the proposed obligation for MS to keep the data on the annual outputs reported in the context of the annual performance clearance for ten years, which is considered as being too long and burdensome, and the retroactive application is criticised as well.
49. On the **identification system for agricultural parcels** (Art. 66), further clarification is needed of the proposed requirement for the Land Parcel Identification System (LPIS) to include information relevant for the reporting on the indicators according to Art. 7 of the CAP Strategic Plans Regulation.

50. Clarification is also required on the functioning of a "claimless system" for applications as regards area-based and animal-based interventions in the provision dealing with the **geo-spatial and animal-based application system** (Art. 67).
51. Delegations believe that the proposal for an obligatory annual quality assessment of GSAA and an **area monitoring system** (Art. 68) would increase administrative burden and should therefore be reconsidered. Moreover, the deadline of 15 February for submitting the assessment report, which is too tight (Arts. 66-68) should be revised as well. Delegations express concern on the area monitoring system as regards eligibility conditions for environmental-climate measures and small parcels. A voluntary application and a transitional period should be considered. In addition, the Commission's targeting regarding the area monitoring system has to be clarified.
52. In general, the proposed subsidiarity concerning the **control and penalties system** (Art. 70) is welcomed although some delegations underline the need to ensure a level playing field across the EU.
53. Any Commission empowerments to adopt **Delegated or Implementing Acts** (Arts. 72 and 73) should be strictly circumscribed, according to the delegations.
54. With regard to the **control system and penalties in relation to conditionality** (Arts. 84-87), delegations fear that applying conditionality to small farmers would significantly increase administrative burden for both the farmers concerned and national authorities; small farmers should therefore continue to be exempted from conditionality. There is a need to clarify the scope, functioning and purpose of the proposed new obligation for the Member States to review their control system once per year.
55. With regard to the **control system for conditionality** (Art. 84), delegations need further reflection on the minimum rate of the control sample and on the need of establishing the control sample on the basis of a risk analysis.
56. On the **system of administrative penalties for conditionality** (Art. 85), doubts exist among delegations on the possibility to use an intentionality criterion for calculating penalties.
57. As regards the **calculation of the penalty** (Art. 86) and instead of a general reduction percentage (3%), delegations would prefer to have more flexibility when calculating payment reductions in the case of non-compliances due to negligence. While an early

warning system could help to address individual cases of minor non-compliances occurring for the first time, the retroactive application of reductions needs to be revisited. The calculation of penalties in cases of reoccurrence of non-compliance should disregard cases outside the CAP Strategic Plan period concerned. Delegations believe that all the main elements should be laid down in the basic act and any empowerments to the Commission to adopt delegated acts should be clearly confined.

58. On the **amounts resulting from the administrative penalties on conditionality** (Art. 87), Member States plea to continue to retain 25% of the reductions imposed in cases of non-compliance.
-