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INFORMATION

From:	General Secretariat of the Council
To:	Delegations

Subject:	Post 2020 CAP reform package - Commission replies to questions submitted by Member States on the future CAP legal framework
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Delegations will find in the annex written replies to the questions which Member States raised ahead of the SCA meeting in Ljubljana, for information purposes only.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT

Deputy Director-General, in charge of Directorates D, E and F

Brussels
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Dear Ms Vrevc,

Please find in annex replies to interpretation questions on the future CAP legal framework submitted by Member States ahead of the SCA meeting of 6 September in Ljubljana.

The purpose of the present letter is to clarify and explain the provisions based on the recent political agreement on the CAP. Please note that the ordinary legislative procedure is not finished and the Regulation not adopted yet. The reply aims at assisting Member States. It is provided for information purposes only and is not a legally binding document. It does not bind the European Commission in relation to the future approval procedure of the CAP Strategic Plans of Member States. It was prepared by Commission services and does not commit the European Commission.

Once the Regulation is adopted, it is in the event of a dispute involving Union law, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

In order to ensure a consistent approach in the preparation of the CAP Strategic Plans, the Commission envisages including the position presented in this letter on CIRCABC for information to all Member States.

Yours sincerely,

Mihail DUMITRU

Annex: Q&A on SPR, HZR and CMO

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Part I : Q&A on the SPR

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4(1) (a)	<u>Definition of agricultural activity</u> “Agricultural activity” may now also serve the provision of public goods, even though this does not become sufficiently clear in the following two indents (which essentially correspond to the text of the COM draft): in what way does the Commission plan to take this aspect into account? Could this, for instance, translate into a “more nature conservation friendly” interpretation of the definition of permanent grassland (cf. the second indent of sentence three of (a) (iii))?	DE	As explained in Recital (4) of the draft SPR regulation, the concept of public goods refers to the role of agriculture in providing public goods and emphasizes that, for the purpose of WTO Green Box compliance, a farmer must always be given a choice between the productive and the maintenance activity. It is not requested to further define it (the concept of public goods), nor does it directly translate into other definitions under Article 4 of the draft SPR regulation.
4(1)(b)	'agricultural activity' - Shall the definition of "agricultural area" cover all possible areas which are eligible for all CAP SP interventions including agri-environmental schemes? Where should "agricultural land" for Art.65	LV	The area covered under AECM may be larger than the area covered under DP interventions, in order to accommodate agricultural land and other beneficiaries beyond farmers. It follows the same approach as in the current period. In this respect, Member States are free to define the land eligible for the support under this Article (as part of the description of their agri-environmental interventions) and land eligible

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	interventions, in case when eligible area is also “Agricultural land beyond agricultural area” as set out in the Strategic plan template be defined? Shall we provide some exemptions in the "agricultural area" definition regarding separate areas which would not be eligible for direct payments but could be eligible under agri-environmental schemes since environment and climate measures are implemented there? In a similar way for definition of agricultural activity - where should those exemptions related with agri-environmental commitments which go beyond baseline be described?		for agri-environment-climate commitments may differ from the definition of eligible hectare provided for in Article 4 of the SPR. To clarify, regarding definitions of ‘agricultural area’ and of ‘agricultural activity’, MS will have to define them in Section 4.1 of the SFC template. The definition of ‘agricultural area’ has to consist of 3 types of agricultural areas: arable land, permanent crops and permanent grassland. Areas covered under Art. 65 interventions can be broader and encompass other types of lands, which could be specified under intervention(s) in question. Under definitions of ‘agricultural area’ and of ‘agricultural activity’ there are no exceptions related to agri-environmental commitments. Other requirements which are linked with the description of the intervention can be included under Section 5.3.6 However, there are some derogations under the definition of ‘eligible hectare’. In this connection, it should be noted that for the purpose of eligibility to direct payments, ‘standard’ rules, i.e. Art. 4(1)(c) of the SPR, have a number of derogations linked to the undertaking of envi-clima related obligations/commitments. Thanks to the latter, the previously eligible area remains eligible when, following the undertaking of an envi-clima related commitment/obligation (e.g. a commitment leading to set-aside of the area due to the undertaking of interventions under Art. 65 of the SPR), the agricultural activity is no longer performed on the area. These derogations are part of ‘eligible hectare’, MS cannot define them further, because they apply by default.
4(1)(b)(i) ii)	permanent grassland What is meant with “not reseeded with different types of grasses”? Does it mean “different species of grasses”?	FI	Yes, it refers to different species of herbaceous plants. To clarify, the term 'different types of grasses' is meant to encompass 'different types of grasses or other herbaceous forage'. It was proposed to make this concept clearer in the regulation in the exercise of legal revision (see text circulated to delegations on 21 September 2021): 'permanent grassland and permanent pasture' (together referred to as 'permanent grassland') shall be land that is used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) <i>and that has not been included in the crop rotation of the holding for five years or more and, where Member States so</i>

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			<i>decide, that has not been ploughed up, tilled, or reseeded with different types of grass or other herbaceous forage, for five years or more.</i>
4(1)(b)(i) ii)	Land used to grow <u>grasses or other herbaceous forage</u> is not considered permanent grassland, among others, if it is land “that has not been..., or not reseeded with different <u>types of grasses</u>, for five years or more”. We would like to know from the Commission whether the phrase “different types of grasses” does not actually refer to “different types of grasses or other herbaceous forage”. This is crucial for Germany as the typical crops used for crop rotation are e. g. ley grass (grass only) and clover grass (mixture of grass and clover). We would therefore like to know whether the text could be amended accordingly before the different language versions are being sent out. Should this no longer be possible, the question arises as to whether the Member States may interpret the text in such way. Alternatively may the Member States define the term of “crop rotation” in such way at national level, without drawing up a regulation on “different types of grasses”.	DE	As explained in the previous reply, the term 'different types of grasses' is meant to encompass 'different types of grass or other herbaceous forage'. The concept of 'crop rotation' cannot be defined further for the purpose of this definition because it refers to changing to crops other than 'grasses or other herbaceous forage'.
4 (1) d)	'active farmers'	SK	The income test is meant to indicate the minimum agricultural activity that is deemed by the MS as necessary for the notion of active farmer. It can be a fixed threshold or a comparison

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	when using the criterion of the income tests, is it possible to define an active farmer on the basis of a certain percentage ratio of the total income from agricultural production and the total amount of received direct payments?		with other incomes of the farmer. If MS concentrate on agricultural production only instead of agricultural activity, there is an issue with the WTO Green Box requirement. The direct payments are income from agricultural activity. They are also taken into account in the last paragraph of Article 4(1)(d) when presuming that farmers receiving an amount of direct payments below 5 000 EUR are active farmers per se.
4(1)(d) active farmer	Draft articles 65 and 67 state that the aid schemes devoted to them are intended for farmers ("farmers") and other categories of beneficiaries ("other beneficiaries", "forest holders and their associations " and " land managers "). When the draft provisions provide that aid schemes are intended for "farmers", do the Member States have the possibility of granting such aid only to "active farmers"? We are thinking of support for the conversion to organic farming, which at present can only be granted to "active farmers" under Article 29, §1 of Regulation (EU) 1305/2013. Will the Member States be able to condition the granting of aid for the installation of young farmers (art. 69, §2, a) and new farmers (art. 69, §2, b) on the condition that the beneficiaries undertake to fulfill within a certain period of time the conditions to be considered as an “active farmer”, by	BE	AECM support should not be limited to active farmers. The scope of this support instrument goes beyond agricultural area and can target other beneficiaries beyond farmers. When it comes to the definition of Young Farmer (YF) under Article 69(2)(a), Member States need to fulfill the same definition as for the first pillar (Article 4(1)(e) [SPR]). The YF to be supported under Article 69 is in the process of becoming a farmer; this means that the farmer is in the process of installation before submitting the application, but s/he has not yet finished with the installation. The legal text no longer lays down the timeline as to when a young farmer receiving start-up aid support needs to comply with the definition of active farmer. Moreover, the conditions for the submission and content of the business plan will be laid down by the Member States in their CAP Strategic Plans. In this respect, it is expected that with the business plan, the YF makes the commitment to be installed as a farmer and to carry out agricultural activities. The business plan has to be considered as a general framework driving the development of the holding during and after the beneficiary’s setting up and not as a precise roadmap to be strictly followed. When it comes to the definition of New Farmer (NF), Member States need to fulfill the same definition as for the first pillar (Article 4(1)(e) [SPR]). The conditions for the submission and content of the business plan will be laid down by the Member States in their CAP Strategic Plans, but since the NF is not considered as an individual who is in the process of installation, it is expected that s/he fulfills the definition of active farmer at the time of submitting an aid application.

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	analogy with the provision provided for in article 19 §4, al. 3 of Regulation (EU) n°1305/2013?		
4 (1) ea)	'new farmer' is it obligatory for MS to define 'new farmer' even if the MS does not apply any grant/intervention of this type under the CAP Strategic Plan?	SK	As regards direct payments, the definition is relevant when it comes to allocating payment entitlements through the reserve. If the MS does not use payment entitlements, there is no need to provide for the definition of 'new farmer'. For rural development, the definition is only necessary when there are interventions targetted to new farmers and if the specific output indicator for new farmers is being used (O22a).
4 (1) ea)	Do the Member States need to provide a definition of a new farmer even if no specific support measures will be envisaged to the new farmers?	FI	See reply above.
4(1)(e)	'young farmer' - MS define the skills and competencies required for young farmers to be eligible for support. Is it possible for MS to define the different timeframe of required training or skills competences for each intervention, taking into account the different nature of the interventions under the pillars (e.g. I pillar - an annual payment for the area of the holding requiring inspections during the year accordingly with the education-related activities must be completed within the year. II pillar support is provided for the implementation of multi-annual projects to establish or develop a farm accordingly also with the education-	LV	The definition and all its elements (age, training and skills required, and conditions for being head of the holding) should apply accross the whole CAP plan. Further eligibility conditions may be included in the interventions.

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	related activities can be obtained in the longer term).		
11	11 conditionality + annex III GAEC7 and GAEC8 - what definition of "grasses or other herbaceous forage" is to be applied in the case of application of the exemptions for GAEC7 and GAEC8 referred to in footnotes 7 and 8?	SK	In the CAP Strategic Plan, elements of framework definitions not defined in the SPR (like the one in question) have to be defined by Member States based on local specificities and the EU rules.
11	The wording of the first point of the GAEC 9 does not correspond to the explanation of the COM during the GREX of July 20, 2021. According to the COM, the Member States are free to choose among the options proposed, but on the basis of the current wording, it seems that Member States are more likely to have to offer all three options anyway. Annex III: no remarks, except on GAEC 4. Indeed, the significant ditches and the application of buffer strips or grass strips are novelties. According to our interpretation, the continuity of the current GAEC on rivers and the consideration of ditches as a river or not is in the hands of the Member States. This should be confirmed by COM.	BE	As a general principle, MS define GAECs. On GAEC 9, specifying which options will be offered to farmers is part of the choices that MS need to do, though for the reasons explained in the SCA they cannot offer only the second option (combination with an eco-scheme). That said, the Commission services are carefully analysing the extent to which MS are flexible in this choice. The detailed position will be communicated in the updated GAEC fiches. On GAEC 4, as in GAEC 1 in the current period, MS will have the possibility to define a water-course.
12	Article 12 and GAEC 9	SE	Each GAEC needs to be defined to address the environmental issue and the practice concerned in relation with that particular GAEC, as set out in Annex III. The legal provision (Article 12)

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	During the negotiation process, there were several exemptions included in Annex III. We presume that, irrespective of those exemptions, article 12 should still give leeway for Member States to adapt, “where relevant, the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use such as farming practices, farm size and farm structures and the specificities of outermost regions”. Concerning for example “the minimum share of agricultural area devoted to non-productive areas or features in GAEC 9” our analysis show that organic producers by their existing farming system generally contribute to enhanced biodiversity, mainly by not using pesticides and because there are generally tolerated more weeds in the crops. Would it thus be possible, based on such analysis, to exempt organic producers from the requirement of GAEC 9?		allows to adapt the obligations, not to define exemptions from the obligation. The allowed exemptions are foreseen in the SPR basic act. At the same time we can assume that most organic farmers will fulfill GAEC 9 requirements and hence represent a minor risk for non-compliance. MS could set up controls to focus them where this risk is high. In general MS define GAEC standards in detail and take choices regarding obligations for farmers. Issue will be settled in detail in the updated GAEC fiches.
GAEC 9	Annex III: Are the three scenarios specified in GAEC 9 (in future GAEC 8?) optional for the Member States, i. e. may a Member State, for example,	DE	As explained above, as a general principle, MS define GAECs. On GAEC 9, specifying which options will be offered to farmers is part of the choices that MS need to do, though for the reasons explained in the SCA they cannot offer only the second option (combination with an eco-scheme). That said, the Commission services are carefully

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	or a minimum amount. If a MS chooses an area then for animal-related coupled support it may also set an amount threshold. Article 15a (1) is restricted only to animal-related <i>coupled</i> support and does not include other animal-related support such as a payment for animal welfare under echoschemes.		Art. 15a(3) Where a Member State has decided to set a minimum area in accordance with the first sub-paragraph, it shall nevertheless set a minimum amount in accordance with the second sub-paragraph for those farmers receiving an animal-related <i>coupled</i> support to be paid per animal in the form of direct payments who hold fewer hectares than that minimum area. Recital (25a) To avoid the excessive administrative burden caused by managing numerous payments of small amounts and to ensure an effective contribution of the support to the objectives of the CAP to which the direct payments contribute, Member States should set requirements in terms of minimum area or support-related minimum amount for receiving direct payments in their CAP Strategic Plan. When Member States decide to grant animal-related <i>coupled</i> income support to be paid per animal, they should always set a threshold in terms of minimum amount to avoid penalising farmers, who are eligible for this support, but whose area is below the threshold. Due to the very specific farming structure in the smaller Aegean islands, Greece should be able to decide whether any minimum threshold should apply in that area.
18(2)	Please provide clarification and examples in which cases the amount of ISIP per hectare may be reduced in accordance of last sentence of Article 18(2)	LV	The last sentence of Art. 18(2) reads : <i>'In accordance with Article 97(2)(ca), the amount of basic income support per hectare may be reduced taking into account support under other interventions in the CAP Strategic Plan.'</i> If group of territories B has higher income support need compared to group of territories A, when duly justified, BISS/ha could still be lower in group B as long as the combination of all the income support - including ANC - per ha is higher in territory B <u>and</u> is sufficiently addressing the needs in terms of redistribution and income support.
26 (1)	Complementary redistributive income support for sustainability how should the mechanism be applied in practice, according to which the MS may address the need of redistribution of income support by other instruments and interventions? Which alternative ways of redistribution exist in this context?	SK	As a general rule, MS should assess the redistributive needs and present an overview of how the aim of fairer distribution is addressed in the strategy. In addition, the legislation provides that MS must dedicate at least 10% of DP to the redistributive payment. When duly justified in the CAP Plan that the redistributive needs (from larger to smaller) are sufficiently addressed in by other instruments and interventions, MS may derogate from this minimum % for the redistributive payment, or may decide not implement it at all. For this purpose, they may use instruments of the first pillar (reference to EAGF in Article 26), such as: • Reduction of payment and capping, • Payment for small farmers,

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		LV	• Territorialisation of basic income support, • Internal convergence, • possibly coupled income support... To note that all those instruments are not all automatically redistributing support from larger to smaller farms, it depends on the details of their design, on farm structures or other conditions. It is also important to recall that the needs assessment may show that a 10% envelope for the redistributive payment would not be sufficient to address the needs. As to how to assess whether the redistributive needs have been sufficiently addressed, this is work in progress and that will need to be performed together with MS. Still, it seems appropriate that MS take at least the following steps: · Specific assessment of needs in terms of fairer, more effective and efficient distribution of DP. To note : - o 80-20 ratio is not enough: the ratio tells about concentration of DP which is highly linked to the specific national farm structure, but not about the targeting of DP towards those who need it most, notably the smaller farms - o Good practice would be an analysis of income level and direct payments levels by category of farms, notably by physical size, classes of agricultural income (but also other dimensions can be relevant) · Overview of the strategy (interventions and other tools) to address the identified needs, in particular concerning smaller farms (but also other dimensions can be relevant) · Assessment of the targets and their justification in particular for result indicator R6. R.6 is the PMEF result indicator to address the better redistribution objective. Assessment of the expected evolution of R.6 compared to current situation. In the spirit of the new strategic approach, no one size fits all; the Commission does not prejudge the instruments most adapted to MS specific context as choices should be based on analysis. Yes, CRISS can be differentiated based on groups of territory defined for BISS under Article 18(2), but it is not a requirement: MS may have BISS differentiated between groups of territory according to Article 18(2) while CRISS is not (depending on the needs). MS has to justify that

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	Can redistributive payment be differentiated taking into account the same conditions as under Article 18(2)? Is it possible to differentiate the amount of CRISS in the case if MS decides not to differentiate the amount of the BISS?		the implementation of CRISS by group of territory addresses MS needs in terms of redistribution of income support from bigger farms towards smaller farms. The definition of the different thresholds and unit amounts will also have to be justified and address the needs in terms of redistribution of income support. As regards the last question, no it is not possible to apply the groups of territory (art. 18(2)) only for CRISS and not for BISS. Article 26(3) states that : <i>'Member States shall establish at national or regional level, which may be the groups of territories referred to in Article 18(2)'</i> and Article 18(2) is only referring to BISS which means that, in order to have different groups of territories for CRISS, they should be created, first, to implement BISS. However, as stated in Article 26(3), CRISS could also be differentiated by regions independently from what is done for BISS as long as it is justified on the basis of the needs in terms of redistribution of the income support from bigger farms to smaller farms (horizontal principle of the NDM). Please bear in mind that if different approaches (groups of territories for BISS, regions for CRISS) can be justified as both interventions have different goals, it can also make the whole system more complex to implement and it is crucial to ensure consistency (avoid that one approach contradicts benefits from another).
27	Complementary income support for young farmers is it in compliance with Article 27 (2) if the setting-up of the holding during the five years preceding the first submission of the aid application is also considered as the first setting-up of the holding?	SK	The reason why the concept of being «newly set-up» is included here is that the farmers need an increased support for the beginning of the activity. Linking the «newly set-up period» to the first aid application alone does not guarantee that the payment period of the CIFYF actually covers the first years of activity of the YF (i.e. the farmer may have set-up some years before starting applying for aid).
Art 28(3)	The text still gives an impression that when the Member States establish the lists for eco-schemes they need to cover all four areas (climate, environment and animal welfare and antimicrobial resistance).	FI	As explained orally in the SCA of 6 September in Slovenia, at least one of the areas needs to be covered by an eco-scheme which is particularly relevant for eco-schemes linked to animal welfare and antimicrobial resistance. Recital 63 (SPR text after legal revision) sets out that: <i>Member States may also plan eco-schemes for supporting practices on animal welfare and antimicrobial resistance.</i> This was added to explain the meaning of 28(3) that not all areas of action need to be covered.

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			Further interpretation might be offered on the basis of the recital. This issue can be covered in the final version of the Q&A document on ES.
28 (4)	Schemes for the climate, the environment and animal welfare how and to what extent should the MS demonstrate in their CAP Strategic Plan that the given eco-scheme covers at least two areas of actions for the climate, the environment, animal welfare and antimicrobial resistance?	SK	MS should show briefly the benefits of practices covered by the eco-schemes commitments for the relevant topics (areas of action) with e.g references to the SWOT or other information.
28(5a)	We would like to ask clarification of Article 28(5a). In the first subparagraph, it is said: <i>“provided that the obligations of the eco-schemes go beyond the relevant statutory management requirements and the minimum standards for good agricultural and environmental condition of land”</i> . However, based on Article 28(5), point (a) the eco-schemes shall always go beyond the relevant SMRs and GAEC standards. So what does <u>the first subparagraph</u> of Article 28(5a) mean? What added value does the first subparagraph give to the Member States compared to Article 28(5) point (a)? And what does <u>the second subparagraph</u> mean? Does this only	FI	This provision (Article 28(5a)) has been set up to cover the case where there is a direct combination between a specific GAEC standard and eco-scheme requirements. De facto, the eco-scheme requirements will go beyond the associated GAEC standards. This is in line with Article 28(5) point (a). There is no added value to refer again to the conditions under 28(5) point (a). On <u>the second subparagraph</u> , the Commission confirms that one single control (of the eco-scheme) would be sufficient to consider the associated GAEC requirements checked.

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	mean that a GAEC standard over which a relevant eco-scheme has been set does not need to be checked separately, but is considered to be checked while the eco-scheme is controlled?		
28(5)(d)	The regulation stipulates that eco-schemes are different from commitments in respect of which payments are granted under Article 65. In the case of organic farming might it be considered as different: a top-up payment for environmentally friendly practices for organic farming which is green by definition and under Article 65 payment compensating loss of income and losses due to organic farming practices?	LV	In both cases the practice covered is fulfilling requirements of organic farming which is the same (cannot be considered different). Also, it goes against the no double funding provision. In sum, the commitments would not be considered different.
28(6a)	Finland would like to thank the Commission for the answers concerning Article 28(6a) in the GREX meeting on 20 July. Could you give your answers also in the Q&A document, especially as regards “any other appropriate methodology”?	FI	The Commission is preparing a final version of the Q&A document on eco-schemes, including the questions raised at the GREX of 20th July. We envisage to complete this work by the CDP planned for the end of October.
29	Coupled income support in the context of coupled income support, e.g. in the vegetable sector, if the MS demonstrates that this is fully justified, is it possible to differentiate within one intervention the unit rate according to the way in which a particular type of vegetable is grown (e.g. field-grown tomatoes at the level	SK	Yes, different unit amounts can be provided under the same intervention where justified. This justification must be based upon the identified needs of the sector/products concerned, which in turn must be based upon the detailed SWOT analysis.

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	of EUR 100/ha, tomatoes grown in greenhouses at the level of EUR 200/ha) or to differentiate within one intervention the rate according to a particular type of vegetable (e.g. tomatoes at the level of EUR 100/ha, peppers at the level of EUR 200/ha)?		
39, 44, 45 and 60a	a) Potatoes are in the section "other sectors" - what should be done in this case for a vegetable producer organization (PO) that also produces potatoes? Should the PO recognize for both products of Part 9 of Annex 1 of Regulation 1308/2013 and the potatoes included in Annex 13 of the SP Regulation? b) If there is a wish to set up an PO consisting of producers from dairy, beef and pigmeat sector and all these products are in the "other sectors" section, does the PO has to obtain separate recognition for milk, separate recognition for beef and separate recognition for pigmeat? Or, given that all these products are in the section "other products", can PO be recognized unitedly for all three sectors to form a cross-sectoral PO? Can the cross-sectoral PO elaborate a common and single operational program	LV	a) The rules on recognition of POs are laid down in Regulation (EU) 1308/2013 (CMO). Article 152(1)(a) of CMO Regulation establishes that all POs recognised by Member States are ‘constituted, and controlled (...), by producers in a specific sector listed in Article 1(2)’. The list of agricultural products belonging to those sectors for which recognition is possible is laid down in Annex I to the CMO Regulation. In accordance with Article 154(1a) CMO (untouched by the 2020 CAP reform), it is possible for a MS to grant more than one recognition to a PO that operates in several sectors referred to in Article 1(2) of the CMO Regulation. Therefore, in answer to the question, a PO recognised under the fruit and vegetables sector [the sectors concerned are those listed in Article 1(2)(i) (i.e. ‘fruit and vegetables, Part IX of Annex I’) and (j) (i.e. ‘processed fruit and vegetable products, Part X of Annex I’) of the CMO Regulation] could also obtain a recognition for potatoes (listed in Section 2 of Part XXIV of Annex I to the CMO under «Other products» sector). However, it should be noted that, under the SPR, a PO that is recognised for different products belonging to different sectors may not elaborate a common and single operational programme for all sectors for which it is recognised under the CMO. Individual operational programmes are to be elaborated and implemented per sector corresponding to the CMO sectors. However, a PO that is recognised for products belonging to the same sector may design and implement a single operational programme for the products in that sector.

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	(incl. operational fund) for all sectors, or the PO must elaborate own operational program (incl. operational fund) for each sector for which recognition is granted? This issue is particularly relevant for organic farming - organic producers are small farms and often specialize in a very specific sector. If they want to set up an PO that brings together organic producers from different sectors, will they also have to obtain recognition for each product? The European Commission's action plan for the development of organic production has highlighted organic producer organizations as one of the actions, at the same time there are a number of administrative obstacles. c) As regards the fruit and vegetable sector, the implementing and delegated regulations are currently in force. If and when are their revisions planned? Will implementing and delegated acts be amended regarding "other sectors" as well? If so, when does the European Commission intends to do so?		As regards products listed in Annex XIII to the SPR, under the SPR, Member States shall specify, for each sector they define, the list of products covered by that sector. Therefore, a PO recognised for different products listed in Annex XIII to the SPR may only design and implement a single common operational programme if the Member State has included the products under the same sector. Therefore, in your example, a PO recognised under the fruit and vegetables sector and «Other products» sector, cannot have a single common operational programme under the SPR. b) In light of the above, the PO would need to obtain recognition for each sector (in your example milk and milk products, beef and veal and and pigmeat sectors). And, as explained above, under the SPR, individual operational programmes are to be elaborated and implemented per sector corresponding to the CMO sectors. This should also be the case for organic producers from different sectors joining into a 'organic PO': there can be a single PO but the recognition has to be done for each sector, and there needs to be an individual operational programme per sector. c) The Commission services are currently working on the secondary legislation which would be presented and discussed in the GREX in fall 2021.
Art 44(7)(aa)	It is not clear how paragraphs 7(a) and 7(aa) relate to each other. Given that the two paragraphs refer to different	HU, PL, ES	The simultaneous application of the two conditions, the minimum 15% expenditure and at least three actions, was agreed in the trilogue discussions. The acceptance of the final compromise (reduction from 20% to 15% + reduction of research from 5% to 2%) was combined with their

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	objectives (?), it appears that the three actions are an obligation in excess of the obligation of 15 % expenditure ratio. However, it can be understood that the 15 % expenditure must be complied with by carrying out at least three actions within the operational programme. In that regard, it is not clear what is meant by 'action'. The question also arises whether if at least 80 % of the members of the PO are subject to three agri-environment-climate or organic farming commitments provided for in Chapter IV of Title III, they will only comply with the three measures, or the 15 % expenditure ratio obligation as well, or if these commitments are considered as a single action, to what extent they can be taken into account for the purposes of meeting the 15 % expenditure ratio requirement. When considering these questions it should be taken into account that agri-environment-climate or organic farming commitments provided for in Chapter IV of Title III are paid by EAFRD, therefore they couldn't be part of the expenditures of Operational programs of the producer organisations paid by EAGF. On the basis of the question above we are asking the redaction of clear and applicable rules in the Regulation.		effective application and therefore not making possible the alternative of a certain number of actions. So both requirements apply simultaneously. As regards the agro-environmental commitments by at least 80% of the members of the PO, this relates only to the second requirement of at least 3 actions dedicated to environmental/climate objectives. Where such condition is met (80% of the members assuming the same agro-environmental commitment under RD), then this would count as one action out of the minimum three of the requirement.

Art.	Issues/ Questions	MS	Commission's answer
	<i>Art. 44 (7)</i> <i>Member States shall ensure that:</i> <i>(a) at least 15% of expenditure under operational programs covers the interventions linked to the objectives referred to in points (e) and (f) of Article 41a;</i> <i>(aa) operational programmes include three or more actions linked to the objectives referred to in points (d) and (e) of Article 42. Where at least 80% of the members of a producer organisation are subject to one or more identical agri-environment-climate or organic farming commitments provided for in Chapter IV of Title III of this Regulation, each of these commitments shall count as an action for the minimum of three referred to in this point.</i> <i>(b) at least 2% of expenditure under operational programs covers the intervention linked to the objective referred to in point (c) of Article 42</i>		
44(7)	Provisions on environmental ringfencing for operational programmes in the fruit and vegetable sector In case of the environmental ringfencing for interventions in the fruit and vegetables sector, the compromise	PL	Please see previous answer. These two requirements are not alternative and both apply simultaneously. The additional requirement that each operational programme needs to include at least tree actions linked to environment/climate related objectives was included in the final compromise at the proposal of the EP and confirmed during the trilogue meeting in May 2021.

Art.	Issues/ Questions	MS	Commission's answer
	provided only for the general level of this ringfencing, i.e. 15% of expenditure under operational programmes. The compromise did not specify anything on the requirement to implement at least three environmentally-oriented activities within operational programmes, hence the provision in Article 44 (7) point aa) of the regulation on strategic plans is surprising. We consider that this part of the compromise transposition goes beyond agreed solutions.		
Art. 52	Types of interventions in the wine sector: there is the need to harmonize the terminology used for all interventions under this provision. The breakdown of interventions, operations, activities, actions has to be identical for the different interventions in the wine sector. In this way, the planning of the indicators and their reporting will follow a unified approach, as set out in Title VII (Monitoring, Reporting and Evaluation), Chapter II (Annual Performance Reports). This chapter uses the term "operation", which is not present in the texts of Art. 52, points g), ga) and gb), but is mentioned in point b). In the last paragraph of par. 1 of Art. 52 uses the term "measures", which does not correspond to the newly introduced term in the RSP -	BG	For wine, interventions (to be defined by MS) are implemented via operations for which operators submit a request for support. The operations themselves are broken down into actions. The wording is being checked and harmonised in the legal revision of the text.

Art.	Issues/ Questions	MS	Commission's answer
	"interventions". Paragraph 2 of the same article states that Member States shall "within the chosen types of interventions, they shall specify interventions". The text needs to be clarified in order to make it clear which is the "type of intervention" and which is the "intervention" within the type of intervention. It should also be noted that some of the preamble texts still use the term "sectoral interventions" instead of the newly adopted terminology in Chapter III of Title III "types of interventions in certain sectors".		
Art. 56	Objectives in the olive oil and table olives sector: The Member States referred to in Article 82(4) shall pursue in the olive oil and table olives sector one or more of the objectives set out in points (a), (e) to (g) (h) and (j) of Article 41a.	IT	The proposed change is not complete, objective (k) to be included and needs referring also to Art 42, 55 and 59 In the Commission's view, the single objective to be excluded for other relevant sectors than fruits and vegetables is the one on promotion of consumption of fruit and vegetable (point (i) of Art 41a) and therefore both points (b) "concentration of supply", (h) "promotion" but also point (k) "improving conditions of employment" should be included among the menu for the Member States' choice. Therefore the wording should be: <i>"Article 56 Objectives in the olive oil and table olives sector</i> The Member States referred to in Article 82(4) shall pursue in the olive oil and table olives sector one or more of the objectives set out in points (a), (e) to (g) (h), and (j) and (k) of Article 41a." Objective (k) needs to be added as well in Article 42 for fruit and vegetables, in Article 55 for hops and in Article 59 for the other sectors.

Art.	Issues/ Questions	MS	Commission's answer
			This is being addressed in the legal revision of the text.
65(7) and Annex I	- In the case of organic farming under Article 65, may the aid be provided for a livestock unit or other units, considering that Annex I provides an indicator for other units in organic farming?	LV	For agri-environment-climate commitments and commitments for organic farming, MS have to establish a payment per hectare. The possibility to use other units under O.17 is limited to the justified cases when the payment is established as a lump sum.
68a	'Investments in irrigation': - By referring to paragraph 2, from a legal point of view, the whole article 68a only refers to irrigation with surface and groundwater and not to 'irrigation' with rainwater (f.e. drip irrigation with rainwater in a greenhouse with tomato plants with reuse of water is common practice in Belgium) - Obligation in paragraph 3: does this legally apply to all water sources or ground and surface water only? - From a legal point of view, Paragraph 4 (a): does this only apply to the use of groundwater and surface water only or does it also apply to the use of rainwater? [if answer yes, then this is not logical in relation to paragraph 5: if the irrigated area is expanded, clearly the obligations are only directed to surface and groundwater, this would mean that	BE	Art. 68a aims at aligning EAFRD investments in irrigation with the objectives of the WFD of reaching good status of ground and surface water bodies. Thus, it sets out the conditions for investments in irrigation which affect surface or groundwater bodies. Irrigation with rainwater is not considered to affect ground or surface water bodies. Water metering is not required for investments in irrigation fed by rainwater (the purpose is to measure abstraction from ground and surface water bodies). Paragraph 4(a) merely requires that investments in the improvement of an existing irrigation installation render the installation more water efficient (i.e. such improvements should offer »potential water savings«, e.g. moving from sprinkler to drip irrigation). This should also apply to investments in the improvement of existing installations which are fed by rainwater (unless the improvement concerns e.g. only energy efficiency). What would be the interest in supporting an investment in improving an existing rain-fed irrigation installation if that investment does not render the installation more water efficient? This does not mean that »real water savings« have to be made (i.e. no effective reduction in water use is required) in the case of rain-fed irrigation installations (only irrigation installations which affect ground or surface water bodies have to achieve real water savings when modernised if the status of the water body affected is less than good).

Art.	Issues/ Questions	MS	Commission's answer
	there are stricter obligations for existing irrigation installations with rainwater than for expansion?		
69	Small viable farms have the potential to develop if they are helped to solve the problems that limit their development. It is necessary to continue supporting small farms for market orientation and increase their viability and sustainable development in order to access development resources under EAFRD grant support. In connection with the programming of grant aid to support the development of small agricultural holdings under Art. 69 of the Regulation on Strategic Plans , we would like to ask the Commission services to clarify whether it is admissible for small farmers to receive start-up support under Art. 69 of the Regulation on strategic plans , provided that small farms are not present in the latest version of the regulation.	BG	Yes to support specifically small farms, with enhanced support rates, recognising their specific difficulties and needs, under investments (Art 68) So this results in a provision in Art. 68 to allow increased support rates for investments in small farms for their further development/modernisation (up to 85% - Art. 68(4)(b)). Setting up of (small) farms can be considered as eligible under Art.69(2b) based on the SWOT analysis and the needs assessment provided by the MS. Eligibility to be defined in the CAP plan considering viability (business plan).
Art. 69	Small farmers support - options	PL	Development of small farms can be supported under Article 68 (Investments) with a higher support rate of 85%. Under investments, Member States can also make use of simplified cost options, such as lump sums, unit costs or flat rates, following Article 77. Article 69 support is limited to start-up aid (new activities), be it for young farmers, new farmers, diversification, or non-agricultural start-ups related to the local development strategy.

Art.	Issues/ Questions	MS	Commission's answer
Art. 69(2)(c)	Business start-ups: Is it possible to support business start-ups which are NOT part of local development strategies or not possible? What does it mean that the start-ups must be „related to” the LDS?		Only non-agricultural business start-up that are related to a local development strategy can be supported. This means that the selected local strategy has to identify this area as a priority/need to be supported in the territory concerned. The managing authority could then plan such intervention under Article 69 with a separate budget than the budget planned for Leader (note that all Leader support must be granted under Article 71). Such intervention under Art. 69 can therefore only be planned once LEADER strategies are selected.
Art 71	- Point (b) of paragraph (8b) is contrary to point (d) of paragraph 1 and paragraph 3, since point (d) does not specify that only setting up of producer groups, producer organisations and interbranch organisations is eligible and in line with paragraph (3) the costs related all aspects of cooperation are eligible. However, under paragraph (8b) only the setting up of producer groups, producer organisations and interbranch organisations is eligible. - Point (b) of paragraph (8b) is contrary to paragraph (2), which states that existing organisations are eligible if they start a new activity. However, paragraph (8b) only allows for support the setting up of organisations and only for	HU	The 10% max in paragraph 8b(b) applies for the setting up of producer groups. In the case of new cooperation activities by existing ones, the normal support rate (max 100%) would apply, on the basis of expenditure incurred (invoices) or simplified cost options.

Art.	Issues/ Questions	MS	Commission's answer
	a period of five years from the date of recognition. - Point (b) of paragraph (8b) is contrary to paragraph (8), which states that aid may be granted for a period of seven years and for collective environment and climate actions for a longer period. However, paragraph (8b) authorises the granting of aid for a period of five years from the date of recognition. - Point (b) of paragraph (8b) is contrary to Article 77(1), according to which the payments provided for in this Chapter may be granted in any of the forms listed in Article 77(1). However, according to paragraph (8b), the aid is granted only in the form specified therein. - Point (b) of paragraph (8b) is contrary to the point d) of Paragraph (1) of article 158 of the regulation 1308/2013/EU which says that Member States may recognise interbranch organisations applying for such recognition, provided that they – with the exception of the cases laid down in Article 162,		

Art.	Issues/ Questions	MS	Commission's answer
	– do not, themselves, engage in production, processing or trade. However, paragraph (8b) authorises the granting of aid on the basis of the annual marketed production of the organisation. For the coherency of the paragraph (8b) with the rules above, we are asking the following adaptation of the text: <i>Article 71 Cooperation</i> <i>8b. Member States shall limit the support for:</i> <i>(a) information and promotion actions for quality schemes to one or more rates not exceeding 70% of the eligible costs,</i> <i>(b) setting up of producer groups, or producer organisations or interbranch organisations to 10% of the annual marketed production of the group or organisation with a maximum of EUR 100 000 per year. The support shall be degressive and limited to the first five <i>seven</i> years following recognition.</i>		
<u>72</u>	<u>Knowledge exchange and information, (3):</u> Is the allocation of EUR 200,000 provided for in Article 72 (3) of the Reg. on Strategic Plans a national, regional allocation or total allocation/programme/action/year?	RO	The limitation (200,000 EUR) applies to the setting up of each farm advisory service, since more than one could be planned by MS. The amount is a total maximum per setting-up. Both public and private services can be supported. Specific eligibility conditions to be set by the MS in the CAP Plan.

Art.	Issues/ Questions	MS	Commission's answer
	Can it be multiplied? Will the funding be provided both to public and private services to advise farmers?		
Art. 85(1), row 889	Does it mean that TA can not be co-financed with EU and national money?	PL	Technical assistance is paid as a flat rate (up to 4%) calculated on the basis of the eligible expenditure reimbursed to the Member States. MS can still decide to use co-financing, but they will not be requested to indicate this in their CAP Plan.
Art 86(6a)	Translating the „floor” mechanism into the legal text. The political compromise was in itself a bit contradictory, because on the one hand it promised a full use of unused amounts in 2023 and 2024 (between 20% and 25%), within the margins of the maximum unit amounts, without a compensation obligation. On the other hand, it stipulates a compensation obligation for half of the 5% yearly „floor” (10% altogether in 2023 and 2024). It means in practice, that the „floor” does not operate between 20-25%, but only between 22,5-25%. The Council agreed to it, because a further 2% flexibility was provided for 2025 and 2026, with an obligation to compensate later on. The proposed text correctly includes all the possible steps, creating however a monstre paragraph inside Art. 86. If our interpretation is correct and the „floor” is not 5% but 2,5% in 2023 and 2024, then the text could be made shorter and more	HU	The suggested change is different from the current text in that it fixes the 2.5% per year and not seen for the two years together. It is therefore a change of substance of the compromise and would be less flexible than the compromise text.

Art.	Issues/ Questions	MS	Commission's answer
	understandable. It should clearly state in the fifth subparagraph of Art. 86 (6a) that the „<i>floor</i>” is 2,5% in the learning period. It would allow the deletion of the sixth and seventh subparagraphs. It could read as follows: <u>Fifth subparagraph:</u> <i>„Member States may, in calendar years 2023 and 2024, in accordance with Article 88(3), use an amount up to a threshold corresponding to 2,55% of the amounts set out in Annex VII for the respective calendar year, and reserved in accordance with this paragraph for the schemes for the climate, the environment and animal welfare referred to in Subsection 4 of Section 2 of Chapter II of Title III, to finance in that year other interventions referred to in Section 2 of Chapter II of Title III, provided that all possibilities to use the funds for the schemes for the climate, the environment and animal welfare have been exhausted.</i> As well, sixth and seventh subparagraph to be deleted.		
86 (4) (3) and (4)	Reserved budgets for young farmers' support: The Member States must use an amount at least equal to the minimum amount for measures to support young	DE	MS should indicate in their financial plan the amounts that will contribute to meeting the ring-fencing under Annex X. This shall be done per pillar and, in the case of direct payments, per calendar/financial year.

Art.	Issues/ Questions	MS	Commission's answer
	farmers set out in Annex X. To this effect, subparagraphs 3 and 4 of Article 86 (4) stipulate provisions on the (indirect) reservation of these amounts. Germany intends to use a higher sum in the Strategic Plan than the minimum amount for measures to support young farmers set out in Annex X. The specific plan is to earmark the full minimum amount according to Annex X as an indicative allocation for the complementary income support for young farmers and additional funds for EAFRD measures (Article 69 (2), increased investment support). However, the text in subparagraphs 3 and 4 of Article 86 (4) could also be understood in such a way that, according to these provisions, all funds earmarked by the Member State should be reserved, thus also the amounts exceeding the minimum budget specified in Annex X. As a result, further funds exceeding this minimum amount (up to the amount originally planned) could not be used for other direct payments or other EAFRD measures, if demand turns out to be lower than expected.		Where the total amount planned for young farmers exceeds Annex X, MS should specify which part of the indicative financial allocations for CIFYF and the installation for young farmers (and/or investments where applicable) contribute to respecting Annex X. It is up to MS to decide how the repartition of Annex X over the different years and pillars will be done. The amounts notified in the plan as contributing to Annex X will then be used to calculate the maximum amount that can be spent for the other interventions (the so-called “reverse ceilings”). The reverse ceilings cannot be adapted based on actual take up of the other interventions. It will only be possible to modify the amounts to be taken into account via an amendment of the CAP plan for future years.

Art.	Issues/ Questions	MS	Commission's answer
	We fail to understand this, because a total amount at least as high as the minimum amount set out in Annex X was spent. We would therefore like know what solution the Commission sees here. May the Member States identify in the Strategic Plan which of the total funds earmarked for the support of young farmers – and, if applicable, to what extent – should be considered as reserved funds to meet the minimum requirement according to Annex X? Is there also a possibility to subsequently change this allocation according to the actual utilisation of the different measures? From our point of view, this would be necessary to prevent the expiry of funds.		
86 (6a) (7), (8) and (10)	Compensation for unused funds for eco-schemes: Subject to certain conditions, the Member States must compensate unused minimum budgets for eco-schemes in the following years either by increasing the minimum budget for eco-schemes or by increasing the budget for specific EAFRD measures. The relevant provisions are set out in subparagraphs 7, 8 and 10 of Article 86 (6a). In subparagraph 7, the	DE	This difference is not made on purpose, it is a drafting error and will be addressed during the legal revision.

Art.	Issues/ Questions	MS	Commission's answer
	wording “and/or” is used, while the other two subparagraphs state “or”. This means that in the case of subparagraph 7, a combination of both possibilities is obviously also permissible. We believe that a harmonised approach should be taken and that a combination of both possibilities should be permissible in all three cases. We would like to ask the Commission whether this is a drafting error and if the wording “and/or” should also be used in the other two subparagraphs. This change could also still be implemented before sending out the different language versions.		
86(6b)	Article 86 (6b) provides that at least 10% of the direct payment amounts shall be reserved annually for the CRISS. Does the amount of 10% shall include all expenditures for CRISS, including expenditures paid for first hectares in large holdings?	LV	The objective of the redistributive payment is the fairer distribution of DP, because this payment is to be granted only for a limited number of hectares the farm holds. Contrary to the current legislation, the SPR legislation allows MS to decide not to grant at all the redistributive payment for farms above a certain size (to further strengthen the redistributive effect should their SWOT/Needs assessment show a need for it). The figure of 10 percent is provided for in Article 86(6b) of the SPR regulation and means 10 % is the allocation for CRISS out of the total envelope set in Annex VII. It includes the whole CRISS allocation: it does not require MS to indicate which part of the redistributive payment will be paid to smaller holdings and which one will go to larger ones.
86	In addition to the flexibility of 5% per year in 2023 and 2024, an additional paragraph has been added which states	BE	This was part of the political compromise. The condition is not new. In fact, it is a translation of the political compromise into legal provisions.

Art.	Issues/ Questions	MS	Commission's answer
	that the flexibility is limited to 2.5% on average in 2023 and 2024. This condition was not present before.		
89 (1a)	Planned unit amounts and planned outputs what are the limits for setting the minimum and maximum planned unit amounts?	SK	All minimums and maximums should be justified in view of the needs identified by MS.
99	a) point (da) – it is required that only the corresponding RI for each intervention are indicated, is it intentional that is not required to indicate the planned value anywhere, as it is for the OI in point (f)? How, in the case of RI, will SFC2021 calculate the total values of the RI if they are not to be determined at intervention level?	LV	SFC2021 will not calculate the total value of RIs, MS will provide the values. The sum of contributing planned outputs would anyhow not match, given the issue of double counting, the fact that interventions might not always contribute in full to the related RIs and that many outputs are planned in a different unit than the unit to be reported under the RIs. Anyhow, table xxx of SFC will provide to MSs for each RI a synthetic view to MS of all linked outputs and planned values for a consistency check.
99(e)	b) point (e) - Regarding Article 10 and Article 99(e) we would like to have COM explanation or guidelines what should be included in justification demonstrating that implemented interventions respect WTO green or blue box criteria.	LV	In their Strategic plans for each intervention Member States will have to indicate which paragraph of Annex 2 to the WTO Agreement of Agriculture the measures comply with and explain why the measure in question fulfils these requirements. This explanation shall include the reasoning why the measure fulfils the requirements of the Annex 2 for Green Box measure (or Article 6.5 for coupled payments that Member States choose to be Blue Box compatible).
107(7)	Amendment of the CAP Strategic Plan article 107(7) – in case a MS decides for the option provided in the art. 11a(1) and launches social conditionality system as from 1/1/2025,	LV	It is suggested that MS can introduce social conditionality provisions via a CAP SP modification. As all MS will need to do this it is suggested that they do so via a modification to be sent at least 6 months prior to the proposed entry into force of the mechanism.

Art.	Issues/ Questions	MS	Commission's answer
	will the relevant conditions be included in the CAP SP as an amendment in the coming years not initially, and this amendment shall not count for the limitation laid down in the first subparagraph of Art.107(7)?		
Article 109 Point b):	Missing words: As a result of the amendments made by the co-legislators, Point b) misses the words „<i>of requests for amendments</i>”. Consequently, it has no content, it is unspecified that the submission of what the text is referring to. It should read as follows: „(b) procedures and time limits for submission of requests for amendments to CAP Strategic Plans;	HU	Your reading is correct. It is a drafting mistake that should be corrected.
110 (2) (c)	Obligations under conditionality: In accordance with Article 110 (2) (c), the managing authority must inform the beneficiaries of their obligations resulting from the conditionality. Does the Commission have plans for a provision under which the beneficiaries must also be informed of their obligations resulting from social conditionality?	DE	It is the obligation of the social/labour authorities to inform about the obligations arising from social/labour legislation – and farmers should already be informed in that regard. We proposed to the legal revisers to add a reference to social conditionality in Art. 110(2)(c), as not including it was an omission.
121(4b)	Annual performance reports article 121(4b) – examples on application of point 4b are necessary, providing information for the full circle – starting with planning the values in the CAP SP	LV	Noted.

Art.	Issues/ Questions	MS	Commission's answer
	and concluding with reporting in the APR.		
140a	Why is the possibility of transfer limited to ecoschemes of the kind mentioned in art.28§6 b)? In addition to the fact that this is unmanageable from an administrative point of view, transferring to an ecoscheme with an ecosystemic character represents a more favourable development for the environment / biodiversity given that we account of the integrated effect of a set of elements.	BE	Transfers from AECM to ES should respect the principle of costs incurred and income forgone, as well as its multi-annual character. Therefore, only type b are possible.

Part II: Q&A on the HZR

Recital/ Article	Issues/ Questions	MS	Commission's answer
2	According to definition in Article 2 of HZR the whole Regulation (EU) 2018/1046 (Financial Regulation) is part of basic Union requirements. What does this mean for MSs concerning the part of Financial Regulation that is not useable for shared management?	FI	The CAP strategic plans will be implemented under the shared management mode. Article 2 of the Horizontal Regulation provides that "basic Union requirements" means the requirements laid down in the CAP Strategic Plan Regulation, the Horizontal Regulation, Regulation (EU) 2018/1046 (Financial Regulation) and in Directive 2014/24/EU (Public Procurement Directive). It is evident that only the Financial Regulation rules that are relevant to Union expenditure under shared management will fall under the definition of "basic Union requirements" in Article 2 of the Horizontal Regulation.
<u>Controls and penalties (Title IV)</u>	• What level of detail the Commission expects in the CAP-plan regarding controls and penalty system? • If there is need for changes concerning controls and penalties in the CAP-plan after the approval, is there a need to make a change to the CAP-plan?	FI	Only a general description of the system is expected. MS could keep the Commission informed of important developments, but it would not be expected that every change triggers a modification of the CAP Plan. The section in the CAP Plan on controls and penalties is not approved by Commission and therefore, changes just need to be notified at the earliest occasion via CAP Plan amendment request.
Title IV	<u>Provisions on controls and sanctions:</u> For which of the areas IACS, conditionality and social conditionality does the Commission intend to lay down further detailed provisions with regard to controls and sanctions in delegated and implementing acts, and when are these draft provisions expected to be presented?	DE	IACS: there will be no further rules from the Commission on checks and penalties for interventions under IACS. The Implementing Act will, mainly, include provisions on the area monitoring system, the aid applications, the geo-spatial aid application etc. Conditionality: calculation of conditionality penalties (with exception of social conditionality – see below) will be covered in the DA.

			Social conditionality: Given the diversity of national systems and responsible bodies for enforcement and control of social and employment legislation, the draft legislation clearly states that Member States may use existing enforcement systems. The Commission does not therefore intend to come forward, at this stage, with additional rules on controls for social conditionality. As regards penalties, again given the the diverse situation, the Commission considers that MS should have the flexibility to design payment reduction methodologies in line with the applicable national grading system of labour sanctions, referred to Art 87b(1). MS will be requested to inform the Commission of the established methodology.
57 (2) (b)	<u>Detailed provisions on the identification of beneficiaries:</u> Will the Commission introduce detailed provisions on the identification of beneficiaries in accordance with Article 57 (2) (b)? If detailed provisions regarding Article 57 (2) (b) are planned, when is the Commission expected to present these detailed regulations?	DE	The Commission will develop Article 57 (2)(b) in the Implementing Act under the HZR.
57 & 96	- According to Article 96(1) of HZR MS shall ensure annual ex-post publication of the beneficiaries including, where applicable, the information on groups, as referred to in paragraph 2b of Article 57, as provided to them by those beneficiaries in accordance with that paragraph. What is the role of PA to verify the information provided by the beneficiaries? Can the PA only publish the information received from the beneficiaries? - Does this concern only groups as defined in article 2 of Directive 2013/34/EU or all kinds of groups and companies?	FI	When the PAs receive the information from the beneficiaries, ideally electronically already in the aid application/payment claim, this information should be checked by the PA and could be used in the PA's controls, especially when checking circumvention under Art 60 HZR. Art 57 HZR refers to the definiton of »groups« as provided in Art 2(11) Directive 2013/34/EU: <i>a parent undertaking and all its subsidiary undertakings</i>. Article 57(4) of HZR is inspired by Art.74(3) of Reg.(EU)1303/2013 under which the Commission submits certain types of complaints related to the 2014-2020 Rural Development programming period directly to the MS. Under the new provision, complaints relating to the CAP plans which are submitted to the Commission will be transferred to the MS in case they have not to be handled by the Commission. These are those complaints which do not reveal a systemic breach of EU law. According to the said provision, the

	What is then the exact delimitation of groups as defined in article 2 of Directive 2013/34/EU How does the process of examination of complaints submitted to the Commission will work (Article 57(4) of HZR)? What is the estimated workload for MSs?		Commission will ask the competent national authorities to report within a timeline on the follow-up given to the complaint. As concerns the workload for MS, this depends from the number and complexity of the complaints received for the new programming period. Since such complaints fall under MS competence, they have to be handled in any case by the MS.
58(1)	According to Article 58(1) of HZR the relevant authority shall draw its check sample from the entire population of applicants comprising, where appropriate, a random part and a risk-based part. Does this mean that the whole sample can be only risk-based when it covers the entire population and there is need to target the areas where the risk of errors is the highest?	FI	This provision is similar to Article 59(1) and (2) of Regulation (EU) No 1306/2013. In line with the article in Regulation (EU) No 1306/2013, Article 58(1) HZR states that all applicants should be in the population, from which the checks sample will be drawn, i.e. everyone should have a chance to be selected. The checks sample should have, where appropriate, a risk-based part to target the areas where the risk of error is the highest, and a random part.
64(2)	What does the addendum to Article 64(2) of HZR concerning the geographic information systems (GIS) mean in practice?	FI	Member States should be able to detect in their Land Parcel Identification Systems that parcels are located in Natura 2000 zones, in Nitrate Vulnerable Zones, that parcels contain landscape features protected under GAEC or covered by interventions listed in Chapters II and IV of Title III of CAP SP Regulation.
65(1)	According to the article "Data used for the area monitoring system may be stored as raw data on a server external to the competent authorities." We still think there is a need to further define "raw data" in this context. Is only the initial satellite image considered as raw data? Are higher data levels, such as sentinel coherence or amplitude tiles, considered as raw data? Could summary tables be accepted as raw data? It is important to get this clarification as soon as possible as we are currently preparing our IT-systems.	SE	In principle Copernicus Application Ready Data (CARD) is considered raw data. It should be the data provided for the purpose of launching the automated analysis as to fulfilment of eligibility conditions on the parcel.

68	Area monitoring system: We would like to get more detailed information on the meaning of "fully operational" by 1 January 2024 for AMS. We believe there will always be requirements that are not possible to monitor. Does the text in the article imply that Member States should not programme requirements that are not possible to monitor by AMS? Should AMS be compulsory for requirements that are possible to monitor even if this should be far from cost efficient because of the quality of satellite images? We believe the use of AMS is especially difficult for second pillar requirements	SE	According to the basic act, the AMS is compulsory in all Member States in relation to the area interventions and covers the monitorable elements. It is acknowledged that certain Pillar II elements cannot be monitored via AMS; this should not be seen as an obstacle from Member States in planning environmentally ambitious commitments. Member States have a choice to extend the use of AMS to carry out the controls, but this is not obligatory. The legislator provided a possibility to limit the scope of AMS to certain interventions in year 2023 to facilitate the uptake of this new technological component of IACS. Where satellite data does not provide conclusive information, Member States should use equivalent data sources, notably geo-tagged photos. The Commission will provide additional clarifications in secondary legislation.
70	We would like to get more detailed information on the meaning of the wording "Those checks shall be supplemented by on-the-spot checks, which may be executed remotely with the use of technology" in this article. Could satellite analysis be used to enhance the quality of the 5 % on-the-spot checks? Or are satellite images only to be used within the framework of the AMS?	SE	The provision indicates that Member States should execute administrative and on-the-spot checks. The on-the-spot checks do not necessarily imply a physical visit on the farm and can be substituted by the use of technology, allowing for analysis to be carried out remotely. Nothing prevents Member States from using information provided by the Area Monitoring System for the purpose of checking eligibility at the level of individual beneficiary. However, AMS as such is not a control system and has a primary objective of providing information on the reported values of indicators.
84	Control system for conditionality: Art. 84(2) point ba) Does a calculation of a higher administrative penalty because of reoccurrence, prerequisite that the beneficiary has been informed of a previous non-compliance and has had the possibility to take the necessary measures to remedy that previous non-compliance? I.e., is this status quo? Art. 84(3) point b) Does this mean that these checks can be used to fulfil the control ratio of 1 % in accordance with art. 84.3 d)?	SE	According to Commission services, it was left out by mistake and was addressed in the legal revision. Art 84(3) b: Yes

<u>Art. 84(3) point d)</u>	There is a new inclusion of a possibility to, where applicable, take account of participation in farm advisory services. We find it unclear what impact this has on the weighting factors. Does this mean that weighting factors shall apply when taking into account the participation of beneficiaries in the farm advisory services? Or does it mean that weighting factors shall be applied for risk analysis in general? We believe this could be clarified in the text.	SE	The co-legislators provided that the participation (or not) of farmers in the farm advisory system should be considered as a risk factor in the PA's risk analysis when determining the risk part of the conditionality sample.
85	System of administrative penalties for conditionality Art. 85(1) first subpara Does it also allow Member States to make use of their existing systems for calculating and applying administrative penalties? Art. 85(2) c) ii) Could the COM mention an example of an order from a public authority? Also, what is the difference from exceptions included under the concept of exceptional circumstances?	SE	Yes, existing systems can be used, but adapted to certain novelties.
86	Application and calculation of the penalty Art. 86(1) second subpara What does it mean that for the calculation account shall be taken of the “permanence OR reoccurrence”. Could the COM give examples of when the former should replace the latter and the other way around? Art. 86(2a) first and second subpara Does this allow for the Member State to make use of the Early Warning System? If so, without retroactive administrative penalties in the case of reoccurrence?	SE	«Reoccurrence» is defined in this Regulation. As regards «permanence» it will be defined in a Delegated act (DA) but with the same approach as current legislation. Persistence will be clarified in the DA. «Justified reason» shall be developed at MS level.

	Art. 86(3) first subpara Does this cover all persisting and reoccurring non-compliances? Even those with no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned? Does the term “justified reason” have an equivalence in the CAP regulations in force today? Or could the COM give examples of what could be referred to as “justified reason”.		
Art. 87b(1) subparagraph 1	Under the system referred to in Article 87a (1), first subparagraph, the paying agency shall be notified at least once per year of cases of non-compliance with the legislation referred therein where enforceable decisions in that respect have been made by the competent enforcement authorities or bodies referred to in Article 87a (2). This notification shall include an assessment and grading of the severity, extent, permanence or reoccurrence and intentionality of the non-compliance in question. Member States may make use of any applicable national grading system of labour sanctions in order to carry out such assessment. The notification to the paying agency shall respect the internal organisation, tasks and procedures of the competent enforcement authorities and bodies	AT	The addition in bold is not considered necessary (see text under legal revision).
87.c	clarifications after the “De Ruiter judgement” it should have a clear reference to article 86 HZR and be valid for the entire konditionality. We presume it relates to article 86 as well as 87 a-b.	SE	ECJ case C-361/19 De Ruiter is explicitly mentioned in recital 57, which is linked to Article 86 and thus it applies . In the HZR version sent by the Council to the EP with the offer letter, a change was made and Art. 87c (1) and Art. 86 (1) now have the same wording.

Art. 99 (2)– Processing and protection of personal data (add last part of the sentence)	Where personal data are processed for monitoring and evaluation purposes under Regulation (EU) .../... [CAP Strategic Plan Regulation], and for statistical purposes, they shall be made anonymous and processed in aggregated form only.	AT	The last part of the sentence was deleted to align Art 99 HZR to the revised Art 137 SPR. The deletion should be maintained.
102 (1)	Article 102 (1) lays down a final provision repealing Regulation (EU) No 1306/2013, however, certain provisions of the Regulation continue to apply for a transitional period. This means, among other things, that the current provisions on cross-compliance continue to apply to rural commitments already made. The requirements and standards covered by conditionality are in certain respects significantly different from the requirements and standards covered by cross-compliance. Conditionality has, among other things, added rules from the current greening requirements and repealed cross-compliance requirements, which are related to registration and identification of livestock. These differences in the regulatory basis are expected to give rise to challenges in relation to on-the-spot checks, as the complexity of the regulatory framework increases during the transition period with rural commitments already made. In addition, the abolition of certain SMRs could be considered as an amendment of provisions imposing administrative penalties, which according to the Regulation on the protection of the financial interests of the EU means that the Member State cannot maintain a previous level of administrative penalties.	DK	Covered by the reply to DK (Ares(2021)5472758) of 06/09/21, to be published on Circabc CAP Strategic Plans 2023-2027.

	These differences in the regulatory basis are expected to give rise to challenges in relation to on-the-spot checks, as the complexity of the regulatory framework increases during the transition period with rural commitments already made. In addition, the abolition of certain SMRs could be considered as an amendment of provisions imposing administrative penalties, which according to the Regulation on the protection of the financial interests of the EU means that the Member State cannot maintain a previous level of administrative penalties. Denmark finds it unfortunate that the final provision in the horizontal regulation (Article 102 (1)) does not address to the mentioned problem. The on-the-spot checks of aid applications can be simplified if all rural commitments can be included in the on-the-spot checks of conditionality. Can the Commission confirm that Member States may carry out the on-the-spot checks of existing rural commitment commitments by applying the requirements and standards covered by conditionality? Will this be included in the implementing acts?		
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Part III: Q&A on the CMO

Recital/ Article	Issues/ Questions	MS	PRE comments (political/technical)	Commission's answer
(iv) in point (5a) (b)	(iv) point (h) is replaced by the following: '(h) areas to be newly planted in the framework of increasing the size of small and medium-sized vine holdings;';	ES		Indeed this indent (iv) in point (5a) (b) of Article 1 of the amending Regulation needs to be added to the text. It was proposed by the Council to clarify that this priority criteria refer to "vine holdings" which was already the interpretation of the existing CMO text. This clarification was accepted during the trilogue. This is being addressed in legal revision of the text.
(6a) on page 44 ((6a) <u>Article 86 is replaced by the following:..</u>)	We see some ambiguities regarding the text of the new article 86. Marketing standards were not supposed to be part of Amending Regulation and even the new wording does not allow the possibility of adopting such standards by the Commission. We are of the opinion that if marketing standards are to be included in this article, it should also be possible to adopt delegated or implemented acts for their regulation. At present, all articles with requirements on marketing standards have been removed from the text of REV1 without discussion among the delegations. Marketing standards do not fall under the optional reserved terms so we do not understand the logic of this change. This is why we expressed reservations at the SCA meeting on 23.7.2021.		In this article the wording " including as regards production methods and sustainability in the supply chain" was added. PCY: This corresponds to the achieved agreement. To be clarified, if only the introductory sentence is to be changed, because the	This corresponds to the political agreement and cannot be changed. In order for the EP to accept not to touch provisions on marketing standards and drop their numerous amendments on this topic, it was agreed to clarify that optional reserved terms under Article 86 (rather than marketing standards themselves) could well aim at responding to consumer demands with regards to sustainability (which was the concern of the EP). This was already possible in the previous version of the CMO (de facto nothing changes), but this clarification satisfied the EP to

			rest is identical to the current wording of Article 86	withdraw all its amendments on marketing standards.
Article 1, (10) point last modification point	(Article 94. (b) (ii) first sentence): „The product specification may contain a description of the contribution of the designation of origin or geographical indication to sustainable development.” The results of the super trilogue (st10050.en21) do not contain this sentence. Hungary considers the issue of sustainable development to be important, but considers it premature to integrate it into this Regulation. Finalizing the text in its current form will, in our opinion, only lead to ambiguity and confusion for both applicants and national authorities assessing applications, given that sustainable development has several dimensions.	HU	Agreed as an A point 3/3/2021 PCY: should be maintained	Confirm. Agreed as an A point 3/3/2021, should be maintained While text on sustainability was not in the Commission proposal, we can support the cautious and moderate, ‘optional approach’ of the text now tabled. Many GIs exhibit strong attributes across the environmental-social-economic spectrum of sustainability. A clear option to include such in the Product Specifications will <i>prevent</i>, not <i>cause</i>, any ambiguity whether such commitments can or cannot be included. Further, the clause will serve as a channel for those producer groups who wish to <i>increase</i> the sustainable performance of their GI, by reducing negative outcomes like pollution. Without this clause, it could be argued that this-or-that sustainability commitment had ‘nothing to do with a GI’ and thus should be excluded from the Product Specification. By including the contribution to sustainable development, the undertakings will be checked and enforced as for other elements of the product specification, thus contributing to the guarantee of integrity of the GI to the consumer.

Article 1 (22d)	In Article 151 of the CMO [Article 1 (22d) of the Amending Regulation] the following amendment is suggested: “(22d) Article 151 is amended as follows: paragraph 1 is replaced by the following: ‘From 1 April 2015, the first purchasers of raw milk shall declare to the competent national authority the quantity of raw milk and the quantity of organic raw milk that has been delivered to them each month and the average price paid for raw milk and organic raw milk. A distinction shall be made between organic and non-organic milk.’; (b) paragraph 3 is replaced by the following: ‘Member States shall notify the Commission of the quantity and the price of raw milk and organic raw milk referred to in the first subparagraph.’; (...)”	AT	To be clarified if MS according to paragraph b have to notify also the price of the raw milk delivered.	Indeed, MS have to notify both quantities and prices (as they already do).
Article 1 (22n)	The amendment in paragraph 1 point c of Article 163 of the CMO [Article 1 (22n) of the Amending Regulation] is obviously intended to refer to the provisions of Article 157 paragraph 3 point a of the CMO.	AT	Since 157(3) has been deleted, we would assume that it is the correct reference.	Indeed paragraph 3 of Article 157 has been deleted, so the reference now should be to Article 157(1), point (a). It is being addressed in the legal revision of the text.
Article 4 'Article 22a POSEI'	Interbranch agreements in la Reunion a paragraph coming from another EP amendment relating to Art. 30 (line 311 of the 4 column document) mistakenly appears in Art. 22a and needs to be deleted. For ease of reference, please find the full text herewith (with strikethrough for the part to be deleted).	EC	Obvious error, to be deleted	Indeed we spotted the error and can only confirm it, this paragraph comes from another (withdrawn) EP amendment and was copy-pasted by mistake in the 4-column table. But this is corrected in the Council document 10991/1/21 REV1 of 22 July 2021