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WORKING PAPER

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WORKING DOCUMENT

From: To:	General Secretariat of the Council Working Party on Financial Agricultural Questions
Subject:	Proposal for a Regulation on Financing, management and monitoring of the CAP - Non-paper from the Commission services on Block 5

Delegations will find attached a non-paper from the Commission services in reply to inquiries from Member States on Articles 33-42, 45 and 91-95 of the proposed Horizontal Regulation.

TITLE III: FINANCIAL MANAGEMENT OF THE FUNDS

Chapter III: Common provisions

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 33				
Article 34	SI	We would like to have additional explanation of the second paragraph and how this provision reflects in the point b). The question is connected to the whole Strategic Plan and type of interventions that could be financed from both funds, EAGF and EAFRD.		It is intended to maintain the current rules for combination of support, including Art 65(11) of Regulation 1303/2013 (CPR). As the EAFRD is not included in the proposal for the new CPR, the intention is to bring the existing provisions into the HZR and to clarify that support can be combined for the same project, but the very same cost item within that project cannot be declared towards the Commission under different forms of support (in the CAP Plan) or different EU funding (e.g., grant scheme and financial instrument supporting the same project).
	PL	34.2 The clarification of “highest aid intensity or aid amount” is needed as well as identification of article of Title III of CAP Strategic Plan Regulation it refers to. Does that paragraph apply to the area measures of II pillar for example Agri-environmental-climate measure?		The terms “highest aid intensity or aid amount” are taken from the State aid rules and thus should not need to be defined. This broader State aid terminology is needed, as this Article is also about the combination with other Union instruments, which do not use the “support rate” concept defined in

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		The example of this provision, as the further clarification, would be of the most use.		the CAP plan regulation. However, in the context of the CAP plan, they should be understood as "support rate" or "amount of support", and for financial instruments, as the GGE of the FI support (Art.3(d) of CAP Plan R). In the case of financial instruments the following examples could be provided: 1. An investment project is granted 50% non-repayable grant support. The same project can receive maximum another 50% of financing from FI for the rest of the expenses. 2. An investment project receives 100% financing from FI. The same project cannot receive further grant support. To be read together with paragraph 1, namely that "*the total cumulated aid amount granted under the different forms of support does not exceed the highest aid intensity or aid amount applicable*"
	HU	34.2 Last sentence of second subparagraph excludes cumulation of CAP Staregic Plan expenditure with other EU instruments (either one can be declared) whereas the first sentence explicitly allows it up until highest aid intensity.	"In such cases Member States shall not declare whole or part of the expenditure to the Commission for:" "The amount of expenditure to be entered into a declaration of	It is intended to maintain the current rules for combination of support, including Art 65(11) of Regulation 1303/2013 (CPR). As the EAFRD is not included in the proposal for the new CPR, the intention is to clarify that support can be combined for

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		Also last subparagraph allows pro rata declaration of expenditure for supposedly for different instruments however drafting is not entirely clear. It would be useful to present in a Commission working document how this system would work. We would also appreciate examples.	expenditure of different aid instruments referred to in second subparagraph may be calculated on a pro rata basis, in accordance with the document setting out the conditions for support."	the same project, but the very same cost item within that project cannot be declared towards the Commission under different forms of support or different EU funding (e.g., grant scheme and financial instrument supporting the same project). See example of Financial Instrument in reply to PL.
	DE	Para. 2 second sentence: What is the reference for the phrase „In such cases…" ?		In cases where support is cumulated Member States shall not declare the same expenditure to the Commission for the support mentioned under pt (a) and (b).
	FI	At which stage should the double funding be controlled?: 1) CAP Strategic Plan, 2) upon granting or 3) declaration of expenditure or a combination of these? <u>Maximum aid amount, example calculation 1:</u> Is this the way the procedure for payments and declarations of expenditure should be understood? If not, how? Area-based measure where: • Aid level of directs payment is 25 units • Aid level of payments under Pillar 2 is 100 units		Article 98 of the CSPR foresees that the CAP Strategic plan includes an overview of the coordination, demarcation and complementarities between the EAFRD and other Union funds active in rural areas. When Member States design their interventions they need to ensure that the principle of double funding is respected. Concerning the last question, support on the same area and **on the same type of commitmen**t cannot be granted by both EAGF and EAFRD. Complementarity between the two funds can occur when the EAFRD area intervention is different (quantitatively or qualitatively) from the EAGF area intervention. The examples put forward should be treated

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		a. Declaration of expenditure (pro rata principle) and payment to the beneficiary: • Direct payments under the CAP Strategic Plan 25 units • Pillar 2 payments under the CAP Strategic Plan 75 units b. In the declaration of expenditure it is also possible to declare 100 units of Pillar 2 payments under the CAP Strategic Plan, but the ratio for the payment to the beneficiary should still be 25/75. Is this example correct? If not, how should the declarations of expenditure and payments to the beneficiary be made? <u>Maximum aid amount, example calculation 2:</u> It is a question of training on conditionality, for which 10 units is paid as direct payments and training on area-based environmental measure for which 30 units is paid as aid under the CAP-plan. If the training is concerned with the same theme (biodiversity in both cases), the		in the context of the compilation of the CAP Strategic Plan and relate to the SPR regulation. In the case of financial instruments the intention is to maintain current rules on double funding: 1. The MS cannot declare the same expenditure item to the EC under different forms of support. 2. Any combined support/finance to a final recipient cannot exceed 100% of the eligible costs of the project.

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		following declaration of expenditure is made (following the pro rata principle) and the payment to the beneficiary is as follows: • Direct payments under the CAP Strategic Plan 10 units • Pillar 2 payments under the CAP Strategic Plan 20 units If the training is concerned with two different themes (one with biodiversity and one with climate issues, i.e. there is no overlap, the following declaration of expenditure is made and the payment to the beneficiary is as follows: • Direct payments under the CAP Strategic Plan 10 units • Pillar 2 payments under the CAP Strategic Plan 30 units. Is this example correct? If not, how should the declarations of expenditure and payments to the beneficiary be made? <u>Maximum aid amount, example calculation 3:</u> In addition to the training on conditionality and relating to an area-based environmental measure in example 2, there is a project where training is provided on climate issues. What is the amount that can be used to		

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		support this project? In addition to training on the three themes referred to above, a measure under the EIP is offered concerning cooperation between the farmer and advisory service? What is considered to constitute double funding? For how long should the correlation be followed? <u>Maximum aid amount, example calculation 4:</u> Let us assume that in the EAGF there is the condition that a certain area-based measure must be followed in a certain part of the arable area of the farm, which is not a statutory requirement. At the same time aid is paid from the EAFRD to a measure that is area-based and the conditions are exactly the same. a. Is it a question of double payment if aid under the EAGF is paid for the area from the first hectare that fully compensates for the costs and losses of income? b. Is it a question of double payment if in addition to this other lump-sum payments are made to a farmer that specifically promote the implementation		

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		of the aid scheme in question?		
	LV	Irrespective of Commissions answer given during the AGRIFIN meeting on 19th of September, we still are of the opinion that Art. 34 (b) is not clearly understandable. We kindly ask the Commission for illustrative examples of some projects, which would be the cases when expenditure for the support from the same CAP Strategic Plan does not have to be declared?		The intention was to provide explicit provision on the possibility of combining/cumulating different forms of support for the same underlying project, at the same time preventing double funding of the same expenditure. See also reply to DE. For the examples, see the answer to the PL question.
	HR	It needs to be more clearly indicated that the same cost / activity cannot be financed twice regardless of which fund / program or the national budget is funded.		See above answerto DE.
Article 35	LV	According to our comment on the Article 26 this article should be reconsidered by Commission.		As provided in the comments to Article 26, technical assistance EAFRD at the initiative of the MS is financed as a flat rate on the declared EAFRD expenditure in accordance with art 86 of the proposed CAP Strategic Plan Regulation and as such is not an intervention.
	IT	The Commission is asked to provide clarification on the meaning of the letter (c) (II), in relation to the text "without extending to the eligibility conditions for individual beneficiaries under the strategic plans of the national CAP" Italy would like to have some explanation and, possibly, some examples.		The detailed eligibility conditions set at the national level for final beneficiaries are considered in the relationship between the Member State and the beneficiary. However, when it comes to eligibility of expenditure declared by the Member States to the Commission it is the reported outputs and the governance systems set up by

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				Member States which are considered. . The expenditure will be eligible for reimbursements by the Commission if it was effected in accordance with the applicable governance systems and matched by a corresponding output. The basic Union requirements do not go down to the level of individual beneficiary but rather define the requirements towards the Member States (e.g. having IACS, LPIS as well as systems in place that ensure adherence to EU basic rules defined by both regulations (HZR and SPR) etc.). However, Member States have to define eligibility conditions that beneficiaries have to respect since they are the basis for the targeting of interventions. See also Article 9 of the CAP Strategic Plan Regulation
	HU	— point c) (i) should be deleted since declaration of output is not part of the expenditure declaration but the performance reports as referred to in art 121 (4) of CAP regulation. — point c) (ii) should be deleted since the matter is being dealt with under the conformity procedure in art 53.		This article is the basis for the New Delivery Model in which the Commission is proposing to move away from a compliance based system to a performance based system. In this context the link between outputs and corresponding expenditure becomes the basis for eligibility as defined in this Article. Therefore, the outputs reported in the Annual Performance Reports are crucial to determine the eligibility of the expenditure. Point (c)(ii) specifies that governance systems must be in place for expenditure to

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				be eligible. Art 53 set outs the consequences if there are serious deficiencies in the governance systems.
	SI	Paragraph b) Slovenia would like to receive additional explanation of the wording "it has been efected …..Union rules, or" the provision paragraph c). Paragraph c(i) Matching to corresponding reported output is subject of consequences under the articles in the continuation of the Chapter III (art 37 to 39). The provision 35/c/i could be understand that such expenditures became ineligible. We would like to get an explanation for wich situations point c(i) may be used? Paragraph c(ii) The translation in slovenian language may not be adequate. In national language version we may understand that the governance system have to be "valid or validated or approved". In the original (English langugage) version is written: " it has been delivered in accordance with the applicable governemnet systems,..." According to the Commission explanation of the same provision on Agrifin on September 19 we would like to raise again the question: How can we assure (also the Commission) that applicable government system is working in the beginning of the implementation of Strategic plan interventions		Point (c)(i) defines eligibility for all expenditure under the CAP Strategic Plan. The expenditure for the interventions in the Plan has to be matched by corresponding output. This corresponding output will be established in the CAP Strategic Plan itself. Point (b) relates to expenditure outside the CAP Strategic Plan. Point (c)(i) will be used for the Annual Performance Clearance (see Art 52). If expenditure does not have a corresponding reported output then it is not eligible. On (c)(ii) the translation will be verified once a compromise text is agreed. The required governance systems encompass governance bodies and basic EU requirements. Governance bodies will be largely based on already existing governance bodies. The PAs, CBs, etc. that are currently in place will be rolled over. In addition the Commission will be relying on the work of the Certification Bodies that will certify the functioning of the governance systems (as they do now for the proper functioning of internal controls). As regards basic EU requirements, MS will

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				ensure the respect of basic EU rules via drawing up the CAP Plan, which in turn will be approved by the Commission and via designing or using existing systems such as IACS and LPIS, which shall ensure that the support is paid to beneficiaries in accordance with provisions set in both regulations (HZR and SPR) etc. The existence and proper functioning of those systems will be then subject to the Management Declaration and the CB opinion (as this is the case now for the internal control systems). The approval of the CAP Strategic Plan by the Commission and the roll over of existing governance bodies and systems should provide both Member States and the Commission with ex ante assurance.
	PL	The possibility of using the performance reserve should be conditional on results, but the eligibility of costs at the level of the beneficiary should not be linked to the "relevant reported output". This approach will introduce major limitations and difficulties at the stage of programming and implementation of instruments. Poland asks for clarification weather according to the provision of art 35 c) (i) only expenditures incurred by Paying Agency for	The expenditure referred to in Article 5(2) and Article 6 may be financed by the Union only if: (a) it has been effected by accredited paying agencies, (b) it has been effected in accordance with the applicable Union rules, or (c) as regards types of interventions referred to in Regulation (EU) …/… [CAP	This article defines the eligibility of the costs at the EU level and not at the level of individual beneficiary. The link of expenditure with the outputs is a major element in the New Delivery Model and is critical for the assurance that the EU funds are spent appropriately. In a performance based model the performance of Member States, here expressed in outputs, must be part of the eligibility criteria. The Commission does not consider that the reporting requirement namely linking

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		which was reported increase of the value of a product indicator are eligible? Poland is against of such solution. Eligibility of expenditures should not be related to the change of value of a product indicator.	Strategic Plan Regulation], it has been effected in accordance with the applicable governance systems, not extending to the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans	expenditure with relevant output should create major difficulties in **programming and implementation of the instruments.** Data necessary for presenting the output indicators by intervention may be already available in the Member State systems, and as to the indicators themselves, they are already defined in the Annex I of the CAP SP Regulation. It should be stressed that eligibility is not defined as the attainment of a specific output – there are no targets set for outputs. Rather the CAP Strategic Plan will set out the planned ratio between expenditure and output. The declared expenditure and the reported output will be assessed against the planned ratio (unit amount of e.g hectares) See also examples presented in the Horizontal working Party on 18 October (Commission Power point).
	DE	35.1 Para. 1 lit. b): Germany asks for confirmation/clarification as follows: Does the word "or" indicate that Union financing will be permissible as long as outputs are achieved and administrative procedures as contained in the strategy plan are followed, even if applicable eligibility conditions for the individual beneficiary may not be met?		The "or" indicates that as regards (b) this is in relation to expenditure outside the CAP Strategic Plan, e.g. under the amended Regulation 1308/2013 and (c)(i) relates to expenditure under the CAP strategic Plan where eligibility conditions at the level of final beneficiary will no longer form the basis for EU eligibility and this will be the Member States' responsibility to verify. As

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				long as the outputs are reported with corresponding expenditure at the MS level and properly functioning governance systems exist, the expenditure will be considered eligible. (see also reply to Poland).
	FI	Part of the payments under the EAFRD applied for by the declaration of expenditure are advances (according to Article 42(2)(b) of the Horizontal Regulation, prior to 1 December payable advances of up to 75 %). How are the advances paid before the reporting year and the financial year to be taken into account? Clear guidelines and examples by measures are needed concerning this for setting the objectives in the CAP Strategic Plan and performance reporting. If advances or interim payments are the only payments to an investment during the FY, but the investment is not yet ready (no ready outputs to report), no output indicators data is expected? How will that kind of situation be handled in the performance report?		The request for examples of how advances would be treated by interventions (old measures) is noted. The verification of the match of the outputs and expenditure will be done in the context of the Annual Performance clearance. For the particular type of rural development interventions in question (i.e. the IACS interventions), the advances for a claim year N should, by 30 June year N+1, be followed by a final payment and thus matched by outputs in the financial year the final payment is made. Therefore, for these payments there should be a link between the expenditure and the outputs in the Annual Performance report. Advances do not need to have a corresponding output as is clearly set out in Article 35. When an interim payment is carried out on an investment intervention, this should still be reported and have a corresponding (partial) output even if the investment is no yet finalized.

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	NL	In order to avoid legal uncertainties coming from the word 'or', the language should be clarified. Hence a drafting suggestion to make the purpose of the provision more clear.	The expenditure referred to in Article 5(2) and Article 6 may be financed by the Union only if: (a) it has been effected by accredited paying agencies, (b) it has been effected in accordance with the applicable Union rules, ~~or~~ ~~(c)~~ **By way of derogation from the first subparagraph** as regards types of interventions referred to in Regulation (EU) …/… [CAP Strategic Plan Regulation], **the expenditure referred to in Article 5(2) and Article 6 may be financed by the Union only** **if:** **(a) it has been effected by**	The Commission takes note of the proposal. See also reply to DE.

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			accredited paying agencies, (~~i~~**b**) it is matched by a corresponding reported output, and (~~ii~~**c**) it has been effected in accordance with the applicable governance systems, not extending to the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans. Point **(b)** ~~(c)(i)~~ of the ~~first~~ **second sub**paragraph shall not apply to advances paid to beneficiaries under types of interventions referred to in Regulation (EU) No…/…[CAP Strategic Plan Regulation].	
	HR	The application deadline of 2021 will be difficult to achieve, taking into account that implementing rules must be adopted in time, necessary funds are available and enough		The Commission takes note of the concern regarding transition. The outputs (to be provided by

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		time is provided for the development of new IT systems (monitoring, recording of progress in achieving objectives using indicators etc.). Clarification is needed in relation to point (c)(i), according to which expenditure is eligible if it is matched by a corresponding reported output – a reference to the relevant provision in the CAP SP Regulation is needed.		intervention) are defined in Annex I of the CAP SP regulation. They have been designed to provide to MS a framework for measuring performance and data for most of them is already readily available in the MS' systems. The CAP strategic plan will include details on the outputs for the planned intervention. See also reply for the questions above.
	CZ	In our view, it is complicated to wait for the financing of eligible expenditure after the final approval of the strategic plan, as there could be delays. We would also like to confirm that we understand correctly that expenditure eligible under this Article does not have to meet the eligibility requirements for individual beneficiaries set out in the Strategic Plan.		The Commission takes note of the concern regarding transition. The eligibility conditions at the level of final beneficiary will no longer form the basis for EU eligibility. As long as the outputs are achieved at the MS level and inthe framework of properly functioning governance systems the expenditure will be considered eligible.
Article 36	CZ	As regards the ineligibility of payments for Union funding, especially after the latest possible date of payment, we would like to see how to deal with multiannual issues (eg. inheritance proceedings); are these issues covered or not in this article? Or, if it fails for other reasons?		Article 36 concerns payments for which "deadlines for payment are laid down by Union law". According to the HZR any payment made outside these deadlines is ineligible. However, as is the case today, the proposal provides an empowerment to the Commission to adopt delegated acts allowing for certain late payments to be considered eligible. Currently, rules in delegated act

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				(Regulation 907/2014, Articles 5 and 5a) provide for a proportionate system of reductions and for a reserve to cover exceptional cases (cases under appeal, legal proceedings etc.). See also reply to HU
	HU	Our question is why the Commission changed the formulation? The second sentence of the paragraph is unclear in the sense that the possibility of derogating from the first sentence is created through the acts to be adopted by the Commission. The current legislation contains the clause "derogating from the rule contained in the first paragraph."		It is just a question of drafting; the meaning of the Article 36 remains the same as current Article 40 of Reg. 1306/2013. See also reply to CZ
Article 37	PL	Articles 37, 38 and 39 should be deleted due to their financial implications for the Member States resulting from the decision suspending payments unilaterally made by the European Commission, without the possibility of agreeing on the state of affairs with the Member States concerned	deleted	Article 37 concerns the procedure for the reductions of payments due to overrun of ceilings and reductions due to non-respect of payment deadlines. The overrun of ceilings is straightforward (a simple mathematical calculation based on ceilings set by union law); therefore no contradictory procedure with MS is foreseen, but MS are informed about the cuts (article 19(4) for EAGF payments and article 30(7) for EAFRD payments). Reductions for non-respect of payment deadlines foresee the possibility for the MS to submit comments, similarly to the current system. Please note that Articles 38(3) and 39(3) provide for a requirement for the

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				Commission to inform the MS of the intention to suspend payments and a period of 30 days for the MS to reply. It is recalled that the suspension is a 'last resort' instrument to be used once other corrective measures have been exhausted.
	HU	37.2 The Hungarian translation of paragraph (2) is incorrect, while it also includes the possibility of suspension or reduction. The English text is only for the reduction.		The Commission confirms that only the term "reduction" should be used in Article 37. The issue as regards the HU translation is noted.
	SI	37.4 Slovenia supports the Lithuanian request that Commission should precisely define the conditions for reducing monthly payments for the EAGF IACS expenditures.		The Commission considers that further rules on procedure or practical arrangements are best placed in implementing acts.
Article 38	PL	See justification to the amendment concerning the deletion of Article 37	deleted	See the reply provided for Article 37
	HU	<u>It would be very useful for us to have the Commission prepare an annual performance report template.</u>		The Commission takes note of the MS request for an annual performance report template. The Commission has presented a CAP Strategic Plan template that could be used as a basis for planning but then also subsequent reporting. Moreover, the presentation in the WPHQ of 18/10 also provides valuable elements for intended presentation of the annual performance report. The provisions as regards the

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				contents of the Annual Performance Report are set out in Art 121 of SPR.
	EL	General Comments on articles 38, 39 More clarity should exist and more details should be determined in the basic regulation regarding performance indicators, rates of suspensions / reductions, reasons justifying deviations from the indicators, ... instead of being left to be determined at a later stage. We would also like to express our concern for possible loss of funding for the member states with the introduction of the Strategic Plan and the new requirements related to this.		The MSs will have an opportunity to react to the delegated acts as part of the standard procedure in producing these acts. In addition, same type of implementing powers exist in the current legislation in force so this approach does not represent a change. The rates/amounts of suspensions currently applied are based on the guidelines on financial corrections by analogy.. The rates for suspension in the new delivery model that will be set out will depend on the proportion of deviations that cannot be justified. As to the concerns of the Member State as regards the possible loss of funding, the Commission would like to refer the delegation to point 3.3 of the Legislative Financial Statement, which provides estimate amounts of the assigned revenue. Those are significantly lower than the amounts of assigned revenue in the current period.
	DK	Can the Commission in relation to this Article confirm that all output must be priced per unit in order to match delivered output with planned output? Has different rates been considered? – after all it is easier to price area support where we know the support level as an example for organic areas or grassland		The outputs per intervention will be based on the Annex I to the CAP SP regulation. The defined outputs include outputs for investment projects. Please review the mentioned Annex I for further details. MS are to define outputs at intervention level and an **average** (where

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		areas in comparison with project investments where it can be difficult to predict an average price of for instance wet-land areas?		single/uniform cannot be defined appropriately) planned rate of support for each intervention. As regards investments, the Commission takes note of the MS concern.
	DK	Denmark would welcome if the Commission the first year could deviate from suspensions due to late submission of the annual clearances. (The annual accounts and the annual performance report.) The set-up will be new to both Member States and the Commission and could require adjustments in the first years in order to secure reliable and accurate reports.	Add following text after first subparagraph "…. provided that the date of receipt is not later than six months after the deadline" "The suspension referred to in the first subparagraph shall only apply from year N + 1 of the financial year 2021."	The Commission proposal is presented with an assumption that the new rules should be ready to be put in place as of 1 January 2021. In any case, Article 38.1 specifies that the Commission **may** suspend payments. The Commission takes into account the justification mentioned by the MS before making any suspensions.
	CZ	We consider problematic the new setting in regard to the suspension of payments and the confusion that it brings. It is also not entirely clear what the real impact these provisons might have on the budgets of the MSs. Therefore, we would like to ask for more clarification and also to amend the text of the Regulation so that the mechanism of the suspension of payments would be clear.		The suspensions mechanisms as well as reductions and corrections were additionally explained in a Non-paper delivered to the MS delegations. [Council ref WK 11877 2018 INIT]
	SI	38.1 Slovenia will rely on the explanation of the Commission on Agrifin September 19 i.e. that first (two) year could be considered as transitional period for possible difficulties with the assurance package according to 8(3).		Please see answer to the comments above.
	DK	This paragraph says "where, in the framework of the annual performance clearance, the Commission establishes that		In accordance with this article the suspensions will be applied whenever there

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		the difference between the expenditure declared and the amount corresponding to the relevant reported output is more than 50 percent, the Commission may suspend the monthly payments.” Has the Commission a specific scenario in mind here? A 50 percent deviation seems serious and of cause some kind of reaction is probably needed, but has the Commission considered what serious incident in the Member State that could justify the suspension? Special provisions for investments would seem necessary given the likelihood of significant annual fluctuations. Rules on suspension rates should be adapted through implementing acts, not delegated acts.	**”Where, in the framework of the annual performance clearance referred to in Article 52, the Commission establishes that the difference between the expenditure declared and the amount corresponding to the relevant reported output is more than 50% for interventions not covered by article 68 of [CAP strategic plan regulation] and the Member State cannot provide duly justified reasons, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30”.** **…** **The Commission is empowered to adopt delegated implementing acts in accordance with Article 100 supplementing this Regulation with rules on the rate of suspension of**	is such a significant difference (50%). Causes of this difference could be varied and cannot all be listed. The justifications provided by the MSs will always be taken into consideration before taking any suspension decision. This refers also to the investments. Regarding the implementing and delegating acts please see answers to other MSs above (EL).

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			payments.	
	IT	38.1 The Commission may provide for the suspension of the total amount of monthly payments to a Member State if the documents referred to in Article 8 (3) and Article 11 (1) are not submitted. The documents referred to in Article 8 (3) are in the responsibility of the paying agencies, while the documents referred to in Article 11 (1) are in the responsibility of the coordinating body which operating in the Member States where more than one paying agency is accredited. It seems to understand that, even if it is only one paying agency not to submit the documents referred to in article 8 (3), the Commission may suspend the total amount of the monthly payments to the Member State and not only the payments to the paying agency concerned. If this interpretation is correct and the suspension concerns the total amount of payments of a Member State, can the Commission explain how the principle of proportionality is respected?	**The Commission is asked to provide clarification on these aspects.**	The suspensions, as it is the case also now, are to be applied in a proportional manner to the relevant expenditure. However, it should be noted that the Commission is basing itself in the annual performance clearance on an aggregated annual performance report. If a suspension needs to be applied to a 'part' of the expenditure, it will be applied to the Member State, and the latter in turn would decide how to implement effects of the suspension in the Member State.
	HU	38.1 In the above-mentioned Article 8 (3), the deadline of 15 February is considered to be too early for the performance report. June 30th would suit better.		Please see the answers on Article 8 for explanations on deadlines.
	HU	38.2 In principle Hungary is of the opinion that no suspension should apply if planned	**Provision should be dropped**	It should be noted that Article 38 does not provide for suspensions due to the non

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		output is missed since such forward planning is necessarily based upon prior estimates. If suspension were to apply, it would further endanger the chances of meeting forthcoming targets and milestones, thus such procedure is rather counter-productive. Furthermore, art 89 of the CAP Plan regulation allows for a variation of the unit amount without such threshold, therefore this paragraph seem to limit the scope of that article. Also, there is a contradiction between art 52 and this paragraph.Reduction in the performance clearance procedure referred to in art 52 is triggered by an assessment by the COM as opposed to the suspension under this paragraph. Second subparagraph refers to the suspension as a consequence of the clearance reduction (which is applied without a trigger threshold) wheras the trigger for the suspension is a 50% mismatch. It is very difficult to see how it is intended to work in practice since the aplication of suspensions, permanent and non-permanent reductions seem to overwrite one another. Should this procedure indeed prevail the 50% deviation is considered way too strict.		achievement of a planned output. There are no targets for outputs, only targets for results. Article 38 will be applied in case the realized unit amount varies by more than 50% from a planned unit amount and no sufficient justification is provided submitted. As regards the forward planning, estimates of unit amounts will be done by the MSs and should be realistic and achievable. They will be part of the CAP Strategic Plan approved by the Commission and will form the baseline against which the performance should be measured. The variations allowed in accordance with article 89 of the CAP Strategic Plan regulation and any justifications of a difference will be taken into account prior to applying any suspensions. There is no contradiction with Article 52 since that Article defines situations when reductions are made. Reductions are applied as part of the Annual Performance Clearance for the expenditure of the previous year and relate to the past expenditure. The suspensions are applied relative to the future expenditure when the Commission has no ex-ante assurance that the expenditure in the future will be eligible in accordance with Article 35.. Please see also the Non-paper on

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				suspensions, reductions and corrections for further explanations of the way the suspensions and reductions work together. [Council ref WK 11877 2018 INIT]
	IT	38.2 The suspension of payments for a Member State may be provided by the Commission if there is a difference of more than 50% between the expenditure declared and the amount corresponding to the declared output. This suspension is applied to the relevant expenditure in respect of the interventions subject to reduction (article 52.2). But if more than one paying agency is accredited in the Member State, is the difference between declared expenditure and the amount corresponding to the declared output to be considered at the level of the single paying agency or at national level? Italy would like to have at least the criteria for determining the duration and the rate of suspension of payments in the basic Act.	**The Commission is asked to provide clarification on these aspects.**	The suspensions would only be applied to the affected expenditure. The principle of proportionality will be respected in the application of any suspensions. As regards the reasons for setting out the criteria in delegated acts please see answers above.
	CZ	38.2 As part of the annual performance approval, it is not clear to what extent, in addition to the 50% mentioned, it is possible to deviate, what are the exact criteria? What is eligible as "proper justification"? The external factors contributing to the failure to achieve the targets/milestones set out in the CAP Strategic Plan shall be considered during the annual performance		It is not possible to specify in detail, in particular, in the basic act, all of the cases of deviations and acceptable justifications that may occur. The delegated acts and the exchanges with the Commission in the process of creation of the CAP Strategic plans will be an opportunity to further explain this situation to the MSs.

COMMISSION PROPOSAL	**MS**	**MS COMMENTS**	**MS DRAFTING SUGGESTIONS**	**DG AGRI COMMENTS**
		clearance. External factors such as socio-economic or environmental factors, significant changes in the economic or environmental conditions in a Member State and force majeure shall be considered as duly justified to avoid suspension or reduction of payments (Art. 38 (2), 52 of COM (2018) 393). We would appreciate to cover such cases into Art. 38 2).		
	LV	38.2 Clarification and harmonization of the wording of Art.38(2) and 52(1) of the HZR with the wording of Art.121(4) of the CAP SPR is needed, as for the moment both proposals are not aligned and are contradictory - it is not clear what exactly will be compared and assessed in order to determine whether the reported difference is more than 50%.		There are no contradictions in the current proposals, Art 38(2) concerns future expenditure and Art 52 (1) past expenditure. However, the Commission takes note of the MS request for further clarifications and it has already provided a Non-paper on the topic WK 11877 2018 INIT.
	NL	38. 2 The rules concerning the rate of suspension of payment should be set in this Regulation. Hence the last subparagraph should be deleted.	Where, in the framework of the annual performance clearance referred to in Article 52, the Commission establishes that the difference between the expenditure declared and the amount corresponding to the relevant reported output is more than 50% and the Member State cannot provide duly justified reasons, the Commission may adopt	For the reasons for setting out the criteria in delegated acts please see answers above.

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			implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced by means of the implementing act referred to in Article 52. ~~The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the rate of suspension of payments.~~	

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	ES	38.2 Paragraph 3 sets that the COM is granted with powers to adopt delegated acts with rules regarding suspension percentage. We would like the horizontal Regulation to set forth the percentages as well as rules to implement them. In this regard, we will propose this be fixed in the basic act, and that the Commission make a proposal regarding the delay or meaning of insufficient progress in the achievement of goals. It is considered necessary to better clarify within the basic Regulation the rules for payment suspension procedures.	The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage *of* … ***up to a maximum of…..***corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced by means of the implementing act referred to in Article 52.	For the reasons for setting out the criteria in delegated acts please see answers above.
	HR	38.2 The application deadline of 2021 is not realistic (see comment for Article 35.) It should be more clearly defined what the duly justified reasons will be where the Commission will not apply suspensions of monthly payments.		The Commission proposal is presented with an assumption that the new rules should be ready to be put in place as of 1 January 2021. It is not possible to specify in detail, in particular, in the basic act, all of the cases of deviations and acceptable justifications that may occur. The delegated acts and the exchanges with the Commission in the process of creation of the CAP Strategic plans will be an opportunity to further explain this situation to the MSs.

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	EL	38.3 The time period (30 days) given to Member States to submit its comments is short and has to be extended.		It is to be noted that a suspension for future expenditure may be applied if a difference between the planned and realized unit amounts extends beyond 50% in the annual performance report. This situation risks to undermine ex-ante assurance as regards Member States expenditure, so it calls for application of suspension as soon as possible. That is why a 30 days delay for a MS to provide replies is justified. See also Art 121(4) of SPR which provides that a justification should be entered in the Annual Performance Report already in the event of such a deviation. Moreover, this procedure is applied for a (hopefully temporary) suspension and it will only be confirmed as a permanent reduction in accordance with article 52, following the annual performance clearance procedure, if the divergence materializes in the context of the annual clearance package for the following financial year.
	DK	38.3 Denmark is concerned that the MS has only 30 days to respond to the Commission, before the Commission may adopt a decision that suspends payments. 30 days seems to be short time for a MS to produce further explanations for calculations in order to prove that a suspension is not necessary. If we compare with the normal conformity clearance procedure following an audit		Please see the above answer on this topic.

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		mission in the current system, 30 days in not much time. Here you should take into consideration that the suspension can become permanent. And that the financial impact would equal a financial correction. We want to follow a conformity procedure here. After all the financial impact for the MS can be significant.		
Article 39	DK	Article 121 of the Strategic Plans Regulation states that "where the reported value of one or more result indicators reveals a gap of more than 25 percent from the respective milestone for the reporting year concerned, the Commission may ask the Member State to submit an action plan in accordance with Article 39 in HRZ Regulation. In article 38 of the HRZ Regulation there is a reference to the 50 percent deviation between the expenditure declared and the amount corresponding to the relevant reported output. Should there not be a similar reference to the 25 percent here in Article 39? Furthermore, Denmark is of the opinion that a 25 percent borderline for the deviations in the result indicators seems low if you consider the possibility for fluctuations on a yearly basis. We would preper the percentage to be at least 50 %		The Commission takes note of the proposal to introduce a reference to Art 121(9) of the SPR in Art 39(1). As regards the proposed increase of 25% threshold of deviation from milestones for triggering action plans and potential suspension under art 39, the Commission takes note of the MS's comment but points out that the 50 % deviation is set in Art 38(3) is set as this would be a situation where the Commission no longer has ex-ante assurance for eligibility of future expenditure, whereas the 25 % deviation is a matter of the progress towards the targets (results).
	LU	LU authorities would like to propose to indicate clearly in that article that there will		Rules on the elements of the action plans and the procedure will be set by

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		be no suspension of payments in relation to the multi-annual performance monitoring if the Member State/Paying Agency can prove that a delayed or insufficient progress towards targets is a case of force majeure or that it is simply not the fault of the PA. Moreover, as already underlined at the Working Party on Horizontal Agricultural Questions, LU cannot support an annual performance review, neither annual milestones. A review at two occasions in the period and at the end of it, as it is actually applied, should be suitable. Despite this, LU would like to stress that the new performance system is not appropriate for the first years of the period because of the necessary implementation period at national level and the difficulties linked to the uptake of the measures.		implementing act by the Commission. It shall be noted that in the New Delivery Model, performance is replacing detailed eligibility criteria, therefore a focus on performance is pronounced throughout the entire proposal. Setting criteria in the basic act excluding the possibility to ask the Member States concerned for corrective actions is not considered to be in line with the performance-oriented model. On the other hand, the MSs can expect that an annual performance review will be done in an active dialogue between the Commission and the MS. The same refers to the annual performance review, which allows for immediate identification of shortcomings in performance and introduction of potential remedial actions as necessary. The frequency of the performance review is subject to a discussion in the WPHQ.
	HU	We propose to delete this Article for reasons similar to the ones expressed under art 38. We principally disagree with suspensions stemming from performance monitoring		The Commission takes note of the comment. It shall be noted that in the New Delivery Model, performance is replacing detailed eligibility criteria; therefore, a focus on performance is pronounced throughout the entire proposal. Suspension is the last resort instrument, to be applied only in case of non-submission

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
				or insufficiency of the action plans.
	SI	39.1 Slovenia would like to get more precise explanation regarding achievements progress indicators and the presentation of the cases that the Commission could treats as failures. Additionally we are asking for the explanation about the consultations with the Commission and the role of the Managing Authority, Monitoring Committee and Paying agency of the member state when consultation will be applied.		A non-paper on the roles of the Managing Authority and Paying Agency has been distributed to the delegations. Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission. MSs can expect that the annual performance review will be done in an active dialogue between the Commission and the MS.
	IT	39.1 More details on the procedure for the adoption and duration of the action plan and about the progress indicators should be included in this basic act.		Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission. It is not considered appropriate that all the technical details of the procedure and the content of the action plan shoudl be set in the basic act. MSs can expect that an annual performance review will be done in an active dialogue between the Commission and the MS.
	HU	39.1 Since remedial actions are the subject of the CAP plan regulation, provisions in the first subparagraph are misplaced. In the absence of a time-frame for such insufficient progress and exact definition of what may be deemed insufficient at all COM action could be arbitrary thus unacceptable.	paragraph should be deleted	Please see reply to IT above.
	EL	39.1 If the action plan fails to deliver the required results the Commision is also	Where the Member States fails to submit or to implement the	The Commission takes note of the comment. This provision relates to the

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		responsible since it was agreed together with the Commission	action plan referred to in paragraph 1~~or if that action plan is manifestly insufficient to remedy the situation~~, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30.	situation where a Member States submits an action plan which is manifestly insufficient not where a plan agreed is manifestly insufficient.
	DK	39.1 Rules on action plans should be in the basic act, not implementing acts	The Commission may adopt implementing acts laying down further The rules on the elements of action plans and the procedure for setting up the action plans are as follows [to be filled in by the Commission]. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	Please see reply to IT above.
	PL	See justification to the amendment concerning the deletion of Article 37. The association of payments with the level of implementation of the annual goals of individual actions means the necessity to carry out labor-intensive estimates with a high risk of error, and then - in the event of probable discrepancies between the estimates and the actually achieved results - research	deleted	See the reply provided for Article 37. The Commission takes note of the comment. It shall be noted that in the New Delivery Model, performance is replacing detailed eligibility criteria; therefore, a focus on performance is pronounced throughout the entire proposal.

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		and justification of the causes of non-compliance. The EC presenting such a proposal in no way justified the way in which such a rigid implementation system of a multiannual strategic plan would affect better implementation of objectives than is the case when applying the n + 3 rule It should be clarified whether the procedure contained in this article concerns only the objectives expressed by result indicators and whether it is used only in the context of art. 121 (9) of the draft strategic plan regulation (difference> 25% for one or more result indicators)		Suspension is the last resort instrument, to be applied only in case of non-submission or insufficiency of the action plans. The procedure of Article 39 is to be applied in the context of multiannual-performance review and will be concentrated on looking at the milestones for results.
	CZ	Action Plan – we are not clear about its content, the scope, the time limits for its preparation and its approval. The Action Plan can also be seen as another new element that would increase the administrative burden and not simplify the procedures.		Please see reply to IT above.
	HR	39.1 The application deadline of 2021 is not realistic (see comment for Article 35.). It should be more clearly defined what will be considered insufficient progress towards targets (does it relate to the 50% difference from Article 38.2?). The option of special cases should be introduced.		Rules on the elements of the action plans and the procedure will be set by implementing act by the Commission. It shall be noted that in the New Delivery Model, performance is replacing detailed eligibility criteria, therefore a focus on performance is pronounced throughout the entire proposal. Setting detailed special cases in the basic act excluding the possibility to ask the Member States

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				concerned for corrective actions is not considered to be in line with the performance-oriented model. On the other hand, the MSs can expect that an annual performance review will be done in an active dialogue between the Commission and the MS. 50% is the threshold for the application of suspensions in case of divergence between the planned and realized unit amounts and refers to outputs not to Art 39 which concerns results..
	HR	39.2 It is not acceptable that the same sanction is foreseen for both the cases of failure to submission or implementation of an action plan, as well as an action plan considered to be "manifestly insufficient to remedy the situation". It should be more clearly stipulated how it will be determined if the action plan is insufficient.		Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission. It is not considered that all the technical details of the procedure and the content of the action plan to be set in the basic act. MSs can expect that an annual performance review will be done in an active dialogue between the Commission and the MS.
	IT	39.2 In this case, the possible suspension is applied at the level of a single paying agency, if its expenditure does not progress towards the targets? Or will the suspension be applied at the level of intervention foreseen in the CAP action plan, which may also involve other paying agencies, whose expenditure progresses towards the targets? Italy would also like to see that at least the criteria for determining the duration and rate of		Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission. It is not considered appropriate that all the technical details of the procedure and the content of the action plan should be set in the basic act. MSs can expect that an annual performance review will be done in an active dialogue

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		suspension of payments are included in the basic act		between the Commission and the MS. As regards the scope of the application of the suspension, it will be applied to expenditure for the interventions leading to underachievement of the results in question. Suspension will be applied to a reimbursement of payments to Member State and implementation of the financial impactwill be left to the national authorities.
	HU	39.2 Contradictory and vague empowerment granted to COM. Multi-annual deficiencies are to be penalized by suspension of funds, whereas suspenson is to be lifted if annual progress is achieved (second subparagraph). Annual remedy via suspended funds is difficult to achieve for multiannual deficiencies. Also it is not clear which payments are to be suspended if a target is missed since more measures contribute towards one target. COM is not in the position to separate the effects of individual measures towars one specific target, thus arbitrary suspension is likely to take place.	Deleted	Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission. It is not considered appropriate that all the technical details of the procedure and the content of the action plan should be set in the basic act. MSs can expect that an annual performance review will be done in an active dialogue between the Commission and the MS, and the same shall apply to action plans, which will be considered on a case-by-case basis. Moreover it should be kept in mind that the application of suspensions is a last resort instrument. As regards the scope of the application of the suspension, it will be applied to expenditure for the interventions leading to underachievement of the results in question.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	DK	39.2 Criteria for sufficiency of action plans should be included in the basic act. Rules on suspension rates and durations of suspension etc. should be adopted through implementing acts, not delegated acts.	Where the Member States fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. The criteria for the sufficiency of action plans include: [to be filled in by the Commission]. Add following text after the second subparagraph: "Where the reported value of one or more result indicators reveals a gap of more than 50 % from the respective milestone for the reporting year concerned, the Commission may ask the Member State to submit an action plan in accordance with Article 39 paragraph 1, describing the intended remedial actions and the expected time frame."	Rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission, while the duration and rates of the suspension are better suited for the delegated acts. It is not considered appropriate that all the technical details of the procedure and the content of the action plan should be set in the basic act. The MSs will have an opportunity to react to the delegated acts and implementing acts as part of the standard procedure in producing these acts.

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			The Commission is empowered to adopt delegated implementing acts in accordance with Article 100 supplementing this Regulation with rules on the rate and duration of suspension of payments and the condition for reimbursing or reducing those amounts with regard to the multi-annual performance monitoring.	
	NL	39.2 The rules concerning the rate and the duration of suspension of payment should be set in this Regulation. Hence the last subparagraph should be deleted.	Where the Member States fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure related to the interventions which were to be covered by that action plan. The Commission shall	Please see a reply to DK above.

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			reimburse the suspended amounts when, on the basis of the performance review referred to in Article 121 of Regulation (EU) …/… [CAP Strategic Plan Regulation] satisfactory progress towards targets is achieved. If the situation is not remedied by the closure of the national CAP Strategic Plan, the Commission may adopt an implementing act definitively reducing the amount suspended for the Member State concerned. ~~The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the rate and duration of suspension of payments and the condition for reimbursing or reducing those amounts with regard to the multi-annual performance monitoring.~~	
	ES	39.2 We would like the horizontal Regulation to set forth the percentages as well as rules to	The suspension shall be applied in accordance with the	Please see a reply to DK above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		implement them. In this regard, we will propose this be fixed in the basic act, and that the Commission make a proposal regarding the delay or meaning of insufficient progress in the achievement of goals. It is considered necessary to better clarify within the basic Regulation the rules for payment suspension procedures.	principle of proportionality *of ... **up to a maximum of ……***to the relevant expenditure related to the interventions which were to be covered by that action plan. The Commission shall reimburse the suspended amounts when on the basis of the performance review referred to in Article 121 of Regulation (EU) …/… [CAP Strategic Plan Regulation] satisfactory progress towards targets is achieved. If the situation is not remedied by the closure of the national CAP Strategic Plan, the Commission may adopt an implementing act definitively reducing the amount suspended for the Member State concerned.	
	DK	39.3 Denmark is concerned that the MS has only 30 days to respond to the Commission, before the Commission may adopt a decision that suspends payments. 30 days seems to be short time for a MS to produce further explanations for calculations in order to prove that a suspension is not necessary. If we compare with the normal conformity clearance procedure following an audit mission in the current system, 30 days in not much time. Here you should take into		The application of suspension will be only done as a last resort instruments, once the action plan are not submitted or are insufficient to remedy the situations. MS should be ensured that the performance review will be done in an active dialogue between the Commission and the MS, and the same shall apply to action plans, which will be considered on a case-by-case basis. MS should also be reminded that the New

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		consideration that the suspension can become permanent. And that the financial impact would equal a financial correction. We want to follow a conformity procedure here. Ater all the financial impact for the MS can be significant.		Delivery Model replaces detailed eligibility with a performance-based model. That is why, an underachievement of results and subsequent insufficient corrective action cannot be taken lightly and hence the application of a short deadline for the reply to the Commission pre-suspension letter. It shall also be noted that suspensions are of a temporary nature and that the funds withheld shall be released once the situation is rectified. Suspension under Art 39 would only become permanent reduction if at the closure of the plan the situation is not remedied
	HR	39.3 It needs to be clarified what the appropriate response of the Member State, referred to in subparagraph 2, will be.		Please see above replies to DK.
Article 40	HR	The application deadline of 2021 is not realistic (see comment for Article 35.).		The Commission takes not of the MS concern as regards the transition.
	HU	Under the current regulations, only suspensions due to problems with Paying Agencies can be effected. Now it would cover the entire governance system, which we consider to be quite problematic. However, governance systems need to work well, we consider that the proposal lack specific criteria for such action, therefore should be deleted.		The New Delivery Model replaces detailed eligibility criteria at the level of the beneficiary with the performance based system, which require sound functioning of the governance systems. The Commission is positive about the application of these provisions in the Member States. Already currently, there exists a robust system of the governance bodies in the Member States and a well-functioning system of internal control,

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				which are a basis of a very low error rate. That is why, the Commission does not consider that the Member States should have significant difficulties with abiding to the governance systems. The application of art 40 should be an exception.
	SI	40.1 Slovenia would like to get the explanation about the consultations with the Commission and the role of the Managing Authority, Monitoring Committee and Paying agency of the member state in this procedure.		This procedure will be subject to an implementing act.
	IT	40.1 The deficiencies in the functioning of the governance systems are generically defined as "serious", without specifying further details on the possible financial consequences related to these deficiences. Also with reference to this article, it would be advisable to include in the basic act further details on the procedure for the adoption and duration of the action plan and on progress indicators.	Make explicit in the text the reference to possible financial consequences in dependence of such serious deficiencies.	It should be noted that the scope of Art 40 is a suspension of future expenditure in the context of serious deficiencies in the governance system. Those will be applied proportionately to the assessed risk to the Fund. It should also be noted that suspensions are of a temporary nature and that the funds withheld shall be reimbursed once the situation is rectified and no risk to the Fund can be established for the period when the suspension was applied. Financial consequences of the non-respect of governance system are to be seen in the context of Article 53 – Conformity. Cross reference to Article 53 is made in Article 40(2). Details on procedures for the adoption/duration of the action plan will be subject to an implementing act.

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	HU	40.1 Further explanation is required on what "progress indicator" means since this term is not used in the Strategic Plan regulation. We propose to clearly define "progress indicator"in the basic act if such collective term is to be used. Under this article the Commission intends to examine the management system of the MS in detail, althoug article 47 (checks by the Commission) does not provede explicit provisions to do so. It is not clear that against which criteria the Commission foresees these deficiencies to be established if no compliance-based checks are to be performed. Since the proposed procedures lack transparency and clear rules paragraph should be dropped altogether.	paragraph should be deleted	Commission takes note of the MS position are regards the term 'progress indicators'. In this context the term progress indicators refers to actions and deadlines set out in the action plan not to the performance indicators in the CAP Strategic Plan Regulation. As details on procedures for the adoption/duration/content of the action plan will be subject to an implementing act, the Commission considers those will bring necessary clarity on technical details of the action plans. Commission will assess the governance systems in place in the Member States in the context of a single audit approach, placing reliance on the opinion of the certification bodies where possible. Article 47 specifically provides a legal basis for the Commission checks to verify, among others, proper functioning of the governance systems. Article 46 specifies that whenever it can, the Commission will base itself on the work performed by the certification body.
	DE	40.1 "In case of serious deficiencies" is an indeterminate legal concept and should be defined by Council law for reasons of legal security and standardized implementation in the EU; the current Articles 41 and 42 of Regulation 1306/2013 may serve as an		Commission takes note of the Member States comment. A serious deficiency should be read though as a failure in the functioning of the governance bodies or internal control systems as well as non-compliance with the

Commission proposal	MS	MS Comments	MS Drafting suggestions	DG AGRI Comments
		example of objectifying.		EU basic requirements (IACS, LPIS, public procurement, WTO requirements) which create a risk to the fund.
	DK	40.1 Here it is stated that in case of serious deficiencies in the functioning of the governance systems, the Commission may ask the Member State concerned to implement the necessary remedial actions". Could the Commission please specify what "serious deficiencies" and "necessary remedial actions" implies? And how does the Commission plan to identify such deficiencies taking into consideration that it is an overall goal to reduce the number of audits to the number states significantly? How will the yearly review in article 84 and the actions taken by the Member State as consequence of the review be affected? Article 40 gives the Commission the possibility to overrule the decisions taken by the Member State regarding the control system in relation to conditionality. This does not seem to be in accordance with the princip of subsidarity expressed in article 84-86 and the Commissions information that the desciption of the control system for conditionality in the CAP-plan would not be subject to approval of the Commission. How does this suspension mechanism play together with the system of annual performance review and the performance		Please refer to the reply above to DE and HU ? Article 40 bears no relation to performance

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		bonus of 5 % as presented in Article 121 to 124 in the CAP Strategic Plan Regulation, which is foreseen to be the key element of the ongoing monitoring and steering of policy implementation? Minimum requirements to the functioning of the governance systems should be described in the basis act and not in implementing rules.		bonus system. Minimum requirements for the functioning of the governance systems are requirement for the governance bodies and EU basic requirements defined in the two acts of the CAP legislative proposal (HZR and SPR).
	FI	40.1 Serious deficiencies in the functioning of the governance system will probably be revealed when the certification body checks the information declared in the performance reporting. What does the certification body check in practice? And when? More information is fed to the system all the time and the same information is not available at all times. Detailed guidelines for this are needed.		The certification body (CB) checks will be comprised of checking the functioning of the governance system and the performance reporting. CBs will work according to their annual work program and will have to submit an opinion by 15/2 n+1. In order to do so they will, most likely, have to plan part of their work already during the year n. Guidelines for the work of the CBs will be provided as they have been in the current programming period.
	HR	40.1 Clarification is needed about what will be considered as serious deficiency in the governance system.		Please refer to the reply to DE above.
	HR	40.2 Same as comment for Article 39 Paragraph 2.		Please refer to the reply to HU below.
	HU	40.2 The term "manifestly insufficient" is ambiguous. It is advised to rephrase it; otherwise it carries a decent amount of		Manifestly insufficient should be read as an obvious and clear failure of the action plans

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		uncertainty and potential subjectivity.		to cover and correct the deficiencies found. (e.g. if the action plan submitted does not address at all a specific deficiency found or falls completely short of remedying the situation)
	NL	40.2 The word serious should be repeated in order to make cristal clear that such suspension only may happen if serious deficiences are at stake. Moreover, the Commission does not have the empowerment to determine a period for the suspension in paragraph 1. In paragraph 1 the empowerment is limited to elements and procedure for setting up of the action plan. Therefore the reference to para 1 should be deleted. **Finally, we should insist on clarity in this Regulation on the rate of suspension. This is completely missing in this provision and very relevant. Serious deficiencies in governance systems may concerns a huge part of the budget and thus may lead to a huge amount to be suspended too. Hence we need up-front transparant rules on such an important element.**	Where the Member State fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure effected by the Member State where the **serious** deficiencies exist, for a period ~~to be determined in the implementing acts referred to in the first subparagraph,~~ which shall not exceed 12 months. If the conditions for the suspension continue to be met, the Commission may	The request is noted. However, the the suspensions would only be applied to the affected expenditure. The principle of proportionality will be respected in the applications of any suspension as noted in the article. For the reasons for setting out the criteria in delegated acts please see answers above

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			adopt implementing acts prolonging that period for further periods not exceeding 12 months in total. The amounts suspended shall be taken into account when adopting the implementing acts referred to in Article 53.	
	EL	40.3 The time period (30 days) given to Member States respond is short and has to be extended.		The period of 30 days is appropriate and in line with other deadlines in this regulation and in the current Art 41 of Regulation 1306/2013. Serious deficiencies of the governance system need to be dealt with swiftly and with urgency since they affect a large amount of payments. Moreover, the Commission will have entered in a dialogue as regards serious deficiencies identified in the governance system much before, when it will be communicating CB's or own audit findings and requesting an introduction of an action plan.
	HR	40.3 It needs to be clarified what the appropriate response of the Member State, referred to in subparagraph 2, will be.		Please see answers to HU above on what consists a manifestly inappropriate response.
	HU	40.3 We propose to delete this Paragraph		Deleting this paragraph would leave an uncertainty and un-clarity on the procedure that is not appropriate.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 41				
Article 42	DK	In the present regulation 1306/2017, Article 75, paragraph 2, it is mentioned that payments to beneficiaries shall not be made before the verification of eligibility conditions has been finalized. Which means that payments cannot be executed before all the on-the-spot checks have been finalized. We do not see this rule reflected here in Article 42. We understand this as confirmation that when the application from each single beneficiary has been controlled by the paying agency and it is verified that eligibility criteria are met, we can initiate payments immediately afterwards. Which we also see as a consequence of article 68, which says that Member states shall set up and operate an area monitoring system. So once this monitoring system is operational there is no longer the need to wait for the result of the on-the- spot control. Can the Commission confirm that our understanding is correct?		The Commission can confirm that in the new delivery model eligibility criteria for payments to the MS will not extend to detailed eligibility rules at the level of beneficiary. The Commission will no longer set rules on the on the spot checks, leaving the application of Article 57 to the discretion of the Member States.
	CZ	42.2 a) In view of the climate changes and the non-standard annual fluctuations of the weather, such as drought, we would welcome increasing advances of direct payments.		The comment of the Member State is noted. It is not considered possible to increase the level of advances for direct payments to 75% in the HZR proposal as Article 11(2)(b), Regulation 2018/1046 (the financial regulation) allows only to commit in advance up to three quarters of the total EAGF appropriations for a following

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
				financial year (with EAGF also financing some market-related expenditure of MS as from 16/10). The Commission has always given due consideration to MS requests to grant increased advances for direct payments based on e.g. exceptional weather conditions.
	SE	Opportunities to advance payments are optional and MS decide if they want to use that opportunity. It can provide more flexibility to MS therefore SE is positive about the possibilities for advance payments. It would be interesting to hear the Commission´s view on whether it is possible to increase the percentage for advances of direct payments, without risk going above the limit of ¾ as set out in paragraph 11, 1046/2018?		The Commission proposes to maintain the current level of advances for direct payments. For more details, see above reply to CZ comment.
	SE	42.3 According to article 42.3 it is possible to pay advances of up to 50 % under the interventions referred to in articles 68 (investments) and 71 (cooperation). Why isn’t article 72 (Knowledge exchange and information) included as well? We also haven’t found, in this proposal or in the proposal for the CAP strategic plan regulation, that the payment of advances shall be subject to the establishment of a bank guarantee or an equivalent (Article 63 in		Article 42(3) follows a similar practice as in the current period, in which advances can be paid for investments and LEADER (which in the future is included under cooperation). The requirement of a bank guarantee for the payment of advances is not included in the proposal and it is left at the level of the Member States to rule this out. The EU proposal is intentionally not including prescriptive rules for granting advances, and other requirements are not foreseen.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		1305/2013). Will this no longer be required in the new legislation? Will there be any other requirements relating to advances for rural development measures?		
	FI	42.2 The maximum of instalments of the individual payments to beneficiaries are not restricted, but this is up to the discretion of the Member State?		The number of instalments of the individual payments to the beneficiary is indeed at MS discretion.
	FI	42.4 This kind of empowerment has not existed before; what does it aim at? Delegated acts should not restricts e.g. aid measures concerning rural development or measures for which advances can be paid under paragraph 2?		The intention of this empowerment is not to restrict advances under paragraph 2. The empowerment is to provide for advances in sectorial measures, brought in into the CAP Plan.
	HU	42.4 Since paragraph 2 provides for advances to be paid by MS, this article should empower the COM to authorise higher advances in case of emergency		This empowerment is provided for in Article 42(5).
	SI	42.5 Which are the specific problems for which the Commission could adopt implementing act?		This has been done in cases such as natural disasters (draughts, flooding, earthquakes) which justified an earlier payment or a higher percentage of advances.

Article 45	FI	45.1 What kind of delegated acts does the Commission mean in 45(1)? This empowerment is too broad – it should be limited e.g. to the conditions of the declaration of expenditure, otherwise the empowerment would enable e.g. preventing	1. The Commission is empowered to adopt delegated acts in accordance with Article 100 in order to supplement this Regulation concerning the conditions **of details of expenditure declarations** under	The empowerment enables the Commission to define the structure and the content of the monthly and quarterly declarations for reporting on expenditure and assigned revenue effected by the MS.

		all expenditure of aid measures in an approved CAP Strategic Plan.	which certain types of expenditure and revenue under the Funds are to be compensated.	
	HU	Delegated powers should be kept to the minimum and should not interfere with arrangements already made by MSs, acting along the provisions of the basic regulations.		The comment is noted. The current proposal has significantly reduced the number of delegated empowerments.

TITLE V: COMMON PROVISIONS

Chapter II: Use of the euro

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 91				
Article 92				
Article 93				
Article 94				

TITLE V: COMMON PROVISIONS

Chapter III: Reporting

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 95				