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WORKING PAPER

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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Financial Agricultural Questions
N° Cion doc.:	9634/18 + COR 1 + ADD 1
Subject:	Proposal for a Regulation on Financing, management and monitoring of the CAP - Non paper from the Commission services on Blocks 6, 7 and 8

Delegations will find attached a non-paper from the Commission services in reply to inquiries from Member States on Blocks 6, 7 and 8 covering:

- Articles 43 and 46-56
- Articles 57-62 and 74-83
- Articles 96-104

of the proposed Horizontal regulation.

REGULATION ON FINANCING, MANAGEMENT AND MONITORING OF THE CAP – BLOCK 6

TITLE III: FINANCIAL MANAGEMENT OF THE FUNDS

Chapter III: Common provisions

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 43	IT	Thanks to the Commission for the clear presentation on this article given by working paper WK 12019/2018.		
	NL	43.1 The Netherlands is of the opinion that Member States should be permitted to retain 100% (not 20% or 25%) of EAGF sums recovered by the Member States , as long as the recovered budget is re-used for interventions addressing environmental and climate objectives. In line with our suggestions on recoveries in respect of EAGF (see our comments on art. 54 below) and conditionality (see our comments on SP Regulation round 5 art. 87), which is retaining the money in the MS, it should not become assigned revenue. Hence, those parts of the article should be deleted.	The following shall be "assigned revenue" within the meaning of Article 21 of the Financial Regulation: (a) as regards expenditure under both EAGF and EAFRD, sums under Articles 36, 52 and 53 of this Regulation and Article 54 of Regulation (EU) No 1306/2013 applicable in accordance with Article 102 of this Regulation and, as regards expenditure under the EAGF, sums under Article 54 and Article 51 of this Regulation, which must be paid to the Union's budget,	The proposal is as status quo. The amounts recovered by MS for EAGF and penalties related to cross compliance are currently assigned revenue for EAGF. By analogy in the future, amounts of recoveries in EAGF and penalties related to conditionality will create revenue assigned to EAGF. Please also note that assigned revenue is exactly a mechanism, which allows the amounts to be reused in the EAGF, where the budgetary needs are.

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			including interest thereon; (b) amounts corresponding to penalties applied in accordance with the rules on conditionality as referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation], as regards expenditure under EAGF; (eb) any security, deposit or guarantee furnished pursuant to Union law adopted within the framework of the CAP, excluding rural development interventions, and subsequently forfeited. However, forfeited securities lodged when issuing export or import licences or under a tendering procedure for the sole purpose of ensuring that tenderers submit genuine tenders shall be retained by the Member States;	

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			(d) sums definitively reduced in accordance with Article 39(2);	
	IE	Will recoveries of irregularities and Cross Compliance on EAGF continue to be reported on the assigned revenue budget lines for the new interventions? And how will this be incorporated for Performance Reporting i.e. matching expenditure to outputs? Will the current procedure for reimbursing the Commission after the close of the RDP programme continue for the next round i.e. recoveries from the 2007-2013 and 2014-2020 current RDP		The proposal is as status quo. The amounts recovered by MS for EAGF and penalties related to cross compliance are currently assigned revenue for EAGF. Per analogy in the future, amounts of recoveries in EAGF and penalties related to conditionality will create revenue assigned to EAGF. Currently MS have to reimburse to the Commission the amounts recovered by after closure of Rural Development programmes. In the future MS will be allowed to re-use these recovered amounts for EAFRD interventions under CAP Strategic Plan. As explained in the AGRIFIN WP meeting of 10 October, for the purpose of Annual Performance Report the comparison of outputs should be to total expenditure for EAFRD and EAGF.
	CZ	43.1 Article 43 (2) describes situation when the entire amount is reimbursed to the Union budget however in Article 87 20% remains in the Member State. We see a possible discrepancy. For what reason are the sanctions under 43 (1) b) included as assigned revenue?		The provisions of Article 43(b) and 87 of HZR should be read together. The amounts resulting from penalties related to conditionality are assigned revenue for EAGF; however, MS may retain 20 % of recovered amounts and must declare the remainder as assigned revenue to the Fund. As regards conditionality penalties, the

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				proposal is a status quo. Currently penalties related to cross compliance are an assigned revenue for EAGF. Per analogy in the future, amounts of penalties related to conditionality will create revenue assigned to EAGF with Member States having the possibility to retain 20 %.
	SK	43.2 We suggest that the assigned revenue in the event of reuse should be used exclusively to finance EAGF or EAFRD expenditure <u>preferably to supplement the agricultural reserve.</u> <u>Justification: The Commission should reuse the assigned revenue to supplement the agricultural reserve before taking into account available appropriations under the EAGF.</u>	2. The sums referred to in paragraph 1 shall be paid to the Union's budget and, in the event of reuse, shall be used exclusively to finance EAGF or EAFRD expenditure preferably to supplement the agricultural reserve.	Revenue assigned to the EAGF shall be used to finance only EAGF expenditure. As already emphasized in the replies to MS questions on Article 14 of the HZR proposal, the use of assigned revenue is one of the preferred ways to replenish the agricultural reserve in order to avoid the regular application of financial discipline. The COM recalls that the agricultural reserve will be by default financed from a rollover of the unused reserve amount from the preceding budget year. Furthermore, if the minimum amount of EUR 400 million is not achieved by that rollover, or a concrete situation would require a higher amount for the reserve, assigned revenue, possible EAGF surpluses from the previous year and availabilities from the current budget may also be used for constituting the reserve amount deemed necessary. EAFRD assigned revenue shall be used to finance the EAFRD expenditure declared by MS for their CAP Strategic Plans. The

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				EAFRD assigned revenue cannot be used to finance the agricultural reserve.

Chapter IV: Clearance of accounts (articles 46-56)

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Article 46	IT	In the article is stated that the Commission shall take assurance from the work of certification bodies, but it also specified the possibility of the Commission, as long as it has informed the Member State, that it cannot rely on this work. No general reference is made to the criteria used by the Commission to assess the work of the certification body and to a procedure linked to this situation. If this information will be given only in the letter by 30/04/N+1 regarding the clearance of accounts of year N, the Member State the Member State shall can take corrective measures only for future financial years and not for the past. The Commission should better clarify these aspects, considering that the occurrence of this situation can have considerable consequences in the Member States, also on the agreement between the Competent authority and the Certification body, which		The single audit is built in such a way that the Commission assesses the work of CB (under article 47) in order to obtain reliance on the CBs work (under article 46). CBs' work assessment will be against provisions and tasks of the CBs that will be defined in implementing act and guidelines. This approach is already in place. Those technical elements are considered too detailed to place in the basic act. Should the Commission conclude it cannot rely on the work of the CB, it will employ other ways to obtain assurance (Commission audit). In case of poor quality of the work of a CB, the MS is to introduce corrective measures. Only if there are financial risks arising from deficiencies in the work of the CB could this result in financial consequences if corrective measure not taken. It is the responsibility of the Member States

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		can be is a private body and in this case the agreement is based on a contract, in relation to which disputes could arise. In general, further details would be necessary in the basic act. It should also be noted that the role of certification body in the single audit approach will cause a considerable increase in the financial burden for the Member States, which cannot be reimbursed in the context of technical assistance.		and in particular the Competent Authority that the Certification Body fulfils its task in accordance with Art 11(1). In the new delivery model, the scope of CBs' work will change in the future and will be more typical "audit work" therefore it is considered that the costs of the work of the CB should not increase substantially.
	HU	Articles 46-47: The single audit model is basically good, unless the COM intend to continue with its own audits creating an "over-bureaucratic" hybrid system. In the case of a sufficiently uniform operation, it may reduce the burden on the Commission and the PA, but the CB's tasks and administrative burdens may increase, precisely because it is transferred from these actors to the CB. In our view, the new model stops responding to the compliance with the regulatory framework established for EU intervention areas. It is therefore necessary to clearly state whether or not there is a need for checks at beneficiary level. At present, this is controversial.		Please refer to the comprehensive reply provided to the IT delegation. Article 47 is there to ensure that the Commission does have the possibility of access to carry out checks if it is considered necessary e.g. if the Commission cannot rely on the Certification Body and wishes to have assurance that the Paying Agency is respecting the EU basic requirements. Article 47 is not meant to provide a basis for "large scale inspections" by the Commission.

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		Our current understanding is that the CB will not carry out audits at the level of the final beneficiaries, and according to the new audit model, this will NOT be (can not) be expected. We do not agree that following the introduction of the principle of "single audit" (Article 46), it wishes to maintain its right to carry out large-scale inspections by Member States (Article 47), including individual producers, the paying agency, the certifying body, the managing authority and each participating institution. The proposal runs counter to the Commission's promise that audits of conformity / regularity will be done away with.		
	HU		<i>Article 46</i> Single audit approach For the purposes of Article 127 of the Financial Regulation, the Commission shall take assurance from the work of the certification bodies referred to in Article 11 of this Regulation.	Please refer to the comprehensive reply provided to the IT delegation. The Commission will need to assure itself that it can get assurance from the work of the Certification Body.
	LU	What will be the criteria for the Commission		In its conclusion on the governance system,

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		to establish that it cannot rely on the work of the certification body for a given financial year? Moreover, LU authorities are wondering what will be the consequences for the PA in this case? For instance, the annual financial report and the annual performance report established by the CB confirms on one hand that during 2 or 3 consecutive exercises the MS's governance system works well and that the outputs are in line with the expenses. On the other hand, the Commission establishes that there are serious deficiencies in the functioning of the Member States' governance systems performance or that the outputs are not in line with the expenses. Furthermore, the Certifying Body also gave a positive opinion on the Management Declaration for the concerned exercises. In our view, this would clearly be the responsibility of the CB and therefore the PA cannot be responsible for mistakes caused by the CB. Could this situation generate financial corrections or other sanctions for the PA or does the PA/MA only have to take the appropriate corrective measures? We would like to underline that in such a situation LU authorities are strictly opposed to the launch of a conformity procedure by the Commission.		the Commission does not make a distinction between the MS (PA/MA) and the CB, for the reason explained in the meeting AGRIFIN meeting of 10 October. If the Commission concludes about a deficiency in the governance system that should be already taken into account in the MD and the opinion on the MD. Thus, if nonetheless the CB incorrectly certifies to the Commission that the governance systems function properly, and fails to report on an existing failure in the governance systems, it may also mean that this failure was omitted in the MD itself. This means a deficiency at MS level. As regards the other parts of the questions, please refer to the comprehensive reply provided to IT delegation.
	NL	The Netherlands supports the single audit approach. We should stick to what has been	For the purposes of Article 127 of the Financial Regulation, the	Art 127 FR provides a general concept of single audit for further specification in the

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		agreed in the discussion on the financial Regulation and not go beyond. Therefore the last part of the paragraph should be deleted. Question to the Commission: We have understood from the discussions in the Working Party that the rationale of the part after the comma is to protect the MS (i.e. their stake in the Union financial interests). However, the lack of objective criteria justifying Commission intervention, possibly leading up to an audit in a Member State, may equally undermine the CAP. Why has the Commission chosen for the vague wording in this article?	Commission shall take assurance from the work of the certification bodies referred to in Article 11 of this Regulation, unless it has informed the Member State that it cannot rely on the work of the certification body for a given financial year, and it shall take it into account in its risk assessment of the need for Commission audits in the Member State concerned.	sectorial rules, thus the Commission considers the provision should remain as proposed. The Second part of Article 46 was proposed in order to a) give a guarantee to MS that they must be informed if the Commission considers it cannot rely on the CB and b) the last part to say that if can rely on CB then basically in the risk assessment this would mean not necessary to audit the MS.
	FI	In general, Finland wishes that the Commission could clarify in detail, what are the special requirements of CB that go beyond the international audit requirements. Because of principle of legal certainty the reasons why the Commission cannot rely on the work of the CB requires better definition in the Basic Act.	For the purposes of Article 127 of the Financial Regulation, the Commission shall take assurance from the work of the certification bodies referred to in Article 11 of this Regulation, unless it has informed the Member State that it cannot rely on the work of the certification body for a given financial year <i>because of misleading or missing work or observations from the audit mission and recommendations following the mission, which</i>	Please refer to reply provided to NL and IT delegation.

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			<i>were not taken into account</i> , and it shall take it into account in its risk assessment of the need for Commission audits in the Member State concerned.	
	DE	GER supports the “single audit“ concept. The authorization for the audit of Member States’ shared management expenditures as laid down in Art. 126-129 of the EU Financial Regulation is sufficient. There are no further authorizations required.		Please refer to reply provided to NL delegation.
	GR	Article 46 is very general and does not provide the necessary information on what credibility/reliance on the work of the certification body means and, specifically, how the lack of assurance from the work of the certification body can be substantiated. The basic principles regarding the Single Audit Approach must be defined in this regulation in order to assure equal treatment between Member States.		Please refer to reply provided to IT, LU and NL delegation.
	PT	This communication, from the COM to the MS informing that it cannot rely on the work of the certification body, lacks a greater contextualization and timing. In fact, it would not be acceptable for a communication of this nature to reach the MS in the middle of a financial year and with effects on that same		Please refer to the comprehensive reply provided to IT delegation. In addition, the effects on the same year could occur only in cases where the poor quality of the work of the Certification Body would render it unreliable also for the future.

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		year.		
	RO	Phrasing “except for cases when it has informed the member state that it cannot rely on the work of the certifying body for a given financial year and would take this into account when assessing the risks and the needs for Commission audits at the respective Member State” is too vague. We ask Commission for clarifications. How does the Commission acknowledge that the activity of the Certifying Body is not appropriate and how is this issue reflected while risks evaluation? Which are the measures taken by Commission if it concludes that Certifying Body’s report does not provide enough insurance? Please explain “Single audit approach”		Please refer to the comprehensive reply provided to IT and LU delegation.
	SV	We support the concept of single audit and appreciate that the Commission will take assurance from the Certifying Body’s work. At the AGRIFIN meeting (10 October 2018) we believe we heard the Commission say that		The opinion of the Member State is noted. It should, however, be kept in mind that in the new delivery model, the scope of CBs’ work will change. It will have to concentrate on certifying the proper

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		they will need to visit the paying agency (and beneficiaries) until they know that they can trust the CB. We would like to underline that, unless the Commission has an indication from their work on a previous MFF period that there is something wrong with the CB, they should assume that the CBs are doing their work properly. Otherwise, we risk ending up in a situation in which no CBs are considered trustworthy and the Commission would have to visit every single country at the start of the new delivery model.		functioning of the governance systems and the performance reporting. The reliance on these new elements will have to be obtained. See also replies to IT and NL delegation.
Article 47	IT	The Commission explained that the new delivery model of the CAP and the single audit approach will allow a limitation of the number of compliance checks at Member State level. 47.1 The wording of the letter (a) of the Proposal remains the same as in Reg. (EU) no 1306/2013 and there is no reference (in principle) to a possible reduction in compliance checks. Italy would like more elements in this regard in the Proposal.		The single audit is built in such a way that the Commission assesses the work of CB (under article 47) in order to obtain reliance on the CBs work (under article 46). The CBs audit the proper functioning of the governance system and the performance reporting. Article 47 is necessary for the Commission to have a possibility to verify the assurance layer below its own (CBs in this case) and if cannot rely on the CB also to check the PA. In conclusion, the Commission still has the possibility to go on the spot (e.g. when it has no reliance on CBs work, for the measures outside the CAP Plan etc.) but it is not expected that it does so as frequently

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				as today.
	HU	Generally speaking COM checks conflict with the single audit approach thus only either one should be maintained.		Please refer to the comprehensive reply provided to IT delegation.
	NL	The Netherlands supports the single audit approach. Therefore Commission audits should be limited as much as possible. This major change should be reflected in this article! Hence the article should be redrafted drastically and be deleted to a major extent. The Netherlands would like to reiterate that under the single audit approach the Commission shall take assurance from the work of the certification bodies. The single audit approach should also apply to checks on compliance with the recognition criteria for producer organisations (and interbranch) organisations laid down in Regulation 1308/2013. As the Member States shall protect the financial interest of the Union, undue payments shall be recovered from beneficiaries in the regular course of controls by the Member States' paying agencies, as stipulated in the financing Regulation. In the event that the Member States' certification body finds a non-compliance with the recognition criteria and non-compliance is caused by serious deficiencies in the		Please refer to the comprehensive reply provided to IT delegation. In the future framework, the eligibility criteria for the EU expenditure will not extend to legality and regularity of transactions with individual beneficiaries (in the example – individual producer organisations). MS should have systems in place to ensure that payments to beneficiaries are done in accordance with the EU basic requirements and have arrangements in place to prevent, detect and correct irregularities. The existence of these systems will be subject to assurance work. If a financial correction is applied to the Member State due to serious deficiencies in the governance system (non-compliance with the recognition criteria), the correction would be a flat rate addressed to the

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		governance system, then the Commission may exclude the amounts of support concerned from Union financing to the Member State. It should be clarified that this finding shall not lead to a recovery of support at the level of the individual producer organisations Question to the Commission: We have understood from the discussion in the Working Party that a rationale of the current wording of art. 47 has to do with the compliance audits the Commission wants to maintain on CAP support under R 1308/2013. Firstly, where does it say so in the text of Article 47, and secondly, why should there be an exception to the single audit approach for support under R 1308/2013? In accordance with Article 11, paragraph 1, point d, the certification body shall establish whether the expenditure for measures laid down in R 1308/2013 is legal and regular. Why should the Commission as a rule not take assurance from the certification body in relation to these measures as well? Question to the Commission: In this Regulation the Commission proposes detailed rules on cross-compliance controls and		Member State. However, the Commission will also in such case request an action plan from the MS, whereby the MS will need to lay down how to remedy the situation. In general, MS is not released from an obligation to recover undue amounts paid to POs not complying with the recognition criteria. It should be well understood that there is no difference in the single audit approach when it comes to expenditure under the CAP Plan and outside. The Commission will rely to the same extent on the work of the CBs. However, when it is has to do the audit work itself (if it cannot rely on the CB's work), the Commission needs to have the possibility to perform checks in the MS. Extent of these checks will be different in case of • measures under R1308/2013 - going down to the level of individual beneficiary (Art 47(1)(a)) and, • interventions under CAP Plan - checking governance systems (47(1)(a)) and performance reporting (47(1)(b)). According to Article 11 SPR, the MS shall include in there CAP Plan a system of conditionality, and foresee administrative

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		penalties. How would the Commission envisage the proposed enhanced conditionality in respect of audits? How should this be seen in view of the new delivery model?		penalties for non-compliance with management requirements under the EU law and GAEC. The existence of this system is an EU basic requirement and this should be audited by the Commission again in the context of the single audit approach.
	HU	47.1 point b) should be deleted since it enables the COM to carry out wide range of audits covering the implementation of the CAP plan. This is contrary to what's been communicated.		There is no inconsistency regarding the Commission communication and the article 47.1 point b). Please refer to the comprehensive reply provided to IT delegation.
	DK	According to paragraph 1, litra b the Commission may organize checks in Member States in order to verify in particular whether the expenditure corresponding to the interventions have a corresponding output reported in the annual performance report. Can the Member States be sure that the Commission will not use this option unless it has informed the Member States that it does no longer rely on the work of the certification body as stated in Article 46? Or does the Commission intend to carry out independent spot checks even though it has not declared the work of the certification body unreliable?		Please refer to the comprehensive reply provided to the question on Article 46 to IT delegation. The Commission needs to have the possibility to perform checks in the Member States in order to do its own audit work if it cannot rely on the CB's work. Reliance on the CB's work is built on the basis of the assessment of the CB's work, which does not exclude auditing the PAs system of performance reporting. This is done to corroborate the assessment of the system performed by CB.

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	FI	47.1 Finland is very concerned about the rules of checks by the Commission in relation to conditionality. It seems that all the existing procedures and rules of controls are in place with relation to conditionality including extending of controls still to the final beneficiary. This is negative issue and is against the spirit of simplification. It should be clearly noted in this Article it does not concern conditionality.	1. Without prejudice to the checks carried out by Member States under national law, regulations and administrative provisions or Article 287 of the Treaty or to any check organised under Article 322 of the Treaty or based on Council Regulation (Euratom, EC) No 2185/96, the Commission may organise checks in Member States <i>with the exception of conditionality</i> with a view to verifying in particular: - Persons authorised by the Commission to carry out checks on its behalf, or Commission agents acting within the scope of the powers conferred on them, shall have access to the books and all other documents, including documents and metadata drawn up or received and recorded on an electronic medium, relating to expenditure financed by the EAGF or the EAFRD. <i>When it is question about the interventions referred to in Regulation (EU) .../.../CAP</i>	According to Article 11 SPR the MS shall include in their CAP Plan a system of conditionality, and foresee administrative penalties for non-compliance with management requirements under the EU law and GAEC. The Commission will continue to audit that such a system is in place.

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			<i>Strategic Plan Regulation/ this concerns only relevant documentation regarding to CAP Strategic Plan.</i>	
	RO	47.1 How does the Commission quantify the output? It has to be fulfilled 100% or what is the margin between accomplished and not accomplished?		A reply to this question needs to be also seen in the context of the discussion on the Strategic Plan Regulation. The Commission presented a template for the CAP Plan and other details as regards reporting in the WGHQ. The Commission is considering the shape of the future performance monitoring and evaluation framework, especially in terms investment interventions financed under EAFRD.
	ES	47.1 We request better clarifications concerning the inclusion of "... on spot". We consider that the scope for specific participation of the persons authorized by the Commission should be clear	The powers to carry out checks shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national law. Without prejudice to the specific provisions of Regulation (EU, Euratom) No 883/2013 and Regulation (Euratom, EC) No 2185/96, persons authorized by the Commission to act on its behalf shall not take part, inter alia, in home visits and on spot or the formal questioning of	The provision referred to is a specific provision limiting the access of the Commission as regards home visits and formal questioning of persons on the basis of the law of the Member State concerned. Including "on the spot" checks here would be a limitation of the Commission's possibility of access to see how the governance systems in a Member State functions, although it is a possibility which the Commission would not systematically avail itself of. Please refer to the comprehensive reply

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			persons on the basis of law of the Member State concerned. However, they shall have access to information thus obtained.	provided to IT delegation.
	SV	47.1 This paragraph gives the Commission rather far-reaching rights to organize checks in Member States. Some of those checks could result in findings regarding serious deficiencies in governance systems, which in turn could trigger a conformity procedure in accordance with Article 53. We would like the Commission to confirm that they will not, under normal circumstances, carry out any checks that could trigger Article 53 in case the Certifying Body has declared that the systems have no serious deficiency and the Commission has no reason to doubt the work of the Certifying Body. We would also like to underline that DG Agri should not carry out checks at the level of the paying agency, or the beneficiaries, unless the Commission is carrying out an audit of the certifying body.	the Commission may organise checks in Member States with a view to verifying in particular: (a) compliance of administrative practices with Union rules; [...] (d) whether a paying agency complies with the accreditation criteria laid down in Article 8(2) and whether the Member State correctly applies Article 8(5). Such checks may only be carried out in the context of an audit of the certifying body.	Please refer to the comprehensive reply provided to IT delegation.
	DE	Streichung - Erläuterung s. Art. 46	delete	Art 127 FR provides a general concept of single audit for further specification in the sectorial rules, thus the Commission

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				considers it necessary to specify that for the CAP it is the Certification Body, which the Commission will build its assurance on.
	FI	47.2 The Basic Act should contain clear rules on documents and metadata needed for Commission audits and cases when the Commission audits the MS.	The commission shall give sufficient prior notice of a check <i>and needed documents relevant for the CAP-plan to be checked</i> to the Member state concerned...	Article 47(2) and 49 remain almost unchanged. Any rules on Commission audit procedure and documents needed for audits are considered too detailed to be included in the Basic Act.
Article 48	DE	48.3 The Commission is requested to explain the meaning of “other cases of non-compliance with the conditions established by Member States”.		These are cases of non-compliance by beneficiaries with the conditions of the interventions referred to in the CAP Strategic plan in the meaning of Article 54 and 55(1).
Article 49	NL	Question to the Commission: In the Strategic Plan Regulation the Commission proposes similar provisions. The financial Regulation contains similar provisions too. What is the rationale to include this provision on top of those provisions? And what is the relation with the ten years requirement proposed by Article 65 of this Regulation?		Article 49 remains almost unchanged – rules on access to documents are not changed just like almost all of the rest of this section. The Commission maintains the possibility to access documents in case it will decide to perform checks in accordance with Article 47.

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				If similar provisions exist in CAP Plan Regulation they refer to monitoring, while those in HZR refer to payments.
Article 50	NL	The Netherlands is of the opinion that as much as possible rules should be included in the Basic act. Commission powers for both implementing and delegated act should be limited and reduced. Moreover, the empowerments need to be reduced in order to adapt them to the changes necessary for articles 47.		The position of the MS is noted.
	HU	Since the aim is to move away from regulating and controlling non-compliance in depth, we believe that only some general principles of irregularity and non-compliance should be laid down in the basic act, everything else should be left to the MS.		The position of the MS is noted.
	HU	should be deleted		The position of the MS is noted.
	NL	50.1 The words “in particular” should be deleted.	The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with specific obligations to be complied with by the Member States under this Chapter and with rules in	The list of empowerments is not intended to be exhaustive. Specific mentioning of OLAF cases in this Article is necessary, as, as it is the case for all the other basic acts for other funds, OLAF does not have legal basis on its own for the information on irregularities. OLAF takes empowerment from sectorial rules.

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			particular on the criteria for determining the cases of irregularity within the meaning of Regulation (EU, Euratom) No 2988/95 and other cases of non-compliance with the conditions established by Member States in the CAP Strategic Plan, to be reported and the data to be provided.	
	FI	In this Article we would like to see more detailed delegation of powers instead of the words used now i.e. “specific obligations”. Instead of “delegated acts with specific obligations” the delegation of powers should be more clearly stated. If it is a question of information needs of OLAF, we believe that this is possible. The definition of irregularities should also be up to the Member States in order to guarantee subsidiarity.		Please see reply to NL.
	FI	50.1	1. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with specific obligations to be complied with	Please see reply to NL.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			by the Member States under this Chapter and with rules in particular the criteria for determining the cases of irregularity within the meaning of Regulation (EU, Euratom) No 2988/95 and other cases of non-compliance with the establishment by Member States in the CAP Strategic Plan, to be reported and concerning the data to be provided for OLAF purposes .	
	ES	50.1 If the previous Article 54 on the procedure for recovery of undue payments has been eliminated and with this article, the Commission must be notified on certain irregularities subsequently established by the Commission for delegated acts and to include them in the strategic plan when we are dealing with a direct relationship between Member States and the beneficiaries. As the Commission has informed us, this is no longer of potential interest to the Commission. Its interest relies on the achievement of goals and not in the actions of Member States regarding beneficiaries. On the other hand, if there is interest in knowing about these irregularities, they are already communicated through another regulation to the OLAF in case of	The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with specific obligations to be complied with by the Member States under this Chapter and with rules in particular on the criteria for determining the cases of irregularity within the meaning of Regulation (EU, Euratom) No 2988/95 and other cases of non-compliance with the conditions established by Member States in the CAP Strategic Plan, to be reported and the data to be provided.	Please see reply to NL.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		irregularities which have a higher financial risk to the Fund, specifically those of more than 10.000 €. Therefore, we propose to eliminate the communications of irregularities affecting beneficiaries. Another option would be that these rules were established by execution act and not by delegated act.		
Article 51	RO	51.2 Phrasing is not clear. We ask for re-phrasing in order to clearly understand the steps the Commission shall take.		There will be no change relative to the current financial clearance. The steps taken will be very similar to those in the current period.
Article 52	HU	Performance-based assessment could be a forward-looking concept, but we see implementation very problematic. A radically new concept requires MS to adjust the whole institutional set-up of implementation which leads to high administrative costs. Unfortunately the COM has not shared the details of the concept and its practical implementation, therefore COM action to initiate reductions appears to be arbitrary, the whole process entails significantly more risk for the MS than the current one. We can't see the role of CB in the annual performance clearance either.		The opinion of the Member State is noted. The Commission is proposing to maintain the institutional set up in Member States by having a rollover of the governance bodies already in place including the accreditation criteria for Paying Agencies.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		We oppose the annual nature of reductions (clearance), because the proper implementation of some measures may take several years. Outputs lagging behind in the first years may be well compensated later on when the program gains momentum. In case of newly introduced voluntary measures (e.g. risk management) it is almost impossible to give an annual breakdown for expected outputs. MS are, therefore inclined to take a conservative approach to avoid risks and some otherwise useful measures may not be introduced at all. Performance should be measured at the end of the program but not against rigid pre-set output figures, but in the context of broader impacts.		The legislative proposals include a set of indicators for outputs, results and impacts. The impacts are indeed measured over a longer period, but the output indicators have been designed so that they can be easily linked to expenditure on an annual basis. Outputs should not lag behind the expenditure. In the Annual Performance Clearance, it will be assessed whether expenditure has corresponding outputs.
	HU	52.1 No threshold is indicated for missing out on outputs, thus severe cases of reductions are likely to occur. Paragraph should be dropped.		Please see the reply to LU.
	RO	52.1 How does the Commission quantify the output? It has to be fulfilled 100% or what is the margin between accomplished and not accomplished?		Please see reply to LU and NL.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		We consider it necessary to detail the calculation for the reductions applied to the member state based on non-deliveries, also showing some examples by EC		
	SL	52.1 Slovenia would like to get additional explanation on the methods of verifications of the expenditure if they have appropriate outputs in the annual performance report? Wheather will be verified the same expenditure (data) under this article and article 47(1)b?		Please see reply to LU and NL.
	HU	52.2 Criteria for COM's assessment is entirely missing, action may be arbitrary. Although MS may provide justifications, however unclear what justifications may be accepted. We believe that delegated acts are not the righ legal forms to lay down such criteria, legal certainty should be guaranteed on the level of the basic act.		It is proposed to set out the criteria for the reductions in a Delegated Act in line with what is currently the situation for the conformity clearance procedure. The Commission in its assessment will follow the criteria provided for in the Delegated Act.
	IT	52.2 The annual expenditure declared for an intervention is a real and objective parameter, while the amount corresponding to the relevant reported output can be also a calculated parameter (also following comments and justifications of the Member State). The inclusion of the term "calculated" in the wording of the article is proposed.	2. The Commission shall assess the amounts to be reduced on the basisi of the difference between the annual expenditure declared for an intervention and the calculated amount corresponding to the relevant reported output in accordance with the national CAP Strategic Plan and taking	This number is only attainable if it is calculated; therefore, it is considered superfluous to add the word calculated.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			account for justifications provided by the Member State.	
	NL	52.2 The assessment made by the Commission should be clear up-front! Hence it should be clear from the Regulation on what general principles the Commission should base their assessment. The general rule should be that the reduction can not go beyond the expenditure which is clearly not eligible.		The reductions will only affect expenditure that does not have a corresponding output. The expenditure that does not have a corresponding output is ineligible in accordance with Article 35 (except for advances).
	GR	52.2 More clarity should exist and more details should be determined in the basic regulation regarding the method to be used for the calculation of amounts to be reduced/suspended in case of differences between planned and real outputs, as well as on how the Commission will take into account (evaluate) the justifications provided by the MSs.		Please see previous replies.
	PT	52.2 Does the evaluation proposed in point 2 apply to all interventions? What is the relationship with the second paragraph of Article 121 (4) of the SPR and what is the role of the change in unit amounts referred to in Article 89 of the SPR?		Paragraph 2 refers to all interventions. Second paragraph of Article 121(4) of the SPR specifies the threshold of 50% for which the justifications have to be provided in the annual performance report. Also because this raises doubts about ex-ante assurance for future expenditure. Article 52(2) of the HZR provides that the MS can also provide justifications for any deviations, which might otherwise result in

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
				a reduction. The allowed variation in unit amounts referred to in article 89 of the SPR will be defined in the MS CAP Strategic plans and will be taken into account before any reductions are made. See also the presentation given in the WP HAQ on 18 October.
	RO	52.2 We consider it necessary to replace the word “relevant” with the specific intervention it refers to		The “relevant reported output” is the output corresponding to the expenditure for that particular intervention. The word relevant does not refer to interventions but rather to the output.
	SL	52.2 Slovenia is of opinion that concrete examples and levels of reductions are needed. The amount of reductions should be included in this Regulation or presented in the Commission explanation document.		Please see other replies to questions relating to this paragraph. The levels of reductions are defined by this article - all of the expenditure that does not have a corresponding output will be reduced. See also the presentation given in the WP HAQ on 18 October.
	LU	According to this article, there will be reductions if expenses and outputs do not match. What will be the reasons for triggering this reduction? The mechanism in art. 121 §4 of the SPR and mentioned in art. 38 §2 of the HZR foresees possible reductions or suspension of payments for interventions like investments		The expenditure reduced in article 52 will be the expenditure that is not covered by corresponding output. The reduction will therefore be proportionate and will affect only the expenditure without corresponding output. See also the presentation given in the WP HAQ on 18 October, which contains

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		and LEADER measures (since interventions referred to in article 89 are excluded) if the difference between expenses and realised output exceeds 50%. However, especially for the aforementioned investment measures, which are subject to a selection process, it is not possible to ensure that no deviation bigger than 50% will occur. LU thinks this mechanism is not appropriate and should be reviewed. What exactly will be the reduction? Will it be proportional to the difference of programmed and realised performance? This has to be clarified and mentioned in the basic act.		examples of possible situations with reductions.
	LU	52.3 According to paragraph 3 a MS has the opportunity to submit its comments and justify any differences. What is the exact procedure in that situation? We need a clear schedule with deadlines! Could these justifications lead the Commission to drop the reductions? This has to be clarified in § 1 or 3.		The detailed procedure will be established in the Delegated Act. The Commission may decide to adjust the reductions depending on the justifications provided by the MSs as set out in paragraph 2.
	DK	52.3 Here it says that before the Commission reduces its financing the Member state shall be given an opportunity to submit its comments. Does the 30 days rule from paragraph 3 in Article 38 and 39 apply here? In other words the Member States have only 30 days to respond before the Commission		The Basic Act does not specify the timing of the responses of the MSs in relation to article 52. In accordance with Article 52(5), procedure and deadlines will be defined in an Implementing Act. It should be noted that this procedure must take place between 15 February and 15 October in a given year.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		reduces the financing?		
	RO	52.3 We consider it necessary to supplement the article with the possibility of organizing a conciliation meeting for clarifying differences, in case EC does not agree with the justification provided by the member state.		The detailed rules on the procedure will be set out in the implementing act as specified in paragraph 5. The Commission has not proposed a conciliation procedure for this as it is a simple reduction where expenditure does not have corresponding output. See also reply to DK delegation.
	HU	52. 4 The scope and content of the delegation are unclear, the whole procedure entails potentially uncalculable risks even if the overall performance of the implementation is satisfactory.		The scope and content of the Delegated Act will cover the rules and criteria for Member States' justifications and the methodology and criteria for assessing the amounts referred to in Article 52.2 and establishing if reduction is to be applied.
	LU	52.4 Paragraph 4 refers to rules on the criteria for justifications from the concerned Member State and the methodology and criteria for applying reductions. Could we have some more details about those criteria and methodology? Moreover, we would like to have some of those details in the basic act.		Please see reply above.
	CY	52.4 We beleive that the adoption of delegated acts by the Commission should be as minimum as possible in order to ensure a stable environment.		The MS comment is noted. It is recalled that the current proposals reduce significantly the number of empowerments given to the Commission.
	SK	52.4 The rules on the criteria and		Please see replies above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		methodology for applying financial reductions should be set out in the legislative act or adopted by means of implementing acts, but not by means of delegated acts. Justification: Slovakia would like to deliver its opinions on a draft act.		
	LV	52.4 We doesn't support Commission's powers under Art.52(4), in means of adopting delegated acts supplementing this Regulation with rules on the criteria for justifications from the concerned Member State and the methodology and criteria for applying reductions. We consider that the substantial conditions should be included in the basic acts.		The MS opinion is noted. Please see reply.
	PT	52.4 The rules on the criteria for justifications from the concerned Member State and the methodology and criteria for applying reductions should be in the regulation and not in delegated acts.		Please see replies to previous such comments.
	SL	52.4 It would be important to reconsider whether the rules for the application of reductions should already be laid down in the Horizontal Regulation and not in delegated acts, as provided in this paragraph.		Please see replies above.
	LU	52.5 Same question for paragraph 5 which deals with the information exchange between the Commission and the Member States, the		Please see replies above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		procedure and the deadlines to be respected. We would like to have more details. Moreover, we would like to have some of those details in the basic act.		
	CY	52.5 We beleive that the adoption of implemented acts by the Commission should be as minimum as possible in order to ensure a stable environment.		Please see other replies to questions on this article. The Commission empowerments in the current proposal are significantly fewer than in existing legislation.
	IE	Can you confirm existing commitments under the current programme which are carried forward into new round shall be exempt from Performance Reporting and will there be certain budget lines allocated for which there will be no reported output required? For EAFRD if a MS has exhausted allocation from the old programme and has expenditure in the FY2021 what are the transitional arrangements? In the case of EAFRD, if the MS Annual Performance is not cleared or the MS was not in a position to submit the Annual Performance Clearance package and you have a suspension in place which carries into the following financial year can the		Expenditure paid under current programme will be subject to control and reporting requirements of the current legal framework. Expenditure paid under the CAP Strategic Plan will need to be subject to the new performance reporting requirements unless it is expenditure under old rules. Such transitional arrangements will need to be addressed separately. The declaration of expenditure is deemed inadmissible by the Commission according to the requirements set out in Article 30(6) and (7) if the annual clearance package is not received. Once all the conditions are met by the MS, the Commission will accept the declaration of expenditure.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		expenditure be retrospectively claimed once the suspension is lifted? If EAFRD expenditure has been deemed inadmissible as per Article 30.7 can the expenditure be retrospectively claimed once the suspension is lifted or do you claim the expenditure at the time for which there would be no reimbursement until the suspension is lifted? In the case of EAFRD currently, recoveries are reused within the programme and therefore annual declaration against each budget line/intervention is reported at net spend. This would incorporate gross expenditure less recoveries of irregularities and cross compliance from all years. Do we exclude recoveries of Cross Compliance and irregularities for the purpose of matching output to spend? In the case of EAGF, currently expenditure recoveries for all years and Cross Compliance for all years are reported on separate budget lines. Are outputs to be matched with the expenditure lines only?		The situation is different if there is a reduction applied in the Annual Performance Clearance then the expenditure cannot be claimed at a later stage. Once suspension is lifted as a result of the follow-up procedure, and if applicable, relevant reduction or correction has been applied, the claimed and eligible expenditure is reimbursed. When output is to be matched with expenditure, correlation is to be made with the expenditure incurred in the year ("gross") unless the recovery relates to the given payment, made within the financial year. Recoveries related to previous years' expenditure should not be taken into account for matching expenditure with related output of the financial year to be reported/audited and assessed. This would be applicable for both EAGF and EAFRD.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	DK	In general, we are still very uncertain about the consequences of not fulfilling the relevant output and result indicators in the annual performance reports. It must be clear how suspensions of payments might ultimately result in reductions.		Suspensions of payments might ultimately result in reductions only at the end of the programming period as regards results .

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	DK	Here it is said that where expenditure corresponding to the interventions referred to in the Strategic plan does not have a corresponding output reported in the annual performance report, the Commission shall reduce the Union financing. Is there a link here to paragraph 2 in article 38? And if there is, should there not be a reference to paragraph 2 in Article 38 which says that if the Commission in the framework of the annual performance clearance establishes that 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 payments? Or does the wording in paragraph 1 mean that if the deviation between the interventions in the Strategic plan and the output reported in the annual performance report is less than 50 percent then the commission will not reduce the financing?		Article 38 refers to suspensions which are put in place when the Commission has no ex-ante assurance for the future expenditure (thus a threshold of 50% is appropriate). Article 52 defines reductions for the expenditure that has already been executed by the PAs. The reductions will be carried out when the expenditure does not have a corresponding output. All expenditure reported in the Annual Performance report for the previous year that has no corresponding output will be reduced and there is no specific threshold like in Article 38. A suspension under Art 38(2) as regards output will be re-assessed during the annual performance clearance for the year the suspension was applied and if expenditure has corresponding outputs, the suspension will be lifted and amounts reimbursed. If the declared expenditure does not have a corresponding output then, the relevant amount of the suspension will be permanently reduced.
	LV	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		The MS comment and its opinion that the wording of the CAP SPR is clearer is noted.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		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%. We draw attention to the difference between wording of HZR Art. 38(2), 52(1) and CAP SPR Art.121(4). Art.38(2): “...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...” and Art.52(1): “Where the expenditure referred to in Articles 5(2) and 6 and corresponding to the interventions referred to in Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation] does not have a corresponding output as reported in the annual performance report, the Commission shall adopt implementing acts prior to 15 October of the year following the budget year in question determining the amounts to be reduced from		

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		<i>Union financing... ”.</i> Whereas CAP SPR Art.121(4): “...<i>For the types of interventions which are not subject to Article 89 of this Regulation, and where the realised output and the realised expenditure ratio deviates by 50% from the annual planned output and expenditure ratio, the Member State shall submit a justification for this deviation... ”.</i> Art.38(2) is about difference between declared amount and amount indicated in the APR, whereas Art.52(1) is about difference between spent funding and achieved output. In this respect, the wording of the CAP SPR is more clearly understandable.		
Article 53	HU	We do not understand exactly the basis of the establishment of non-conformity by the COM when there are no checks at beneficiary level? If COM intends to investigate matters at a control level only, it is impossible to associate any exact amount with the findings. Consequently, flat-rate reductions will be the general practice necessarily overestimating the financial impact of the actual errors.		This article is needed in order to cover serious deficiencies in the governance systems of the Member States. Conformity stays at the level of basic Union requirements, which is to be maintained from the existing system. The current system is transformed into a set-up that allows for a more objective assessment based on: - functioning of the governance

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		Since MS may not have the proper means to actually quantify the real losses, over-penalization may be hard to avoid. Such approach is unfair, thus unacceptable. The introduction of annual performance clearance and the maintenance of the conformity procedure result in a more complicated and financially risky situation for the MS, therefore either a performance-based or a conformity-based approach should be applied instead of a mixed system. In our opinion art 53 should be deleted.		system (as set out in HZR – and SPR), - output related to expenditure declared in the annual accounts. The conformity procedure should stay in place for cases, when deficiencies in the governance systems are not remedied by the Member States and when they create a financial risk to the EU budget.
	LU	According to this article and the explanations given during the AGRIFIN meeting there will only be flat rate corrections! LU authorities would like to keep the possibility for corrections based on extrapolation or precise calculations!		The principle of proportionality will always be maintained and in accordance with paragraph 3 the Member States shall be given the opportunity to demonstrate the actual extent of the non-compliance. However, given that, it will be deficiencies at governance system level and not at individual beneficiary level, it would be more difficult to do a precise calculation as in line with the current guidelines on e.g. financial corrections for non-compliance with accreditation criteria.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	NL	53.1 Fear of recovery of support, years after it has been received due to lengthy audit procedures, increasingly hampers the development and consolidation of producer organisations and inhibits larger producer organisations to implement operational programmes. If operational programmes in the fruit and vegetables sector, and in any of the other sectors, is to be a meaningful type of intervention for Member States to pursue the various EU objectives, then producer organisations must be given a reasonable assurance that CAP support once granted will not be recovered, except in cases of fraud. Question to the Commission: The second subparagraph provides that non-conformity with regard to expenditure for interventions under the CAP strategic plans shall only result in exclusion from Union financing in the case of serious deficiencies in the functioning of the Member States' governance systems. Could the Commission share its thoughts on the effects of a finding of non-compliance with the recognition criteria of producer organisations under R 1308/2013? Would the Commission agree that where producer organisations are beneficiaries of interventions under the CAP strategic plans non-conformity with regard to the recognition criteria should also only result	1. Where the Commission finds that the expenditure referred to in Article 5(2) and Article 6 has not been effected in conformity with Union law, the Commission shall adopt implementing acts determining the amounts to be excluded from Union financing. However, as regards the types of interventions referred to in Regulation (EU) .../...[CAP Strategic Plan Regulation] the exclusions from Union financing as referred to in the first subparagraph shall only apply in the case of serious deficiencies in the functioning of the Member States' governance systems. A decision of exclusion shall not require Member States to recover amounts from beneficiaries except in the case of fraud. The first subparagraph shall not apply to cases of non-compliance with the eligibility	The measures under Regulation 1308/2013 will be subject to compliance with legality and regularity requirements. Thus, if non-compliance were established in this respect, the related payments would need to be recovered also from the beneficiaries. The serious deficiencies in the governance system are to be established at national level as regards functionality and compliance with the basic Union requirements, and (not related to the individual payments, transactions or beneficiaries). The Member States would continue to have an overall obligation to recover unduly paid amounts.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		in exclusion from Union financing when the governance systems have serious flaws? Question to the Commission: How exactly foresees the Commission to deal with enhanced conditionality in respect of this paragraph and in respect of financial corrections?	conditions for individual beneficiaries laid down in the national CAP Strategic Plans and national rules. The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 101(2).	
	IT	53.1 The conformity procedure, as regards		Serious deficiencies in the governance

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		the types of interventions referred to CAP SPR, shall only apply in case of serious deficiencies in the functioning of the MS' governance systems. This leads to the conclusion that the possible financial consequences linked to the suspension of payments due to unsolved serious deficiencies in the governance systems (Article 40) will be quantified and defined exclusively under the conformity procedure. Is this conclusion correct?		system are to be reported within the annual clearance package (also certified by the CB), which, if MS remedial actions are not sufficient or have not resolved the deficiency by the reporting deadline, could lead to a conformity procedure. In this case, the financial risk linked to the deficiencies in the governance systems is to be quantified within the conformity enquiry. The financial risk can also be quantified by the MS related to the annual clearance package (i.e. management declaration by PA, opinion by the CB)
	IE	53.1 Will there be a document similar to the 'key and ancillary controls' in the current Reg, classifying "serious deficiencies"?		It is not the intention of the Commission to create such a document since the number and variety of deficiencies would make it difficult to list all of them. However, the Commission will continue to provide support and guidelines including on types of deficiencies where this is considered necessary by Member States.
	CZ	53.1 Paragraph 1, 2nd subparagraph states that, with regard to interventions, exclusion applies only 'in the event of serious deficiencies'. There is an exception for cases of non-compliance with the eligibility conditions for individual beneficiaries set out in SP. However, in paragraph 2, the same rule remains that "the Commission shall		Serious deficiency is the same as under the current legal framework (ref. Guideline no 1 on accreditation criteria), the system is so deficient that it does not allow for proper functioning and it does not ensure checks and payments to be made in compliance with the basic Union requirements. Non compliance with conditionality will as

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		assess the amounts to be excluded in the light of the seriousness of the deficiencies". So we ask for clarification of what the EC will consider to be a seriously deficient? Next, we ask whether this provision 53 (1) also applies to the expenditure which has been paid out, however, should not be granted because of a breach of the conditionality or is that provision only referring to the conditions of eligibility?	PUBLIC	today result in financial corrections.
	DK	53.1 Denmark understands subparagraph 3 in paragraph 1 to mean that if an individual beneficiary does not fulfil national rules in the CAP Strategic plan then it will not result in a financial correction at the EU level. Is that correctly understood? In other words, it will be up to Member States to establish a system in accordance with article 57 where unduly paid amounts are required to be repaid?		Art 53.1 (3) means that financial risk related to the deficiencies in the governance system is to be assessed and calculated at the overall governance system rather than to be linked to individual payments and beneficiaries. Notwithstanding, if the MS realises non-compliance with eligibility conditions set out in its CAP Strategic Plan is to recover ineligible expenditure.
	DE	53.1 The conditions under which an exclusion from Union financing as referred to in the first subparagraph shall apply should be clearly defined. Clarification is needed about the indeterminate legal concept "serious deficiency". A definition such as laid down in articles 41 and 42 of the current regulation (EU) no. 1306/2013 should		Please see replies to other questions on this paragraph.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		be included in the basic regulation.		
	GR	53.1 Clarification is needed, in the basic regulation, regarding the phrasing “<i>in the case of serious deficiencies in the functioning of the Member States' governance systems</i>”. The inclusion of a list with serious deficiencies (even if it is not exhaustive) will be useful. The Regulation (EU) should incorporate the method of calculating the lump sums that should be excluded from Union financing.		The current Guideline no 1 on accreditation that also clarifies institutional set-up and concept such as seriously deficient could be adapted for the next legal framework. See also previous replies. Guidelines for financial corrections would also be established under the proposed legislative framework.
	PT	53.1 What is meant by "serious deficiencies in the functioning of the MS governance system"? Further clarification should be included in the text of the Regulation		Refer to previous replies.
	RO	53.1 We consider it necessary to clarify the term „serious weaknesses”. The first subparagraph does not apply in cases of non-compliance with the eligibility conditions for individual beneficiaries, as set in the national strategic plans under CAP and in national norms” – comment: Shall we understand that any other weaknesses (except for not fulfilling the eligibility criteria by the beneficiaries) are serious?		No, this interpretation is not entirely correct. Please refer to previous replies.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	SL	53.1 Slovenia would like to have more précised explanation of serious deficiencies in the functioning of the MS governance systems. Are there exactly the same disadvantages as respected for the suspension of payments under Article 40?		Please refer to previous replies.
	ES	53.1 The reasons by which a deficiency may be considered as serious shall be clear.	However, as regards the types of interventions referred to in Regulation (EU) .../... [CAP Strategic Plan Regulation] the exclusions from Union financing as referred to in the first subparagraph shall only apply in the case of serious deficiencies in the functioning of the Member States' governance systems.	Please refer to previous replies.
	NL	53.2 The amounts of financial corrections should be carefully assessed by the Commission. The general principles concerning that assessment should be clear up-front and therefore be included in this paragraph or article. One of the principles should be that the financial correction should be proportionate.	The Commission shall assess the amounts to be excluded on the basis of proportionality while taking into account the gravity of the deficiencies found. Only in the case an exact calculated amount is not possible flat rate corrections	Paragraph 3 of this article allows the MSs to demonstrate the actual extent of non-compliance. The general principles of proportionality apply for the entire proposed regulation and do not need to be specifically repeated here. In this context, it is not considered necessary to add the proposed changes.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			are applied.	
	DK	53.2 This paragraph states that the Commission shall assess the amounts to be excluded [from union financing] on the basis of the gravity of the deficiencies found. Under the current programming period, the revised update of the Guideline on the calculation of financial correction and the updated and key- and ancillary controls significantly increased the transparency on how the gravity of deficiencies are assessed. Considering the significant changes to the CAP, we would very much like this level of transparency to continue.		MS comment is noted and transparency in this respect is aimed to be kept.
	PT	53.2 How will the COM assess the amounts to be excluded in view of the seriousness of the deficiencies found? Further clarification should be included in the text of the Regulation		Refer to previous replies.
	SL	53.2 Slovenia proposes that besides gravity of deficiencies also principle of proportionality is respected when the amounts are to be excluded from financing. Similarly, for example, Article 40(2), which regulates the suspension of payments in relation to deficiencies in the governance system, expressly provides that the		Yes indeed, please refer to previous replies.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		Commission must comply with the principle of proportionality.		
	BE	53.2 More details in basic act		Please see previous replies on this topic.
	DK	53.3 With regard to paragraph 3 and 4, we would like to know if the Commission aims to continue the procedure that we see in article 34 of Regulation 908/2014, and the deadlines that were have agreed on for the current programming period?		Yes, conformity clearance procedure would remain in place when it is considered necessary and the financial risk linked to the deficiencies in the governance system have not been mitigated by remedial actions of the MS. Yes, the same procedure as currently provided for in Article 34 of 908/2014 is foreseen.
	DK	53.4 See comments to paragraph 3		See reply to 53(3).
	NL	53.5 Question to the Commission: What exactly is the rationale behind this paragraph? Depending on the reply of the Commission on our question above we might suggest at a later stage to delete this paragraph.		Art 53(5) is in line with the provisions in current Art 52(5) of Reg No 1306/2013 and so is a continuation stating that the 24 months limitation does not apply in case of infringements (detailed in the Art 53(5)).
	LV	53.6 We don't support Commission's powers under Art.53(6), in means of adopting delegated acts supplementing this Regulation with rules on the criteria and methodology for applying financial corrections. We consider that the substantial conditions should be included		The MS comment is noted. In the current legal framework the same approach is applied.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		in the basic acts.		
	DK	53.6 Denmark is of the opinion that the rules on criteria and methodology for applying financial corrections should be laid down in implementing rather than delegated acts. Consequently, the text in para 6 and 7 should be joined.	The Commission is imposed to shall adopt implementing acts in accordance with Article 101 0 supplementing this Regulation with rules on the criteria and methodology for applying financial corrections.	The MS comment is noted.
	SK	53.6 The rules on the criteria and methodology for applying financial corrections should be set out in the legislative act or adopted by means of implementing acts, but not by means of delegated acts. Justification: Slovakia would like to deliver its opinions on a draft act.		Please see previous responses on this topic.
	PT	53.6 The rules on the criteria and methodology for applying financial corrections should be in the regulation and not in delegated acts.		Please refer to previous reply.
	CY	53.6 We beleive that the adoption of delegated acts by the Commission should be as minimum as possible in order to ensure a stable environment.		Noted, please refer to previous reply.
	CY	53.7 We beleive that the adoption of implemented acts by the Commission should be as minimum as possible in order		Noted, please refer to previous reply.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		to ensure a stable environment.		
	FI	The Commission has told that flat rate is the only acceptable method to count financial corrections. When conditionality is concerned, there should be possibility to calculate the expenditure, which is not effected in conformity with Union law, same way as at present assessing the risk of financial damage resulting from the non-application of administrative penalties. It should be possible to identify more precisely the financial damage caused to the Union than flat-rate correction.	The Commission shall assess the amounts to be excluded on the basis of the gravity of the deficiencies found. <i>Financial corrections concerning conditionality shall be based on calculated deficiency of the administrative penalties not applied. Where this cannot be identified with proportionate effort, flat-rate corrections are used.</i>	The approach to calculated and flat-rate corrections as regards conditionality remains the same and this principle will be included in related Delegated Act (similarly to Art 12 of 907/2014).
	SV	We note that expenditure shall only be excluded from financing in case of serious deficiencies in the functioning of Member State' governance systems. We have no drafting suggestions at this time, but would like to clarification on some points: • Could the Commission please provide examples of what constitutes a “serious” deficiency and what is merely a “deficiency”? • How will the amount to be excluded be determined? If a flat rate is to be used, what will be its basis? As regards the second bullet point, we can		Noted. Please see replies above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		think of several options. For instance, it could be possible to use a low flat rate for “serious” deficiencies and a higher one for “even more serious” deficiencies. It could also be possible to use a lower flat rate the first time an error occurs, and increase it in case the error is repeated. Flat rates could also be based on an intent to reflect the perceived risk to the fund, or they could have other intents. We are not convinced that we should try to define “serious deficiency” in the basic act. However, it is important that the recitals do not cause any unintended interpretation of this concept. Recital 31 could be taken to mean that any “non-compliance with Union basic requirements and unreliability of reporting” is to be considered a serious deficiency. That would not, as we see it, tally with the Commission’s explanation at the AGRIFIN meeting on 10 October, that a serious deficiency could be a total lack of a certain system, such as the geo spatial aid application, rather than shortcomings of such a system. Another definition of “serious deficiency” is evident in WK 12035/2018 INIT, article 1.3, where it is defined as anything that is not in line with MS management declaration. It would be beneficial if the term “serious deficiency” is used in a consistent manner in		

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		order to avoid different interpretations and misunderstanding. Sweden would prefer the definition in line with the Commission's explanation at the AGRIFIN meeting on the 10th of October.		
Article 54	SK	We suggest to set out a possibility for Member States not to pursue recovery in the following cases: 1. If the recovery is less than the de minimis amounts 2. Where recovery proves impossible due to the insolvency of the debtor.	On duly justified grounds, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases: - that the amount to be recovered from the beneficiary in the context of an individual payment for an aid scheme or support measure, not including interest, does not exceed EUR [...]; - where recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity. The financial consequence of non-recovery shall be borne by the Union's budget.	In the New Delivery Model the Commission proposes no longer to set the rules for the recovery of undue payments at the level of individual beneficiary in the basic act (de minimis, insolvency etc). These rules are at the discretion of the MS.
	HU	Hungary welcomes all the simplification intentions of the Commission. We consider		The reuse of the recovered amounts from irregularities for second pillar is a principle,

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		that the issue of non-compliance recovery can be further simplified by abolishing the amounts outstanding on 31 December 2020. Thus, a real administrative burden reduction can be achieved, as there is no further need to deal with the II and III Annexes of the current 908 regulation. As a reminder, for example, in the negotiation of the omnibus regulation, the Commission argued for the abolition of the 50-50% rule that these were small amounts. Hungary would prefer to have similar rules for EAGF and EAFRD recovered irregularities, thus the MSs to retain and reuse 100% of the irregularities collected under the 1st pillar. Question to the Commission: one of the meetings of AGRIFIN said that although the II. and III. Annexes will disappear, but some report should be given. In the new system, what kind of reporting (content, form, etc.) should be given by the Member States on the recovery, even in accordance with the requirements of OLAF?		which is already applied for recovered amounts the same programming period. The reuse has been extended to all programming periods. However, this principle does not exist at all in first pillar for which the irregularities have been defined as assigned revenue in the new MFF. It is not considered sound financial management to simply write off any amounts outstanding on 31.12.2020.
	NL	The Netherlands does not support this article. The money resulting from recoveries in case of non-compliances should be reallocated in		The amounts recovered by MS for EAGF are currently an assigned revenue for EAGF. The proposal is a status quo.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		the MS. Although NL acknowledges that the yearly regime of the EAGF is less flexible than the regime of the EAFRD a similar approach is justified. Due to the integrated approach of the two pillars in the strategic plan, we need also an integrated approach on recoveries. The money need to be reallocated in the MS addressing environmental and climate objectives and should not be reused via the by-pass of assigned revenue.		
	IE	Art54/55 in conjunction with Article 35 Eligible expenditure: Is all expenditure eligible from 01-01-2021, regardless of the approval date of the CAP Strategic Plan, which would facilitate retrospective eligibility and claims (even in a prior year) as per the current Reg for RDP? Is it proposed that in any circumstances only one amendment will be permitted per year for the CAP Strategic for both funds or will further types of amendments be facilitated in implementing and/or delegated Acts? Is the eligibility for the amendment retrospective to the date it was submitted?		The expenditure is eligible from 1 of January of the year following the adoption of the CAP Strategic Plan (Art. 80(1) of CAP SPR). Regarding amendments of the CAP Strategic Plan for EAFRD, expenditure that becomes eligible as a result of an amendment to the CAP Strategic Plan, will be eligible from the date of submission of the request for an amendment by MS (Art. 80(2) of CAP SPR).
	CZ	We appreciate the foreseen change of rules, including the possibility for the MS set their own appropriate de minimis rule. We would		See reply to SK above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		like to ask Commission where will be these provisions set if not in the currently discussed Regulations? Would it also be possible to clarify under which conditions (if any) will it be possible to decide not to pursue a recovery? Followingly, we would like to ask EC where in the regulation/ implementing regulation will be described the procedure when the recovery is non-recoverable.		
	DK	On EAFRD we have today a rule saying that if the Member State has collected irregularities from a beneficiary, these financial means can be used for other purposes within the EAFRD program period. Why does the Commission not establish a similar rule in relation to EAGF? When we read the Commissions communication on the future food and farming policy from November 2017, we got the impression that the Commission considered such a rule on EAGF. Something we would be delighted to support, since we prefer similar rules on both EAFRD and EAGF. Why has the Commission now changed its position and asks the Member States to pay back 80 percent of irregularities to the Commission? Normally, the Commission would argue that financial means should create measurable		See reply to NL above. The proposal reflects the current situation, i.e. also now EAGF amounts recovered by the MS are to be returned to the EU budget and MS may retain 20% of the amounts as flat rate recovery costs.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		results. So why collect 80 percent of the money instead of leaving it to the Member States to use the means on other purposes within EAGF?		
	FI	A uniform de minimis –rule is needed before the Member State has to make the recovery. The costs of the recovery may be higher than the amount to be recovered. Such uniform possibility should concern all direct payment interventions and measures including conditionality to make the IT systems easier to plan and operate. The possibility to use this de minimis -rule for recoveries should have nothing to do with Article 85(2)(b) of HZR. Thus the MS should have possibility to apply or not apply the de minimis –rule to administrative penalties for conditionality (the amount of the penalty per beneficiary and per calendar year is EUR 100 or less) and de minimis –rule before the Member State has to make the recovery. Thus the de minimis –rule concerning administrative penalties for conditionality should not be a lex specialis de minimis- rule that makes uniform approach impossible.	Sums recovered by the Member States <i>and the interest thereon</i> following <i>cases of non-compliance with the eligibility conditions for individual beneficiaries laid down in the national CAP Strategic Plans and other schemes under the EAGF</i> the occurrence of irregularities and other cases of non-compliance by beneficiaries with the conditions of the interventions referred to in the CAP Strategic Plan and the interest thereon shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the sums are actually received. <i>Member States may decide amounts that have to be exceeded before the recovery is made (de minimis –rule). This option applies to all individual interventions separately as well as</i>	See reply to SK above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			<i>conditionality in spite of the decision made by the Member State concerning Article 85 (2)(b), and may be uniform concerning all.</i>	
	DE	A common rule for the recovery procedure as laid down in article 54 of the current regulation (EU) no. 1306/2013 is missing. Such a rule is necessary to establish a common practise and to avoid legal uncertainty for unresolved cases of previous periods. Due to the lack of a rule corresponding to article 54 the 50/50 rule would be dropped.		See reply to SK above. It is not considered that there is an uncertainty as to the recovery procedure. EAGF recovered amounts are to be returned to the EU budget; EAFRD recovered amounts can be re-used by the MS. MS will not have the obligation to return to the EU budget 50% of the amounts not recovered within 4/8 years anymore. The 50/50 rule will continue to apply for the past, to the EAGF expenditure declared until financial year 2020 and to Rural Development programmes 2014-2020 and previous.
	GR	To be clearly written in the article the possibility for MSs to use the “ <i>de minimis</i> ” rule in their CAP strategic plans. Within the context of the CAP Strategic Plans, amounts recovered for interventions in the 2 nd pillar are retained from MSs. The same principle should apply for the interventions in the 1 st pillar as all	When the Union's budget is credited as referred to in the first paragraph, the Member State may retain 20% 100% of the corresponding amounts as flat rate recovery costs, except in cases of non-compliance attributable to its administrative authorities or	See reply to SK and NL above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		interventions are now part of the same CAP Strategic Plan with the new delivery model.	other official bodies.	
	LV	Latvia considers that it is necessary to determine the amount of ineligible expenditures, when the Member states may decide not to pursue recovery. So there will not be situations when the costs already incurred and likely to arise (in total) are more than the amount to be recovered. In order to ensure equal terms for all beneficiaries, this threshold should be the same in all Member States.		See reply to SK above.
	ES	We propose, with the purpose of maintaining the status quo in the management of agricultural fund debts, in such a way that the calculation of interests remains the one that operated until now in agricultural funds with a common community base. With regard to the minimum amounts to be recovered, as there is nothing indicated in this regard, it could be understood that it would be compulsory to recover any amount, without establishing a minimum, with the consequent increase in administrative burden to the Paying Agency. Therefore, it is necessary to maintain the current situation or to establish that Member States shall determine this minimum, in accordance with the provisions for the case of minimum reimbursements to	1. Sums recovered by the Member States following the occurrence of irregularities and other cases of non-compliance by beneficiaries with the conditions of the interventions referred to in the CAP Strategic Plan and the interest thereon that Member States will calculate after the expiration date of the period granted to the beneficiary for its payment, shall be made over to the paying agency and booked by it as revenue assigned to the EAGF in the month in which the sums are	See reply to SK above. The procedure for recovery of undue payments from the final beneficiary is at the discretion of the MS, which implies that MS may continue to recover debts from beneficiaries by means of offsetting with the EAGF or EAFRD payments.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		beneficiaries for financial discipline. In order to maintain the status quo in terms of agrarian fund debt, flexibility in payments and the existence of a common community base, it is essential for paying agencies to be able to recover their debts through the compensation mechanism currently foreseen by EU regulations. Otherwise, there may be delays in recoveries and payments of CAP interventions, which are subject to strict payment deadlines.	actually received. Member states may establish the minimum amount to which this section shall be implemented, as established in the case of a minimum reimbursement to beneficiaries for financial discipline. - Include a new section 2 in article 54. 2. Member States may deduct any beneficiary outstanding debt, as established in the previous paragraph, from any future payment to the beneficiary, which the Paying Agency must carry out as responsible entity for debt recovery.	
Article 55	SK	We suggest to set out a possibility for Member States not to pursue recovery in the following cases: 1. If the recovery is less than the de minimis amounts 2. Where recovery proves impossible due to the insolvency of the debtor.	On duly justified grounds, Member States may decide not to pursue recovery. A decision to this effect may be taken only in the following cases: - that the amount to be recovered from the beneficiary in the context of an individual payment for an aid scheme or	See reply to SK regarding Article 54 above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			support measure, not including interest, does not exceed EUR [...]; - where recovery proves impossible owing to the insolvency, recorded and recognised under national law, of the debtor or the persons legally responsible for the irregularity. The financial consequence of non-recovery shall be borne by the Union's budget.	
	NL	Question to the Commission: The second subparagraph prescribes that cancelled and recovered amounts shall be ‘reallocated to other rural development interventions’. This requirement seems to be too restrictive, as Member States should also be able to make the amounts concerned available under the same rural development intervention but for a different beneficiary. Moreover, the word intervention seems not appropriately used here. Could the Commission clarify the intention of this provision?		The MS comment is noted. The intention of the Commission is to allow the reuse the recovered amounts for another Rural Development “operation”.
	IE	Please see Article 55 comment above.		Please see the reply to Art 55.
	IE	55.1 Can the follwoing wording be changed : Amounts of the Union financing under the	Amounts of the Union financing under the EAFRD	The wording should remain “shall”, as any recovered amounts shall to be re-used for

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		EAFRD which are cancelled and amounts recovered, and the interest thereon, shall be reallocated to other rural development interventions in the CAP Strategic Plan	which are cancelled and amounts recovered, and the interest thereon, may be reallocated to other rural development interventions in the CAP Strategic Plan	EAFRD operations under the CAP Strategic Plan.
	FI	Article 55(1) seems not to be in the right place 55.1 and unnecessary concerning the interventions under the CAP Strategic Plan.	1. Where irregularities and other cases of non-compliance by beneficiaries with the conditions of the rural development interventions referred to in the CAP Strategic Plan are detected, Member States shall make financial adjustments by totally or partially cancelling the Union financing concerned. Member States shall take into consideration the nature and gravity of the non-compliance detected and the level of the financial loss to the EAFRD. <i>Sums recovered by the Member States and the interest thereon following cases of non-compliance with the eligibility conditions for individual beneficiaries laid</i>	Article 55(1) concerns irregularities and cases of non-compliance with the conditions of the rural development interventions under the CAP Strategic Plan. It should therefore be placed in Article 55, referring to “Provisions specific to EAFRD” with regard to non-compliances.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			down in the national CAP Strategic Plans and national rules Amounts of the Union financing under the EAFRD which are cancelled and amounts recovered, and the interest thereon, shall be reallocated to other rural development interventions in the CAP Strategic Plan. However, the cancelled or recovered Union Funds may be reused by Member States only for a rural development operation under the national CAP Strategic Plan and provided the funds are not reallocated to rural development operations which have been the subject of a financial adjustment.	
	PT	55.1 By “in cases of irregularities and other non-compliance by beneficiaries with the conditions of the rural development measures referred to in the CAP strategic plan”, should we understand that this covers any improper payments in the light of European law and national law?		Article 55(1) concerns irregularities and cases of non-compliance with the conditions of the rural development interventions under the CAP Strategic Plan.
	RO	55.2 Regarding the provisions of Art 56 of the Reg. 1306/2013, we consider suggest to	“After conclusion of a rural development program, MS	Article 55(2) contains new provisions on Financial instruments. General provisions

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		add the above stated information to the paragraph 2, as follows:	shall reimburse the recovered amounts to EU budget.”	for EAFRD funding are regulated in paragraph 1 of that Article. Therefore, it would not be appropriate to add such a provision to paragraph 2. The proposal foresees that such amounts should not be reimbursed anymore. The purpose is to allow amounts recovered by MS to be continuously re-used by MS under rural development interventions of the CAP Strategic Plan.
	ES	55.1 The same as 54	1. Where irregularities and other cases of non-compliance by beneficiaries with the conditions of the rural development interventions referred to in the CAP Strategic Plan are detected, Member States shall make financial adjustments by totally or partially canceling the Union financing concerned. Member States shall take into consideration the nature and gravity of the non-compliance detected and the level of the financial loss to the EAFRD. Amounts of the Union financing under the EAFRD which are canceled and amounts recovered, and the	See reply to SK regarding Article 54 above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			interest there on, that Member States will calculate after expiration of the period granted to the beneficiary for payment, shall be reallocated to other rural development interventions in the CAP Strategic Plan. However, the canceled or recovered Union Funds may be reused by Member States only for a rural development operation under the national CAP Strategic Plan and provided the funds are not reallocated to rural development operations which have been the subject of a financial adjustment. Member states may determine the minimum amount to which this section shall apply, as established in the case of a minimum reimbursement to beneficiaries for financial discipline.	
	ES	55.2 The same as 54.2	2. Member States may deduct any beneficiary outstanding debt, as established in the previous paragraph, from any future payment to the	The procedure for recovery of undue payments from the final beneficiary is at the discretion of the MS, which implies that MS may continue to recover debts from beneficiaries by means of offsetting with

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			beneficiary, which the Paying Agency must carry out as responsible entity for debt recovery.	the EAGF or EAFRD payments.
Article 56	...	...		

REGULATION ON FINANCING, MANAGEMENT AND MONITORING OF THE CAP – BLOCK 7

TITLE IV: CONTROL SYSTEMS AND PENALTIES

Chapter I: General rules

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 57	NL	It should be laid down at EU-level that controls should be cost-effective. We should not become penny wise and pound foolish. Hence the word cost-effective should be introduced	Member States shall, within the framework of the CAP, adopt all legislative, regulatory and administrative provisions and take any other measures necessary to ensure cost-effective protection of the financial interests of the Union. Those provisions and measures shall relate in particular to: (a) checking the legality and regularity of operations financed by the Funds; (b) ensuring effective prevention against fraud, especially in areas with a higher	The principle of effective protection of the EU budget is a long standing principle embedded in EU law and it is also maintained in this proposal. The new delivery model however, and in particular the subsidiarity given to Member States to design their control and penalties system for interventions in the CAP strategic plan, give Member States the opportunity to explore options for achieving efficiency, in addition to effectiveness. It is therefore not considered necessary to include this term.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			level of risk, and which will act as a deterrent, having regard to the costs and benefits and the proportionality of the measures; (c) preventing, detecting and correcting irregularities and fraud; (d) imposing penalties which are effective, dissuasive and proportionate in accordance with Union law, or failing this, national law, and bring legal proceedings to that effect, as necessary; (e) recovering undue payments plus interest, and bring legal proceedings to that effect as necessary.	
	DK	57.1 Paragraph 1, litra e, says that Member States must establish a system where unduly paid amounts are required to be repaid. Yet, we would also like this regulation to		In line with the performance-based delivery model, the cases in which Member States may decide to not pursue recovery will not be specified at EU level (cf. the current Article 54 of Regulation (EU) No

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		establish that Member States in case of over declaration of areas should be able to refrain from penalties and to recover unduly paid amounts, insofar the over declaration relates to earlier years and not the year of finding, and provided that the over declaration is only a modest amount. The "modest amount" should be set as an area equivalent to for instance [1] ha per year because an area threshold is easier to administer than an amount threshold. Can Denmark within the range of subsidiarity set up its own area threshold?		1306/2013 is not kept). Hence, Member States may develop their own rules on de minimis.
	DK	57.2 It is clear from Article 57, paragraph 2 that Member States shall set up efficient management- and control systems in order to ensure compliance with the legislation for interventions as set out in the CAP-plan regulation. The Commission has in an earlier working party (for the CAP-plan regulation) stated that it is not mandatory for Member States to use an area monitoring system for on-the-spot checks of area-based support schemes under Pillar I and Pillar II, it was only an opportunity. We would ask the Commission to confirm that we have understood the main rule for on-the-spot checks of area-based support		Article 57(2) covers all expenditure made under the interventions in the CAP strategic plan but other expenditure as well; this is a general requirement. As regards IACS control and penalties, Article 70 of the proposal for a HZR refers indeed to paragraphs 1 to 5 of Article 57 where general principles are set out on how the financial interests of the Union are to be protected. It does not however specify how the control and penalties system should be designed to achieve that purpose. In line with the performance-based delivery model, the design of the control and penalties system is left to Member States. Hence, a Member State may decide to use the 'area monitoring system' as a tool for carrying

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		schemes as set out in Article 57(2) correctly. It is our understanding that this provision gives Member States the option to carry out the on-the-spot checks of area-based support schemes under Pillar I and Pillar II in the form of 1) a 5% sampling, 2) using the area monitoring system or 3) a combination of these two control methods? Is this a correct interpretation?		out systematic checks but it may also decide to continue the current sample-based approach. A combination of the two methods is also possible.
	SL	57.3 Does the provision that the beneficiary maintains the right to receive the aid in the event of force majeure apply to both pillars / all interventions? So far, in the case of force majeure, the beneficiary has retained a proportional share on the second pillar, and on the first pillar the entire payment or support. Does SI understand correctly that in the future CAP full payment will be unified?		The approach in the current system does not change.
	NL	57.3 This paragraph should be deleted	Member States shall take appropriate precautions ensuring the the penalties applied as referred to in point (d) of paragraph 1 are proportionate and graduated according to the severity, extent, duration	Paragraph 3 of Article 57 gives common EU rules and principles on penalties to be applied for non-compliances found. As such it ensures a level playing field at EU level.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			and recurrence of the non-compliance found. The arrangements set out by Member States shall ensure, in particular, that no penalties shall be imposed: (a) where the non-compliance is due to force majeure; (b) where the non-compliance is due to an error of the competent authority or another authority, and where the error could not reasonably have been detected by the person concerned by the administrative penalty; (c) where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance	

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			with the obligations referred to in paragraph 1 or if the competent authority is otherwise satisfied that the person concerned is not at fault. Where the non-compliance with the conditions for the granting of the aid is due to force majeure, the beneficiary shall retain the right to receive aid.	
	CZ	57.3 There is not included so called "obvious error" in the options where no sanctions are imposed. How does the EC intend to grasp and address these situations?		The list set out in paragraph 3 of Article 57 is a non-exhaustive list of cases in which penalties shall not apply. As indicated by the wording "in particular", Member States can further extend the list to include e.g. cases of obvious error or the concept of "right to error".
	DE	57.3 The list of circumstances where penalties do not apply does not provide for the "obvious error". Could the Commission please explain why?		Please see reply to CZ delegation.
	LV	57.3 We propose to supplement paragraph 3 with additional cases when penalties, shall	3. Member States shall take appropriate precautions	Please see reply to CZ delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		not be imposed. Similar like, it is applied in the current period and is set out in Regulation No.1306/2013 penalties shall not be imposed in cases where the non-compliance is due to obvious errors and where the non-compliance is of a minor nature. Such cases of non-compliance are sufficiently reasonable for non-application of penalties and considerably reduces the administrative burden.	ensuring the the penalties applied as referred to in point (d) of paragraph 1 are proportionate and graduated according to the severity, extent, duration and reoccurrence of the non-compliance found. The arrangements set out by Member States shall ensure, in particular, that no penalties shall be imposed: (a) where the non-compliance is due to force majeure; (b) where the non-compliance is due to an error of the competent authority or another authority, and where the error could not reasonably have been detected by the person concerned by the administrative penalty; (c) where the person concerned can demonstrate to the satisfaction of the competent authority that he or she is not at fault for the non-compliance with the obligations referred to in paragraph 1 or if the	

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			competent authority is otherwise satisfied that the person concerned is not at fault. (d) where the non-compliance is due to obvious errors; (e) where the non-compliance is of a minor nature, including where expressed in the form of a threshold, to be set by the Commission [or the Member State]; (f) other cases in which the imposition of a penalty is not appropriate, to be defined by the Commission [or the Member State]. Where the non-compliance with the conditions for the granting of the aid is due to force majeure, the beneficiary shall retain the right to receive aid.	
	SK	57.4 What are “Complaints concerning the Funds?” Could the Commission define the complaint and give some examples regarding		These provisions are carried over from article 74 of the current CPR Regulation No. 1303/2013. They are in line with Art 63

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		complaints concerning the Funds?		of the proposal for the new CPR, where the complaints are defined as covering any dispute between potential and selected beneficiaries with regards to the proposed or selected operation and any disputes with third parties on the implementation of the programme or operations thereunder, irrespective of the qualification of means of legal redress established under national law.
	CZ	57.4 It is not entirely clear who may submit proposal on the complaints to be addressed and what effective measures should we take to resolve these complaints? Will there continue a similar system to address the situation e.g. through "Commission Pilots"?		Please see answer to SK delgation.
	DE	57.4 The establishment of a management system for the effective examination of complaints concerning the Funds will result in an increase of administrative burden.		Please see answer to SK delegation.
	LV	57.4 Please give an explanation about arrangements, which MS shall introduce for ensuring the effective examination of complaints concerning the Funds and shall, upon request by the Commission, examine complaints submitted to the Commission. What exactly is meant by this? Farmers complaints to the Commission about the conditions for receiving support in the Member States, or disputes of control		Please see answer to SK delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		results?		
	SL	57.4 Are the arrangements for effective examinations of complaints part of the governance system?		Please see the answer to SK delegation for more details on the types of complaints. Yes, such arrangements are part of the basic Union requirements and thereby governance systems.
	FI	We have understood that these general rules concern also control system and penalties in relation to conditionality, but we have heard in the other working party that it is not so. Could the Commission clarify is it so that these general rules do not concern at all control system and penalties in relation to conditionality or do some articles concern and some not? Does the requirement to ensure effective protection of the financial interests of the Union include rules from Regulation 2988/95 and article 3 of it concerning effective procedures for retro-active sanctions and recoveries based on those? Is there requirement to implement Regulation 2988/95 and article 3 of it to all kinds of non-compliances concerning eligibility criteria both those which are based on national requirements and those which are based on Union requirements in the future?		The necessary separate set of rules on controls and penalties for conditionality (to ensure level playing field – see recital 55), are established in Chapter IV of Title IV. The early warning system is driven by the nature of possible conditionality infringements. Therefore, Article 86(2) third paragraph explicitly excludes from the early warning system infringements “which constitute a direct risk for public or animal health” and which “shall always lead to a reduction or exclusion”.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		We suppose that early warning system, remark for beneficiary or remedial actions for minor compliance are also applicable administrative penalties in the penalty system set up by the Member State? That would be simplification and according to proportionality principle.		
	DE	57.6 GER asks for confirmation that the Commission's authorization to establish implementing acts relating to procedures will only relate to basic principles whereas details such as control rates, percentages of random or risk based checks, parameters for the amounts of sanctions or the de minimis regulation will remain in the responsibility of MS. Para. 6b) Paragraph 4 should be deleted in order to avoid additional administrative burdens.		It is confirmed that the empowerment requested in Article 57(6)(a) does not cover rules on control rates, percentages of random vs. risk-based samples and the level of penalties. As regards controls and penalties for IACS-based interventions, subsidiarity is given to Member States. See reply to DK delegation.
Article 58	NL	58.1 Question to the Commission: What does the Commission mean by systematic checks? Risk based controls should be the general principle. The word 'also' keeps this provision too broad. Hence, the text should	The system set up by the Member States in accordance with Article 57(2) shall include systematic checks which shall also target the areas where the	Systematic checks should be understood as covering both a random-based and a risk-based part; this is necessary to assess if the risk is being appropriately targeted. Hence, it is considered that the current drafting should be kept. Systematic checks may also be based on a monitoring approach where all beneficiaries

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		be adapted by deleting the word also. It goes without saying that targeting on the highest risks needs an assessment of the highest risk. Moreover, it should be laid down at EU-level that controls should be cost-effective. We should not become penny wise and pound foolish. Hence the word cost-effective should be introduced	risk of errors is the highest. Member States shall ensure a level of checks needed for an a cost-effective management of the risks.	are covered by a procedure of regular and systematic observation, tracking and assessment of agricultural activities and practices on agricultural areas (cf. Article 68 – area monitoring system). The principle of effective management of risk is a long standing principle embedded in EU law.
	BE	58.1 Delete chapter III –art 74- 83 scrutiny of transactions and adding it here in general – parts of art 75.1, 76.1 Art 78.1 Mutual assistance can be helpful, as well for EAGF as for EAFRD	1. The system set up by the Member States in accordance with Article 57(2) shall include systematic checks which shall also target the areas where the risk of errors is the highest. <i>In relation to measures financed outside the CAP SP, Member States may, as part of the control system, carry out systematic scrutiny of the commercial documents of undertakings, in particular by cross checks.</i> Member States shall ensure a level of checks needed for an effective management of the risks.	It is not considered necessary to extend Article 58 to include the principle of providing mutual assistance in carrying out checks since the principle is already set out in Chapter III – Scrutiny of transactions as well as Article 64(4) of Chapter II – Integrated administration and control system.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			1bis Mutual assistance Member States shall assist each other for the purposes of carrying out the scrutiny checks provided for in this Chapter in the following cases: (a) where an undertaking or third party is established in a Member State other than that in which payment of the amount in question has or should have been made or received; (b) where an undertaking or third party is established in a Member State other than that in which the documents and information required for scrutiny are to be found. (The Commission may coordinate joint actions involving mutual assistance between two or more Member States)	
	CZ	58.1 Article 58 (1) contains systematic checks that will also address the areas with the highest risk of error. What the level of these checks is recommended or expected?		See reply to NL delegation. The design of the control and penalties system is left to Member States.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		We will appreciate a greater degree of detail and procedures that the EC will consider as a necessary level for effective management.		
	DE	Germany proposes the deletion of this article. Otherwise the current control system would be kept in place with no chance for an administrative simplification.		The Article ensures common rules and principles regarding checks to be carried out on CAP expenditure; as such, it ensures a level playing field for Member States.
	RO	58.1 We are asking for details on the first paragraph, especially the part regarding systemic controls. What does the domain represent, is it assimilated to the measure / scheme or to the fund?		The provision set out in Article 58(1) is a general principle applicable to the whole CAP expenditure. As regards “systematic checks”, see reply to NL delegation.
	SL	58.1 Member States are required, according to Article 57(2), to set up efficient management and control systems, which have to include, according to Article 58(1), systematic checks which will have to also target the areas where the risk of errors is the highest. Given that in those provisions there is no reference to Article 68, does that mean that the MS must set up and operate an area monitoring system as of the year 2021, but the MS may decide to use this new system for the purpose of checks later, e.g. 2022? Furthermore, Article 58(1) stipulates that checks will have to also target the areas where the risk of errors is the highest. When using the area monitoring system for the		See reply to NL delegation and reply to DK delegation on Article 57(2). Where a Member State decides to use the area monitoring system for the purpose of carrying out systematic checks, and provided a flat rate of payment per hectare is applied (all payment entitlements have equal value, all unit payments per hectare are the same) the Commission could consider an area threshold as a criteria that ensures that areas where the risk is the highest are targeted. At this stage it is however not possible to confirm whether the area threshold of 0,3 ha would be acceptable; as, the rapid technological

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		purpose of checks, could Slovenia on this basis focus on parcels that are bigger than 0,3 ha? Namely, 1/3 of agricultural parcels in Slovenia are smaller than 0,3 ha (representing 7 % of determined areas under the single application) and 1/2 of agricultural parcels is smaller than 0,5 ha (representing 16 % of determined areas under the single application). SI estimates that 100% follow-up actions on small parcels, which will be necessary because of relatively low resolution of the images for motoring system, will represent a big financial burden and it will be difficult to perform them on time. SI estimates that small parcels do not represent a significant financial risk for the EU budget, but they represent a disproportionate financial and administrative burden for SI.		developments in the field indicate that in the near future even parcels smaller than 0,3 ha will yield reliable results when analysed via monitoring techniques.
	SV	58.1 Sweden supports the change to a more risk-based approach to checks. The article should reflect this change by emphasizing the risk-based selection while not ruling out other bases for selection.	The system set up by the Member States in accordance with Article 57(2) shall include systematic checks targeting which shall also target the areas where the risk of errors is the highest.	See reply to NL delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	ES	58.4 Its elimination is proposed in order to reach simplification within the "delivery model" framework	e)with regard to wine as referred to in Regulation (EU) No 1308/2013, rules on the measurement of areas, on checks and on rules governing the specific financial procedures for the improvement of checks	
Article 59	PT	How does this provision, compliance with Public Procurement rules, combine with the "COCOF table", Table of Financial Corrections, approved by the European Commission?		This article which is in line with changes introduced in Reg No 1306/2013 with the Omnibus Regulation is indeed drafted so as to be used in combination with the table. The mentioned table could serve as a guide to determine the gravity of the non-compliance and level of proportional penalty as provided in this article.
	HU	Question to the Commission: Article 59 deals with non-compliance with public procurement rules, but the second sentence of this article is not clear. “Member States shall ensure that the legality and regularity of the transaction shall only be affected up to the level of the part of the aid not to be paid or to be withdrawn.” Please clarify in this regard, given that it is a new provision not covered by the current		This sentence is intended to limit the effect of any non-compliance on the legality and regularity of the whole transaction to only those parts that are affected by the non-compliance.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		regulation and it is necessary to clarify it in order to establish appropriate national practice.		
	RO	How is the principle of proportionality defined in terms of sums which must not be paid to MS? How can gravity be correlated to proportionality?		Please see above reply to HU delegation.
	SL	Is TA according to Article 112 (Technical assistance at the initiative of the Member States) of the legal proposal on strategic plans, including employment, implemented only according to public procurement procedure (in line with the national legislation for implementing Directive 2014/24/EU, Directive 2014/25/EU, Directive Sveta 89/665/EGS, Directive Sveta 92/13/EGS)? Or other procedures are also allowed for TA (e.g. a public tendering procedure, which transfers public powers for certain parts of implementation of support from the strategic plan to a private body or a public-law entity)?		Technical Assistance as other EU funds should be done in accordance with EU rules. There is no change in that for the HZR proposal.
Article 60	IT	A sharable principle is considered in this article, but very difficult to implement according to the rules of national (civil and penal) law. Moreover, unlike the same article in Regulation (EU) No 1306/2013, the proposed wording specifically gives to Member States	Italy proposes the deletion of this article or, as possible extreme alternative, to maintain the same wording of article 60 of the Reg. (EU) no.1306/2013.	It is considered necessary to keep the provision and act to the extent possible in detecting and pursuing cases of circumvention. Member States are also invited to consult reports of the European Court of Auditors (e.g. chapter 7 of The Annual Report of the European Court of

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		the responsibility to take measures to prevent circumvention of the provisions of EU law.		Auditors for 2016) where the issue of circumvention is highlighted.
	CZ	The Czech Republic suggests deletion of this article due to its inadequate level of complexity.		Please see reply to IT delegation.
	FI	The CAP-plan regulation stipulates ascendant capping from 60 000 euros onwards. This may stimulate farmers to split farms in orders to avoid cuts to their subsidies of direct payments. Is it circumvention of rules or a much discussed freedom what the Commissioner Hogan has told? Does this mean that in setting up eligibility rules of the subsidies should be avoided by the Member States conditions which may create a risk for circumvention of rules? What is the difference concerning old and new circumvention clause concerning individual files? Where do we find the point that the circumvention does not lead to 100 % refusal of payment, but just concerns the "profit" made by circumvention? This Article has proven very difficult and	Without prejudice to specific provisions, Member States shall take effective and proportionate measures to avoid provisions of Union law to be circumvented and ensure, in particular, that no advantage provided for under sectoral agricultural legislation shall be granted in favour of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantages were created artificially, contrary to the objectives of that legislation. Member States may give further and more detailed national legislation on the artificial conditions.	The Member States comments and proposal is noted.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		inefficient to apply in practice in terms of fulfilling the burden of proof needed to show circumvention and taking appropriate action. Article 60 should either be improved, or the Member States should be given the authorization to issue further, more detailed national legislation.		
	DE	Experience has shown that there is no practicable way of administrating the circumvention clause. This rule is focussed on benefits which contradict the goals of the horizontal regulation. The Horizontal Regulation does not define any goals of state aid regulations or of rural development measures. However, these definitions would be required for the application of this article. Furthermore the European Court of Justice has ruled that the circumvention clause only applies in cases, in which conditions have been created artificially in order to achieve the contravening benefits (see first ground in ECJ judgement C-434/12 of 12 September 2013). For reasons of legal security the term "exclusively" should be added.		The Commission takes note of the observations and the proposed drafting change. The change is, however, not considered necessary to add since it is implied in the text of the legal provision that the artificial creation of conditions is done in order to obtain advantages provided for under sectoral legislation.
	SL	Slovenia supports MS who report difficulties in using principle of intentionality. From the provision of Article 60 it follows that no advantage shall be granted in favour		The MS proposal is noted.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		of a natural or legal person in respect of whom it is established that the conditions required for obtaining such advantage have been artificially created and contrary to the objectives of that legislation. It would be sensible to consider using the term “<i>advantage shall be refused or withdrawn</i>» instead of the term “<i>no advantage shall be granted</i>.” Thus, the provision would apply to cases in which MS deal with applications for support, as well as cases where funds have already been paid on the basis of a payment claim .		
Article 61	RO	We suggest to maintain the phrasing in the Reg. 1306/2013.	Procedures allow joint operation or data exchange with integrated system	The Commission takes note of the MS proposal.
Article 62	RO	62.3 We consider it necessary to add a new letter, (g), which establishes the conditions under which the guarantee is withheld if a full unused advance is returned before the deadline;		It is not considered necessary to add a new letter. The case specified by Romania is already covered by art. 62(3)(e) and (f)
	HU	62.3 In case of the d) and e) point of the article 62 it is necessary to clarify what is the intention of the Commission about the advances for the rural development investments. In the 2014-2020 period the rural		The opinion of the MS is noted. The proposal carries over the existing, well functioning system.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		development advances were lagging behind than the expected due to the strict Union legislation. The requirements for the agricultural advances are differ from any other operative programs. Bank guarantee required or equivalent security must be presented to claim the advance. This strict regulation hits the agricultural sector however this sector is far the best repayer, the proportion of the unpaid loans is the lowest here than any other sectors (eg construction, trade etc.)For the upcoming period (2021-2027) there should be a possibility for the application of the collateral-free advances for rural development investments.		

Chapter III: Scrutiny of transactions

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 74	IT	In general. The Chapter III on scrutiny of transactions regards CMO measures and shall not apply to interventions covered by the integrated	Italy proposes the deletion of the Chapter III (Articles 74 – 83)	The Commission takes note on the various comments made by the different delegation as regards Chapter III. Scrutiny of transactions is considered necessary for measures regulating or supporting

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		system referred to in CAP strategic plan regulation. So this type of control will concern a low number of beneficiary undertakings compared to the current situation with a very low financial impact compared to the total amount of CAP aids. In addition, the limited number of beneficiaries of these residual CMO measures would be systematically audited every year, with a constant additional burden for them. Another aspect to be considered concerns the relevant burdens of Member States to maintain a specific service in charge of carrying out this type of control, which will cover a limited number of beneficiaries. Finally, it should be pointed out that the legality and regularity of transactions relating to the CMO aid will be verified, by a sample, from the Certification body. In other words, the cost-benefit ratio linked to this type of control and their burdens, in the New Delivery Model background, results excessive for Member States.		agricultural markets, as laid down in Regulation (EU) No 1308/2013 excluding the sectoral interventions as referred to in Chapter 3 of Title III of Regulation (EU).../[CAP Strategic Plan Regulation]. In addition, scrutiny remains an important component in order to guarantee the overall sound financial management, taking into account the inherent risks of certain types of transaction. The Commission also notes that the MS themselves have reported for the last reporting period significant irregular amounts detected by scrutiny. It is proposed to maintain the scrutiny mechanism for the measure not covered by the new delivery model in order to maintain a high level of assurance for this expenditure. The mechanism of scrutiny should therefore be maintained.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	HU	We agree with the sections of the draft EAGF for ex-post control as it is in line with the Commission's ambition to ensure continuity in this area. We do not support the deletion of these articles as the ex-post controls at EAGF in Hungary provide a high level of added value in the control system and thereby contribute to the protection of the EU's financial interests.		The Hungarian comments are appreciated and the Commission takes note.
	NL	All articles on scrutiny of transactions should be deleted. The Netherlands supports the DK opinion on this matter and refers in this respect to the letter from mr. Wendel (DE) too.		Please see answer to IT delegation.
	NL	74.1	This Chapter lays down specific rules on the scrutiny of the commercial documents of those entities receiving or making payments relating directly or indirectly to the	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			system of financing by the EAGF, or representatives of those entities (hereinafter 'undertakings') in order to ascertain whether transactions forming part of the system of financing by the EAGF have actually been carried out and have been executed correctly.	
	NL	74.2	This Chapter shall not apply to interventions covered by the integrated system referred to in Chapter II of this Title and by Chapter III of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation]. The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			with the establishment of a list of interventions which, due to their design and control requirements, are unsuited for additional ex-post controls by way of scrutiny of commercial documents and, therefore, are not to be subject to such scrutiny under this Chapter.	
	NL	74.3	For the purposes of this Chapter the following definitions shall apply: (a) "commercial document" means all books, registers, vouchers and supporting documents, accounts, production and quality records, correspondence relating to the undertaking's business activity, and commercial data, in whatever form	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			they may take, including electronically stored data, in so far as these documents or data relate directly or indirectly to the transactions referred to in paragraph 1; (b) "third party" means any natural or legal person directly or indirectly connected with transactions carried out within the financing system by the EAGF.	
	BE	Controls no longer to be specified, because - New delivery model: controls of beneficiaries are a responsibility of the MS. The choice to use this kind of control must be given to the MS. - The nature of the measures: no export restitutions anymore; originally created for this. The scope of the measures: little risk since	Deletion of Article 74	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		producer organisations for fruits and vegetables are no longer concerned		
	DK	Denmark would like to propose that the Articles 74-83 are deleted. In general, these rules have not been changed since 1989, except from minor adjustments in the amounts e.g. when undertakings have to be scrutinized. However, more important is that the present control set-up described in these articles is out of date. Originally, the rules were primary designed for scrutiny of undertakings which received export restitutions. And in those days the rules made sense. Yet, since export restitutions are suspended today and EU in accordance with WTO rules is working to phase out export restitutions there is no need to maintain an administrative control set up, which result in a lot of paper work, but only few cases where transactions have been executed incorrectly. The present situation is also reflected by the fact that in the proposal for a regulation		Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		amending Regulation No. 1308/2013 it is also proposed to delete the articles 196 to 204 concerning export restitutions. Furthermore, when it comes to detect irregularities, the Commission increasingly supervises the work of the Certifying Body which means that the Certifying Body goes deeply into every application when they audit the work of the Paying Agency. Finally, since 2017 the Commission has demanded that the Member States should develop an anti-fraud strategy. We think that this approach should replace the present work carried out under scrutiny of transactions.		
	FI	(Articles 74-83)The Commission proposal includes detailed requirements for the scrutiny of transactions. Because of the small numbers of such transactions, the need for this heavy control system is delegationable, both now and in the future. Alternatively, it should be possible for the Member State not to scrutiny transactions if the number of these is under certain limit.		Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		Suggestion for amendment (first priority): <i>Articles 74 to 83 should be deleted.</i> If the deletion of Articles 74 to 83 is not possible the limit (art. 79) should be higher. Could the Commission clarify what are those schemes where these articles are necessary also in the future?		
	DE	GER proposes the deletion of articles 74-83. There have been no major amendments to these rules since 1989(except for minor adjustments in the amounts, e.g. in cases when particular business activities have to be scrutinised). However, the present control set-up described in these articles is out of date. Originally, the rules were primarily designed for the scrutiny of activities for which export restitutions were provided. The rules were		Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		justified in those days. Export restitutions are suspended today. The EU, in accordance with WTO rules, aims for phasing out export restitutions. Consequently, there is no longer the need to maintain an administrative control set up which results in excessive administrative burdens. The present situation is also reflected by the fact that the proposal for a regulation amending Regulation No. 1308/2013 provides for the deletion of articles 196 to 204 covering export restitutions. Furthermore, when it comes to detect irregularities, the Commission increasingly supervises the work of the Certifying Body resulting in increased auditing efforts by the Certifying Body. Finally, since 2017 the Commission has demanded the development of anti-fraud strategies by Member States. In our view this approach should replace the present work carried out under scrutiny of transactions.		
	LV	We support those member states, which consider that Art.74-83 (Scrutiny of transactions) should be deleted from the Horizontal Regulation. Scrutiny of transactions are expected to apply for the		Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		measures which have low level of financial risk. We believe that abolition of such checks would facilitate simplification and reduce administrative burden.		
	SL	The system of Scrutiny presents a high standard of controls. In line with this, the types of interventions and measures for which Scrutiny applies should be (more) transparent and specified.		Please see answer to IT delegation.
	SL	74.2 This paragraph is very “user unfriendly”. It should set out a positive list of interventions for which the Scrutiny Chapter applies.	2. This Chapter shall not apply to interventions	Please see answer to IT delegation.
	ES	74.1 We support the proposal of Denmark to eliminate the Chapter III (art.74-83): Scrutiny of transactions, however, if it is maintained in case of Spain, 95% of these operation controls are duplicated with the current framework legality and regularity. Therefore, if the Legality and Regularity checks (LAR) are maintained within the functions entrusted to the certification bodies in EAGF NON-IACS (art.11), based on simplification and administrative efficiency, we request that LAR checks, that in Spain are also performed	This chapter establishes provisions for the control of business documents of the entities or representatives of those entities (hereinafter referred to as "the companies"), which receive or make payments directly or indirectly related to the EAGF funding system, to verify whether the operations being part of the EAGF funding system have	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		by the certification bodies because they are public, are accepted as valid for operations checks, complementing third parties control	actually been correctly carried out. However, if the bodies responsible for operation checks in a Member State are the public certification bodies, these may be compatible with the Legality and Regularity checks, where applicable.	
	SV	All articles regarding scrutiny of transactions should be deleted. There are three reasons: 1. In our experience, the current scrutiny of transactions does not fulfil any meaningful function. The administrative checks carried out before payment, together with the on-the-spot checks, give sufficient assurance. 2. Scrutiny of transactions is also a very expensive form of check. For instance, during 2016/2017 we spent 1 936 hours on reviewing six cases. 3. Furthermore, the scrutiny will comprise very small amounts. Since	Delete paragraphs 1, 2, 3	Please see answer to IT delegation.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		the sector-specific interventions (including the PO scheme for fruit and vegetables) will no longer be comprised by this scrutiny, the amounts concerned will be even lower than they are today. Consequently, it would be unreasonable to require Member States to maintain an expensive and ineffective system in order to review a small number of interventions comprising very small amounts. The current rules on the school scheme and private storage require administrative checks of 100 per cent of the applications. These checks include verification of proof of payment, and in the case of private storage they even include inspectors watching as the goods are put into storage. This, together with on-the-spot checks based on risk and a random element, should be enough to ensure that EU funds are used properly.		
Article 75	NL	75.1	Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			the nature of the transactions to be scrutinised. Member States shall ensure that the selection of undertakings for scrutiny gives the best possible assurance of the effectiveness of the measures for preventing and detecting irregularities. The selection shall take account, inter alia, of the financial importance of the undertakings in that system and of other risk factors.	
	NL	75.2	In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with whom undertakings are	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 76.	
	NL	75.3	The scrutiny carried out pursuant to this Chapter shall not prejudice the checks undertaken pursuant to Articles 47 and 48.	Please see answer to IT delegation on article 74.
	BE	Idem Article 74	Deletion of Article 75	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 76	NL	76.1	The accuracy of primary data under scrutiny shall be verified by a number of crosschecks, including, where necessary, the commercial documents of third parties, appropriate to the degree of risk presented, including: (a) comparisons with the commercial documents of suppliers, customers, carriers and other third parties; (b) physical checks, where appropriate, upon the quantity and nature of stocks; (c) comparison with the records of financial flows leading to or consequent upon the transactions carried out within the financing system by the EAGF; (d) checks, in relation to	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			bookkeeping, or records of financial movements showing, at the time of the scrutiny, that the documents held by the paying agency by way of justification for the payment of aid to the beneficiary are accurate.	
	NL	76.2	Where undertakings are required to keep particular book records of stock in accordance with Union or national provisions, scrutiny of those records shall, in appropriate cases, include a comparison with the commercial documents and, where appropriate, with the actual quantities in stock.	Please see answer to IT delegation on article 74.
	NL	76.3	In the selection of transactions to be checked, full account	Please see answer to IT delegation on

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			shall be taken of the degree of risk presented.	article 74.
	BE	Idem Article 74	Deletion of Article 76	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		delete	Please see answer to IT delegation on article 74.
Article 77	NL	77.1	The persons responsible for the undertaking, or a third party, shall ensure that all commercial documents and additional information are supplied to the officials responsible for the scrutiny or to the persons authorised to carry it out on their behalf. Electronically stored data shall be provided on an appropriate	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			data support medium	
	NL	77.2	The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.	Please see answer to IT delegation on article 74.
	NL	77.3	Where, during scrutiny carried out pursuant to this Chapter, the commercial documents maintained by the undertaking are considered inadequate for scrutiny purposes, the undertaking shall be directed to maintain in future such records as are required by the Member State responsible for the scrutiny, without prejudice to	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			obligations laid down in other Regulations relating to the sector concerned. Member States shall determine the date from which such records are to be established. Where some or all of the commercial documents required to be scrutinised pursuant to this Chapter are located with an undertaking in the same commercial group, partnership or association of undertakings managed on a unified basis as the undertaking scrutinised, whether located inside or outside the territory of the Union, the undertaking shall make those commercial documents	

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			available to officials responsible for the scrutiny, at a place and time to be determined by the Member States responsible for carrying out the scrutiny.	
	NL	77.4	Member States shall ensure that officials responsible for scrutiny are entitled to seize commercial documents, or have them seized. This right shall be exercised with due regard to the relevant national provisions and shall be without prejudice to the application of rules governing proceedings in criminal matters concerning the seizure of documents.	
	BE	Idem Article 74	Deletion of Article 77	Please see answer to IT delegation on

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
				article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.
Article 78	NL	78.1	Member States shall assist each other for the purposes of carrying out the scrutiny provided for in this Chapter in the following cases: (a) where an undertaking or third party is established in a Member State other than that in which payment of the amount in delegation has or should have been made or received; (b) where an undertaking or third party is established in a	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			Member State other than that in which the documents and information required for scrutiny are to be found. The Commission may coordinate joint actions involving mutual assistance between two or more Member States.	
	NL	78.2	Member States shall send the Commission a list of undertakings established in a third country for which payment of the amount in delegation has or should have been made or received in that Member State.	Please see answer to IT delegation on article 74.
	NL	78.3	If additional information is required in another Member	Please see answer to IT delegation on

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			State as part of the scrutiny of an undertaking in accordance with Article 75, and in particular cross checks in accordance with Article 76, specific scrutiny requests may be made indicating the reasons for the request. The scrutiny request shall be fulfilled not later than six months after its receipt; the results of the scrutiny shall be communicated without delay to the requesting Member State.	article 74.
	BE	Mutual assistance	Deletion of Article 78	Please see answer to IT delegation on article 74.
	BE	78.1 Mutual assistance can be OK helpful as well for EAGF as EAFDR	Added under art 58, 1	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	BE	78.2	Delete paragraph 2	Please see answer to IT delegation on article 74.
	BE	78.3	Delete paragraph 3	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.
Article 79	NL	79.1	Member States shall draw up programmes for scrutiny to be carried out pursuant to Article 75 during the subsequent scrutiny period.	Please see answer to IT delegation on article 74.
	NL	79.2	Each year, before 15 April, Member States shall send the Commission their programme as referred to in	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			paragraph 1 and shall specify: (a) the number of undertakings to be scrutinised and their breakdown by sector on the basis of the amounts relating to them; (b) the criteria adopted for drawing up the programme.	
	NL	79.3	The programmes established by the Member States and forwarded to the Commission shall be implemented by the Member States, if, within eight weeks, the Commission has not made known its comments.	Please see answer to IT delegation on article 74.
	NL	79.4	Paragraph 3 shall apply mutatis mutandis to the amendments to the programme made	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			by the Member States.	
	NL	79.5	At any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of a Member States.	Please see answer to IT delegation on article 74.
	NL	79.6	Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 shall be scrutinised in accordance with this Chapter only for specific reasons to be indicated by the Member States in their annual programme referred to in paragraph 1 or by the Commission in any proposed amendment to that programme. The Commission is	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			empowered to adopt delegated acts in accordance with Article 101 amending the threshold set out in the first subparagraph.	
	BE	See art 74	Deletion of Article 79	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	FI	79.6	Articles 74 to 83 should be deleted. Suggestion for amendment (second priority): 6. Undertakings for which the sum of the receipts or payments amounted to less than EUR 40 000 150 000 shall be scrutinised in accordance	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			with this Chapter only for specific reasons to be indicated by the Member States in their annual programme referred to in paragraph 1 or by the Commission in any proposed amendment to that programme.	
	LV	79.1 Articles about the scrutiny (Art.79(1) and 81(1)) do not indicate the period covered by the program - does it correspond with the calendar or the accounting year, or there will be completely different deadline? In which law it will be indicated?		The scrutiny period is currently set out in the Implementing Act (Reg No 908/2014). It is proposed to continue with the same provision.
	RO	Our proposal is to rise the threshold to Euros 100.000, since the state administrative costs have increased meantime, and such threshold has been maintained since 2008, at least (costs for personnel, equipment, fuel). Thus, ex/-post controls for low-risk transactions, also having a low risk, shall mainly result in increase in the state expenditure –expenditure unjustified by the associated risk level.		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 80	NL	80.1	In each Member State, a special department shall be responsible for monitoring the application of this Chapter. Those departments shall, in particular, be responsible for: (a) the performance of the scrutiny provided for in this Chapter by officials employed directly by that special department; or (b) the coordination and general surveillance of the scrutiny carried out by officials belonging to other departments. Member States may also provide that scrutiny to be carried out pursuant to this Chapter is allocated between the special departments and other national departments,	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			provided that the former is responsible for its coordination.	
	NL	80.2	The department or departments responsible for the application of this Chapter shall be organised in such a way as to be independent of the departments or branches of departments responsible for the payments and the scrutiny checks carried out prior to payment.	Please see answer to IT delegation on article 74.
	NL	80.3	The special department referred to in paragraph 1 shall take all the measures necessary, and it shall be entrusted by the Member State concerned with all the powers necessary, to perform the tasks referred to in this	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			Chapter.	
	NL	80.4	Member States shall adopt appropriate measures to penalise natural or legal persons who fail to fulfil their obligations under this Chapter.	
	BE	See art 74	Deletion of Article 80	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.
Article 81	NL	81.1	Before 1 January, following the scrutiny period, Member States shall send the Commission a detailed report on the application of this	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			Chapter. The report referred to in the first subparagraph shall also contain an overview of the specific scrutiny requests referred to in Article 78(3) and the results of the scrutiny following those requests.	
	NL	81.2	The Member States and the Commission shall have regular exchanges of views on the application of this Chapter.	Please see answer to IT delegation on article 74.
	BE	See art. 74	Deletion of article 81	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	LV	81.1 Articles about the scrutiny (Art.79(1) and 81(1)) do not indicate the period covered by the program - does it correspond with the		Please see answer to LV delegation on article 79.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		calendar or the accounting year, or there will be completely different deadline? In which law it will be indicated?		
	SV		Delete	Please see answer to IT delegation on article 74.
Article 82	NL	82.1	In accordance with the relevant national laws, Commission officials shall have access to all documents prepared either with a view to or following the scrutiny organised under this Chapter and to the data held, including those stored in the dataEN 78 EN processing systems. That data shall be provided upon request on an appropriate data support medium.	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	NL	82.2	The scrutiny referred to in Article 75 shall be carried out by the officials of the Member States. Officials of the Commission may participate in that scrutiny. They may not themselves exercise the powers of scrutiny accorded to national officials. However, they shall have access to the same premises and to the same documents as the officials of the Member States.	
	NL	82.3	In the case of scrutiny taking place under Article 78, officials of the requesting Member State may be present, with the agreement of the requested Member State, at the scrutiny in the requested Member State and have access	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			to the same premises and the same documents as the officials of that Member State. Officials of the requesting Member State present at scrutiny in the requested Member State shall at all time be able to furnish proof of their official capacity. The scrutiny shall at all times be carried out by officials of the requested Member State.	
	NL	82.4	Without prejudice to the provisions of Regulations (EU, Euratom) No 883/2013, (Euratom, EC) No 2988/95 (Euratom, EC) No 2185/96 and (EU) 2017/1939, where national provisions concerning criminal procedure reserve certain acts for officials	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			specifically designated by the national law, neither the officials of the Commission, nor the officials of the Member State referred to in paragraph 3, shall take part in these acts. In any event, they shall, in particular not take part in home visits or the formal interrogation of persons in the context of the criminal law of the Member State concerned. They shall, however, have access to information thus obtained.	
	BE	See article 74	Deletion of Article 82	Please see answer to IT delegation on article 74.
	Dk	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
				article 74.
Article 83	NL		The Commission shall adopt implementing acts laying down rules necessary for the uniform application of this Chapter and in particular relating to the following: (a) the performance of the scrutiny referred to in Article 75 as regards the selection of undertakings, rate and the timescale for the scrutiny; (b) the conservation of commercial documents and the types of documents to maintain or data to record; (c) the performance and co-ordination of joint actions referred to in Article 78(1); (d) the details and specifications regarding the content, form and means of	Please see answer to IT delegation on article 74.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			submission of requests, the content, form and means of notification, submission and exchange of information required under this Chapter; (e) conditions and means of publication or specific rules and conditions for the diffusion or making available by the Commission to the competent authorities of the Member States of the information needed under this Regulation; (f) the responsibilities of the special department referred to in Article 80; (g) the content of reports referred to in Article 81 and any other notification needed under this Chapter. These implementing acts shall	

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			be adopted in accordance with the examination procedure referred to in Article 101(3).	
	BE	See Article 74	Deletion of Article 83	Please see answer to IT delegation on article 74.
	DK	See comments to Article 74		Please see answer to IT delegation on article 74.
	SV		Delete	Please see answer to IT delegation on article 74.

REGULATION ON FINANCING, MANAGEMENT AND MONITORING OF THE CAP – BLOCK 8

TITLE V: COMMON PROVISIONS

Chapter IV: Transparency

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 96	SK	We would like to point out the possible conflict between the Paragraph 1 and 2 of Article 96 (HZR Regulation) and Article 44(3)-(5) of CPR Regulation. Justification: Paragraph 1 and 2 of Article 96 (MS shall ensure annual ex-post publication of the beneficiaries) is inconsistent with Article 44(3)-(5) of CPR Regulation (the MA shall update the list at least every three months).		The intention of the proposal is to maintain annual publication for EAGF (and for EAFRD) and not have quarterly publication.
	DK	96.1 Remove any doubt from the text that publication of information relating to beneficiaries takes place only one time every year. Why not copy-paste the present wording of Article 111 in Regulation (EU) No. 1306/2013?	Member States shall ensure annual ex-post publication of the beneficiaries of the Funds in accordance with [Article 44(3)-(5)] of Regulation (EU) .../... CPR Regulation] and paragraphs 2, 3 and 4 of this Article.	The intention of the Commission is to maintain annual ex-post publication. See reply to SK delegation above. The reference to CPR regulation as regards transparency reflects the intention of the Commission to have the same rules across all shared management funds, whilst not changing what is done now for the CAP. Reference to the CPR regulation should therefore be maintained.
	DK	96.2 Remove any doubt from the text that publication of information relating to beneficiaries takes place only one time every	Delete paragraph 2	The intention of the Commission is to maintain annual ex-post publication. See reply to SK delegation above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		year.		
	DK	96.4 Remove any doubt from the text that publication of information relating to beneficiaries takes place only one time every year.	The information referred to in Article 44(3) (5) of the Regulation shall be made available on a single website per Member State. It shall remain available for two years from the date of the initial publication. Member State shall not publish the information referred to in points (a) and (b) of Article 44(3) of the Regulation (EU) .../... [CPR Regulation] if the amount of aid received in one year by a beneficiary is equal to or less than EUR 1250.	The intention of the Commission is to maintain annual ex-post publication. See reply to SK delegation above. Also, the intention of the Commission is that the information should remain accessible for two years from the date of the initial publication. The exception applies to the <u>name</u> of the beneficiaries of very small amounts (EUR 1 250), for reasons of protection of personal data. Therefore, reference to the <u>points (a) and (b)</u> of Article 44(3) of the CPR regulation – on beneficiary's name – are included in the proposal. The current rules do not differ, but refer to the small farmers' scheme for the ceiling (Article 112 of R1306/2013).

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	DE	Art. 96-98 Contrary to the Commission's explanation the application of the transparency rules is unnecessarily complicated by the link to the Common provisions Regulation . In order to achieve simplification the transparency rules as laid down in Art. 111 ff of Regulation (EU) 1306/2013 should be maintained. During the period 2014-2020 significant parts of the Common provisions Regulation also apply for the Rural Development Regulation. The requirement to respect both Common provisions and Rural development provisions results in significant complications for the support regime and in increased risks of errors and financial risks for the EU Budget. Under the new legislative proposals nearly all requirements (apart from simplified cost options and LEADER) are laid down in the CAP Strategic Plans Regulation. The requirement to follow the reversed way and respect two different regulations when it comes to transparency requirements is not acceptable.		Overarching rules are incorporated in the proposal CPR art. 44-45, complemented by the proposal for HZR Art. 96 to 98. The reference to CPR as regards transparency reflects the intention of /Commission to set out common provisions across all shared management funds - thus reducing fragmentation of existing rules - whilst not changing what is done now for the CAP. In essence, the current rules on transparency for CAP Funds do not change for the Member States.
	LV	Latvia does not support that requirements about publication of information relating to beneficiaries referred in CPR Art.44(3) are applicable to EAGF and EAFRD. Taking into account the content of the CAP and the differences between the actions supported by the European Union Structural and Cohesion		See replies above. It is left to the discretion of the Member State which competent body should publish the data – can be PA, MA, ministry of agriculture As it is today, the information will have to be available on a <u>single website</u> per Member State

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		policies, as well as the significant number of beneficiaries of the CAP. We invite to maintain the current period approach. Currently two proposals of the regulations are contradictory, for example, the CPR provides updating information at least every three months, while the HZR provides annual publication of data. It is not clearly understandable from the wording of the proposed regulations, whether this information should be available on a single website in each Member State for all the funds mentioned in CPR regulation or for EAFRD and EAGF separately, whether according to EAFRD interventions, the amounts of operations should include both European Union and national contributions? It is unclear about what period of time this information should be indicated.		according to art. 96(4) of the proposal HZR. For EAFRD interventions, the points (h) and (k) of the CPR proposal apply, according to which the total costs of the intervention – inclusive of EU contribution and national co-financing – should be published. The period of time is not indicated in the CPR and HZR proposals. In line with art 98 of HZR proposal, implementing acts will lay down rules on the form of publication, including timelines.
	LV	96.2 Technical clarification. There is incorrect reference to the Art.44(3) of CPR. Amounts corresponding to the national contribution and the co-financing rate, as provided for in points (h) and (i) of Article 44(3) of that Regulation shall not apply to EAGF. There should be reference to the points h) and k).		It is correct that the national contribution and the Union co-financing rate do not apply to EAGF funds.
	LV	96.4 Please give an explanation, wheather there is needed beneficiary identification system in cases, when the amount received by the beneficiary does not exceed EUR 1 250, and in accordance with		The current requirement applies. See replies above.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		the provisions of Art.96(4) of the HZR, MS shall not publish the information referred to in points (a) and (b) of Art.44(3) of CPR. At the moment in the current Regulation No.1306/2013 there is such a requirement.		
	SL	Based on COM answers given at Agrifin meeting of 11 Oct 2018: - there will be an obligation of the MS to publish data annually (not every three month), - it will be up to MS to decide who publishes the data (PA or MA); - although Technical Assistance is not an “intervention” (art. 64 of the Reg. on CAP Strategic plan) the beneficiaries of Technical assistance will need to be published; - publication on one single web side per MS. SI is in favour to keep the present sistem for the publication of EAGF and EAFRD beneficiaries (annual publication, PA’s obligation to publish data, present list of data, single website for EAFRD and EAGF), based on HzR <u>only</u>.		The intention of the Commission is to maintain annual ex-post publication. See reply to SK delegation above It is left to the discretion of the Member State which competent body should publish the data – can be PA, MA or Ministry of Agriculture. The intention of the Commission is to continue to make the Technical Assistance amounts public, as it is the case today. As it is today, the information will have to be available on a single website per Member State according to art. 96(4) of the proposal HZR. Under the new regulatory framework, overarching rules are incorporated in the proposal CPR art. 44-45 (covering different shared management funds), complemented by the proposal for HZR art. 96 to 98. Basically, the current rules (annual publication, PA’s obligation to publish data, present list of data, single website for EAFRD and EAGF) remain unchanged.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	SI	96.1 SI proposes to keep the present list of data and not to expand it, in particular to data under (e) – (h) and (j) – (n) of art. 44(3) CPR Regulation. In any event, a more précised text would be needed for the following data: Art. 44(3)(e) - the purpose of the operation and its achievements: what precisely does it mean “the purpose” and what “achievements” Art. 44(3)(f) - start date of operation: does it mean The date of approval? The date a beneficiary starts with the operation? SI suggests The date of approval. Art. 44(3)(g) – expected or actual date of completion of the operation: when it comes to EAGF operations / measures which date is relevant? Is it relevant for the EAGF at all?		The Commission considers that it is important to align with other Funds in order to ensure a consistent approach throughout the EU on transparency and publication of beneficiaries. As indicated under art. 96(3) of the HZR proposal, “operation” means “intervention” or “measure”. The “start date of intervention” (point f) could be considered as the date of the grant letter or the first payment granted to the beneficiary (RD). Point (e): currently the purpose of a measure is included in the Commission document “description of measures”
	SI	96.2 SI suggest that wording: “ <i>as provided for in points (h) and (i) of Article 44(3)</i> ” to be replaced by “ <i>as provided for in points (h) and (k) of Article 44(3)</i> ”.		The national contribution and the Union co-financing rate do not apply to EAGF.
Article 97	...			
Article 98	...			

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 99	...			

TITLE VI: DELEGATED ACTS AND IMPLEMENTING ACTS

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 100	IT	As specified in the comments on the previous articles, various provisions for which the Commission requires the exercise of the delegation should be part of the basic act (at least in the general principles). Italy invites the Commission to better considering this aspect.		The opinion of the Member State is noted.
	DE	The multitude of proposals to empower the Commission to adopt implementing and delegated acts makes a final assessment of this proposal difficult. A final adoption of the basic regulation is impossible as long as MS are left uncertain about the content, the extent and the consequences of any future implementing and delegated acts. GER doubts that the scope of power shifted to the Commission is consistent with the approach of more flexibility and an increased scope of subsidiarity. The scope of empowerment of the Commission should be strictly limited in order to facilitate simplification and allow MS the necessary flexibility to implement the new delivery model.		The opinion of the Member State is noted.
	LV	We consider that the substantial conditions should be included in the basic act. Provisions, which are significant for MS should be adopted with implementing acts instead of delegated acts.		The opinion of the Member State is noted.
Article 101	DE	Currently article 116 (3) of regulation (EU) no		The opinion of the Member State is noted.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
		1306/2013 stipulates: In the case of acts referred to in Article 8, where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply". A corresponding rule is missing in the proposal and should be added.		

TITLE VII: FINAL PROVISIONS

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
Article 102	IE	102.1 As there is the potential for some measures to continue for eligibility purposes in current EAFRD 2014-2020 until 2023, with new interventions commencing for EAFRD in the new round – will the CB have to produce the current CB report for the existing 2014-2020 and retain independent sampling for substantive testing purposes as an independent fund? Can they treat EAFRD from both rounds as one population for substantive tests? Could suspension in the new round on EAFRD impact clearance of the 2014-2020 residual accounts?		The provisions of Regulation 1306/2013 with regard to Certification Bodies (Article 9), will continue to apply to as regards the EAFRD, in relation to expenditure incurred and payments made for rural development programmes approved by the Commission under Regulation 1305/2013. As regards EAFRD expenditure effected under the CAP Strategic Plan Regulation, this regulation will apply. The two rounds should be treated separately each one in accordance applicable to the period it relates to.
	BE	Belgium requests that Article 118 of the current Horizontal regulation nr 1306/2013 on the level of implementation be maintained in the new Regulation. A recital is legally not sufficient. Which recital was meant by the Commission in the agrifin-meeting in the CAP SP Regulation and or in the Horizontal Reg.	Art 102: level of implementation Member States shall be responsible for implementing programmes and carrying out their tasks under this Regulation at the level they deem appropriate, in accordance with the institutional, legal and financial framework of the Member State and subject to compliance with this Regulation and other relevant Union rules.	The opinion of the Member State is noted. The Commission has repeatedly indicated its willingness to address the level of implementation issue of Belgium in Article 93 of the CAP Strategic Plan Regulation, together with the AT Presidency. In this context another Article 118 in the HZR would be redundant.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
	BE	102.1 Article 102 to become article 103	Art 102 Art 103, par 1	
	BE		par 2	
	FI	We have concerns that there is a gap between articles 102 and 104. Should there be same structure that is the case concerning rural development in the Article 102 as it concerns all expenditure based on the old Regulations? Could the Commission clarify those articles in order to make it clear that direct payments from the claim year 2020 are paid during financial year 2021 and they are not under the CAP plan?		The Commission believes that there is no gap between Articles 102 and 104 with regard to EAFRD expenditure. The Articles of Regulation 1306/2013 listed in Article 102(1)(a) and related delegated and implementing acts will continue to apply to the 2014-2020 Rural Development Programmes. This Regulation will apply to the EAFRD expenditure under CAP Plan. The Commission proposal is that for EAGF expenditure this regulation would apply as of financial year 2021.
	FI	102.1	1. Regulation (EU) No 1306/2013 is repealed. However: (a) Article 5, Article 7(3), Articles 9, 34, Article 35(4), Articles 36, 37, 38, 43, 51, 52, 54, 110 and 111 of Regulation (EU) No 1306/2013 and the relevant implementing and delegated rules shall continue to apply in relation to expenditure incurred and payments made for the agricultural financial year 2020 and before as regards the EAGF	The Commission proposal is that for EAGF expenditure this regulation would apply as of financial year 2021.

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			<i>in relation to expenditure incurred and payments made under Regulation (EU) No 1307/2013 and under Regulation (EU) No 1308/2013 before the date of entry into force of Regulation amending this Regulation by Regulation (EU) .../...of the European Parliament and of the Council,</i> and as regards the EAFRD in relation to expenditure incurred and payments made for rural development programmes approved by the Commission under Regulation (EU) No 1305/2013,	
Article 103	BE	Article 103 to become article 104	Art 103 Art 104	
Article 104	BE	Article 104 to become article 105	Art 104 Art 105	
	FI	In order to clarify the difference between old and new regime, should it be clearly noted in the Article 104. A clear road map for the transition from old to new financial period is very much needed.		The opinion of the Member State is noted.
	FI	104.2	2. However, Articles 7, 10, 18, 19, 35, 36, 37, 38, 39, 40, 43, 51, 52, 53 and 54 shall apply to <i>all</i> expenditure <i>under Regulation (EU) No.../... [CAP Strategic Plan Regulation]</i> effected from	The Commission proposal is that for EAGF expenditure this regulation would apply as of financial year 2021. As regards EAFRD it is proposed that for expenditure effected under the CAP Strategic

Regulation on financing, management and monitoring of the CAP

COMMISSION PROPOSAL	MS	MS COMMENTS	MS DRAFTING SUGGESTIONS	DG AGRI COMMENTS
			16 October 2020 as regards the EAGF and regards the EAFRD to expenditure effected under Regulation (EU) No.../... [CAP Strategic Plan Regulation]	Plan Regulation, this regulation will apply.