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From:	General Secretariat of the Council
To:	Working Party on Financial Agricultural Questions
Subject:	Proposal for a Regulation on Financing, management and monitoring of the CAP - German comments on the drafting suggestion in article 8 (4)

Delegations will find attached comments received from the German delegation on the drafting suggestion in article 8 (4) of the above mentioned proposal.

<u>German comments</u>

<u>on the drafting suggestion in article 8 (4) in document WK 13742/18</u>

Thanks to the good and efficient work of the Presidency on the Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (Horiziontal Regulation). The discussions on the draft regulations during the meetings of the AGRIFIN working group are proceeding well.

The draft suggestion of the Presidency on article 8 (4) is a step in the right direction but it does not go far enough. Before entering into further discussions on this article we would like to give the following comments:

> A Non-Paper from the Commission services on Block 2 – WK 12629/18 Germany claimed:
>
> "Germany welcomes and supports the approach of the European Commission to fully rely on the existing, tried and tested structures for the future governance system. This shall be valid also for the specific structures established in a federal republic like Germany. The regulation must ensure that the constitution and the specific share of tasks and responsibilities between the central government and the federal states are fully respected."
>
> The Commission replied as follows:
>
> "Yes, the proposal builds on the already existing structures and authorities established under the current legal framework and thus provides coherence between the past and future. As clearly set out in recital 9 the proposal is drafted whilst respecting the constitutional provision of each Member State. …….. The intention of the Commission is that there will be a rollover, accreditation will be kept in order to avoid administrative burden on Member States. As was the case with the entry into force of Reg No 1305/2013, 1036/2013, 1307/2013 and 1308/2013 the Competent Authority should ensure that the PA is in a position to make payments in the context of any new types of intervention and if necessary accreditation needs to be reviewed."

In this context we remind the Presidency and the Commission of the discussion on the Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (the horizontal regulation) - Delegations' comments- in the document st17313/1/11REV 1 from the 22. November 2011.

With regard to article 7 of Reg. 1306/2013 (draft) Germany made - inter alia - the following comment:

> "4. Where more than one paying agency is accredited, the Member State shall designate a body, hereinafter referred to as the "coordinating body", to which it assigns the following tasks:
> (a) to collect the information to be made available to the Commission and to send that information to the Commission;
> (b) to establish a synthesis report providing an overview at national level of all management declarations of assurance referred to in point (b) of paragraph 3 and the audit opinions thereon referred to in Article 9;

(c) to *ensure* that remedial action is taken as regards any deficiencies of a common nature and that the Commission is kept informed of the follow-up;
(d) to promote and *ensure* harmonised application of the Union rules.

There is no authority in our constitutional system to give federal directives to the German Länder. Consequently, for constitutional reasons the coordinating body is prevented from ensuring that the required actions are taken by the paying agencies, which are located at Länder level.

In addition, the new obligations could entail implications for the internal organisation of Member States. For this reason increased obligations cannot be accepted and the actual version has to be kept."

According to our constitutional system the federal level is not authorized to give directives to the German Länder in areas where the competences are assigned to them. Nor can the federal level supervise the Länder in such areas. Consequently, for constitutional reasons the coordinating body is prevented from ensuring that the required actions are taken by the paying agencies, which are located at Länder level. The coordination body can only, wherever appropriate, organize meetings with the Länder in order to discuss best practice and with the objective to implement a common procedure on a voluntary basis. This procedure has proven its effectiveness and should not be changed without need.

Furthermore, the Commission services had already proposed to reduce the number of Paying Agencies during the last CAP reform. This had also been refused by Member states.

It was a time-consuming process to find the compromise in Article 7 (2) and (4) of Reg. (EC) No. 1306/2013 that would work for all Member States.
During the current discussions on the new Horizontal Regulation the Commission confirmed that constitutional conditions have to be respected also in the future.

The constitutional situation in Germany and other Member States did not change and therefore we propose to maintain the current text of Reg. (EC) No. 1306/2013 in order not to repeat the discussions from 2011 as time and energy should be focused on other issues in the context of the New Delivery Model.

Especially those German Länder which have transmitted the tasks of the paying agency to another Land on a voluntary basis by way of an Interstate Treaty must be allowed to create their own paying agency in case this treaty will expire.