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WORKING PAPER

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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 - Belgian comments on articles 74 to 83

Delegations will find attached comments received from the Belgian delegation on articles 74 to 83 of the above mentioned proposal.

Scrutiny of transactions

Article 74 *Scope and definitions*

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 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.

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 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.

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 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.

Article 75 *Scrutiny by Member States*

1. Member States shall carry out systematic scrutiny of the commercial documents of undertakings taking account of 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.

~~2. In appropriate cases, the scrutiny provided for in paragraph 1 shall be extended to natural and legal persons with whom undertakings are associated and to such other natural or legal persons as may be relevant for the pursuit of the objectives set out in Article 76.~~

~~2. The accuracy of primary data under scrutiny shall be verified by a number of cross-checks, including, where necessary, the commercial documents of third parties, appropriate to the degree of risk presented~~

3. ~~The scrutiny of commercial documents shall be carried out independent from the checks carried out prior to payments~~

The scrutiny carried out pursuant to this Chapter shall not prejudice the checks undertaken pursuant to Articles 47 and 48.

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Article 76 ~~Cross-checks~~

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1. The accuracy of primary data under scrutiny shall be verified by a number of cross-checks, 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 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.

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.

3. In the selection of transactions to be checked, full account shall be taken of the degree of risk presented.

Article 77 ~~Access to commercial documents~~

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 data support medium.

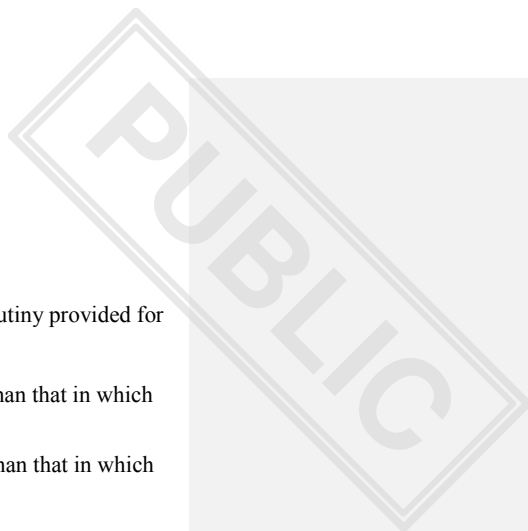
2. The officials responsible for the scrutiny or the persons authorised to carry it out on their behalf may require that extracts or copies of the documents referred to in paragraph 1 be supplied to them.

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 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 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.~~

4.3 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.



Article 78 *Mutual assistance*

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 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.~~

2. Member States shall send ~~the Commission~~ ~~each other~~ a list of undertakings established in a third country for which payment of the amount in question has or should have been made or received in that Member State.

3. If additional information is required in another Member 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 79 *Programming and reports*

1. Member States shall draw up programmes for scrutiny to be carried out pursuant to Article 75 during the subsequent scrutiny period.

2. Each year, ~~before 15 April~~ ~~before for 15 February~~, Member States shall send the Commission their programme as referred to in 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;~~

~~a) A detailed report on the application of this chapter for the previous scrutiny period, including the results for the scrutiny carried out under article 78 (3)~~

~~(b) the criteria adopted for drawing up the programme.~~

~~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.~~

4. Paragraph 3 shall apply mutatis mutandis to the amendments to the programme made by the Member States.

5. At any stage, the Commission may request the inclusion of a particular category of undertaking in the programme of a Member States.

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~~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 empowered to adopt delegated acts in accordance with Article 101 amending the threshold set out in the first subparagraph.

~~Article 80 coordination~~ *Special departments*

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~~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, provided that the former is responsible for its.~~

~~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.~~

~~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 Chapter.~~

~~4. Member States shall adopt appropriate measures to penalise natural or legal persons who fail to fulfil their obligations under this Chapter.~~

~~Article 81~~ *Reports*

~~1. Before 1 January, following the scrutiny period, Member States shall send the Commission a detailed report on the application of this 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.~~

~~2. The Member States and the Commission shall have regular exchanges of views on the application of this Chapter.~~

~~Article 82~~ *Access to information and scrutiny by the Commission*

~~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 data processing systems. That data shall be provided upon request on an appropriate data support medium.~~

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.

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 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.

4. Without prejudice to the provisions of Regulations (EU, Euratom) No 883/2013, (Euratom, EC) No 2088/95 (Euratom, EC) No 2185/96 and (EU) 2017/1939, where national provisions concerning criminal procedure reserve certain acts for officials 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.

Article 83 *Implementing powers*

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 coordination of joint actions referred to in Article 78(1);~~

~~(d) the details and specifications regarding the content, form and means of 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 ~~84~~⁷⁹ and any other notification needed under this Chapter.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).