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From:	General Secretariat of the Council
To:	Working Party on Horizontal Agricultural Questions (CAP Reform)
N° Cion doc.:	9634/18 + COR 1 + ADD 1
Subject:	Proposal for a Regulation on the financing, management and monitoring of CAP (Presidency drafting suggestions on Articles 63-73 and 84-87) - Comments from the Irish delegation

Delegations will find attached the comments from the Irish delegation on the Presidency's drafting suggestions on the abovementioned Articles, issued on 27 November 2019 as part of the consolidated Presidency drafting suggestions on the Horizontal Regulation (14465/19).

**Ireland's written comments on the draft Presidency draft text 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 – document number 14465/19**

General comments

In general, Ireland can agree with the Presidency's approach that further consideration is required under Articles 8, 40, 46, 47 and 53. However, we consider that Article 40 in particular must be looked at in unison with the CAP Strategic Plan Regulation.

We can agree that Articles 38, 39 and 52 must be reviewed following the outcome and finalisation of discussions regarding Article 121 of the CAP Strategic Plan Regulation.

As regards the remaining Articles, Ireland's position is set out below:

Article	Ireland's comments
<u>Articles 63 – 73 – Integrated administration and Control System</u>	Ireland can support the changes in these articles and welcomes, in particular, the proposed text under Article 64 (1) (c) – <i>'as from 1 January 202{4} at the latest an area monitoring system'</i> , which will provide Member States with time to assess the requirements for and develop the appropriate system.
<u>Articles 84 – 87 – Control system and penalties in relation to conditionality</u> Article 84 (1) 2nd para. – <i>'Member States may set up a simplified control system for the beneficiaries receiving payments under Article 25 of Regulation (EU)..../[CAP Strategic Plan Regulation]. Where a Member State does not apply that Article, it may decide a size corresponding to a size limit of Article 25 for which a simplified control system would apply'.</i> Article 85(1) (a) - <i>'the non-compliance is related to the agricultural activity of the beneficiary; In cases other than those referred to in Article 86(3a), the administrative penalty referred to</i>	Ireland requests clarification on the number of hectares or 'size' concerned. Ireland notes that the introduction of a two-tiered system for implementing controls and application of penalties may add to the administrative burden, raise questions about equity and fairness; and may lead to practices at farm level to avoid appropriate penalties being applied (e.g. splitting holdings). As regards the small farmer in general, Ireland considers further discussions on this issue is required. Ireland welcomes the inclusion of the additional text <i>'In cases other than those referred to in Article 86(3a)'</i> and consider it to be a positive, as it ensures all applicants will be liable to a penalty for non-compliances that have <i>'grave consequences'</i>.

in paragraph 1 shall not apply to beneficiaries receiving payments under Article 25 of Regulation (EU)..../[CAP Strategic Plan Regulation]. Where a Member State does not apply that Article, it may apply this subparagraph to the holdings referred to in the last sentence of the second paragraph of Article 84(1).

Article 85(1) - *Where the area monitoring system used to carry out checks as referred to in point (c) of Article 84(3) of this Regulation reveals findings relevant for requirements or standards, the competent authorities may decide to apply administrative penalties only to beneficiaries selected for on-the-spot checks in accordance with point (d) of Article 84 (3).*

Article 86 (2) – ~~*In the case of non-compliance due to negligence, the percentage of reduction shall in principle be as a general rule 1%, 3% or 5% of the total amount of the payments referred to in paragraph 1 of this Article.*~~

Article 86 (2a)

– *'In the case that non-compliance has no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned, no administrative penalty shall be applied. The beneficiary shall be informed about the non-compliance and possible remedial actions to be taken'.*

Ireland seeks clarification on how breaches identified in cases outside of the control population (1%) should be dealt with. We note the text '**may decide**', however this raises uncertainty around the 'fairness' in dealing with farmers and could this raise audit issues in the future without clarity being provided.

Ireland considers that removal of the term negligence is a negative as it gives context to the level of the non-compliances where such % reductions would apply. Ireland further considers that the removal of 'negligence' or the concept of negligence from the system of administrative penalties for conditionality may lead to a dilution of the administrative penalty system.

Ireland notes the new text and would welcome clarity on how this could be implemented. How would 'insignificant consequences' be defined across the various SMRs/GAEC standards and applied consistently across member states? Will the Commission provide 'guidelines' on this to ensure consistency?

The new text in 2(a) states the beneficiary should be informed of possible remedial actions but ends there. Therefore, there is no consequence (penalty to apply) to a farmer if he does not carry out the remedial actions. If there is no motivation to carry out the remedial action the non-compliance may

Article 86 (3) – ‘In case of reoccurrence, the percentage reduction shall be higher than the one to be applied in case of non-compliance due to negligence and sanctioned for the first time accordance with paragraph 2’. Article 86 (3a) – ‘In the case that non-compliance has grave consequences for the achievement of the objective of the standard or requirement concerned, the percentage reduction shall be higher than the one applied in accordance with paragraphs 2 or 3.’	increase/expand which would have consequences for the achievement of the standard concerned. Ireland suggests the following text should be re-instated to address this matter - <i>‘Where a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, a reduction pursuant to the first subparagraph shall be applied retroactively.’</i> Ireland has consistently stated that the level of reoccurrence should be set in the Regulation rather than <u>‘higher than the one applied for non-compliance due to negligence’</u>, so that there is no ambiguity across Members States and a level playing field for all. Ireland welcomes the introduction of paragraph 3a, as it is essential that non-compliances that have ‘grave consequences’ are being addressed in the Regulations. However, Ireland would welcome clarity on how ‘grave consequences’ is defined and how it will be applied consistently across Member States. The proposed text no longer allows for total exclusion from payment for one or more years where it is warranted. Ireland considers that the non-inclusion of this provision could lead to difficulties in applying ‘dissuasive and proportionate’ penalties where continued non-compliances that have ‘grave consequences’ are determined.
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