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WORKING PAPER

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NOTE

From:	Presidency
To:	Delegations
N° Cion doc.:	9634/18 + COR1 + ADD1
Subject:	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 - Presidency compromise suggestions on Articles 96, 57 and 84-86

With a view to the forthcoming Agriculture and Fisheries Council on 22-23 March 2021, and on the basis of the discussions in the Special Committee on Agriculture on 8 March on the publication of information on beneficiaries, the protection of the financial interests of the Union, and on issues related to the conditionality control effort and penalties, the Presidency put together a number of suggestions, which should provide a basis for progress towards an overall compromise package on these issues. At the forthcoming Council, Ministers will be invited to comment on the Presidency's suggestions, which are given below.

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HZR Article 96 - Publication of information relating to beneficiaries

1. The EP proposes, in Article 96 on Publication of information relating to beneficiaries, to include a new paragraph, according to which Member States shall ensure that beneficiaries of Funds provide them with the information necessary for their identification, including, where applicable, the identification of the group they belong to.¹ Member States should also ensure annual ex-post publication of the beneficiaries of the Funds, including, where applicable, the information on the groups they belong to.
2. It should be underlined that this new compromise amendment would imply less administrative burden on Member States as compared to the EP's original amendment, where it would be up to the Member States to identify the group that 'owns' the beneficiary. The new compromise text of the EP would alleviate the administrative burden as it will be the beneficiaries themselves who must provide the Member States with the information necessary for their identification and for the identification of the group they possibly belong to. It will be for the Member States to ensure that they get this information from the beneficiaries and that the information is published.
3. The identification of beneficiaries and the possible group they belong is politically important as it will allow EU policy makers and the public at large to see who the beneficiaries of CAP funding actually are. Although it is unavoidable that each new policy or legislative measure requires some administrative burden, the EP compromise proposal takes into account the Council's concerns with the result that, as compared to the EP's original request, the administrative burden for administrations will be much less. All things considered, and subject to confirmation from Ministers, the Presidency is therefore inclined to show flexibility towards EP's compromise proposal.

¹ See doc. 6704/21 for a detailed explanation of the Parliament's compromise proposal.

Article 57 - Protection of the financial interests of the Union

4. In reply to the European Council conclusions of 21 July 2020 to present "*measures to ensure the collection and comparability of information on the final beneficiaries of EU funding for the purposes of control and audit to be included in the relevant basic acts*", the Commission made a proposal to amend Article 57 on the Protection of the financial interests of the Union. Member States will be required, through the compulsory use of the ARACHNE system or a single data mining tool, to verify, record and store information on the organisations or natural persons ultimately benefitting (directly or indirectly) from EU funding. The Commission's proposal would comprise a general requirement in the basic act with an empowerment to lay down further details in an implementing act.
5. Although Member States acknowledge the advantages of using a common, a single data mining tool, they cannot support to make the use of the ARACHNE-tool mandatory in the Horizontal Regulation at this point in time.² They believe that there is a need to gain further experience with the ARACHNE-tool in the specific CAP environment. They therefore propose that, during a transitional period, Member States should use ARACHNE on a voluntary basis. This would also allow to assess the administrative burden associated in developing national systems to feed in the relevant information to ARACHNE.
6. The European Council concluded that there is a need to step up efforts to protect the financial interests of the Union. Although Member States acknowledge that the Commission's proposal would be an important step to contribute to this objective, they can only support the voluntary use of the single data mining tool during a transition period. The Presidency is therefore inclined to defend this line in the further negotiations on the Commission's proposal.

²

For a detailed explanation of the Commission's proposal, see doc. 6704/21 and WK 12512/2020. The comments of the Member States on the Commission's proposal are given in WK 10645/2020 ADD 1-17.

Articles 84 - 86 on Conditionality controls and penalties

7. On "conditionality", and in line with the New Delivery Model, according to which the Member States are responsible for the *conditionality control effort*, the Presidency is seeking EP's support for the Council's approach on Articles 84 to 87 of the HZR, which:
 - aims to balance the *conditionality control effort* with the need to keep things simple and administratively light;
 - makes all farmers subject to conditionality standards and requirements although Member States may provide for a *simplified control system* to make checks on small farms less burdensome;
 - sets a maximum size of 5 hectares for holdings in order to keep all small farms within the scope of conditionality in case Member States chose not to apply Article 25 of the Strategic Plan Regulation;
 - allows for a reduction of the controls of the concerned standards and requirements where a risk analysis shows that the risks are low;
 - will take into account the farm structure and the risk of non-compliance in the control sample for the risk analysis.
 - foresees no sanctions where infringements have no or insignificant consequences but the farmer is informed about remedial actions (without an automatic need for controlling him/her again the following year).
8. The EP showed willingness to possibly accept the Council's approach as explained above. However, the Parliament is expecting certain concessions from the Council:
 - In Article 84(3), the EP proposes to compromise on a figure of 2,5% of beneficiaries receiving support for the control sample. This would be mid-way between the EP's original proposal of 5% and the 1% proposed by the Council. Considering that the figure of 2,5% would in fact mean a 250% increase of controls as compared to the current situation, and in the absence of a justification for the need of such an increase, the Presidency suggests to stick to the 1%, as proposed by the Commission.
 - In Article 85(2), the EP sticks to the Commission's proposal that no penalty shall be applied when the penalty is EUR 100 or less. The Council proposes an amount of EUR 250, mainly because of the perceived disproportionate administrative burden involved with a lower amount. However, in a spirit of compromise, the Presidency suggests to go back to the amount of EUR 100, as originally proposed by the Commission.

- In Article 86(1), the EP cannot accept the Council's proposal that the *intentionality* of the non-compliance shall only be taken into account in the calculation of reductions and exclusions "*if Member States so decide*". This wording would effectively provide the Member States with the possibility not to take any action at all in cases of suspected intentional non-compliance. Considering further that it is most unusual in EU legislation to leave the decision on the intentional character of a penalty to the discretion of the Member States, the Presidency suggests to show flexibility on this matter and to drop the words "*if Member States so decide*".
- Finally, in Article 86(2), the EP cannot accept the Council's proposal on the various percentages (1%, 3% or 5%) to be applied to reductions and instead proposes to accept the Commission's proposal of a "3% reduction as a general rule" with the possibility to increase this percentage for non-compliance in case of reoccurrence or intentionality. The Presidency suggests to go back to the Commission' proposal on this matter, i.e. to accept a "3% reduction as a general rule".

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