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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
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 - Presidency discussion paper on delegated and implementing acts

With a view to the meeting of the WP AGRIFIN on 9 April, delegations find attached a discussion paper by the Presidency on Delegated and Implementing Acts in the above mentioned Commission proposal.

Discussion paper on delegated and implementing acts in the Horizontal Regulation

The Horizontal Regulation provides for several delegated and implementing empowerments of the Commission. Following the redrafting suggestions presented by AT PRES (doc. 15046/18), Member States were invited to send their outstanding comments on the revised HZR text. Considering that certain comments received concerned the delegated and implementing empowerments, the RO Presidency announced its intention to organize a block discussion on this topic.

This point will be on the agenda of the AGRIFIN Working Party on 9 of April.

In order to steer the discussion in the AGRIFIN Working Party, the Presidency prepared a discussion paper structured in two annexes Annex I – Delegated acts and Annex II – Implementing Acts, that includes the relevant provisions of HZR as redrafted by the RO Presidency, a synthesis document containing the COM clarifications to Member States' comments and additional information provided in the non-papers prepared so far.

As regards the delegated acts (Annex I to this paper), Article 290 of the Treaty on the Functioning of the European Union provides that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act, the essential elements of an area being reserved for the legislative act and thus not being the subject of a delegation of power.

Concerning the implementing acts (Annex II to this paper), according to Article 291 of the Treaty on the Functioning of the European Union, implementing powers should be conferred on the Commission where uniform conditions for implementing legally binding Union acts are needed. Also, the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers should be laid down in advance in the basic act by the co-legislators.

The Presidency recalls Member States that the examination of the Commission's delegated and implementing powers should be made in the context of the respective Articles. In this regard, and taking also into account the answers provided by the Commission so far, as well as the experience gathered from the current multi-annual financial exercise regarding the regulatory framework on the provisions under discussion, Member States are invited to address in their interventions the questions below:

1. Do you consider the additional information and clarifications provided by COM on the delegated and implementing powers address, in a satisfactory manner, the outstanding concerns of the Member States? In replying to this question, Member States should bear in mind the COM arguments presented in the documents mentioned above, as well as the previous discussions and explanations offered in previous AGRIFIN meetings.
 - If not, do you consider that the scope of some of the Commission's delegated or implementing powers is too wide and should be therefore more limited? If so, please indicate which ones and why.

2. Do you consider acceptable enough the COM arguments stating why certain rules should be adopted by the Commission through delegated acts and not through implementing acts?

➤ If not, please indicate which ones and why.

In order to streamline the discussion, Member States are recommended to address the Articles that are still open for discussion and to focus their interventions strictly on the issues related to the COM empowerment in that particular Article.

Annex I - Delegated acts

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Block 1 - Articles 1 - 7		
NO reference to delegated acts		
Block 2 - Articles 8 - 11; 88 - 90		
Title II - General provisions on agricultural Funds		
CHAPTER II - Governance bodies		
Article 10 (1) Commission powers	(1) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on: a) the minimum conditions for the accreditation of the paying agencies referred to in Article 8(2) and of the coordinating bodies referred to in Article 8(4); b) the obligations of the paying agencies as regards public intervention and the rules concerning the content of their management and control responsibilities.	Commission replied that the current provisions provide for a delegated act (Annex 1 to Reg. 907/2014 foresees the accreditation criteria). A roll over of the current system is foreseen and therefore it has not been considered necessary to change the current empowerment for a delegated act.
BLOCK 3 - Articles 12 - 24; 44		
Title III Financial management of the Funds		
CHAPTER I EAGF		
Article 15 Financial discipline	(6) The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules for calculating the financial discipline to be applied by Member States to farmers.	NO MS COMMENTS
Article 21 Public intervention expenditure	(2) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on: (a) the type of measures eligible for Union financing and the reimbursement conditions;	NO MS COMMENTS

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	(b) the eligibility conditions and calculation methods based on the information actually observed by the paying agencies or based on flat-rates determined by the Commission, or based on flat-rate or non-flat-rate amounts provided for by the sectoral agricultural legislation. (3) The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules on the valuation of operations in connection with public intervention, the measures to be taken in the case of loss or deterioration of products under the public intervention, and the determination of the amounts to be financed.	
BLOCK 4 - Articles 25 - 32		
NO reference to delegated acts		
BLOCK 5 - Articles 33 - 42; 45; 91 - 95		
Title III FINANCIAL MANAGEMENT OF THE FUNDS CHAPTER III Common provisions		
Article 36 <i>Compliance with payment deadlines</i>	2nd paragraph - The Commission is empowered to adopt delegated acts in accordance with Article 100, supplementing this Regulation with rules on the circumstances and conditions in which the payments referred to in the first paragraph of this Article may be deemed eligible, taking into account the principle of proportionality.	NO MS COMMENTS
Article 38 <i>Suspension of payments in relation to</i>	(2) 3rd subparagraph - The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the rate of suspension of payments.	Several MS requested that these rules on the rate of suspension of payments to be set up in an implementing act.

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
<i>the annual clearance</i>		The Commission explained that MSs would have an opportunity to react to the delegated acts as part of the standard procedure in producing these acts. In addition, same type of delegated powers exist in the current legislation in force, so this approach does not represent a change. The rates/ amounts of suspensions currently applied are based on the guidelines on financial corrections by analogy. The rates for suspension in the new delivery model that will be set out will depend on the proportion of deviations that cannot be justified. It is not possible to specify in detail, in particular, in the basic act, all of the cases of deviations and acceptable justifications that may occur. In the non-paper on suspensions (WK 1658/2019), COM detailed the situations that would lead to suspension of payments, gave examples of calculation of the suspension rate, and also presented the indicative criteria for assessing the appropriateness of the justifications of the MS in order to enable MSs to have a better indication of the content on the delegated act.
Article 39 Suspension	(2) 3rd subparagraph - The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this	Certain MS requested that the rules on the rate and duration of suspension of payments to be set up

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
<i>of payments in relation to the multi-annual performance monitoring</i>	Regulation with rules on the rate and duration of suspension of payments and the condition for reimbursing or reducing those amounts with regard to the multi-annual performance monitoring.	in the implementing act. COM explained that the rules on the elements of the action plans and the procedure will be set by the implementing act by the Commission, while the duration and rates of the suspension are better suited for the delegated acts. The MSs will have an opportunity to react to the delegated acts as part of the standard procedure in producing these acts. The non-paper on suspensions (WK 1658/2019) presents the situation that would lead to the suspension of payments, the timeline for the application of the suspension, the level of suspension and the conditions for lifting the suspension and reimbursing or reducing the concerned amount in order to enable MSs to have a better indication on the content of the delegated act.
Article 42 Payment to beneficiaries	(4) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the interventions or measures, <u>including those referred to in Chapter III of Title III of Regulation [CAP Strategic Plan Regulation]</u> for which	The Commission confirmed MSs that the intention of this empowerment is not to restrict advances under paragraph 2, but to provide for advances in sectoral measures, brought in into

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	the Member States may pay advances.	the CAP Plan. Following MS comments, PRES RO proposed a revised text to clearly state that the advances for the sectoral interventions shall be set up by delegated act, maintaining thus the status quo. This redrafting suggestion was presented in SCA and was also subject to an exchange of views at the Ministerial Council on 18 March 2019. Following the debate during the March Council where there was support by Member States on this redrafting proposal, no further discussion on this provision is envisaged at the level of the WP.
Article 45 Commission powers	(1) 1st subparagraph - The Commission is empowered to adopt delegated acts in accordance with Article 100 in order to supplement this Regulation concerning the conditions under which certain types of expenditure and revenue under the Funds are to be compensated. (1) 2nd subparagraph - If the Union's budget has not been adopted by the beginning of the financial year or if the total amount of the commitments scheduled exceeds the threshold laid down in Article 11(2) of the Financial Regulation, the Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the method applicable to the commitments and the payment of the amounts.	NO MS COMMENTS
TITLE V COMMON PROVISIONS		

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Chapter II Use of the euro		
Article 92 Exchange rate and operative event	(5) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on those operative events and the exchange rate to be used. The specific operative event shall be determined taking account of the following criteria: (a) actual applicability as soon as possible of adjustments to the exchange rate; (b) similarity of the operative events for analogous operations carried out under the market organisation; (c) coherence in the operative events for the various prices and amounts relating to the market organisation; (d) practicability and effectiveness of checks on the application of suitable exchange rates. (6) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the exchange rate applicable when declarations of expenditure are drawn up and when public storage operations are recorded in the accounts of the paying agency.	NO MS COMMENTS
Article 93 Safeguard measures and derogations	(2) Where exceptional monetary practices concerning a national currency are liable to jeopardise the application of Union law, the Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with derogations from this Chapter, in the following cases: (a) where a country uses abnormal exchange techniques such as multiple exchange rates or operates barter agreements; (b) where countries have currencies which are not quoted on official	NO MS COMMENTS

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	foreign exchange markets or where the trend in such currencies is likely to create distortion in trade.	
BLOCK 6 – Articles 46 – 56		
TITLE III Financial management of the Funds		
Chapter IV Clearance of accounts		
Article 50 Commission powers	(1) 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.	COM explained that specific mentioning of OLAF cases in this article is necessary, as it is the case for all the other basic acts for other funds, as OLAF does not have legal basis on its own for the information on irregularities. OLAF takes empowerment from sectorial rules.
Article 52 Annual performance clearance	(4) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the criteria for justifications from the concerned Member State and the methodology and criteria for applying reductions.	A few MS requested these rules to be set up in the basic act or in an implementing act. The Commission replied that 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. It was recalled that the current proposals reduce significantly the number of empowerments given to the Commission.

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
		In the non-paper on suspensions (WK 1658/2019), COM gave examples of calculation of the reductions to be applied during the clearance process and also presented the indicative criteria for assessing the appropriateness of the justifications of the MS in order to enable MSs to have a better indication on the content of the delegated act.
Article 53 Conformity procedure	(6) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on the criteria and methodology for applying financial corrections.	Following certain MSs request to set up these rules in the basic act or in an implementing act, the Commission replied that in the current legal framework the same approach is applied. In order to clarify the outstanding concerns of MS on this Article, COM prepared a non-paper that will be presented during the Agrifin meeting, on the 9 of April.
BLOCK 7 – Articles 57 – 62; 74 – 83		
TITLE IV Control systems and penalties		
Chapter I General rules		
Article 58 Rules regarding checks to be carried out	(3) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules, where the proper management of that system so requires, on additional requirements with respect to customs procedures, and in particular to those laid down in Regulation (EU) No 952/2013 of the European Parliament and of the Council.	NO MS COMMENTS

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Article 62 Securities	(3) The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with rules on: (a) which ensure a non-discriminatory treatment, equity and the respect of proportionality when lodging a security; (b) specifying the responsible party in the event that an obligation is not met; (c) laying down the specific situations in which the competent authority may waive the requirement of a security; (d) laying down the conditions applying to the security to be lodged and the guarantor and the conditions for lodging and releasing that security; (e) laying down the specific conditions related to the security lodged in connection with advance payments; (f) setting out the consequences of breaching the obligations for which a security has been lodged, as provided for in paragraph 1, including the forfeiting of securities, the rate of reduction to be applied on release of securities for refunds, licences, offers, tenders or specific applications and when an obligation covered by that security has not been met either wholly or in part, taking into account the nature of the obligation, the quantity for which the obligation has been breached, the period exceeding the time limit by which the obligation should have been met and the time by which evidence that the obligation has been met is produced.	NO MS COMMENTS

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Chapter III Scrutiny of transactions		
Article 74 Scope and definitions	(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.	
Article 75 Scrutiny by Member States	<u>(6) The Commission is empowered to adopt delegated acts in accordance with Article [100] amending the threshold set out in the paragraph 4.</u>	NO MS COMMENTS. The entire section was discussed during AGRIFIN on 7 of March, with several MS expressing themselves in favour or against the maintenance of this Chapter on scrutiny of transactions. No further discussion on the Commission empowerment is envisaged for this Chapter.
BLOCK 8 – Articles 96 – 104		
Title VI Delegated acts and implementing acts		
Article 100 Exercise of the delegation	(1) The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. (2) The power to adopt delegated acts referred to in Articles 10, 15, 21, 36, 38, 39, 42, 45, 50, 52, 53, 58, 62, 72, 74, 79, 86, 92, 93 and 103 shall be conferred on the Commission for a period of seven years from the date of entry into force of this Regulation. The Commission shall draw up a	Standard provision on DA used in basic acts; however, the precise numbers of Articles setting out the empowerments are possibly to be adapted following the conclusions during AGRIFIN discussions.

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	report in respect of the delegation of power not later than nine months before the end of the seven-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. (3) The delegation of powers referred to in Articles 10, 15, 21, 36, 38, 39, 42, 45, 50, 52, 53, 58, 62, 72, 74, 79, 86, 92, 93 and 103 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force. (4) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. (5) As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council. (6) A delegated act adopted pursuant to Articles 10, 15, 21, 36, 38, 39, 42, 45, 50, 52, 53, 58, 62, 72, 74, 79, 86, 92, 93 and 103 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.	

Article	DELEGATED POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	That period shall be extended by two months on the initiative of the European Parliament or of the Council.	
Title VII Final provisions		
Article 103 Transitional measures	The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with derogations from, and additions to, the rules provided for in this Regulation, where necessary.	NO MS COMMENTS

Annex II – Implementing acts

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Block 1 – Articles 1- 7		
NO reference to implementing acts		
Block 2 – Articles 8 – 11; 88 – 90		
Title II - General provisions on agricultural Funds		
CHAPTER II - Governance bodies		
Article 10 (2) Commission powers	2) The Commission shall adopt implementing acts laying down rules on: a) the procedures for issuing, withdrawing and reviewing accreditation of paying agencies and coordinating bodies, as well as the procedures for the supervision of the accreditation of paying agencies; b) the work and checks underlying the management declaration of the paying agencies, referred to in point (c) of Article 8(3); c) the functioning of the coordinating body and the notification of information to the Commission as referred to in Article 8(4). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	In reply to MSs comments on these empowerments to adopt implementing acts and the roll-over mechanism, Commission explained that the work to be carried out by the Competent Authority would not change as compared to today. The works and checks underlying the Management Declaration will not change from the current system: i.e. the Director of the PA will take into account all checks performed for the management and execution of payments etc. and will draw its conclusion based on the results. These checks could include the PA internal control and Internal Audit checks, and the CB audits etc.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Article 11 (3) Certification bodies	11 (3) The Commission shall adopt implementing acts laying down rules on the tasks of the certification bodies, including the checks to be carried out and the bodies subject to those checks, and on the certificates and the reports, together with the documents accompanying them, to be drawn up by those bodies. The implementing acts shall also set out: a) the audit principles on which the opinions of the certification bodies are based, including an assessment of the risks, internal controls and the level of audit evidence required; b) the audit methods to be used, by the certification bodies, having regard to international standards on auditing, to deliver their opinions. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	At the request of MS to be provided with advance information or drafts concerning the audit principles on which the opinions of the CBs are based and concerning the audit methods to be used, the Commission explained that the audit methodology is subject to Implementing acts and Guidelines that are to be elaborated once the basic acts are finalized. Implementing Act and Guidelines are seen as a vehicle for predictability for MS to know what the Commission will require and as a support to CBs. To further clarify its intentions, COM prepared a non-paper on the Certification bodies work in the framework of the new delivery model, that focused on the new tasks of CB, the methodology that needs to be followed, the assessment methods linked to the audit techniques to be used, and the results to be reported on.
Article 90 Implementing powers	The Commission may adopt implementing acts laying down rules on: a) the form, content, intervals, deadlines and arrangements for transmitting or making available to the Commission: (i) declarations of expenditure and estimates of expenditure and their updates, including assigned revenue, (ii) management declaration and annual accounts of the paying agencies, (iii) the account certification reports,	Regarding MS comments on article 90, the Commission replied that the Article took over the Commission's implementing powers as laid down in Article 104 of Regulation (EU) No 1306/2013. The proposal for HZR respects the principles of proportionality and subsidiarity. The Commission stressed that this empowerment

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	(iv) the names and particulars of accredited paying agencies, accredited coordinating bodies and certification bodies, (v) arrangements for taking account of and paying expenditure financed by the Funds, (vi) notifications of financial adjustments made by Member States in connection with rural development interventions, (vii) information on the measures taken pursuant to Article 57; b) the arrangements governing exchanges of information and documents between the Commission and the Member States, and the implementation of information systems, including the type, format and content of data to be processed by these systems and the corresponding data storage rules; (c) the notifications to the Commission by Member States of information, documents, statistics and reports, and the deadlines and methods for their notification. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	would be necessary for conformity issues related to the governance system, legality and regularity issues as regards market measures, information provided in the Management declaration, etc. As regards point (a) (vii), the information needs to be transmitted to the Commission for OLAF related checks. This empowerment is necessary in the HZR and other sectoral regulations relating to shared management, as OLAF does not have 'its own' legal basis, so takes the empowerments from sectoral legislation.
BLOCK 3 – Articles 12 – 24; 44		
TITLE III Financial management of the Funds		
CHAPTER I EAGF		
Article 12 Budget ceiling	2. In the event that Union law provides for sums to be deducted from or added to the amounts referred to in paragraph 1, the Commission shall adopt implementing acts without applying the procedure referred to in Article 101, setting the net balance available for EAGF expenditure on the basis of the data referred to in Union law.	NO MS COMMENTS
Article 15	(1) 2nd subparagraph The Commission shall, by 30 June of the	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Financial discipline	calendar year in respect of which the adjustment rate applies, adopt implementing acts fixing the adjustment rate. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2). (2) Until 1 December of the calendar year in respect of which the adjustment rate applies, the Commission may, on the basis of new information, adopt implementing acts adapting the adjustment rate set in accordance with paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2). (3) 2nd and 3rd subparagraph Where appropriations to be carried-over as referred to in the first subparagraph remain available, the Commission may, adopt implementing acts setting out per Member State the amounts of non-committed appropriations to be reimbursed to final beneficiaries unless the overall amount of non-committed appropriations available for reimbursement represents less than 0,2% of the annual ceiling for EAGF expenditure. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).	
Article 16 Budget discipline procedure	(3) Where, at the end of financial year N, reimbursement requests from the Member States exceed or are likely to exceed the amount referred to in Article 12, the Commission shall: (a) consider the requests presented by Member States pro rata	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	subject to the budget available, and adopt implementing acts setting provisionally the amount of the payments for the month concerned; (b) determine, for all Member States, on or before 28 February of financial year N + 1, their situation with regard to Union financing for the financial year N; (c) adopt implementing acts setting the total amount of Union financing broken down by Member State, on the basis of a single rate of Union financing, subject to the budget which was available for the monthly payments; (d) effect, at the latest when the monthly payments are made for March of year N+1, any compensation to be carried out with respect to Member States. The implementing acts provided for in points (a) and (c) of the first subparagraph shall be adopted in accordance with the advisory procedure referred to in Article 101(2).	
Article 19 Procedure for monthly payments	(3) The Commission shall adopt implementing acts determining the monthly payments which it makes on the basis of a declaration of expenditure from the Member States and the information supplied in accordance with Article 88(1). (5) The Commission shall adopt the implementing acts determining the monthly payments referred to in paragraph 3 without applying the procedure referred to in Article 101.	With reference to para 5, the Commission said that the reasoning behind the proposed change is to reduce the administrative burden for both MSs and Commission, while maintaining the necessary information of MS. In this respect, the information of the MS is maintained, it has also been reinforced by adding

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	(6) The Commission may adopt implementing acts determining supplementary payments or deductions adjusting the payments made in accordance with paragraph 3, without applying the procedure referred to in Article 101.	in the Article, paragraph 4, stating that the Commission shall inform the MS of any overrun of the ceilings that will lead to a reduction in a coming monthly decision. In addition, in case of nonobservance of payment deadlines, MS is also informed, according to article 37(2). Therefore, with the proposed procedure, MSs are duly informed in advance of any possible reductions. COM reminded that the proposed procedure can already be used currently for supplementary payments referred to in Article 18(4) of Reg. 1306/2013. Also, COM mentioned that this change of procedure is an alignment to the current practice for EAFRD payments, where the Commission informs MS about any possible overrun and payments are effected without any Committee procedure.
Article 21 Public intervention expenditure	4. The Commission shall adopt implementing acts, fixing the amounts referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2).	NO MS COMMENTS
Article 24 Implementing powers	The Commission may adopt implementing acts laying down: (a) rules relating to the financing pursuant to points (b) and (c) of Article 7;	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	(b) the procedure under which the measures referred to in Articles 22 and 23 shall be carried out in order to meet the objectives assigned; (c) the framework governing the acquisition, enhancing and utilisation of satellite data and meteorological data, and the applicable deadlines. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
BLOCK 4 - Articles 25 – 32		
Title III FINANCIAL MANAGEMENT OF THE FUNDS		
Chapter II EAFRD - SECTION 3 FINANCIAL CONTRIBUTION TO RURAL DEVELOPMENT INTERVENTIONS		
Article 30 <i>Interim payments</i>	30 (9) 2nd subparagraph - The Commission shall adopt implementing acts laying down the periods for accredited paying agencies to establish and forward those intermediate declarations of expenditure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS
BLOCK 5 - Articles 33 - 45; 91 – 95		
CHAPTER III Common provisions		
Article 37 <i>Reduction of monthly and interim payments</i>	37(1) Where the Commission establishes from declarations of expenditure or the information referred to in Article 88 that financial ceilings set by Union law have been exceeded, the Commission shall reduce the monthly or interim payments to the Member State in question in the framework of the implementing acts concerning the	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	monthly payments referred to in Article 19(3) or in the framework of the interim payments referred to in Article 30. 37(2) Where the Commission establishes from declarations of expenditure or the information referred to in Article 88 that the payment deadlines referred to in Article 36 have not been complied with, the Member State shall be afforded the opportunity to submit its comments within a period which shall not be less than 30 days. Where the Member State fails to submit its comments within the said period or where the Commission considers the response to be unsatisfactory, the Commission may reduce the monthly or interim payments to the Member State concerned in the framework of the implementing acts concerning the monthly payments referred to in Article 19(3) or in the framework of the interim payments referred to in Article 30. 37 (4) The Commission may adopt implementing acts laying down further rules on the procedure and other practical arrangements for the proper functioning of the mechanism provided for in Article 36. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 38 <i>Suspension of payments in relation to the annual clearance</i>	38 (1) Where Member States do not submit the documents referred to in Articles 8(3) and 11(1) by the deadlines, as provided for in Article 8(3), the Commission may adopt implementing acts suspending the total amount of the monthly payments referred to in Article 19(3). The Commission shall reimburse the suspended amounts when it receives the missing documents from the Member State concerned provided that the date of receipt is not later than six	COM explained that same type of implementing powers exist in the current legislation in force so this approach does not represent a change. The rates/amounts of suspensions currently applied are based on the guidelines on financial corrections by analogy. The rates for suspension

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	months after the deadline. 38 (2) 1st paragraph - Where, in the framework of the annual performance clearance referred to in Article 52, 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, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. 38 (2) 2nd paragraph - The suspension shall be applied to the relevant expenditure in respect of the interventions which have been subject to the reduction referred to in Article 52(2) and the amount to be suspended shall not exceed the percentage corresponding to the reduction applied in accordance with Article 52(2). The amounts suspended shall be reimbursed by the Commission to the Member States or permanently reduced by means of the implementing act referred to in Article 52. 38 (3) The implementing acts provided for in this Article shall be adopted in accordance with the advisory procedure referred to in Article 101(2). Before adopting those implementing acts, the Commission shall inform the Member State concerned of its intention and shall give the Member State the opportunity to submit its comments within a period, which shall not be less than 30 days. The implementing acts determining the monthly payments referred	in the new delivery model that will be set out will depend on the proportion of deviations that cannot be justified. In the non-paper provided on suspensions (WK 1658/2019), COM detailed the situations that would lead to suspension of payments, the indicative timeline for their application, examples of calculation of the suspension rate, the indicative common criteria for assessing the appropriateness of the justifications of the MS, the conditions for lifting the suspension and reimbursing or reducing the amounts.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	to in Article 19(3) or the interim payments referred to in Article 30 shall take account of the implementing acts adopted under this paragraph.	
Article 39 <i>Suspension of payments in relation to the multi-annual performance monitoring</i>	39 (1) 2nd subparagraph - The Commission may adopt implementing acts laying down further rules on the elements of action plans and the procedure for setting up the action plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3). 39 (2) 1st subparagraph - Where the Member States fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. 39 (2) 2nd subparagraph - The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure related to the interventions which were to be covered by that action plan. The Commission shall reimburse the suspended amounts when, on the basis of the performance review referred to in Article 121 of Regulation (EU) .../... [CAP Strategic Plan Regulation] satisfactory progress towards targets is achieved. If the situation is not remedied by the closure of the national CAP Strategic Plan, the Commission may adopt an implementing act definitively reducing the amount suspended for the Member State concerned. 39 (3) The implementing acts provided for in paragraphs 1 and 2 shall be adopted in accordance with the advisory procedure referred	COM explained that the rules on the elements of the action plans and the procedure will be set by implementing act by the Commission as it is not considered appropriate that all the technical details of the procedure and the content of the action plan to be set in the basic act. MSs can expect that the annual performance review would be done in an active dialogue between the Commission and the MS. The non-paper on suspensions (WK 1658/2019) foresees the timeline for the submission of the action plan, the situation that would lead to the suspension of payments, the indicative common criteria for assessing the appropriateness of the justifications of the MS, the level of suspension and the conditions for lifting the suspension and reimbursing or reducing the amounts.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	to in Article 101(2). Before adopting those implementing acts, the Commission shall inform the Member State concerned of its intention and shall ask it to respond within a period which shall not be less than 30 days.	
Article 40 <i>Suspension of payments in relation to deficiencies in the governance systems</i>	40 (1) 2nd subparagraph - The Commission may adopt implementing acts laying down further rules on the elements of the action plans and the procedure for setting up the action plans. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3). 40 (2) 1st subparagraph - Where the Member State fails to submit or to implement the action plan referred to in paragraph 1 or if that action plan is manifestly insufficient to remedy the situation, the Commission may adopt implementing acts suspending the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30. 40 (2) 2nd subparagraph - The suspension shall be applied in accordance with the principle of proportionality to the relevant expenditure effected by the Member State where the deficiencies exist, for a period to be determined in the implementing acts referred to in the first subparagraph, which shall not exceed 12 months. If the conditions for the suspension continue to be met, the Commission may adopt implementing acts prolonging that period for further periods not exceeding 12 months in total. The amounts suspended shall be taken into account when adopting the implementing acts referred to in Article 53. 40 (3) - The implementing acts provided for in this Article shall be	Commission explained that the details on procedures for the adoption/duration of the action plan will be subject to an implementing act. Moreover, Commission explained that minimum requirements for the functioning of the governance systems are the requirements for the governance bodies and EU basic requirements defined in the two acts of the CAP legislative proposal (HZR and SPR). In the non-paper on suspensions (WK 1658/2019) COM described the timeline for the submission of the action plan, the situation that would lead to the suspension of payments, the level of suspension and the conditions for lifting the suspension and reimbursing the concerned amounts.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	adopted in accordance with the advisory procedure referred to in Article 101(2). Before adopting the implementing acts referred to in paragraph 2, the Commission shall inform the Member State concerned of its intention and shall ask it to respond within a period which shall not be less than 30 days. The implementing acts determining the monthly payments referred to in Article 19(3) or the interim payments referred to in Article 30 shall take account of the implementing acts adopted under the first subparagraph of this paragraph.	
Article 42 Payment to beneficiaries	42 (5) Upon the request of a Member State, in the event of an emergency, and within the limits of point b) of Article 11 (2) of Regulation (EU, Euratom) 2018/1046, the Commission may shall, where appropriate adopt implementing acts to resolve specific problems in relation to the application of this Article. Those implementing acts may derogate from paragraph 2, but only to the extent that, and for such a period, as is strictly necessary. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	Following MSs question on the specific problems for which the Commission could adopt an implementing act, the Commission replied that this has been done in cases such as natural disasters (draughts, flooding, and earthquakes) which justified an earlier payment or a higher percentage of advances. PRES RO proposed a revised text to better reflect the conditions for the application of an increased level of advance payments to beneficiaries of direct payments and rural development interventions under Art. 63 (2) of HZR, as well as the obligation of COM to act as long as those conditions are met. The replacement of “may” with “shall” represents a recurrence to the current

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
		text of Regulation 1306/2013. This redrafting suggestion was presented in SCA and in the Ministerial Council of 18 March 2019. Following the debate during the 18 March Council, where there was support by Member States on the revised provision, no further discussion on this provision is envisaged at the level of the WP.
Article 45 Commission powers	45 (2) The Commission may adopt implementing acts laying down further rules on the obligation laid down in Article 41 and the specific conditions applying to the information to be booked in the accounts kept by the paying agencies. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3). 45 (3) The Commission may adopt implementing acts laying down rules on: (a) the financing and accounting of intervention measures in the form of public storage, and other expenditure financed by the Funds; (b) the terms and conditions governing the implementation of the automatic decommitment procedure. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS
TITLE V COMMON PROVISIONS Chapter II Use of the euro		

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Article 93 Safeguard measures and derogations	93 (1) The Commission may adopt implementing acts safeguarding the application of Union law if exceptional monetary practices related to national currency are likely to jeopardise it. Those implementing acts may only derogate from the existing rules for a period of time which is strictly necessary. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS
BLOCK 6 - Articles 46 - 56		
TITLE III Financial management of the Funds Chapter IV Clearance of accounts		
Article 50 Commission powers	2. The Commission may adopt implementing acts laying down rules on: (a) the procedures relating to the cooperation obligations to be complied with by the Member States for the implementation of Articles 47 and 48; (b) the conditions under which the supporting documents referred to in Article 49 are to be kept, including their form and the time period of their storage. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS
Article 51 Annual financial	1. Prior to 31 May of the year following the budget year in question and on the basis of the information referred to in points (a) and (c) of Article 8(3), the Commission shall adopt implementing acts,	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
<i>clearance</i>	containing its decision on the clearance of the accounts of the accredited paying agencies, for the expenditure referred to in Article 5(2) and Article 6. Those implementing acts shall cover the completeness, accuracy and veracity of the annual accounts submitted and shall be without prejudice to the content of the implementing acts subsequently adopted pursuant to Articles 52 and 53. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2). 2. The Commission shall adopt implementing acts laying down rules on the clearance of accounts provided for in paragraph 1 with regard to the measures to be taken in connection with the adoption of the implementing acts referred to in the second subparagraph of paragraph 1 and their implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 52 Annual performance clearance	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 Union financing. Those implementing	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	acts shall be without prejudice to the content of the implementing acts subsequently adopted pursuant to Article 53 of this Regulation. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 101(2). 3. Before the adoption of the implementing act referred to in paragraph 1, the Commission shall give the Member State an opportunity to submit its comments and justify any differences within a period which, where the documents in accordance with Articles 8(3), 8(4) and 11(1) have been submitted by the deadline, shall not be less than 30 days. 5. The Commission shall adopt implementing acts laying down rules on the measures to be taken in connection with the adoption of the implementing act referred to in paragraph 1 and its implementation, including the information exchange between the Commission and the Member States, the procedure and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 53 Conformity procedure	1. subparagraph 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. (1) 4th subparagraph The implementing acts referred to in the first subparagraph shall be adopted in accordance with the advisory	COM will present a non-paper on art. 53 Conformity procedure during AGRIFIN of 9 of April.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	procedure referred to in Article 101(2). 7. The Commission shall adopt implementing acts laying down rules on the measures to be taken in connection with the adoption of the implementing act referred to in paragraph 1 and its implementation, including the information exchange between the Commission and the Member States, the deadlines to be respected and the conciliation procedure provided for in paragraph 3, including the establishment, tasks, composition and working arrangements of the conciliation body. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 56 Implementing powers	The Commission shall adopt implementing acts laying down rules on the forms of notification and communication to be made by the Member States to the Commission in relation to the obligations set out in this Section. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	COM explained that the procedure for recovery of undue payments from the final beneficiary is at the discretion of the MS and, as a consequence, it is not necessary to add other elements in the basic or implementing acts in relation to offsetting of payments, insolvency, de minimis, etc.
BLOCK 7 – Articles 57 – 62; 74 – 83		
TITLE IV Control systems and penalties Chapter I General rules		
Article 57 Protection of the financial interests of the	6. The Commission may adopt implementing acts, laying down rules necessary for the uniform application of this Article relating to the following: (a) the procedures, deadlines, exchange of information in relation to	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Union	the obligations as set out in paragraphs 1 and 2; (b) the notification and communication to be made by the Member States to the Commission in relation to the obligations set out in paragraphs 3 and 4. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 58 Rules regarding checks to be carried out	4. As regards measures referred to in the sectoral agricultural legislation other than Regulation (EU) .../... [CAP Strategic Plan Regulation], the Commission shall adopt implementing acts, laying down rules necessary for the uniform application of this Article, and in particular: (a) with regard to hemp as referred to in point c) of Article 4 of Regulation (EU) .../... [CAP Strategic Plan Regulation], rules on the specific control measures and methods for determining tetrahydrocannabinol levels; (b) with regard to cotton as referred to in subsection 2 of Section 2 of Chapter 2 of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation], a system for checks of the approved interbranch organisations; (c) 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	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	improvement of checks; (d) the tests and methods to be applied in order to establish the eligibility of products for public intervention and private storage, and the use of tendering procedures, both for public intervention and for private storage; (e) other rules on the checks to be conducted by the Member States, as regards the measures laid down in Chapter IV of Regulation (EU) No 228/2013 and in Chapter IV of Regulation (EU) No 229/2013 respectively. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
Article 62 Securities	4. The Commission may adopt implementing acts laying down rules on: (a) the form of the security to be lodged and the procedure for lodging the security, for accepting it, and for replacing the original security; (b) the procedures for the release of a security; (c) the notifications to be made by Member States and by the Commission. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
Chapter III Scrutiny of transactions		
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 body or bodies special department referred to in Article 75(3)80; g) the content of reports referred to in Article 79(2)(b)81 and any other notification needed under this Chapter.	NO MS COMMENTS. The entire section was discussed during AGRIFIN on 7 of March, with several MS expressing in favour or against the maintenance of the Chapter on scrutiny of transactions. No further discussion on the Commission empowerment is envisaged for this chapter.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	
BLOCK 8 – Articles 96 – 104		
Chapter IV Transparency		
Article 98 Implementing powers	The Commission shall adopt implementing acts laying down rules on: (a) the form, including the way of presentation by measure or intervention, and the timescale of the publication provided for in Articles 96 and 97; (b) the uniform application of Article 97; (c) the cooperation between the Commission and Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 101(3).	NO MS COMMENTS.
Article 101 Committee procedure	1. The Commission shall be assisted by a committee, called the Committee on the Agricultural Funds. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. For the purposes of Articles 10, 11, 15, 16, 19, 21, 24, 30, 37, 38, 39, 40, 42, 45, 50, 51, 52, 53, 56, 57, 58, 62, 73, 83, 90, 93 and 98, as regards matters relating to direct payments interventions, rural development interventions and the common organisation of markets, the Commission shall be assisted by the Committee on the Agricultural Funds, the Common Agricultural Policy Committee established by Regulation (EU) .../... [CAP Strategic Plan Regulation]	Standard provision on IA used in basic acts; however, the precise numbers of Articles setting out the empowerments are possibly to be adapted following the conclusions during AGRIFIN discussions.

Article	IMPLEMENTING POWERS	Commission's replies provided in the Q&A documents and non-papers, which should be read accordingly -State of play-
	and the Committee for the Common Organisation of the Agricultural Markets established by Regulation (EU) No 1308/2013, respectively. 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply. 3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.	