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Subject: Proposal for a Regulation of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (*CAP reform*)
Proposal for a Regulation of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products (Single CMO Regulation) (*CAP reform*)
Proposal for a Regulation of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural development (EAFRD) (*CAP reform*)
Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy (the horizontal regulation) (*CAP reform*)
= *Presidency suggestions for an adjusted Council mandate*
= *Summary of open issues*

With the view to the meeting of the Council ("Agriculture and Fisheries") on 25 June 2013, delegations will find in Annex the summary of open issues prepared by the Presidency.

Council (Agriculture and Fisheries)

Luxembourg, 25 June 2013

Outstanding items yet to be agreed

Direct Payments Regulation

Article 11 - Degressivity

The EP is seeking movement on a series of issues covered by the European Council conclusions on the MFF: Pillar 1 and Pillar 2 Member State allocations, funding transfers between pillars, RD co-funding rates, functioning of crisis reserve and its placement inside or outside Heading 2, and capping.

The Commission has presented text for a new mandatory degression proposal providing for two tranches of degression, from €150,000 to €300,000 and over €300,000. At trilogue, Commission proposed a rate of degression of 14%. Presidency views a possible landing zone as mandatory degression on amounts over €150,000 at a low rate, strictly on the condition that other MFF issues are taken off the table.

Horizontal Regulation

Article 4(2)(e) - use of the unused portion of the crisis reserve by DG Sanco.

This proposal was tabled by the Commission last week. The European Parliament wish to take the proposal on board. MS opposed to the proposal at the SCA on 17 June.

Possible Landing Zone

Maintain Council position - opposed to the inclusion of the provision

Package on Arts 8, 9, 42, 43, 44, 48

Presidency considered that a package comprised of the following measures provided the basis for a solution:

- delegated act on accreditation of paying agencies and coordination bodies (art 8),
- implementing act on tasks to be completed by certification bodies (art 9),
- compliance with payment deadlines and the deletion of the requirement to pay interest on late payment (art 42),
- breach of two rather than three national control systems leading to earlier reduction and suspension of monthly payments (art 43),
- suspension of up to 1.5% (rather than 2%) of payments in the case of late submission of control statistics (art 44),
- delegated powers in connection with articles 42, 43 and 44 (art 48).

Commission agrees with this package but the European Parliament has difficulty with accepting the deletion of the provision requiring MS to pay beneficiaries interest on late payment.

Possible Landing Zones

Retain the Package as described above.

Article 7 No. of Paying Agencies

The European Parliament is adamant that there must be a reduction in the number of PAs. Council wish to retain the same number as at present but agree not to increase the number in the MSs.

Possible Landing Zones

MS to retain the status quo.

Articles 25(4a) the operation of the reimbursement of unused crisis reserve funds to beneficiaries.

Beneficiaries in year N pay into the crisis reserve.

Beneficiaries in year N+1 to be reimbursed unused funds from the crisis reserve

Possible Landing Zones

Commission compromise already agreed by Council.

Art 56(2) - (50:50 Rule)

The European Parliament and Commission are opposed to the retention of the 50/50 rule and point to the fact that the actual funding involved is relatively small (less than €15m p.a.) but MSs wish to retain the provision on a matter of principle.

Possible Landing Zones

50/50 provision to be retained.

Presidency asks for a flexible mandate to negotiate the optimum package on the financial aspects of the Horizontal Regulation described above

Article 12(2) and (3) and Annex I. Farm advisory service (linked to Article 93(3) and (4))

The Commission wants certain parts of the Water Framework Directive and the Sustainable Use of Pesticides Directive to be compulsory within the farm advisory system. This arises from the deletion of these two Directives from the cross-compliance obligations in Article 93(3) and (4). The optional measures in that Article 12(3) and Annex I cannot be agreed in the absence of agreement on 12(2) containing, in addition to the WFD and SUPD, mandatory advice on cross-compliance and also mandatory advice on some rural development measures. Those elements of the WFD and SUPD that are to be included in FAS are those that have already been transposed in the Member States and will become part of the cross-compliance obligations when the two Directives are fully implemented in all MS. The two Directives were deleted from cross-compliance by Council, while only the WFD was deleted by Parliament. Parliament agrees to delete the SUPD from cross-compliance provided Council agrees to include the two as obligatory elements of FAS.

Possible Landing Zones

Retain compromise as described above.

Alignment package on FAS and cross-compliance (Articles 15, 93(5), 96 and 101)

The Commission compromise consisting of a mix of delegated and implementing acts is already contained in the consolidated text. A new text was also inserted to deal with the Parliament's amendment 155 relating to Article 101 to the effect that the penalty shall only be applied where the non-compliance is directly attributable to the farmer. Parliament wanted specific text to provide that no penalty was to be applied where the non-compliance resulted from a technical failure of the animal identification (eartags) system. The animal identification system is the cornerstone of traceability in the beef and sheep sectors and should not be watered down in the context of cross-compliance. It could have serious implications for the export market for beef and sheep. It is understood that the problem is confined to the UK and relates solely to a failure in the electronic system for reading eartags at factories. This is a matter for the veterinary authorities.

Possible Landing Zones

Retain compromise as described above.

Article 71(1) and 77(2)(c) - tolerances

A number of MS requested that a tolerance be applied to both administrative and on-the-spot checks and wanted this provision contained in the basic act. Delegated powers have been provided in Article 77 and in Article 78 (implementing acts) allowing a tolerance for on-the-spot checks, the results of which are used to update the land parcel identification system. A number of MS requested that this tolerance should also apply to administrative checks. It has since been established that this request arises from small dual claims where two or more farmers apply on the same piece of land. There is already a provision in Commission detailed rules (Article 28(3) of Commission Regulation (EC) No 1120/2009, which adequately deals with this issue.

Possible Landing Zones

The Commission has agreed to replicate this provision in implementing acts.

Article 99(2) - Early warning system for cases of minor non-compliance with cross-compliance

The Council text provides that no cross-compliance penalty is to be applied where a non-compliance is regarded as minor in nature. In such cases, the farmer is asked to remedy the non-compliance without any further check. The EP tabled an amendment for an "early warning system" for first time offenders whereby no penalty would apply, the farmer would be asked to take remedial action and a follow-up check would be required to ensure if remedial action is taken, otherwise a penalty would be applied. At trilogue on this paragraph, a compromise was reached whereby the Council and EP text were integrated, the effect of which is to retain the Council position with the words "early warning system" included in the text. This means that there is no penalty and no follow-up action.

Possible Landing Zone

Retain compromise text.

Article 76(1) and (2): Payment deadlines

Commission and EP want to harmonise payment arrangements for P1 and P2. Currently no deadlines apply for P2 payments. Council wants to retain the status quo. Commission offered compromise to start P2 payments on 16 October, in line with P1, after administrative checks only have been completed, all payments (P1 and P2) to be completed by 30 June of the following year.

Possible Landing Zone

Retain compromise text.

Article 71(2): EFA's in LPIS

Commission and EP want LPIS to reflect stable EFA's for greening control purposes. Council provided that the update required should be completed by 2019 at the latest. Commission and EP feel this is too late.

Possible Landing Zone

Member States are asked to consider whether we could accept an earlier completion date, for example, 2017.

Article 77a(5a): Greening penalty

According to MFF, greening is compulsory for all farmers. This means that a penalty for non-compliance must go beyond the greening payment. Otherwise greening would be optional. Council has provided for a phasing-in penalty maxing at 25% of the greening payment as of 2017. The legal text set out in Article 77a(5a) provides that the penalty is applicable to the basic payment scheme.

Possible Landing Zones

Retain compromise text.

SCMO Landing Zones

On milk, the envisaged Landing Zone is :

- Dropping of EP Article 156a on supply control in the milk sector;
- Inclusion of recital no. (134a) referring to need to address market disturbance in the milk sector;
- Retention of milk package provisions on recognition of POs, APOs and IBOs in the milk sector
- Deletion of Article 110(5) and second paragraph of Article 111 : application to the milk sector of Articles 110 and 111 giving discretionary power to Member States to permit POs and IBOs to extend rules to non members;
- Deletion of Article 145a - extension to the milk sector of Article 145 on the application of competition rules to IBOs.;
- Deletion of Article 157 (4) - Scope of Article 157 on "Communication Requirements" extended to milk.

The landing zone on sugar is as follows:

- Article 101(3): End Date 2017 (or 2018)
- Annex IIIB - Additional 30,000 tonnes of Isoglucose quota for Hungary;

On Contractual Negotiations

- New Articles 113b, c, and d have been inserted permitting POs in the olive oil, arable crops and beef sectors to engage in collective bargaining, with protection for co-ops, and competition, and a 15% upper limit on the share of the national market.

On PDO and PGI Hams:

Article 113e - new Article inserted permitting regulation of supply for PDO and PGI Ham.

Provisions for collective farming (including GAEC)

Separate paragraph to be added at the end of Article 8, 11, 28a and 38 of the DPR, and to article 32.4 of Rural development

In case of a legal person, or a group of natural or legal persons, Member States may apply the

[adjustment rate referred to in the first paragraph]

[tranches referred to in the first paragraph]

[maximum number of payment entitlements or hectares referred to in the fourth paragraph]

[limits referred to in the fifth paragraph]

of this Article at the level of the members of these legal persons or groups where national law provides for the individual members to assume rights and obligations comparable to those of individual farmers who have the status of head of holding, in particular as regards their economic, social and tax status, provided that they have contributed to strengthening the agricultural structures of the legal persons or groups concerned.

Amendment of recital 11 (on financial discipline) :

Specific rules should be foreseen for the purpose of this provision and certain other provisions in case of legal person, or a group of natural or legal persons, where national law provides for the individual members to assume rights and obligations comparable to those of individual farmers who have the status of head of holding in order to strengthen the agricultural structures and promote the establishment of the legal persons or groups concerned.

Positions on Article 43(3) related provisions

CAP Reform Proposal on the sCMO	COM position including in trilogue	EP position as expressed in trilogues	Presidency position ad referendum in trilogues	Poss Landing zone
Article 7 Reference prices	43(2)	43(2)	43(2)	43(2) using the term “reference threshold”
Art 7 (1a) poss review of reference prices		43(2)	43(2)	43(2) in line with the above
Article 12 (1)(c) Opening of public intervention prices for the beef and veal sector	43(2)	43(2)	43(2)	43(2)

Article 13 (1) Buying-in at a fixed price or tendering	43(2)	43(2)	43(3)	43(3)
Article 13(2) tendering procedure	43(2)	43(2) poss 43(3)	43(3)	43(3)
Article 14(2) Public intervention (fixing)	43(2)	43(2)	43(3)	43(3)
Article 14 (3) Public intervention (increases/ reductions)	43(2) + DA	43(2) + DA	43(3) + IA	43(3) + IA

Article 17 (3) + (4) Fixing of amount of aid for private storage	43(2) + IA	43(2) + IA poss 43(3) + IA	43(3) + IA	43(3) + IA
Article 21(4) and (4a) School fruit and vegetables (level of Union aid, minimum allocation per MS)	43(2) for total EU budget and for rules of supply costs. 43(3) is acceptable for minimum allocation per MS	43(2) on the Union aid for the school fruit scheme	43(3) for both level of Union aid + minimum allocation per MS	43(3) 43(3) level of Union aid 43(3) for minimum allocation per MS
Article 135 (2) Export refunds (fixing)	43(3) + IA	43(2) + IA poss 43(3)	43(3) + IA	43(3) + IA

<i>Sugar</i>				
Article 101b Production charge	could accept 43(3)	43(2) poss 43(3)	43(3)	43(3)
Article 101c Production refund	43(3)	43(2) + IA (poss 43(3))	43(3) + IA	43(3) + IA
Article 101g Minimum beet price	Minimum beet price could accept 43(3) increase/crease – could accept 43(3)	Minimum: 43(2) Increase/decrease: 43(2) + DA	minimum beet price 43(3) increase/decrease 43(3) + IA	43(3) for minimum beet price 43(3) + IA increase/decrease
Article 101h: Quota allocation + Annex IIIb	43(2)	43(2)	43(2)	43(2)

Article 101j: Adjustment of the national quotas	43(2) + DA ?	43(2) + DA	43(3) + IA	43(3) + IA
Article 101o: Surplus levy	43(2)	43(2) + IA poss 43(3)	43(3)	43(3)

Draft Horizontal regulation

CAP Reform Proposal on the Horizontal Regulation	COM position including in trilogue	EP position as expressed in trilogue	Presidency position ad referendum in trilogue	Landing zone
Article 25 financial discipline/	43(3)	43(2)	43(3)	43(2)
Article 26 budget discipline	43(2) or 43(3) as appropriate	43(2) only	43(2) or 43(3) as appropriate	43(2) or 43(3) as appropriate