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Subject:	CAP reform: Presidency Progress Report (December 2012)

I. INTRODUCTION

1. The Presidency hereby submits its report on the progress achieved on the CAP reform draft legal texts[1] during the second half of 2012.

[1] The main elements of the CAP reform package submitted by the Commission on 12 October 2011 are Proposals for Regulations on Direct Payments (15396/11), Single CMO (15397/11), Rural Development (15425/11), Financing, Management and Monitoring of the CAP ("Horizontal Regulation" - 15426/11), and Article 43(3) TFEU (15400/11).

2. The report has been drawn up under the responsibility of the Presidency, on the basis of positions expressed by delegations in meetings of the Council and its preparatory bodies under the principle "nothing is agreed until everything is agreed" and without pre-empting their final position on CAP reform in the light of the future decision on the Union's Multiannual Financial Framework (MFF) for the period 2014-2020.

3. The report indicates for each of the draft legal texts (included in documents 17383/1/12 REV 1, 17370/1/12 REV 1, 17352/1/12 REV 1 and 17354/1/12 REV 1), the main amendments which the Presidency - building on the foundations laid under the Danish Presidency[2] - has tabled and for which it has noted broad support from delegations. These amendments include adaptations to take account of the accession of Croatia as of 1 July 2013, as well as of the opinion of the European Data Protection Supervisor on the CAP reform legal proposals issued on 9 February 2012[3].

4. The report also identifies for each of the draft legal texts the key issues which remain outstanding as of December 2012, including the issues contained in the Negotiating Box for Heading 2 of the MFF[4].

5. This report cannot be considered in any sense as binding on the delegations, but it does represent the Presidency's best assessment of where the centre of gravity of the Council lies.

II. DRAFT REGULATION ON DIRECT PAYMENTS

6. The Council ("Agriculture and Fisheries") held policy debates on the draft Direct Payments Regulation on 22 October and 26 November 2012.

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2 Progress report set out in 8949/12.

3 OJ C35, 9 February 2012, p 1.

4 The latest version of the Negotiating Box is contained in doc. 15602/12 of 13 November 2012.

7. On the basis of these policy debates and intensive discussions in both the Special Committee on Agriculture (SCA) and the Working Party on Horizontal Agricultural Questions, the Presidency has prepared the Presidency draft Regulation set out in document 17383/1/12 REV 1, for which it has noted broad support from delegations on the suggested amendments discussed to date. Further details on the main amendments and on the issues which remain outstanding are set out below.

A. MAIN AMENDMENTS TABLED BY THE PRESIDENCY

8. On the **basic payment scheme** (Articles 18-28) the main amendments aim to complete the list of farmers entitled to the first allocation of payment entitlements (Article 21(2) (d)), take account of exceptional circumstances and/or force majeure for the allocation of payment entitlements from the national reserve (Article 23(5)(a)), clarify the possibility for Member States to exclude areas predominantly used for non-agricultural activities (Article 25(2)(b)), and clarify the use of a reduction coefficient for certain surface areas (Article 25(2)).[5]

9. On the **transition from the single area payment scheme (SAPS)** to the basic payment scheme the Presidency amendments aim to facilitate this transition (Article 22(3a)). A number of delegations consider that this issue is linked to the outstanding issue of internal convergence and to the issue of voluntary coupled support.

10. On the **operation of the young farmers scheme** (Articles 36 to 39) the amendments mainly aim to clarify and simplify the calculation method (Article 36(5)), with a view to ensuring predictability and proportionality of annual payments, avoiding unequal treatment of young farmers across the EU, and limiting the risk of unused funds under the scheme.[6]

[5] Summary record of SCA meeting on 17 September 2012 (doc. 13828/12).
[6] Summary record of SCA meeting on 5 November 2012 (doc. 15775/12).

11. On the **small farmers scheme** (Articles 47 to 51) the amendments aim in particular to provide, in addition to the method proposed by the Commission, an alternative, simpler method for fixing the annual payments, whereby small farmers receive an annual flat-rate amount based on their total aid amount received in 2014. Moreover, Member States may choose to apply the scheme automatically to all farmers whose total aid amount does not exceed EUR 1000 (with an opt-out option for farmers who do not wish to participate in the scheme). Delegations intending to apply the scheme welcomed in particular that no ceiling needs to be applied to the share of the national ceiling required to operate the simplified version of the scheme. Moreover, a number of amendments have been made to take account of the particular structure of the farming sector in Malta.[7] Finally, on the nature of the scheme, the Presidency amendment acknowledges that a very large majority of delegations maintain their position that the scheme should be voluntary for Member states.

12. As regards the Commission's implementing powers included in the draft Regulation, the text (Article 56(2)) identifies those implementing acts which should be subject to the **'non opinion clause'** of Article 5(4)(b) of Regulation (EU) No 182/2011. This is to ensure that, where the competent committee in the Commission is unable to deliver an opinion on the implementing acts concerned, the Commission cannot proceed to their adoption.[8]

B. OUTSTANDING ISSUES

13. The outstanding issues on the draft Direct Payments Regulation are marked in square brackets [ ] in document 17383/1/12 REV 1. A number of these outstanding issues concern elements included in the **Negotiating Box for Heading 2 of the MFF**. These are convergence of direct payments across Member States, capping of direct payments to large farms, the principle of greening of direct payments and the proposed 30% proportion of direct payments subject to greening, and flexibility between the two CAP pillars. The other main outstanding issues as at December 2012 are set out below.

[7] Summary record of SCA meeting on 12 November 2012 (doc. 16117/12).
[8] Summary record of SCA meeting on 19-20 November 2012 (doc. 16479/12).

14. The **nature of the young farmers' scheme (**voluntary versus mandatory) was discussed by the Council ("Agriculture and Fisheries") at its session on 22 October 2012.[9] The Presidency noted that, while quite some delegations considered that the scheme should be common and binding, quite some other delegations preferred to be able to decide themselves on the best form of support to young farmers or had an open position.

15. On the progress towards a uniform level or value of payment entitlements (**internal convergence)** the Presidency organised discussions in the first instance in the SCA[10] and at bilateral level. These discussions allowed to clarify the positions of Member States applying the Single Payment Scheme (SPS) and to identify where there could be common ground on the level of convergence to be achieved; the mechanism of convergence, including the determination of eligible surface areas; and the rhythm of convergence. The SCA further took note of the papers on internal convergence submitted by a number of Member States[11] [12] and of the common declaration on coupled support submitted by a number of Member States applying the SAPS[13].

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9 On the basis of the Presidency questionnaire set out in doc. 14993/12.

10 Summary record of the SCA meetings on 1 October 2012 (doc. 14455/2) and 15 October 2012 (doc. 15150/12).

11 Docs. 14370/12 and. 14292/12; summary record of the SCA meeting on 1 October 2012 (doc. 14455/12).

12 Doc. 17527/12; summary record of the SCA meeting on 10 December 2012.

13 Doc. 16173/12; Summary record of the SCA meeting on 19-20 November 2012 (doc. 16479/12).

16. The Council ("Agriculture and Fisheries") at its session on 22 October 2012 held a policy debate on **internal convergence**.[14] On the level of convergence to be pursued, delegations broadly acknowledged that Member States applying the SPS should achieve significant and irreversible progress towards uniform per hectare payments at a national or regional level, and that Member States already involved in the convergence process should continue to take steps forward. However, on the level of ambition, the rhythm and the mechanism for convergence, delegations expressed diverging views, with many calling for a more flexible and a more gradual process. Several delegations from Member States applying the SAPS showed understanding for requests for flexibility from Member States applying the SPS, provided their own request for a smooth transition to the new basic payment scheme was met. Finally, a few delegations applying the SAPS requested to continue with the SAPS as an alternative direct payments system, without prejudice to the application of new elements such as greening, the small and young farmers' schemes and payments for areas with national constraints.

17. On the issue of **greening** the Presidency organised discussions in the SCA with a view to providing adequate flexibility in the application of the greening practices proposed by the Commission (crop diversification, maintaining permanent grassland and preserving ecological focus areas) and to further develop the concept of "equivalence" aimed at acknowledging the greening efforts made by farmers who take on 2nd pillar Agri-Environment/Climate commitments or participate in national or regional environmental certification schemes.[15]

[14] On the basis of the Presidency questionnaire set out in doc. 14991/12.

[15] Summary records of the SCA meetings on 29 October 2012 (doc. 15597/12), 12 November 2012 (doc. 16117/12), 19-20 November (doc. 16479/12) and 3 December 2012 (doc. 17182/12).

18. Building on this preparatory work, the Council ("Agriculture and Fisheries") at its session on 26 November 2012 held a policy debate on **greening**.[16] This debate confirmed the critical need for flexibility for Member States to take account of differing environmental and agronomic conditions, and to avoid a disproportionate impact on productivity and competitiveness. In this context, the Council broadly acknowledged the great potential of an approach based on equivalence, which would provide the opportunity for Member States to offer the possibility to their farmers to fulfil the greening requirements through alternative measures, provided such an approach would be simple to apply and would bring about at least an equivalent benefit for the environment and climate as the greening practices proposed by the Commission.

19. Following this debate, the Presidency has tabled a set of further amendments to the greening provisions[17], which have been broadly welcomed by delegations in the SCA as a step in the right direction.

II. DRAFT REGULATION ON THE SINGLE CMO

20. The Council ("Agriculture and Fisheries") held policy debates on the draft Single CMO Regulation on 16 July, 24 September, 22 October and 28 November 2012.

21. On the basis of these debates and intensive discussions in both the SCA and the Working Party on Horizontal Agricultural Questions, the Presidency has prepared the Presidency draft Regulation set out in document 17370/1/12 REV 1, for which it has noted broad support from delegations on the suggested amendments discussed to date. Further details on the main amendments and on the issues which remain outstanding are set out below.

[16] On the basis of the Presidency questionnaire set out in doc. 16690/12.
[17] Doc. 15874/3/12 REV 4 + COR 1, as amended on the basis of the SCA discussion on 10 December 2012.

A. MAIN AMENDMENTS TABLED BY THE PRESIDENCY

22. The amendments on **carcass classification** (Articles 9a, 18-20c and Annex IIIa) aim to improve and simplify the provisions already reintroduced into the body of the Regulation under the Danish Presidency. In particular, the provisions pertaining to checks, inspections and communication which are covered by the draft Horizontal Regulation and Article 157 were removed and the provisions on the delegated and implementing powers on carcass classification were inserted and further clarified. The Commission's power to adopt provisions on the review of the application of carcass classification in Member States by a Union Committee has been adjusted so that the measures are taken as implementing acts rather than delegated acts[18].

On the **bovine animal** definition (Articles 7, 9a, 16, Annex II - Part IV and Annex III), the word "adult" was deleted from the text to reflect discussions in the SCA on 3 September 2012[19].

23. On **aid in the apiculture sector** (Articles 52-54) the amendments mainly aim to simplify the text, empower the Commission to update the list of measures eligible for aid and to adopt implementing acts on the content of the studies carried out by Member States on production and marketing, and to clarify that Member States are allowed to top up the EU contribution beyond the 50%-50% ceiling[20]. Regarding the additional national support the text has been further adjusted.

24. On the **"milk package"**[21] the changes in Articles 104-116, 143-145a, 157-158, 160-165 faithfully incorporate the measures previously agreed on by Council and the European Parliament in Regulation (EU) No 261/2012. This includes maintaining the provisions on controls and communication in the dairy sector in the Single CMO Regulation.

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18 See doc. 17112/12.

19 Summary record of the SCA meeting on 3 September 2012 (doc. 13216/12).

20 See doc. 17112/12.

21 Regulation (EU) No 261/2012 of the European Parliament and of the Council of 14 March 2012 amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector.

25. Following discussions in the SCA on 17 September[22], 8 October[23] and 5 November 2012[24] on the draft Regulation laying down the measures to be taken by the Council under **Article 43(3) TFEU**, the amendments in the draft Single CMO Regulation mirror that position and as such adjust the draft Regulation on the fixing of the reference price for products subject to intervention; the fixing of intervention prices compared to reference prices including adoption of price increases or reductions as regards both buying-in and sales of common wheat, barley, maize and paddy rice; fixing of aid for private storage including measures for reducing the amount of aid; the quantitative limitation on the Union aid applicable to the school milk scheme; and the Union aid for the school fruit scheme (Articles 7, 13-14, 17-18, 20-21 and 24).

26. On the proposal to require producer organisations seeking recognition not to hold a **dominant position**, in the Council policy debate on 22 October 2012[25] most delegations supported the Commission proposal, although a number of delegations considered that the Treaty requirement not to abuse a dominant position (Article 102 TFEU) was sufficient. On this basis the Presidency considers the draft Regulation does not require adjustment on this point.

27. On the proposal to allow the Commission to adopt **exceptional measures**, in the discussions held at the level of the SCA on 2 July[26] and in Council on 16 July 2012[27] the Presidency noted broad support for the Commission proposal as amended by the Danish Presidency. However some delegations entered reserves in the light of the views expressed by the Council Legal Service both orally and in a written opinion dated 13 September 2012[28]. To address these concerns the Presidency tabled legal improvements to the draft Regulation[29]. At the SCA on 3 December 2012[30] the Presidency noted that most delegations considered these to be a good compromise.

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22 Summary record of the SCA meeting on 17 September 2012 (doc. 13828/12).
23 Summary record of the SCA meeting on 8 October 2012 (doc. 14764/12).
24 Summary record of the SCA meeting on 5 November 2012 (doc. 15775/12).
25 On the basis of the Presidency questionnaire set out in doc. 14994/12.
26 Summary record of the SCA meeting on 2 July 2012 (doc. 12167/12).
27 See doc. 12188/12 (Presidency questionnaire).
28 See doc. 13721/12.
29 See doc. 16925/12.
30 Summary record of the SCA meeting on 3 December (doc. 17182/12).

B. OUTSTANDING ISSUES

28. The outstanding issues in the Single CMO draft Regulation are marked in square brackets [ ] in doc. 17370/1/12 REV 1. Among the outstanding issues there is one element included in the **Negotiating Box for Heading 2 of the MFF**[31]: the crisis reserve (Article 159). The other main outstanding issues as at December 2012 are set out below.

29. **Reference prices** were discussed in Council on 24 September 2012[32]. While many delegations saw merit in examining the feasibility of introducing a mechanism to allow future updates of reference prices, no clear view emerged on how and under what conditions an adjustment mechanism would exactly work. On the other hand a significant number of delegations opposed updating of reference prices and broadly confirmed the Commission approach with several of these delegations underlining the inevitable budgetary implications of any adjustments and the possible consequences in the context of the WTO.

30. On **marketing standards**, building on the work achieved by the two previous Presidencies, in the SCA on 19-20 November 2012 the Presidency further explored delegations' views on the outstanding issue of empowering the Commission to extend, by means of delegated acts, specific marketing standards to any agricultural sector and products and to impose mandatory labelling of "place of farming and/or origin" to any sector. The Presidency noted the divergent opinions of delegations with considerable support for the status quo[33]. On this basis the Presidency inserted the status quo in square brackets [ ] in the draft Regulation.

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31 The latest version of the MFF Negotiating Box is contained in doc. 15602/12 of 13 November 2012.

32 On the basis of the Presidency questionnaire set out in doc. 13747/12.

33 Summary record of the SCA meetings on 19-20 November 2012 (doc. 16479/12) and doc. 16247/12.

31. On the issue of **recognition of producer organisations (POs), associations of producer organisations (APOs) and inter-branch organisations (IBOs)** discussions were held at both Council[34] and SCA[35] level. The Presidency tried to take work forward by first suggesting a sectoral approach and then by making a distinction between primary organisations of producers (POs) and secondary or other organisations, such as APOs and IBOs[36]. Delegations did not find either solution fully satisfactory and at the SCA on 20 November the Presidency noted that delegations maintained diverging opinions, although there was considerable support for the status quo. On this basis the Presidency inserted the status quo in square brackets [ ] in the draft regulation.

32. On the **extension of rules and financial contributions to non-members** (Articles 110-111), on 15 October 2012 the SCA took note of the broad support for the Commission proposal on condition that the milk and milk products sector was excluded from the scope[37]. On this basis the Presidency slightly amended the text, in order to exclude the dairy sector from their scope[38]. However, although many delegations continue to support the Commission proposal, some delegations would prefer to extend its scope to the milk and milk products sector while some others prefer not to allow for the extension of rules and financial contributions to non-members. For these reasons the Presidency considers more work may need to be done on this issue.

33. On **vine planting rights**, while acknowledging the importance of this issue for a number of Member States, at its session on 28-29 November the Council considered that it should return to this issue after the recommendations of the High Level Group on vine planting rights set up by the Commission, due in December 2012 were known.

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34 On 22 October 2012, on the basis of the Presidency questionnaire set out in doc. 14994/12.
35 Summary record of the SCA meeting on 20 November 2012 (doc. 16479/12).
36 See doc. 16248/12.
37 Summary report of the SCA meeting on 15 October 2012 (doc. 15150/12).
38 See doc. 17112/12.

34. Concerning **sugar quotas** on 28 -29 November 2012, the Presidency organised a Council debate on the future of the sugar regime[39]. On that occasion a large number of delegations requested quotas to be extended at least until 2020, whilst a significant number of others expressed the wish to stick to the decisions made during the 2006 sugar reform i.e. that quotas should end in 2015.

III. DRAFT REGULATION BASED ON ARTICLE 43(3) TFEU

35. The draft Regulation determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products (the "Article 43(3)" Regulation) was on the agenda of the SCA on 17 September, 8 October, 5 and 20 November 2012.

36. On the basis of the SCA debates, the Presidency prepared a revised text (set out in doc 16223/12 ADD 5), for which it has noted broad support from delegations on the understanding that the draft Regulation is an integral part of the CAP Reform Package and will be adjusted, as appropriate, in the light of future discussions on CAP reform.

37. In line with the views expressed by the Council Legal Service the Presidency revised text includes under **Article 43(3) TFEU** the fixing of the reference price for products subject to intervention; the fixing of intervention prices compared to reference prices including adoption of price increases or reductions as regards both buying-in and sales of common wheat, barley, maize and paddy rice; fixing of aid for private storage including measures for reducing the amount of aid; the quantitative limitation on the Union aid applicable to the school milk scheme; and the Union aid for the school fruit scheme.

IV. DRAFT REGULATION ON RURAL DEVELOPMENT

38. The Council (Agriculture and Fisheries) held policy debates on the draft Rural Development Regulation on 16 July, 25 September and 28 November 2012.

[39] On the basis of the Presidency questionnaire set out in doc. 16694/12.

39. On the basis of these debates and intensive discussions in both the Special Committee on Agriculture and the Working Party on Agricultural Structures and Rural Development, the Presidency has prepared the Presidency draft Regulation out in document 17352/12, for which it has noted broad support from delegations. Further details on the progress made and on the issues which remain outstanding are set out below.

A. PROGRESS ACHIEVED

40. The Presidency has built upon the work of previous Presidencies, and specifically on the consolidated revised text presented in June 2012 by the Danish Presidency (document 10878/1/12 + REV 1). To identify the outstanding issues and areas for further discussion, the Presidency undertook a stocktaking exercise at the first meeting of the Working Party on Agricultural Structures on 12 September 2012.

41. On the basis of this exercise, the Presidency determined that further work needed to be done in order to reach agreement on definitions (Article 2), thematic sub-programmes (Article 8), ex-ante conditionalities (Article 10 and Annex IV), investments (Article 18), forestry (Articles 22-27, 35), areas with natural constraints (Article 32-33), the baseline for agri-environment and climate related measures (Article 29), investments in irrigation infrastructure (Article 46(3)), as well as implementing and delegated powers of the Commission (Articles 15, 16, 20, 29, 47 and 95). It should be noted that risk management measures (Articles 37-40) were discussed already before the stocktaking exercise, at the Council in July.

42. With regard to **definitions**, the text has been aligned with the Common Provisions Regulation, indicating which definitions would need to be amended in case the text of the common Provisions regulation is changed.

43. Concerning the **thematic sub-programmes** an orientation debate was organised at SCA level. Delegations underlined the optional character of these programmes but recognised their potential benefit for specific policies in need of more targeted support, and where appropriate with a higher support rate.

44. As regards **ex-ante conditionalities**, during the debate held at SCA level there was broad agreement among delegations that the amendments introduced so far should be maintained, and that general ex-ante conditionalities established under the Common Provisions Regulation should not be applicable to the EAFRD.

45. As regards the provisions on **forestry**, the Presidency made proposals aiming to ensure that the eligibility criteria for beneficiaries are consistent and clear. Delegations gave broad support to the approach that the beneficiary should be the forest holder managing the forest, irrespective of the forest ownership. Delegations further agreed that State owned and managed forests, with the exception of municipalities, shall only be eligible for support for investments for prevention and restoration of damage to forests and improving the resilience and environmental value of forest ecosystems (Articles 25 and 26).

46. On the subject of **implementing and delegated powers**, the Presidency undertook a review of all the outstanding provisions in order to achieve a consistent and coherent position of the Council in this area. A number of delegated powers were deleted (Articles 15 and 16), restricted in scope (Article 29), or where appropriate replaced by implementing powers (Article 20). The new proposals received broad support from delegations.

B OUTSTANDING ISSUES

47. Regarding **investments** (Article 18(4)) the Presidency tabled compromise proposals on the eligibility of investments made to comply with Union standards that have entered into force. However, a number of delegations considered that allowing support for investments to meet Union standards which have entered into force in the previous twelve months, limited to young farmers setting up for the first time and only for a duration of twelve months, was too restrictive.

48. **Agri-environment-climate** payments is a very important issue which is directly linked to the "Greening" baseline. Therefore, Article 29(3), as regards the Direct Payments Regulation, has been left open.

49. As regards **Areas with Natural Constraints** (Articles 32 and 33), discussions in the SCA and the Council in September have shown that a very large majority of Member States agree that the status quo is no longer an option for the Council and therefore support the Commission's proposal, including uniform biophysical criteria across the EU. A number of Member States requested flexibility to take into account their geographical specificities, in particular with regard to fine-tuning. The Presidency introduced a certain degree of flexibility by proposing that phasing out payments should become degressive only after 2016, and that the aggregation threshold should be maintained at 60% in the spirit of compromise. This received broad support. However, some Member States continue to oppose the proposals.

50. Some delegations would like to discuss further the provisions regarding **Risk management and Income stabilisation tool** (Articles 37 to 40). However, on this issue the Presidency considers that the positions of Member States are not always going in the same direction and, therefore, it would be very difficult to amend the provisions without disturbing the balance of the text. While a number of Member States may be sceptical towards the introduction of risk management under the second pillar, they recognise the optional character of the measures and would support the current text, which seems to strike the right balance. Some Member States however strongly oppose the income stabilisation tool, as they believe its objectives are already addressed by the first pillar. On the other hand, several Member States have requested that the threshold of 30% for loss of annual production be limited to a single sector of production, which in many cases would amount to widening the scope of the measures. Furthermore, some Member States have requested that the support rate for risk managements measure should be increased. In view of these opposing views, the Presidency considers that the current text may still form the best basis for a possible compromise.

51. Concerning investments in **irrigation**, the Presidency made proposals in order to provide more flexibility to Member States, while at the same time ensuring the sustainable use of water resources. The Presidency introduced a flexible threshold for water reduction of 10-25%, in order to take into account already existing highly efficient irrigation systems. The proposals further provide that farmers may use 50% of the water reduction achieved freely, for instance by extending their irrigated area. Moreover, the importance of infrastructure has been reflected, as well as the special nature of investments in reservoirs or energy efficiency. These proposals were generally welcomed. However, a number of Member States still have concerns regarding paragraph 3 in Article 46 which need to be addressed.

52. Furthermore, several Member States have made an appeal to the Commission for simplifying the **procedure of approval of Rural Development programmes (RDP)**, so as to have a "one window" approach in order to also cover those measures within the RDPs which have to be approved under the State Aid rules.

53. Finally, there are the outstanding issues related to the **Multiannual Financial Framework** (Articles 64 and 65 on Resources and their distribution and the Fund contribution).

V. DRAFT HORIZONTAL REGULATION

54. On the basis of intensive discussions in both the Special Committee on Agriculture and the Working Party on Horizontal Agricultural Questions and Working Party on Financial Agricultural Questions (AGRIFIN), the Presidency has prepared the Presidency draft Regulation set out in document 17354/12, for which it has noted broad support from delegations on the suggested amendments discussed to date. Further details on the main suggested amendments and on the issues which remain outstanding are set out below. It should be noted that conclusion on this Regulation depends, among others, on agreement being reached on the other CAP reform Regulations.

A. PROGRESS ACHIEVED

55. A definition for "area-related rural development measures" has been inserted into Article 2 (**Terms used in this Regulation**).

56. On the **accreditation and withdrawal of accreditation of paying agencies** (Article 7), the Presidency has brought the text of paragraph 3 into line with Article 59(5)(b) of the text of the new financial regulation[40].

[40] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298; 25.10.2012, p. 1).

57. On the **certification bodies** (Articles 9) the suggested amendments mainly aim to confer upon the Commission implementing powers to lay down audit principles and methods, specifying that transaction testing should be as efficient as possible and that due regard should be given to the need to reduce the administrative burden of the additional audit.

58. On **assignment of revenue** (Article 45), a technical correction has been brought to paragraph 1 point (b) so as to refer only to milk levy (Section III) in the existing single CMO Regulation, as the relevant provisions in that regulation will continue to apply as set out in the draft Regulation of the European Parliament and of the Council establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

59. As regards **on-the-spot-checks by the Commission** (Article 49), the amendments aim to ensure that when performing the on-the-spot-checks, the Commission will bear in mind the administrative impact on the paying agencies concerned.

60. As regards the **clearance of accounts** (Article 53), the deadline for the Commission decision has been put back by one month to take into account the possibility of extending the deadline by which the persons in charge of the accredited paying agencies must submit the information provided for in Article 7(3).

61. On **conformity clearance** (Articles 54 and 55), the amendments to Article 54(2) aim to clearly define in what cases flat rate corrections can be used as last resort. The amendments brought to Article 54(3) include in the basic act the obligation for the Commission to justify its decision not to follow the report on the outcome of the conciliation procedure. Those brought to Article 55 reflect the will of a qualified majority of Member States to have the rates of the financial corrections to be applied laid down by means of Commission implementing acts, rather than Commission guidelines.

62. As regards the **general principles of checks** (Article 61), a new paragraph 1a has been inserted so as to make it clear that those obvious errors and simple administrative errors which have been recognised by the relevant competent authority can be corrected in the cases to be provided for by the Commission by means of implementing acts. These provisions fit better into Article 61 rather than into Article 66 providing for administrative penalties, since if obvious errors have been corrected, there is no reason to apply a penalty or provide for an exception to the application of penalties.

63. On the scope of the **Integrated Administration and Control System** (Article 68), the reference to the provisions of the draft common provisions regulation concerning Leader have been corrected.

64. As regards the **computerised database** (Article 70), the previous amendment that only data relating to the previous ten years needs to be stored has been kept with the exception of those cases in which the support level is affected by pre-2000 data. The five year requirement has been limited to data relating to permanent grassland alone, since this is the only data for which direct and immediate consultation is necessary for five years, as opposed to the current four.

65. As regards the **LPIS cartography requirements** (Article 71), a derogation from the new accuracy requirements has been included for long term contracts agreed before November 2012.

66. As regards the **aid applications and payment claims** (Article 73), some slight technical clarifications have been brought to the text so as to make it explicit that the total area cannot exceed one hectare in both cases, i.e. both (1) when Member States decide that agricultural parcels of an area of up to 0,1 ha for which an application for payment is not made do not need to be declared (2) when Member States decide that a farmer who does not apply for any area-related direct payment does not have to declare his agricultural parcels and that the obligation for the farmer to indicate in his application that he has agricultural parcels at his disposal and to indicate, at the request of the competent authorities, their location applies in all cases.

67. As regards the **payments to beneficiaries** (Article 76), the Presidency has restored the status quo in that only direct payments must be made within the period from 1 December to 30 June and that advance payments for the rural development support can be made without limitations in terms of dates after the completion of administrative checks. Furthermore, a new paragraph 2a has been added so as to confer upon the Commission implementing powers in order to resolve, in emergency situations, specific problems in relation to the application of Article 76.

68. On the **general principle of cross-compliance**, (Article 91), some delegations have questioned the accuracy of the definition of "holding" in paragraph 3 but the Commission has taken the view that the definition is correct and does not need to be changed.

69. The delegated powers with a view to including Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the **sustainable use of pesticides**[41] **in the scope of cross-compliance** (Article 93) have been deleted.

[41] OJ L 44, 14.2.2009, p. 1–2.

70. The draft regulation was brought into line with the **Opinion of the European Data Protection Supervisor**[42] by adding a new Article 112a.

71. As regards the **transitional measures** (Article 114), the Commission's delegated powers have been more narrowly framed and implementing powers have been added.

72. Amendments to **GAEC 8** (Annex II) aim to provide Member States with more flexibility. However, a number of delegations consider that there is still room for simplification as regards Annex II.

B. MAIN OUTSTANDING ISSUES

73. **Penalties** (Articles 65 to 67, 77a to 77d, 89 and 90 and the definition of "sector agricultural legislation" linked to penalties in Article 2) are an extremely sensitive and political issue for the Council, the European Parliament as well as the Commission. The Council has expressed clearly its views on penalties. Unfortunately, the Commission services, having a completely different view, have been unable to assist the Council in this work. Therefore, the Presidency made appeal to Member States and set in motion a process whereby Member States have come together to work on the "non-IACS" penalties (Article 66 of the draft Regulation) while the Presidency took care of the so-called IACS penalties (Article 77a to 77d). Work is still ongoing on both sets of penalties-related provisions. The draft legal text reflects the most up-to-date versions available at this stage. On cross-compliance penalties, a number of delegations have requested that Article 99 be further examined, in particular as regards serious and/or intentional non-compliance. The draft legal text reflects the most up-to-date versions available at this stage.

[42] Opinion of 14 December 2011, OJ C 35, 9.2.2012, p. 1.

74. As regards **publication of beneficiaries** (Articles 110a to 110d), the Council has not been able to make much progress. The reasons are twofold. On the one hand, the Commission's amending proposal containing the provisions in question was received by Council no sooner than in early October. On the other hand, many delegations have requested the opinion of the Council Legal Service on this proposal, which is not yet available. Work on this proposal could be resumed once the opinion becomes available and Member States are in a position to have a substantiated opinion.

Other outstanding issues

75. On the inclusion of landscape features in the **Land Parcel Identification System** (LPIS), a large number of delegations considered that discussions on the relevant provisions (Articles 71(2), 73(1b) and 77) should be postponed until the Commission presented a working document on this issue.

76. Those related to the **Multiannual Financial Framework** concern the financial Discipline (Article 25(1) and (6)), the budget discipline procedure (Article 26), the pre-financing arrangements (Article 34(1) and the automatic decommitment for rural development programmes (Article 37(1)).

77. As regards the provisions applying to payments for rural development programmes (Article 33), Article 70 of the draft **common provisions regulation** has been deleted in the Presidency compromise on Financial Management in the framework of the Cohesion Policy Legislative Package[43]. The reference to Article 70(2) of Regulation(EU) No CR/xxxx has therefore been placed between square brackets until the final outcome of the negotiations on the draft common provisions regulation is known.

[43] Doc. 15880/12 ADD 1 REV 1.

78. Finally, pending the outcome of the ongoing negotiations on the other components of the CAP reform, there might be more exception to the principle of **no double funding** (Article 29).

79. A number of delegations take the view that the insertion of "permanent crops" into the footnote to **GAEC 7** (Annex II), which gives permanent crops grown on carbon rich soils the same status as arable land, i.e. turning them into arable land shall not be considered as “first ploughing”, and the transitional period (2 years) laid down in Article 115, albeit providing them with more flexibility, are not sufficient.

VI. CONCLUSIONS

80. The Presidency invites:
    - the Council to take note of this Progress report;
    - the Irish Presidency to continue to work with particular focus on the issues identified in this report as outstanding, with a view to preparing negotiations with the European Parliament.