COUNCIL OF THE EUROPEAN UNION

Brussels, 21 June 2013

Interinstitutional File:
2011/0280 (COD)
2011/0281 (COD)
2011/0282 (COD)
2011/0288 (COD)

11171/13
ADD 1

AGRI 396
AGRIFIN 102
AGRISTR 71
AGRIORG 89
CODEC 1520

ADDENDUM TO THE NOTE

from:	Presidency
to:	Council
No. prev. doc.	11227/13
No. Cion prop.:	15396/11 + REV 1, REV 2 (NL), REV 3 - COM(2011) 625 final/3 15397/2/11 REV 2 - COM(2011) 626 final/3, 14477/12 - COM(2012) 535 final 15425/11 + REV 1 (en, fr, de) **-** COM(2011) 627 final/2 15426/11 + REV 1 (en, fr, de) **-** COM(2011) 628 final/2
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)* *- Political agreement on the CAP reform package* *= Presidency issues paper*

With a view to the session of the Council ("Agriculture and Fisheries") on 24-25 June 2013, delegations will find attached in Annex the Presidency issues paper on the outstanding issues on CAP Reform.

ANNEX

Council of Ministers 24/25 June

Note from the Presidency

This paper sets out landing zones - in bold text below - on some of the key issues in the CAP reform negotiations. In some cases these points have been discussed and provisionally agreed in trilogue, while in other cases they have been discussed in high level informal contacts but have not yet been formalised in trilogue.

In all cases the landing zones indicated are the Presidency's assessment of the deal available between the Council, the Parliament and the Commission on the basis of both the trilogue and informal contact discussions to date. It is hoped to finalise an agreement along these lines at the trilogues and Council meeting in Luxembourg on 24/25 June and at Comagri on [26] June.

This document is not comprehensive: there are other issues still under negotiation.

Financial discipline DP - Article 8.1 - Original Positions of Institutions:

Commission	Council	Parliament (AM 197)
Linear cuts on payments above €5,000 to finance the crisis reserve/avoid breaches of the financial sub-ceiling.	Linear cuts on payments above €2,000 to finance the crisis reserve/avoid breaches of the financial sub-ceiling.	Linear cuts on all payment; no threshold.

Landing zone: Council threshold of €2,000 is the mid-point in the negotiations and the likely basis of agreement.

Active Farmer: DP - Article 9 - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 40)**
No payments to farmers where annual payments are <5% of receipts from non-agricultural activities or, for mainly grazing areas, where minimum activity is less than minimum set by MS.	Member state shall: - set minimum activity level for areas “naturally kept in a state suitable for grazing of cultivation”, and may: - exclude list of non-farm enterprises from payment, - exclude from payment those for whom farming is an insignificant part of their economic activity. The optional provisions above shall not apply to farmers who only received direct payments not exceeding an amount to be decided by MS, which shall not exceed €5,000.	Member States to draw up legal framework to ensure payments made only to farmers carrying out a minimum level of activity. Negative list established but MS can decide to make payments if agricultural activity significant.

Landing zone:
(i) Short negative list, along the lines proposed by the EP (airports, railway services, waterworks, real estate services, sports and recreational grounds, camping sites), with discretion for Member States to add to the list and subsequently withdraw additions.
(ii) Decision required on the mandatory/voluntary application of this list: Council continues to support voluntary application, while the EP and Commission support mandatory.

MFF Issues/ Capping and Degression: DP - Article 11 - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 41 to 45)**
Mandatory and phased reductions at > €150,000; payments capped at €300,000.	Member State can voluntarily reduce and/or cap payment at €150,000 and above.	Mandatory and phased reductions at > €150,000; payments capped at €300,000; exemption for co-ops or other groups and allowance for salaries/costs incurred; savings to be spent on P2 measures.

Landing Zone:
(i) 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.
(ii) The Commission has presented text for a new mandatory degression proposal providing for two tranches of degression, from €150-300,000 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.

Basic Payment Options: DP - Article 22, 28a/b - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 53 – 54 and 61)**
Flat rate basic payment by 2019; convergence in steps starting with 40%.	Options of • Flat Rate basic payment by 2019. Convergence in steps starting with 10% (22.2) • Partial convergence - raising those below 90% of national average by 1/3 of the difference between their current payment and 90% of the national average by 2019; financed by proportional decreases in payments above the average - i.e. the highest payments reduced most; greening payment then applied as a fixed percentage of the final basic payment amount. Provision for a maximum and minimum payment per hectare if a Member States wishes. (22.5a) • Redistributive - as add-on, not alternative, to flat rate or partial convergence, Member States may use up to 30% of national ceiling for top-up payment to farmers on hectares up to the national average farm size or up to 30 hectares. (28a/b)	Options of • Flat rate basic by 2019 and convergence in steps starting at 10% • Tunnel option with a 20% deviation allowed from average unit values by 2019 and provision for a maximum loss of 30% in the basic payment • Partial convergence - by 2021 with no minimum level set, option to use external convergence model to approximate; provision made for variable greening (22A) • Redistributive - as add-on to flat rate or partial convergence. MS may use of to 30% of national ceiling for top ups on up to the first 50ha (28a).

Landing Zone:
(i) Partial convergence: optional [30%] maximum loss for individual farmers and mandatory minimum payment per hectare of [50%-70%] of national/regional average,
(ii) On the redistributive payment, payment on up to 30 hectares or the national average farm size, if higher.

Observance of greening on land not covered by entitlements: DP - Art 21 (2), 26 (1), 25 (2) and 29 (1) - Original Positions:

Commission	Council	Parliament
Greening applicable on all eligible hectares as defined in Article 25 (2); no "naked land" envisaged..	Greening applicable on eligible hectares covered by entitlements as declared in Article 26 (1).	No amendment.

Landing zone: Make reference to art 25.2 (which defines eligible area) in art 29.1 (which establishes greening obligations), meaning that the farmer must observe greening on all eligible hectares.

Green Payment: DP - Article 29-33 - Original Positions of Institutions:

Commission	Council	Parliament (AM 63 to 65)
30% of national ceiling paid as flat rate per hectare 3 criteria to receive payment: - Crop diversification: >3 ha arable requires 3 crops with main crop covering max 70% - Permanent grassland (PG): Applied at farm level and allow farmers to convert no more than 5% of PG	30% of national ceiling paid as flat rate per hectare, or if using partial convergence /Irish model as 30% of farmers overall payment. 3 criteria to receive payment: - Crop diversification 10-30 hectares of arable land 2 crops, main crop max 75%; over 30 hectares three crops. Exemptions include holdings with more than 75% of area under grass. (30) - Permanent Grassland (PG): Allow farmers convert no more than 5% of PG, but need not apply at farm level if less than 5% conversion at national level. Third option allows up to 7% conversion from area of PG in 2011, with authorisation system above 3.5%. (31)	No amendments proposed to Art 29 or 33 (30% greening and 3 basic criteria) - Crop diversification: 10-30 ha of arable – 2 crops, main crop max 80%; over 30 ha – 3 crops with max 95% for 2 main crops - PG: Definition expanded to include permanent pasture; maximum conversion of 5% (7% in exceptional circumstances); option to apply at national, regional and sub-regional level but no conversion of carbon rich soils, wetlands etc.

- EFA to cover 7% of eligible area; EFA list includes land left fallow, terraces, landscape features, buffer strips + eligible afforestation.	- Ecological Focus Areas. If non-permanent grass area of holding is more than 15ha, 5% of arable areas must be EFA to start with, rising to 7% after 2 years if deemed appropriate following a review. List of EFA includes fallow, some forest, hedges etc, short rotation coppice and nitrogen fixing crops. (32); Provision for regional application of EFA A matrix of weighting factors for inclusion as an annex to the Regulation is being drafted.	- EFA: 3% requirement in year 1 on arable land >10ha, rising to 5% in 2016 and possibly 7% after 2017 review; list of EFA expanded to include nitrogen fixing crops; provision for regional application of EFA and weighting factors.

Landing zone on EFAs:

- ***minimum area 15 hectares,***
- ***percentage [3-5-7%],***
- ***the inclusion/exclusion of permanent crops (EP is opposed to inclusion), which may in turn affect the exemption threshold,***
- ***retention of list of qualifying areas as in Council General Approach,***
- ***exemption where 75% or more of eligible agricultural area is grassland (provided the area not covered by grassland does not exceed 30 hectares), and for crops under water,***
- ***weighting matrix template in basic act with coefficients determined by delegated acts.***

Equivalence, baseline and double funding: DP, HZR and RD - Article 29: Original positions of institutions

Commission	**Council**	**Parliament (AM 69 RD) and 195/202 (HZR))**
Organic regarded as green by definition; protected habitats under Dir 2009/147 and Natura 2000 areas must meet the 3 criteria only to the extent permitted under these Regns.	As alternative to three criteria farmers can qualify for greening by participating in agri-environment or national certification schemes that are deemed by Commission to be at least equivalent in terms of benefit to the environment.(29.1b); Greening outside the baseline for P2 schemes (Article29 of HZR and RD)	No amendment proposed to Commission text of DP Regulation AM 69 of RD: greening in baseline for P2 AM 195 and 202 of HZR no double funding

Landing zone: List of equivalent measures included in the text with provision for additions to the list under delegated acts.
As a solution to double funding either

- ***apply a small deduction to the pillar 2 payment in respect of a small number of the equivalent measures referred to above, to compensate for the fact that the farmer is also receiving a greening payment in pillar 1 (e.g. catch crops); In the case of all other measures listed, the farmer is paid his full greening payment and his full pillar 2 payment for delivery of the equivalent measures. In this solution, greening remains outside the baseline; or***
- ***incorporate greening into the baseline and allow the rural development programme approval process to determine which equivalent measures in pillar 2 give rise to a risk of double funding.***

Greening penalty: HZR - Article 77a - Original Positions of Institutions:

Commission	Council	Parliament
Penalties fixed by delegated acts.	Penalty shall not exceed 25% of the greening payment (Article 77a (5a)).	No amendment.

Landing zone: a graduated approach over three years, starting with a 15% penalty in year one, moving to 20% in year two and to 25% in year three.

Young Farmer: DP - Article 36 - Original Positions of Institutions:

Commission	Council	Parliament (AM 70 and 71)
Mandatory top up for farmers below 40 and newly set up; 25% top-up on up to 25ha/national average for 5 years using up to 2% of national ceiling.	Roughly similar conditions to Commission but scheme made optional for Member States and extended to SAPS MS; selection criteria introduced and provision made for lump sum payments and to avoid high-value top-ups.	Along Commission lines but selection criteria introduced and limit increased to 100 ha. In addition, provision to transfer unused amounts to national reserve and to use a 2% ceiling, with any unused funds going to the national reserve for young farmers.

Landing zone:

(i) Mandatory scheme either in Pillar 1 or Pillar 2; Minimum effort in Pillar 2 is still to be defined,

(ii) Four options for calculation of the payment, including the three options in the Council General Approach:

- ***multiplying the number of payment entitlements activated by a farmer by either 25% of the average value of the payment entitlements held by the farmer or 25% of the amount arrived at by dividing the percentage share of the national ceiling allocated for the basic payment scheme in 2019 by the number of eligible hectares declared in 2014,***
- ***for SAPS MS, multiplying 25% of the farmer's SAPS payment by the number of eligible hectares declared,***
- ***a lump sum amount per holding based on the average size of farms held by young farmers during the most recent reference period and:***
- ***the EP option of 25% of the total payments to farmers including BPS, Greening and any other measures payable.***

(iii) Regarding maximum and minimum hectares, Member States shall set a single maximum limit which shall correspond to a figure not below 25 and not above 90 hectares.

Percentage Coupled Support: DP - Article 38 - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 72 to 85)**
Option for Member States to use 5% of national ceiling for voluntary coupled support in specified sectors (cereals, beef, sheep, dairy); Limit is 10% for SAPS MS and MS who paid more than 5% of ceiling as coupled support in 2010-2013.	Maximum percentages increased to 7% and 12% respectively; special arrangement for Malta to use €3 million per annum .	Option for MS to use 15% of ceiling for voluntary coupled support, increasing by 3% points for support of protein crops; Payments extended to all Annex 1 products, to compensate for special entitlements losses and to tenant farmers; allowance made for increased production. Provision for additional optional national premium for suckler cows.

Landing zone:
EP has now proposed 13% for all MS plus 3% for protein crops. Commission open to protein crop proposal but seeks differentiated rates for Member States. Possible landing zone is 8%/13%, plus some provision for protein crops.

Small Farmer: DP - Article 47 - Original Positions of Institutions:

Commission	Council	Parliament (AM 87 to 90)
Mandatory for MS; optional for farmer.	Member states may operate a simplified payment scheme for farmers with total payments of less than €1k.	Optional for MS; mandatory for eligible farmers.

Landing zone:

(i) An optional scheme, with a maximum limit of €1,250 and 10% of fund,

(ii) Council can accept the EP figures on a lump sum and 5ha/25%, and the Commission proposal for simplified application as an option. If the simplified option is chosen then the % allocated to the ceiling is not an issue.

Sugar Quotas: SCMO - Articles 100a, 101, 130a, 130b, 163 and 165 - Original Positions of Institutions :

Commission	Council	Parliament (AM 204 - 225, 325 and 328)
Quota system abolished on 30 September 2015.	Quota system to end on 30 September 2017. No possibility for reallocation in the meantime. Extension catered for through simple roll-over of existing provisions in SCMO regulation.	Quotas extended until 30 September 2020. Provision made for the re-allocation of quota to those MS who had relinquished their entire quotas in 2006. Extension catered for through incorporation of SCMO alignment text, with additions (notably temporary market management and release of out-of-quota sugar onto internal market) - gives rise to article 43(3) issues.

Landing Zone:

(i) 2017 end-date,

(ii) On methodology, the (amended) alignment text containing further clarification on contractual arrangements in the post-quota period to be incorporated into the basic act (this text gives rise to some article 43(3) issues).

Vine planting rights: SCMO - Articles 54a and 163, and Recital 82a - Original Positions of Institutions:

Commission	Council	Parliament (AM 49 and 230 to 240)
Vine planting regime to be abolished on 31 December 2015, or 2018 in certain limited circumstances.	Extension of existing regime until 31 December 2018; new vine planting authorisation system from 2019 to 2024, with a review in 2021 and annual increases allowed of up to 1%.	Vine planting regime should continue until 2030 (new Recital 82a) and rules for current regime reproduced (AM 230 to 240). On the annual increase, 1% acceptable for small vineyards, but only 0.5% for large vineyards.

Landing Zone:

(i) 2016 start date (with provision for extension of pre-existing rights' validity period from 3 to 5 years),
(ii) 2030 end-date,
(iii) 1% annual increase in authorisations.

Market support arrangements (incl. milk market supports): SCMO - Articles 7-20, and 156a-c - Original Positions of Institutions

Commission	Council	Parliament (AM 105-118 (ex. 107) & 312)
Supports retained at safety net level based on current reference and trigger prices; APS for butter converted from compulsory annual scheme to discretionary scheme.	Generally as per Commission proposal, except where rules are to be fixed by Council under 43(3) TFEU.	Provision for a regular review of ref. prices (to include production costs). Intervention should be open all year, and should be mandatory (fixed price tender limit for butter raised from 30,000 to 70,000 tonnes). Cheese and olive oil added to APS list, and APS to take account of production costs, profit margins and seasonal nature of production. Milk supply management (art 156a - levy, and aid for production cut).

Landing zone:
(i) Article 43(3) issues - Article 43(2) to apply to reference prices and to the trigger for the opening of public intervention for beef. EP continues to insist on wider application of 43(2), in particular to the fixing of intervention prices. Decision required on whether further movement is possible from Council,
(ii) "Milk safety net" package:

- ***withdrawal of EP amendment on measures to address severe imbalances in the milk sector (article 156a),***
- ***reference in a recital to the need to address such circumstances in particular in the milk sector post-quota abolition,***
- ***butter/SMP intervention period extended by one month, to end-September,***
- ***limit for fixed-price buying-in of butter/SMP into intervention increased to 50,000 tonnes (EP sought 70,000 tonnes),***
- ***PDO/PGI cheeses to be included in the list of products eligible for APS (but only after maturation period),***
- ***Retention of milk package.***

Areas of natural constraint: RD - Article 32 and 33 - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 72 and 73)**
Delineated according to 8 new biophysical criteria at LAU2 level; qualification threshold of 66% of area affected by handicap; option for MS to include 10% additional area as having specific handicaps and for degressive payments from 2014 for areas no longer qualifying.	Proposes deferring commencement to 2016. Accepts biophysical criteria but with a qualification threshold of 60%, makes provision for delineation at level other than LAU2 and cumulation options to meet thresholds such that the 8 criteria thresholds may be applied at a range of +/- 20% for existing LFA that would otherwise become ineligible.	Wants the Commission to present a revised proposal by 31 December 2014 and to defer degressive payments for areas that fall out until the new regime is operational. Also suggests differentiation of measurement of costs incurred and income foregone for mountain ANCs according to geographical, social and economic differences.

Landing zone: EP still maintaining its position, but possible landing zone is the Council position with deferral of commencement date to 2018.

Financial Provisions: RD - Articles 64 and 65 - Original Positions of Institutions:

Commission	Council	Parliament
Commission implementing acts to make an annual breakdown of funding by Member State, taking account of transfers from P1 to P2 (art 64.4). Co-financing rates - e.g. 85% less developed regions, 50% general rate. Minimum 25% spend on agri environment/climate in recital.	Commission implementing acts, excluding transfers from P1 to P2. Co-financing - 75% less developed regions and regions with GDP per capita in 2007-2013 less than 75% EU average, 75% for environment/climate change measures, 53% general rate As per Commission, but adds biodiversity, forestry, N2000 and WFD.	MS funding in Annex, with delegated acts to record changes as a result of transfers from P1 to P2. Co-financing - 55% for agri-environment-climate measures. Minimum 25% spend in legal text (art 65.5a). Replacement of national aid with non-commercial private contributions.

Landing zone:
(i) Inclusion of Member State allocations in Annex, with provision for delegated or implementing act to amend,
(ii) Inclusion of minimum 25% spend in the legal text with extended list of measures.

Number of paying agencies: HZR - Art 7 - Original Positions of Institutions:

Commission	Council	Parliament (AM 40)
One paying agency per Member State or per region.	Minimum number necessary to ensure expenditure is effected under sound administrative and accounting conditions.	As Commission on number of paying agencies but want agencies to cover both EAFRD and EAGF.

Landing zone: Small reduction in the current number of paying agencies.

Interest on Late Payment: HZR - Art 42 (2) - Original Positions of Institutions:

Commission	Council	Parliament (AM 74)
MS must pay interest on late payments.	Has deleted the Commission proposal.	Interest on late payments only if the fault lies with the MS.

Landing zone: Maintenance of the Council position, in the context of discussions with the other institutions on other elements of the Horizontal Regulation, notably Articles 43 and 44.

Suspension of monthly payments for failure of key controls: HZR - Art 43 - Original Positions of Institutions:

Commission	**Council**	**Parliament (AM 196 to 199)**
Commission initially proposed the status quo - suspension/reduction only if a) key controls deficient, **and** b) of a continuous nature **and** subject of 2 conformity clearance decisions **and** c) MS cannot remedy situation.	Agreed with Commission initial proposal.	Suspension/reduction if key controls deficient, **and** **either** of the following apply a) are of a continuous nature and subject of 2 conformity clearance decisions **or** b) MS cannot remedy situation.

Landing zone: EP amendment.

Suspension of Monthly Payments for non-submission of Control Stats: HZR - Article 44 - Original Positions of Institutions:

Commission	**Council**	**Parliament**
Payments to MS suspended if control stats not submitted on time; ultimately non-payment of up to 2% of monthly payments.	Has deleted the Commission proposal.	As Commission but with additional checks and balances and establishing distinctions where late submission places the budget discharge mechanism at risk.

Landing zone: Permanent loss of up to 1.5% of monthly payments (not 2%) if control statistics (due on 15 July in year n) not submitted by 31 January of year n+1.

* ***Presidency considers that a package comprised of the following measures provides 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 EP appears to have difficulty with the approach.

There is also an alignment issue in relation to performance indicators in article 110, and article 43(3) TFEU issues which are of keen interest to the EP.

Recovery of undue payments: HZR - Article 56 - Original Positions of Institutions:

Commission	Council	Parliament
Cost of non-recovery borne by Member State; 12 month period for recovery.	Cost of non-recovery shared 50:50 between the Member States and the Union budget and provision for extension of the recovery deadlines to 24 months if amt exceeds €1m.	As Commission regarding non-recovery and as Council regarding extension of deadlines if amt exceeds €1m.

Landing zone:
Maintain Council position on 50:50 split in cases of non-recovery (may form part of an overall package of measures aimed at securing agreement on the HZ regulation).

Harmonisation of payment dates (Article 76(1) and (2))

Commission	Council	Parliament
Full harmonization of payment arrangements between P1 and P2.	Status quo should be retained, i.e. no payment deadlines for P2, with 75% advance following admin controls.	Supported Commission approach with further flexibilities in the event of emergencies.

Possible landing zone:

Provide for advance payments under P1 and P2 starting on 16 October with 50% advance under P1 when all on-the-spot and administrative controls are finalised. For P2, however, allow a 75% advance on 16th October after the administrative controls only had been carried out.

21 June 2013