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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Horizontal Agricultural Questions (CAP Reform)
N° Cion doc.:	9645/18 + COR 1 + ADD1 9634/18 + COR 1 + ADD 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council (selected Articles and Annex III) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (Title IV, Chapters II and IV) - Presidency drafting suggestions

Delegations will find in the Annex the Presidency's drafting suggestions on:

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- Articles 7, 9, 11, 12, 13, 102, as well as Annex III of the CAP Strategic Plans Regulation;
- Articles 68, 72, 84, 85, 86 of the Horizontal Regulation.

Compared to the Commission proposal, the added text is marked in **bold and underlined** and ~~strikethrough~~ is used for deleted text. Changes compared to the last drafting suggestions proposed by the Romanian Presidency (doc. 10103/19 REV 1 + ADD1 and 10135/19) are highlighted in yellow. To further facilitate the comparison with the previous drafting suggestions, ad-hoc operational footnotes (*) can be found in Annex III.

PRESIDENCY DRAFTING SUGGESTIONS FOR THE

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council

Article 7

Indicators

1. Achievement of the objectives referred to in Articles 5 and 6(1) shall be assessed on the basis of common indicators related to output, result, impact **and context as set out in Annex I.** ~~These set of~~ common indicators shall include:

- (a) output indicators relating to the realised output of the interventions supported;
- (b) result indicators relating to the specific objectives concerned and used for the establishment of quantified milestones and targets in relation to those specific objectives in the CAP Strategic Plans and assessing progress towards the targets. **The indicators relating to environment and climate-specific objectives may cover interventions included in relevant national environmental and climate planning instruments emanating from the Union legislation listed in Annex XI;**
- (c) impact indicators related to the objectives set out in Articles 5 and 6(1) and used in the context of the CAP Strategic Plans and of the CAP;

(d) context indicators referred to in Article 103(2) and listed in Annex I.

~~The common output, result and impact indicators are set out in Annex I.~~

2. The Commission is empowered to adopt delegated acts in accordance with Article 138 amending Annex I to adapt the common output, result, **and impact and context** indicators, **strictly limited to addressing technical problems raised by Member States in relation to take into account the experience with their application and, where needed, to add new indicators.**

Article 9

General principles

Member States shall design the interventions of their CAP Strategic Plans **and standards for conditionality set out in Article 12** in accordance with the Charter of Fundamental Rights of the European Union and the general principles of Union law.

Member States shall ensure that interventions **and standards for conditionality set out in Article 12** are set out on the basis of objective and non-discriminatory criteria, are compatible with the internal market and do not distort competition.

Member States shall establish the legal framework governing the granting of Union support to beneficiaries ~~on the basis of~~ **in accordance with** the CAP Strategic Plan and ~~in accordance with~~ the principles and requirements set out in this Regulation and Regulation (EU) [HzR].

Article 11

Principle and scope

1. Member States shall include in their CAP Strategic Plans a system of conditionality, under which an administrative penalty shall be imposed on **farmers and other** beneficiaries receiving direct payments under Chapter II of this Title or the annual premia under Articles 65, 66 and 67 who do not comply with the statutory management requirements under Union

law and the standards for good agricultural and environmental condition of land established in the CAP Strategic Plan, as listed in Annex III, relating to the following specific areas:

- (a) the climate and the environment;
- (b) public health, animal health and plant health;
- (c) animal welfare.

2. The rules on the administrative penalties to be included in the CAP Strategic Plan shall respect the requirements set out in Chapter IV of Title IV of Regulation (EU) [HzR].

- 3. The legal acts referred to in Annex III concerning the statutory management requirements shall apply in the version that is applicable and, in the case of Directives, as implemented by the Member States.
- 4. For the purpose of this Section, 'statutory management requirement' means each individual statutory management requirement under Union law referred to in Annex III within a given legal act, differing in substance from any other requirements in the same act.

Article 12

Obligations of Member States relating to good agricultural and environmental condition

- 1. Member States shall ensure that all agricultural areas, including land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall ~~define~~set, at national or regional level, minimum standards for farmers and other beneficiaries for each standard for good agricultural and environmental condition of land referred to in Annex III in line with the main objective of the standards as referred to in that Annex III. In setting their standards, Member States shall take into account, where relevant, farm size, farm structures, the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, such as share of forested areas, crop rotation, farming practices, and farm structures and the specificities of outermost regions.

2. In respect of the main objectives laid down in Annex III Member States may prescribe standards additional to those laid down in that Annex against those main objectives. However, Member States shall not define minimum standards for main objectives other than the main objectives laid down in Annex III*.

~~3. Member States shall establish a system for providing the Farm Sustainability Tool for Nutrients referred to in Annex III, with the minimum content and functionalities defined therein, to beneficiaries, who shall use the Tool.~~

~~The Commission may support the Member States with the design of that Tool and with data storage and processing services requirements.~~

4. The Commission is empowered to adopt delegated acts in accordance with Article 138 supplementing this Regulation with **minimum** rules for good agricultural and environmental condition, including establishing the elements of the system of the ratio of permanent grassland, the year of reference and **to ensure a level-playing field as regards the rate of conversion under calculation method concerning GAEC I as referred to in Annex III;** the format and additional minimum elements and functionalities of the Farm Sustainability Tool for Nutrients.

Article 13

Farm advisory services

1. Member States shall include in the CAP Strategic Plan a system providing **public or private** services for advising farmers and other beneficiaries of CAP support on land management and farm management ('farm advisory services'). **Member States may make use of existing systems.**

* Additional specification in recital 22: **"The national standards may have different regional designs or be targeted to certain areas or farms when such adaptations are justified due to variations in the characteristics of the area or farms."**

2. The farm advisory services shall cover economic, environmental and social dimensions and deliver up to date technological and scientific information developed by research and innovation. They shall be integrated within the interrelated services of farm advisors, researchers, farmer organisations and other relevant stakeholders that form the Agricultural Knowledge and Innovation Systems (AKIS).
3. Member States shall ensure that the farm advice given is impartial and that advisors have no conflict of interest.
4. The farm advisory services shall cover at least the following:
 - (a) all requirements, conditions and management commitments applying to farmers and other beneficiaries set in the CAP Strategic Plan, including requirements and standards under conditionality and conditions for ~~support schemes~~ interventions as well as information on financial instruments and business plans established under the CAP Strategic Plan;
 - (b) the requirements as defined laid down by Member States for implementing Directive 2000/60/EC, Directive 92/43/EEC, Directive 2009/147/EC, Directive 2008/50/EC, Directive (EU) 2016/2284, Regulation (EU) 2016/2031, Regulation (EU) 2016/429, Article 55 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council⁸ and Directive 2009/128/EC;
 - (c) farm practices preventing the development of antimicrobial resistance as set out in the Communication "A European One Health Action Plan against Antimicrobial Resistance"⁹;
 - (d) risk management ~~as referred to in Article 70~~;
 - (e) innovation support in particular for preparing and for implementing Operational Group projects of the European Innovation Partnership for agricultural productivity and sustainability as referred to in Article 114;

⁸ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

⁹ "A European One Health Action Plan against Antimicrobial Resistance (AMR)" (COM(2017) 339 final).

(f) ~~development of digital technologies in agriculture and rural areas as referred to in Article 102(b);~~

(fa) at the latest as from {2023} the use of the Farm Sustainability Tool for Nutrients to be developed by the Commission together with the Member States. Alternatively, Member States may use another tool that meets the same objective. The Commission may support the Member States with data storage and processing services requirements.

5. The tool referred to in point (fa) of paragraph 4 shall be a digital application that provides a nutrient balance based on relevant information of the farm, legal requirements on nutrients and available information from soil analyses. The tool shall be as far as possible automatically integrated with other relevant digital sources, such as LPIS and IACS, and enable a two-way communication between farmers and the appropriate paying agency/management authority. It shall guarantee the privacy and the security of the data of the end-users and, if possible, be able to support and interact with other additional digital applications for farm sustainability.

Article 102
Modernisation

The ~~description section of~~ the elements that ensure modernisation of the CAP referred to in point (g) of Article 95(1) shall highlight the elements of the CAP Strategic Plan that support the modernisation of the agricultural sector and the CAP and shall contain in particular:

- (a) an overview of how the CAP Strategic Plan will contribute to the cross-cutting general objective related to fostering and sharing of knowledge, innovation and digitalisation **in agriculture and rural areas** and encouraging their uptake set out in the second subparagraph of Article 5, notably through: **a description of the design and organisational set-up of AKIS and how advisory services as referred to in Article 13, research and CAP networks will combine and cooperate to provide advice, knowledge flows and innovation services and how the actions supported under Article 72 are integrated into AKIS;**
- (i) ~~a description of the organisational set-up of the AKIS designed as the combined organisation and knowledge flows between persons, organisations and institutions who use and produce knowledge for agriculture and interrelated fields;~~
- (ii) ~~a description of how advisory services as referred to in Article 13, research and CAP networks will work together within the framework of the AKIS, and how advice and innovation support services are provided;~~
- (b) a description of ~~the strategy for the development of digital technologies in agriculture and rural areas and for the use of these~~ **how digital technologies will be used in agriculture and rural areas** to improve the effectiveness and efficiency of the CAP Strategic Plan interventions.

ANNEX III

RULES ON CONDITIONALITY PURSUANT TO ARTICLE 11: OBJECTIVES, STANDARDS AND REQUIREMENTS

SMR: Statutory Management Requirement

GAEC: Standards for good agricultural and environmental condition of land

Areas	Main Issue	Requirements and standards		Main objective of the standard
Climate and environment	Climate change (mitigation of and adaptation to)	GAEC 1	Maintenance of permanent grassland based on a ratio of permanent grassland in relation to agricultural area at national, regional, sub-regional, group-of-holdings or holding level. The variation of this ratio shall be maximum 5% compared to reference year {2015} OR {2018} [*]	<i>General safeguard against conversion to other agricultural uses to preserve carbon stock</i>
		GAEC 2	Appropriate Minimum protection of wetland and peatland at the latest by 2024	<i>Protection of carbon-rich soils</i>
		GAEC 3	Ban on burning arable stubble, except for plant health reasons	<i>Maintenance of soil organic matter</i>
	Water	SMR 1	Directive 2000/60/EC of 23 October 2000 of the European Parliament and of the Council establishing a framework for Community action in the field of water policy: Article 11(3)(e) and Article 11(3)(h) as regards mandatory requirements to control diffuse sources of pollution by phosphates	
		SMR 2	Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 375, 31.12.1991, p. 1): Articles 4 and 5	
		GAEC 4	Establishment of buffer strips along water courses ¹	<i>Protection of river courses against pollution and run-off</i>

^{*} Comparison with the previous drafting suggestions:

"Maintenance of permanent grassland based on a ratio of permanent grassland in relation to agricultural area at a **national, regional, sub-regional, group-of-holdings or holding level set by Member States. The Maximum variation of this ratio** coefficient of determined hectares of permanent grassland is **shall be maximum 5% compared to reference year {2015} OR {2018}**"

¹ The GAEC buffer strips must respect, both within and outside vulnerable zones designated pursuant to Article 3(2) of Directive 91/676/EEC, at least the requirements relating to the conditions for land application of fertiliser near water courses, referred to in point A.4 of Annex II to Directive 91/676/EEC to be applied in accordance with the action programmes of Member States established under Article 5(4) of Directive 91/676/EEC

Areas	Main Issue	Requirements and standards	Main objective of the standard
		GAEC 5 Use of Farm Sustainability Tool for Nutrients ³	<i>Sustainable management of nutrients</i>
	Soil (protection and quality)	GAEC 6 Tillage management or other appropriate cultivation techniques to limit reducing the risk of soil degradation, including taking into account the slope consideration gradient	<i>Minimum land management reflecting site specific conditions to limit erosion</i>
		GAEC 7 No bare Minimum soil cover in period(s) and areas that are most sensitive period(s) ⁴	<i>Protection of soils in period(s) and areas that are most sensitive winter</i>
		GAEC 8 Crop rotation or other practices aiming at preserving the soil potential, such as crop diversification ^{**}	<i>Preserve the soil potential</i>
	Biodiversity and landscape (protection and quality)	SMR 3 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7): Article 3(1), Article 3(2)(b), Article 4(1), (2) and (4)	
		SMR 4 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna (OJ L 206, 22.7.1992, p. 7): Article 6(1) and (2)	

³ — The Tool shall provide at least for the following elements and functionalities:

a) Elements

- Relevant farm information based on LPIS and IACS;
- Information from the soil sampling, on an appropriate spatial and temporal scale;
- Information on relevant management practices, crop history, and yield goals;
- Indications regarding legal limits and requirements relevant to farm nutrients management;
- A complete nutrient budget.

b) Functionalities

- Automatic integration of data from various sources (LPIS and IACS, farmer generated data, soil analyses etc.) as far as possible, to avoid data input duplication for farmers;
- Two way communication between PA/MAs and farmers allowed;
- Modularity and possibility to support further sustainability objectives (e.g. emissions management, water management)
- Respect of EU data inter operability, openness and re-use principles;
- Guarantees for data security and privacy in line with best current standards.

⁴ Comparison with the previous drafting suggestions:

"Minimum soil cover in period(s) and/or areas that are most sensitive as defined by the Member State".

^{**} Comparison with the previous drafting suggestions:

"Crop rotation or other practices with an equivalent main objective of the standard **aiming at preserving the soil potential, such as crop diversification**".

Areas	Main Issue	Requirements and standards	Main objective of the standard
		GAEC 9 <ul style="list-style-type: none"> • In areas that are most appropriate, Mminimum share of agricultural area devoted to: <ul style="list-style-type: none"> (i) non-productive features or (ii) catch crops or nitrogen fixing crops, cultivated without plant protection products; • Retention of landscape features • Ban on cutting hedges and trees during the bird breeding and rearing season • As an option, measures for avoiding invasive plant species 	Maintenance of non-productive features and area to improve on-farm biodiversity
		GAEC 10 <p>Ban on converting or ploughing permanent grassland in Natura 2000 sites designated as environmentally-sensitive permanent grasslands in Natura 2000 sites.</p>	Protection of habitats and species
Public health, animal health and plant health	Food safety	SMR 5 <p>Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1):</p> <p>Articles 14 and 15, Article 17(1)³ and Articles 18, 19 and 20</p>	
		SMR 6 <p>Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and beta-agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC (OJ L 125, 23.5.1996, p. 3):</p> <p>Article 3(a), (b), (d) and (e) and Articles 4, 5 and 7</p>	

* Comparison with the previous drafting suggestions:

- **In areas that are most appropriate,** ~~M~~minimum share of agricultural area to be defined by Member States, devoted to:
 - (i) non-productive features ~~and/or~~
 - (ii) **to areas with ecological value, catch crops, or to areas with nitrogen fixing crops, cultivated without plant protection products in areas that are most appropriate**

³ As implemented in particular by:

- Article 14 of Regulation (EC) No 470/2009 and the Annex of Regulation (EC) No 37/2010,
- Regulation (EC) No 852/2004: Article 4(1) and Annex I part A (II 4 (g, h, j), 5 (f, h), 6; III 8 (a, b, d, e), 9 (a, c)),
- Regulation (EC) No 853/2004: Article 3(1) and Annex III Section IX Chapter 1 (I-1 b, c, d, e; I-2 a (i, ii, iii), b (i, ii), c; I-3; I-4; I-5; II-A 1, 2, 3, 4; II-B 1(a, d), 2, 4 (a, b)), Annex III Section X Chapter 1(1),
- Regulation (EC) No 183/2005: Article 5(1) and Annex I, part A (I-4 e, g; II-2 a, b, e), Article 5(5) and Annex III (under the heading 'FEEDING', point 1 entitled 'Storage', first and last sentences, and point 2 entitled 'Distribution', third sentence), Article 5(6), and
- Regulation (EC) No 396/2005: Article 18.

Areas	Main Issue	Requirements and standards	Main objective of the standard
Identification and registration of animals	SMR 7	Council Directive 2008/71/EC of 15 July 2008 on identification and registration of pigs (OJ L 213, 8.8.2008, p. 31); Articles 3, 4 and 5	
	SMR 8	Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1); Articles 4 and 7	
	SMR 9	Council Regulation (EC) No 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No 1782/2003 and Directives 92/102/EEC and 64/432/EEC (OJ L 5, 9.1.2004, p. 8); Articles 3, 4 and 5	
Animal diseases	SMR 10	Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 147, 31.5.2001, p. 1); Articles 7, 11, 12, 13 and 15 [*]	
	SMR 11	Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases (OJ L 84, 31.3.2016, p.1) Article 18(1), limited to foot and mouth disease, swine vesicular disease and blue tongue.	
Plant protection products	SMR 12	Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1); Article 55, first and second sentence	

* Text of art 86(1) HZR on penalties should be further elaborated.

Areas	Main Issue	Requirements and standards		Main objective of the standard
		SMR 13	<p>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 (OJ L 309, 24.11.2009, p. 71):</p> <p>Article 5(2) and Article 8(1) to (5)</p> <p>Article 12 with regard to restrictions on the use of pesticides in protected areas defined on the basis of the Water Framework Directive and Natura 2000 legislation.</p> <p>Article 13(1) and (3) on handling and storage of pesticides and disposal of remnants.</p>	
Animal welfare	Animal welfare	SMR 14	<p>Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves (OJ L 10, 15.1.2009, p. 7):</p> <p>Articles 3 and 4</p>	
		SMR 15	<p>Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5):</p> <p>Article 3 and Article 4</p>	
		SMR 16	<p>Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes(OJ L 221, 8.8.1998, p. 23):</p> <p>Article 4</p>	

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on the financing, management and monitoring of the common agricultural policy and
repealing Regulation (EU) No 1306/2013**

Article 68

Area monitoring system

1. Member States shall set up and operate an area monitoring system.
2. Member States shall annually assess the quality of the area monitoring system in accordance with the methodology set up at Union level.

Where the assessment reveals deficiencies in the system, Member States shall adopt appropriate remedial actions or shall be requested **by the Commission** to set up an action plan in accordance with Article 40.

An assessment report and, where appropriate, the remedial actions and the timetable for their implementation shall be submitted to the Commission by 15 ~~February~~ **March** following the calendar year concerned.

Article 72

Delegated powers

The Commission is empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation concerning:

- (a) further **detailed** rules on the quality assessment referred to in Articles 66, 67 and 68;
- (b) further **detailed rules as regards** definitions, **basic and** features **and well as other** rules on the identification system for agricultural parcels, the system for the identification of beneficiaries and the system for the identification and registration of payment entitlements referred to in Articles 66, 69 and 71.

Article 84

Control system for conditionality

1. Member States shall set up a control system to ~~ensure that~~ **control compliance with the obligations referred to in Section 2 of Chapter I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] by the** beneficiaries of the aid^{*} referred to in Article 11~~(1)~~ of Regulation (EU) .../... [CAP Strategic Plan Regulation] and in Chapter IV of Regulation (EU) No 228/2013 and in Chapter IV of Regulation (EU) No 229/2013 respectively, ~~comply with the obligations referred to in Section 2 of Chapter I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation].~~

Member States may set up a simplified control system for the beneficiaries receiving payments under Article 25 of Regulation (EU).../...[CAP Strategic Plan Regulation].

Member States may make use of their existing control systems and administration to ensure compliance with the rules on conditionality.

Those systems shall be compatible with the control system referred to in the first subparagraph of this paragraph.

Member States shall conduct a yearly review of the control system referred to in the first subparagraph in light of the results achieved.

* The consistency of the use of the terms "aid", "support" and "payments" should be checked at an appropriate moment.

2. For the purposes of this Chapter, the following definitions shall apply:
- (a) "requirement" means each individual statutory management requirement under Union law referred to in Article 11 of Regulation (EU) .../...[CAP Strategic Plan Regulation] within a given **legal** act, differing in substance from any other requirements of the same **legal** act;
 - (b) "**legal** act" means each of the individual Directives and Regulations referred to in Article 11 of Regulation (EU) .../...[CAP Strategic Plan Regulation].
3. In their control system referred to in paragraph 1 Member States:
- (a) shall include on-the-spot checks to verify compliance by beneficiaries with the obligations laid down in Section 2 of Chapter ~~H~~I of Title III of Regulation (EU) .../... [CAP Strategic Plan Regulation];
 - (b) may decide, depending on the requirements, standards, **legal** acts or areas of conditionality in question, to use the checks, **including administrative checks**, carried out under the control systems applicable to the respective requirement, standard, **legal** act or area of conditionality, provided the effectiveness of these checks is, at least, equal to the on-the-spot checks referred to in point (a);
 - (c) may, where appropriate, make use of remote sensing or the area monitoring system **or other relevant technologies** to carry out the on-the-spot checks referred to in point (a);
 - (d) **shall** establish the control sample for the checks referred to in point (a) to be carried out each year on the basis of a risk analysis, **taking into account farm structure and the inherent risk of non-compliance**, and shall include a random component and shall provide the control sample to cover at least 1% of beneficiaries receiving the aid provided for **support referred to** in Section 2 of Chapter 1 of Title III **Article 11(1)** of Regulation (EU) .../... [CAP Strategic Plan Regulation];
 - (e) as regards the obligations of conditionality in relation to Directive 96/22/EC, the application of a specific sampling level of monitoring plans shall be considered to fulfil the requirement of the minimum rate mentioned in point (d).**

Article 85

System of administrative penalties for conditionality

1. Member States shall set up a system providing for the application of administrative penalties to beneficiaries referred to in Article 11 of Regulation (EU) .../... [CAP Strategic Plan Regulation] who do not comply, at any time in the calendar year concerned, with the rules on conditionality as laid down in Section 2 of Chapter 4~~I~~ of Title III of that Regulation ("penalty system"). **Where the area monitoring system used to carry out checks as referred to in point (c) of Article 84(3) of this Regulation reveals findings relevant for requirements or standards, the competent authorities may decide to apply administrative penalties only to beneficiaries selected for on-the-spot checks in accordance with point (d) of Article 84 (3).**

Under that system, the administrative penalties referred to in the first subparagraph shall only apply where the non-compliance is the result of an act or omission directly attributable to the beneficiary concerned, and where one or both of the following conditions are met:

- (a) the non-compliance is related to the agricultural activity of the beneficiary. **In case of non-compliance due to negligence, the administrative penalty referred to in paragraph 1 shall not apply to beneficiaries receiving payments under Article 25 of Regulation (EU) .../... [CAP Strategic Plan Regulation] or with an agricultural area of less than or equal to [x ha].**
- (b) the **non-compliance concerns** ~~area of the holding of the beneficiary is concerned as defined in point (b) of Article 3(1) of Regulation (EU) .../... [CAP Strategic Plan Regulation]~~ **or other areas managed by the beneficiary situated within the territory of the same Member State.**

With regard to forest areas, however, the administrative penalty referred to in the first subparagraph shall not apply where no support is claimed for the area concerned in accordance with Articles 65 and 66 of Regulation (EU) .../... [CAP Strategic Plan Regulation].

2. In their penalty systems referred to in paragraph 1, Member States:

For the calculation of those reductions and exclusions, account shall be taken of the severity, extent, permanence, or reoccurrence or intentionality of the non-compliance determined. The penalties imposed shall be dissuasive and proportionate. Where the area monitoring system is not used as an alternative to the on-the-spot-checks on a control sample as referred to in 84(3)(d), the penalties shall comply, and compliant with the criteria set out in paragraphs 2 and 3 of this Article. The administrative penalties referred to in the first subparagraph of this paragraph shall be based on the control carried out according to Article 84(3).

PARAGRAPH 2 - OPTION 1:

2. In the case of non-compliance due to negligence, the percentage of reduction shall in principle be ~~as a general rule~~ 1%, 3% or 5% of the total amount of the payments referred to in paragraph 1 of this Article. In the case that due to its minor severity, extent or permanence a non-compliance has no consequences for the achievement of the objective of the relevant standard or requirement, no administrative penalty shall be applied. The beneficiary shall be informed about the non-compliance.

~~Member States may set up an early warning system that applies to individual cases of non-compliance occurring for the first time and which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. Where a subsequent check within three consecutive calendar years establishes that the non-compliance has not been remedied, the reduction pursuant to the first subparagraph shall be applied retroactively.~~

~~However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.~~

~~Member States may provide mandatory training under the farm advisory system provided for in Section 3 of Chapter 1 of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] to the beneficiaries who have received an early warning.~~

- (a) shall include rules on the application of administrative penalties in cases where the land is transferred during the calendar year concerned or the years concerned. These rules shall be based on a fair and equitable attribution of the liability for non-compliances among transferors and transferees;

For the purpose of this point, 'transfer' means any type of transaction whereby the agricultural land ceases to be at the disposal of the transferor.

- (b) may decide, notwithstanding paragraph 1, not to apply a penalty per beneficiary and per calendar year when the amount of the penalty is EUR ~~1400~~250 or less. The **beneficiary shall be informed about the** finding and the obligation to take remedial action ~~shall be notified to the beneficiary for the future~~;
- (c) shall provide that no administrative penalty be imposed where the non-compliance is due to force majeure **or exceptional circumstances as set out in Article 3.**
3. The application of an administrative penalty shall not affect the legality and regularity of the expenditure to which it applies.

Article 86

Calculation of the penalty

1. The administrative penalties provided for in Section 2 of Chapter ~~4~~1 of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] shall be applied by means of reduction from or exclusion of the total amount of the payments listed in that Section of that Regulation granted or to be granted to the beneficiary concerned in respect of aid applications ~~he has~~ **that have been or will be** submitted ~~or will submit~~ in the course of the calendar year of the finding.

PARAGRAPH 2 - OPTION 2:

2. In the case of non-compliance due to negligence, the percentage of reduction shall **in principle** be ~~as a general rule~~ **1%, 3% or 5%** of the total amount of the payments referred to in paragraph 1 of this Article.

Member States may set up an early warning system that applies to individual cases of non-compliance **occurring for the first time and** which, given their minor severity, extent and permanence, shall not lead to a reduction or exclusion. Where a subsequent check within three consecutive calendar years establishes that **the a non-compliance that could have** ~~has not~~ **been remedied** **has not been**, the reduction pursuant to the first subparagraph shall be applied **retroactively to amounts resulting from aid applications of the current year.**

However, cases of non-compliance which constitute a direct risk to public or animal health shall always lead to a reduction or exclusion.

Member States may provide mandatory training under the farm advisory system provided for in Section 3 of Chapter ~~4~~I of Title III of Regulation (EU) .../...[CAP Strategic Plan Regulation] to the beneficiaries who have received an early warning.

3. In case of reoccurrence, the percentage reduction shall be higher than the one to be applied in case of non-compliance due to negligence and sanctioned for the first time.
- ~~4. In case of intentional non-compliance, the percentage shall be higher than the one applied in case of reoccurrence pursuant to paragraph 3 and may go as far as total exclusion from payments and may apply for one or more calendar years.~~
- 54.** In order to ensure a level-playing field between Member States and the effectiveness and dissuasive effect of the penalty system, the Commission shall be empowered to adopt delegated acts in accordance with Article 100 supplementing this Regulation with **further detailed** rules on the application and calculation of penalties.

