RE: draft implementing and delegated acts on the CAP

Dear Sir,

In the context of the current discussions on the preparation of the delegated and implementing acts for the future CAP, Copa and Cogeca would like to share with you some of our concerns on the matter.

As a general remark, while we acknowledge the need for clarity of the basic acts, the secondary legislation under preparation should not lead to more rigid and/or prescriptive provisions. We are very worried that in some specific areas which we will develop below, the secondary legislation goes beyond the context of the political agreement reached by the co-legislators.

Regarding the draft secondary legislation in relation to GAEC 1, paragraphs 1 and 2 seem somehow confusing and would possibly require some further alignment. In paragraph 1, the ratio of permanent grassland in 2018 should be calculated based on farmers receiving direct payments, but according to paragraph 2 the yearly ratio from 2023 onwards should be calculated on the basis of the areas declared for that year by the beneficiaries receiving direct payments or the annual payments under Articles 65, 66 and 67.

We are concerned that the impact the inclusion of permanent grassland belonging to organic farmers in the calculation of the ratio of permanent grassland will have on this ratio and consequently on all farmers given that organic farmers are currently exempted from the greening obligation (permanent grassland). Thus, we consider that a provision needs to be added to the delegated act establishing that when including the organic areas declared in 2018 for the calculation of the ratio of permanent grassland, Member States can also decide to take into account the impact of a possible change in the area of organic permanent grassland in the period from 2018 to 2023.

Moreover, the strict 0.5% threshold for the maintenance of permanent grassland in absolute terms would not take into consideration the differences in farm holding structures across the EU and could lead to a non-proportional penalization of smaller holdings. Consequently, we prefer keeping the current formulation in art. 45 (3), second subparagraph of Regulation 1307/2013.

Furthermore, we would like to see the current provisions of art. 45 (4) of Regulation 1307/2013 being mentioned in the delegated act (“...where the decrease below the threshold is the result of afforestation that is compatible with the environment and does not include plantations of short rotation coppice, Christmas trees or fast-growing trees for energy production”). Moreover, Member States should also be allowed to take into account the basic changes in area use (if for example, the permanent grassland turns into other uses like roads, villages...).
Regarding the secondary legislation in relation to the calculation of penalties for conditionality, the new text regarding non-compliances occurring continuously throughout several calendar years is not acceptable and is highly disproportionate. When a non-compliance is found, it is evaluated based on the “extent”, “severity”, “permanence”. The formulation in the delegated act leads to a system when a farmer is punished twice (an administrative payment per year and a higher penalty due to the “permanence” evaluation). This is tightening up the penalty system compared to the basic act and is unacceptable. In addition, the detection of the non-compliance should be done within the past three calendar years in order to avoid heavy penalties.

In reference to the control by monitoring, while we welcome the possibility for lower level of penalties for negligent non-compliances, there is no need for mentioning a threshold when monitoring is used (100% checks). Furthermore, if area monitoring system is used, having lower penalties should no longer be an option but an obligation for the Member States. Member States should have the possibility to set the penalty system even lower. Certain flexibilities in the level of penalties would also be needed when it comes to intentional non-compliances if the area monitoring system is used. A reduced administrative penalty could also be applicable for other requirements of conditionality where a 100% administrative control is conducted.

We would very much insist on the need for adherence to the basic act provisions according to which no administrative penalty shall be applied where the non-compliance has no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned. An appropriate and proportionate approach when it comes to reductions and penalty rates in case of small unavoidable non-compliances should be followed at all times.

Moreover, in the case of negligent non-compliance, there should be a limitation of the penalty (no higher than 5%) as indicated in art. 39 (1) of the current Regulation 640/2014.

It is very important to maintain a workable, efficient and practicable awareness mechanism to ensure that farmers can remedy the non-compliance in due time and avoid that they are heavily penalised.

Regarding the secondary legislation in relation to IACS, Copa and Cogeca oppose the inclusion of the information on the use of plant protection products on each agricultural parcel in the geo-spatial aid application. This data is already registered in the administrative records of the holding which need to be kept for five years from the last entry so that the competent authorities have access to them when controls are taking place. As the farmer would need to have permanent access to the application (the farmer completes the application at the time of the treatment and not five months later), this would require high-speed Internet which is not the case for all farmers (and rural regions in the EU) and could lead to discrimination between farmers. Introducing this data in the informatized system of the CAP would also strongly increase the costs and administrative burden for farmers. Moreover, this idea did not have the political support of the European Parliament during the CAP negotiations.

On the time frame for corrections of applications, it is positive to see an extended time frame for possible corrections of the aid application, and that it will be possible to correct non-compliances detected by administrative checks and the monitoring system without imposing penalties.

On the area monitoring system, we are still doubtful on how the area monitoring system will be used. The formulation of this specific part in the implementing act implies setting-up a system that will be used to control farmers directly while the political intention of the area monitoring system was not that one.

In addition, it is very unclear how the system of checks by monitoring and the area monitoring system will function together. It is very important for farmers, that controls can be finished in a timely manner so that payments to farmers can be disbursed as quickly as possible. The ongoing checks by the area monitoring system should not prevent or delay this very important process.
We would further have several points of demands for clarification when it comes to the meaning of "at least" in Article 3(2), the interpretation of "relevant" in the context of conditionality in Article 6(3) and Article 7 letter b, the meaning and the implications of “most recently updated corresponding graphic material through GIS-based interface”, the meaning of “part affected by the non-compliance” in paragraph 1 letter b of Article 8, the meaning of “presence of non-homogeneous land use” in Article 11 (2) letter ii and well as its practical and technical necessity together with points i and iii.

Finally, we would be against the use of other data sources for the area monitoring system.

Faithfully yours,

Art. 4.1(b) Privacy