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WORKING PAPER

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From:	General Secretariat of the Council
To:	Delegations
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 - Non-paper on ring-fencing for eco-schemes and flexibilities

Delegations will find attached a non-paper on the abovementioned subject. This document was produced by the Commission services to assist the negotiations and does not constitute an official position of the Commission.

Ring-fencing and flexibilities for eco-schemes

1. Political importance of ring-fencing

The ring-fencing percentage to be agreed for eco-schemes is intended to reflect the **increased contribution of the CAP to the Green Deal challenges**. A minimum percentage common for all Member States, besides ensuring ambition in CAP Strategic Plans for these interventions going beyond the new conditionality, also ensures a level-playing field among Member States.

Both Council and EP have foreseen a number of flexibilities for Member States. This paper summarises these flexibilities and provides a short analysis of their technical feasibility and potential implementation problems, without prejudice to their political appreciation.

2. Flexibilities

At the source of flexibilities lays the **concern of Member States** that eco-schemes, voluntary for farmers, but mobilising an important share of direct payments whose budget management is annual, **may possibly lead to significant unspent funds** in case of low uptake by farmers.

To avoid under-execution, compared to the current system of rigid annual financial ceilings for each intervention, the Commission proposal introduces increased financial flexibility through the mechanism of maximum and minimum unit amounts (Art 89). In practice, the mechanism allows moving funds between eco-scheme interventions in the course of the implementation, within the margins of unit rates justified in the Plans.

To further mitigate the risk of unspent funds, **co-legislators have proposed a series of amendments, which explore a number of avenues** such as making planning more flexible or the possibility to mobilise rural development funding to decrease the eco-scheme obligation (for a detailed description and assessment see point 4).

Before assessing the actual amendments, it is important to recall a number of factors that need to be kept in mind (besides the balance to be achieved between an eco-scheme ring-fencing true to its purpose and the need to mitigate the risk of under-execution) when conceiving eco-scheme ring-fencing.

3. Factors framing possible flexibilities

<u>Budget management rules</u>: It is important to note that from a budgetary point of view, transfers between pillars cannot take place within a given year. Transfer decisions need to be notified before the start of the financial year to which they will apply. As a rule, any transfer between pillars notified by a Member State in year N can, at the earliest, apply to its allocation of year N+2[1].

[1] As in the MFF 2014-2020, flexibility transfers between direct payments and rural development can only be made for future financial years, otherwise the annual budget will not be correct and operations like controlling ceilings and setting the financial discipline rate will not work.
The MFF regulation (2020/2093) sets an annual sub-ceiling for the EAGF, while the CAP Strategic Plan regulation will set out Member States' allocations for direct payments and rural development. Each year before the Commission presents the Draft Budget for the next year, the MFF regulation requires the Commission to make a "technical adjustment" of the MFF ceilings. This includes adjusting the EAGF ceiling to take into account transfers between CAP pillars as notified by Member States. The MFF technical adjustment and Draft Budget are presented in May-June of year N-1.

Order between transfer and calculation of the ring-fencing obligation: In the Council text [rows 913a, 913e, 913f], ring-fencing of eco-schemes is calculated after transfers to rural development but before transfers from rural development, while ring-fencing of EAFRD is calculated after all transfers i.e. to and from rural development. This means that a Member State transferring budget from direct payments to rural development will have this amount subject to the ring-fencing under rural development , while another Member State transferring from rural development to direct payments will have this amount exempted from any ring-fencing obligation.

Effective implementation of ring-fencing: Independently from the flexibilities finally agreed, Member States will plan interventions in order to comply with the required ring-fencing percentage and this will be verified when CAP plans are assessed. However, ring-fencing requirements also need to be enforced during the implementation of the plans. It must be ensured that the funds ring-fenced are not used for any other intervention (contrary to what is proposed, for example, under Article 88(3) in the Council General Approach). To ensure that funds planned pursuant to the ring-fencing obligation are indeed spent accordingly, certain legal provisions need to be clarified ("reverse ceilings").

Simplification: Flexibilities finally chosen should entail as little administrative burden as possible. Ring-fencing involves two main stages: (1) planning (where the Member States plan expected spending for eco-schemes corresponding to the ring-fencing requirement) and (2) implementation, where actual spending should follow the approved Plan. To ensure the simplest possible implementation, flexibilities should ideally only take place at the planning stage like for flexibilities proposed by EP in row 908i or by Council in rows 913f-g-h; and the enforcement during implementation should be based on the amounts planned.

4. Council and EP avenues to mitigate under-execution

As mentioned above, both co-legislators deem it necessary to further mitigate the risk of under-execution. While some of the solutions proposed go in the same direction, some others differ. Amendments tabled are as follows:

Based on Member States' notifications, the Commission will adopt a delegated act to adjust their allocations in the CAP plan regulation. Moreover, a Commission implementing act sets the "EAGF net balance", in essence adjusting the EAGF sub-ceiling in the MFF regulation to take account of the transfers between pillars. This EAGF net balance will then constitute the reference for setting the financial discipline rate in case EAGF expenditure exceeds the EAGF net balance. The financial discipline rate must be fixed by latest 1 December (N-1).

Member States' transfer decisions are also taken into account in the budget amounts for direct payments and rural development. For example, for rural development, the commitment appropriations equal Member States' EAFRD allocations after transfers. In case Member States would be able to transfer funds within the same budget year, the budget adopted by the Budgetary Authority would no longer correspond to for instance the actual EAFRD allocations. Such "late" transfers would also change the EAGF net balance, but at that moment it would no longer be possible to change the financial discipline rate as MS pay direct payments as from 1 December (N-1).

Last but not least, if transfers were to be effected during the year, this would have an impact on the calculation of the ring-fencing for eco-schemes and the maximum amount MS can plan and spend on coupled income support; this would require amendments of the Plans at a stage when farmers have already been informed of the applicable rules and acted accordingly.

Thus, as in the MFF 2014-2020, transfers between pillars must be notified well in advance so that these can be duly taken into account in the relevant legal acts and in the annual budget adopted by Council and Parliament, and in order for the whole SPR Regulation to apply properly.

- Making planning more flexible: Allowing Member States to reserve a variable share of direct payments for eco-schemes (e.g. 15% in the 1st year, 20% in the 2nd, 25% in the 3rd, etc) if the overall amount over the programming period corresponds to the ring-fencing percentage [row 908i]. This flexibility would be consistent with the purpose of ring-fencing.
- Mobilise relevant increased rural development funding to reduce the eco-scheme ring-fencing obligation is proposed by both EP and Council but in different ways:
  - EP: We understand from the technical explanations provide that the intention is allowing Member States to transfer funds (max 12%) from direct payments to EAFRD under the condition that these funds are only used to implement environment/climate management commitments [row 936] and to deduct the amount transferred from the eco-scheme ring-fencing obligation [row 908j]. The issue with the drafting of the tabled amendments is that unless otherwise provided for under Article 86, the amount transferred to EAFRD will only be subject to a [30%] ring-fencing under EAFRD, while the total amount transferred [100%] can be deducted from the eco-scheme ring-fencing under direct payments. This amendment, as currently drafted, would therefore lead to a reduction of the total ring-fencing obligation for green interventions in the future CAP.
  - Council: allowing Member States, independently from a possible transfer from EAGF, to plan Articles 65/67/68 interventions in excess of the required EAFRD ring-fencing percentage (insofar as these interventions address the specific environmental and climate-related objectives set out in points (d), (e) and (f) of Article 6 and animal welfare) and deduct such 'excess' amounts from the eco-scheme ring-fencing obligation, by maximum 50% or in certain conditions 75%. [rows 913f-g-h]. Such a flexibility would be in line with the purpose of ring-fencing but would entail the need for clear detailed rules on off-setting between the annual ring-fencing for direct payments, and the EAFRD ring-fencing which applies for the period. It is worth noting that, in order to avoid excessive complexity and burden in managing the ring-fencing, it should be clarified that this flexibility applies at the level of planning for the period and cannot be adapted during the year depending on actual spending.
- Additional mechanisms to avoid unspent funds:
  - Council: To transfer unused funds to rural development in the same year [row 913d]. This is technically not possible. Unused direct payment funds cannot be transferred to rural development in the same year, nor in a subsequent year (see detailed explanation under footnote 1).
  - Council: Waive the ring-fencing obligation for a transitional period: Providing for a two-year "learning period" during which the eco-scheme planning would only be indicative; i.e. funds planned to reach the politically agreed ring-fencing percentage but not spent despite flexibility foreseen via maximum unit amounts under Article 89 could be spent on e.g. basic income support [row 913c]. This provision would imply that the ring-fencing would not need to be respected during this learning period.
  - Council: Provide for higher payments for eco-schemes and for other direct payments to avoid unspent funds: Allow Member States to set maximum unit amounts for all direct payments including eco-schemes justified by the sole aim of avoiding unused

funds [rows 924f and 930a]. The need to avoid unspent funds is not in itself an objective of the CAP and should not be an acceptable justification for the setting of payments. Moreover, these provisions grants considerable flexibility to spend funds planned for eco-schemes on other direct payments throughout the programming period, which in reality would undermine the concept of a ring-fencing and the whole strategic approach. Row 924f also introduces an element of differentiated treatment between MS in this context, granting additional flexibilities to MS using payment entitlements to grant the basic income support.