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From: General Secretariat of the Council  
To: Special Committee on Agriculture

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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  
*- Options on social conditionality*

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With a view to the meeting of the Special Committee on Agriculture on 8 February 2021, delegations will find in the Annex a document setting out options on social conditionality.

**Option A - Social conditionality**

Payments would be reduced or cut for farmers who are found to be in breach of the directives listed in Annex I as transposed in the Member States' national legislation:

Control system: the paying agency should rely on national social/health and safety inspectorates for the checks on farmers for the above requirements or alternatively partly or fully control itself (if the way in which controls are performed by social and labour authorities is not sufficient for the purposes of CAP management and control) in line with the provisions of HRZ Article 84<sup>1</sup> "Control system for conditionality".

Sanctions system: where the beneficiary is found to be in breach of the rules following the social/labour inspections, the paying agency is notified and the system of administrative penalties<sup>2</sup> laid down in HRZ Article 85 (in the form of reduction of CAP payments received) applies.

**Sub-option A-1 (social conditionality conditional on Court rulings)**

Administrative penalties would apply, for the identified areas, only once a final court ruling (or administrative decisions, in accordance with national legal frameworks) has been delivered for the non-respect of the provision in question. The administrative and judicial proceedings will be carried out in application of the labour and social legislation (by the competent non-agricultural authorities and judges); only when the final ruling or administrative decision is issued, would the paying agency proceed to apply the reduction on the CAP payments (reduction, exclusion under principles and mechanism as per ordinary cross-compliance).

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<sup>1</sup> HZR provides that MS shall set up a control system to ensure beneficiaries comply with their obligations. But MS may make use of their existing control systems.

<sup>2</sup> MS are required to set up a system for the application of administrative penalties to beneficiaries who do not comply with the rules on conditionality; the system will have to respect relevant principles like proportionality.

## Option B – Article 6 plus

A reference to working conditions would be included in Art 6.1.(h)<sup>3</sup> (SO 8) amongst the specific objectives of the Strategic Plan Regulation (SPR). This could be supported elsewhere<sup>4</sup> in the SPR, notably in Articles 95 (Content of the CAP Strategic Plans) and 96 (Assessment of needs) with a provision that requires Member States to include in their CAP Strategic Plans a chapter on social elements, including on workers conditions, based on needs assessment and SWOT analysis. The list of indicators (Annex I) might need to be amended in order to include relevant result indicators to monitor progress.

Like this, in practice, a legal requirement would be introduced for the Member States to explain in the CAP Strategic Plans what they are foreseeing for the social protection of agricultural workers and whether and how they will use CAP financing. Such financing can be planned in particular for improving workers' accommodation or other investments<sup>5</sup> in health and safety conditions as well as for cooperation<sup>6</sup>, training and information actions<sup>7</sup>.

In this context, it should be noted that all of the recommendations addressed to the MS as regards their national strategic plans already include the issue of workers' conditions<sup>8</sup>.

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<sup>3</sup> The draft Art 6.1. (h) currently reads: “promote employment, growth, social inclusion and local development in rural areas, including bio-economy and sustainable forestry”. It is noted that EP already proposes to include “promoting decent living, working and economic conditions” in its extensive modification of SO8. In addition to this, the EU Charter of Fundamental Rights is mentioned in Article 9.

<sup>4</sup> Such development is optional only, as once mentioned in Art 6(1), the links to Articles 95-97 would be automatic. However, it would be necessary ensure that the matter of workers' conditions would be sufficiently followed up in ALL strategic plans.

<sup>5</sup> Planned under Article 64 (d) and Article 68 of the SPR; investments foreseen in Chapter III of SPR “Sectoral types of interventions” would be also eligible

<sup>6</sup> Planned under Article 64 (g) and Article 71 of the SPR

<sup>7</sup> Planned under Article 64 (h) and Article 72 of the SPR

<sup>8</sup> The text included in the recommendations varies a little from one MS to another but generally reads: “Ensuring the protection of agricultural workers, especially the precarious, seasonal and undeclared ones, will play a major role in delivering on the respect of rights enshrined in legislation which is an essential element of the fair EU food system envisaged by the Farm to Fork Strategy”.

### **Option C - Implementation conditions**

For the purposes of improving the attention to workers' conditions, the CAP SPR would develop a specific provision on "implementation conditions"<sup>9</sup>. The Commission would check these implementation conditions before the approval of the CAP Plan. If the conditions are fulfilled, the CAP Plan would be approved. In the case of non-fulfilment at the stage of SP approval, it would be followed up with MS via a written exchange and a commonly monitored action plan, without, however, blocking the approval and without influencing payments.

Commission assessment will concern the implementation of the Charter of Fundamental Rights of the European Union and, in particular, Articles 21, 23, 27, 28, 30, 31, 32 and 33 thereof (see Annex II attached).

### **Supplementary activity to any of the options above - Advisory services**

The Farm Advisory Services (FAS) set out in Article 13 SPR requires national authorities to provide advice to farmers/beneficiaries on a number of issues and the EP request for advice on "safety standards and psycho-social care" could be enlarged to a selection of social legislation and/or recommendations.

In the event that Co-legislator would not support using FAS for these purposes, widespread dissemination to be ensured of the guidelines for workers in agriculture, livestock farming, horticulture and forestry<sup>10</sup>, issued by the EU Agency for Occupational Health and Safety.

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<sup>9</sup> Drawing from but differing from the enabling conditions in Art 11 of the new Common Provisions Regulation (CPR): the CPR for the new period provides for a limited list of "enabling conditions" which are a prerequisite for programme approval and have to be monitored and applied throughout the programming period. Art 11 CPR includes two annexes:

- Annex III of CRP refers to the EU Charter of Fundamental Rights, the United Nations Convention on the rights of persons with disabilities (UNCRPD) and the effective mechanisms to ensure compliance with them
- Annex IV of CPR contains detailed and specific for regional and social policies conditions, which are linked to their thematic objectives.

<sup>10</sup> <https://op.europa.eu/en/publication-detail/-/publication/a582a0df-60d3-4258-b4ff-b610f232118f>

## Annex I - List of Directives subject to Social Conditionality

<b>Category</b>	<b>Nr.</b>	<b>Title</b>
<b>Posting of workers</b>	1	<i>Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services</i>
	2	<i>Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services</i>
	3	<i>Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ( 'the IMI Regulation' )</i>
<b>Temporary Work Agencies</b>	4	<i>Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work</i>
<b>Transparent and Predictable Working Conditions</b>	5	<i>Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union</i>

<b>Framework Directive OSH</b>	6	<i>Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work</i>
<b>Work Life Balance</b>	7	<i>Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU</i>
<b>Non discrimination in the workplace</b>	8	<i>Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation</i>
	9	<i>Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)</i>
<b>Working Time Directive</b>	10	<i>Working Time Directive (2003/88/EC)</i>

## **Charter of Fundamental Rights of the European Union**

### **Article 21**

#### **Non-discrimination**

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

### **Article 23**

#### **Equality between women and men**

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

### **Article 27**

#### **Workers' right to information and consultation within the undertaking**

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

## **Article 28**

### **Right of collective bargaining and action**

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

## **Article 30**

### **Protection in the event of unjustified dismissal**

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

## **Article 31**

### **Fair and just working conditions**

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.



## Article 32

### **Prohibition of child labour and protection of young people at work**

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

## Article 33

### **Family and professional life**

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.