

The EU's Common Agricultural Policy Q&A: is its governance robust enough to deliver the EU's nature and climate goals?

Setting the scene

After a turbulent negotiation process, the European Parliament and the Council of the European Union (Council) finally reached a political compromise on the Common Agricultural Policy (CAP)¹. Member States must now submit their draft national Strategic Plans (SPs) to the European Commission by 1 January 2022 and the European Commission will then have six months to assess and approve them.

Unfortunately, the agreement struck by the co-legislators falls short of protecting the environment and tackle the climate crisis². **The governance framework of the CAP political compromise fails to guarantee that agricultural subsidies will significantly contribute to achieving the European Green Deal (EGD).** This confirms that agriculture unacceptably continues to benefit from a 'special status' compared to other EU laws and policies.

¹ Namely the [CAP Strategic Plans Regulation](#), the [Regulation on the financing, management and monitoring of the CAP](#) (so called Horizontal Regulation), and the [Regulation on the common organisation of the markets in agricultural products](#) (CMO Regulation).

² See the 10 tests for a Green Deal compatible CAP developed by EEB, BirdLife and Greenpeace: <https://mk0eeborgicuyptuf7e.kinstacdn.com/wp-content/uploads/2021/06/Copy-of-10-tests-for-a-Green-Deal-compatible-farm-policy.pdf>

The European Parliament will vote on the CAP reform in Autumn³. **This Q&A shows the weakness of the deal's governance structure and explains why this CAP should be voted down.**

Q&A

1. Will the European Commission be able to reject the CAP Strategic Plans?

It is not technically forbidden for the European Commission to reject the CAP Strategic Plans (SPs). However, the vague wording of the provision regulating the approval of the SPs and the possibility to approve incomplete plans⁴ make a rejection highly unlikely. Unless there are severe breaches of EU law principles, or of the CAP Regulations themselves, the European Commission will not have legal ground to deny the approval⁵.

Politically, the European Commission also does not seem willing to reject poor plans. Commissioner [Wojciechowski commented](#) that he “cannot even imagine or assume a situation where the Commission would, in a spectacular manner, reject a strategic plan prepared by the member states. Instead, the Commission will consistently continue to engage in dialogue with EU countries to push them towards plans which yield good results.”

2. Can the European Commission reject a CAP Strategic Plan that fails to implement the European Green Deal?

No, the Commission cannot directly reject a plan that does not implement the European Green Deal, notably the Farm to Fork Strategy and the Biodiversity Strategy.

When assessing the CAP SPs prior to their approval, Article 106 excludes the possibility to base this assessment on non-legally binding acts. As the EGD – and related strategies – is a communication, i.e. a soft-law document, and therefore not legally binding, the European Commission cannot use it to deny the approval of a CAP SP.

This is in contrast with the preamble of the CAP SP Regulation, known as a Recital. This Recital (78a) explains that “*when assessing the proposed CAP Strategic Plans, the Commission should assess the consistency and contribution of the proposed CAP Strategic Plans to the Union targets for 2030 set out in the Farm to Fork Strategy and the EU Biodiversity Strategy.*” However, recitals do not create new legal

³ First, at Committee level and then in Plenary. Following the European Parliament's plenary vote, the Council will have to approve the final text. If this vote is positive, then the act will be approved in first reading. Otherwise, the co-legislators will continue to negotiate and will seek an agreement during the so-call “second reading” procedure.

⁴ Even a plan that is not complete could be approved if the Member State provides a justification for this missing part and if the general consistency of the plan is not impacted.

⁵ According to Article 106, CAP SP Regulation, the European Commission is the institution responsible for approving the CAP SPs submitted by Member States. Prior to the approval, the Commission carries out an assessment of each plan, to verify (a) the consistency of the plan with general principles of EU law; (b) the impact of the plan on the internal market; and (c) whether the intervention strategy identified in the plan as well as the allocation of the resources is adequate to achieve the objectives and targets laid out in the plan. In particular, the approval will be granted if the plan is compatible with the requirements established in the CAP SP Regulation – including the CAP objectives under Article 6(1) – and in the CAP Horizontal Regulation.

obligations and cannot overrule a relevant operative provision. Instead, they are used to facilitate the understanding of a specific provision.

The way to solve this apparent conflict could be to use Recital 78a to interpret one small extract of Article 106. Before approving a SP, the Commission must assess *its effective contribution to the specific objectives set out in Article 6(1)*, CAP SP Regulation (Article 106). The specific objectives under Article 6(1)⁶ are broad and only speak generally about sustainability in the agriculture sector. Therefore, it is difficult to understand what they mean concretely and how they should inform the approval process. To interpret them, the Farm to Fork and the Biodiversity Strategies should be used. This means that when the European Commission assesses the effective contribution of the plans to the specific objectives, it should read these objectives in light of the EGD.

In practice, the European Commission does not directly assess – and approve – the SPs on the basis of the EGD; rather, it assesses how the plans work towards the CAP's objectives, which, in turn, should be understood as embedding the EGD's targets.⁷

Considering this indirect link, the Commission could still reject a plan that lacks environmental and climate ambition if it has the political will to do so; however, the legal wording of Article 106 makes this task extremely difficult and unlikely.

3. Does Annex XI ensure alignment between the CAP and EU environmental legislation?

Annex XI attempts to build bridges between agricultural planning tools and environmental ones, listing key EU environmental regulations and directives – e.g. Water Framework Directive, Habitats Directive, Regulation on the Governance of the Energy Union and Climate Action. **While being helpful, it is too weak to ensure full alignment between the CAP and EU environmental legislation.**

The correct implementation of EU environmental laws at country level is not a prerequisite for Member States to receive CAP funds. In addition, when drafting SPs⁸, the CAP SP Regulation obliges Member States to consider EU environmental legislation listed in Annex XI, but fails to include any specific legal consequences if this does not happen. It is therefore difficult to see it as an effective tool for integrating agriculture and environmental law.

4. Once a CAP Strategic Plan has been approved, does the European Commission have the power to request modifications if it emerges that it is no longer consistent with EU environmental legislation (listed under Annex XI)?

⁶ As a result of the trilogues, the following are the specific objectives (under Article 6) with environmental and climate relevance: point (d) *contribute to climate change mitigation and adaptation, including by reducing greenhouse gas emissions and enhancing carbon sequestration, as well as promote sustainable energy*; point (e) *foster sustainable development and efficient management of natural resources such as water, soil and air, including by reducing chemical dependency*; point (f) *contribute to the protection of halting and reversing biodiversity loss, enhance ecosystem services and preserve habitats and landscapes*.

⁷ European Commission, *CAP strategic plans: state of play on the dialogue between the Member States and the Commission*, July 2021. Available at: https://ec.europa.eu/commission/commissioners/2019-2024/wojciechowski/announcements/cap-strategic-plans-state-play-dialogue-between-member-states-and-commission_en

⁸ In particular, when Member States (a) carry out their assessment of needs, according to Article 96(2); (b) identify their intervention strategy, pursuant to Article 97(2); (c) carry out the SWOT analysis, meaning they evaluate strengths, weaknesses, opportunities and threats, according to Article 103(2).

No, the European Commission does not have the power to request modifications to CAP SPs, even when the plans are inconsistent with EU environmental laws, as listed under Annex XI. According to Article 107a, CAP SP Regulation, if the EU environmental legislation listed in Annex XI is amended, Member States – not the European Commission – are responsible for deciding whether the plan needs further modifications.

If in the future modifications are made to EU environmental laws listed in Annex XI, Member States are obliged to carry out an assessment as to whether modifications to the plan are needed, but are not obliged to automatically modify the plan accordingly.

Article 141a complements Article 107a on the revision of CAP SPs. Article 141a states that the European Commission has to review the list of environmental legislation in Annex XI by December 2025, and update it with new Union environmental legislation if necessary. Considering the 2025 deadline and the absence of an obligation for Member States to amend their CAP SPs following the revision of Annex XI, this new provision is not a strong enough safeguard to ensure that the CAP SPs are consistent with the rapidly evolving EU environmental legislation.

5. The European Commission evaluates how the CAP SPs contribute to EU climate and environmental commitments. A recital specifies that these commitments include those emerging from the European Green Deal.

Is this sufficient to ensure that Member States will achieve the EU Green Deal targets?

No, neither Article 127(1b), nor the associated recital will ensure alignment between the CAP and the EGD. Article 127(1b), read in combination with Recital 78d, requires the European Commission to monitor progress towards the EGD objectives, but it does not grant the Commission the power to request changes to the SPs that are unambitious enough in protecting the climate and the environment.

However, based on its assessment, the Commission can decide to issue recommendations to Member States to “facilitate the achievement” of the EGD’s objectives. These recommendations do not trigger any legal obligations for Member States. Member States are not even required to justify how and to what extent these recommendations have been taken into account. Article 127(1b) also does not oblige the Commission to make its recommendations public, creating unjustified hurdles for citizens to follow this process – a breach of EU access to information law⁹.

6. By 2026, the European Commission should carry out an *interim* evaluation of the CAP funds. Will the *interim* evaluation be able to steer the CAP towards a European Green Deal-compliant path in case the plans are not ambitious enough?

No, the *interim* evaluation does not trigger any specific legal consequences for the European Commission or Member States. For instance, if the *interim* evaluation concludes that the CAP funds are not contributing to better management of water resources at national level, or, if they are not supporting a decrease of farming emissions¹⁰, the Commission will effectively be unable to do anything about it.

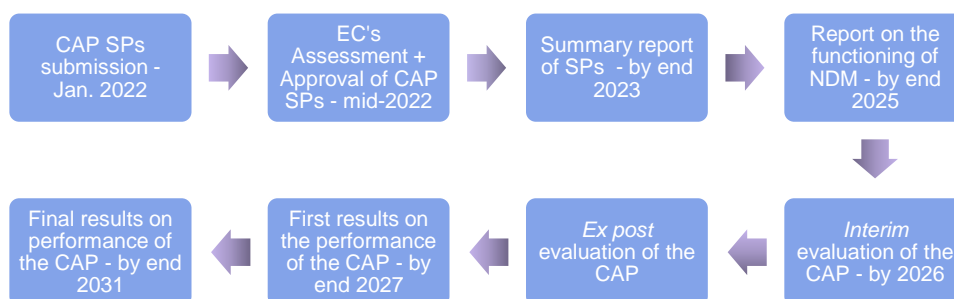
⁹ Including [Regulation \(EC\) N. 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.](#)

¹⁰ On this respect, the European Court of Auditors, has recently published a report concluding that despite the €100 billion of CAP funds dedicated to climate action in the CAP 2014-2020, agricultural emissions have not substantially decreased. Indeed, the CAP rarely finances measures with high climate mitigation potential. Please, refer to

The objective of the *interim* evaluation (Article 127(2)) is to assess whether the CAP funds (namely both direct and rural development payments) are “effective, efficient, relevant, coherent” and have added value. These same aspects will also be examined during an *ex post* evaluation (provided under Article 127(3)). Both the *interim* and *ex post* evaluations should feed into two reports, to be presented to the European Parliament and the Council by 2027 and 2031, respectively.

These evaluations will provide information on the performance of the CAP but they will not oblige Member States to change SPs that are not ambitious enough.

Even if the objective of the reports is merely to gather data on the performance of the CAP, their timing is highly problematic. Publishing the results of these assessments in 2027 and in 2031 means that this information will not be used when drafting the next CAP reform proposal. Therefore, the purpose of these exercises and how the data collected will be used is unclear.



This timeline is based on the last version available of the CAP Strategic Plans Regulation (consolidated version).

Conclusions

This Q&A on the key provisions demonstrates that **the governance framework of the CAP political compromise fails to guarantee that agricultural subsidies will significantly contribute to achieving the European Green Deal.**

Although the CAP refers to the EGD, it does not set any binding targets to hold Member States to account, nor a mechanism for the European Commission to force Member States to reform their national plans if they lack environmental and climate ambition. Without these safeguards, the new CAP relies on the goodwill of national decision-makers and the European Commission to ensure EU resources are actually allocated towards achieving the bloc's climate targets. As a result, the CAP perpetuates a model that favours polluting, industrialised farming, and disregards the environmental and climate challenges we face as a society.

European Court of Auditors, Special Report 16/2021: *Common Agricultural Policy and climate Half of EU climate spending but farm emissions are not decreasing*, 21 June 2021. Available at: [Special report 16/2021: Common Agricultural Policy and climate: Half of EU climate spending but farm emissions are not decreasing \(europa.eu\)](https://ec.europa.eu/eua/audits-and-questions/2021/06/21/special-report-16-2021-common-agricultural-policy-and-climate-half-of-eu-climate-spending-but-farm-emissions-are-not-decreasing) (last access 26th July 2021).

For these reasons, **we call on Members of the European Parliament to show their discontent and vote this CAP down.** Should the compromise package be nonetheless adopted by both the European Parliament and the Council, we expect the European Commission to conduct a thorough and transparent assessment of the CAP Strategic Plans, to ensure CAP funding is effectively allocated to environmental and climate-friendly farming practices, in compliance with EU environmental laws.

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