ClientEarth

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The recovery budget for agriculture

How the EU disguised a missed opportunity

Executive summary

The outbreak of the COVID-19 crisis led the European institutions and Member States to mobilise an exceptional budget worth €750 billion that will support the recovery of the Union. Of this amount, €7.5 billion will reinforce the rural development fund of the Common Agricultural Policy (**CAP**). In a first publication, ClientEarth discussed the CAP in relation to its budget, specifically asking the co-legislators to reconsider their harmful positions on the reform of the CAP when entering into inter-institutional negotiations. The present memo clarifies the rules that were adopted to govern the distribution of the recovery budget for agriculture for the next two years. At a crucial time, when supporting farmers in the fight against climate change, soil degradation and biodiversity loss – to which the spread of zoonotic diseases like COVID-19 is closely linked – is most needed, the European Parliament and the Council of the European Union have done little more than window dressing. In reality, they have favoured business as usual, turning their back on the green recovery of agriculture.

Introduction

On 14 December 2020, the Council of the European Union (**Council**) adopted a Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis[1] (**EURI Regulation**), which provides for a €750 billion[2] (2018 prices) recovery budget. This extraordinary sum will complement the EU budget, which was voted for under the Multiannual Financial Framework (**MFF**) for the period 2021-2027[3].

As far as agriculture is concerned, the EURI Regulation reserves €7.5 billion (2018 prices; or €8.07 billion[4] in current prices) to development in rural areas[5]. When adopting the rules that would organise the distribution of these sums, the co-legislators agreed that "*the additional resources provided by the EURI* [Regulation] *should be used to fund measures under Regulation (EU) No 1305/2013, paving the way for a resilient, sustainable and digital economic recovery in line with the objectives of the Union's environmental and climate commitments and with the new ambitions set out in the European Green Deal*[6]".

This memo provides an overview of the European legislative framework applicable to the recovery budget for rural development, and an appraisal of its ability to support the green recovery of the agricultural sector. It finds that the Council and European Parliament did not vote for legislations that will empower such a green recovery, rather, they encouraged Member States to maintain the status quo at a time when farmers urgently need to be supported in the fight against soil degradation, climate change and biodiversity loss.

The European Parliament and the Member States are currently negotiating the reform of the Common Agricultural Policy (**CAP**). Now is the time to transform the EU farming sector, ensuring its long-term resilience. Regrettably, the co-legislators are taking the wrong direction, failing to translate their political commitments in favour of the European Green Deal[7] into laws that are adequate to face global environmental and health emergencies. The European Commission is still in a position to withdraw its proposals for the CAP, but as inter-institutional negotiations progress, the less chances there are for this to happen. This poses a serious risk of leaving the EU farming sector increasingly vulnerable vis-à-vis the climate and biodiversity crises.

The recovery of agriculture, yet another CAP story

The rules on the recovery budget for rural development are intertwined with the CAP, the multiannual legislative framework that determines EU-wide rules for the distribution of the European agricultural funds. The share of the MFF budget for agriculture (hereinafter 'CAP budget') is divided between two funds: the European Agricultural Guarantee Fund (EAGF, also known as pillar 1) and the European Agricultural Fund

[1] Council Regulation 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, *OJEU, 22.12.2020, L 433 I/23* (available here).
[2] Article 2(1), first subparagraph, EURI Regulation.
[3] See Council Regulation of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, *OJEU, 22.12.2020, L 433 I/11*, and its Annex I (available here).
[4] Article 58a(1), first subparagraph, Regulation 1305/2013 (EAFRD), as introduced by Article 7(12) of the CAP Transitional Regulation.
[5] Article 2(2)(a)(vi), EURI Regulation;
[6] See Recital 21 of Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) in the years 2021 and 2022 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards resources and application in the years 2021 and 2022 and Regulation (EU) No 1308/2013 as regards resources and the distribution of such support in respect of the years 2021 and 2022, *OJEU, 28.12.2020, L 437/1* (**CAP Transitional Regulation**; available here).
[7] See in particular, European Parliament resolution of 15 January 2020 on the European Green Deal (available here), and Council conclusions on the Farm to Fork Strategy, 19 October 2020, 12099/20 (available here).

for Rural Development (EAFRD, or pillar 2). Historically, the EAGF has the largest share of the CAP budget, being used to grant farmers support in the form of income calculated on a hectare basis, while the sums available under the EAFRD serve as subsidies for different types of interventions in rural areas.

Since 2018, ahead of the end of the 2014-2020 CAP period, the European institutions have been preparing the CAP reform, which consists of a set of three new regulations[8] initially planned to apply from 2021 to 2027. However, to date, the CAP reform is still in the negotiations phase. With the expiration date of the 2014-2020 CAP approaching, the concern that farming subsidies would be cut as of 2021 has intensified. To tackle this issue, the co-legislators agreed to bridge the legislative gap for a period of two years. On 23 December 2020, they adopted the CAP Transitional Regulation[9], which extends the applicability of the 2014-2020 CAP laws until 31 December 2022. This means the CAP reform, which is currently being discussed in inter-institutional negotiations (so-called trilogues), will only enter into force by 2023.

Under the 2014-2020 CAP period, Regulation (EU) 1305/2013[10] constituted the CAP's second pillar – in other words, it regulated the distribution of the EAFRD. The CAP Transitional Regulation does not only extend the applicability of Regulation (EU) 1305/2013 until 2022, but also amends it. The Transitional Regulation inserts a new Article 58a in Regulation 1305/2013[11], a provision that determines the European rules applicable to the €7.5 billion recovery budget for rural development. This exceptional budget is to be divided between 2021 and 2022 with a ratio of 30:70, amounting to €2,387.7 million for 2021 and €5,682.7 million for 2022[12] (current prices). The CAP Transitional Regulation also provides the breakdown of the recovery's additional resources for each Member State[13].

EU rules governing the recovery of agriculture

The new Article 58a of Regulation (EU) 1305/2013 determines EU-wide rules for the distribution of the recovery budget. These rules are to be implemented by national authorities through a revision of their Rural Development Programmes (**RDPs**). Since 2014, Member States design their implementation strategy – at state and/or regional level – for Regulation (EU) 1305/2013 through these multiannual

[8] European Commission, Proposal for a Regulation of the European 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), 1 June 2018, 2018/0216 (COD) (COM(2018) 392 final); European Commission, Proposal for a Regulation of the European Parliament and of the Council on the financing, management and monitoring of the common agricultural policy, 1 June 2018, 2018/0217(COD) (COM(2018) 393 final); and European Commission, Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU)
No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products, (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union and (EU) No 229/2013 laying down specific measures for agriculture in favour of the smaller Aegean islands, 1 June 2020, 2018/0218(COD) (COM(2018) 394 final/2).

[9] Regulation (EU) 2020/2220 of the European Parliament and of the Council of 23 December 2020 laying down certain transitional provisions for support from the European Agricultural Fund for Rural Development (EAFRD) and from the European Agricultural Guarantee Fund (EAGF) in the years 2021 and 2022 and amending Regulations (EU) No 1305/2013, (EU) No 1306/2013 and (EU) No 1307/2013 as regards resources and application in the years 2021 and 2022 and Regulation (EU) No 1308/2013 as regards resources and the distribution of such support in respect of the years 2021 and 2022, *OJEU, 28.12.2020, L 437/1* (**CAP Transitional Regulation**; available here).

[10] Regulation (EU) 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), *OJEU, 20.12.2013, L 347/487* (available here).

[11] See Article 7, Paragraph 12, of the CAP Transitional Regulation.

[12] Article 58a(1), third subparagraph, Regulation 1305/2013 (EAFRD), as introduced by Article 7(12) of the CAP Transitional Regulation.

[13] See Article 58a, Paragraph 2, Regulation (EU) 1305/2013, as introduced by Article 7, Paragraph 12, of the CAP Transitional Regulation, as well as Annex Ia of Regulation (EU) 1305/2013, as inserted by Annex II of the CAP Transitional Regulation;

programmes[14]. In view of the transitional period, Member States will need to request the Commission's approval of the extension and amendment of their RDPs, approval that must be granted by means of implementing acts[15].

Therefore, when drafting their amended RDPs, national authorities will need to take into account the letter of Article 58a of Regulation (EU) 1305/2013, which contains a set of three rules and an exception that govern how the recovery money for rural development should be spent.

I. Non-regression principle for environment-, climate- and ANCs-related measures

In the 2014-2020 CAP period, Article 59, Paragraph 6 of Regulation (EU) 1305/2013 compelled Member States to dedicate a minimum of 30% of their EAFRD share to measures deemed to bring environmental and climate benefits[16]. The measures concerned were specified by Article 59, Paragraph 6 through the identification of several provisions of Regulation (EU) 1305/2013, namely:

- 'Investments in physical assets', in so far as they relate to "*environment and climate related investments*[17]" (Article 17);
- 'Investments in forest area development and improvement of the viability of forests' (Article 21);
- 'Agri-environment-climate' (Article 28);
- 'Organic farming' (Article 29);
- 'Natura 2000 and Water Framework Directive payments', "*with the exception of Water Framework Directive related payments*[18]" (Article 30);
- 'Payments to areas facing natural or other specific constraints' and 'Designation of areas facing natural and other specific constraints' (Articles 31 and 32); and
- 'Forest-environmental and climate services and forest conservation' (Article 34).

The additional resources that Member States receive from the recovery budget are not covered by this 30% threshold[19]. Instead, the new Article 58a, Paragraph 3 establishes a non-regression principle[20], applicable to both the recovery money and the MFF share of the EAFRD. The non-regression principle requires Member States to maintain at least the same overall[21] percentage of spending, in comparison to 2014-2020, for the measures identified in Article 59, Paragraph 6. In other words, each Member State must continue to dedicate the same overall share of the budget to the environment- and climate-related measures as well as measures for areas of natural constraints (**ANCs**)[22] highlighted by Regulation (EU) 1305/2013.

The 2014-2020 CAP period compelled Member States to dedicate a minimum of 30% of their rural development budget for environment-, climate- and ANCs-related measures. Therefore, the non-regression principle should apply in all revised RDPs at a minimum of 30% and above. In fact, data show that many Member States have been spending a much higher percentage of their rural development

[14] See Article 6 of Regulation 1305/2013.
[15] Article 1, Paragraph 2 of the CAP Transitional Regulation, and Article 11, point (a) of Regulation (EU) 1305/2013.
[16] However, as stipulated in Article 59, Paragraph 6, second subparagraph of Regulation (EU) 1305/2013, this rule did not apply to the outermost regions and Member States' overseas territories.
[17] See Article 59, Paragraph 9, first subparagraph of Regulation (EU) 1305/2013.
[18] *Ibid.*
[19] Article 58a, Paragraph 3, of Regulation (EU) 1305/2013.
[20] See also Article 1, Paragraph 2 of the CAP Transitional Regulation.
[21] See also Recital 22 of the CAP Transitional Regulation: "*Member States* (…) *should ensure the same overall share for the additional resources as the overall share which they reserved in their rural development programmes for measures that are particularly beneficial for the environment and climate under the EAFRD contribution ('non-regression principle')*".
[22] **Payments for areas of natural constraints consist of compensating farmers whose lands face natural or specific disadvantages (e.g. in mountain areas).**

envelope on measures for the environment, climate and ANCs over the past few years[23]. This means that, in principle, a significant share of the recovery's additional resources should be used to fund such initiatives. While this suggests an important step towards the green recovery of agriculture, we will see that the non-regression principle is extremely weak.

II. Minimum 37% for the environment, climate and ANCs, LEADER and animal welfare

Article 58a, Paragraph 4 indicates that the authorities must dedicate at least 37 % of their additional resources for the recovery to the same environmental, climate and ANCs measures (those covered by Article 59, Paragraph 6), as well as animal welfare and LEADER [24], "*and in particular for:*

(a) organic farming;
(b) mitigation of, and adaptation to, climate change, including reduction of greenhouse gas emissions from agriculture;
(c) soil conservation, including the enhancement of soil fertility through carbon sequestration;
(d) improvement of the use and management of water, including water saving;
(e) creation, conservation and restoration of habitats favourable to biodiversity;
(f) reduction of the risks and impacts of pesticide and antimicrobial use;
(g) animal welfare;
(h) LEADER cooperation activities".

III. Minimum 55% for promoting economic and social development in rural areas

In addition, following Article 58a, Paragraph 5, in each RDP, at least 55% of the additional resources should be reserved for investments in physical assets, farm and business development, basic services and village renewal in rural areas, as well as cooperation (as elaborated under Articles 17, 19, 20 and 35 of Regulation (EU) 1305/2013). The new provision expresses in loose terms that the measures concerned are only those for which the designated use in the RDPs "*promotes economic and social development in rural areas, and contributes to a resilient, sustainable and digital economic recovery in line, inter alia, with the agri-environment-climate objectives pursued under this Regulation*". Following Article 58a, Paragraph 5, Member States should provide funding under the 55% threshold rule in particular for:

"(a) short supply chains and local markets;
(b) resource efficiency, including precision and smart farming, innovation, digitalisation and modernisation of production machinery and equipment;
(c) safety conditions at work;
(d) renewable energy, circular and bio-economy;
(e) access to high-quality ICT in rural areas."

IV. The exception

The situation in Member States is such that the three rules listed above are not necessarily compatible. In the 2014-2020 CAP period, many EU countries have spent more than 45%[25] of their EAFRD share for the measures referred to in Article 59, Paragraph 6, and relating to the environment, climate and ANCs. This

[23] See years 2015 to 2018 in European Commission, Environment and Climate Action (Summary) – (EU27) – European Union 27 (excluding UK), *Share of EU expenditure for rural development spent on environment and climate (%)* (available here); A. Matthews, *The CAP Transitional Regulation and Next Generation EU funds*, CAPReform.eu (available here).
[24] **LEADER is a local development tool engaging stakeholders in the design and delivery of strategies, decision-making and resource allocation for rural development**. For more information, see https://enrd.ec.europa.eu/leader-clld_en.
[25] See years 2015 to 2018 in European Commission, Environment and Climate Action (Summary) – (EU27) – European Union 27 (excluding UK), *Share of EU expenditure for rural development spent on environment and climate (%)* (available here)

means that these Member States cannot simultaneously comply with the non-regression principle and the 55% ring-fencing for economic and social development measures[26].

This issue is directly addressed in the second part of Article 58a, Paragraph 5, which introduces what can be regarded as an exception with regard to the above, in the following terms:

"*When allocating the additional resources (…), Member States may decide to derogate from the percentage threshold [of 55%] to the extent necessary to comply with the non-regression principle (…). However, Member States may instead decide to derogate from that non-regression principle to the extent necessary to comply with the percentage threshold [of 55%]*."

Member States are left with the choice to give preference either to the non-regression principle relative to environmental, climate and ANCs measures, or to the 55% threshold for economic and social development.

Following the new Article 58a of Regulation (EU) 1305/2013, **when revising their Rural Development Programmes to make use of their share of the recovery budget for rural development, Member States are required to:**

1. Dedicate at least the same overall percentage of the additional resources to environment-, climate- and ANCs-related measures (those covered by Article 59, Paragraph 6 of the same regulation), in comparison to the percentage of the EAFRD that they spent for these measures in the previous CAP period;

2. Reserve 37% of their additional resources for environment-, climate- and ANCs-related measures (those covered by Article 59, Paragraph 6 of the same regulation), animal welfare (Article 33) and LEADER (Article 59, Paragraph 5); and

3. Consacrate 55% of their additional resources for socio-economic measures in the form of investments in physical assets, farm and business development, basic services and village renewal in rural areas, and co-operation (as per Articles 17, 19, 20 and 35).

However, if they cannot simultaneously comply with the first and third rules, Member States can decide to derogate from either of them to the extent necessary to abide by the rule that was given precedence.

No effective EU support for the green recovery of agriculture

The CAP Transitional Regulation says that the recovery budget for rural development should help "*paving the way for a resilient, sustainable and digital economic recovery in line with the objectives of the Union's environmental and climate commitments and with the new ambitions set out in the European Green*

[26] A. Matthews, *The CAP Transitional Regulation and Next Generation EU funds*, CAPReform.eu, 17 December 2020 (available here).

Deal[27]". The set of three rules governing the recovery money is introduced based on the assertion that "*Member States should therefore not reduce the environmental ambition of their existing rural development programmes*[28]". However, we demonstrate that the conditions agreed between the Council and European Parliament do not, in many instances, compel Member States to maintain the status quo as a minimal guarantee of the green recovery of agriculture.

The co-legislators' affirmation that the non-regression principle inserted in Regulation (EU) 1305/2013 through the new Article 58a would be "*in line with the new ambitions set out in the European Green Deal*[29]" is highly questionable. A significant criticism can be raised against the measures eligible for funding by the recovery money, and by the rest of the EAFRD, under the non-regression principle. Whereas the CAP Transitional Regulation ascertains that such measures are "*particularly beneficial for the environment and climate*[30]", from a scientific perspective there is no evidence that monetary support for ANCs can be considered environment- or climate-friendly measures[31]. In fact, by including payments for ANCs within the scope of the non-regression principle, the co-legislators have essentially undermined it. This is because Member States are only expected to reserve "*at least the same* ***overall*** *share of the EAFRD contribution*" (emphasis added) for environment-, climate- and ANCs-related measures (those laid down in Article 59, Paragraph 6), which implies no obligation to maintain or raise the support for effective environmental and climate measures. On the contrary, a Member State could still abide by the non-regression principle if it increased the level of payments for ANCs while lowering support for the other measures by a corresponding percentage. Note that, in the previous CAP period, payments for ANCs constituted a significant part of the EU expenditure considered as having a positive impact on the environment and climate under the EAFRD. For example, France reserved more spending for ANCs than for all other environmental and climate measures put together[32].

Likewise, merely requesting that each RDP reserve at least 37% of the additional resources for ANCs, LEADER and animal welfare, climate and environmental measures, does not in any way secure that a minimum share of the recovery money will be spent on effective environmental and climate measures. Not only does the 37% ring-fencing once again include payments for ANCs, but it also encompasses measures for animal welfare and LEADER. Whereas support for animal welfare and LEADER can in some cases trigger better environmental status, the co-legislators failed to link it to environmental conditions. What's more, this 37% threshold creates the illusion to go beyond the protection offered by the non-regression principle, while in practice, the spending on environment-, climate- and ANCs-related measures was well above 37% in most Member States during the 2014-2020 CAP period. The co-legislators created a mirage, one that recalls of Commission President von der Leyen's pledge that 37% of Next Generation EU "*will be spent directly on our European Green Deal objectives*[33]".

The rule according to which Member States must dedicate 55% of their recovery money's share for socio-economic measures is also criticisable. Whereas providing that the use of these measures should contribute *"to a resilient, sustainable and digital economic recovery in line, inter alia, with the agri-environment-climate objectives pursued under [Regulation (EU) 1305/2013]",* no mandatory criteria of

[27] See Recital 21 of the CAP Transitional Regulation.
[28] See Recital 22 of the CAP Transitional Regulation.
[29] See Recital 6 of the CAP Transitional Regulation.
[30] See Recital 22 of the CAP Transitional Regulation.
[31] Alliance Environment, *Evaluation of the impact of the CAP on habitats, landscapes, biodiversity*, Final Report, November 2019 (available here); Alliance Environment, *Evaluation study of the impact of the CAP on climate change and greenhouse gas emissions*, Final Report, October 2018 (available here).
[32] See years 2015 to 2018 in European Commission, Environment and Climate Action (Summary) – (EU27) – European Union 27 (excluding UK), *Share of EU expenditure for rural development spent on environment and climate (%)* (available here)
[33] Commission President Ursula von der Leyen, *State of the Union Address by President von der Leyen at the European Parliament Plenary*, ec.europa.eu, 16 September 2020 (available here).

biodiversity protection or climate mitigation were attached. Declaring precision and smart farming, innovation, digitalisation and modernisation of production machinery and equipment as eligible and privileged investments, without further definition, simply pushes for more of the same, *i.e.* damaging monoculture and industrial practices[34].

The introduction of the exception is in itself indicative of the co-legislators' greenwashing exercise. Considering that in 2014-2020, many Member States spent more than 45% of their EAFRD share for environment-, climate- and ANCs-related measures, it was clear that these countries could not simultaneously comply with the non-regression principle and the 55% threshold. While asking Member States to increase the funding for social and economic development, the Council and European Parliament also created the opportunity to proportionally diminish support for environment-, climate- and ANCs-related measures.

On the other hand, if Member States are to prioritise the non-regression principle, they are under no obligation to use their additional resources for the benefit of effective environmental and climate measures, as previously discussed.

Overall, the Council and European Parliament did not ensure that the additional resources contribute fully, or even partially, to the green recovery of the agricultural sector.

Turning point: providing long-term support to EU farmers and the environment they rely on

The transitional period builds on the old, and does not bring forward new initiatives with the potential to enhance the state of the environment and combat climate change. The framework designed for the use of the additional resources coming from the recovery budget is no exception: instead of tying these resources to effective green conditions, the Council and European Parliament have given Member States *carte blanche*. The ball is now in the court of national authorities. When revising their RDPs, they have three options: maintaining the status quo; favouring measures with proven ecological value; or moving backwards.

As the European co-legislators renounced to encourage the green recovery of agriculture, the CAP reform 2023-2027 will have to be all the more ambitious. Farmers cannot fight against climate change, biodiversity loss and soil degradation alone. Decision-makers are responsible for helping them transition to ecological practices so as to build their resilience, and for creating empowering market conditions. This is a fundamental necessity, for the farming sector and for society as a whole. However, the results of current negotiations on the future CAP regulations for 2023-2027 show that the European Parliament and Council are still watering down the proposals of the European Commission.

The European Green Deal will remain mere political promises if the co-legislators persist in excluding agriculture from the legislative agenda. It is time to translate political commitments into law, by designing a CAP reform that is up to the challenges ahead and by banishing any kind of greenwashing tactic.

[34] META (EEB), *European Parliament greenwashes farming subsidies and recovery funds*, 15 December 2020 (available here).

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