

The Special Committee on Agriculture (SCA)

A sixty-year-old obstacle to an environmentally ambitious CAP?

This paper is a brief summary of an in-depth legal analysis of the Council's main preparatory body in charge of the Common Agricultural Policy (**CAP**), the Special Committee on Agriculture (**SCA**)¹. This analysis questions the lawfulness of the SCA's role in the Council decision-making process and, consequently, the ability of the Council to adopt a coherent approach to the ongoing CAP Reform in the context of the European Green Deal.

The need for an integrated approach to the CAP

As underlined in a Council Presidency Paper to the SCA in January 2020, the climate change and environmental emergencies meant to be addressed by the Commission's European Green Deal require "*intense coordination to exploit the available synergies across all policy areas*", and a need to rethink all policies, including food and agriculture².

In the European Union (**EU**), the CAP has progressively integrated resource-protection, biodiversity and climate-change considerations to extend its policy objectives beyond the goals it was expressly and specifically assigned to in the Treaties³. In fact, integrating environmental protection across all policies is a requirement under horizontal principles enshrined in the EU Treaties, such as the principle of

¹ This analysis was carried out by ClientEarth lawyers with the support of an EU institutional law professor, Antoine Bailleux, consulted by ClientEarth AISBL. The conclusions remain subject to the outcome of the access to documents requests put by ClientEarth AISBL to the Council General Secretariat in September 2020.

² See Annex to the Note from the Council Presidency to the SCA "*The European Green Deal – agricultural aspects*", 15 January 2020, 15051/19 + ADD 1.

³ Which have remained largely unchanged (see a comparison of art. 39 and following of the Treaty of Rome or *Treaty establishing the European Economic Community* signed on 25 March 1957 with art. 39 and following of the Treaty on the Functioning of the European Union (**TFEU**)).

environmental integration⁴ and the principle of consistency⁵. These principles require European institutions to integrate a high level of environmental protection in all sector-specific regulations and ensure that all EU policies and actions are consistent with one another.

ClientEarth expects the principle of consistency to play a decisive role in future developments of environmental law, both as a substantive requirement of EU law and a behavioural duty on EU institutions.

The legal debate on the SCA: a conflict of competence

Despite the acknowledged need for integration, agriculture somehow institutionally still appears to be an outlier compared to other EU policies. The SCA, which is the main preparatory body in charge of preparing the work of the Council on the CAP, provides a good illustration.

Created in 1960 as a *temporary* specialised committee meant to accelerate the implementation of the CAP⁶, it has continued to work since then without a clear legal basis⁷, and has undoubtedly played a critical role in shaping the CAP over the past 60 years.

Among the Council's many preparatory bodies, the SCA stands out as enjoying an extraordinary status in that its work is directly tabled with the Council, without going through the Committee of Permanent Representatives (**Coreper**)⁸.

This historic oddity triggers an interesting *legal debate* as to the lawfulness of the way the SCA operates, which appears to directly conflict with the Coreper's exclusive competence to prepare the Council's work enshrined in the EU Treaties⁹ and in the Council Rules of Procedures¹⁰.

This legal debate may have far-reaching *policy implications* as it raises doubts on the structural ability of the CAP legislative procedure within the Council to fully integrate resource-protection, biodiversity and climate change considerations.

Unlike the Coreper, the SCA is under no express duty to “ensure consistency of the European Union's policies and actions”¹¹. Having sometimes been described as an “expert group”, less susceptible than the Coreper to adopt a “horizontal perspective”¹², there are doubts as to the ability of the SCA to ensure environmental integration and consistency in the context of the CAP Reform.

⁴ See art. 3(3) of the Treaty on the European Union (TEU), art. 11 TFEU, art. 37 of the Charter of fundamental rights of the European Union (Charter).

⁵ See art. 13(1) TEU, art. 7 TFEU.

⁶ The SCA was created pursuant to article 5(4) of the *Décision des représentants des gouvernements des États membres de la Communauté économique européenne réunis au sein du Conseil, concernant l'accélération du rythme de réalisation des objets du traité, OJEU, N°58, 1917/60, 12 September 1960*. This decision was subsequently confirmed by a Council decision dated 20 July 1960 (doc. 504/60, (R/770/60)).

⁷ Despite extensive research and legal analysis, ClientEarth has not been able to identify a solid legal ground allowing the SCA to derogate from the Coreper's ultimate exclusive competence to prepare the work of the Council.

⁸ According to the Council General Secretariat, the SCA “is the only exception to Coreper's monopoly in preparing the Council's work. *The items which the SCA has examined are therefore included directly on the agendas for the Agriculture and Fisheries Council.*” (Comments on the Council's Rules of Procedure, March 2016, p. 20, we highlight and underline).

⁹ Articles 16(7) TEU, and 240(1) TFEU both provide that the Coreper “shall be responsible for preparing the work of the Council”;

¹⁰ Article 19 of the Council Rules of Procedure requires that that “[a]ll items on the agenda for a Council meeting shall be examined in advance by Coreper unless the latter decides otherwise” (Council Decision of 1 December 2009 adopting the Council's Rules of Procedure (2009/937/EU)).

¹¹ Art. 19(1) of Council Rules of Procedure.

¹² Jeffrey Lewis (2000) The methods of community in EU decision-making and administrative rivalry in the Council's infrastructure, *Journal of European Public Policy*, 7:2,261-289, DOI: 10.1080/135017600343197, p. 276.

The new dimension of the debate in the context of the post-2020 CAP Reform

The debate on the SCA is not new, nor has its terms fundamentally changed. EU observers¹³ have signaled this risk of inconsistency numerous times as well as a previous General Secretary of the Council¹⁴. However, this has been in vain as bringing agricultural institutional framework in line with other policies has apparently not been a priority¹⁵.

However, this old debate takes a *new dimension* in the context of the post-2020 CAP Reform and the implementation of the European Green Deal. The challenges ahead – from the climate and biodiversity crises – are too complex to face if there are obsolete sector-specific governance dynamics standing in the way.

The full inclusion of the Farm to Fork and Biodiversity strategies' objectives in the CAP Reform, requires integrated governance mechanisms to achieve consistency between the CAP Reform and other sector-specific legislative initiatives.

A farm policy equipped to deal with them needs to boost new synergies between farmers, people and nature, as the European Green Deal announces. Only if all institutional levels are mobilised can agriculture become a solution rather than a major contributor to these crises.

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The current handling of the CAP legislative file within the Council raises doubts on the Council's structural ability to deliver an integrated approach to the CAP. It is of course extremely difficult to ascertain whether and to what extent the SCA has effectively to date been an obstacle on the way to a truly environmentally ambitious CAP, as the discussions within the SCA and the Coreper are not public.

It is up to the Council to lift those doubts, by either (i) conducting structural reforms on how it handles the CAP legislative file; or, (ii) demonstrating the current processes are capable of delivering true environmental integration and consistency. The latter would require transparency on the respective roles, compositions, functioning and discussions within the SCA and Coreper, in line with the European Parliament resolution¹⁶, and recommendations from the Ombudsman¹⁷ on the need for increased transparency within the Council preparatory bodies.

¹³ Jeffrey Lewis (2000) The methods of community in EU decision-making and administrative rivalry in the Council's infrastructure, *Journal of European Public Policy*, 7:2,261-289, DOI: 10.1080/135017600343197, p. 276: "Despite its venerable status and routinized decision-making practices, **the SCA scores fairly low on the methods of community. Unlike COREPER, the key organizing trait of the SCA is the segmented nature of their preparatory responsibility.** [...] In particular, **the 'segmented character of agricultural policy-making'** (Rieger 1996: 121, fn. 15) **precludes the emergence of a horizontal *vue d'ensemble*** and an extended shadow of the future. One SCA representative drew a comparison with COREPER as follows:

The SCA, compared to COREPER, is more of an expert group . . . COREPER is seeking and is being driven by the need to reach agreement. The SCA is driven by the need to protect national interests, and for most countries, the need to protect very specific national concerns. COREPER is more susceptible to take into account a more horizontal perspective" (we highlight and underline).

¹⁴ Trumpf–Piris Report, *Operation of the Council with an enlarged Union in prospect* (10 March 1999), p. 25: "**The basic rule that all decisions must transit via Coreper before their adoption by the Council is not always observed. Thus, the SCA's drafts intended for the Agriculture Council are not submitted to Coreper. [...] This situation is unsatisfactory. It is essential to restore Coreper's coordinating role, otherwise consistency between the action of the Council in its various formations might suffer**" (we highlight and underline).

¹⁵ Even though the number of revisions of the EU Treaties and Council rules of procedure since 1960 could have provided opportunities to clarify or revise the status of the SCA.

¹⁶ European Parliament resolution of 17 January 2019 on the Ombudsman's strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU (2018/2096(INI)).

¹⁷ Recommendation of the European Ombudsman in case OI/2/2017/TE on the Transparency of the Council legislative process. Recommendation of the European Ombudsman in case 640/2019/FP on the transparency of the Council of the EU's decision-making process leading to the adoption of annual regulations setting fishing quotas (total allowable catches).

ClientEarth AISBL is a registered international non-profit organisation in Belgium, enterprise number 0714.925.038, registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.