

# The Special Status of Agriculture

Why is the CAP an exceptional policy?

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## Executive summary

**Agriculture enjoys a special status under EU law and policy.** By analysing provisions that regulate the governance of the Common Agricultural Policy (CAP), stakeholders’ participation, allocation of CAP funds, COVID-19 recovery budget and the CAP legislative process itself, we are able to better understand how the CAP is unusual compared to other fields of EU law.

These rules that seem to apply exceptionally to the CAP can only be justified by the fact that there are sectoral interests at play, which have granted Agriculture its unique status. Such sectoral interests make the CAP no longer fit for purpose and incapable of playing its part for a more just and green EU, under the flagship policy of the European Green Deal (EGD).

The new CAP reiterates the same sectorial logic of the past, maintaining the special status of agriculture at the expense of other sectors, primarily the climate and the environment. In particular, this CAP reform:

1. Fails to meaningfully incorporate new interests and stakeholders;
2. Is based on exceptional legislative processes both at EU and at national levels;
3. Perpetuates business as usual through budgetary mechanisms that find no equal in other EU laws and policies.

### 1. Failure to incorporate new interests and new actors into the CAP

Despite progress, the CAP still operates as a “compartmentalised” policy that fails to meaningfully include competing interests and to open the policy debate to new actors.

On the one hand, environmental and climate concerns are not adequately embedded in the CAP Strategic Plan (SP) Regulation Proposal and the co-legislators have even weakened several key provisions (e.g. on eco-schemes). On the other, environmental stakeholders risk being excluded from the processes of drawing up and implementing the CAP Strategic Plans at national level, unless strong EU rules grant them participation rights.

**The failure of the CAP to effectively take into account new interests and incorporate new actors in the policy debate demonstrates how and to what extent the CAP responds to old sectorial logics that benefit the few and forget the many.** Comparison with the rules governing EU funds other than the CAP – in particular, the Common Provision Regulation on European Structural and Investment Funds – gives us a clear indication of how the CAP has remained resistant to change, while other parts of EU law have adapted more quickly to emerging societal needs.

If key provisions of the CAP Strategic Plans Regulation Proposal are not strengthened during the Trilogues, CAP subsidies will continue to support intensive agricultural practices, and in doing so, jeopardise achieving the EGD’s objectives. In particular, the rules on **participation** should expressly mention the participation of environmental groups in the design and implementation of the CAP Strategic Plans at national level, and **the approval process of the CAP Strategic Plans** should require the plans to contribute to the EGD’s objectives.

### 2. Exceptional EU and national legislative processes

The special status enjoyed by agriculture at EU institutional level is well established. The Special Committee on Agriculture is a good illustration of the obsolete dynamics that prefer a sector-specific approach to the integration and consistency of the CAP with other policies.

**The Special Committee on Agriculture oddly operates as an exception to the Coreper's exclusive competence to prepare the work of the Council.** This means that the consistency check that normally falls under the Coreper's remit may not be applied to the CAP. This oddity should be called out and addressed.

The **early drafting of CAP Strategic Plans at national level** – well before the CAP SP Regulation enters into force – further exemplifies how agriculture escapes normal scrutiny. The significant resources dedicated to this exercise by national public administrations are in practice reducing co-legislators decision-making power. This, threatens the democratic legitimacy of the CAP reform.

**The Commission must guarantee that national Strategic Plans will be thoroughly assessed and approved against the content of the regulation in its final version. The European Parliament, at the very least, should uphold its position on the approval process of the CAP Strategic Plans or go further by requesting the Commission to assess how the Strategic Plans will contribute to tackle the climate and biodiversity crises.**

### 3. Funding business as usual

Agriculture represents one third of the EU budget, yet, **compared to other EU funds, less strict safeguards regulate its allocation.** The Common Provision Regulation and the Common Provision Regulation Proposal – covering EU Structural and Investment Funds, foresee specific mechanisms to ensure that EU funds boost compliance with the EU environmental law. This type of system is absent in the CAP, as no condition needs to be satisfied prior to distributing CAP funds. This is another example of the special treatment granted to agriculture under EU law and policies, since no substantial justification can underpin this choice.

Likewise, **the recovery budget reserved for agriculture is governed by specific rules under the current CAP, therefore falling outside the scope of the Recovery and Resilience Facility.** Instead of securing a green recovery for the sector, the EU has done little more than window dressing and left it to Member States to decide what level of ambition they will pursue, if any, when revising their rural development programmes.

**This illustrates the importance of designing a CAP Strategic Plan Regulation that imposes strong environmental requirements on Member States, and that establishes a legally-binding link with the EGD. Failing to do so would drastically limit the steering power of the Commission when assessing and approving the CAP Strategic Plans.**

## Introduction

Agriculture is a vital economic sector, which our livelihoods depend on. But since the 1950s, intensification of agriculture has led to considerable environmental damages, from harming biodiversity; to polluting the air, soil and water; and contributing to climate change. This method of cultivating the land is threatening our health and the planet's.

In the European Union (**EU**), agriculture represents by far the most urgent pressure for species and their habitats, notably due to intensification, specialisation and abandonment of extensive management practices<sup>1</sup>. Data gathered since 1990, demonstrate that the population of farmland birds declined by 33% and the index of grassland butterflies by 39%, with no sign of recovery. These long-term trends are representative of the major biodiversity loss<sup>2</sup> the EU is experiencing. The use of fertilisers and pesticides is another important driver, significantly contributing to polluting the air<sup>3</sup>, soils, surface waters and groundwaters<sup>4</sup>.

The effects of agricultural activities on the climate are no less important. In the EU, the agricultural sector generates around 10% of all greenhouse gas (GHG) emissions<sup>5</sup>. Worldwide, 9% to 14% of total GHG emissions are accountable to crop and livestock activities within the farm gate<sup>6</sup>, while the food system as a whole is responsible for 21% to 37%<sup>7</sup>.

The European Green Deal (**EGD**) commits to make Europe the first climate-neutral continent by 2050. With the Farm to Fork Strategy, the EU also pledges to significantly reduce the detrimental impacts that food production, processing, distribution and consumption generate on the natural environment and human health. Achieving this objective means that the agricultural sector also plays its part to reduce emissions, runoff as well as land and habitats deterioration. This is especially true for the main EU farming policy, the Common Agricultural Policy (**CAP**), whose environmental and climate ambition will determine the success or the failure of the whole EU green agenda.

## The CAP: a work in progress

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<sup>1</sup> EEA, State of Nature in the EU, Report n. 10/2020. Available at: <https://www.eea.europa.eu/publications/state-of-nature-in-the-eu-2020>

<sup>2</sup> Figures based on data from 1990 to 2017. EEA, Abundance and distribution of selected European species, Indicator assessment, 19 June 2020. Available at: <https://www.eea.europa.eu/data-and-maps/indicators/abundance-and-distribution-of-selected-species-8/assessment-1>.

<sup>3</sup> EEA, Air quality in Europe, Report n. 9/2020. Available at: <https://www.eea.europa.eu/publications/air-quality-in-europe-2020-report>.

<sup>4</sup> EEA, State of Nature in the EU, *op. cit.*

<sup>5</sup> Figure for 2015. Eurostat, Agri-environmental indicator – greenhouse gas emissions, Statistics explained, November 2019. Available at: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/16817.pdf>.

<sup>6</sup> Before the product is ready to be shipped for consumers.

<sup>7</sup> IPCC Report Land Use and Climate Change, Chapter 5 on Food Security. Available at: <https://www.ipcc.ch/srccl/chapter/chapter-5/>

In June 2018, the Juncker Commission issued three regulation proposals for a CAP post-2020, namely the CAP Strategic Plans Regulation<sup>8</sup>, the CAP Horizontal Regulation<sup>9</sup> and the Common Market Organisation Regulation<sup>10</sup>.

This paper focuses exclusively on the CAP Strategic Plan Regulation Proposal (**CAP SP Regulation Proposal**), as it is the main instrument that organises the governance of the legislative package, sets the rules on agricultural subsidies for farmers and requires Member States to draw up national CAP strategic plans.

Initially, this new reform of the CAP was meant to apply to the period 2021-2027. However, the adoption of the package has been delayed to the extent that it should only enter into force in 2023. Contrary to the established practice that has seen agricultural policies last for seven-year periods, the new reform will be applicable for a shorter time span of five years, expiring at the end of 2027.

In 2019, the expiration date of the 2014-2020 CAP approaching, there was growing concern that farming subsidies would be cut as of 2021. To tackle this issue, it was decided that the legislative gap would be bridged for a period of two years. In December 2020, the co-legislators adopted the **CAP Transitional Regulation**<sup>11</sup>, which extends the applicability of the 2014-2020 CAP until 31 December 2022.

Work on the new CAP reform has nonetheless been ongoing, and in October 2020, the Council and the European Parliament drafted their own modifications to the text of the CAP SP Regulation Proposal. While the Council adopted its General Approach<sup>12</sup>, the European Parliament voted its amendments to the CAP SP Regulation Proposal<sup>13</sup> in a Plenary session. Since then, the co-legislators and the European Commission have been holding regular inter-institutional negotiations (**'trilogues'**) on the CAP reform, for which they expect to reach an agreement in May 2021. According to the co-legislators agendas, the adoption of the three new CAP Regulations would then be voted on in the months following the political deal and enter into force in 2023.

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<sup>8</sup> 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) 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, 1 June 2018, 2018/0216 (COD) (COM(2018) 392 final) (**CAP SP Regulation Proposal**).

<sup>9</sup> 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 and repealing Regulation (EU) No 1306/2013, 1 June 2018, 2018/0217(COD) (COM(2018) 393 final).

<sup>10</sup> 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).

<sup>11</sup> 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**).

<sup>12</sup> Note from the GSC to Delegations, 'CAP SP Regulation' General Approach, 21 October 2020 ([12148/20](#)) (**the Council General Approach**).

<sup>13</sup> Amendments adopted by the European Parliament on 23 October 2020 on the 'CAP SP Proposal' (P9\_TA-PROV(2020)0287) (**EP Amendments**).

Since its introduction in 1962, the CAP, which was created to ensure food security, has progressively broadened its scope to integrate other considerations, including the need to preserve biodiversity, the climate and natural resources. However, even recent attempts in 2014-2020 to make the CAP more environment-friendly - in particular with the so-called cross-compliance and greening measures - have fallen far short from meeting biodiversity and climate needs<sup>14</sup>.

As a basic principle, the CAP SP Regulation Proposal obliges Member States to raise their overall environmental and climate ambition, compared to the 2014-2020 CAP, through their national Strategic Plans<sup>15</sup>. These Strategic Plans constitute the main element of novelty in the governance structure of the CAP reform under negotiations, key to the so-called New Delivery Model, namely a system intended to shift the current compliance-based system to one based on performance. In their Strategic Plans, Member States will have to present an intervention strategy that, tailored to domestic-specific needs, is supposed to achieve the EU specific objectives for the agricultural sector<sup>16</sup>.

The CAP SP Regulation Proposal also introduces a new “green architecture”, based on:

- a system of enhanced conditionality, whose policy rationale is to tie direct payments to minimum legal requirement and basic good agronomic practices;
- eco-schemes, a new way to offer environmental and climate payments to farmers under Pillar 1<sup>17</sup>; and
- environmental, climate and other management commitments under Pillar 2<sup>18</sup>.

The Commission further recognised *the inextricable links between healthy people, healthy societies and a healthy planet*<sup>19</sup> when, in May 2020, it released its Farm to Fork and Biodiversity Strategies as part of the European Green Deal (EGD). It also stated that *[t]he increasing recurrence of droughts, floods, forest fires and new pests are a constant reminder that our food system is under threat and must become more sustainable and resilient*.

While on paper this appears to go in the direction of strengthening the environmental and climate ambition of the CAP, the design of the provisions of the green architecture, as well as the lack of direct link between the CAP and the EGD, raise serious concerns about the the CAP’s ability to deliver the EU’s environmental and climate commitments<sup>20</sup>.

<sup>14</sup> Please, see for instance, European Court of Auditors, Greening: a more complex income support scheme, not yet environmentally effective, Special Report n. 21/2017. Available at: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=44179>

<sup>15</sup> See Article 92, CAP SP Proposal.

<sup>16</sup> Pursuant to Article 91, CAP SP Proposal, the Strategic Plans implement the Union’s support under both Pillar 1 and Pillar 2. Under Article 95, CAP SP Regulation Proposal, an assessment of needs, an intervention strategy, a description of the governance and coordination system - followed by Annexes covering, inter alia, the ex-ante evaluation, the strategic environmental assessment (SEA), the SWOT analysis, the consultation of partners. Each Member State submits to the European Commission a proposal for the Strategic Plans and the Commission is responsible for assessing and, eventually, approving the them, following a procedure described in Article 106, CAP SP Proposal.

<sup>17</sup> **Pillar 1 payments are direct income support to farmers. They are paid by the EU and administered at national level and are calculated on the basis of the hectares that a farmer possesses.**

<sup>18</sup> **Pillar 2 is also called the rural development pillar and requires co-financing by member states’ governments.**

<sup>19</sup> European Commission, Farm to Fork Strategy, 20 May 2020 (COM(2020) 381 final), p. 1.

<sup>20</sup> For in-depth analysis of the provisions, please, see: Meredith S., Maréchal A. and Bas-Defossez F. (2020), Analysis of the AGRIFISH Council and the European Parliament’s decisions on the future of CAP, IEEP. Available at: <https://ieep.eu/publications/agriculture-and-land-management/future-of-the-cap/preliminary-assessment-of-agrifish-council-and-european-parliament-s-positions-on-the-future-of-cap> and European Court of Auditors, Opinion n. 7/2018 concerning Commission proposals for regulations relating to the Common Agricultural Policy for the post-2020 period. Available at: <https://www.eca.europa.eu/en/Pages/NewsItem.aspx?nid=11068>

Civil society organisations have long advocated for increased environmental ambition of the CAP and, in the last few months, started calling for a withdrawal of the reform package<sup>21</sup>. As it currently stands, trilogues negotiations are falling short on both biodiversity and climate. There has been little, or no progress, on key green provisions – on the contrary, they have been further weakened<sup>22</sup>. We cannot afford delaying the transition for another six years.

As much as other economic sectors, intensive agricultural practices must be considered responsible for the climate and biodiversity crises we are facing. This means that the CAP – being the main EU farming policy – can no longer be the exception. A policy that allows spending the bulk of public money on harmful industrial activities does not belong under the EGD. Public subsidies should reward farmers that engage in regenerative agricultural practices and should support the shift towards environmentally positive farming models.

**This memo shows how ‘special’ agriculture is compared to other EU laws and policies.** The analysis of key provisions regulating the governance of the CAP, stakeholders’ participation, allocation of CAP funds, the COVID-19 recovery budget and the CAP legislative process itself, will provide a snapshot of the ‘exceptionality’ of the CAP, compared to other EU law fields. These exceptional rules for the CAP have no specific justification; rather, they make the CAP no longer fit for purpose, rendering it incapable of playing its part for a more just and green EU.

## Part I – Getting older but not wiser: how the CAP is leaving the environment behind

Agricultural policies have historically emerged as “exceptional”<sup>23</sup> and “compartmentalised”, under *the idea that agriculture is a sector unlike any other economic sector, and, as such, warrants special government support*<sup>24</sup>. Traditionally, agriculture exceptionalism has been explained by looking at government intervention in the market<sup>25</sup>, at farm labour, and at the groups involved in defining the policy objectives<sup>26</sup>.

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<sup>21</sup> <https://www.clientearth.org/latest/documents/ngos-open-letter-to-the-european-commission-calling-for-a-withdrawal-of-the-post-2020-common-agricultural-policy/>

<sup>22</sup> Meredith S. and Kollenda E. (2021), CAP Triologue Negotiations Briefing. Briefing Note by the Institute for European Environmental Policy, Brussels. Available at: [https://ieep.eu/uploads/articles/attachments/6b0cc89c-8dd0-4efc-a32c-4a23dd9cf078/Briefing%20note%20on%20the%20Common%20Agricultural%20Policy%20trilogue%20negotiations%20\(IEEP%202021\).pdf?v=63783304864](https://ieep.eu/uploads/articles/attachments/6b0cc89c-8dd0-4efc-a32c-4a23dd9cf078/Briefing%20note%20on%20the%20Common%20Agricultural%20Policy%20trilogue%20negotiations%20(IEEP%202021).pdf?v=63783304864)

<sup>23</sup> A very good description of what it means to consider agriculture “exceptional” is provided by Daugbjerg and Feindt: *a set of exceptionalist ideas which legitimize a set of compartmental institutions that provide a dedicated policy space for a policy community to adopt and implement policy instruments and programmes that serve their interests and comply with their ideas*. Please, refer to Carsten Daugbjerg & Peter H. Feindt (2017): Post-exceptionalism in public policy: transforming food and agricultural policy, in *Journal of European Public Policy*, pp. 1565-1584.

<sup>24</sup> Grace Skogstad (1998), Ideas, Paradigms and Institutions: Agricultural Exceptionalism in the European Union and the United States, in *Governance*, Vol. 11, p. 468.

<sup>25</sup> For a better understanding of the relationship between the CAP and competition rules, please, refer to K. J. Cseres (2020), “Acceptable” Cartels at the Crossroads of EU Competition Law and the Common Agricultural Policy: A Legal Inquiry into the Political, Economic, and Social Dimensions of (Strengthening Farmers’) Bargaining Power, in *The Antitrust Bulletin*, Vol. 65(3), pp. 401-422.

<sup>26</sup> It is beyond the scope of this memo to recall the academic debate around this topic. Please, see, among others: Devuyst Y. (1999), The Community-method after Amsterdam, in *Journal of Common Market Studies*, Vol.37, pp. 109–120; Feindt, P.H. (2010), Policy-learning and environmental policy integration in the common agricultural policy, 1973–2003, in *Public Administration*, Vol. 88, pp. 296-314; Halpin, D. (2005), Agricultural interest groups and global challenges: decline and resilience, in D. Halpin (ed.), *Surviving Global Change? Agricultural Interest Groups in Comparative Perspective*, Aldershot: Ashgate, pp. 1–28.

With time, farming policies have broadened their scope, including also environmental and climate interests as well as new stakeholders bearers of such new perspectives. However, we argue that this is not enough. This chapter will briefly show how, despite progress, the incorporation of new interests and actors into the CAP has been insufficient, and has therefore failed to effectively include sustainability concerns into the agricultural domain. For these reasons we conclude that the CAP remains a “compartmentalised” policy.

## A. Incorporating new interests into the CAP

The 2018 CAP Proposal includes biodiversity and climate objectives that are meant to be achieved through the green architecture. The Commission’s CAP Proposal contained several deficiencies<sup>27</sup> that became more evident after the adoption of the EU Green Deal and, in particular, after the publication of the Farm to Fork (F2F Strategy) and Biodiversity Strategies.

The misalignment between the CAP and the EGD<sup>28</sup> is, firstly, reflected by the lack of a direct link between the two. This leaves the agro-environmental targets of the F2F and Biodiversity Strategies – including pesticides reduction and 10% landscape feature at farm level – largely advisory<sup>29</sup>.

Secondly, other key provisions – as adopted by the European Parliament and by the Council – show no appetite for increasing environmental ambition and, actually, even represent a step back from the Commission’s Proposal. For instance:

- the Parliament diluted Article 28, CAP SP Regulation Proposal, on eco-schemes, admitting that eco-schemes – originally thought of as a novel instrument to support farmers willing to engage in environmentally positive agricultural practices – should support the climate and environmental objectives of the CAP while *maintaining and enhancing the economic performance of farmers*<sup>30</sup>. Broadening the scope of eco-schemes to include economic interests will not make this CAP suitable for the challenges ahead. These schemes should support farmers to build a more resilient and climate-proof farming model. Watering them down by including competing economic interests goes against the objective they were conceived for the first place.
- the Council amended Article 106, CAP SP Regulation Proposal, on the approval of the CAP Strategic Plans, establishing that only binding acts could be the legal basis for approving (or rejecting) the Strategic Plans, in a clear attempt to avoid that the EGD could be used as a means to reject plans with unsatisfactory environmental ambition. While the Commission announced that the EGD would act as a roadmap to guide EU actions in the future, the Council considers it a problematic instrument, which stands in the way of other parallel – and, most likely conflicting – interests.
- Both co-legislators weakened key conditionality provisions that should work as baseline requirements for farmers receiving income support. Among others, they have removed, from the basic agronomic conditions, the Farm Sustainability Tool for Nutrients. This instrument is helpful

<sup>27</sup> Please, refer to EU Court of Auditors, Opinion n. 7/2018 (pursuant to Article 322(1)(a) TFEU) concerning Commission proposals for regulations relating to the common agricultural policy for the post-2020 period (COM(2018) 392, 393 and 394 final). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C:2019:041:FULL&from=FR> as well as to ClientEarth’s memo [Securing the environmental ambition of the CAP](#).

<sup>28</sup> Please, see [ClientEarth’s legal analysis on the misalignment between the CAP and the EGD](#) and Civil Society Organisations’ [open letter for full alignment between the reformed Common Agricultural Policy and the European Green Deal](#).

<sup>29</sup> Indeed, it should be recalled that the EGD and the related Farm to Fork and Biodiversity Strategies are “communications”, hence they have no legally binding effect on Member States. They can only be considered as programmatic political documents.

<sup>30</sup> Article 28b, Paragraph 1, EP Amendments: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0287\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0287_EN.pdf)

for farmers to record the nutrient flow<sup>31</sup> and beneficial for Member States and the EU in monitoring progress towards the F2F's objective on nutrient reduction. Nutrient pollution impacts both freshwater and seas in Europe: nitrates and phosphorus in freshwaters show a tendency of leveling off in recent years<sup>32</sup> and eutrophication remains a large-scale problem in the Baltic Sea, the Black Sea, parts of the North-East Atlantic and some coastal areas in the Mediterranean Sea<sup>33</sup>. This choice is regrettable and is not based on the latest scientific data available.

The co-legislators have yet to reach a full agreement on the CAP. We call on them to improve the CAP's green architecture by strengthening the conditionality requirements and narrowing eco-schemes to agricultural practices that are proven to be beneficial for nature and the climate. Finally, the approval process of the CAP Strategic Plans should take into account how and to what extent the plans contribute to the EGD.

## B. Incorporating new actors into the CAP

Public participation is key to develop strategic plans that better manage natural resources and meet the needs of local communities. Local concerns and values can be raised in the process, enhancing democratic legitimacy of environmental decisions as well as facilitating smoother implementation and enforcement afterwards. For these reasons, it is important that a broad range of stakeholders, from farmers to civil society groups, are involved during the preparation of the Strategic Plans.

Article 94 of the CAP SP Regulation Proposal is dedicated to the participation process during the preparation and implementation of the CAP Strategic Plans at national level. Each Member State should organise a "partnership", ensuring that environmental and climate authorities are *involved in the preparation of the climate and environmental aspects of the plan*<sup>34</sup> as well as giving a broad range of stakeholders the opportunity to engage<sup>35</sup>. However, when reading the list of partners envisaged in Article 94, environmental NGOs are not mentioned.

This is at odds with the text of another regulation that the Commission clearly had in mind when drafting the CAP SP Regulation Proposal. The wording adopted in Article 94, CAP SP Regulation Proposal, reflects the Regulation (EU) 1303/2013, the so-called Common Provision Regulation<sup>36</sup> (CPR), which establishes a common set of provisions for several EU funds, including EU Structural and Investment Funds.

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<sup>31</sup> This was foreseen under GAEC 5, CAP SP Regulation Proposal.

<sup>32</sup> EEA, Nutrients in freshwater in Europe (data from 2018). Available at: <https://www.eea.europa.eu/data-and-maps/indicators/nutrients-in-freshwater/nutrients-in-freshwater-assessment-published-10>

<sup>33</sup> EEA, Nutrient enrichment and eutrophication in Europe's seas. Moving towards a healthy marine environment, Report n. 14/2019. Available at: <https://www.eea.europa.eu/publications/nutrient-enrichment-and-eutrophication-in>

<sup>34</sup> This is the text of Article 94, Paragraph 2, CAP SP Regulation Proposal. The Council's General Approach actually deletes Paragraph 2 of Article 94, watering down the participation requirements for environmental and climate authorities.

<sup>35</sup> Article 94, Paragraph 3, CAP SP Regulation Proposal.

<sup>36</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1303>

The CPR currently in force<sup>37</sup> and the proposal for a post-2020 Common Provision Regulation (hereinafter, CPR Proposal)<sup>38</sup> require establishing a partnership to ensure efficient multi-level governance as well as increased participation of relevant stakeholders during the programming, implementation, monitoring and evaluation of the programmes. The principles guiding the functioning of this partnership, under the CPR, are established by the so-called “Code of Conduct”, namely the Commission Delegated Regulation (EU) No 240/2014<sup>39</sup>. The Code of Conduct sets out the framework within which the Member States, in accordance with their institutional and legal framework as well as their national and regional competences, will implement the partnership.

Article 94 CAP SP Regulation Proposal is very similar to the CPR<sup>40</sup> and to the CPR Proposal, except that environmental NGOs are not included as partners in the CAP, as the table below shows:

<b>Article 94, Paragraph 3, CAP SP Regulation Proposal<sup>41</sup></b>	<b>Article 94, Paragraph 3, CAP SP Regulation after April’s Trilogue</b>	<b>Article 5, CPR</b>	<b>Article 6, CPR Proposal<sup>42</sup></b>
<p><i>Each Member State shall organise a partnership with the competent regional and local authorities. The partnership shall include at least the following partners:</i></p> <p>[...]</p> <p><i>(c) relevant bodies representing civil society and where relevant bodies responsible for promoting social inclusion, fundamental</i></p>	<p><i>Each Member State shall organise a partnership with the competent regional and local authorities. The partnership shall include at least the following partners:</i></p> <p>[...]</p> <p><i>(c) relevant bodies representing civil society and where relevant bodies responsible for promoting social inclusion, fundamental</i></p>	<p><i>Each Member State shall [...] organise a partnership with the competent regional and local authorities. The partnership shall also include the following partners:</i></p> <p>[...]</p> <p><i>(c) bodies representing civil society, such as <u>environmental partners, non-governmental organisations</u> and bodies responsible for promoting social inclusion, gender</i></p>	<p><i>Each Member State shall organise a partnership with the competent regional and local authorities. That partnership shall include at least the following partners:</i></p> <p>[...]</p> <p><i>(c) relevant bodies representing civil society, <u>environmental partners</u>, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender</i></p>

<sup>37</sup> Please, refer to Article 5, Regulation (EU) 1303/2013. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&from=en>

<sup>38</sup> Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, COM/2018/375 final - 2018/0196 (COD). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A375%3AFIN> Here we specifically refer to Article 6, CPR Proposal dedicated to the “partnership”.

<sup>39</sup> Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0240>

<sup>40</sup> Article 5, Paragraph 1, Letter (c), of the CPR.

<sup>41</sup> Please, note that the text of Article 94 as it is in the Commission’s CAP SP Regulation Proposal will most likely be amended during interinstitutional negotiations. However, in light of the available 4-column documents, the result of the negotiations held so far does not improve the text of this provision.

<sup>42</sup> Please, note that the text of Article 6 CPR Proposal might actually (positively) change as follow in the post-2020 CPR version that will be adopted: [...] *(c) relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination.*

<i>rights, gender equality and non-discrimination.</i>	<i>rights, gender equality and non-discrimination.</i>	<i>equality and non-discrimination.</i>	<i>equality and non-discrimination.</i>
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A few points should be highlighted:

- **Comparison between Article 94 CAP SP Regulation Proposal and Article 5 CPR:** in the context of the CAP, Article 94 does not contain any explicit reference to environmental partners and to non-governmental organisations, while the other elements of Article 5 CPR are accurately transposed. The reasoning behind this exclusion is unclear and, certainly, it cannot be justified by substantial arguments. It would be difficult to justify that, while “environmental partners” and NGOs should be included in the context of structural funds, they are excluded in the context of the CAP.
- **Comparison between Article 94 CAP SP Regulation Proposal and Article 6 CPR Proposal:** the CPR Proposal has weakened the provision on public participation with regard to non-governmental organisations, while it has confirmed that environmental partners should be included in the partnership. This means that even a weaker CPR Proposal ensures better inclusion of environmental concerns than the CAP. Although the final text of the CPR Proposal has not been adopted yet, during the inter-institutional negotiations concluded in December 2020, the text of Article 6 has been substantially improved, as it finally includes NGOs.
- The **principle of coherence**, as enshrined in Article 13 TEU and Article 7 TFEU, should be applied in this context, ensuring that the partnership principle is consistently regulated across various policy fields. In the case of the CAP SP Regulation Proposal, the EU Code of Conduct guiding the functioning of the partnership will not apply, while it applies in the context of the CPR. According to Article 94, CAP SP Regulation Proposal, each Member State, when defining the rules governing the partnership, is not required to take into account the principles set in the EU Code of Conduct. This leaves Member States with broad room to manoeuvre, which, in the absence of stringent EU requirements, will enable them to organise the partnership at their discretion. Considering the complexity of the topic and the diversity of stakeholders involved, this will most likely create discrepancies among Member States around what stakeholders should be included in the partnership and the degree of their participation. This choice does not appear justifiable in light of the Commission concluding that the Code of Conduct has been instrumental to ensure the correct implementation of the partnership principle in the context of ESI funds<sup>43</sup>.
- At a more general level, when we look at the principle of partnership, we notice that, in the context of the CPR, it is a well-developed concept, described in the CPR Proposal as *a key feature in the implementation of the Funds, building on the multi-level governance approach and ensuring the involvement of civil society and social partners*<sup>44</sup>. The same principle does not apply to the CAP, despite the considerable portion of the EU budget that it represents and the consequent need to involve stakeholders to ensure that the fund is effectively allocated. Why this difference?

The CAP negotiations only partially solved these discrepancies. While the European Parliament, during the Plenary session in October, voted to also include in Article 94 CAP SP Regulation Proposal

<sup>43</sup> European Commission Directorate-General Regional and Urban Policy, *Implementation of the partnership principle and multi-level governance in 2014-2020 ESI Funds*. Available at: [https://ec.europa.eu/regional\\_policy/en/information/publications/studies/2016/implementation-of-the-partnership-principle-and-multi-level-governance-during-the-2014-2020-esi-funds](https://ec.europa.eu/regional_policy/en/information/publications/studies/2016/implementation-of-the-partnership-principle-and-multi-level-governance-during-the-2014-2020-esi-funds)

<sup>44</sup> Recital 11, CPR Proposal.

organisations working on climate, environment and biodiversity<sup>45</sup>, the Council, in its General Approach, does not clarify the role of environmental stakeholders in the partnership. It is worrisome to see that the European Commission and the Council do not consider environmental partners and NGOs as relevant actors when designing and implementing the CAP Strategic Plans, whereas they are included in the preparation and application of programmes drafted under the Cohesion Fund or the European Regional Development Fund.

Inter-institutional negotiations on the CAP reform are ongoing. There is still the opportunity to improve the text of Article 94, either by including NGOs and other environmental partners as relevant stakeholders – using the wording of the CPR as a model – or adopting the amendment voted on by the European Parliament during the Plenary.

**Box 1**

Despite progress, the CAP is still a “compartmentalised” policy that fails to include new competing interests and open the policy debate to new actors.

We have shown how environmental and climate concerns are not adequately embedded in the CAP SP Regulation Proposal and how co-legislators have even weakened several key provisions. Similarly, environmental stakeholders risk to be excluded from the processes of drawing up and implementing the CAP Strategic Plans at national level, unless strong rules at EU level grant them participation rights.

These two examples demonstrate how and to what extent the CAP responds to old sectorial logic that benefit the few and forget the many. Comparison with the rules governing EU funds other than the CAP provides us with a clear indication of how the CAP has remained resistant to change, while other EU law domains have adapted more quickly to emerging societal needs.

If key provisions are not strengthened during the Trilogues, CAP subsidies will continue to support intensive agricultural practices, and in doing so, will jeopardise the achievement of the European Green Deal’s objectives. Therefore, we call on the co-legislators to amend the following provisions:

- Article 28, on **eco-schemes**, should only aim to reward farmers for practices that bring proven environmental and climate benefits;
- **Conditionality**, in Annex III, should establish more stringent agronomic and environmental requirements;
- Article 94, on **participation**, should ensure the participation of environmental groups in the design and implementation of the CAP strategic plans at national level;
- By amending Article 106, **the approval process of the CAP Strategic Plans** should require the plans to contribute to the EGD’s objectives.

## Part II – Sand in the legislative machinery

The sectoral logic that we have described in the previous chapter also colours the legislative procedure on the CAP reform. At EU level, this has been perpetuated since the dawn of the European Economic Community by the Special Committee on Agriculture (**SCA**). The SCA strikingly acts in lieu of the Committee of Permanent Representatives (**Coreper**) when it comes to preparing the meetings of the Agriculture Council. Questions arise on the capacity of the Council to ensure the integration of

<sup>45</sup> The precise wording being: “relevant bodies representing civil society related to all objectives laid down in Article 5 and Article 6(1). EP Amendments 574 and 734cps. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0287\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0287_EN.pdf)

environmental protection requirements in the CAP reform, and to supervise the consistency of the latter with other EU policies.

The oddities of the CAP legislative procedure are also visible in the most recent governance structure of the CAP, the so-called New Delivery Model (**NDM**). The NDM requires Member States to draw up CAP Strategic Plans to tailor the implementation of the legislation to national circumstances. Member States were called on to draft their CAP Strategic Plans long before the closure of negotiations on the CAP SP Regulation. This has not generated opposition among institutional ranks, despite the disruptive effects that it produces on the democratic process.

## A. At EU level: the Special Committee on Agriculture

As underlined in the Commission’s Communication on the European Green Deal, addressing the climate change and environmental emergencies require rethinking all policies, including those for food and agriculture, and *intense coordination to exploit the available synergies across all policy areas*<sup>46</sup>. When scrutinising the Council’s internal functioning, one can reflect on whether the institutions has successfully taken up this challenge.

The Special Committee on Agriculture is the senior Council preparatory body in charge of the CAP. The SCA was created in 1960 as a temporary specialised committee to accelerate the implementation of the CAP<sup>47</sup>, but has, since then, continued to work without a clear legal basis<sup>48</sup>, despite it playing a critical role in shaping this policy over the past sixty years.

The SCA stands out as enjoying an extraordinary status because its work is directly tabled with the Agriculture Ministers in the Council, without going through the Coreper<sup>49</sup>. This appears to directly conflict with the Coreper’s exclusive competence to prepare the Council’s work, as enshrined in the EU Treaties<sup>50</sup> and in the Council Rules of Procedures<sup>51</sup>.

This unique arrangement may have far-reaching policy implications: in the Council, the Coreper is entrusted to *ensure consistency of the European Union’s policies and actions*<sup>52</sup>. The SCA, on the other hand, is under no similar duty.

The common reference to the SCA as the agriculture “Coreper III” is therefore misleading. Whereas the Deputy Permanent Representatives and Permanent Representatives sitting in Coreper I and Coreper II oversee the work of several Council configurations, the SCA is composed of delegations’ officials<sup>53</sup> whose only mandate is to prepare agriculture-related dossiers, and who therefore lack an encompassing overview

<sup>46</sup> Communication of the European Commission, The European Green Deal, 11 December 2019 (COM(2019) 640 final).

<sup>47</sup> 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).

<sup>48</sup> 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.

<sup>49</sup> 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; emphasis added).

<sup>50</sup> Articles 16(7) TEU, and 240(1) TFEU both provide that the Coreper “*shall be responsible for preparing the work of the Council.*”

<sup>51</sup> 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)).

<sup>52</sup> Article 19(1) of the Council Rules of Procedure.

<sup>53</sup> DG LIFE Coordination, SCA Spokespersons (update 15.10.2020).

of other legislative agendas. In fact, the SCA has sometimes been described as an *expert group* less susceptible than the Coreper to adopt a *horizontal perspective*<sup>54</sup>.

This raises concerns as to the ability of the Council to ensure the consistency of the CAP with other EU policies, such as environmental policies. Integrating environmental protection across all policies is a requirement under horizontal principles enshrined in the EU Treaties, such as the principle of environmental integration<sup>55</sup> and the principle of consistency<sup>56</sup>. 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. However, it is questionable whether the Council has the structural ability to overcome its agricultural technical focus and fully integrate nature and climate change considerations into the CAP legislative procedure. Such obsolete sector-specific governance dynamics stand in the way of a green and fair overhaul of the EU's main farming policy. Integrated governance mechanisms are needed if consistency between the CAP Reform and other sector-specific legislative initiatives is to be achieved.

## B. At national level: national Strategic Plans

The CAP SP Regulation Proposal establishes that Member States have to draw up CAP Strategic Plans<sup>57</sup> in which they will lay down the implementation of the Regulation at national level. These country-specific Strategic Plans will need to be assessed by the European Commission, and eventually receive approval by means of an implementing decision<sup>58</sup>.

Following a call from the European Commission, several Member States started drafting their Strategic Plans<sup>59</sup> long before the CAP SP Regulation was adopted. They therefore did so without knowing what would be required of them at the end of the CAP reform legislative process. This situation poses serious concerns regarding the co-legislators' ability to freely negotiate. Since then, significant resources were spent at national level on designing the Strategic Plans, presumably reducing the European Parliament and the Council's room to manoeuvre.

For example, in Germany, the legislative process leading to the national adoption of the German Strategic Plan has already been put in motion. The Ministry of Agriculture and the sixteen federated states already provisionally agreed on some key aspects of the future Strategic Plan<sup>60</sup>. The authorities' intention is to make sure that it is approved by the Bundestag – the federal Parliament's first Chamber – in June. This means the German Strategic Plan would be adopted at national level before the CAP SP Regulation, as it is expected that the European Parliament will only pronounce itself on the enactment of the CAP reform in the last quarter of the year<sup>61</sup>.

Designing the CAP Strategic Plans – and adopting them at national level – before the CAP SP Regulation is voted cannot be deemed compatible with a thorough democratic process.

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<sup>54</sup> Jeffrey Lewis (2000), The methods of community in EU decision-making and administrative rivalry in the Council's infrastructure, in *Journal of European Public Policy*, Vol. 7, p. 276; please, see also the 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**” (emphasis added).

<sup>55</sup> Article 3(3) TEU, Article 11 TFEU and Article 37 of the Charter of fundamental rights of the European Union.

<sup>56</sup> Article 13(1) TEU, and Article 7 TFEU.

<sup>57</sup> Article 1, Paragraph 2, CAP SP Proposal. For more details on the structure of these plans, see Article 95.

<sup>58</sup> The approval of the CAP Strategic Plans is regulated under Article 106 of the CAP SP Regulation.

<sup>59</sup> For more information, see for example Arc2020, Cap Strategic Plans, <https://www.arc2020.eu/tag/cap-strategic-plans/>.

<sup>60</sup> Conference of the Agriculture Ministers of 25-26 March 2021 in Berlin, *Nationale Ausgestaltung der GAP ab 2023* (National design of the CAP from 2023), [file:///lon-fp01/home\\$/smartin/Downloads/Beschluesse Sonder AMK GAP.docx.pdf](file:///lon-fp01/home$/smartin/Downloads/Beschluesse%20Sonder%20AMK%20GAP.docx.pdf).

<sup>61</sup> POLITICO, *Morning Agriculture & Food*, 8 April 2021.

## Box 2

The special status enjoyed by agriculture at EU institutional level is well established. The Special Committee on Agriculture is a good illustration of the obsolete dynamics that prefer a sector-specific approach to the integration and consistency of the CAP with other policies.

We have underlined that **the SCA oddly operates as an exception to the Coreper's exclusive competence to prepare the work of the Council**, and that **the consistency check that normally falls under the Coreper's remit may not be applied to the CAP**. It is however extremely difficult to ascertain whether and to what extent the SCA is effectively an obstacle 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, for example by re-configuring the SCA as a working party reporting to Coreper I<sup>62</sup>; or
- (ii) demonstrating that current processes are capable of delivering true environmental integration and consistency. The latter would require transparency on the discussions within the SCA and Coreper, in line with the European Parliament resolution<sup>63</sup>, and recommendations from the Ombudsman<sup>64</sup> on the need for increased transparency within the Council preparatory bodies.

The early drafting of CAP Strategic Plans, well before the CAP SP Regulation enters into force, further exemplifies how agriculture escapes normal scrutiny. The significant resources dedicated to this task, and in the case of Germany, the advancement of the legislative process, are, in practice, reducing the decision-making power of the co-legislators, therefore threatening the democratic legitimacy of the CAP reform.

**The Commission must guarantee that the national Strategic Plans will be thoroughly assessed and approved against the content of the regulation in its final version. The European Parliament should, at the very least, uphold its position on Article 106 of the CAP SP Proposal, where it makes sure that the approval process concerns the Strategic Plans in their entirety, and where it sets stronger delimitations for the approval of Strategic Plans that are incomplete<sup>65</sup>.**

<sup>62</sup> Coreper I is already in charge of veterinary and phytosanitary issues, as well as all files relating to the Common Fisheries Policy and prepares the work of other Council configurations, among which the Environment Council and the Employment, Social Policy, Health and Consumer Affairs Council.

<sup>63</sup> 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)).

<sup>64</sup> 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).

<sup>65</sup> See the EP Amendments of 23 October 2020, where the European Parliament deletes the second subparagraph of Article 106, Paragraph 5, and modifies the third subparagraph.

## Part III – Green or greenwashed? Why the CAP budget reiterates business as usual

Since its creation in the 1960s, the CAP has unchangeably received the biggest share of the EU budget. At present, that share still accounts for around a third of the envelope. Originally, the establishment of the CAP was most notably justified by the necessity to address food shortages following the second World War. Today, the largest portion of the CAP budget is distributed to farmers in the form of income support. Whereas, according to logic and a long-standing narrative, such revenue should aim at supporting small, family farms, in practice, 80% of CAP money is shared between 20% of beneficiaries<sup>66</sup>, which identify as the largest farms. Why is that? The criterion for calculating income support is the number of hectares a farm covers – the more hectares, the more support. Other reasons include the weakness of the legislation, which does not ensure the full uptake by Member States of instruments designed to support small farms, and the preferential treatment that some countries give big farms – or in other words, the mingling of business with politics<sup>67</sup>.

Subsidies in the form of income support are taken from the European Agricultural Guarantee Fund (**EAGF**), also known as the CAP's first pillar. Another source of CAP funding is the European Agricultural Fund for Rural Development (**EAFRD**), or pillar 2, which subsidises different types of interventions in rural areas. The EU agriculture budget is therefore composed of these two funds, the EAGF and the EAFRD, to which the CAP reserves different rules for their distribution. The handling of the EAGF, with its skewed distribution of income support, is not the only CAP fund that generates criticism, as recent history on the allocation of the recovery budget through the EAFRD shows. In addition to agreeing on an agri-specific regime that escapes the safeguards of the Recovery and Resilience Facility, EU authorities have completely greenwashed the legislation governing agriculture's recovery.

In this chapter, we also highlight to what extent the main EU farming policy contributes – or does not contribute – to the implementation of the EU environmental *acquis*, meaning the body of common rights and obligations mandatory for all Member States, which stems from the Union's environmental legislation. The CAP could be a helpful tool to increase the level of implementation of EU environmental law at national level, if compliance with key environmental provisions was a prerequisite to receiving CAP support. Despite evidence that such compliance mechanism is bringing positive outcomes in other EU law domains – like the European Structural and Investment Funds - it is not foreseen in the CAP. We show that this choice is not logically justifiable, rather, it confirms that the rules governing EU agriculture protect specific interests and policy groups, while leaving the others behind.

### A. Greenwashing the recovery

Recent history on the budget provides another example of the path-dependencies of the EU's agricultural policy. In December 2020, by adopting the CAP Transitional Regulation, the co-legislators extended the applicability of the 2014-2020 CAP until the end of 2022, and proceeded to some minor changes of the legislative ensemble. More significantly, the CAP Transitional Regulation was used as a tool to regulate the allocation of the agriculture's recovery budget.

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<sup>66</sup> See for example: Pe'er, G. et al., *Is the CAP Fit for purpose? An evidence-based fitness-check assessment*, Leipzig, German Centre for Integrative Biodiversity Research (iDiv), November 2017.

<sup>67</sup> Sabev, D. et al., *Where does the EU money go? An analysis of the implementation of CAP funds in Bulgaria, the Czech Republic, Hungary, Slovakia and Romania*, February 2021, [https://www.greens-efa.eu/files/assets/docs/eu\\_agricultural\\_funds\\_web\\_220221.pdf](https://www.greens-efa.eu/files/assets/docs/eu_agricultural_funds_web_220221.pdf).

On 14 December 2020, the Council adopted the Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis<sup>68</sup> (**EURI Regulation**), which provides a €750 billion<sup>69</sup> EU recovery budget (in 2018 prices). This extraordinary sum comes in addition to the EU budget, which was endorsed under the Multiannual Financial Framework (**MFF**) for the period 2021-2027<sup>70</sup>. As far as agriculture is concerned, the EURI Regulation reserves €7.5 billion (2018 prices) of the EU recovery budget to development in rural areas<sup>71</sup>.

During the 2014-2020 CAP period, Regulation (EU) 1305/2013<sup>72</sup> constituted the CAP's second pillar – in other words, it regulated the distribution of the European Agricultural Fund for Rural Development (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 inserted a new Article 58a in Regulation 1305/2013<sup>73</sup>, 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<sup>74</sup> (current prices). The CAP Transitional Regulation also provides the breakdown of the recovery's additional resources for each Member State<sup>74</sup>.

In the CAP Transitional Regulation, the co-legislators make the statement 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*<sup>75</sup>, and that *Member States should therefore not reduce the environmental ambition of their existing rural development programmes*<sup>76</sup>. The new Article 58a of Regulation (EU) 1305/2013 contains a set of rules that supposedly translate these pledges into legal obligations for Member States. Yet, as we demonstrate in our publication *The recovery budget for agriculture: How the EU disguised a missed opportunity*, the conditions established by the EU do not, in many instances, compel them to support the green recovery of agriculture at country level.

As a general rule, a non-regression principle<sup>77</sup> should be applied in each national and regional revised rural development programme. This principle covers measures that, in the eyes of the co-legislators, are all *particularly beneficial for the environment and climate*<sup>78</sup>. However, this assertion is disproved by science<sup>79</sup> to the extent that the measures encompass payments for areas of natural constraints<sup>80</sup>. What is more, the non-regression principle is considerably weakened by the introduction of an exception, which

<sup>68</sup> 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 (**EURI Regulation**).

<sup>69</sup> Article 2(1), first subparagraph, EURI Regulation.

<sup>70</sup> 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.

<sup>71</sup> Article 2, Paragraph 2, (a)(vi), EURI Regulation.

<sup>72</sup> 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.

<sup>73</sup> See Article 7, Paragraph 12, of the CAP Transitional Regulation.

<sup>74</sup> Article 58a, Paragraph 2, and Annex Ia of Regulation (EU) 1305/2013.

<sup>75</sup> See Recital 21, CAP Transitional Regulation.

<sup>76</sup> See Recital 22, CAP Transitional Regulation.

<sup>77</sup> Article 1, Paragraph 2, and Article 58a, Paragraph 3, Regulation (EU) 1305/2013.

<sup>78</sup> See Recital 22, CAP Transitional Regulation

<sup>79</sup> 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.

<sup>80</sup> **Payments for areas of natural constraints consist of compensating farmers whose lands face natural or specific disadvantages (e.g. in mountain areas).**

applies in particular circumstances but which applies to many Member States. The exception allows to derogate from the non-regression principle in order to dedicate a greater share of the recovery money towards socio-economic measures<sup>81</sup>. Under a misleading cover, the EU thereby offered Member States the possibility to lessen their environmental and climate ambitions, compared to 2014-2020, when funding the recovery of rural areas.

Another imperative governing the recovery budget for agriculture consists of reserving, in each rural development programme, 37% of the money for *measures that are particularly beneficial to the environment and climate, as well as to animal welfare and LEADER*<sup>82</sup>. This rule also has important flaws. One major criticism is that, not only does the 37% ring-fencing once again include payments for areas of natural constraints, but it also covers measures for animal welfare and LEADER<sup>83</sup> without linking them to environmental conditions. The law does not further specify which share of the 37% threshold should be reserved for effective environmental and climate initiatives.

This means that neither through the non-regression principle, nor through the 37% threshold, did the EU ensure that a minimum share of the recovery money will be spent on effective environmental and climate measures. It is fair to say that the EU framework governing the distribution of Next Generation EU for agriculture does not sufficiently incentivise Member States to fund the green recovery of the sector. As it stands, the law even allows for lowering climate and environmental ambitions compared to the 2014-2020 spending.

The special treatment that was reserved for the EU's agricultural policy in the context of the COVID-19 recovery agenda is striking. Its €7,5 billion budget falls outside the scope of the Recovery and Resilience Facility Regulation<sup>84</sup> (**RRF Regulation**). Under the RRF Regulation, governments must draw up plans (**RRPs**) describing, among others, what investments and reforms they intend to undertake with the grants and loans streaming from NGEU. In these plans, Member States must demonstrate that all the measures envisaged respect the 'Do No Significant Harm' principle<sup>85</sup>, *i.e.* that none of them "*does significant harm to environmental objectives within the meaning of Article 17 of [the Taxonomy Regulation]*"<sup>86</sup>. Notwithstanding potentially important short-comings in the implementation of this principle, it remains that, from the outset, agriculture was excluded from the application of the 'Do No Significant Harm' principle without any meaningful alternative safeguards being integrated in Regulation (EU) 1305/2013.

## B. To what extent the CAP contributes to the implementation of the environmental law?

The Common Provision Regulation (**CPR**) has been introduced in Part I of this memo, where we discuss the partnership principle in relation with the participation requirements under the CAP Strategic Plans Regulation Proposal. Here, we draw a parallel between the prerequisites that the CPR sets for receiving EU financial support under the European Structural and Investment Funds (**ESI Funds**), and the requirements foreseen to receive financial support under the CAP.

<sup>81</sup> Article 58a, Paragraph 5, Regulation (EU) 1305/2013.

<sup>82</sup> Recital 22, CAP Transitional Regulation, and Article 58a, Paragraph 4, Regulation (EU) 1305/2013.

<sup>83</sup> **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](https://enrd.ec.europa.eu/leader-clld_en).

<sup>84</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, *O.J.E.U.*, 18.2.2021, L 57/17 (**RRF Regulation**).

<sup>85</sup> Article 5, Paragraph 2, RRF Regulation.

<sup>86</sup> Article 18, Paragraph 4, (d), and Article 19, Paragraph 3, second indent, (d), RRF Regulation. On prescription of the latter provision, the European Commission issued a *Technical guidance on the application of "do no significant harm" under the Recovery and Resilience Facility Regulation*, 12 February 2021 (C(2021) 1054 final).

The CPR provides the common rules applicable to several “shared-managed” EU funds, meaning funds that are jointly managed by the Commission and the Member States. The CPR ensures that these funds contribute to achieving of the Union’ objectives: under Article 174 TFEU, the European institutions should promote the *overall harmonious development* of the Union, supporting its least developed regions.

Among the funds regulated by the CPR, there are the European Structural and Investment Funds, which are financial instruments through which the EU invests in local and regional projects. The ESI Funds are: Cohesion Fund, EU Social Fund, EU Regional Development Fund, the EU Maritime and Fisheries Fund and, before the current CAP Proposals, the EU Agricultural Fund for Rural Development.

The Common Provision Regulation, which is applicable since 2014, introduced the so-called “ex-ante conditionalities”, namely a set of prerequisites that Member States need to satisfy before they can receive EU financial support from the ESI Funds<sup>87</sup>. Member States have a duty to report<sup>88</sup> on how they have met the ex-ante conditionalities (hereinafter, ExACs), whereas the Commission assesses their fulfilment<sup>89</sup>. The Commission can even decide to suspend payments<sup>90</sup> when the Member State fails to fulfil the ExACs<sup>91</sup>. The logic behind the ExACs is that the effectiveness of EU public investments depends on the conditions in place at national level to ensure that durable results are achieved. Otherwise, regulatory, administrative and institutional obstacles can jeopardise the objectives of public spending.

In the Commission Staff Working Document *The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds*<sup>92</sup>, the Commission states *To sum up, had it not been for ExAC, reforms changes might not have happened or they might have happened at a much slower pace*. ExACs played a significant role in improving the implementation of EU legislation across the Union, accelerating structural reforms. For instance, the ExAC related to the water sector, has been helpful to address several shortcomings of the first River Basin Management Plans, while the ExAC in the energy sector has boosted the complete transposition of the EU law in the energy efficiency and renewable energy sectors<sup>93</sup>.

The CPR Proposal confirms this system of prerequisites that need to be fulfilled to receive ESI funds. The CPR Proposal replaces the ExACs with the so-called “enabling conditions”. Compared to the ExACs, enabling conditions are monitored and applied throughout the period<sup>94</sup>, so they come with stronger

<sup>87</sup> Ex-ante conditionalities are both general and funds-specific conditions that needed to be satisfied at an early stage of the programming period or, at the latest, by the end of 2016. Please, refer to Article 19, Paragraph 2, CPR, and see Annex XI, CPR, for a complete list of the ex-ante conditionalities.

<sup>88</sup> Please, refer to Article 19(2), CPR: *Member States shall fulfil those ex ante conditionalities not later than 31 December 2016 and report on their fulfilment not later than in the annual implementation report in 2017 in accordance with Article 50(4) or the progress report in 2017 in accordance with point (c) of Article 52(2)*.

<sup>89</sup> Article 19(3), CPR: *The Commission shall assess the consistency and the adequacy of the information provided by the Member State on the applicability of ex ante conditionalities and on the fulfilment of applicable ex ante conditionalities in the framework of its assessment of the programmes and, where appropriate, of the Partnership Agreement*.

<sup>90</sup> Technically, these payments are called “interim payment” in the framework of the EU ESI funds. ESI Funds are under a framework of shared management between the Member States and the Commission. The Member State submits an application to the Commission requesting the payment, the Commission makes the payment to the Member State and then the Member State distributes this money to the projects and beneficiaries who were successful in their applications for funding published by the Managing Authority’s website. The Commission will issue three types of payments in the following order: pre-financing payments, interim payments and payment of final balance. The Member State applies for interim payments and the Commission can issue the payment only if the annual implementation report has been already submitted by the Member State. Please, refer to Article 135, CPR for further details.

<sup>91</sup> According to Article 19(5), CPR, in addition to this, the Commission can suspend payments also when adopting a programme, in case of significant prejudice to the effectiveness and efficiency of specific objectives.

<sup>92</sup> European Commission Staff Working Document (2017), *The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds*, SWD(2017) 127 final. Available at: [https://ec.europa.eu/regional\\_policy/sources/docgener/studies/pdf/value\\_added\\_exac\\_esif\\_en.pdf](https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/value_added_exac_esif_en.pdf)

<sup>93</sup> SWD(2017) 127 final, p. 11.

<sup>94</sup> Enabling conditions are also: (i) less than the ExACs; (ii) more focussed on the goals of the specific fund; (iii) divided into horizontal conditions and fund-specific conditions.

conditions of application<sup>95</sup>. One of the shortcomings of the ExACs<sup>96</sup> was that the Commission's assessment of their fulfilment was a one-off exercise, not envisaging mid-term or ex-post evaluations to ensure the durability of ExACs achievements throughout the implementation of the programmes<sup>97</sup>. This translated into the risk that after an ex-ante conditionality was complied with, a Member State could roll back on it later in the programming period. The enabling conditions overcome this issue, foreseeing that their continued fulfilment has to be monitored regularly<sup>98</sup>.

The Court of Auditors in its report on the role of ExACs in cohesion policy,<sup>99</sup> noted that the ExACs have provided a consistent framework for assessing the Member States' readiness to implement ESI Funds objectives (the Cohesion policy in particular), but it remained unclear to what extent this has effectively led to changes on the ground<sup>100</sup>. When assessing the enabling conditions of the CPR Proposal, the opinion of the Court of Auditors has been mostly positive: *we [...] welcome the Commission's aim to strengthen governance and other conditions designed to create a favourable environment for cohesion spending, such as links to the European Semester process and the replacement of ex ante conditionalities with enabling conditions. In this context, we provide a number of considerations for the Commission and the legislators to help them realise the full potential of the proposed changes.*

Despite the positive role both the ExACs and to the enabling conditions provide, the post-2020 CAP does not foresee a similar instrument. While we acknowledge that the CAP financing tools are not limited to shared management (therefore the ExACs system cannot be exactly replicated), the logic behind both the ExACs and the enabling conditions could have been successfully translated into the new CAP framework.

For instance, under the CPR Proposal there is a fund-specific<sup>101</sup> policy objective titled *A greener, low carbon Europe by promoting clean and fair energy transition, green and blue investment, the circular economy, climate adaptation and risk prevention and management*. To achieve this objective, the CPR Proposal establishes the enabling condition *Governance of the energy sector*, whose fulfilment requires a set of actions that boost the implementation of Regulation (EU) 2018/1999 on the governance of the Energy Union and Climate Plans<sup>102</sup>. This enabling condition requires Member States to have National Climate and Energy Plans correctly in place, ensuring that EU funds contribute to the achievement of defined milestones and criteria from National Climate and Energy Plans.

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<sup>95</sup> European Court of Auditors, Opinion n. 6/2018 (pursuant to Articles 287(4) and 322(1)(a) TFEU) concerning the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument, 2019/C 17/01, Paragraph 36. Available at: [https://www.eca.europa.eu/Lists/ECADocuments/OP18\\_06/OP18\\_06\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/OP18_06/OP18_06_EN.pdf)

<sup>96</sup> As identified by the Commission SWD(2017) 127 final.

<sup>97</sup> Commission SWD(2017) 127 final, p. 18.

<sup>98</sup> CPR Proposal, Whereas 17 and Article 11(6).

<sup>99</sup> European Court of Auditors, *Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments*, Special Report No 15/2017. Available at: [https://www.eca.europa.eu/Lists/ECADocuments/SR17\\_15/SR\\_PARTNERSHIP\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR17_15/SR_PARTNERSHIP_EN.pdf)

<sup>100</sup> ExAC, p. 20.

<sup>101</sup> Exclusively for regional development and cohesion fund.

<sup>102</sup> Regulation (EU) 1999 of 2018 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2018:328:TOC&uri=uriserv:OJ.L\\_.2018.328.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2018:328:TOC&uri=uriserv:OJ.L_.2018.328.01.0001.01.ENG) In particular, the enabling condition foresees that National Energy and Climate Plans are adopted and include: (a) *All elements required by the template in Annex I of the Regulation on Governance of the Energy Union;* (b) *An indicative outline of envisaged financing resources and mechanisms for measures promoting low-carbon energy.*

In comparison, the CAP SP Regulation Proposal chooses a much weaker option which translates into two mechanisms, known as the “enhanced conditionality” (Annex III, CAP SP Regulation Proposal) and Annex XI.

- Enhanced conditionality links farming income support to “Good Agricultural and Environmental Conditions” (GAECs) and “Statutory Management Requirements” (SMRs). GAECs are specific farming practices and standards that CAP recipients must follow, while SMRs connect the CAP to wider EU legislation that governs the environment, public health, animal health, plant health and animal welfare. **Unlike enabling conditions, the CAP enhanced conditionality applies exclusively after the recipient receives the funds.**
- Annex XI contains a list of environmental and climate legislation whose objectives the CAP Strategic Plans should contribute to<sup>103</sup>. **The mechanism envisaged under Annex XI does not have the same binding value as the “enabling conditions” as payments cannot be suspended, even if a Strategic Plan does not comply with Annex XI. Moreover, compliance with Annex XI is by no means a prerequisite to obtain EU financial support. Therefore, the ability of Annex XI to boost compliance with the EU environmental law raises several doubts.**

The CAP and Cohesion Fund represent the two largest portfolios in the EU budget<sup>104</sup>. However, the conditions to receive CAP funding are less strict compared to those applying to the Cohesion Fund or, more generally, the ESI funds. The reasons for such a choice are unclear. Many have highlighted the unsuccessful performance of the CAP towards achieving climate and biodiversity objectives<sup>105</sup>. One way to revert the situation could have been to include key environmental and climate legislation as enabling conditions to receive CAP funding. This would have added an extra safeguard for the proper implementation of the EU environmental law. However, the Commission and the co-legislators, have not taken this into consideration and, under the current CAP Strategic Plan Regulation Proposal, subsidies can be allocated without prior assessment of the proper implementation of EU law at Member State level.

### Box 3

Agriculture represents one third of the EU budget, yet, compared to other EU funds, less strict safeguards regulate its allocation. Thanks to a comparison with the Common Provision Regulation and the Common Provision Regulation Proposal – covering EU Investment and Structural funds – , we have shown how specific mechanisms foreseen in both these regulations ensure that these funds boost compliance with the EU environmental law. Such a system is absent in the CAP, where no condition

<sup>103</sup> Pursuant to Article 97, Paragraph 2, Letter (b), CAP SP Regulation Proposal, the CAP national strategic plans should explain how “the environment and climate architecture of the CAP Strategic Plan is meant to contribute to already established long-term national targets set out in or deriving from the legislative instruments referred to in Annex XI”.

<sup>104</sup> De Groen W.P., Nunez J. et al. (2021), The Largest 50 Beneficiaries in each EU Member State of CAP and Cohesion Funds, Study requested by The European Parliament’s CONT Committee. Available at: [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/CONT/DV/2021/01-25/Study\\_Largest50Beneficiaries\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/CONT/DV/2021/01-25/Study_Largest50Beneficiaries_EN.pdf)

<sup>105</sup> Among others, European Court of Auditors, Biodiversity on farmland: CAP contribution has not halted the decline, Special Report N. 13/2020. Available at: <https://s3.eu-central-1.amazonaws.com/euobs-media/0b10da05b962cb1a51b53f976cf2c788.pdf>; Recanatì F, Maughan C., et al. (2019), Assessing the role of CAP for more sustainable and healthier food systems in Europe: A literature review, in *Science of the Total Environment*, Vol. 653, pp. 908-919. Available at: <https://www.sciencedirect.com/science/article/pii/S0048969718342773>; Scown MW, Nicholas KA (2020), European agricultural policy requires a stronger performance framework to achieve the Sustainable Development Goals, in *Global Sustainability*, Vol. 3, pp. 1–11. Available at: <https://www.cambridge.org/core/journals/global-sustainability/article/european-agricultural-policy-requires-a-stronger-performance-framework-to-achieve-the-sustainable-development-goals/6C8CD537A972E6A40C592226E223C20A>

needs to be satisfied prior to distributing CAP funds. We argue that this is another example of the special treatment granted to agriculture in the realm of EU law and policies, since no substantial justification can underpin this choice.

Likewise, the recovery budget reserved for agriculture is governed by specific rules under the current CAP, which means it falls outside the scope of the Recovery and Resilience Facility. Instead of securing a green recovery for the sector, the EU has done no more than window dressing and left it to Member States to decide what level of ambition they will pursue, if any, when revising their rural development programmes. Before Member States can start allocating the recovery money to elected initiatives, the revised rural development programmes still need to be approved<sup>106</sup> by the Commission. However, if the Commission would be willing to strengthen the environmental and climate ambitions of the programmes, it will not find the adequate support to do so in Regulation (EU) 1305/2013.

**This illustrates the importance of designing a CAP Strategic Plans Regulation that imposes on Member States strong environmental requirements, and that establishes a legally-binding link with the European Green Deal. Failing to do so would drastically limit the steering power of the Commission when assessing and approving the CAP Strategic Plans.**

## Conclusions

Agriculture has historically been considered as a “special” sector due to its role of “food provider”. The need to ensure food security – after the second World War and against the background of ongoing population growth – has translated into the industrialisation of agricultural practices. These long-term trends, such as the intensification of high-input agricultural crop and livestock production, cause biodiversity loss, contamination of soils and water bodies, as well as contribute to the climate crisis<sup>107</sup>.

This memo shows how and to what extent the CAP represents an exception in the realm of EU law and policies. Impermeable to interests and to policy communities that differ from big farmers’ groups, the CAP is highly resistant to change and unable to embed the ambition of the EU Green Deal. The inter-institutional negotiations on the new CAP reform demonstrate no progress in terms of climate and environmental ambition, going even a step backward compared to the already unsatisfactory Commission’s CAP SP Regulation Proposal. Moreover, unlike other EU laws and without justification, environmental stakeholders are left out from the partnership agreement that should guide the design and implementation of the CAP strategic plans at national level.

We have stressed how the sectorial interests translate not only in the content of the CAP reform, but also in its legislative process. At EU level, the long-standing Special Committee on Agriculture prepares the work of the agriculture ministers. This group of technical experts lacks the horizontal vision of the Coreper, which is supposed to be the overarching preparatory body of the Council. Clarity on how the Council ensures the consistency of the CAP with other EU policies and laws, integrating environmental protection requirements, is still lacking. The CAP decision-making procedure is also abnormally influenced by pressures coming from national level, as the design of the CAP Strategic Plans move forward – sometimes at an advanced stage of the domestic political process.

Finally, the allocation of the EU budget for agriculture lacks effective environmental and climate safeguards. That is certainly the case for the recovery budget dedicated to rural development following

<sup>106</sup> Article 11, Regulation (EU) 1305/2013.

<sup>107</sup> Inga C. Melchior and Jens Newig (2021), Governing Transitions towards Sustainable Agriculture—Taking Stock of an Emerging Field of Research, in *Sustainability*, Vol. 13, p. 528. Available at: <https://www.mdpi.com/2071-1050/13/2/528>

the outbreak of the COVID-19 crisis, despite attempts by the EU institutions to conceal alarmingstaggering loopholes. The comparison between the CAP and the Common Provision Regulation and its future overhaul show, once again, the degree to which EU law grants the agricultural sector special treatment. No requirement exists, under the CAP, to ensure that EU funding is distributed only if the EU environmental law is properly transposed and implemented at national level. Compliance with EU environmental law should be a prerequisite to receive CAP funding, to ensure that taxpayers money contribute to a healthier environment.

**It is paramount that the Common Agricultural Policy plays its part in meeting the European Green Deal. To operate a shift away from a solely agri-sectoral specific approach, we call on the co-legislators to make sure that the CAP SP Regulation:**

- **only validates eco-schemes that aim to reward farmers for practices that bring proven environmental and climate benefits (Article 28, CAP SP Proposal);**
- **contains enhanced conditionality that establishes more stringent agronomic and environmental requirements (Annex III);**
- **secures the participation of environmental groups to the design and implementation of the CAP Strategic Plans at national level (Article 94);**
- **enables the European Commission to only approve the Stratgic Plans if they demonstrate a sufficient contribution to the European Green Deal's objectives. The approval process should cover the entire content of the Strategic Plans. The Commission should be empowered to reject, or require Strategic Plans to be changed if they fail to meet a high level of environmental and climate ambition (Article 106).**

**The CAP needs to be streghened at EU level if it is to deliver on the European Green Deal. The EU institutions should not rely on the good will of Member States to support the ecological transition of the farming sector, as it did in the context of the recovery budget. Clear and legally-binding provisions are key to enable the Commission to steer the allocation of taxpayers' money towards incentivising and rewarding farmers for their efforts in tackling the climate and biodiversity crises.**

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