ClientEarth

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Why negotiations on the CAP and the EU budget are jeopardising the green transition of EU agriculture

Executive summary

Around 1/3 of the European budget is dedicated to agriculture. Introduced in 1962, the Common Agricultural Policy (CAP) lays down the rules for the distribution of subsidies to farmers. Over the past years, however, the majority of the CAP budget went to only 20% of beneficiaries, and sustained practices that damage the environment and exacerbate climate change[1]. Ongoing negotiations on the CAP, the Multiannual Financial Framework and Next Generation EU are jeopardising the capacity of agriculture to meet the objectives of the European Green Deal. For this reason, ClientEarth has joined civil society organisations in calling on the European Commission to withdraw its CAP proposals, unless the co-legislators agree, during inter-institutional negotiations, on key amendments able to strengthen the environmental ambition of the future CAP.

After recalling major developments on the CAP budget between 2018 and October 2020[2], this briefing presents discussions on key provisions of the CAP and the recovery fund, as well as recommendations to the co-legislators.

[1] See for example: EEB, *The Future of the CAP: An urgent need for a truly sustainable agriculture, land and food policy*, September 2017 (available here).
[2] **This paper will be followed by an assessment of the deal that was obtained on 10 November 2020 on the MFF and Next Generation EU once it is voted into law.**

Setting the background

In June 2018, the European Commission issued its proposals for a CAP post-2020, composed of three regulations, namely the CAP Strategic Plan Regulation[3], the CAP Horizontal Regulation[4] and the Common Market Organisation Regulation[5]. This briefing focuses exclusively on the CAP Strategic Plan Regulation Proposal (**CAP SP Proposal**), which sets rules on CAP subsidies and requires Member States to draw up national CAP strategic plans. This CAP SP Proposal imposes on Member States to raise their overall environmental and climate ambition[6], compared to the previous seven-year CAP period (2014-2020), and proposes various instruments to do so, some of them constituting a novelty. The Commission further recognised *the inextricable links between healthy people, healthy societies and a healthy planet*[7] when, in May 2020, it released its Farm to Fork and Biodiversity Strategies as part of the European Green Deal (**EGD**), also stating 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*.

Since then, both the Council and the European Parliament have drafted their own modifications to the text of the CAP SP Proposal. The current position of the Council is reflected in its General Approach[8], adopted on 21 October 2020, whereas the European Parliament voted its amendments to the CAP SP Proposal[9] two days later, during its Plenary session. Together with the European Commission, the co-legislators have now entered in inter-institutional negotiations ('**trilogues**') on the CAP reform, which will most likely continue until spring 2021. If a political agreement is reached, the European Parliament and Council will then vote the adoption of the three CAP Regulations. These are expected to enter into force in 2023.

To finance the future CAP SP Regulation, the Commission proposed in 2018 to allocate € 254.247 billion[10] to the European Agricultural Guarantee Fund (**EAGF**, or pillar 1) and €70.037 billion to the European Agriculture Fund for Rural Development (**EAFRD**, also referred to as pillar 2)[11]. In May 2020, in reaction to the COVID-19 pandemic, the Commission proposed to increase these funds by around €4 billion and

[3] 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).
[4] 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).
[5] 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).
[6] See Article 92, CAP SP Regulation Proposal.
[7] European Commission, Farm to Fork Strategy, 20 May 2020 (COM(2020) 381 final), p. 1.
[8] Note from the GSC to Delegations, 'CAP SP Regulation' General Approach, 21 October 2020 (12148/20) (**the Council General Approach**).
[9] Amendments adopted by the European Parliament on 23 October 2020 on the 'CAP SP Proposal' (P9_TA-PROV(2020)0287) (**EP Amendments)**.
[10] **Figures used in this document refer to constant 2018 prices**.
[11] **The funds form the basis for the financing of the Common Agricultural Policy. The EAGF, also known as pillar 1, constitutes the main budgetary source of the CAP. Until now, this fund has been used to grant farmers 'direct payments', which are attributed on an hectare basis. The second pillar, the EAFRD, supports different types of agricultural interventions in rural areas.**

€5 billion[12], respectively. It also introduced an Article 84a in its CAP SP Proposal[13] through which it proposed to allocate an extra €15 billion to the EAFRD under Next Generation EU (**NGEU**), the Union's recovery package.

On 21 July 2020, the European Council (**EUCO**) released its conclusions[14] on the Multiannual Financial Framework (**MFF**), in which it increases the CAP budget to €258.594 billion for the EAGF and €77.850 billion for the EAFRD but halves the share of NGEU for rural development, which is now set at €7.5 billion. Amounting to a total of €343.944 billion, the proposed figures remain nonetheless inferior to that of 2014-2020 (€382.855 billion). As discussed below, the EUCO also pronounced itself on several provisions of the CAP SP Proposal[15].

Negotiations on the CAP SP Regulation, MFF and NGEU are still ongoing and likely to influence each other. Recent developments have shown that **the European Council, the Council of Agriculture ministers and the European Parliament are jeopardising the green transition of EU agriculture by weakening key provisions of the CAP and failing to plan an environmentally sound recovery from the COVID-19 pandemic**.

The weakening of CAP provisions

In its proposal for the next CAP, the Commission drafted several provisions that should raise the environmental and climate standards of European agriculture. In Article 15 of the proposal, it introduced the obligation for Member States to **'cap' direct payments** at €100,000, and to reduce payments starting at €60,000 following a system of tranches (so-called 'degressivity'). This would help to avoid the concentration of subsidies in the largest farms, as was the case under the 2014-2020 CAP period[16]. However, in its General Approach of 21 October 2020, which embraces the EUCO conclusions[17], the Agrifish Council proposes the capping of direct payment to become voluntary. Agriculture ministers also want to render the degressivity of direct payments optional for Member States[18]. By contrast, the position of the European Parliament is to maintain the mandatory capping and degressivity of direct payments, as appears in its amendments to the CAP SP Proposal of 23 October[19].

Also on the basis of the EUCO conclusions[20], the Agrifish Council seeks to increase the degree of **flexibility between pillars** that was proposed by the Commission at a baseline of 15% in both directions (see Article 90, CAP SP Proposal), to the harmful effect of transfering up to 30% of the EAFRD to direct payments[21], therefore increasing the funds to be distributed on an hectare basis. The proposition of the

[12] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The EU budget powering the recovery plan for Europe, 27 May 2020 (COM(2020) 442 final).
[13] In May 2020, the Commission amended its original CAP SP Regulation Proposal of 2018, especially introducing this Article 84a (see **Amended proposal for a CAP SP Regulation,** 29.5.2020 (COM(2020) 459 final)).
[14] Note from the GSC to Delegations, Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, 21 July 2020 (EUCO 10/20) (**21 July 2020 European Council conclusions**).
[15] **The 21 July 2020 European Council conclusions do not bring negotiations on the MFF, NGEU and the CAP to an end. Indeed, pursuant to Article 312, Paragraph 2 of the TFEU, the Council (of ministers) is responsible for adopting the MFF Regulation, subject to receiving Parliamentary consent. Since the ordinary legislative procedure governs the CAP, in accordance with Article 42 and Article 43, Paragraph 2 of the TFEU, it must be adopted by the European Parliament and the Council jointly. As for NGEU, it relates to various legislative proposals subject to different adoption procedures**.
[16] See for example: Euractiv, *Why the new CAP will be worse for the climate and farmers*, 2 April 2019 (available here).
[17] See §90 of the 21 July 2020 European Council conclusions.
[18] See Article 15 as drafted in the Annex of the Council General Approach.
[19] The EP Amendments do not modify Article 15, Paragraph 1.
[20] See §93 of the 21 July 2020 European Council conclusions.
[21] See Article 90 as drafted in the Annex of the Council General Approach.

European Parliament to transfer only up to 5% of pillar 2 to pillar 1 *provided that the corresponding increase is allocated to operations covered by Article 28*[22] – *i.e.* eco-schemes – constitutes a welcomed alternative.

That being said, discussions on **eco-schemes** are taking a worrying turn. Eco-schemes were proposed by the Commission as a new instrument under pillar 1 with the view to reward farmers who make voluntary, additional efforts for the environment and climate. In its communication of May 2020 on the *Analysis of links between CAP Reform and Green Deal*, the European Commission highlighted that it *did not propose mandatory minimum spending on eco-schemes […] However, the idea of ring-fencing minimum funds for eco-schemes […] could indeed prove to be a solid guarantee of better results with regard to the environment and climate […]*[23]. Indeed, for the mechanism to be meaningful, it must be accompanied by qualitative conditions of elegibility and the mandatory ring-fencing of a significant share of the EAGF, *i.e.* of at least 30%[24]. Whereas in October the Agrifish Council supported the obligation for Member States to ring-fence part of their EAGF share for eco-schemes, it set the bar at 20%[25] only. On the other hand, the European Parliament's amendments of 23 October deprive eco-schemes from their substance. In its Article 28b, the Parliament introduces a criteria of *economic performance* for agricultural practices to be eligible, and lists a series of eligible practices that simply require the status quo to be maintained[26]. It means the proposition of the European Parliament to ring-fence 30%[27] of the EAGF for eco-schemes risks financing agricultural practices that are not truly ecological.

Another significant provision is Article 87 of the CAP SP Proposal, on the basis of which the Commission plans to use a "simple and common methodology" for tracking climate expenditure under the CAP (the **'Rio markers' approach**). However, assessments by the European Court of Auditors[28] and IEEP[29] have demonstrated the ill-funded character and incapacity of this methodology to reflect the actual levels of CAP spending that will contribute to climate change mitigation. This has been acknowledged by the European Parliament in its proposition for Article 87, according to which the Commission should *develop a science-based and internationally recognised common methodology*[30]. But the Council of ministers has been sticking to the Rio Markers approach[31], expecting that 40% of the CAP expenditure will help to fight climate change, which poses serious concerns for the realisation of the European Green Deal.

Inadequate safeguards for financing the recovery

The Commission's pledge that the share of NGEU for agriculture is meant *to support farmers and rural areas in making the structural changes necessary to implement the European Green Deal, and in particular to support the achievement of the ambitious targets in the new biodiversity and Farm to Fork strategies*[32] did not translate in its legislative Proposal for a Council Regulation establishing a European Union Recovery Instrument[33]. Worse still, the integration of Article 84a in the CAP SP Proposal dismisses the

[22] See Article 90, Paragraph 1, point *b)* in EP Amendment 1136.
[23] Commission SWD, Analysis of links between CAP Reform and Green Deal, 20 May 2020 (SWD(2020) 93 final), p. 18.
[24] IEEP, *CAP 2021-27: Using the eco-scheme to maximise environmental and climate benefits*, ieep.eu, January 2019.
[25] See Article 86, 6a and 6b as drafted in the Annex of the Council General Approach
[26] See Article 28b in EP Amendment 1131.
[27] See Article 86, 4c in EP Amendment 1134.
[28] European Court of Auditors, Opinion No 7/2018, *OJEU*, C41, Vol. 62, 1 February 2019 – see in particular §38.
[29] IEEP, *Keeping track of climate delivery in the CAP?*, ieep.eu, February 2020.
[30] See Article 87, Paragraph 2a in EP Amendment 1135.
[31] See §87 of 21 July 2020 European Council conclusions, and Article 87 in the Council General Approach.
[32] European Commission, EU budget powering the recovery plan for Europe, 27 May 2020 (COM(2020) 442 final), p. 7.
[33] See in particular Article 2 and Article 3 of European Commission, Proposal for a Council Regulatiion establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, 28.5.2020 (COM(2020) 441 final/2).

application, for the recovery money, of Article 86 on the obligation to dedicate at least 30% of pillar 2 to interventions addressing the new specific environmental- and climate-related objectives of the CAP[34].

However, in October 2019 the European Commission had released its Proposal for a CAP Transitional Regulation, which builds on the CAP 2014-2020 to extend the EAFRD and EAGF support pending the adoption of the CAP SP Proposal, which incurred lenghty delays. As negotiations on the CAP Transitional Regulation Proposal are still ongoing, the Council and European Parliament are now willing to make the €7.5 billion of the recovery available under the interim period[35]. By doing so, the co-legislators wish to allocate the NGEU sums for agriculture as per 2021 (30% of the funds) and 2022 (the remaining 70%). If this manoeuver is voted into law, there may be no obligation for Member States to support the agriculture sector's green recovery, as the funds would only be subject to the non-delivering[36] conditionality of the current CAP (2014-2020)[37].

Key elements to finance the green transition of agriculture

By weakening the provisions of the CAP SP Proposal subsidising environmentally sound agricultural practices, and by their inaction to support the green recovery of European agriculture, the co-legislators are allowing the use of public money for intensive and polluting economic activities.

The European institutions must now live up to their commitments towards the EGD[38] and ensure that public money, including the recovery funds, enhance the Union's capacity to transition to an agriculture from which people and nature can thrive.

This means **submitting the €7.5 billion of NGEU to green conditions** (whether in the CAP SP Regulation or the Transitional Regulation), in particular, ensuring that it does not support environmentally harmful practices and that it incentivises and rewards farmers who work towards the achievement of the EGD objectives.

In reaction to the positions recently taken by the Council and European Parliament on the CAP reform, **ClientEarth, together with other civil society organisations, is calling on the European Commission to take decisive action to safeguard the EGD by withdrawing its proposals**, unless the co-legislators drastically improve the texts during trilogues. If the European Parliament and the Council are serious about making the CAP SP Proposal the policy transformation tool needed to achieve the EGD, we expect them to:.

- ring-fence at least 50% of the EAGF for qualitative eco-schemes by amending Article 28;

[34] Article 84a, Paragraph 4, Amended CAP SP Regulation Proposal read in conjonction with Article 86, Paragraph 2, CAP SP Regulation Proposal.
[35] The co-legislators want to integrate a new Article 58a in Regulation (EU) No 1305/2013 of 17 December 2013 on support for rural development (EAFRD) through modifying Article 8 of the CAP Transitional Regulation (European Commission, Proposal laying down certain transitional provisions for support by the EAFRD and by the EAGF in the year 2021 (…), 31 October 2019 (COM(2019) 581 final)). See ComAGRI, Working Document on Rapporteur's proposal on the NextGenerationEU and Recovery Instrument programme for Rural Development, 23 September 2020 (available here); and the Note from the GSC to Delegations, 9 September 2020 (10607/20).
[36] See for example: EEB, BirdLife, Greenpeace and WWF, *Last Chance CAP*, 20 September 2018 (available here).
[37] **Note that, in their provisional agreement of 10 November 2020, the European institutions have decided that at least 37% of NGEU for rural development should support organic farmers, environment and climate-related actions and animal welfare.** See for example: Euractiv, *EU farming recovery fund to be rolled out from 2021*, 11 November 2020 (available here). **We are following the process that will translate this political agreement into law**.
[38] See in particular, European Parliament resolution of 15 January 2020 on the European Green Deal (available here), and Council conclusions on the Farm to Fork Strategy, 19 October 2020 (12099/20).

- uphold the Commission's proposal for mandatory capping and degressivity of direct payments (Article 15);

- if any, condition transfers from the EAFRD to the EAGF upon feeding eco-schemes, by replacing the reference to 'direct payments' set out in Article 90, Paragraph 1, point *b*;

- in Article 86 (on minimum and maximum financial allocations), ring-fence 50% of the EAFRD for the climate and environmental specific objectives set out in points *d*, *e* and *f* of Article 6, Paragraph 1[39], and totally *exclude* payments for Areas with Natural Constraints[40] (ANC) from this share as they cannot be considered as contributing to the enhancement of the environment and the climate[41];

- block the fake climate expenditure tracking enshrined in Article 87;

- strengthen the wording of the CAP specific objectives – set out in Article 6 – by inserting a direct and legally binding link with the targets of the Farm to Fork and Biodiversity Strategies; and

- amend Article 92 – on national greater overall contributions to the achievement of the specific environmental- and climate-related objectives of Article 6 – to require Member States to justify how their Strategic Plans will support the achievement of the targets set out in the Farm to Fork and Biodiversity Strategies.

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[39] In the European Commission's Proposal for a CAP SP Regulation, Article 6, Paragraph 1 reads that: "The achievement of the [CAP's] general objectives [set out in Article 5] shall be pursued through the following specific objectives: (…) (d) contribute to climate change mitigation and adaptation, as well as sustainable energy; (e) foster sustainable development and efficient management of natural resources such as water, soil and air; (f) contribute to the protection of biodiversity, enhance ecosystem services and preserve habitats and landscapes".
[40] ANC payments provide a compensation to farmers who face natural of specific disadvantages (e.g. in mountain areas).
[41] In Article 86, Paragraph 2, subparagraph 2 of its Amendment 1134, the European Parliament suggests to count up to 40% of payments for ANC in the 35% share of the EAFRD that it proposes to ring-fence for environmental- and climate-related objectives. As for Article 86 as drafted in the Council General Approach, it allows for taking into acount 100% of the ANC payments.

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