



New elements in the post-2022 CAP to foster the provision of environmental goods and services and for climate action

Prepared by Tania Runge and Norbert Röder

On 6 December 2021 the legal texts framing the Common Agricultural Policy (CAP) for the period 2023-2027 have been published. The package consists of the following three pieces of legislation, these are the Strategic Plan Regulation¹, the so-called horizontal regulation², covering financing, management and monitoring of the CAP and the Common Market Organisation Regulation³. Now is the time to have a look into the outcomes as Member States are currently preparing their national strategic plans to be submitted to the Commission no later than 1st January 2022. This text puts the focus on the **Strategic Plans Regulation**, which is **shaping the new green architecture of the CAP for the programming period 2023-2027**. In those strategic plans the Member States are setting national targets, specifying conditions for interventions and allocating financial resources. A consultation phase is mandatory in the drafting process and provides the opportunity for input from experts and interested persons on the planned interventions. In some countries this is carried out as a public consultation (e.g. Ireland), in others relevant administrations and social partners are specifically addressed (e.g. Germany).

The provision of public goods through agricultural activity eased with the new CAP

The green architecture of the new CAP finds its starting point in the objectives themselves. For the first time the general as well as the specific objectives addressing environment and climate are displayed in a prominent position of the body of the core regulation of the CAP itself (articles 5 and 6(1) of the Strategic Plans Regulation). **Three out of nine specific targets are environment- and climate-specific objectives**, targeting the natural resources (e), biodiversity (f) and climate mitigation as well as adaptation (d). This greater emphasis on environment becomes visible in the mandate given to the Member States when defining “agricultural activity” where it says that it “*shall be determined in a way that it allows to contribute to the provision of private and public goods (···)*” (article 4 (2)). This means that the **maintenance of the agricultural area with a focus on the provision of public goods is as important as the production of agricultural products**. The preamble (30) states “*The CAP should play a role both in reducing negative impacts on the environment and climate, including biodiversity, and also in increasing the provision of environmental public goods*“. The broader definition of agricultural activity together with the explicit mentioning of areas available for crop production but lying fallow to be included in arable land could become a door-opener for Member States to no longer oblige farmers to undertake maintenance measures in order to ensure eligibility for direct payments on an annual basis. This may in future limit the yearly mulching, known to negatively affect wild flora and fauna. The reinforced attention given to environment is particularly pronounced in the preamble (7) where it says that “*In view of the high environmental ambition of the CAP, the eligible area should not be reduced as a result of the implementation of certain rules of conditionality and of the schemes for the climate, the environment and animal welfare (eco-schemes) under direct payments. (···) Furthermore, agricultural areas should*

¹ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) (access: <https://eur-lex.europa.eu/eli/reg/2021/2115>)

² Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy (access: <https://eur-lex.europa.eu/eli/reg/2021/2116>)

³ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 establishing a common organisation of the markets in agricultural products (access: <https://eur-lex.europa.eu/eli/reg/2021/2117>)

remain eligible for direct payments when subject to certain Union requirements relating to the environmental protection, (···)." How far this ambition will be mirrored in the interventions to be designed by the Member States in their strategic plans is not yet clear. Also, when it comes to the definition of permanent grassland and permanent pasture more freedom is given to Member States to decide what area to be included and thus becoming eligible for financial support under the pillar I. Currently parts of very extensive grassland even though historically used for grazing, in particular if combined with stony areas, shrubs or too many trees, are excluded from funding. This could lead to the situation that such areas are threatened by abandonment as their use is no longer economically beneficial. Unintended consequence of land use abandonment may be increased risk of erosion or fires, but also the loss of valuable habitats.

Member States have proven and new instruments for environmental and climate protection in their hands

In order to foster the provision of environmental goods and services Member States have three core instruments in the new CAP: the conditionality (article 12-13), the annual eco-schemes (article 31) as well as the pluriannual agri-environment-climate commitments (article 70) that will be addressed here. Support for investments (article 73), cooperation (article 77), farm advisory services (article 13), knowledge exchange and dissemination of information (article 728) and the European Innovation Partnership (EIP) for agricultural productivity and sustainability (article 127) have likewise the potential to benefit environment and climate.

While the **conditionality replaces cross-compliance** in the current programming period and includes current greening obligations, the annual eco-schemes are totally new. Respecting the rules under conditionality is mandatory for farmers who want to receive the CAP support while participation in the two other instruments is voluntary for them. The conditionality rules and standards⁴ set the baseline for the Basic Income Support for Sustainability (BISS) as main share of the direct payments. Since the initial CAP proposal published in 2018 by the Commission, several changes up to the very last moment took place. This concerns in particular the GAEC standard 8 that has the objective of "*maintenance of non-productive features and area to improve on-farm biodiversity*". The minimum share of arable land at farm level devoted to non-productive areas and features, including land lying fallow, was finally fixed at 4%. But Member States were given the option to derogate from that rule and to reduce the minimum share of non-productive areas and features to 3% of arable land at farm-level under GAEC 8 under the following conditions: In the first case farmers may complement the 3% by additional 4% of non-productive land under eco-scheme, arising in total to 7% of non-productive areas and features. In the second case, farmers may complement by growing catch crops or nitrogen fixing crops, both cultivated without the use of plant protection products. In total 4% of arable land have to be cultivated by these two crops, applying a weighting factor of 0,3 for catch crops. Under this option farmers may grow 4 ha of legumes instead of 1 ha laying fallow or 13 ha of catch crops instead of 1 ha fallow with combinations of both being possible too. Those 3 options are likely to complicate programming of eco-schemes and AEC commitments as well as their control. Furthermore, it may lead to a more heterogenic situation across farms, with less productive land being more likely to be left fallow. Furthermore, there is the newly introduced GAEC 2 on protection of wetland and peatland, targeting carbon-rich soils. Here Member States have the possibility to delay implementation by 2025. GAEC 7 addresses crop rotation on arable land replacing the current greening measure "crop diversity" has been weakened during negotiations by including "*appropriately managed secondary crops*" in the obligatory change of crop at least once a year at land parcel level. Member State can specify what qualifies as secondary crop: a second crop

⁴ The agreed rules on conditionality consist of 9 GAEC standards (GAEC: Good Agricultural and Environmental Condition), with 3 for climate change, 1 for water, 3 for soil, 2 for biodiversity, and 11 Statutory Management Requirements (SMR) derived from EU legislations, 2 each for water, biodiversity and plant protection as well as 2 for food safety and 3 for animal welfare.

to be harvested in the same year as the main crop, an undersown crop as well as non-harvested catch crops. While these options give more flexibility to farmers as foreseen in the initial proposal, it will make programming of eco-schemes and agri-environment-climate commitments even more challenging as both will have to build on the conditionality requirements. In particular when it comes to voluntary measures for biodiversity protection, a good articulation of conditionality, eco-schemes and agri-environment-climate commitments will be essential.

When it comes to the **newly introduced eco-schemes in Pillar I**, the uncertainty about the design, the level of ambition and their uptake is still quite huge. Member States have to establish a list of suitable agricultural practices for the climate, environment and animal welfare under article 31 (3) and farmers will be able to make their choice out of it. As the uptake of eco-schemes is voluntary for farmers their uptake will depend on the design and requirements of the respective measures as well as the payment level. Farmers will have the opportunity to opt in or out from these voluntary schemes on an annual basis. In the legal text it is foreseen that besides individual active farmers, also groups of active farmers are eligible to receive support for eco-schemes. But it is not yet clear how groups of farmers may claim together for eco-scheme payments. This is particularly true in those cases where farmers will apply for eco-schemes together with the individual BISS application. Even though it is not especially mentioned, Member States can include result-based elements in the eco-schemes.

The choice of measures as eco-schemes has to be based on an assessment of needs (article 108) and Member States *“shall use a rating or scoring system or any other appropriate methodology to ensure the effectiveness and efficiency of the eco-schemes to deliver on the targets set”* (article 31 (8)). Member States shall only provide payments for eco-schemes covering commitments that go beyond EU and national law. But on exceptional basis when national law imposes new requirements which go beyond the corresponding/related minimum requirements laid down in Union law support for compliance during a 24-month transition period may be granted.

Member States can use two approaches to calculate payment level for eco-schemes. For participation either payments additional to the basic income support can be granted or to compensate for all or part of the additional costs incurred and income foregone taking into account the targets set. For the second option the same calculation rules than for agri-environment-climate payments under pillar II apply and transaction costs may be included. The reference to targets has been newly introduced. It clarifies that Member States have certain flexibility in the calculation as it allows for a better recognition of the environmental performance of the measure while ensuring WTO green box compliance. At least 25% of the Pillar I budget must be allocated to eco-schemes. A limited reduction on this figure is only possible if Member States spend large amounts on environment and climate-related measures in Pillar II.

The rules for the **agri-environment-climate (AEC) commitments** remain fairly the same as under the current CAP, including the calculation of payments on a hectare basis as general rule. AEC schemes have to go beyond conditionality as well as minimum requirements for the use of fertiliser and plant protection products under national and EU law. Member States have a great freedom when it comes to the content design, but it has to be demonstrated that they are beneficial for achieving at least one of the environment-climate specific targets. While participation in eco-schemes is limited to those qualifying as farmers, also other beneficiaries – like today – are eligible for AEC commitments. Member States shall ensure that agri-environment-climate commitments are consistent with eco-schemes and only if the AEC commitments are different from eco-scheme measures payments can be provided to farmers. AEC schemes can either be designed as stand-alone measures or as top-ups to eco-schemes. The simple maintenance of agricultural area does not qualify as AEC commitment. A revision clause to be included for AEC commitments is owed to the fact that during the programming period additional mandatory standards, requirements or obligations may arise (article 70 (7)). In those cases – as well as for

commitments going beyond 2027 – the beneficiaries may step out before they end without reimbursement obligation.

Already in the current CAP Member States could offer **collective schemes** as well as **result-based payments**, but this time their **benefits are highlighted in an own paragraph** (article 70(5)): *Member States may promote and support collective schemes and result-based payments schemes to encourage farmers or other beneficiaries to deliver a significant enhancement of the quality of the environment at a larger scale or in a measurable way.*” Still, there is no obligation to programme them as alternatives to or in combination with the nowadays usual action-/ practice-based schemes. While collective schemes going beyond single farm level are particularly suitable to address environmental improvements at a larger scale, result-based payments deliver measurable outcomes per definition. Moreover, combinations of both are conceivable.

What is new, is the obligation for Member States to offer appropriate training to the beneficiaries of AEC commitments in addition to providing access to the relevant knowledge and information required to implement AEC commitments (article 70 (9)). This could be seen as a clear intention to reinforce farm advice for the provision of environmental goods and services.

Even though the programming period is only from 2023-2027, thus covering 5 years, the commitments shall in principle be undertaken for a period of five to seven years. But Member States have the possibility to determine a shorter period of at least one year for commitments targeting animal welfare, the conservation, sustainable use and development of genetic resources, for conversion to organic farming as well as for new commitments directly following the commitment performed in the initial period or in other duly justified cases. Amongst the “other duly justified cases” may fall commitments on leased land when the land tenure contract comes to an end or when highly mobile wild animal species are addressed. But the case of longer commitment periods beyond 7 years is possible too when this seems necessary to achieve the intended environmental or animal welfare benefits. By analogy to the 24-month transition period under the eco-schemes, also support for AEC commitments may be granted in the situation where national law imposes new requirements which go beyond the corresponding/related minimum requirements laid down in Union law for up to 2 years from when the requirement becomes mandatory.

Conversion to and maintenance of organic farming was addressed in a specific article under the current CAP. In the new CAP organic farming may be promoted as eco-scheme as well as agri-environment-climate commitment, but also as specific intervention in certain sectors like fruit and vegetables, wine, olives and hops.

In the new CAP **at least 35% of EU funding for Pillar II must be allocated to environmental and climate measures**. While payments for areas with natural constraints (article 71) can be accounted for 50% in this 35% share, this substantially raises the bar compared to the current period. Under the current CAP 30% of the funding had to be foreseen for environment and climate measures with the payments for areas with natural constraints being fully accounted. Consequently the voluntary AECM are likely to play a crucial role in the new CAP when it comes to the provision of environmental and climate services.