

Securing the environmental ambition of the CAP

ClientEarth's priorities for a greener CAP

ClientEarth's work on the Common Agricultural Policy (CAP) focuses mainly on the Proposal from the European Commission for a CAP Strategic Plan Regulation¹ (hereinafter, CAP SP Regulation). While negotiations on the CAP SP Regulation are still ongoing, this document describes ClientEarth's priorities to support a better integration of principles of environmental protection within the CAP.

Four groups of priorities can be identified, depending on the issue area to which they refer:

1. EU "Strategic Plan" for agriculture
2. Transparency and Participation
3. Farm Advisory Services (FAS)
4. Conditionality

Each issue area embeds multiple provisions, as the following paragraphs will show.

¹ Proposal for a Regulation of the European Parliament 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, Brussels, 1.6.2018 COM(2018) 392 final. Available at https://eur-lex.europa.eu/resource.html?uri=cellar:aa85fa9a-65a0-11e8-ab9c-01aa75ed71a1.0003.02/DOC_1&format=PDF (last visited 17 October 2019).

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1. An EU strategic plan for agriculture is necessary to prevent renationalisation

Without a plan from the European Commission outlining a clear vision of how EU agriculture should look like, the risk is that the principle of subsidiarity will translate into renationalisation and that national strategic plans will reflect poor environmental ambition. Therefore, next to national strategic plans, a “strategic plan”² from the Commission on agriculture is necessary to establish quantifiable and time bound targets. The suggested amendments to the CAP SP Regulation have the potential to create a level playing field among Member States while ensuring a high level of environmental protection.

The following are the recommended options for amendments³:

1. Introducing a new provision/paragraph that establishes the obligation, for the Commission, to draft an EU Strategic Plan for Agriculture, which should contain, *inter alia*, clear targets on pesticides reduction, nutrient management, soil degradation, farmland biodiversity; or
2. Introducing one new paragraph, under Article 6 of the CAP SP Regulation, listing quantifiable and time bound targets⁴;
3. Improve the set of indicators under Annex I as well as those listed in Annex XII, so that the Commission’s reporting obligation under Article 128 CAP SP Regulation becomes a meaningful exercise.

In all the proposed cases, the new provision/paragraph should make it mandatory for the Commission to establish SMART targets, thus measurable actions within a specific timeline. The set of indicators should also be improved accordingly.

2. Serious environmental ambition requires increasing participation for all interested stakeholders and clearer rules on transparency

In order to allow local conditions and needs to be taken into account, it is necessary to grant effective participation rights to all interested stakeholders and to improve their access to information. In line with this⁵:

² Please, consider that here the name “strategic plan” is not used in the technical sense of a plan anticipated by, *inter alia*, SWOT analysis and assessment of need, rather it indicates an EU-wide vision for agriculture that includes science-based targets, as the following lines of this paper will explain.

³ While this memo focuses mainly on the ongoing negotiations within the European Parliament, it should be underlined that, without withdrawing its CAP Proposal, recent EU Case Law of the European Court of Justice (Case C-409/13, para 74) clarifies that the European Commission has the right to amend its own proposal during the legislative review of it, until the final decision has been adopted by the Council.

⁴ Please, refer to point 1 for an example of the areas that the targets should cover.

⁵ Please, consider that, when mentioning amendments voted in ENVI or AGRI Committee within the European Parliament 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

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1. ClientEarth supports the inclusion of ***Letter (ka) in Article 110***, as suggested by the ENVI Committee, as essential for increasing the level of transparency.
2. Amendments to Article 94 of the CAP SP Regulations are pivotal for ensuring adequate participation, in compliance with the Aarhus Convention. In particular:
 - We support the amendment by the ENVI Committee to include Paragraph 1a: ***"Member States shall make CAP Strategic Plans and related annexes public, both at the draft stage and after their approval."***
 - We propose to amend Article 94, Paragraph 3 as follows: "Each Member State shall organise a partnership with the competent regional and local authorities" **and all interested parties**. "The partnership shall include at least the following partners: (a) relevant public authorities; (b) economic, ***environmental*** (addition suggested by ENVI) and social partners; (c) Relevant bodies representing civil society", **among which non-governmental organisations promoting environmental protection**, "and where relevant bodies responsible for promoting social inclusion, fundamental rights, gender equality and non-discrimination".
 "Member States shall involve those partners in the preparation of the CAP Strategic Plans", **ensuring that the public is given early and effective opportunities to participate in the preparation of the draft and of the amendments of the CAP Strategic Plan, in compliance with the Aarhus Convention**⁶.
3. Article 106, Paragraph 5, Subparagraph 2 should be deleted, so that also Annexes to CAP national strategic plans fall under the mandatory verification and approval by the Commission. Indeed, under Article 95, Paragraph 2, each CAP strategic plan should contain Annexes from I to V. Pursuant to Article 103, CAP SP Regulation, among the mentioned Annexes to the national strategic plans, Annex III is supposed to outline "the outcomes of the consultation of the partners and a brief description of how the consultation was carried out".
 It is, therefore, essential, for the Commission, to be able to verify not only how the public consultation has been carried out from a procedural perspective, but also to what extent the issues raised by the stakeholders are reflected in the draft strategic plan – rather than not reflected and on the basis of what kind of arguments .
4. In case Article 94 is modified to include environmental NGOs as interested stakeholders to be consulted, Article 111, Paragraph 2, must be changed accordingly.

(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 (COM(2018)0392 – C8-0248/2018 – 2018/0216(COD)), A8-0200/2019 of 23.5.2019. Furthermore, please note that amendments by ENVI Committee appear in bold and italics, while ClientEarth's suggestions are bold and underlined.

⁶ The proposed text reflects Article 10 of the Governance Regulation, i.e. Regulation (EU) 2018/1999 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 Regulation (EU) 1999 of 2018. OJEU L 328/1. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1999&from=EN> (last visited 21 October 2019).

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3. Supporting the transition towards sustainable agriculture means ensuring farmers are provided with independent advice, from advisors trained on agroecological practices

Article 13 of the CAP Strategic Plan Regulation is dedicated to the Farm Advisory Services (FAS). To facilitate the uptake by farmers of sustainable agriculture practices, it is necessary to provide them with independent advice on how they could benefit from ecosystem services and biodiversity. Therefore, it is in ClientEarth's view that the following amendments should be adopted:

1. Article 13, Paragraph 3, should state that advisors must be “independent of corporate interests”. The wording chosen by the Commission - “impartial” and “no conflict of interests” – is not enough to ensure a sharp separation between sales and advisory activities.
2. Article 13, Paragraph 4, should include another letter mentioning agroecology – or regenerative agricultural practices - as one of the areas covered by FAS
3. A system of registration/certification of FAS at EU level should be established. This could be done in two ways:
 - Including in Article 13, an additional paragraph that introduces a registration/certification mechanism at EU level mandatory for all FAS; or
 - Including the FAS in Article 95, Paragraph 1 - on the content of CAP strategic plans. This would cause the power of the Commission to verify how the advisory services have been organised at Member States level and, thus, included in the domestic strategy for agriculture. This would ensure better coherence and a level playing field among Member States.

4. Ensure a higher environmental baseline extending the rules on conditionality

Article 11 and Article 12 of the CAP SP Regulation define conditionality, by distinguishing between statutory management requirements (SMRs) and good agricultural and environmental conditions (GAECs), both listed in Annex III to the CAP SP Regulation.

As SMRs represent a reinforcement of compliance, it is, firstly, necessary that any amendment to the Regulations/Directives included in Annex III as SMRs be captured. This is especially true in light of the REFIT, currently ongoing, of the Nitrates Directives, the Water Framework Directive (WFD) and the Plant Protection Products Regulation. Therefore, Article 11, establishing that SMRs should be applied “in the version that is applicable”, should be clarified and strengthened accordingly.

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Secondly, a comprehensive system of conditionality should also include - within the SMRs listed in Annex III - the following provisions⁷:

1. Water Framework Directive (WFD)⁸

- Article 9 on recovery of costs of water services, including environmental and recovery costs, and application of the polluter pays principle. Paragraph 1 is particularly important in the agriculture domain considering, *inter alia*, the case of nitrate pollution, therefore it is relevant to refer expressively to the polluter pays principle and to the recovery costs;
- Article 11(3)(b): measures deemed appropriate for the purposes of Article 9;
- Article 11(3)(c): measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the [environmental] objectives specified in Article 4 of the WFD. This could apply, for instance, to intensive irrigation models that generate high negative impacts on the status of rivers, aquifers and wetlands. Currently, this is even more relevant due to the intensification of droughts that will likely increase as a result of climate change.

It is essential that the CAP does not favour unsustainable use of water in its agricultural models.

2. Habitats Directive⁹

- Article 10, which requires Member States to endeavour to encourage management of features in the landscape, which are of major importance to flora and fauna and which are essential to migration and dispersal (relevant for e.g. hedgerows and field boundaries);
- Article 12, which requires a strict system of protection for certain animal species;
- Article 13, which requires a strict system of protection for certain plant species.

3. Birds Directive¹⁰

- Article 5, which requires a system of strict protection for birds;
- Article 8, which prohibits large scale non-selective methods of capturing or killing birds (i.e. not hanging up a mist net on farm that catches all the birds).

⁷ Please, note that ClientEarth's support the amendments approved in ENVI Committee regarding SMR 12 and SMR 13, covering, respectively, the Plant Protection Products Regulation and the Sustainable Use of Pesticides Directive.

⁸ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy. OJEC L 327/1. Available at https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF (last visited 21 October 2019).

⁹ Council Directive 92 /43 /EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. OJEC L 206/7. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992L0043&from=EN> (last visited 21 October 2019).

¹⁰ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds. OJEU L 20/7. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0147&from=EN> (last visited 21 October 2019).

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4. Plant Protection Product Regulation¹¹
 - Article 55 as whole, not only first and second sentence;
 - Article 67, on record keeping obligations.
5. Sustainable Use of Pesticides Directive¹²
 - Article 14, on Integrated Pest Management.

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¹¹ Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1107&from=EN> (last visited 7 February 2020).

¹² Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0128&from=EN> (last visited 7 February 2020).



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