

# CAP conflict: Is the European Commission breaching its legal duties?

The [CAP reform](#), which accounts for about 35% of EU budget, was put on the legislative agenda by the former Commission in June 2018 and is still in its proposal phase. This means the current Commission under Ursula von der Leyen has inherited a proposal that now conflicts with its political mandate and its own policies – specifically the climate, environmental and biodiversity goals enshrined in the [European Green Deal](#), as detailed in the [Farm to Fork \(F2F\)](#) and [Biodiversity strategies](#).

Addressing a [request from the European Parliament](#) to analyse “*the current CAP reform proposal [...] in order to fully align it to the goals set in the European Green Deal*”, the Commission has explicitly acknowledged in a [Staff Working Document](#) some misalignments and need for changes for the future CAP to deliver on the environmental ambitions of the EGD.

ClientEarth lawyers suggest that the European Commission cannot leave things there, up to the goodwill of the Union’s co-legislators or Member States. In order to deliver the environmental ambitions of the EGD in the field of agriculture, the Commission must use the powers conferred upon it by the Treaties to align its CAP reform legal proposal with its EGD political communications.

This is the key message delivered in a confidential letter sent to the Vice-President of the European Commission, Mr. Timmermans, on 3 June 2020, by ClientEarth’ CEO James Thornton and Head of Agriculture, Marc Pittie, alleging that a failure to do so might be deemed to amount to a breach of EU law principles. The Commission has not responded to date.

## **Legal issues with the Commission’s conduct?**

The lawyers have reminded the Commission that the EU Treaties specifically entrust the Commission with the [power of legislative initiative](#) in order to safeguard [the general interest of the Union](#) and the [consistency of the EU’s actions](#)<sup>1</sup>. This means that, according to the lawyers, amending or withdrawing the current CAP proposal to align it with the EGD announcements is not only an option but an obligation for the Commission.

According to ClientEarth lawyers, this obligation derives from a combination of EU law principles which impose behavioural duties on the Commission to act in a certain way, including during the pre-legislative phase. The letter refers to the principles of consistency, good administration and environmental integration and quotes the corresponding provisions in the EU Treaties (see further details below).

It also observes that, outside the context of the current CAP Reform, the Commission otherwise seems to expressly agree on the implications and reach of these principles, and attempts to comply with them. For example, the letter refers to the Commission’s recent [withdrawal of its Combined Transport Directive](#) proposal, notably on the ground that it was “insufficient” in light of the EGD.

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<sup>1</sup> See point 2.2.2, p. 9 of Contribution from Mr Barnier and Mr Vitorino, members of the Convention: “The Community method”, CONV 231/02 CONTRIB 80.

By contrast, in the field of agriculture, the lawyers say the Commission does not seem to want to acknowledge the above principles. To date, EGD ambitions [yet remain to be translated into the CAP strategic plans legislative proposal](#), which is probably the most important piece of legislation in the field of agriculture.

Instead, under the [Farm to Fork](#) and [Biodiversity](#) Strategies, the Commission proposes to achieve EU targets, including on organic farming, high diversity landscape, and use of antibiotics, on the sole basis of non-binding [“recommendations”](#) to Member States, with no mechanism to hold them to account if they fail to uphold these targets.

The European Commission also seems to want to rely on the Council and European Parliament to remedy the admitted inconsistencies between the CAP reform proposal and the EGD. For example, in a [Staff Working Document](#), the Commission implicitly calls to “close the identified gaps” on the need for “*minimum ring-fenced spending for eco-schemes and additional indications concerning agricultural practices that could be supported by eco-schemes*”, or “*include a specific legal provision*” on animal welfare and antibiotics.

In fact, there are more deficiencies in the CAP reform proposal that have long been identified by environmental NGOs and scientists as standing in the way of the achievement of the European Green Deal ambition, and not been expressly referenced by the European Commission.

### **Details of the Commission’s duties under the EU treaties**

The European Commission’s role and corresponding powers and obligations are defined in the Treaties that dictate how the EU must function.

These include the [Treaty on the European Union \(TEU\)](#) and the [Treaty on the Functioning of the European Union \(TFEU\)](#). The [Charter of Fundamental Rights of the European Union \(Charter\)](#) [has the same legal value as the Treaties](#).

These agreements detail certain principles which must be adhered to, to ensure good governance: in their letter, the lawyers have referred to a combination of principles:

- the principle of consistency (TEU, Article 13(1); TFEU, Article 7);
- the principle of good administration (Charter, Article 41; TEU, Article 6(1)); and
- the principle of environmental integration, which requires a high level of environmental protection to be integrated in the definition of the Union’s policies to achieve sustainable development (TFEU, Article 11; Charter, Article 37).