Questions from Copa-Cogeca membership regarding the CAP

DISCLAIMER: The purpose of the replies provided in this document is to clarify and explain the compromise text of the Regulation on support for CAP Strategic Plans as agreed by co-legislators at the end of June 2021. Please note that the ordinary legislative procedure is not finished and the Regulation not adopted yet. The replies are provided for information purposes only and are not legally binding. They do not bind the European Commission in relation to the future approval procedure of the CAP Strategic Plans of Member States. They were prepared by Commission services and do not commit the European Commission. Once the Regulation is adopted, it is in the event of a dispute involving Union law, under the Treaty on the Functioning of the European Union, ultimately for the Court of Justice of the European Union to provide a definitive interpretation of the applicable Union law.

1) How it will be ensured that the Commission does not apply the 'VOLUNTARILY / MANDATORY' principle when approving National Strategic Plans? Whether the procedures for Strategic Plan approval are clearly described and publicly available? EURACTIVE 2021-07-01: The EU’s Agriculture Commissioner has said he does not foresee a situation where a member state’s Common Agricultural Policy national plan would be rejected for failing to align with the Green Deal, banking instead on the POWER of PERSUASION...(question from the chat – Copa-Cogeca WP meeting on CAP, 7/07)

COM: The procedure for assessment and approval of CAP strategic plans is laid down in the CAP Strategic Plan Regulation that the European Parliament and the Council have negotiated. The future plans must be strategic and that is why Member States are preparing these plans on the basis of a SWOT analysis and an assessment of what must be done in each Member State in light of the 9 specific CAP objectives. These analyses will form the basis of the intervention logic and set of interventions planned by Member States. The Commission assessment will be based on the elements laid down in the Article on the approval of the Plan (Article 106 (2) in the political agreement).

The Commission has entered into a structured dialogue with each Member State. It is clear that discussions on the future CAP Strategic Plans is taking place between Member States and the Commission in the framework of the approval procedure. They will have to achieve sustainable food systems. The Commission services believe that the evidence based approach will allow achieving ambitious strategic plans. Therefore the Commission has the right to formulated observations to the Strategic Plan submitted and ask MS to satisfactorily reply to those observations.

2) GAEC 4 question, do the 3 m buffer strips along water courses have a requirement to be fenced from animals? and is use of pesticide allowed in cases where control of noxious weeds and invasive species is required? ...(question from the chat – Copa-Cogeca WP meeting on CAP, 7/07)

COM: No, the GAEC does not provide for a requirement to fence off buffer strips from animals. MS can decide how to manage the buffer strips. However, as the aim of GAEC 4 is to protect water courses from pollution, MS can envisage to set rules to prevent that animals walk on buffer strips. Pesticide use is not allowed, other weed control techniques (e.g. mechanical) can be used.
3) New Delivery Model – how will the COM ensure that MS are given the right indications in order not to be blamed afterwards?

COM: In the New Delivery Model, MS have to comply with the rules on governance systems (including basic Union rules and governance bodies) as laid down in the Union legislation. In addition, MS should deliver on performance and should respect their CAP Strategic Plans, as approved by the Commission. The basic rules to be respected are provided for in the basic acts and will be complemented with provisions in the secondary legislation, where the Commission is empowered to do so. The MS will design and develop their own interventions in the CAP Strategic Plans, as well as the detailed rules on eligibilities for beneficiaries. The national Certification Bodies and where necessary, the Commission, will check the compliance with the governance systems and the compliance of CAP plans at MS level with the Union rules. In addition, the COM will assess the MS’ delivery on performance, based on a list of indicators and targets for results that it aims to achieve with the strategic plan. This carefully balanced system should avoid the ‘blame game’ referred to in the question.

Moreover, the Commission and the Member States have discussed in the legislative procedure the need for clarity of rules to avoid ‘surprises’ when auditing. In response, clarifying and adding provisions in the legislation where this was necessary has contributed to fine-tuning the new delivery model. Still, the co-legislators have clearly chosen to follow the new approach to the CAP, which demonstrates they are also convinced that setting increasingly detailed rules for agricultural practices is not the best way forward for the agricultural policy. The choice to cut the cycle of increasingly detailed European rules has been made for the benefit of farmers.

4) What percentage of the text on art. 70 Risk Management is completed? Is it still possible to work on the text? Member states are in great need of integrated and flexible risk management tools. It is necessary to build and operate Funds / Nationals Integrated Risk Management System in Agriculture, which includes mandatory insurance, complementary, mutual fund and any other risk management tools available on the market. The instruments must be designed in line with MS SWOT analysis and assessment of needs, allowing public, private or public-private systems in the national legislation. Therefore, any type of risk management tools, including insurance schemes and mutual funds should be allowed and be flexible enough to fit the reality in the ground. These can be complemented by for example, Mutual Funds and/or facultative Insurance scheme and /or Income Stabilization Tools. The financial contributions to premiums for insurance schemes or other risk management tool, could also cover the administrative costs of setting them up and implementation costs and the maximum rate should be increased to 85%.

Do you consider that such a system would be possible to implement taking into account the form of the regulation agreed in the trilogue?

COM: Following the outcome of supertrilogue of 24-25 June 2021 and the political agreement of 28 June 2021, the text on Article 70 “Risk Management” is finalised and is in principle not subject to changes during the remaining phases of the co-decision procedure.

According to Article 70, Member States may grant support for different types of risk management tools, in particular financial contributions to premiums for insurance schemes, financial contributions to mutual funds (including the administrative cost of setting up) and income stabilization tools, in line with their assessment of needs. The wording deliberately leaves the possibility for Member States to create other types of risk management tools, which are not pre-
defined at this stage, allowing Member States to engage in an innovative process to find new solutions specific to their territorial and sectoral situation.

The rules and eligibility of costs for the setting-up and management of the mutual funds are applied, where relevant, to such other eligible risk management tools. This means that there is a big flexibility to design any type of risk management tools according to MS SWOT analyses and needs and specified in their CAP strategic Plans. Furthermore, the Strategic Plan Regulation foresees and encourages Member States to create support schemes in their CAP strategic plans in complement to private and national schemes.

The applicable maximum support rate as set out in the agreed Strategic Plan Regulation is 70% of the eligible costs, and applies to the total eligible costs including the administrative setting up of risk management tools. It should be noted that this level of public support for risk management tools resulted from an increase in the relevant eligibility rules of rural development Regulation (EU) No 1305/2013, effected by the so-called ‘omnibus’ regulation (Regulation (EU) 2017/2393). That change of eligibility conditions was done with the objective to make the support more attractive for beneficiaries.

5) How realistic is the calendar for the approval of the secondary legislation by the end of 2021?

COM has already kicked-off internal work on future delegated/implementing acts; work will run in parallel with the finalisation and adoption of the future basic acts. COM will do its utmost to ensure that the necessary delegated/implementing acts are adopted by the end of 2021. Then it is the responsibility of the co-legislators to exert their scrutiny right on Delegated Acts taking into account the sense of urgency.

6) In this regard how many Delegated and Implementing acts are we looking at?

COM: At this stage, the number of delegated/implementing acts is not decided.

7) What is the governance model/structure for the approval by the Commission of the National Strategic Plans?

COM: The approval process will follow the relevant legal basis, in particular Article 106 of the CAP Strategic Plan Regulation. Such approval is based on well-established procedures in the Commission for the shared management policies and funds, which include the following stages: CAP Plan submission by the Member States, Commission internal assessment involving all relevant services followed by an inter-service consultation on the observation letter(s) to be sent to the Member State with comments and remarks. Upon resubmission or revision of the Plan, the Commission runs another internal inter-service consultation before formal approval and adoption by the College of the decisions approving each Strategic Plan.

8) In this regard, will the “stop-the-clock mechanism” be applied in case of additional info or corrections by Member States?

COM: The stop-the-clock mechanism provided for in Article 108 of the political agreement applies. This means that the maximum deadline for approval (6 months) is interrupted when the Commission sends out observations, until the moment such observations are satisfactorily addressed by the Member State and a revised version of the plan resubmitted.

9) How does the “rebate system” work (related to the ring-fencing in PIi and PI)? Can you provide an example? Are ANC payments finally counted in for the rebate system?
COM: The “rebate system” is an option at the level of planning. It allows to compensate a certain share of the budget that must be ring-fenced for eco-schemes in the case where the level of planning for certain interventions under EAFRD goes beyond 30% of the total EAFRD. This ensures that “green funds remain green”. The concerned interventions are those planned under Article 65, 67 and 68, insofar as these interventions address the specific environmental and climate-related objectives set out in points (d), (e) and (f) of Article 6(1) and animal welfare as referred to in point (i) of that Article. Funds planned for ANC cannot be used to activate the rebate. The total rebate for the eco-scheme ring-fencing may not be higher than the amount by which the 30% is exceeded. Note also that, as a rule, the rebate is limited up to 50% of the basic eco-scheme ring-fencing per year.

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<tr>
<th>Eco-scheme ring-fencing</th>
<th>Planning of ES ring-fencing</th>
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<tbody>
<tr>
<td></td>
<td>2023</td>
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<tr>
<td>Annex VII (Direct payments)</td>
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<tr>
<td>ES ring-fencing before rebate (25%)</td>
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</tr>
<tr>
<td>Rebate applied (MS choice, max 30 in total)</td>
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<tr>
<td>ES ring-fencing planned</td>
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Calculation of maximum rebate

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<tr>
<td>EAFRD allocation for the period</td>
<td>400</td>
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<tr>
<td>EAFRD 30%</td>
<td>120</td>
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<tr>
<td>Planning for Article 65,67 and 68*</td>
<td>150</td>
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<tr>
<td>Maximum rebate for the period**</td>
<td>30</td>
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* Only interventions which may activate the rebate

** Without prejudice to limits of maximum 50% and 75% rebate of eco-scheme ring-fencing per year

Finally, ANC payments are not counted for the rebate. As explained above, only amounts planned under Articles 65 (AECM), 67 (Natura 2000 and WFD payments) and 68 (investments), which address the specific environmental and climate-related objectives set out in points (d), (e) and (f) of Article 6(1) and animal welfare as referred to in point (i) of that Article, are taken into account.

10) How should the 10% for unused funds be interpreted? If the rule provides for 5% deviation/first 2 years, why is such a provision included?

COM: At the level of implementation, certain flexibility is provided. One of these flexibilities includes that Member States may transfer an amount corresponding to no more than 5% of Annex VII to other decoupled direct payments in each of the years 2023 and 2024, if the funds cannot be used for eco-schemes due to low uptake by farmers. After these two years, also called the “learning period”, Member States must compensate for having used this flexibility to the extent that it goes beyond half of the 2*5% floors.

Simple illustration:

- Allocations for direct payments: 100 in 2023, 100 in 2024 (total for 2023+2024=200).
- Eco-scheme ring-fencing: 25 in 2023, 25 in 2024
- “Flexibility threshold (floor)” for implementation: 5 in 2023, 5 in 2024 (total for period: 10)
- Compensation for learning period (half of floor/threshold): 2.5%*200=5

11) Could you provide examples on how the point rating system for eco-schemes could work?
COM: Article 28(6a) of the SPR states that MS 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 in the CAP SP.

Points-based (or score-based) approaches usually encompass a bundle of actions (practices, commitments) that are scored according to their contribution for the environment and climate (the higher the contribution, the higher the score).

Eco-schemes encompassing a variety of different management practices leave flexibility to farmers to choose those they want to carry out. This should encourage a high uptake. The variety of actions, including the management of crops and livestock, and the management of landscape features allows for an integrated farming approach.

However, a drawback of this approach is that farmers might mostly choose the practices demanding the lower effort, those with a lower economic cost or those that are already being carried out. In this case, a scoring method accompanied by the setting of a minimum number of points (or alternatively/complementarily a bonus for selecting a minimum number of actions) allows tackling this “adverse selection” and encouraging farmers selecting those practices that are more appropriate and that work in synergy.

12) How are the sanctions established under social conditionality?

The political agreement on the CAP reform package provides for the minimum elements of the social conditionality penalty system in the legal text. These elements are very similar to those of the penalty system set up for conditionality, where the principles are known, since they correspond to those already applied for other penalties in CAP: the penalties should be proportionate, effective and dissuasive and should be without prejudice to other penalties laid down under Union or national law. These elements are set up in the basic act and the specific penalties will be fixed by the Member States. However, in order to ensure a level playing field between Member States and the effectiveness and dissuasive effect of the penalty system for conditionality, the Commission will adopt delegated acts on the application and calculation of such penalties.

The administrative penalties shall be applied by means of reduction or exclusion of the total amount of the payments to the beneficiary. For the calculation of those reductions and exclusions, Member States will have to take into account the severity, extent, permanence, reoccurrence or, to the extent possible, intentionality of the non-compliance.

With a view of controlling the breaches of labour and social law, Member States will rely on their labour authorities and bodies. The mechanism has been designed in a flexible way that will allow Member States to make use and not to interfere with their current social and labour enforcement mechanism. Thus, the implementation of the mechanism may vary substantially from one Member State to another.

13) What would be the weighting coefficient for N-fixing crops?

COM: Since co-legislators decided to not empower the Commission to supplement rules on GAEC 8 (GAEC 9 in the Commission proposal), MS will set details of GAEC standards, including weighting coefficient for N-fixing crops considering the objective of the GAEC and the need to preserve the credibility of the 4% set.

14) Effectivement, le compromis des trilogues mentionne que le calcul de la superficie à consacrer à la BCAE 9 se fera sur base de la superficie arable.
Mais la question posée concernait les superficies non productives ‘valides’ pour le respect de cette BCAE. Autrement dit, est-ce qu’une haie située sur une prairie appartenant à un agriculteur qui a aussi des superficies arables est valide pour la BCAE 9 ou ce sont uniquement les éléments non productifs situés sur des parcelles arables qui sont pris en compte.

Notre crainte est d’amener des agriculteurs à labourer des prairies pour ‘rapprocher’ ou inclure des éléments non productifs dans des superficies arables. De plus, une non-prise en compte des ENP en prairies va désavantage les polyculteurs-éleveurs par rapport aux éleveurs qui sont exemptés.

COM: Non, nous confirmons que seul les haies ou autres surfaces non-productives sur les terres arables comptent pour le calcul de la surface minimale du GAEC 8 (GAEC 9 dans la proposition de la Commission).

15) What are the criteria for MS to activate the exemptions foreseen by GAEC 8 and 9?

COM: There is no criteria, these are exemptions that MS may decide to apply or not.

16) Could the redistribution payments lead to supporting more land owners than farmers?

COM: No, CRISS payments are to be made to active farmers only.

Possible capitalisation in land values of CRISS payments is unlikely because the exact amount of support other than BISS should not be an element of the negotiation of the renting price given that the amount of support depends on the individual situation of each farm and on the decision made by each farmer (Eco-schemes – RD measures etc.).

Specifically for CRISS, it seems unlikely that landowners could ask for a higher price because it is not possible to anticipate how many hectares the (tenant) farmer will declare. There are many different situations of tenant farmers (farmer leasing from a single landowners – owner farmer leasing-in additional land – lease from different landowners) that make the capitalisation of the CRISS into land values unlikely.

17) Does the COM consider coming up with guidelines for MS on issues on which the COM does not have the power to implement Delegated/Implementing Acts? How would the sector be involved?

COM: In line with the subsidiarity/flexibility given to the MS under the New Delivery Model, the Commission does not, in principle, intend to issue guidelines to MS. It is not excluded, however, that there may be some information documents in some areas, e.g. if requested by MS or if necessary for the application of the Regulation.

18) Under GAEC 8, what does “secondary crop” mean? Does it include catch crops? How will this be defined, in what form and in what legal text? Or would it be a MS decision?

COM: It is up to the MS to set the GAEC standards in line with Annex III and to identify the secondary crops concerned. The usual notion of a secondary crop is a crop planted after harvesting another crop on the same land earlier in the season. Compared to catch crop, secondary crops have a longer duration and are usually harvested.

19) Under GAEC 8, if the “regional” level is the whole country, would this be possible?

COM: As regards the footnote of GAEC 7 (GAEC 8 in the Commission proposal) on crop rotation, MS will have the flexibility to authorise in some regions crop diversification as an alternative to crop rotation based on diversity of farming methods and agro-climatic conditions. Although the Commission services consider this unlikely to happen, all regions within a country could be
concerned by the mentioned agro-climatic conditions or farming methods. Nevertheless, Member States need to ensure that the requirements to be defined for the crops diversification will address the GAEC 8 objectives.