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# The new Common Agricultural Policy: reflecting an agro-ecological transition. The legal perspective

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**Keywords** Common Agricultural Policy · Legal approach · Agro-ecological transition

## Introduction

While agriculture's shift towards an agro-ecological transition is considered not only necessary but also obvious in the form that it should take (Altieri, 2015; Bodiguel, 2022; Guillou, 2013), the current CAP reform, which will not be implemented until 2023, offers an ideal opportunity to assess the reality of this statement. Several legal texts, in particular the regulation of 6 December on national Strategic Plans, set out this reform for greater environmental integration and will form the basis of our analysis. The European regulation on national Strategic Plans is of specific importance insofar as it establishes the “rules governing support for Strategic Plans to be drawn up by Member States within the framework of the CAP”. These plans are now at the

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heart of the new CAP, representing the key tool both to construct and implement the future policy.

Our attention is drawn to three main points here. The first concerns the absence of any reference to the term “agro-ecological transition” in the texts of the PAC reform and its preparatory work. The chosen terminology is the “transition to sustainable agriculture”. While the logic of transition is clearly displayed, the model to aim for, however, remains unclear. As it stands, it is not possible to determine what changes it will lead to or to connect it with a precise transition objective. In its literal sense, the term “transition” refers to a dynamic process designating “the passage from one state to another”. Therefore, while the process of change is important, so, then, is the result of this process.

It is therefore important to focus on the second point that attracted our attention. According to the Belgian philosopher Pascal Chabot (2015, p. 11), “transition is the desired change”. This desire for change, and thus the passage from one state to the other, is, according to the authors, more or less intense depending on whether it refers to a mutation, a rupture, a transformation, a development, etc. As well as the clarity of the transition objective to be achieved, we need to consider the concrete legal translation of this transition and its assessment. In other words, we need to take into consideration all the legal means used to implement the transition. This analysis hopes to help clarify the desired transition by assessing the nature and intensity of changes accompanied by law, in particular any changes in agricultural practices resulting from the new applicable legal provisions.

Lastly, the third focal point aims to examine the exit from this agro-ecological transition dynamic. Since every transition is, by its essence, a process to pass from one state to another, it is not, therefore, a permanent situation but a specifically temporary one. It is thus important to identify whether or not there are legal indications to orchestrate the post-agro-ecological transition and to think more broadly about the timelines of this transition.

## **The absence of any reference to the term “agro-ecological transition” in the PAC Reform texts**

### **The use of the expression “transition towards sustainable agriculture” rather than “agro-ecological transition”**

This terminological difference could be thought of as incidental if one considers that the main purpose of the ecological transition is, in general, to shift to more environmentally friendly farming. Beyond the words themselves, however, this is crucially important in that it expresses the objective of a public policy. This general objective will, therefore, guide public authorities in defining their action programmes and deciding upon their interventions. The more precise the targeted objective, the more the actual means to reach it should be clear and precise. In this case, the clearer the vision of the agricultural model to aim for, the better defined the means and steps to achieve it will be.

However, by choosing the term “sustainable agriculture” rather than “agro-ecology” to describe the targeted agricultural model, with this choice of terminology, the CAP reform does not offer an updated vision of its environmental

ambition for the CAP. In fact, the sustainability of agriculture naturally echoes the 2000 agenda,<sup>1</sup> a key moment in the full recognition of the principle of integration<sup>2</sup> into the Common Agricultural Policy. It was within the framework of this reform<sup>3</sup> that the concept of multifunctionality was used, applying to agriculture the three pillars of sustainable development: the ecological function of managing the environment and maintaining the space stands alongside the economic function of producing goods and services and the social function of occupying land and providing jobs. In the 2013 CAP, this terminology (which has now disappeared) took the form of triple performance, i.e. ecological, social and economic.<sup>4</sup>

By opting for a transition to sustainable agriculture (i.e. the same terminology that marked the entrance of the environment into the European agricultural model), the signal given by the new Common Agricultural Policy does not, at first sight, show a marked shift towards a new agricultural model. What is more, the term “sustainable agriculture” may, like sustainable development, suffer from conceptual shortcomings. Nevertheless, some authors wish to give the concept of sustainable agriculture a chance, highlighting the fact that “the concept of sustainable development as it emerged from the Rio Declaration<sup>5</sup> is far more determined than it appears at first sight” (Bodiguel, 2018, p. 184). Nonetheless, reading the CAP reform texts suggests that support for a more environmentally constrained model of agriculture could have been more directly considered. In its Recital n° 26, the abovementioned regulation of 2 December 2021 establishing the rules on support for Strategic Plans states that “The Union needs to improve the response to societal demands on food and health, including high-quality, safe, and nutritious food produced in a sustainable way. In order to advance in that direction, specific sustainable farming practices, such as organic farming, integrated pest management, agro-ecology, agroforestry or precision farming, will need to be promoted. Similarly, actions to promote higher levels of animal welfare and initiatives to combat antimicrobial resistance should also be stimulated”. It emerges from this text that agro-ecology is certainly part of a more environmentally virtuous agricultural model towards which we must strive, but that the Common Agricultural Policy wishes to support a greater diversity of agriculture that meets its sustainable agriculture model. As Luc Bodiguel, (2022) points out, “no text (...) obliges (the

<sup>1</sup> Communication from the European Commission, Agenda 2000: “For a stronger and wider Union”, COM (97) 2000.

<sup>2</sup> According to Article 11 of the Treaty on the Functioning of the Union (TFEU), “Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development”.

<sup>3</sup> Council Regulation (EC) 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF), amending and repealing certain regulations, JOCE n° L 160 of 26 June 1999.

<sup>4</sup> Regulation (EU) 1305/2013 of the European Parliament and Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD), repealing Council Regulation (EC) 1698/2005, OJ L. 347 of 20 December 2013.

<sup>5</sup> <https://www.fao.org/sustainable-development-goals/overview/fao-and-post-2015/sustainable-agriculture/fr/> - cf of the original Rio Declaration and Agenda 21.

legislator) to refer to a particular agri-environmental practice”. Furthermore, it should be emphasised that in its legislative proposal, the European Commission considered maintaining and converting to organic farming, but also other systems such as agro-ecology, conservation agriculture and integrated production, as eligible for aid for environmental commitments.<sup>6</sup> In the final version, the European Union no longer explicitly refers to conservation agriculture (considered potentially environmentally friendly because of its focus on soil conservation<sup>7</sup>) in its conception of sustainable agriculture. It does, on the other hand, now include precision agriculture. This type of farming, however, is in some respects controversial with regard to the extent of its environmental ambition.<sup>8</sup>

The European Union has, then, chosen to retain a broad vision of environmentally friendly agriculture to aim for, with a wide range of types of compromise between farming and the environment. Although it refers to agricultural production modes seen as environmentally friendly, these are envisaged as examples to follow rather than compulsory production modes. Nevertheless, these examples serve as benchmarks because they will guide the choice of practices eligible for the ecological programme, which is compulsory for Member States but voluntary for farmers.<sup>9</sup>

The transition pursued by the European Union is, then, based on an imprecise vision of the agricultural model to follow, sometimes mentioning more specific modes of production, although some of these may also be ill-defined.<sup>10</sup> In any case, in the absence of precise agricultural models to follow, it may prove difficult to determine and clearly mark out the trajectory of the transition to be made. Could new environmental objectives compensate for this absence?

<sup>6</sup> Recital N° 38 of the legislative proposal on strategic plans, 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 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, COM (2018) 392.

<sup>7</sup> Conservation Agriculture is defined by FAO as being “a farming system that can prevent losses of arable land while regenerating degraded lands. It promotes maintenance of a permanent soil cover, minimum soil disturbance, and diversification of plant species. It enhances biodiversity and natural biological processes above and below the ground surface, which contribute to increased water and nutrient use efficiency and to improved and sustained crop production”, <https://www.fao.org/conservation-agriculture/overview/what-is-conservation-agriculture/fr/>, consulted 20 September 2022. See also Chabert and Sarthou, (2017).

<sup>8</sup> Precision Agriculture aims to improve farms’ performance including their environmental performance by reducing the consumption of energy, water and inputs. In this, it represents a response towards the ecological transition. However, it has been the subject of much criticism, in particular, because it is an expensive form of agriculture that is still inaccessible to most of the world’s farmers, and is therefore reserved for certain, larger farms.

<sup>9</sup> See below for eco-schemes.

<sup>10</sup> Criticising the definition of agro-ecology, Bodiguel (2022) points out that “the definition process is very delicate: the concept of agroecology is polysemous and multifaceted; its meaning varies according to the context and the actors”.

## **New environmental objectives to compensate for a vague agricultural transition model?**

In some respects, defining an agricultural model as the objective of the agro-ecological transition may be reassuring, as long as the result of the transition, i.e. the arrival stage, is clearly indicated. However, it may also be restrictive with regard to the diversity of agricultural production methods likely to reconcile agricultural production with environmental protection. The solution of new environmental objectives under the new CAP, as well as those developed as part of the Green Deal, may meet this expectation and thus shape the new face of farming under the reformed CAP.

Firstly, although the objectives of the CAP cited in Article 39 TFEU have not been amended since the 1957 Treaty of Rome,<sup>11</sup> new environmental objectives were formulated in the new texts drawing up the future Common Agricultural Policy. In this sense, they do not appear directly alongside Article 39 TFEU but are, in a way, a guarantee for the implementation of its objectives. According to the European regulation on national Strategic Plans mentioned above, “In order to give substance to the objectives of the CAP as established by Article 39 TFEU, as well as to ensure that the Union adequately addresses its most recent challenges, it is appropriate to provide for a set of general objectives reflecting the orientations given in the communication on ‘The Future of Food and Farming’”. Furthermore, the article stipulates that “A set of specific objectives should be further defined at Union level and applied by the Member States in their CAP Strategic Plans (...)”.<sup>12</sup>

The future CAP is, then, based on a twofold set of objectives, i.e. general objectives and specific objectives, the achievement of which is assessed using a series of indicators of achievement, impact and context.<sup>13</sup> These objectives are connected: “The achievement of the general objectives depends on the achievement of the specific objectives” (Art. 6). In each of these forms of objectives, the environmental dimension is strongly represented. Firstly, the general objectives include the objective to “strengthen environmental protection and climate action, and contribute to the EU’s climate and environmental objectives” (Art.5). Moreover, in order to achieve its general objectives, the CAP must also meet 9 specific objectives: to increase competitiveness, to rebalance the power in the food chain, climate change action, environmental care, to preserve landscape and biodiversity, to support generational renewal, vibrant rural areas, to protect food and health quality”. Three of these 9 objectives address the environmental question directly. The first involves environmental care to “foster sustainable development and efficient management of natural resources such as water, soil and air”. The second concerns preserving landscapes and biodiversity, to “enhance ecosystem services and preserve habitats and

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<sup>11</sup> As a reminder: to increase agricultural productivity by supporting technical progress, and by ensuring the rational development of agricultural production and the optimum use of production factors, particularly labour; to ensure a fair standard of living for farmers; to stabilise markets; to guarantee security of supply; and to ensure reasonable prices in delivering to consumers.

<sup>12</sup> Recital N° 22 of European Regulation cited above.

<sup>13</sup> Article 7 and Appendix 1 of Regulation cited above.

landscapes”. The third objective targets climate change action, to “contribute to climate change mitigation and adaptation, as well as sustainable energy” (Art. 6 d–f). By contributing to the Union’s objectives, the Common Agricultural Policy participates in achieving the objectives of other policies tackling the environment and the climate. The Common Agricultural Policy has thus become a crossroads policy to achieve cross-cutting objectives addressing climate change and the environment. Moreover, it is acquiring this quality by having a key responsibility for land use, indicating a vision less focused solely on the productive capacity of European agriculture. This new conception of agriculture also has consequences on the farmer’s role at the heart of the new Common Agricultural Policy. Because of the explicit connection between the objectives of managing and protecting the environment and climate and production objectives, the farmer is no longer a producer also concerned with the environment and the climate but committed to the active management of the environment and climate. In its 2017 communication “The Future of Food and Farming”, the European Commission expressed this idea in its preparatory study, specifying that “farmers and foresters are not only users of natural resources, but also, indispensable managers of ecosystems, habitats and landscapes”.<sup>14</sup>

Secondly, as well as the objectives provided for by the Common Agricultural Policy reform texts, there are also those of the Green Deal.<sup>15</sup> Although the CAP reform was launched before the European Union’s new roadmap, it will nevertheless have to respect the ambitions of the new roadmap. The aim of the Green Deal<sup>16</sup> is to help the European Union become a fair and prosperous society equipped with a modern, efficient and competitive economy by decoupling economic growth from the use of resources. To mitigate the time lag between the CAP reform and the launch of the Green Deal, a major European Commission staff working paper was produced to make this ex-post link.<sup>17</sup> Moreover, in this document of recommendations made to Member States by the European Commission to draw up national Strategic Plans, the European institution was at pains to point out that these recommendations constitute “a first step in integrating the Green Deal for Europe into future CAP Strategic Plans”.<sup>18</sup> In a way, it shifts the responsibility of considering Green Deal objectives onto Member States by requiring them to take these objectives into account in their Strategic Plans. In particular, in its same recommendation, the European Commission asks Member States “to set explicit national values for the different objectives of the Green Deal”.<sup>19</sup> As with the other environmental objectives directly provided for in the CAP reform texts, it is up to Member States to translate objectives into values adapted to national territories so that they can be implemented

<sup>14</sup> COM (2017) 713 of 29 November 2017.

<sup>15</sup> Communication of the European Commission, Green Deal for Europe, final COM (2019) 640 of December 2019.

<sup>16</sup> Ibid.

<sup>17</sup> Analysis of links between CAP Reform and Green Deal, SWD (2020) 93.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid, p. 19.

in practice. In addition, these recommendations take into account 6 objectives from two Green Deal strategies that are essential for agriculture, the “farm to fork”<sup>20</sup> strategy and the biodiversity strategy for 2030.<sup>21</sup> These strategies include specific targets such as achieving 25% of land used for organic farming by 2030, reducing nutrient losses by at least 50% and reducing fertiliser use by at least 20% by 2030, and reducing the overall use and risk of chemical pesticides by 50% and the use of the most hazardous pesticides by 50% by 2030.

These environmental objectives undeniably give environmental momentum to the new Common Agricultural Policy. However, caution should be exercised insofar as the founding objectives of the CAP remain unchanged and are therefore not explicitly geared towards environmental preservation. Moreover, although the concrete objectives of the Green Deal are likely to accentuate the environmental expectations of the CAP, the legal link established between the CAP and the Green Deal is based on somewhat fragile foundations, notably a working document and European Commission recommendations described as non-binding.

In addition to these objectives that succeed in giving the CAP an increasingly environmentally friendly face, it is the analysis of this legal production, i.e. the CAP reform texts, that should make it possible to establish the intensity of this transition. To the extent that a legal production is the promotion of an objective, it should therefore provide clues as to the reality of an agro-ecological transition within the reformed CAP.

### **The legal production associated with the CAP’s environmental objectives as evidence of the intensity of the agro-ecological transition**

If the legal production drawn up makes it possible to achieve European agriculture’s ecological transition, analysing the deployment of these legal means enables us to assess its nature and intensity. Therefore, we first need to identify which changes in agricultural practices are conveyed by the applicable law and how the law accompanies these changes. In particular, these changes are reflected in a new approach based on environmental outcomes. This new approach aims to make the CAP more environmentally effective. The CAP’s flagship tools, whether new ones such as eco-schemes or older ones such as agri-environmental and climate measures, are designed or redesigned to serve this new approach.

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<sup>20</sup> Commission Communication to the European Parliament, the European Council, the European Economic and Social Committee and the European Committee of the Regions, a “farm to fork” strategy—for a fair, healthy and environmentally friendly food system, final COM(2020) 381 of 20 May 2020.

<sup>21</sup> Commission Communication to the European Parliament, the European Council, the European Economic and Social Committee and the European Committee of the Regions, the EU Biodiversity Strategy for 2030—Bringing nature back into our lives, Final COM(2020) 380 of 20 May 2020.



## The legal architecture to boost a general environmental results-based approach

The legal architecture of the new Common Agricultural Policy is in line with a new relationship paradigm between agriculture and the environment; a results-based approach, announced in the preparatory work for this policy, has been initiated. In its “The Future of Food and Farming” report, the European Commission mentions that it is necessary to “put greater emphasis on high standards and real results” and that there should be “a performance-based delivery of environmental and climate public goods”.<sup>22</sup> More broadly, by promoting a results-based approach, the CAP aligns with an updated vision of environmental performance.<sup>23</sup> The regulation of 2 December 2021 on national Strategic Plans discussed above states that “To enhance the Union added value and to preserve a functioning agricultural internal market, as well as to pursue the general and specific objectives of the CAP, Member States should not take decisions pursuant to this Regulation in isolation but in the framework of a structured process that should materialise in a CAP Strategic Plan”.<sup>24</sup> In addition, the text also notes that “Union top-down rules should lay down the specific Union-wide objectives of the CAP, the main types of intervention, the performance framework and the governance structure. Such a distribution of tasks is aimed at ensuring full correspondence between financial resources invested and results achieved”. This new policy direction was partly prompted by recurrent criticism from the European Court of Auditors<sup>25</sup> and the Court’s encouragement to move in this direction.<sup>26</sup> In the above-mentioned regulation on Strategic Plans, frequent references to this result-based logic are made.<sup>27</sup>

The Green Deal’s variations via its strategies, here in relation to the soil, converge in this sense by highlighting the advantage of results-based agriculture. This is the case, for example, of the European Union’s initiative of 15 December 2021<sup>28</sup>

<sup>22</sup> European Commission, *The Future of Food and Farming*, COM (2017) 713 of 29 November 2017, points 9 and 20. More generally, see also Heyl et al., (2021). This new direction was also formulated by the European Court of Auditors in its notice on the European Commission’s proposals for the CAP regulations for the period after 2020. It states that “it wishes to move from a compliance-based implementation model to a performance-based model (...)”, ECA Notice n° 7/2018 [submitted pursuant to Article 322(1)(a) of the TFEU] on the Commission’s proposals for regulations on the common agricultural policy for the period after 2020 [COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final], pt. 8, JOUE n° C. 41, 1/02/2019. In the same Notice, the European Court of Auditors also demanded that this performance model should be effective, stating that “the absence of clear, specific and quantified objectives at EU level creates uncertainty as to how the Commission would assess Member States’ Strategic Plans under the CAP”, Notice n° 7/2018, pt. 8, p. 4.

<sup>23</sup> See above on the logic of triple performance in the 2013 CAP.

<sup>24</sup> Recital 97.

<sup>25</sup> For example, the ECA deplored the “negative, (...) limited or unknown” impact of the current CAP on maintaining biodiversity, ECA “Special Report: Biodiversity on Farmland: CAP contribution has not halted the decline”, p. 55 eca.europa.eu, 2020.

<sup>26</sup> Such schemes achieve specific and measurable objectives that are directly observable on the ground, ECA Special Report n° 7/2011, *Is Agri-environment Support Well Designed and Managed*, paras. 26 et 27.

<sup>27</sup> For example, see Recitals 71, 101, 115, 117, 119, etc.

<sup>28</sup> Communication from the European Parliament and Council, Sustainable Carbon Cycles, COM (2021) 800 final of 15 December 2021.

to promote carbon storage in agricultural soil. Specifically, to launch this initiative, the European Commission referred to a report it had recently published. The study, “Technical Guidance Handbook – setting up and implementing result-based carbon farming mechanisms in the EU”,<sup>29</sup> examined existing measures to mitigate climate change in five key areas: peatland restoration, agroforestry, maintaining and enhancing soil organic carbon (SOC) in mineral soils, managing SOC on grasslands, and the livestock farm carbon audit. The study concludes that farming, if results-based, “can significantly contribute to climate mitigation in the EU” and provide co-benefits such as increased biodiversity and ecosystem preservation. The study points out that soil management practices that enable carbon sequestration are already known, effective and inexpensive.

To underpin the Common Agricultural Policy’s new results-based approach, the EU uses two main tools operating on different scales of action.

At European level, the EU makes extensive use of indicators to measure the results to be achieved and to maintain a structuring European unity. These national and specific objectives are set out in Articles 5 and 6 of the national Strategic Plan regulation, and the achievement of these objectives is assessed in accordance with Article 7 and Annex 1 of the same regulation using a series of indicators of achievement, impact and context.

At national level, the one of implementation, the Strategic Plan plays a key role. This tool for the coherence and implementation of all CAP tools establishes, in particular, a results-based intervention strategy with target values and intermediate values corresponding to the result indicators set by the European Union (Art. 109). These Strategic Plans drawn up by Member States and approved by the European Commission represent a structural change to the CAP in that they will be the common framework for each Member State.<sup>30</sup> Member States were assisted by the European Commission in drawing up their Strategic Plans with the help of a Communication published by the Commission.<sup>31</sup> This document helps maintain a certain uniformity in the CAP’s implementation. The recommendations have been described as non-binding by the European Commission, although it is also up to the same European institution to approve these Strategic Plans. The French plan has just been approved with a budget of 45.2 billion euros.

With this new architecture, the European Union has shifted away from the “uniform” approach for all Member States that had, until now, characterised the Common Agricultural Policy. Instead, the EU has opted to set the general objectives of

<sup>29</sup> European Commission, Directorate-General for Climate Action, Radley, G., Keenleyside, C., Frelil-Larsen, A., et al., 2021, *Setting up and implementing result-based carbon farming mechanisms in the EU: technical guidance handbook*, Publications Office, 2021, <https://data.europa.eu/doi/10.2834/056153>.

<sup>30</sup> To assist Member States in drawing up their Strategic Plans, the EC has published a set of recommendations, Communication from the Commission, Recommendations to the Member States as regards their Strategic Plan for the Common Agricultural Policy COM (2020) 846 final of 18 December 2020.

<sup>31</sup> Communication from the Commission, Recommendations to the Member States as regards their Strategic Plan for the Common Agricultural Policy COM (2020) 846 final of 18 December 2020. This Communication includes a general recommendation as well as 27 Commission staff working documents for each of the 27 Member States. One document per Member State aims to identify the efforts to be made by each Member State to achieve the 9 specific objectives.

its policy, the achievement of which is measured using indicators. It is left up to each Member State to determine specific objectives and how to achieve them through the prism of its Strategic Plan, in which target and intermediate values are established so that States can respond in a manner commensurate with the efforts required. Key to these plans, flagship tools, new or otherwise, have been set up by the European Union so as to align fully with the Common Agricultural Policy's new ambition.

### **The legal framework of tools for a tangible environmental outcome**

Agri-environmental and climate commitments are tools that have long been a feature of the Common Agricultural Policy's second pillar dedicated to rural development. These commitments are granted by Member States to farmers who make "on a voluntary basis, management commitments considered to contribute to achieving one or more of the specific objectives referred to in Article 6 (1) and (2)". Among the eligibility criteria for these commitments is that the commitments "go beyond the relevant statutory management requirements and the standards for good agricultural and environmental conditions set out in Chapter 1, Sect. 2". The new regulation of 2 December 2021 on establishing national Strategic Plans specifies the potential mission of these commitments in light of new European ambitions. Article 70 of the abovementioned European regulation states in paragraph 5 that "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 and in a measurable way". These commitments are set out in the Strategic Plans of each Member State. Promoting and supporting collective schemes alongside result-based schemes has the virtue of highlighting two particularly complementary contractual systems insofar as the achievement of environmental results is based on a scale of action that generally goes beyond the plot of land of the farmer who has made the commitment.

As part of the CAP's first pillar, the eco-scheme is a new tool that also plays a major role. This measure aims to strengthen the CAP's green dimension especially in its first pillar devoted to market, price and farm income support. This first pillar had previously been made green by introducing cross-compliance for first pillar support and, above all, introducing a green payment<sup>32</sup> for the 2014–2020 CAP. One of the defining features of this eco-scheme lies in the fact that it is a voluntary measure for farmers, similar to the agri-environmental and climate measures in the CAP's second pillar. Implementing this measure is, on the other hand, compulsory for Member States. These eco-schemes have

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<sup>32</sup> The logic of the green payment as it was designed within the framework of the 2014–2020 CAP is to grant this payment to any farmer, beneficiary of the basic payment scheme, who respects three criteria that benefit the environment; the first concerns the contribution to maintaining a ratio of permanent grassland, the second is for crop diversification and the third is for the establishment of areas of ecological interest, see, in particular, Recital n° 47, Regulation (EU) 1307/2013 of the European Parliament and Council of 17 December 2013 establishing the rules regarding direct payments to assist farmers under support schemes of the Common Agricultural Policy and repealing Regulation (EC) 73/2009 of the Council, JOUE n° L 347 of 20 December 2013.

a strong environmental ambition insofar as “Eco-schemes will contribute significantly to this transition (a sustainable food system) and to the Green Deal targets”.<sup>33</sup> The choices of practices envisaged, which Member States will have to determine, are instructive. Firstly, these practices largely represent a break from those envisaged in the past and therefore herald a change. Secondly, they are more or less specific in recommending new behaviours and potentially changes in farming practices. “To be supported by eco-schemes, agricultural practices should.

- Cover activities related to climate, environment, animal welfare and antimicrobial resistance<sup>34</sup>
- Be defined on the basis of the needs and priorities identified at national/regional levels in their CAP strategic plans
- Their level of ambition has to go beyond the requirements and obligations set by conditionality
- Contribute to reaching the EU Green Deal targets

The list of potential agricultural practices includes organic farming practices, agro-ecology such as crop rotation with leguminous crops or low intensity grass-based livestock system. Furthermore, they also comprise carbon farming, with for example conservation agriculture or the extensive use of permanent grassland. Other agricultural practices that could be supported by eco-schemes include precision farming with for instance precision crop farming to reduce inputs or the use of feed additives to decrease emissions from enteric fermentation and husbandry practices in favour of animal welfare and/or reducing the needs for antimicrobial substances”.<sup>35</sup>

The enthusiasm for this results-based approach and the use of tools to achieve it should not, however, mask the difficulties of implementing the approach,<sup>36</sup> especially with regard to assessing the environmental and climate results achieved—this issue raises the question of environmental additionality,

<sup>33</sup> [https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14\\_en](https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en)

<sup>34</sup> Recital 63, Regulation 2021/2115 of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy. Each eco-regime should cover at least two of the following policy areas: climate, environment, animal welfare and combating antimicrobial resistance: climate change mitigation, including reduction of greenhouse gas emissions from agricultural practices, as well as.

maintenance of existing carbon stores and enhancement of carbon sequestration; climate change adaptation, including actions to improve resilience of food production systems and animal and plant.

diversity for stronger resistance to diseases and climate change; protection or improvement of water quality and reduction of pressure on water resources; prevention of soil degradation, soil restoration, improvement of soil fertility and of nutrient management and soil biota; the protection of biodiversity, conservation or restoration of habitats or species, including maintenance and creation of landscape features or non-productive areas; (...))» (article 31-4 of the same Regulation 2021/2115).

<sup>35</sup> [https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14\\_en](https://ec.europa.eu/info/news/commission-publishes-list-potential-eco-schemes-2021-jan-14_en)

<sup>36</sup> For an applied example of this approach with regard to carbon sequestration in farmland, see Langlais (2022, 2023).

intended to justify a payment in return for an environmental result obtained. This can create problems when it is impossible to verify the result for reasons that are unconnected to the farmer's activity (a period of drought, hedges destroyed by storms, etc.). It can also be a source of injustice for farmers who were already heavily invested in the environment and who cannot claim a new environmental benefit (Langlais, 2022) and thus justify a financial contribution on this model. Moreover, insofar as obtaining environmental and climate results is conditioned by intervention on a relevant environmental scale, it is worth recalling the lack of interest in collective AEMs, which also had this objective. Furthermore, it is also important to put into perspective the fact that the new subsidiarity of the CAP, sometimes referred to as the renationalisation of the CAP,<sup>37</sup> derives much of its strength from this results-based regime.<sup>38</sup> For the sake of the effectiveness of this new CAP, the greater flexibility left to Member States is, in a way, compensated by a greater requirement for these same Member States to achieve results. This is, then, both the strength and weakness of the new approach. Lastly, it should be emphasised that these results are still largely based on a best practice approach, whereas a systemic approach would undoubtedly be more effective. Farmers are in no way obliged to change their entire farming system to practise sustainable farming.

All these actions are designed to develop sustainable farming. However, as indicated by the term “transition”, this is only a passage, an intermediary state that is not meant to be permanent. We now need to identify the existence of legal indicators organising the post-agro-ecological transition. This dynamic does not seem to have been envisaged in the texts of the reformed Common Agricultural Policy. On the contrary, a certain status quo—or sometimes even a form of regression—emerges from the reform and may contribute to tarnishing the ambition of the transition.

## A legal framework for post-transition agro-ecology?

The texts of the reformed CAP do not address the timeline of the agro-ecological transition. No exit from this transition is envisaged. Although it would be difficult to determine precisely when the transition had taken place, some evidence of shifts from the existing model could, however, have indicated a desire to leave a transitional situation more quickly. However, the currently applicable law instead reveals the general maintaining of the current agricultural system or at least difficulty in leaving it behind and sometimes even an obstacle to the progress of the agro-ecological transition.

<sup>37</sup> Some authors speak of the “end of an era” for the new CAP (Gadbin, 2021).

<sup>38</sup> The European Parliament's rapporteur on the ‘core’ regulation states that “the aim would be to move from a purely prescriptive regime, based on a complex framework of eligibility criteria, to a regime based on achieving concrete results with a strong environmental component”, E. Herranz Garcia, Draft report on the core regulation: Explanatory memorandum, 2018/0216 (COD), 29 Oct. 2018.

## Signs of difficulty in shifting away from the existing agricultural model

The terms “agro-ecology” and “sustainable farming” both champion seeking symbiosis or at least a strong mutual respect between agricultural production and environmental protection and management. This quest for harmony implicitly implies that environmental protection is an integral part of agricultural production. Adding new objectives into the new Common Agricultural Policy, especially environmental objectives, is a sign of this new alliance between agriculture and the environment.

However, this approach is not fully reflected in the texts and, more specifically, in the eligibility criteria for CAP grants. In particular, being a flagship environmental measure of the Common Agricultural Policy, the applicable rule for the latter is that “Member States shall determine the payments to be made on the basis of the additional costs incurred and income foregone resulting from the commitments made, taking into account the targets set” (Article 70 Paragraph 4). The payment logic, which has been maintained since the introduction of this measure, underlines very clearly that the environment is not naturally integrated into the agricultural production model but that taking it into account is a constraint requiring compensation.

This eligibility criterion has nevertheless been specified in the new version of the text applying to agri-environmental commitments, as seen in the addition of the phrase “taking into account the targets set”. This addition may indicate a desire for a stronger link between the payments made and the environmental impact sought.

More generally, this ambition moves closer to the desire to remunerate farmers for their environmental action and not simply compensate them. It is in this sense that several initiatives have been taken to change the Common Agricultural Policy and open it up to the logic of payments for environmental services (Langlais, 2019; Laurans et al., 2011; Muradian et al., 2010; Wunder, 2008). Although the term does not appear as such in the texts setting out the CAP reform, the original logic of these tools, widely supported at international and European level, is also to promote a results-based logic, one in which there is a greater match between the environmental efforts made and results obtained by farmers and their level of remuneration.

In reality, the difficulties in changing this dichotomy between agricultural production and environmental management, the most visible expression of which is that of funding, go well beyond the sphere of agriculture. These pitfalls are largely related to European and international rules applicable to public aid.

In addition to the difficulties inherent in the legal system of public aid, others linked to the health and political context underline the fragility of the agro-ecological transition underway.

## Obstacles to the progress of the agro-ecological transition

Russia’s invasion of Ukraine, preceded by the COVID-19 pandemic, has upended what seemed almost a given regarding European agriculture’s strong commitment to its ecological transition. Food security, which has always been a priority of the Common Agricultural Policy, has now become even more crucial. A situation as

exceptional as the pandemic or war in Europe was undoubtedly a reason for a certain flexibility.

Nevertheless, the question arises as to the balance to be struck between protecting food security and undermining the principle of environmental non-regression preserving the legal achievements of environmental protection. This principle was introduced into French law on 8 August 2016 in what is known as the “biodiversity law”.<sup>39</sup> According to this principle, “the protection of the environment, ensured by the legislative and regulatory provisions relating to the environment, can only be subject to constant improvement, taking into account current scientific and technical knowledge” (Art. L.110–1-II-9°, French Environment Code). At the heart of this issue is the exceptional and temporary derogation (announced for 1 year) authorising the production of any crop for food or animal feed on set-aside land.<sup>40</sup> Because this derogation aimed to eliminate the 4% of areas of ecological interest, the question arises of an infringement of environmental measures<sup>41</sup> and thus a form of environmental regression. In reality, this infringement and environmental regression are all the more blatant since the environmental sacrifice made to ensure food security may be significant compared with the benefit it is likely to bring. Indeed, as pointed out by Yves Petit (Petit, 2014; see also Petit, 2022), “set-aside land is not the most fertile. It is therefore natural to ask whether it can really contribute to increasing production and replace (at least partially) production from Ukraine?” Although these areas represent little productive value, the areas of ecological interest, on the other hand, represent a set of semi-natural or natural habitats of high ecological value and are known to provide many ecosystem services.

In any event, this crisis reveals the positions of each protagonist involved in the reformed Common Agricultural Policy. In particular, the European Commission wishes to preserve its initial trajectory to promote the agro-ecological transition. It has thus indicated that the war against Ukraine confirms “the necessity of a fundamental reorientation of EU agriculture and EU food systems towards sustainability, in line with the Green Deal and the reformed CAP and facilitated by actions proposed in the long term vision for rural areas”.<sup>42</sup> As Yves Petit also stresses, “Paradoxical as it may seem, Russian aggression in Ukraine could have the consequence of boosting the ‘green’ evolution of the European Union’s agricultural model” (Petit, 2014). If we believe that ecological and agricultural resilience are closely linked, a long-term vision is indeed necessary.

<sup>39</sup> Law 2016-1087 of 8 August 2016 for the recovery of biodiversity, nature and landscapes, JORF n° 184 of 9 August 2016.

<sup>40</sup> Execution Decision (EU) 2022/484 of 23 March 2022 providing for derogations from Regulation (EU) 1307/2013 of the European Parliament and of the Council and Delegated Regulation (EU) 630/2014 of the Commission regarding the implementation of certain conditions for the greening payment for the application year 2022, OJEU of 25 March 2022.

<sup>41</sup> “Une première remise en cause des mesures environnementales” (a first challenge to environmental measures) is the phrase used by *Le Monde* journalists M. Gérard and L. Girard, “La sécurité alimentaire mondiale en peril”, *Le Monde*, 2 April 2022.

<sup>42</sup> Communication from the European Commission, Safeguarding food security and reinforcing the resilience of food systems, COM (2022) 133 final of 23 March 2022, p. 11.

The future of farming is not limited to the Common Agricultural Policy, as a certain number of actions are carried out outside its framework. However, it undeniably covers an important plank of law to transform European agriculture and, even more so, the values that are conveyed. As such, examining the legal texts structuring the new CAP represents a determining marker of this desire for change. Although the change is real, it is, nonetheless, undermined in several respects.

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