The Common Agricultural Policy and Animals: Friends or Foes?

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1 Introduction

The EU's Common Agricultural Policy (CAP) came into being in 1962. At this time, the six founding Member States endeavored to restore Europe's agricultural production capacity by establishing the CAP, following World War II and the establishment of the European Economic Community. The CAP was also the EU's first and, for many years, only fully integrated policy. Although the regulations composing the CAP have undergone many reforms since 1962, the CAP's foundational principles have remained virtually unchanged, making it one of the most resilient EU policies. The inclusion of the CAP in the Treaty of Rome, that later

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became the Treaty of the Functioning of the EU (TFEU), has further provided the legal basis for the EU legislation on farmed animal welfare.[1]

The EU regulates public support to agriculture through a system of subsidies and support programs via the CAP. The CAP is composed of three regulations, which primarily establish rules on distribution of public subsidies—their amount, types, and eligibility criteria for beneficiaries. Through its agricultural subsidies and support programs, the CAP has the power to shape the ways in which agriculture is practiced, thereby determining which types of farming systems are likely to thrive across Europe. The CAP thus influences the diets of 500 million Europeans by incentivizing the supply of certain agricultural outputs.

The EU revises CAP regulations every seven years on average, and until the 2021 reform, CAP expenditures accounted for the majority of the EU's budget. From its outset, the CAP has been successful in achieving food security, so much so that as early as the 1970s, farmers started overproducing food, including beef and butter, famously referred to in the media at that time as "butter mountains." The neoliberal turn of the EU in the 1990s subsequently repurposed the CAP as a driver in increasing the EU balance of trade in agri-food products.

However, the EU failed to address the emergence of negative externalities due to policy orientations in the CAP that have caused the generalization of industrial agricultural production. For instance, while industrial farm animal production has contributed to increasing production volumes in animal-based food, this production method has also caused immense suffering in animals due to routine cruel practices. For instance, the keeping of animals in close confinement is now ubiquitous in the EU, where close to half of egg-laying hens are kept in cages, as well as the majority of breeding sows and calves.[2] Farmed animals also undergo extreme selective breeding practices that undermine their welfare and are additionally subjected to painful mutilations, such as debeaking, dehorning, castration

[1] Consolidated version of the Treaty on the Functioning of the European Union, art. 39, O.J. C 2016/62–63. For more about this topic, see Sowery, K. 2018. Sentient Beings and Tradable Products: the Curious Constitutional Status of Animals Under Union Law. *Common Market Law Review*.

[2] Compassion in World Farming. 2020. End the Cage Age: Why the EU Must Stop Caging Farm Animals. Available at: https://www.ciwf.org/media/7442226/ciwf_cage-age_report_oct-20_english_final.pdf.

without anesthesia, teeth grinding, and tail-docking.[3] Lastly, long distance transports are common in the EU, as well as the use of painful killing methods in industrial slaughterhouses.

The CAP has also caused deleterious effects on the protection of wild animals due to habitat encroachment, and it has caused environmental degradation from intensive agricultural practices.[4] Environmental scientists have found a direct correlation between CAP measures and the eradication of farmland birds.[5] For this reason, the European Environment Agency has identified agriculture as the main driver of habitat destruction in grasslands on the EU's protected natural sites.[6] Conversely, when it supports more extensive agricultural practices, the CAP can play a positive role in the conservation of animals that have thrived as a result of centuries-old agricultural activities that have shaped ecosystems in Europe.[7] Therefore, from an animal protection perspective, animal protection measures in the EU's agricultural policy should aim to do more than just non-intervention in wild ecosystems.

[3] European Commission. 2022. Commission Staff Working Document Fitness Check of the EU Animal Welfare Legislation. SWD (2022) 329 final.

[4] Kmecl, P. and K. Denac. 2018. The effects of forest succession and grazing intensity on bird diversity and the conservation value of a Northern Adriatic karstic landscape. *Biodiversity and Conservation* 27: 2003–2020. https://doi.org/10.1007/s10531-018-1521-2; Zakkak, S., Radovic, A., Nikolov, S. C., Shumka, S., Kakalis, L., and V. Kati. 2015. Assessing the effect of agricultural land abandonment on bird communities in southern-eastern Europe. *Journal of Environmental Management* 164: 171–179. https://doi.org/10.1016/j.jenvman.2015.09.005. The Court of Justice of the EU also found that Natura 2000 areas were affected by agricultural activities. For instance, in the context of the destruction of a bird protected area due to the expansion of corn production, see Case C-96/98, *Commission v France* (1999) ECR I – 8548; and in the context of the degradation of a bird protected area resulting from the illegal deterioration of groundwater, see Case C-559/19, *Commission v Spain* (2021) EU:C:2021:512.

[5] Šumrada, T., Kmecl, P., and E. Erjavec. 2021. Do the EU's Common agricultural policy funds negatively affect the diversity of farmland birds? Evidence from Slovenia. *Agriculture, Ecosystems & Environment* 306. https://doi.org/10.1016/j.agee.2020.107200

[6] European Environment Agency. 2019. The European Environment: State and Outlook 2020. https://www.eea.europa.eu/soer/publications/soer-2020. Accessed 4 December 2024.

[7] De Sadeleer, N. 2023. La Nouvelle PAC: Alliée ou ennemie de la nature sauvage? In *Les vingt ans du règlement sur la législation et la sécurité alimentaire dans l'Union européenne: Bilan et perspectives*, Nathalie De Grove Valdeyron and Marine Friant-Perrot, eds. p. 127. Brussels: Bruylant; De Sadeleer, N., and M. Fauconnier. 2024. L'écoconditionnalité de la politique agricole commune mise à l'épreuve: entre productivisme et dérive environnementale. In *Annuaire de droit de l'Union européen 2024*. Bruxelles: Bruylant.

Over the past three decades, the EU legislature has amended founding EU treaties and CAP regulations in an effort to make the CAP more consistent with citizens' expectations for more sustainable and humane food production systems. First, the EU Member States amended the EU constitutional framework in 2007,[8] by way of the Lisbon Treaty, to give the European Parliament a more prominent role in the decision-making process.[9] To make EU law more consistent with societal aspiration, the EU institutions also mandated the inclusion of environmental[10] and animal welfare objectives in all EU policies, including the EU's agricultural policies[11]—making the CAP the only agricultural policy in the world to take animal welfare into account, at least in theory.

Second, the EU legislature conducted a major reform of the CAP in the early 2000s, to integrate a "multifunctional" approach to the CAP. This approach recognizes agriculture as a provider of non-commodity benefits, also referred to as "public goods," beyond the sole task of producing food.[12] A multifunctional agricultural policy is therefore one that "is capable of [...] conserving nature and making a key contribution to the vitality of rural life, and that responds to consumer concerns and demands as regards food quality and safety, environmental protection, and the safeguarding of animal welfare."[13]

However, the new policy instruments designed to ensure multifunctionality have faced harsh criticism. On one hand, farmers have often lamented the complexity and apparent inconsistency of the growing number of mechanisms. On the other, civil society has questioned the legitimacy and ability of the CAP to counter the spread of industrial production

[8] The EU's founding treaties act as the constitutional treaties of the EU.

[9] As per Consolidated Version of the Treaty on the Functioning of the European Union, art 43(2), 2016 O.J. (C 202) 64–65 [hereinafter TFEU], which provides for the ordinary legislative procedure (TFUE, art 294).

[10] TFUE, art 11, 2016 O.J. (C 202) 53.

[11] TFUE, art 13, 2016 O.J. (C 202) 54.

[12] Daugbjerg, C. and A. Swinbank. 2016. Three Decades of Policy Layering and Politically Sustainable Reform in the European Union's Agricultural Policy. *Governance* 29(2):265–280. https://doi.org/10.1111/gove.12171; Di Concetto, A. 2023. Le bien-être animal dans la Politique Agricole Commune: la prise en compte d'une "attente sociétale." *Revue de droit rural* N°1:14–19. https://www.lexiskiosque.fr/catalog/revue-de-droit-rural/revue-de-droit-rural/n1-2023 (in French).

[13] Conclusions of the Berlin European Council of March 1999, embodying policy on the "Agenda 2000" package cited in European Parliament. 2003. Multifunctional Agriculture and the Reform of the CAP, 22 May 2003.

methods, with advocacy organizations demanding more targeted support and more accountability in the distribution of subsidies.

The latest CAP reform, which took place between 2019 and 2021, partially addressed these issues through a reform of its "delivery model", that is, the way in which funds are distributed to food producers. This reform was the result of lengthy negotiations between the three EU institutions, which took place in 25 trilogues,[14] four super-trilogues, and hundreds of working group meetings. These discussions addressed regulatory and financial rules, aiming to fulfill the numerous objectives of the CAP. A major challenge in the negotiations was aligning the CAP with the objectives presented in the European Green Deal,[15] primarily the achievement of carbon neutrality in the EU by 2050, a goal shared by the Paris Agreement.[16] Given the intertwined nature of the climate and environmental crises, the European Commission adopted, in 2020–2021, a whole host of strategies in a wide array of policy areas to establish bold short- and long-term greenhouse gas climate change objectives, pollution abatement thresholds, and ambitious sustainable development targets.

However, the adoption of the European Green Deal in 2019 followed the publication of proposals for new CAP regulations in 2018. As a result, the objectives of the European Green Deal for the EU's agricultural sector were enacted at a time when negotiations of the CAP reform were well under way. The policy orientations set in the Green Deal and the Farm-to-Fork Strategy[17] were therefore largely excluded from the 2021 CAP

[14] "Trilogues" are negotiations taking place between all three institutions, which are the European Commission, the Council of the EU, and the European Parliament, at the end of the legislative process.

[15] de Sadeleer, N. 2025.The European Green Deal: greenwashing of EU economic policies or a paradigm shift? *European Journal of Risk Regulation*.

[16] European Commission. 2019. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal. COM/2019/640 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640

[17] European Commission. 2020. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system. COM/2020/381 final. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0381.

regulations.[18] However, this inconsistency between the Farm-to-Fork Strategy and the 2021 CAP regulations has diminished over time, as the European Commission ended up abandoning most of the measures in the Farm-to-Fork Strategy—starting with the revision of EU farm animal welfare legislation, the adoption of new legislation on food sustainability, and the review of the EU agri-food promotion program. More recently, the European Commission announced the withdrawal of its proposal for a regulation aiming to halve the use of pesticides.[19]

In December 2021, the European Parliament and the Council of the EU eventually adopted three new CAP regulations, which came into force in January 2023. These three regulations—Regulation 2021/2115 Establishing Rules on Support for Strategic Plans to Be Drawn Up by Member States Under the Common Agricultural Policy (CAP Strategic Plans),[20] Regulation 2021/2116 on the Financing, Management and Monitoring of the CAP,[21] and Regulation 2021/2117 Establishing a Common Organisation of the Markets in Agricultural Products[22]—provide the legal framework for the CAP until the next reform, which is expected to take place in 2027 at the earliest.

[18] Although the EU institutions claimed to have included the objectives of the Green Deal, at least to some extent, in the final stages of the legislative process during the trilogues.

[19] European Commission. 2022. Proposal for a regulation of the European Parliament and of the Council on the sustainable use of plant protection products and amending Regulation (EU) 2021/2115. COM/2022/305 final.

[20] 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 and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (Regulation on the CAP Strategic Plans), 2021 O.J. (L 435) 1–186.

[21] 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 and repealing Regulation (EU) No 1306/2013 (Horizontal Regulation), 2021 O.J. (L 435) 187–261.

[22] Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union, 2021 O.J. (L 435) 262–314.

Because the CAP has played a central role in the history and development of the EU as an economic and political system, political science and economics scholars have produced extensive analyses of this common policy. In comparison, the European legal scholarship has generally neglected the analysis of the legal dynamics at play in the CAP, forsaking how these dynamics more generally reflect the forces at work in the evolution of EU law-making. Yet, the CAP regulation provides, to date, and globally, one of the best ongoing examples of neoliberal legislation.

Similarly, European animal law scholars have paid limited attention to the CAP as a research topic,[23] despite being the main driver of the emergence and proliferation of industrial farm animal production in the EU. As such, CAP regulations are strategic for reformist animal advocates who seek to improve the treatment of wild and domesticated animals exploited for food purposes, but CAP regulations also offer potential incentives to transition away from animal-based production and toward a plant-based economy, which would help secure fundamental rights for animals.

This contribution seeks to address this gap in European scholarship by offering a detailed legal analysis of key animal protection measures within the CAP regulations—focusing mostly on farmed animals but also covering animals living in the wild. Additionally, given that the CAP has evolved over the past six decades into an incredibly complex body of legislation understood by only a few specialists, this chapter also seeks to make the CAP a more accessible subject of research.

This chapter begins by examining how animal protection objectives align with the broader legal and policy goals of the CAP and how these animal welfare objectives have been incorporated, with varying degrees of success, into the CAP regulations. This chapter then presents an overview of wild animal protection measures contained in the CAP regulations. Lastly, this chapter shows that a large array of programs that bolster industrial farm animal production remain in place, undermining efforts to shift away from factory farming to more sustainable food production and consumption models in Europe.

[23] Diane Ryland is an exception. See Ryland, D. 2015. Animal welfare in the reformed Common Agricultural Policy: Wherefore art thou? *Environmental Law Review* 17(1): 22–43.

2 Animal Protection Objectives in the Common Agricultural Policy

Despite historical changes in agriculture and the needs of the EU population, the CAP objectives enshrined in the 1957 Treaty of Rome, which is the founding constitutional treaty of the EU, have remained unchanged. Article 39(1) TFEU lists the general objectives of the CAP regulations as follows:

> to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
>
> thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;to stabilize markets;
>
> to assure the availability of supplies;
>
> to ensure that supplies reach consumers at reasonable prices.[24]

Overall, the CAP has met its objectives. For instance, compared to 1957, the "availability of supply" is guaranteed in the EU. The subsequent CAP regulations have also ensured food security and "reasonable prices," although the financialization of agricultural commodities, the globalization of food supply chains,[25] and the war in Ukraine have recently undermined such objectives.

The EU legislature and the Court of Justice of the EU have never interpreted such objectives in a way that would update them or expand their scope to include non-socio-economic goals. As a result, objectives such as animal welfare or environmental protection are not considered to be primary objectives of the CAP, even though the EU institutions later integrated these goals into primary and secondary law.

In EU primary law in 1994, Member States first introduced a duty for the EU and the Member States to "pay full regard to the welfare requirements of animals […]" when "formulating and implementing the Community's agriculture, transport, internal market and research policies" by way of a Protocol on Protection and Welfare of Animals annexed to the Treaty of Amsterdam (a 1997 treaty amending the EU's

[24] Treaty establishing the European Economic Community, 1957, art 39.

[25] More specifically, the EU's dependence on plant-based proteins produced outside the EU has threatened EU food sovereignty, independently from the conflict in Ukraine.

constitutional treaty and expanding the powers of the EU).[26] The wording of the Protocol was later codified in the Treaty of Lisbon to become Article 13 of the TFEU in 2007. However, Article 13, TFEU only sets a general objective that is secondary to the objectives of the CAP established in Article 39, TFEU, as confirmed by the Court of Justice of the EU in several cases.[27]

Another challenging aspect of the inclusion of non-economic goals in the CAP is that the TFEU also requires the Union to take into account many other public interest goals, besides animal welfare, when designing and implementing EU laws. These non-economic, transversal goals include maintaining a "high level" of employment,[28] public health,[29] consumer protection,[30] and environmental protection goals.[31] The multiplicity of these requirements tends to dilute the priority that Member States should grant to each of these respective issues. Additionally, the legal value of these different provisions is unclear due to the use of unspecific language (e.g., "high level of employment," "high level of protection"), which the courts traditionally do not interpret,[32] nor has the legal scholarship analyzed it extensively.

Despite the confusing nature of Article 13 and other provisions that refer to the duty for the EU institutions to take public interest goals into

[26] Protocol on Protection and Welfare of Animals, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, 1997 O.J. (C 340) 110.

[27] For instance, C-131/86, *United Kingdom of Great Britain and Northern Ireland v Council of the European Communities*, 1988 ECLI:EU:C:1988:86, para 26; C–189/01, *Jippes and Others*, 2001 ECR I–5718, para 73; T–361/14, *H.B. v Commission,* 2017 ECLI:EU:T:2017:252. See also Sowery, K. 2018. Sentient Beings and Tradable Products: the Curious Constitutional Status of Animals Under Union Law. *Common Market Law Review*; Di Concetto, A. 2022. The Double Edged Sword: International Law and Its Effects on EU Farm Animal Welfare Legislation. *Global Journal of Animal Law, Special Issue: Internal Law and Animal Health and Protection: Persistent Themes, New Prospects for Change* 10(2); Di Concetto, A. 2024. EU Animal Law. In *Nordic Animal Law: Welfare and Rights.* Cambridge: Ethics International Press.

[28] TFEU, art 9, 2016 O.J. (C 202) 53.

[29] Ibid., art 114(3) and 168.

[30] Ibid., art 114(3) and 169.

[31] Ibid., art 11.

[32] For instance, the Court interpreted the duty of Member States to improve living and working standards in the context of social protection as a mere general principle. See Case C-126/86 *Gimenez-Zaera,* 1987 ECR I-3697; and Case C-72/91 *Sloman-Neptune,* 1993 ECR I-887.

account, the EU legislature has gradually integrated animal welfare objectives into secondary law. Since 2003, the EU legislature has listed animal welfare as one of the objectives of the CAP. Specifically, Regulation 2021/2115 elaborated on the objectives set forth in Article 39 TFEU by listing general and specific sub-objectives, including the improvement of animal welfare.[33]

The progressive inclusion of animal welfare as a key objective in the CAP has resulted in the adoption of several rules supporting farm animal welfare, explored below.

3 Farm Animal Welfare Objectives in the CAP

3.1 Farm Animal Welfare in the "First Pillar" of the CAP

3.1.1 The CAP's First Pillar

The expression "Pillar I" refers to the programs of the CAP funded under the European Agricultural Guarantee Fund (EAGF), which is managed by the European Commission. "Pillar I" measures cover two types of programs.

The first is "Direct Payments," which are subsidies given to producers for the production of agricultural goods (crops and animal products). Since 2003, producers must demonstrate compliance with a series of standards to receive subsidies, including animal welfare standards. Direct payments are calculated based on the number of hectares cultivated and constitute the bulk of the CAP's (and consequently the EU's) budget. Under the 2021 CAP, direct payments remain an essential element in guaranteeing fair income support for farmers,[34] with a total allocated budget of €182.2 billion for the years 2023–2027, representing 72% of the total CAP budget.[35]

[33] 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 and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (Regulation on the CAP Strategic Plans), art 6(1)(i), 2021 O.J. (L 435) 28.

[34] Regulation 2021/2115 on the CAP Strategic Plans, Recital 28, 2021 O.J. (L 435) 5.

[35] Fifty-one percent of the total first pillar expenditure is made up of direct payments to farmers. Source: European Commission. Common Agricultural Policy Funds. Available at:

The second CAP program is "Market Measures," which are support programs that aim to facilitate market access to agricultural goods (promotion measures) or relieve the market from agricultural surpluses (market support measures, EU School Schemes).

3.1.2 Animal Welfare Conditionality Rules in the 2021 CAP Regulations

Conditionality rules reduce subsidies for farmers who are found to be non-compliant with a list of environmental, climate, and animal welfare standards listed in Regulation 2021/2115 (CAP Strategic Plans Regulation).[36] In this sense, conditionality rules only facilitate the enforcement of these standards; they do not afford additional payments to farmers.

Compared to previous regulations, the 2021 CAP Strategic Plans Regulation provides stricter environmental standards. The aim of the regulation is to make recipients of direct payments more aware of the need to comply with basic standards, thus making the CAP regulations more consistent with citizens' expectations by "improving consistency of the CAP with the environment, public health, plant health and animal welfare objectives."[37]

There are two types of standards producers must comply with under conditionality rules:

Good Agricultural and Environmental Conditions (GAEC)[38] and Statutory Management Requirements (SMRs).[39]

3.1.2.1 Good Agricultural and Environmental Conditions (GAEC)

GAEC standards aim to maintain "all agricultural areas, including land which is no longer used for production purposes, [...] in good agricultural and environmental condition."[40] Unlike Statutory Management Requirements (SMRs), GAEC can include requirements that are otherwise

https://agriculture.ec.europa.eu/common-agricultural-policy/financing-cap/cap-funds_en#eagf. Accessed 12 February 2025.

[36] Blumann, C (dir.). 2011. *Politique agricole commune et politique commune de la pêche*. Brussels: Éditions de l'Université de Bruxelles.

[37] Regulation 2021/2115 on the CAP Strategic Plans, Recital 42, 2021 O.J. (L 435) 7.

[38] Ibid., Recital 41.

[39] Ibid.

[40] Ibid., art 13(1).

not required under EU law, such as crop rotation. Furthermore, Member States are required to adapt each of the GAEC standards listed in the Regulation,[41] taking into account the specific characteristics of the region concerned, including soil and climatic conditions, existing farming conditions, farming practices, farm size and structure, and land use. Each GAEC standard should also contribute to the achievement of multiple objectives, including animal welfare, even though none of the listed GAEC standards deal directly with animal welfare.

3.1.2.2 Statutory Management Requirements (SMRs)

SMRs standards include three specific farm animal welfare standards, which refer to Articles 3 and 4 of the Directive 2008/119 Laying Down Minimum Standards for the Protection of Calves (SMR 9),[42] Articles 3 and 4 of Directive 2008/120 Laying Down Minimum Standards for the Protection of Pigs (SMR 10),[43] and Article 4 of the Directive Concerning the Protection of Animals Kept for Farming Purposes 98/58 (SMR 11).[44]

Unlike GAECs, conditionality rules on animal welfare do not require farmers to engage in good practices stricter than EU law. Instead, animal welfare SMRs are an enforcement mechanism for existing farm animal welfare legislation.[45] There are also far fewer animal welfare SMRs compared to environmental SMRs, likely because there are more environmental laws in EU law than farm animal welfare provisions.[46]

There exist numerous limitations regarding animal welfare conditionality rules. First, the scope of such SMRs is restricted to three of the five farm animal welfare directives on farm animal welfare.[47] Because poultry

[41] Ibid.

[42] Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves, 2009 O.J. (L 10) 8.

[43] Ibid., p. 6–7.

[44] Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes, 1998 O.J. (L 221) 24.

[45] Di Concetto, A. 2023. Le bien-être animal dans la Politique Agricole Commune: la prise en compte d'une "attente sociétale." *Revue de droit rural* N°1, p. 16. https://www.lexiskiosque.fr/catalog/revue-de-droit-rural/revue-de-droit-rural/n1-2023 (in French).

[46] EU environmental law has undergone spectacular development since the early 1970s.

[47] Apart from Directives 98/58, 2008/119 and 2008/120, the EU also adopted Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, 1999 O.J. (L 203) 53–57; and Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production, 2007 O.J. (L 182) 19–28. Also in that sense, see Ryland, D. 2015. Animal welfare in the

farming typically requires relatively little land, the EU institutions assumed that broiler chicken farms and egg farms should not be included in the scope of the conditional rules because these activities are not eligible for direct payments, which are usually hectare-based. The European Commission also assumed that poultry farms with enough hectares to be eligible for direct payments would likely practice extensive poultry farming and thus would not be covered by Directives 1999/74 on the protection of egg-laying hens,[48] or in Directive 2007/43 on the protection of broiler chickens,[49] which excludes non-industrial farms from their scope. However, the European Commission did not consider that certain Member States might extend the scope of penalties under conditionality rules to payments other than direct payments. For instance, French regulations stipulate that both direct payments under the first pillar and payments under the second pillar may be reduced for lack of compliance with SMRs and GAECs.[50] Excluding the poultry Directives from the scope of the SMRs therefore deprives Member States like France of the ability to penalize poultry producers by reducing CAP subsidies for not complying with farm animal welfare laws.

Second, animal welfare SMRs do not provide high levels of protection for farm animals because they refer to farm animal welfare directives, which are ineffective in protecting animals from cruel but common industry practices. For instance, both the Calves and the Pigs Directives allow extreme confinement through the use of individual pens for calves and cages for sows.[51] The 98/58 Directive Concerning the Protection of Animals Kept for Farming Purposes is also rife with vague wording that produces no regulatory effect on the practical ways in which animals are treated on farms.[52]

reformed Common Agricultural Policy: Wherefore art thou? *Environmental Law Review* 17(1):22–43.

[48] Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, 1999 O.J. (L 203) 53–57.

[49] Council Directive 2007/43/EC of 28 June 2007 laying down minimum rules for the protection of chickens kept for meat production, 2007 O.J. (L 182) 19–28.

[50] Ministère de l'agriculture et de la souveraineté alimentaire. 2022. La Politique Agricole Commune: "Conditionnalité." https://agriculture.gouv.fr/aides-pac-quest-ce-que-la-conditionnalite. Accessed 26 December 2024 (in French).

[51] Di Concetto, A. 2022. The Double-Edged Sword: International Law and Its Effects on EU Farm Animal Welfare Legislation. *Global Journal of Animal Law* 10(2). https://ojs.abo.fi/ojs/index.php/gjal/article/view/1756.

[52] Ibid.

A third limitation with conditionality rules pertains to the numerous exemptions introduced by the EU legislature. For instance, none of the conditionality rules apply to "small farmers,"[53] which are defined in a way that exempts approximately 40% of farmers in the EU.[54] Overall, conditionality rules only apply to 55% of EU farms.[55]

3.1.2.3 Penalties

A fourth limitation of the conditionality rules has to do with the penalty levels, which are not sufficiently deterrent. Penalties for breaching animal welfare conditionality rules remain low, EU law establishing a 3% reduction in subsidies as a general rule.[56] The likelihood of producers facing penalties for non-compliance with conditionality rules is also low, considering that the Horizontal Regulation only requires Member States to conduct a minimum inspection rate of 1% of farms per year. Furthermore, Member States can and usually do implement an "early warning system," whereby national competent authorities can issue up to three warnings before effectively reducing subsidies.[57] Empirical studies have additionally shown that national competent authorities have been reluctant to inspect farms and impose penalties in the event of fraud.[58] Last but not least, Regulation 2024/1468 later amended the CAP regulations to exempt farms of less than 10 hectares from controls and penalties related to conditionality requirements.[59] As a result, since 2024, these small farms are no longer subject to administrative controls, even though they represent 65%

[53] Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, art 92, 2013 O.J. (L 347) 592.

[54] European Court of Auditors. 2018. Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation, p. 12. Available at: https://www.eca.europa.eu/en/publications?did=47557. Accessed 4 December 2024. Also in that sense, Di Concetto, A. 2023. Le bien-être animal dans la Politique Agricole Commune: la prise en compte d'une "attente sociétale." *Revue de droit rural* N°1, p. 17. https://www.lexiskiosque.fr/catalog/revue-de-droit-rural/revue-de-droit-rural/n1-2023 (in French).

[55] Ibid.

[56] Regulation 2021/2116 on the financing, management and monitoring of the common agricultural policy, art 85(1), O.J. (L 435) 247.

[57] Ibid., art 85(3).

[58] Jack, B. 2009. *Agriculture and EU Environmental Law*. London: Routledge.

[59] Article 83(2).

of CAP beneficiaries. In the absence of controls, compliance with GAECs will likely be low. Yet the stakes are as crucial, given that pollution from small farms can cause irreversible damage to the environment.

3.1.3 Schemes for the Climate, the Environment, and Animal Welfare (Eco-Schemes)

Regulation 2021/2115 introduced a new form of payment called "eco-schemes," which compensates farmers for the uptake of good practices.[60] The Regulation further requires that Member States dedicate a minimum of 25% of their budget under the first pillar to the payment of eco-schemes every year.[61] As a result, eco-schemes are a subsidy of a hybrid nature: on the one hand, Member States must offer eco-schemes and must spend a minimum amount of their budget to finance them; on the other, eco-schemes are voluntary for farmers, who can choose not to apply for them.

Unlike direct payments, eco-schemes are afforded annually, meaning that farmers must apply for them every year.[62] Furthermore, Member States can choose which good agricultural practices they wish to support, provided they are "beneficial to the climate, the environment, animal welfare and the fight against antimicrobial resistance"[63] and remunerate practices that go above and beyond those provided in GAEC and SMRs.[64]

To ensure compliance with EU law and harmonization across the 27 Member States, the European Commission approves national eco-schemes lists in accordance with one or more specific objectives, including the "protection of biodiversity, conservation or restoration of habitats or species" and "actions to enhance animal welfare or combat antimicrobial resistance."[65]

Eco-schemes are a welcome development of the 2021 CAP reform in that they incentivize agricultural good practices, such as improved space allowance per individual animal, outdoor access, and increased grazing periods.[66] However, their implementation in national legislation is complex and adds to the regulatory burden of the EU and national competent

[60] Regulation 2021/2115 on the CAP Strategic Plans, art 31, 2021 O.J. (L 435) 40.

[61] Ibid., art 97(1).

[62] Ibid., art 31(7).

[63] Ibid., art 31(3).

[64] Ibid., art 31(5).

[65] Ibid., art 31(4)(e) and (g).

[66] European Commission. 2021. List of potential agricultural practices that the eco-schemes could support under the eco-schemes. Available at: https://agriculture.ec.europa.

authorities, while also making eco-schemes challenging for farmers to navigate. Additionally, because eco-schemes are voluntary measures for farmers, but stricter than conditionality standards, similar to measures remunerated under the second pillar of the CAP, there is a risk of redundancy with already-existing subsidies, both in terms of the substance of measures supported and funding.

3.2 Farmed Animal Welfare in the "Second Pillar" of the CAP

3.2.1 The CAP's Second Pillar

"Pillar II" of the CAP, also called "Rural Development," consists of measures that Member States implement at national level. Unlike direct payments in the first pillar, Pillar II measures provide financial incentives for producers, rather than imposing regulatory requirements. Some of these measures are compulsory (the EU requires Member States to implement them) and some are optional (Member States have the choice to implement them or not). This list of measures constitutes what is known as a national "Rural Development Plan" (RDP), funded through the European Agricultural Fund for Rural Development (EAFRD) and co-financed by the EU and Member States.

In 2021, the EU and its Member States committed to funding the EAFRD with €15.34 billion, making up about 23.2% of the total CAP budget.[67] However, the amount of funding appropriated under the EAFRD could affect the level of funding of Pillar I, given that Regulation 2021/2115 on the CAP Strategic Plans provides that Member States who fund agri-environment measures in excess of 30% of their contribution to the EAFRD are allowed to reduce their funding contribution to eco-schemes.[68]

Member States develop and manage their RDPs, often at regional level, rather than national level, to better account for the specific needs of regions and geographical areas. In this sense, Pillar II fully integrates the

eu/news/commission-publishes-list-potential-eco-schemes-2021-01-14_en#moreinfo. Accessed 1 December 2024.

[67] Rural Development measures benefited from an additional €8070.5 million from the Next Generation EU (NGEU) program to finance economic and social recovery in the wake of the COVID-19 pandemic.

[68] Regulation 2021/2115 on the CAP Strategic Plans, art 97(2), 2021 O.J. (L 435) 82. Member States must, in any case, dedicate at least 25% of the First Pillar to eco-schemes.

subsidiarity principles of EU law, whereby policy "principles are set out at Union level" and "Member States should have ample discretion to lay down specific conditions according to their needs."[69]

3.2.2 Animal Welfare Measures in the Second Pillar

Whereas Pillar I incorporates animal welfare legal standards solely through conditionality, Pillar II includes a category of measures, called "Measure 14," which aims to improve farm animal welfare beyond minimal legal standards, with the objective of developing rural areas. Member States willing to include funding for animal welfare measures can therefore choose to do so. Such measures typically fund programs that improve animal health, e.g., better hoof care or nutrition plans, increase space allowance and outdoor access, or prolong weaning periods.[70] Measure 14 was introduced in the CAP regulations in 2003, at the same time as conditionality requirements on animal welfare.[71] Other measures exist that benefit farm animal welfare in the second pillar, such as Measure 4 for on-farm investment, which can be used to improve outdoor areas for poultry. Measure 1, for the conversion and maintenance of organic agriculture, also benefits animals to the extent that organic standards in animal agriculture are stricter than the legal minimum.[72]

However, Pillar II measures are also subject to significant limitations. First, Measure 14 does not mandate that EU Member States offer animal welfare measures to farmers. As a result, for the 2014–2021 period, only 18 out of the 28 EU Member States[73] had implemented Measure 14 on animal welfare. These 18 Member States allocated €1.5 billion for this

[69] Ibid., Recital 71.

[70] For a detailed analysis of such measures, see RSPCA. 2018. Into the Fold Targeted Financial Support to Improve Farm Animal Welfare.

[71] Council Regulation 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations, 1999 O.J. (L 160) 80–102.

[72] Duval, E., von Keyserlingk, MAG., and B. Lecorps. 2020. Organic Dairy Cattle: Do European Union Regulations Promote Animal Welfare? *Animals* 10 (10):1786; Duval, E. 2022. Le droit de l'Union relatif à l'agriculture biologique: la promotion d'un meilleur bien-être des animaux d'élevage? In *Bien-être et normes environnementales*, ed. Isabelle Michallet. Paris: Mare & Martin (in French); Di Concetto, A. 2023. Farm Animal Welfare and Food Information for EU Consumers: Harmonizing the Regulatory Framework for More Policy Coherence. *European Journal of Risk Regulation* 1/2023.

[73] Accounting for a total of 70 Rural Development Programs out of the 118 programs in the EU. Source: European Network for Rural Development. RDP Summaries. https://

measure, which represents only 1.5% of the total expenditure of Pillar II, an amount much lower than the programmed spending, indicating that Member States have underspent on animal welfare measures.

A second limitation of Measure 14 is that it is not tied to strict criteria with effective reporting and inspection mechanisms. For instance, a 2018 report by the European Court of Auditors found that a pig producer was receiving payments under Pillar II's Measure 14 despite violating the ban on the routine tail-docking of pigs.[74]

A third limitation is that animal welfare payments often diverge from their intended target through the modernization of intensive livestock production systems that, for instance, may only marginally improve animal welfare.

Lastly, as with other CAP funding,[75] there exist instances of fraud due to the EU's limited enforcement powers. For instance, on 24 October 2024, the European Public Prosecutor's Office (EPPO) in Croatia arrested nine individuals suspected of defrauding the EU for more than €9 million in CAP funds that were intended for improving animal welfare in the pig sector.[76]

4 The Protection of Habitats and Wild Animals in the CAP

4.1 Environmental Protection Objectives in the CAP

The CAP regulations have integrated a wealth of environmental protection and biodiversity conservation measures over the past six decades,

ec.europa.eu/enrd/policy-in-action/rural-development-policy-in-figures/rdp-summaries-2014-2020_en.html. Accessed 1 December 2024.

[74] European Court of Auditors. 2018. Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation, p. 44. https://www.eca.europa.eu/en/publications?did=47557. Accessed 4 December 2024.

[75] Gebrekidan, S., Apuzzo, M., and B. Novak. 2019. The Money Farmers: How Oligarchs and Populists Milk the EU for Millions. *The New York Times*, 3 November. https://www.nytimes.com/2019/11/03/world/europe/eu-farm-subsidy-hungary.html. Accessed 1 December 2024.

[76] European Public Prosecutor's Office. 2024. Croatia: Nine Arrested in Probe into Multi-Million Subsidy Fraud in Pig Farming. https://www.eppo.europa.eu/en/media/news/croatia-nine-arrested-probe-multi-million-subsidy-fraud-pig-farming. Accessed 1 December 2024.

especially since 2003 and the advent of a multifunctional approach to the EU's agricultural policy.

Green payments first emerged as a form of revenue support for farmers to compensate for budgetary cuts to direct payments introduced in the 1992 CAP reform.[77] In 1999, the EU institutions simplified these green payments and reintroduced incentives for more extensive forms of farming in Pillar II. Since 1999, the CAP thus includes agri-environmental measures, in addition to national rural development funds which are also intended to favor the environment.

The 2021 CAP reform did not bring major change to the structure of environmental subsidies—the so-called green payments. The subsequent section provides an overview of the key measures of the CAP specifically aimed at protecting habitats and wild animals, ensuring that this section is not a repetition of existing literature.[78]

4.2 Wild Animal and Habitat Protection in the First Pillar of the CAP

4.2.1 Conditionality Rules

Under the First Pillar, four main conditionality rules address the protection of habitats and wild animals: two Good Agricultural and Environmental Conditions (GAEC), and two Statutory Management Requirements (SMRs).

Regulation 2021/2115 on the CAP Strategic Plans requires producers to comply with a GAEC standard (GAEC 8) whose main objective is the "maintenance of non-productive features and area to improve on-farm biodiversity."[79] More specifically, this standard requires that producers maintain a minimum of:

[77] De Sadeleer, N. and C.-H. Born. 2004. *Droit international et communautaire de la biodiversité*. Paris: Dalloz.

[78] For instance, see De Sadeleer, N. 2023. La Nouvelle PAC: Alliée ou ennemie de la nature sauvage? In *Les vingt ans du règlement sur la législation et la sécurité alimentaire dans l'Union européenne: Bilan et perspectives*, Nathalie De Grove Valdeyron and Marine Friant-Perrot, eds. 97–138. Brussels: Bruylant.

[79] Regulation 2021/2115 on the CAP Strategic Plans, Annex III, 2021 O.J. (L 435) 150.

either 4% of non-productive areas (honey set-aside) and/or biodiversity elements (hedges, copses, trees, ponds, etc.) in relation to their arable land area;

or 3% of non-productive areas combined with 4% of catch crops and/or nitrogen-fixing crops (peas, beans, clover, lupins, alfalfa, vetches, etc.), without plant protection treatment.

Member States were expected to comply with GAEC 8 as early as 2023. However, the European Commission granted an exceptional derogation, allowing Member States not to comply with GAEC 8 in 2023. This derogation was further extended to 2024 and, in May of that year, the European Parliament and the Council of the EU eventually decided to codify a significantly watered down version of GAEC 8.[80] The codified version of GAEC 8 only requires farmers to maintain topographical features, prohibits farmers from trimming hedges and trees during the bird nesting and breeding season, and provides optional measures to prevent invasive plant species.[81] The final version of GAEC 8 is thus woefully inadequate to protect nature. As a result of this watering down of the legislation, farmers are now authorized to make unrestricted use of their arable land available for food production and will no longer be required to devote a minimum proportion of their arable land to non-productive areas, such as set-aside land, hedges, and low walls. The changes brought to GAEC 9 are therefore likely to accelerate the sharp decline in biodiversity in rural areas.

Another GAEC requires producers to comply with a "Ban on converting or ploughing permanent grassland designated as environmentally-sensitive permanent grasslands in Natura 2000 sites," which are protected natural areas under EU law (GAEC 9).

In addition to these two GAEC standards, Regulation 2021/2115 on the CAP Strategic Plans includes two SMRs relevant to wild animals: SMRs 3 and 4. These two SMRs stipulate penalties in the form of subsidy reduction for producers who do not comply with Directive 2009/147/EC on the Conservation of Wild Birds (Birds Directive)[82] and Directive

[80] Regulation (EU) 2024/1468 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards good agricultural and environmental condition standards, schemes for climate, environment and animal welfare, amendment of the CAP Strategic Plans, review of the CAP Strategic Plans and exemptions from controls and penalties.

[81] Ibid., Annex III.

[82] Ibid., Annex III.

92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (Habitats Directive).[83] However, these two SMRs suffer from the same shortcomings as the SMRs related to animal welfare: the language used in the Directives is not specific enough and enforcement gaps are too numerous to ensure adequate levels of protection to animals.[84]

4.2.2 Wild Animal Protection in the Eco-Schemes

The European Commission's published list of examples of agricultural practices eligible for support via eco-schemes is relatively expansive and includes a few examples of practices that are likely to benefit wild animals. Relevant examples include organic farming practices, the use of "mixed species/diverse sward of permanent grassland for biodiversity purpose (pollination, birds, game feedstocks)," and the "establishment and maintenance of high-biodiversity silvo-pastoral systems."[85]

4.3 Wild Animal and Habitat Protection in the Second Pillar of the CAP: Environmental, Climate-Related, and Other Management Commitments (ECMC)

One category of CAP measures that supports wild animal protection is classified as "Environmental, Climate-Related, and Other Management Commitments" (ECMC). These voluntary measures are intended to compensate farmers for income losses and costs associated with implementation. Farmers may apply to receive these funds for a period of five to seven years.[86]

Like eco-schemes, but unlike GAEC standards, ECMC remunerates voluntary practices that go above and beyond common industry practices. As a result, only practices that go beyond the SMRs and GAECs standards and the relevant minimum requirements relating to the use of fertilizers

[83] Ibid., Annex III.

[84] De Sadeleer, N. 2023. La Nouvelle PAC: Alliée ou ennemie de la nature sauvage? In *Les vingt ans du règlement sur la législation et la sécurité alimentaire dans l'Union européenne: Bilan et perspectives*, Nathalie De Grove Valdeyron and Marine Friant-Perrot, eds. p. 117. Brussels: Bruylant.

[85] European Commission. 2021. List of potential agricultural practices that the eco-schemes could support under the eco-schemes. https://agriculture.ec.europa.eu/news/commission-publishes-list-potential-eco-schemes-2021-01-14_en#moreinfo. Accessed 1 December 2024.

[86] Regulation 2021/2115 on the CAP Strategic Plans, art 70(6), 2021 O.J. (L 435) 65.

and plant protection products or animal welfare are eligible for funding as ECMC.[87] Furthermore, as per the subsidiarity principle that governs the CAP, the content of ECMC measures is defined by Member States, either at national or regional level—provided that these measures align with the general objectives of Regulation 2021/2115 on the CAP Strategic Plans. Consequently, national competent authorities must ensure that eco-schemes and the ECMC do not overlap but instead complement each other effectively.

5 Measures Undermining Animal Protection

Animal-source producers receive very few direct subsidies from the EU. Rather, the meat and dairy industry receives support through a large array of indirect subsidies.[88] These support programs disproportionately benefit industrial animal agriculture compared to the animal protection measures described above.

Several measures under Pillar II undermine efforts to improve animal welfare. This is particularly true of certain subsidies for on-farm investments (Measure 4 mentioned above), which may end up funding the construction of industrial infrastructure, including warehouses for intensive chicken farming, bio-gas tanks, or even manure lagoons to help producers comply with environmental regulations. These subsidies have the effect of incentivizing industrial farm animal production by externalizing the significant production costs necessary to maintain factory farming operations.

The CAP also provides funding for the EU's agricultural promotion policy, which aims to promote agri-food products made in the EU. To achieve this goal, the European Commission's European Research Executive Agency (EREA) grants funds to inter-trade organizations so they can run advertising campaigns inside and outside the EU.[89] These campaigns primarily advertise products, not brands—when they do advertise brands, advertising materials must display multiple brands. Currently, all EU-based inter-trade organizations of all agri-food sectors are eligible

[87] Ibid., art 70(3) a) and b).

[88] Di Concetto, A. 2023. Le bien-être animal dans la Politique Agricole Commune: la prise en compte d'une "attente sociétale." *Revue de droit rural* N°1, p.16. https://www.lexiskiosque.fr/catalog/revue-de-droit-rural/revue-de-droit-rural/n1-2023 (in French).

[89] European Commission, European Research Executive Agency. Promotion of Agricultural Products. https://rea.ec.europa.eu/funding-and-grants/promotion-agricultural-products-0_en. Accessed 26 December 2024.

to apply for these promotional grants, regardless of the type of products, or their method of production.[90] In the 2016–2020 period, the EU granted €252.4 million to inter-trade organizations so that they could promote meat and dairy products.[91]

Overall, the amount dedicated to promoting animal-source food is disproportionately high compared to the amount dedicated to promoting fruits and vegetables.[92] In the same funding period, 32% of the total spending of €776.7 million went to promote meat and dairy products, as opposed to 19% used for fruits and vegetables.[93] Meat and milk further benefited from "mixed" campaigns, which promoted several products, including animal-source food. The cost of these mixed campaigns is estimated at €215 million (28% of the EREA funds).[94]

Over the previous financial period, EU-funded campaigns[95] resulted in encouraging the production and consumption of inhumane food products. For instance, the "Let's Talk About Pork" campaign, which has been running in France, Spain, and Portugal, encourages young consumers to eat more pork. The campaign touted pork production in these countries as an animal-friendly industry on the grounds that industrial hog farms are compliant with high animal welfare standards, without mentioning that EU and national animal welfare legislation does in fact allow inhumane practices, including mutilations and extreme confinement. As a result of these low standards, more than 90% of pigs in France and Spain are raised on farms where sows are kept in cages, piglets undergo castration without

[90] All products listed in Annex I of the TFUE, including all animal source food, are eligible for CHAFEA funds, as per Article 5 of Regulation 144/2014 of the European Parliament and of the Council of 22 October 2014 on information provision and promotion measures concerning agricultural products implemented in the internal market and in third countries and repealing Council Regulation (EC) No 3/2008, 2014 O.J. (L 317) 56–70.

[91] Greenpeace. 2021. Marketing Meat: How EU Promotional Funds Favor Meat and Dairy. Available at: https://www.greenpeace.org/static/planet4-eu-unit-stateless/2021/04/20210408-Greenpeace-report-Marketing-Meat.pdf.

[92] Also see Chap. 11, Marine Friant-Perrot, "Meat Reduction as an Animal Protection Policy Goal: Exploring the Economic, Health, and Climate Nexus in EU Law."

[93] Greenpeace. 2021. Marketing Meat: How EU Promotional Funds Favor Meat and Dairy. Available at: https://www.greenpeace.org/static/planet4-eu-unit-stateless/2021/04/20210408-Greenpeace-report-Marketing-Meat.pdf.

[94] Ibid.

[95] These funds were then managed by the EU's Consumers, Health, Agriculture and Food Executive Agency (CHAFEA).

anesthesia, as well as teeth-clipping and tail docking, and all throughout the production chain these animals are deprived of outdoor access.[96]

In its Farm to Fork Strategy, the European Commission had committed to conduct a review of the EU agri-food promotion program "to support the most sustainable, carbon-efficient methods of livestock production."[97] The Commission ultimately never conducted this review and spending levels for meat and dairy products in 2022 and 2023 remained the same as in previous years.[98] In 2022, promotion campaigns for animal-source food products represented more than 50% of the promotion programs approved for that year,[99] and 25.3% of the approved applications were for meat and dairy products. In 2023, campaigns concerning animal-source products represented 57% of the promotion programs, including 36.8% exclusively covering meat and dairy products. Overall, between 2022 and 2023, the budget allocated to the promotion of animal-source products increased by 37%, while the budget allocated to promoting fruit and vegetables fell by 17%.[100]

5.1 EU School Milk Scheme

The CAP funds another animal-source food program, the EU School Fruit, Vegetables, and Milk Scheme (referred to hereafter as the "School Milk Scheme.") This program was launched in 2017, just two years after milk quotas had ended. The School Milk Scheme is intended to "support

[96] Ninetey-nine percent, 98.5%, and 65% of piglets undergo tail docking respectively in France, Spain, and Portugal. Source: European Commission (DG SANTE). Audits on Measures to Prevent Tail Biting and Avoid Tail-Docking of Pigs in Spain (2017), France (2019), and Portugal (2019).

[97] European Commission. 2020. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Farm-to-Fork Strategy for a Fair, Healthy and Environmentally-Friendly Food System. COM (2020) 381 final, p. 7–8.

[98] European Commission. 2023. Commission implementing decision of 14 November 2023 on the financing of information and promotion actions concerning agricultural products on the internal market and in third countries and the adoption of the work program for 2024. C(2023) 7602 final.

[99] Meat and dairy products, and mixed produced basket.

[100] The authors thank Anatole Poinsot for conducting this detailed analysis, which covers Simple and Multi Programs on the internal market and third countries, but excludes the applications co-financed by the EU and the applicants. This analysis uses data for Simple Programs extracted from the European Commission's website and the list of EU-funded Multi-Programs provided on request by the European Commission.

the distribution of products, educational measures and information measures."[101] In economic terms, support afforded to milk in the School Milk Scheme provides a privileged market for milk producers through the subsidization of public procurement of milk and dairy products for school cafeterias across the 27 Member States. Additionally, because the milk measures in the School Milk Scheme target young children, mostly in primary schools,[102] this program further enables producers to influence food choices and lifelong consumption habits of upcoming generations of European citizens.

Over the 2023–2029 period, the annual budget allocated to the School Milk Scheme is €90.1 million per school year. This number only represents the cost of the subsidies that directly benefit the sector and does not take into account the long-term health effects of consumer food choices of the 15 to 19 million children who are offered a total of around 130 million liters of milk every year.[103]

Additionally, only a few Member States give priority to the environment when implementing the School Milk Scheme, even if a majority of them privilege organic milk.[104] However, standards in organic milk production are too lax to ensure high levels of animal protection. Specifically, the Organic Regulation does not establish a cap on the number of animals per holding, and thus hardly limits the concentration and specialization in the dairy sector, two features that are associated with intensive and environmentally deleterious practices,[105] as well as lower levels of cow welfare.

[101] European Commission. School Scheme Explained. https://agriculture.ec.europa.eu/common-agricultural-policy/market-measures/school-fruit-vegetables-and-milk-scheme/school-scheme-explained_en. Accessed 26 December 2024.

[102] European Commission. EU School, Fruit, Vegetable, and Milk Scheme: Monitoring Data. Available at: https://agridata.ec.europa.eu/extensions/SchoolSchemeMonitoring/SchoolSchemeMonitoring.html. Accessed 26 December 2024.

[103] European Commission. 2021. Final Minutes—Civil Dialogue Group Milk, 26 February 2021. Presentation by Maria Giulia Medico. Brussels: Directorate-General for Agriculture and Rural Development. Available at: https://agriculture.ec.europa.eu/system/files/2021-04/cdg-milk-2021-02-26-minutes_en_0.pdf.

[104] Ibid.

[105] CEAS Consultants (Wye) Ltd. and European Forum on Nature Conservation and Pastoralism. 2000. The Environmental Impact of Dairy Production in the EU: Practical Options for the Improvement of the Environmental Impact. Final Report for the European Commission.

6 Conclusion

The new policy instruments designed to ensure the "multifunctionality" of the CAP—the idea that the CAP should do more than just incentivizing high volumes of production—have faced harsh criticism over the past two decades. On the one hand, farmers deplore the complexity of ever more numerous, seemingly inconsistent mechanisms. On the other, civil society has questioned the role of the CAP in spreading industrial production methods, with advocates demanding better targeted support and more accountability in the distribution of subsidies. Despite such growing discontent, successive reforms of the CAP have failed to reduce the ecological footprint of agriculture in the EU or achieve significant improvements in animal welfare.[106]

Consistent with past reforms, the 2021 CAP reform primarily sought to remedy these numerous imperfections. However, the dilution of the GAEC standards in 2024 and the low ambition of National Strategic Plans have undermined this objective. Another limitation of the 2021 CAP reform is that it mainly consisted of a reform of the delivery model of the CAP—the way in which the money should be distributed to farmers—rather than through a root and branch reassessment of the foundations of the policy itself. This new delivery model provides more independence to Member States, in virtue of a reinforced subsidiarity principle, by allowing Member States to list the specific measures that they want to implement on their territory. This considerable latitude left to Member States is likely to create discrepancies in the ways in which agriculture is subsidized from one Member State to the other. As a result, the CAP remains incredibly complex and ineffective, and may additionally cause distortions in competition across the EU market. The eco-schemes are an example of a CAP measure that fails in these multiple and overlapping key areas.

[106] European Court of Auditors. 2018. Special report No 31/2018: Animal welfare in the EU: closing the gap between ambitious goals and practical implementation; European Court of Auditors. 2020. Special Report 13/2020: Biodiversity on farmland: CAP contribution has not halted the decline; European Court of Auditors. 2021. Special Report 16/2021: Common Agricultural Policy and climate: Half of EU climate spending but farm emissions are not decreasing; European Court of Auditors. 2021. Special Report 20/2021: Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use; European Court of Auditors. 2021. Special Report 21/2021: EU funding for biodiversity and climate change in EU forests: positive but limited results.

On the specific issue of animal protection, while environmental and animal welfare concerns have made their way into primary law and secondary law, including the CAP regulations, the EU legislature has failed to specify the concept of animal welfare in the context of the CAP. As a result, regulatory standards related to animals are few and minimal. Because of inter-state competition, Member States typically do not attempt to go beyond the minimum standards set in EU law. Lastly, CAP regulations do not provide rules on how funds should be divided between animal welfare measures and environmental measures, and consequently, animal welfare measures tend to receive very limited budgetary support.

It is therefore unlikely that the new CAP regulations will properly facilitate a transition in the EU animal agriculture industry—from industrial farm animal production and toward more humane, sustainable, and secure food systems.[107]

[107] In that sense, see European Court of Auditors. 2024. Special report 20/2024: Common Agricultural Policy Plans.