

PROFESSIONAL UPDATING

New CAP, Old Hat? Some thoughts on the EU's Common Agricultural Policy 2014–2020

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ABSTRACT

After a brief review of recent attempts to reform the Common Agricultural Policy of the European Union, the essential elements of the Commission's proposals for the reshaping of the policy from 2014 are reviewed and their implications considered. Given that this is just the first salvo in the campaign, the author concludes that we can expect a great deal of heated debate and substantial horse-trading before the final settlement is reached.

KEYWORDS: Common Agricultural Policy (CAP); Mid-Term Review; European Union; subsidy; cross compliance

1. Context

Those who are veterans to the European policy arena will have thought 12 October 2011 to be one of the most uneventful CAP reform release days of recent decades. There are two reasons for this. Firstly, in today's internet age, leaked copies of the Regulations appeared many months ago and so there was very little that was 'new' in the official announcement made last month. Secondly, there were very few substantive changes proposed to the basic architecture of the current policy, and it might unkindly be described as 'underwhelmingly unambitious'.

For those not familiar with CAP, we are now really well into what might be called 'Phase 3' of CAP – a period that began in 2005 with farm support now almost all decoupled from production decisions across the 27-member bloc. Assigned to distant memories are the famous butter mountains and wine lakes which became so politically embarrassing to the Commission during the 1980s under what might best be called 'Phase 1 – Market Support' of the CAP which ran from its inception in 1958 until the MacSharry Reforms of 1992.

The colourful Irishman who gave his name to that major reform of the early 1990s is also now a fading memory except to those well-versed in agricultural policy history. Ray MacSharry began the long slow process of dismantling the old market support mechanisms in the CAP and 'partially decoupling' the payments by linking them to crop areas and livestock numbers rather than to market prices in 'Phase 2' of the CAP which ran from 1993 to 2004 and saw farmers supported through a complicated structure of crop-based area

payments and headage payments linked to livestock stocking densities. During this period, agri-environment and rural development policies and payments were fully integrated into the CAP architecture as 'Pillar 2', with mainstream agricultural support being designated 'Pillar 1.'

The introduction of the Single Payment Scheme (SPS) in 2005 following the Mid-Term Reform (MTR) of 2003 was arguably the most radical reform of CAP since it was founded. Almost all previous support payments and market support payments were bundled up into this new 'single payment' and paid irrespective of agricultural production activity. Since 2005 farmers simply have had to adhere to baseline environmental management standards, known as cross compliance, to receive the support payment. The MTR started with the arable, livestock and dairy regimes but has over the years been extended to cover tobacco, olive oil, hops and cotton (2004); sugar (2005) and fruit and vegetables (2008). The SPS is now the single most important policy instrument of the CAP.

2. Introduction to the 2013 Reforms

The 2013 CAP reforms have been promoted by the current funding and legislative arrangements for the Single Payment Scheme expiring in 2012. Although the 2003 Reforms were subject to a 'Health Check' or mini-reform in 2008, the basic architecture of the scheme has remained unchanged across the EU for the last six years.

There are the usual pressures bearing down on the reform process, notably the cost of the direct payments

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and the public justification for them – the SPS is, in effect, a complicated mish-mash of income support, compensation for previous supported price reductions and baseline environmental management payments through cross compliance. For many countries which adopted a 'historical' model of implementation of the SPS, the reference years of 2000–2002 now look increasingly anachronistic and there is pressure to harmonise large differences in payments that have been created by this historical quirk. The second pressure is the need to harmonise the SPS system with its simplified cousin (the Single Area Payment Scheme, or SAPS) which was offered to the New Member States who joined the EU in 2004 and 2007; these countries generally have substantially lower payments per hectare than the old EU-15.

As a reminder there are *four separate new regulations* proposed as part of the 2013 reforms although the aspect which continues to attract most is of course the future design of any new direct payments. This is partly because the budget for direct payments is the most important element of EU agricultural policy, accounting for 72% of EU CAP expenditure in the 2012 budget, and partly because of their continuing important role in underpinning farm income in the EU.

3. Key Elements of the Proposed New Regulations

In a nutshell, the key elements of the proposed new Regulations are:

- i. The replacement of the existing SPS in the old EU-15 (plus Malta and Slovenia) and the SAPS in the 10 New Member States of 2004 and 2007 with a new **Basic Payment Scheme (BPS)**, based on up to 70% of the 'national ceiling' available for Pillar 1 payments. Entitlements to the new scheme will be allocated based on applications made on 15 May 2014, but the rules on the management of the newly allocated entitlements and the national reserve largely follow the current rules of the SPS. (In practical terms the current payment entitlements to SPS cease to exist on 31 December 2013). For those countries which have previously implemented SAPS, the creation of 'entitlements' separate to land will be a new concept. All Member States will be obliged to move towards a *uniform payment per hectare* at national or regional level by the start of 2019 – a potential major change for those countries currently using the 'historical' model of SPS implementation. There will be various provisions to deal with oddities created during the transition period – such as a National Reserve and Hardship provisions, very similar to those offered as part of the 2003 reforms.
- ii. A new '**Greening Payment**' based on up to 30% of the annual ceiling for farmers who follow 'enhanced cross compliance' measures beneficial for the climate and the environment. If farmers wish to receive the BPS then *participation in this scheme will be compulsory*. This came as a surprise to many commentators who had assumed in the early stages of the proposals that the 'greening' measures would

be optional but this is not the case. The measures proposed in Articles 28 to 31 of the Regulation are:

- maintaining permanent pasture;
- crop diversification (a farmer must cultivate *at least 3 crops on his arable land* none accounting for more than 70% of the land, and the third at least 5% of the arable area); and
- maintaining an 'ecological focus area' of *at least 7% of farmland* (excluding permanent grassland) – i.e. field margins, hedges, trees, fallow land, landscape features, biotopes, buffer strips, afforested area.

This clearly creates all sorts of practical problems for those businesses which are 'block cropped' as part of larger farming rotations and it is not clear how any ecological focus area required under greening will fit with 'broad and shallow' stewardship schemes currently operating under Pillar 2, such as Entry Level Stewardship in the UK.

- iii. **Other payments:** There will be a voluntary additional payment (up to 5% of the national ceiling) for farmers in disadvantaged areas; a mandatory additional payment to new entrants enrolled in the basic payment scheme (up to 2% of the national ceiling) and a simplified scheme for small farmers (up to 10% of the annual national ceiling). Provision is made for a voluntary coupled support scheme for specific types of marginal farming which are particularly important for economic and/or social reasons (up to 5% of annual national ceiling with the possibility to go beyond this in particular cases). There are also some transitional arrangements for Romania and Bulgaria allowing them to continue with Complementary National Direct Payments (CNDPs) in 2014 and 2015.
- iv. **Cross compliance:** The award of all payments will continue to be linked to the baseline requirements relating to environment, animal welfare and plant and animal health standards known as 'cross compliance.' However, as an exercise in simplification, it is proposed that the number of Statutory Management Rules (SMRs) will be reduced from 18 to 13 and rules on Good Agricultural & Environmental Condition (GAEC) will be reduced from 15 to 8. It is worth noting that some of these elements will also be new obligations to existing SAPS claimants which do not have such rigorous cross compliance obligations as the current SPS. It is also proposed that the Water Framework Directive and the Sustainable Use of Pesticides Directive will be incorporated into cross-compliance rules.
- v. **'Capping':** This is potentially the most contentious point and is set out in Article 11 of the regulation. This proposes that the amount of support that any individual farm can receive from the Basic Payment Scheme will be limited to €300,000 per year², and the payment will be reduced by 70% for the part from €250,000–300,000; by 40% for the part from €200,000–250,000, and by 20% for the part from

² In mid-October 2011, €1 was approximately equivalent to \$1.4 and £0.87

- €150,000–200,000. Greening Payments will be excluded. However, in order to take employment into account, the holding can deduct the costs of salaries in the previous year (including taxes and social security contributions) before these reductions are applied. It is not believed this would include contract labour and so this interpretation could be a substantial disadvantage to those in share farming, contract farming or joint venture operations. This point is clearly highly contentious and likely to be the subject of significant debate and challenge during the on-going negotiations, and it would be very difficult to implement and police. I expect that these provisions will be watered down during the course of the negotiations.
- vi. **'Active farmers'**: In order to iron out a number of legal loopholes, the Commission is tightening the definition of active farmers in these regulations – Article 9 of the regulation. Aimed at excluding payments to applicants who have no real or tangible agricultural activity (perhaps including some sports clubs, stud farms, airports and golf courses) the proposed definition states that payments would not be granted to applicants whose CAP direct payments are less than 5% of total receipts from all non-agricultural activities, or if their agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and they do not carry out the minimum activity required, as defined by Member States. In order to avoid small part-time farmers being caught by this, there is a derogation for farmers who receive less than €5,000 in direct payments the previous year.
- vii. **Eligible hectares** – The rules foresee setting 2014 as a new reference year for land area, but there will be a link to beneficiaries of the direct payments system in 2011 in order to avoid speculation. Article 21 of the draft regulation sets out the details, but this is potentially a serious issue for land sales and tenancies being transferred after 2011 and there are many potential problems in this area. For example in the case of the sale or lease of a holding or part of it, by a contract signed before the 15 May 2014, currently the transfer of the right to receive payment entitlements is only to *one* farmer (provided that the latter complies with the conditions laid down in Article 9). What if a claimant needs to transfer the right to more than one other, where for example a number of tenancies have been given up since 2011? Additional issues on the horizon include where the status of the 2011 claimant changes, which is likely in a number of circumstances.

4. Payment Values

One of the key points of contention, especially for those countries who joined the EU in 2004 and 2007, is whether the question of 'equality' between the 'old' and 'new' Member States has been addressed. Commission figures show that the average direct payment per hectare of potentially eligible area (PEA) for the year 2013 is €94.70 in Latvia and €457.50 in the Netherlands, whereas the EU-27 average is €269.10. Here the

Commission's direct payments regulation opts for a pragmatic approach. It proposes a very limited redistribution initially of funds, envisaging that for countries currently receiving less than 90% of the EU average payment per eligible hectare, one-third of the gap between their current figure and 90% of the EU-27 average is closed. This limited effect is confirmed in the impact assessment, which calculates that the redistribution would amount to just €738 million out of a total budget of €42.8 billion.

However, in the medium-term, and by December 31 2028 at the latest, the proposals suggest that all allocated payment entitlements in the Union should have a uniform value, implying that the payment per eligible hectare in Latvia should be the same as in the Netherlands. This ambitious objective was presumably inserted under pressure from the new member states in exchange for the more limited redistribution initially. Indeed, taken at face value, it appears to rule out different regional unit values within a member state, even though this is expressly permitted in the current regulation.

5. The Process from Now Until 2014

The Commission proposals for new CAP regulations published last month are only the first step in the legislative procedure. The proposal now enters the co-decision process between the Council of Ministers and the European Parliament. In the first reading, the Parliament will adopt its position by a simple majority and the Council will adopt its position by a qualified majority. If the Council adopts the Parliament's position, then the regulations are adopted.

It is more likely that the positions taken by the two parties will differ, in which case the process moves to a second reading in both the Parliament and the Council. Within a three month period, the Parliament can either approve the Council's common position (in which case the regulations are adopted) or propose amendments to the Council's position which are then put to the Council and the Commission for their opinion. The Council then has a further three months in which to accept the Parliament's amendments by qualified majority (or by unanimity where the Commission has given a negative opinion). If the Parliament's amendments are approved, then the regulations become law. Otherwise, a Conciliation Committee is convened within a six week period and the process continues.

It is hoped that the final decisions could be taken under the Irish Presidency of the Council in the first half of 2013 – but in reality there may be slippage and a further roll-on of the existing regimes for 2014 with a start date of 1 January 2015. What is clear is that over the next two years we can expect a lot of heated debate and substantial horse-trading before the final settlement is reached.

About the author

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