



# CAP Legal Proposals: BirdLife Europe Policy Brief

*This briefing reflects an preliminary environmental analysis of the CAP Legislative Proposals, to accompany [our immediate reaction](#). It is intended to contribute to the initial debate. Please contact us with comments or if you spot mistakes.*

## Overview

BirdLife Europe has analysed the European Commission's legal proposal for the post 2020 CAP in light of what would be needed to turn around the collapse of biodiversity and the wider environmental crisis across Europe. Our premise is that a better policy must provide funding to support farmers in conserving and restoring biodiversity, it must help farmers transition from current failed intensive model to an agro-ecological and socio-economically viable one, and it must address the consumption side.

Our overall conclusion is that the proposals do little to discourage intensive farming and to instead use CAP funds to payments for biodiversity, environmental public goods and sustainable farming practices. In fact, they risk driving further intensification through increased flexibility for Member States without this being complemented by sufficient safeguards or any real accountability for results.

The following table provides a breakdown of the key articles relevant to the environmental performance of the CAP, grouped by key aspects of the future CAP architecture. The sum of all these elements has led us to the conclusion that Hogan's proposal will lead neither to an overall improvement of the environmental performance of the current CAP, nor to a turnaround in terms of the real-world environmental challenges. The arrows reflect the changes between this proposal and the current CAP (↑=better, - = no change or mixed, ↓= worse), and the colours between the proposals and what is needed (green=sufficient, yellow = insufficient or mixed, red = actively harmful).

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Funds for Nature / Ring-fencing : how much of the CAP funds need to be spent on biodiversity and the environment	86; ANCs: 66 in connection with 86	↓		<ul style="list-style-type: none"> <li>• <b>No money is earmarked specifically for biodiversity and environmental spending is being reduced through the removal of the ring-fencing in Pillar I.</b> The 30% ring fencing in Pillar II is kept however in this ring-fencing the measure for Areas of Natural or other specific Constraint payments is removed (although these are income support measures that should not be in the second pillar in the first place). This is not enough to mitigate the impact of the preferential budget cut targeting Pillar II.</li> <li>• The partially improved conditionality which includes the current greening and the previous cross compliance underpinning pillar 1 and parts of pillar 2, does not take away the fundamental critique that the CAP needs to finance part of the obligations under the Nature Directives and therefore a dedicated budget to the tune of 15 billion EUR to saving biodiversity.</li> </ul>	<ul style="list-style-type: none"> <li>• A ring-fenced budget for environment and climate in the CAP this could be done through a mandatory spending/ring-fencing on the environment and climate within both Pillars to the amount of 50% dedicated to high quality measures.</li> <li>• Make sure that this ring-fencing includes at least EUR15bn per year for biodiversity</li> <li>• Transfer ANC payments to the Pillar I and ensure that they are not part of any minimum ring-fencing for environmental measures in either Pillar I or II</li> </ul>
Climate spending: how much of the CAP funds need to be spent on biodiversity and the environment	87 (related to Title III, Chapter II, section II, subsections 2 and 3; Title III, Chapter II, section II, subsection 4)			<ul style="list-style-type: none"> <li>• The Commission is automatically considering 40% of direct payments to be climate spending by using the 'Rio markers' (100% for spending on climate, 40% for spending that is climate friendly, 0% for spending unrelated). This is based on the fact that the direct payments are bound by conditionality which is automatically assumed to be good for the climate.</li> <li>• In reality, this means that if a factory farm with huge ammonia and methane emissions, or a maize field on freshly ploughed peatland get EUR1 million in income support, EUR400,000 will be considered "climate funding".</li> <li>• The fallacy of this measure has already been called out by the European Court of Auditors in a 2016</li> </ul>	<ul style="list-style-type: none"> <li>• Direct payments cannot automatically count as climate spending, as per EU Court of Auditors' <a href="#">advice</a>.</li> <li>• Climate spending must be based on real measures on the ground that are proven to be beneficial for the climate.</li> </ul>

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				<a href="#">report</a> that stated: 'Assumptions concerning the contribution from agricultural direct payments to the climate action target lack sound justification'.	
Eco-schemes: environmental schemes in Pillar I	28	↑		<ul style="list-style-type: none"> <li>This creates a new light green scheme in the Pillar I which all Member States have to include and which needs to account towards the environmental/climatic objectives.</li> <li>The schemes definition is slightly better than current greening but <b>without any money attached these are unlikely to be picked up in a meaningful way (a Member State could theoretically comply by allocating EUR1 to one scheme).</b></li> </ul>	<ul style="list-style-type: none"> <li>Strong accountability system by the Commission to ensure the flexibility of Member States is used in the community's interest.</li> <li>50% ring-fencing of Pillar I funds for environment and climate measures would ensure eco schemes are actually used at scale.</li> </ul>
Modulation: The ability of Member States to move money from Pillar I to Pillar II	86	↑		<ul style="list-style-type: none"> <li>In the current CAP, there is a flexibility of 15% with a possible increase for certain countries of 10% from Pillar II to Pillar I. Also in the current situation there is no approval process.</li> <li>The Commission allows a 15% flexibility between Pillars (in both directions) which is not tied to a justification or approval. It allows for an extra (up to) 15% move from Pillar I to Pillar II provided it goes to environmental or climatic interventions. However, this remains simply an option: there is no incentive to do so.</li> </ul>	<ul style="list-style-type: none"> <li>Allow MS to move their whole envelope from Pillar I to Pillar II if they can justify it based on the objectives. It should not be allowed to move money in the other direction.</li> <li>Create incentives for Member States to move money from the first to the second pillar.</li> </ul>
Conditionality: the minimum baseline that beneficiaries of CAP funds have to meet in order to qualify for payments	11 + Annexes	-		<ul style="list-style-type: none"> <li>The new conditionality brings together the previous elements of cross compliance as well as the greening and makes it part of the baseline for Pillar I and part of Pillar II. Some new elements have been introduced (farm sustainability tool, appropriate protection of wetland and peatland), others were redefined without clarity whether it will be an improvement or not (Ecological Focus Areas).</li> <li>However, important points of critique remain since the proposal still does not make conditionality apply</li> </ul>	<ul style="list-style-type: none"> <li>To apply the polluter pays principle to the whole CAP</li> <li>To improve the non-legislative elements of the conditionality (a minimum 10% of non-productive space for nature at farm level, extension of soil cover and other items to permanent crops, etc.)</li> </ul>

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				<p>to all parts of the CAP (e.g. investment aid is excluded).</p> <ul style="list-style-type: none"> <li>Conditionality is left to Member States (e.g. no minimum % for EFAs and no minimum standards for what crop rotation means is defined at EU level)</li> </ul>	
Accountability during definition process of Good Agricultural and Environmental Condition (GAEC) and coupled support by the MSs	12, 98, 97	↑		<ul style="list-style-type: none"> <li>Positive development is that Commission now need to approve GAEC and coupled support. But it is unclear on what grounds the Commission will be able to refuse a proposal by a MS</li> </ul>	
Safeguards on Investments: EU money needs strong environmental safeguards so that it is not used to drive further unsustainable farming practices	68; also 43,51,56,60	↓		<ul style="list-style-type: none"> <li>Investment aid should be conditional on the supported activities not being harmful to the environment and not overexploiting natural resources. An example would be the support for irrigation installations within areas that suffer water scarcity.</li> <li>The current Commission's proposal has removed safeguards that are in place within the current CAP regulation like Article 46 on irrigation.</li> <li>There are no environmental safeguards on sector specific interventions such as in the fruit and vegetables sector or olive sectors, and Member States are able to choose one objective (such as 'modernisation') for olives, and then put all their money into intensification of olive groves. <b>This proposal basically opens the door to almost unlimited deployment of perverse subsidies.</b></li> </ul>	<ul style="list-style-type: none"> <li>Reintroduce appropriate safeguards and ensure no investment aid is granted for measures that harm the natural environment or push the use of natural resources over a sustainable level.</li> <li>Subject all CAP payments to conditionality, including investment aid.</li> </ul>

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Coupled payments: payments under Pillar I tied to production levels	Article 29 - 33	↓		<ul style="list-style-type: none"> <li>This proposal allows for too much freedom for Member States to employ this instrument without a strong framework that avoids environmental harm and ensures the overall coherence with other measures. Member States can grant Coupled Support for 'economic, social or environmental reasons'. Under the current system of Voluntary Coupled Support (VCS), the European Court of Auditors has remarked that these subsidies potentially offset the environmental spending within the CAP. MS can couple up to 10% (+2% for protein crops maximum) or freeze at the level approved in 2018.</li> <li>In the current proposal it is enough for the MS to declare that a sector is facing difficulties, without specifying their nature.</li> <li>In the current proposal <b>biofuels (other non-food crops, excluding trees, used for the production of products that have the potential to substitute fossil materials) will be able to get coupled support</b></li> </ul>	<ul style="list-style-type: none"> <li>To use coupled support, MSs have to show, how this intervention is going to contribute to the objectives and helps to overcome the "difficulties" in the corresponding sector.</li> <li>MS must also prove that income support provided would not lead to harming any objectives of the Plan.</li> <li>Biofuels, as long as it is not proven that they actually save emissions and are not harming the environment, must not get coupled support (for this reason they are not allowed to be subsidised under State Aid rules).</li> </ul>
Who is eligible for support: All those who produce public goods should be allowed access to public money	4	↓		<ul style="list-style-type: none"> <li>In the proposals, the definition of genuine farmer becomes a pre-requisition to access certain types of funding which could de facto exclude other recipients, for example NGOs.</li> </ul>	<ul style="list-style-type: none"> <li>Ensure that those who manage land for environmental purposes shall not be precluded from support.</li> </ul>
Objectives: If the system is supposed to deliver on the basis of objectives and indicators,	5	-		<ul style="list-style-type: none"> <li>The objectives in current proposal are too weak and are potentially contradictory. E.g. efficient management of natural resources as a goal doesn't necessarily imply lower resource consumption. Objective on nature conservation ("Contribute to the Protection of biodiversity, enhance ecosystem services and preserve habitats and landscapes") is lacking concrete goals or measurement.</li> </ul>	<ul style="list-style-type: none"> <li>Include as specific objectives for biodiversity in Article 6: "achieving favourable conservation status (FCS) of all relevant species and habitats of European concern under the Birds and Habitats Directives" and share of UAA covered with landscape elements as objectives for biodiversity.</li> </ul>

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those need to be SMART <sup>1</sup>				<ul style="list-style-type: none"> <li>The climate objective includes 'sustainable energy', but this is taken to mean bioenergy production which is very dangerous for the climate and nature.</li> <li>Objectives such as competitiveness and food security in their mainstream, short-term focused formulation, can be harmful to environmental objectives.</li> <li>Meaningful and detailed objectives and indicators are essential to the success of the new delivery model. Unclear and vague definitions on the other hand will weaken the new system and will lead to the implementation of measures by the Member States that do not contribute to improvement of environmental conditions.</li> </ul>	
Indicators for biodiversity: If the system is supposed to deliver on the basis of objectives and indicators, those need to be SMART	6 + Annex I	↑		<ul style="list-style-type: none"> <li>The indicators for biodiversity are a bit more positive. Good is the inclusion of the Farmland Bird Index, Favourable Conservation status and share of UAA covered with landscape elements as impact indicator.</li> <li>Problematic is that the MS annual performance will be based on the result indicators, which say nothing about the quality of those commitments, are mostly quite vague and include loopholes (e.g. share of UAA under commitments for managing landscape features instead of the actual surface covered with these elements).</li> <li>There is no indicator on pollinators (ie. Grassland butterflies) although it is readily available.</li> </ul>	<ul style="list-style-type: none"> <li>Member States should report about the implementation of respective relevant Natura 2000 management plans (legal protection, assessment and avoidance of impacts/deterioration and status of qualifying species/habitats of the site), and at regional/national levels about the status of implementation of the Prioritized Action Framework (PAF) for the whole Natura 2000 network. For specific habitat types some parameters need to be measured more frequently than in the FCS assessment (e.g. grassland extension through remote sensing). All targets set need to be appropriate to contribute to the above mentioned FCS objectives and biodiversity strategies.</li> <li>The causal connection between result and impact indicators has to be ensured</li> </ul>

<sup>1</sup> Specific, Measurable, Achievable, Realistic, Time-bound

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					(providing scientific evidence that improvement of result indicator will positively affect the impact indicator)
Monitoring: scientific assessment and control of effectiveness	N.A.	N.A.		<ul style="list-style-type: none"> <li>There is no independent scientific monitoring of any of the CAP interventions. This is especially important for the agri-environmental schemes to understand whether they are effective at achieving the stated goals. Without such a system, there is no way to drive the continual improvement of the schemes design</li> </ul>	<ul style="list-style-type: none"> <li>2% of the budget for each schemes should go to independent, scientific monitoring of the schemes, based on a robust sampling methodology with methodological guidelines at EU level.</li> <li>The publication of the results of the monitoring should be made public and submitted to the Commission</li> <li>The Commission should have the right to make Member States roll out schemes that are working, and to withdraw schemes that are ineffective.</li> </ul>
Accountability of MS: More flexibility for Member States needs to come with more responsibility when things go wrong.	Title V: Chapter II – Content of the CAP Strategic Plan, Chapter III: Approval and Amendment of the CAP Strategic Plan; 111; 121 ; Horizontal Regulation (Articles 39-40, 52-55)	-		<ul style="list-style-type: none"> <li>The proposal gives more flexibility to MS, but for this to impact the environment it must be accompanied by credible and strong accountability mechanisms that the national CAP plans contribute to common policy objectives and to guarantee a level playing field, especially within the green infrastructure of the CAP. The proposal does not deliver on this sufficiently.</li> <li>Member States have a lot of freedom concerning the methodology of the needs assessment, which is concerning especially given the lack of clear objectives to tie the assessment of needs to. However, it is positive that the SWOT for the environmental objectives needs to refer to the</li> </ul>	<ul style="list-style-type: none"> <li>Include a provision to ensure that environmental needs are properly addressed by the CAP strategic plans.</li> <li>Strengthen the intervention logic that shows, how intervention satisfies identified needs (for example backed by the obligation to provide scientific evidence for the effectiveness of interventions).</li> <li>The Monitoring Committee should include a fair and balanced representation of relevant stakeholders, including environmental NGOs and independent scientists.</li> <li>Do not allow MS to drop environmental objectives.</li> <li>Performance reserve should be based on the impact indicators.</li> </ul>

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				<ul style="list-style-type: none"> <li>• Environmental objectives can still be dropped in the CAP plans if MS provide non-defined ‘sound justification’ for this in the needs assessment</li> <li>• It is unclear on what bases the Commission can reject plans by the MS.</li> <li>• Annual performance reports and the performance reserve are only based on result indicators, which say nothing about the quality of the schemes, and therefore provide an incentive for poor quality spending. This means that large amount of hectares of shallow schemes will be classed as high performance, whereas Member States with good schemes on less area will be seen as performing worse.</li> <li>• The performance and evaluation plan currently including in the RDP is not included in the CAP Strategic Plans (which can mean that it won’t be part of discussion with stakeholders).</li> <li>• Monitoring Committees have to include economic and social partners, but not environmental NGOs</li> <li>• Vague article on 92 on increased environmental ambition, we struggle to see that this will be measurable, or enforceable, especially as it does not apply to the funding allocation for climate and the environment.</li> <li>• The horizontal regulation foresees some mechanisms to reduce or suspend payments in the case of problems reaching the goals or indicators</li> </ul>	
Partial approval of plans: ability of Commission to approve good	106	-		<ul style="list-style-type: none"> <li>• The partial approval mechanism is only triggered by Member States and not by the Commission, i.e. MS can get direct payments approved and delay environmental spending, but the Commission</li> </ul>	<ul style="list-style-type: none"> <li>• Partial approval should be for the Commission, not for the Member States.</li> <li>• It should apply to the quality of the measures, so that good schemes can be approved and</li> </ul>

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schemes and delay flawed ones				cannot approve good schemes and delay flawed ones.	rolled out without having to wait for a decision or improvements of others.
Involvement of environmental authorities and partnership principle	94	↓		<ul style="list-style-type: none"> <li>The current proposal only foresees that environmental bodies are 'effectively involved' in the environmental aspects of the Plan, which means that the input by the environmental agency can still be ignored by the body that draws up the Strategic Plan. On this matter we strongly criticize the exemption of the EAFRD funds from the common provisions regulation, which leads to a significant weakening of stakeholder involvement and other principles of good governance.</li> <li>MS are required to organise a partnership, who need to be 'involved' in the drawing up of the strategic plans, which does not explicitly include environmental NGOs, or require the agricultural authorities to address their comments/input.</li> </ul>	<ul style="list-style-type: none"> <li>Environmental bodies should be responsible or fully involved at the national level in the design and implementation of the environmental aspects of the CAP plans, and on the European level, when it comes to the design and approval of environmental aspects of the national plans.</li> <li>The partnership needs to explicitly include environmental NGOs. Member States should also have to demonstrate how their input was dealt with in the drawing up of their Plan.</li> </ul>
Definition of what constitutes 'management commitments' that should be compensated under Pillar II	65	↓		<ul style="list-style-type: none"> <li>AES definition is being stretched to cover generic 'other management commitments'. This would give Member States huge leeway to allocated funds to beneficiaries on the basis of standard farm practices rather than ones beneficial to the environment.</li> <li>It might even become a way to deliver undeclared coupled support to pet sectors (as MS could pay for "specific management" of anything from pig farms to tobacco fields).</li> </ul>	<ul style="list-style-type: none"> <li>Management commitments should be restricted to environmental and climate measures that deliver on the corresponding specific objectives.</li> </ul>
Capping : the maximum amount of direct payments a beneficiary is (in theory) able to receive	15	-		<ul style="list-style-type: none"> <li>Intention is good but actually result in cosmetics more than substance. Level of capping and degressivity, and its definition based on labour costs, mean that nothing is likely to actually change in distribution of funds with a small set of big, rich and polluting beneficiaries scooping up most of the</li> </ul>	<ul style="list-style-type: none"> <li>Improves status quo but does not address fundamental flaws in the system. If any income support is to be retained, it must be means-tested. Payments for land stewardship should be actually tied to land stewardship. A simple EUR30,000 cap, with no adaptation for</li> </ul>

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				money. (See A. Matthews ' <a href="#">Why Capping will be a mirage</a> ').	labour costs might actually have made some difference.