

Closing note on the Strategic Initiative concerning how the European Commission ensures transparency and balanced interest representation under the Common Agricultural Policy (SI/2/2022/LDS)

Correspondence - 02/12/2022

Case SI/2/2022/LDS - Opened on 10/02/2022 - Decision on 02/12/2022 - Institution concerned European Commission |

Background

1. The Common Agricultural Policy (CAP) was established in 1962 to achieve self-sufficiency of food production, guarantee a fair standard of living for the agricultural community, and improve agricultural productivity.

2. The European Ombudsman has in the past looked at the transparency of the payments under the CAP [1] as well as the composition of Civil Dialogue Groups hosted by the Directorate-General for Agriculture and Rural Development (DG AGRI). [2]

3. On 2 December 2021, the reform of the CAP was formally adopted. [3] The new CAP is conceived as a pillar of the European Green Deal. It aims to support the Farm to Fork Strategy for sustainable food systems [4] as well as the biodiversity strategy to protect nature and reverse the degradation of ecosystems. [5] This is of particular importance, given the high environmental impact of farming. [6]

4. The measures contained in the new CAP include, among others, improved mandatory environmental standards and investments in green practices, as well as better targeting of income support to farmers who deliver on the green ambition. The new CAP also envisages a new performance, monitoring and evaluation framework to assess how Member States reach the objectives of the CAP.

5. Recently, the European Court of Auditors signalled that EU agricultural funding destined for climate action has not contributed to reducing greenhouse gas emissions from farming. [7] The Court of Auditors has also pointed to deficiencies in the Commission's monitoring of CAP payments. [8]



6. As the new CAP translates into concrete measures decided at EU level and implemented by national authorities, the Ombudsman asked the Commission, within the scope of this strategic initiative, to explain how it is ensuring transparency and appropriate stakeholder engagement in relation to the CAP. In particular, the Ombudsman asked questions as regards (1) the composition of the Civil Dialogue Groups, (2) the approval of the CAP strategic plans, (3) the recipients of CAP funds, and (4) meetings with interest representatives.

1. The composition of Civil Dialogue Groups

7. Civil Dialogue Groups (CDGs) are the forum in which DG AGRI holds a regular dialogue with stakeholders on matters relating to the CAP.

8. The current system of CDGs was put in place by Commission Decision 2013/767/EU [9] ('the 2013 Decision'). Article 4(3) of the 2013 Decision requires a "balanced representation" of interests in the Groups and, in particular, balanced representation of "economic and non-economic interests". In 2014, following a selection process, DG AGRI's Director-General decided on the membership and overall composition of the CDGs. [10] The member organisations of the CDGs were appointed for a seven-year mandate.

9. In her own-initiative inquiry OI/7/2014/NF, the Ombudsman looked into the selection process for, and the composition of, CDGs. The Ombudsman found a lack of clarity regarding what constituted a "balanced representation" of all interests, in particular of economic and non-economic interests. The Ombudsman also found a lack of public information regarding the selection process for CDGs.

10. Based on these findings, the Ombudsman concluded that, in the selection of members of future CDGs, the Commission should set out its definition of balance, in particular as between economic and non-economic interests. The Ombudsman also recommended the Commission to state the overall number of seats it intends to fill on each Group and to justify, when preparing its decision, how it exercised its discretion in allocating seats across different organisations.

11. Prior to the appointment of the next CDGs, [11] the Ombudsman therefore asked the Commission how it is planning to follow up on its commitment to guarantee that non-economic interests are adequately represented in the CDGs.

12. In its reply, the Commission explained that a new Commission Decision will be followed by an open call for applications. The Commission will use this occasion to revise the overall governance of CDGs to align them with the recent CAP reform and the Commission's horizontal rules on expert groups. [12] A balanced representation as regards the composition of the new groups remains a guiding principle of this review.

13. The Commission has in the meantime adopted a new Commission Decision setting up CDGs in matters covered by the CAP [13] ('the 2022 Decision'). At the time of writing, the call for applications for the new CDGs is not yet open.



14. The Ombudsman acknowledges the Commission's commitment to achieving a balanced representation within the CDGs. However, in its reply, the Commission did not explain precisely how it intends to achieve a balanced representation as regards the composition of the new CDGs, particularly as between economic and non-economic interest. In fact, like the 2013 Decision, the 2022 Decision does not contain a definition of balance.

15. The Ombudsman encourages the Commission to ensure that the upcoming call for applications for the new CDGs will clarify the concept of balanced representation. More specifically, the Commission should set out the overall number of seats it intends to fill on each Group as well as how the seats will be distributed between the various relevant interests. This information would make the process of establishing the new CDGs more transparent, and help the public better understand the final outcome.

2. The transparency of the approval of Member States' CAP Strategic Plans

16. The new CAP seeks to take greater account of local conditions and needs. It is for this reason that Member States were asked to draft national 'CAP Strategic Plans' detailing how they will achieve the specific objectives of the CAP, including its green objectives.

17. National strategic plans were submitted to the Commission by the end of 2021, after which the Commission had six months to assess and approve the plans ahead of their implementation in January 2023. [14]

18. The Ombudsman asked the Commission to explain what exchanges it intends to make public in the context of the approval of Member States' plans, and when.

19. In its reply, the Commission explained that it publishes the observations to the national plans submitted to it by the Member States and, when Member States agree, also their comments on the Commission's observations. The Commission implementing decisions, which finalise the approval procedure, are also published.

20. The Commission referred to a website it has set up for the purpose of ensuring the timely dissemination of information on the CAP strategic plans. [15] The Commission is making strategic plans available on this website, once they have been published by the Member States.

21. As stated in her letter of 10 February 2022, the Ombudsman welcomes the Commission's decision to publish the observation letters addressed to the Member States.

22. As for the publication of other documents relating to the approval of the CAP strategic plans, the Ombudsman notes that the Commission's dedicated website does not contain the approved strategic plans themselves. Instead, the Commission compiles links to the Member States' websites, where the plans can be found (usually, in the official language of the Member State). The Commission does so with the disclaimer that *"[t]he completeness of the information provided in the linked documents is solely the responsibility of the competent national authorities"*.



23. The Ombudsman observes that only a limited overview of the national plans is provided in English on the Commission's dedicated website. "At a glance" factsheets provide a summary of the key elements of the approved national plans in plain language. The Commission implementing decisions approving the strategic plans also include an Annex with the headings of budget items and amounts of financial assistance that the Member State is to receive. However, other important elements of the national plans, such as specific measures by budget item and milestones to be fulfilled, are missing.

24. Under these circumstances, it may be difficult for interested parties to understand the conditions under which a Member State will use the assistance provided by the new CAP.

25. In addition, the Commission stated that it is receiving a large number of letters and individual assessments and proposals from stakeholders and citizens related to national strategic plans. The Ombudsman notes that the Commission does not publish information regarding the nature of these submissions, nor their handling by the Commission.

26. The Ombudsman calls on the Commission to reflect on the possibility of further proactive disclosure of material concerning the approval of Member States' CAP strategic plans.

3. The transparency of CAP funds

27. Under Regulation (EU) 1306/2013 on the financing, management and monitoring of the CAP, Member States must publish details of those receiving CAP payments ('beneficiaries'). [16] This publication must contain the name of the beneficiary, the municipality where the beneficiary is resident or is registered, the amounts received, and the nature of the measures financed.

28. Commission Implementing Regulation (EU) No 908/2014 contains additional rules on the transparency of CAP funds. It sets out that information on beneficiaries of CAP payments is to be made available on a single website per Member State. [17] The Commission then publishes a compilation of links to the respective websites of the Member States.

29. In her inquiry 1782/2019/EWM, the Ombudsman examined how the Commission handled a request from a journalist for public access to a database used to audit CAP subsidies. While the Ombudsman considered that the Commission had given appropriate access to the aggregated data contained in the database, she noted that a gap exists as regards the appropriate transparency of these payments.

30. In particular, the Ombudsman noted in her earlier inquiry that information available at national level varied between Member States, that no Member State released data linking individual payments to the land that the subsidy is for, and that, where the beneficiary is a corporate body, the ultimate individual beneficiaries may not be identified. The Ombudsman brought these matters to the attention of the legislators for their consideration.



31. The rules of the new CAP that will enter into force in January 2023 include measures for increased transparency, such as the obligation to disclose the broader entities that beneficiaries of funds belong to, [18] and the obligation to publish the total amount of payments received by a beneficiary so as to enable the public to identify larger recipients of Union funds. [19]

31.1. It is clear that the public will not be able to follow CAP spending unless the information displayed is correct and up to date. In this context, the Ombudsman asked the Commission, within the scope of this strategic initiative, to explain whether (and, if so, how) it monitors the accuracy of the information displayed by the Member States and, if not, whether it would be prepared to do so.

32. In its reply, the Commission stated that the websites and their content fall under the responsibility of the Member States concerned. The Commission cannot guarantee the accuracy or completeness of the data or information provided. However, when Member States do not provide the data on final recipients on time, the Commission reminds them of their transparency obligations. Likewise, if the Commission is made aware of outdated or missing information in the national websites, it informs the Member State concerned so that the issue is rectified.

33. The Ombudsman notes the Commission's willingness to monitor the transparency of CAP funds. The Ombudsman encourages the Commission to assume an active role in securing compliance with the transparency obligations imposed on Member States, to ensure that the public has sufficient information about beneficiaries of CAP funding.

4. The opportunities for the various groups with an interest in the CAP to express their views with DG AGRI

34. In addition to expert groups such as the CAP's Civil Dialogue Groups, there are other ways for groups with an interest in the CAP to express their views with the Commission. These include public consultations of stakeholders organised ahead of legislative proposals according to the Better Regulation Guidelines, and other exchanges held between interest representatives and DG AGRI.

35. In her letter of February 2022, the Ombudsman noted that, between 2020 and 2021, the Commissioner for Agriculture and his cabinet held a larger number of meetings with industry representatives when compared with environmental organisations and other organisations like research institutions. The Ombudsman asked the Commission to explain how it provides sufficient opportunities for the various groups with an interest in the CAP to express their views with decision makers.

36. The Ombudsman reminded the Commission that the Ombudsman's *Practical recommendations for public officials' interaction with interest representatives* advise against interacting with a particular interest group without considering whether to offer a similar opportunity to other groups.



37. As for the meetings held by the Commissioner for Agriculture and his cabinet, the Commission replied that DG AGRI does not express any preference in accepting invitations for meetings. According to the Commission, the fact that most meetings are with organisations and bodies from the agricultural sector is because agriculture is a huge sector with a long value chain consisting of primary producers, processors, feed and fertilizer producers, marketers, retailers and product associations.

38. The Commission added that “ *other Commissioners, Cabinets and Cabinet services may discuss CAP related issues with citizens and stakeholders* ”.

39. It is clear that agriculture is a sector that consumers, environmental interests and the public have a legitimate interest in following as it affects food security, biodiversity, the availability of natural resources, and emissions into the environment

40. The fact that other commissioners, cabinets and other relevant sections of the Commission can discuss the CAP with citizens and other stakeholders is not a reason for DG AGRI not to seek to do so to the greatest extent possible. While other Directorates-General participate in the collegial adoption of the decisions at the Commission, DG AGRI has the leading role in drafting measures in this area.

41. For the above reasons, the Ombudsman calls on DG AGRI to seek a balanced representation of interests in its meetings and exchanges with interest representatives.

Conclusion

42. This initiative has enabled the Ombudsman to gain an insight into how the Commission ensures transparency and balanced interest representation under the Common Agricultural Policy as regards the composition of the Civil Dialogue Groups, the approval of the CAP strategic plans, the recipients of CAP funds, and meetings with interest representatives.

43. The Ombudsman thanks the Commission for the detailed explanations provided and invites it to take into account the observations made above. She looks forward to exchanging with the Commission on these matters in the future.

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Strasbourg, 02/12/2022

[1] <https://www.ombudsman.europa.eu/en/decision/en/127631> [Link].

[2] <https://www.ombudsman.europa.eu/en/decision/en/60873> [Link].



[3]

<https://www.europarl.europa.eu/news/en/press-room/20211118IPR17613/common-agricultural-policy-reform-gets-fir>
[Link].

[4] Communication from the Commission, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system', available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0381> [Link].

[5] https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en [Link].

[6] OECD, 'Making Better Policies for Food Systems' (January 2021), available at

<https://doi.org/10.1787/ddfba4de-en> [Link]. OECD, 'Lobbying in the 21st Century: Transparency, Integrity, and Access' (May 2021), available at <https://doi.org/10.1787/c6d8eff8-en> [Link].

[7] https://www.eca.europa.eu/Lists/ECADocuments/SR21_16/SR_CAP-and-Climate_EN.pdf
[Link]

[8] https://www.eca.europa.eu/Lists/ECADocuments/SR22_14/SR_CAP_Fraud_EN.pdf [Link].

[9]

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2013.338.01.0115.01.ENG
[Link].

[10]

https://agriculture.ec.europa.eu/document/download/42a7ee8b-3ab6-41ba-9391-d32c1c0d6a44_en?filename=cdg-c
[Link].

[11] The mandate of CDGs was set to expire in July 2021. However, in June 2021, the Commission extended the mandate of the current CDGs until 31 December 2022, because the rules of the new CAP will enter into force only from 1 January 2023.

[12] [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2016\)3301&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2016)3301&lang=en)
[Link].

[13] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022D1368> [Link].

[14]

https://ec.europa.eu/info/food-farming-fisheries/key-policies/common-agricultural-policy/cap-strategic-plans_en#recor
[Link].

[15] https://agriculture.ec.europa.eu/cap-my-country/cap-strategic-plans_en [Link].

[16] Articles 111 - 114,

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1306> [Link].



[17] Articles 57 - 62, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32014R0908> [Link].

[18] Article 98 of 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, available at <https://eur-lex.europa.eu/eli/reg/2021/2116> [Link].

[19] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0128> [Link].