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Greening the CAP: the way forward

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Abstract

This paper reviews the debate on the proposal to introduce a green payment in Pillar 1 of the CAP since the publication of the Commission's legislative proposals for the EU's Common Agricultural Policy post-2013 in October 2011 to June 2012. Both arms of the legislative authority have begun to formulate their positions in response to stakeholder reactions. Many relevant details of how the proposals will be implemented remain unclear, but an attempt is made to examine their potential contribution to environmental improvement. Increasing the ambition of agri-environment measures in rural development programmes in Pillar 2, combined with strengthened cross-compliance standards, could offer more effective environmental protection at a lower cost in terms of foregone food production. The legislative process to date indicates that the final outcome will be based on the Commission's original ideas but there is still scope to improve the environmental impact of CAP spending in the next MFF period.

Keywords: Greening, agri-environment measures, direct payments, Common Agricultural Policy

JEL classification: Q18, Q27.

1. INTRODUCTION

The European Commission (EC) presented a set of legal proposals to the Council of the European Union and the European Parliament setting out proposed changes to the Common Agricultural Policy (CAP) for the post-2013 period on 12 October, 2011 (EC, 2011a, and associated texts). The proposal for the direct payments regulation focuses on redistributing, targeting and greening the Pillar 1 payments. The Commission proposes replacing the existing direct payments (under Pillar 1) with a basic payment topped up by an additional payment conditional on farmers respecting certain "agricultural practices beneficial for the climate and the environment" financed from 30% of the national direct payments envelopes. The requirements include ecological focus areas (EFAs), crop diversification and the maintenance of existing areas of permanent grassland at farm level. Participants in the proposed small farmers' scheme are exempt and organic farmers would automatically receive the greening payment.

The Commission's proposals build on existing greening instruments in the current CAP. These include cross-compliance standards for direct payments in Pillar 1 and agri-environmental measures (AEMs) under Pillar 2. Article 68 of Regulation 73/2009 introduced the possibility of paying for environmental public goods through Pillar 1 for the first time. The novelty of the Commission's proposals lies in its attempt to define and fund mandatory green standards applicable across the EU which can be administered as a Pillar 1 direct payment. This option appears to draw on the Swiss experience, which has moved further and faster than the EU to green its direct payments.

The Commission puts forward two reason for pursuing further greening through a green payment in Pillar 1. These are the need for universal application of greening measures on all EU agricultural land, and the fact that it makes the greening of the CAP more visible. It may also have been influenced by the perceived political difficulty of increasing sufficiently the Pillar 2 budget to allow a significant increase in the area of land covered by AEMs.

Reactions to this greening proposal have varied widely. Some groups have welcomed the Commission's plan to link direct payments more specifically to management measures by farmers designed to deliver improved environmental outcomes. Other groups have criticised the Commission's proposals on the grounds that they will be cumbersome and costly to implement, of doubtful environmental value and that they would reduce the ability of the EU to increase food production in response to the global tightening of food supplies.

Since the publication of the Commission's proposals there has been active debate both in the Council of Ministers and the European Parliament's Committee on Agriculture and Rural Development (COMAGRI). The progress made in the Council debates was summarised in a document prepared by the Danish Presidency in June 2012 (Council, 2012a). The COMAGRI rapporteur's report was also published in June 2012 (European Parliament, 2012a) and gives a first indication of the Parliament's thinking, taken together with the opinions adopted by the other relevant Parliamentary committees, even if this report will be amended significantly in COMAGRI before being voted on in the Parliament plenary.[1] The Commission has clarified its initial proposal in a concept paper circulated in May 2012 (European Commission, 2012). The opinions of the European Economic and Social Committee and the Committee of the Regions on the proposals were adopted in April (EESC, 2012) and May 2012 (CoR, 2012), respectively. National parliaments have debated the proposals and their views are summarised in a publication of the European Parliament (2012b). The European Court of Auditors has also offered an opinion which analysed whether and to what extent the proposals remedy weaknesses previously identified by the Court following its audits (ECA, 2012). In addition, numerous position papers and press statements for and against elements of the proposals have been circulated by stakeholder groups such as farmers and environmental and development NGOs.

This paper reviews the debate on the Commission's proposals between the date of their publication and June 2012. We assess their potential contribution to environmental improvements. Although many relevant details of how the proposals will be implemented remain unclear, we conclude that the additional environmental benefits will be limited in comparison to the budget allocated to greening. There is some evidence that the Commission is pursuing a greening agenda as a way to justify the continuation of direct payments, rather than as a means to deliver genuine environmental improvements across the European Union (House of Commons, 2012). Increasing the ambition of agri-environment measures in rural development programmes in Pillar 2, combined with strengthened cross-compliance standards, could offer more effective environmental protection at a lower cost in terms of foregone food

1. [1] A total of 2,292 amendments were tabled by COMAGRI members to the Commission's draft direct payments regulation including those in the rapporteur's report, many of which concern the greening element.

production. The legislative process to date indicates that the final outcome will be based on the Commission's original ideas but there is still the opportunity to improve the environmental contribution of CAP funding in the next MFF period.

2. PRELIMINARY REMARKS ON THE COMMISSION PROPOSALS

Basis for the 30% proportion. The projected allocation in the Commission's proposal for the 2014-2020 Multi-annual Financial Framework (MFF) of €42.78 billion for Pillar 1 direct payments in 2020 implies an annual allocation of €12.8 billion to the green payment during the latter years of the programming period. This compares to annual average spending on agri-environment measures in Pillar 2 in the 2007-2013 period of just over €3 billion (ECA, 2011). At a time of severe public funding difficulties in EU member states, it is very relevant to ask what the environmental return is likely to be from this quintupling of CAP environmental expenditures (assuming Pillar 2 spending is maintained)?

There appears to be no objective basis for the 30% figure. In the Commission's November 2010 Communication, it proposed that the additional aid would be based on the supplementary costs for carrying out the greening measures (EC, 2010). Not surprisingly, given the variation in the greening costs across farms in the EU as shown in the impact assessment, this approach was abandoned in the later proposal. As the ECA (2012) observes, "Thus it is unclear to what extent the flat rate per hectare compensates the costs farmers have to bear in adopting the compulsory practices or in producing the public goods." Some member states have questioned the justification for the 30% figure and have called for it to be reduced. The proposed 30% proportion of direct payments subject to greening is included in the Negotiating Box for Heading 2 of the MFF and will ultimately be decided by the European Council (Council, 2012a). The Capoulas Santos rapporteur's report for COMAGRI would allow a member state to allocate more than 30% of its direct payment ceiling to the greening payment, in order to give priority to chosen beneficiaries at national level, within the definition of active farmers, based on objective and non-discriminatory criteria.

Diverging payments across member states and farms. Given that the Commission proposal envisages that the value of entitlements will continue to differ across member states by the end of the next MFF, it follows that so will the value of the green payment per hectare. The equalisation of the value of entitlements across member states is a very contentious issue in the negotiations on the future CAP regulations. Those member states which defend a continued divergence in the value of entitlements point to differences in wage rates and living standards as justification. This argument may have relevance in relation to the basic payment. Member states which are disadvantaged by this arrangement point out that the value of public goods across member states is comparable, and that the differences in the value of the greening payment bear

no relationship to differences in the cost of compliance (Dobrzyńska, 2012).[2] Their proposal is to establish a green payment of equal value per hectare in all member states.

The amount of the green payment is defined in Article 29 of the regulation as the result of dividing 30% of a member state's national ceiling by the total number of eligible hectares declared in the member state concerned. Where member states adopt a regional breakdown for payment purposes, then it is the regional ceiling which applies (Article 33). Regional breakdowns are used in some member states to distinguish between payments to land of different productivities, with lower entitlement values linked to land of lower productivity. A paradox is that the environmental value of this land (uplands, for example) may often be higher than more intensively-farmed areas. However, if a uniform national greening payment were applied in such situations it would result in, relatively, a lower greening payment in the more intensive areas compared to the basic payment. This could adversely affect the willingness of intensive farmers to enrol in the greening scheme.

A mandatory or voluntary payment? The Commission has emphasised the importance of mandatory participation in the green payment if the measures are to be effective. Strictly, because acceptance of EU direct payments is voluntary (farmers must activate their entitlements if they wish to receive support) the green measures cannot be mandatory in a legal sense. There has been much confusion over whether receipt of the basic payment will be affected by whether a farmer abides by the green measures or not. The draft regulation states that "non-respect of the 'greening' component should lead to penalties" indicating that, as well as not receiving 30% of direct payments, farmers will be subject to additional, as yet undefined, fines if they do not carry out the required activities. Neither the draft of the direct payments regulation nor that of the horizontal regulation gives greater detail as to the penalty regime for breaching greening.

If the payment is intended only as a top-up payment which farmers can opt into, then it may well lose its universal character depending on how farmers evaluate the payment on offer (which will differ across member states) relative to the extra burden and costs (including foregone income) that implementing the measures entail. This weakens the case for retaining the payment in Pillar 1 given the many advantages there are to making agri-environment payments through Pillar 2. On the other hand, if implementing the green measures is a condition also to receive the basic payment, then it becomes a form of super cross-compliance. It becomes difficult to justify the administrative complexity of introducing another payment apart from the argument that it increases the political visibility of a greener CAP.

Small farmer exemption. Further debate has arisen on the Commission proposal that farmers participating in the small farmers scheme should be exempted from the green measures otherwise required for eligibility for the green payment. This is justified on simplification grounds, as it avoids the need to monitor and control these practices on a significant number of holdings which may utilise a relatively small land area. The argument against is that it undermines the rationale for the green payment as a payment to encourage farmers to adopt

[2] The assumption that the value of environmental public goods is the same in all member states strictly only applies to EU-wide public goods. Primarily local public goods can have very different values depending on their relative scarcity and the preferences of local populations.

more sustainable farming practices if for some farmers it is just basic income support. The same simplification could be achieved by inserting appropriate thresholds into the individual measures themselves (for example, the 3 ha limit for crop diversification).

WTO compatibility. The Commission is clear that the green payment, as formulated, would not be eligible to be classified as an agri-environment green box payment because it would not meet the condition that the payment should be related to 'the extra costs or loss of income involved in complying with a government programme' (European Commission, 2011b). Instead, it would intend to report the payment as a decoupled income support payment. Swinbank (2012) warns that the Commission's greening proposals could be in danger of infringing the green box requirement that no production is required to qualify for payment. He also raises the possibility that, if the basic payment can only be claimed if the greening conditions are met, then it could even put the basic payment at risk as a green box measure.

Administrative issues and the simplification agenda. Inspection and enforcement of the greening measures will inevitably incur new administrative burdens and add technical complexity due to the creation of a separate envelope and separate conditions for greening. The proposal would require two separate payment regimes under Pillar 1 direct payments and three separate control regimes – land eligibility, cross compliance and greening – with different sanctions applicable to each. Effectively, this would be a substantial reversal of the simplification achieved under the current Single Payment Scheme.

The Commission addressed the issue of administrative costs in its impact assessment (EC, 2011b). The current system as regards decoupled payments relies on two layers: 100% computer-based cross checks (Land Parcel Identification System) and 5% on-the-spot checks. With the introduction of the greening component, the system will rely more on on-the-spot checks, thus higher costs for controls. However, where possible, the use of remote sensing for on-the-spot checks could help keep costs down compared to field visits. It noted that remote sensing is more appropriate where simple areas must be calculated but would be difficult to use if specific maintenance requirements must be enforced. It has estimated that the overall administrative cost of the future direct payment system would require a 15% increase in the administrative cost (European Commission, 2011b).

The 'one size fits all' approach is too rigid. There is a wide diversity of agriculture throughout Europe. CAP instruments should reflect this diversity and not impose rigid regimes throughout which add little to the targeted objective in particular areas. CAP reform, in shifting support from the product to the producer, has given greater management flexibility to farmers over time. These measures appear to reverse this trend by being overly prescriptive in what farmers are required to do. They are not demand-driven and do not respond to the specific environmental needs of particular areas. They do not incentivise farmers to keep improving their 'green' performance over time. They perform poorly in comparison with the alternative of more targeted measures tailored to local conditions.

3. PROPOSED TECHNICAL AMENDMENTS TO THE COMMISSION PROPOSALS

In the first eight months since publication of the Commission proposals a number of more technical adjustments were proposed in the Council and Parliament. The broader issue of providing more flexibility to member states is taken up in Section 5.

Crop diversification. The Commission proposal is that farmers should have three different crops on their arable land where the arable land covers more than 3 hectares and is not entirely used for grass production (sown or natural), entirely left fallow or entirely cultivated with crops under water for a significant part of the year. None of those three crops shall cover less than 5% of the arable land and the main one shall not exceed 70% of the arable land (Article 30(1)). The current optional GAEC on crop rotation would be removed.

The main technical issues raised have concerned the undue burden on smaller crop farms, possible perverse incentives for livestock farms growing small amounts of arable crops for feed, clarifying what counts as a crop in meeting the diversification criteria, and the treatment of permanent crops. Drawing on the Commission concept paper, the Danish Presidency suggested raising the arable threshold to 10 hectares. The Commission has also accepted that farms of less than 50 hectares where a significant part is covered by permanent and temporary grassland should be exempted. The Danish Presidency proposed to exempt farms where more than [75] % of the eligible agricultural area of the holding is covered by permanent grassland, used for production of grass or other herbaceous forage, left fallow, or subject to a combination of these uses. It also proposed to exempt a farmer who interchanges more than 50% of his total arable land with other farmers on an annual basis, provided that he proves that each parcel of his arable land is being cultivated with a different crop compared to that of the previous calendar year.

The Capoulas Santos rapporteur's report takes a slightly different approach in proposing that farmers should have two different crops on their arable land where the arable land of the farmer covers between five and 20 hectares, and three different crops where the arable land of the farmer covers more than 20 hectares. Farms where more than 80% of the eligible agricultural area of the holding is covered by permanent grassland and historical pastures, or permanent crops, and the arable area is less than 50ha, would be exempt. Farmers with permanent crops such as olive groves, vineyards or orchards would instead be expected to apply specific agronomic practices that imply minimum soil disturbance and green coverage of the soil surface.

Permanent grasslands. The Commission proposes that farmers shall maintain as permanent grassland the areas of their holdings declared as such for claim year 2014. This would replace the current GAEC requirement that member states must maintain their area under permanent grassland at existing levels. The issues raised included the definition of permanent grassland; whether rotation of permanent grassland is allowed; the 5% franchise; setting 2014 as the base year; and the need for greater focus on high-nature-value (HNV) grasslands.

The Commission has now accepted and there seems general agreement that permanent grassland can also include grazing areas with non-herbaceous plants (such as heather) used for extensive stock-rearing. The Presidency progress report proposed combining the current

regional/national approach to maintaining permanent grassland with the individual greening approach. It advocated that farmers shall maintain as permanent grassland the areas of their holdings declared which have specific value for environment, climate or biodiversity. For this purpose only, permanent grassland is defined as the subset which has neither been included in the crop rotation of the holding nor been ploughed for 10 years or longer. Farmers would be under an obligation to maintain this more narrowly defined area of permanent grassland, subject to a 5% tolerance. Member states, on the other hand, would continue to be required to ensure that the ratio of the land under permanent grassland (broadly defined) is maintained in relation to the total agricultural area either at national or regional level.

Ecological focus areas. The Commission proposal is that farmers shall ensure that at least 7% of their eligible hectares, excluding areas under permanent grassland, is ecological focus area such as land left fallow, terraces, landscape features, buffer strips and afforested areas. Issues raised around EFAs include how the base area is defined; permitted land uses; the 7% minimum requirement; collective approaches; and how best to encourage appropriate management.

The Presidency progress report noted that a large number of member states consider 7% ecological focus area too high, and that a number of member states requested to widen their scope for example by taking landscape features on permanent grassland into account. Its proposed amendment would only apply the condition where the eligible agricultural area covers more than 10 hectares. It also extends the list of features that can be counted towards EFAs to include, for example, areas without nitrogen fertilisation, areas with catch crops/green cover, areas with perennial energy crops, areas participating in agri-environmental schemes and afforested areas.

It also introduces a collective or regional option. As an alternative to a 7% requirement on individual farms, member states could implement up to 3.5 percentage points of the ecological focus areas at regional level in order to obtain adjacent ecological focus areas. It would be up to member states to designate the areas and the obligations for farmers or groups of farmers participating to meet the 3.5 percentage points. Participating farmers would still have individual EFA obligations with a minimum of at least 3.5% of their eligible area. The precise individual level would be calculated on the basis of the implemented area managed regionally.

In contrast, the Capoulas Santos rapporteur report would exempt holdings less than 20 hectares. Land planted with nitrogen-fixing crops would be eligible to be counted as part of a farm's EFA. In order to encourage cooperation between farmers to install biodiversity corridors the minimum EFA percentage is reduced to 5% in cases of joint undertakings of groups of farmers putting in place continuous, adjacent ecological focus areas.

4. ENVIRONMENTAL IMPACTS OF THE COMMISSION PROPOSALS

The Commission impact assessment describes in general terms the environmental benefits expected from the three measures but there is no detailed assessment of the expected impacts on different environmental dimensions. As the Court of Auditors notes: "Scientific

evidence exists which justify the effectiveness and necessity of measures such as crop diversification and ecological focus areas (for biodiversity, the quality of water, for soil etc.). However, the regulation does not specify the concrete objectives, which should be achieved by the farming community in that domain, nor does it explain the impact which is expected" (ECA, 2012).

The immediate environmental impacts of the three measures are expected to be very limited, with the greatest immediate benefits from the introduction of EFAs (Matthews, 2012). Introducing a variety of crops into production can have a number of positive environmental effects (EC, 2011b). However, there is general agreement that crop diversification will not deliver the benefits of crop rotation although it could provide protection against large monocultures. A crop rotation requirement, however, is ruled out by the Commission because of the practical difficulties of administering and enforcing this as an annual measure in Pillar I. But the main reason for the limited impact of crop diversification is that only a small area of arable land will be required to adopt different farm practices. The Commission estimated, on the basis of FADN data and its original proposals, that only a relatively small share of area – 1.4% of the eligible area - would be affected by this measure, although some national studies arrive at higher figures using a restrictive definition of what are different crops (AHDB, 2011; Lind et al., 2012).

Protecting permanent grassland can have benefits for biodiversity, historic interest, landscape character, climate change and resource protection. The extent of these benefits depends on the definition of permanent grassland and the management practices permitted. Much permanent grassland is improved grassland of low biodiversity value. Hart and Baldock (2011) point out that, because the current national cross-compliance requirement on grasslands protection operates only at a national/regional level, it allows semi-natural grasslands to be ploughed or offset by improved pasture elsewhere, potentially resulting in a significant loss of biodiversity. The main benefit of moving the reference restriction from the national to the farm level is to increase the implied protection for high nature value (HNV) grasslands. This would be reinforced by the Presidency amendment to limit the restriction to grasslands out of rotation for more than 10 years. But these grasslands would continue to be under threat from intensification even with this restriction in place, e.g. from reseeding. Environmental NGOs have called for a top-up premium for grasslands maintained without ploughing or reseeding (EFNCP, 2012).

EFAs are expected to have a major impact on biodiversity, but also to produce benefits for soil and water quality; climate change mitigation and adaptation; pest control; landscapes; and pollination (EC, 2011b). The extent of these benefits will depend on the area allocated, their location, the quality of management, whether rotational or not, their spatial connectivity, the link with Pillar 2 measures and the provision of advice (Westhoek et al, 2012; Allen et al, 2012). Apart from the first, the Commission proposal does not contain measures to influence these other aspects. Critics note the lack of evidence to support a 7% EFA target at farm level (though it is hardly a coincidence that this is the percentage used by the Swiss for their

ecological compensation areas). Many are sceptical that applying a formulaic percentage of area at farm-level is the most effective or efficient method of delivering the Commission's environmental objectives (House of Commons, 2012). There will be an incentive for farms in more intensive areas to meet their EFA obligations by renting land in more marginal areas. Some would welcome this as an application of trading to meet the specified environmental objectives at least cost. Whether this is desirable or not depends on the extent to which the spatial distribution of biodiversity and other environmental goods is an important objective (this links to the land-sparing versus land-sharing debate in Phalan et al, 2011).

An important thread across all measures is the extent to which the Commission's proposals would lead to real additionality in terms of the environment. Even if the impact of the individual measures is limited, moving some greening measures into Pillar 1 which are currently eligible for payment in Pillar 2 raises the baseline for Pillar 2 measures and potentially could realise additional environmental benefits in Pillar 2 (Allen et al., 2012). On the other hand, there is a risk that some member states will use the proposed elimination of minimum spending thresholds in Pillar 2 to reduce current agri-environment spending in that pillar if greening is introduced in Pillar 1 (see below). Also, raising the baseline for Pillar 2 schemes might make them less attractive to farmers if they must engage in more ambitious measures for a similar payment. The net result might be a decline in the supply of environmental public goods, contrary to the intention of the proposal. Some argue that there is value in making payments to farmers to maintain existing farm practices and features, using the argument that if the CAP had been greened in this way two decades ago, the loss of ecosystem services which has occurred over that period might have been avoided. However, there is an environmental market failure only if there is under-provision of the socially-desired level of environmental services. Given the severe constraints on public funds, they should be targeted on existing problems rather than potential problems that might occur in the future.

5. GIVING MEMBER STATES MORE FLEXIBLIITY

The Danish Presidency's June 2012 progress report (Council, 2012a) noted that all member states have called for a flexible and cost-effective approach to greening, so as to achieve maximum environmental benefits while preserving the economic viability of holdings and keeping the administrative burden and control requirements to a minimum, and to respond to different environmental and agronomic circumstances in individual Member States.

As an alternative to the proposed practices, some member states prefer a 'menu' approach where they could choose among a set of green practices which would be deemed equivalent to those proposed by the Commission. Other member states favour greening via Pillar II by transferring a tranche of Pillar I funding to Pillar II with full EU financing. Yet others consider that greening should cover all direct payments and be included in the framework of cross compliance.

These alternative options were spelled out in more concrete fashion in a paper tabled by Luxembourg on behalf of 15 member states in May 2012 (Council, 2012b). It proposed that

member states must choose one from three options A, B and C. Option A is geared to those member states which want the option to modulate their Pillar 1 money to Pillar 2 to finance targeted agri-environmental priorities with no requirement for national co-financing.[3] Provided that at least [10]% of the direct payments national ceiling was used for this purpose on top of [at least 50%] [the existing level] of Pillar 2 spending, both member states and farmers would be eligible for the green payment. Farmers would thus receive [90]% of the national ceiling under the basic payment scheme.

Option B is actually two options. Option B1 would permit member states to exempt a broader range of farmers from the greening measures while remaining eligible for the green payment by declaring them 'green by definition'. Farmers could qualify for exemption under a wide array of schemes: ecological farming, 100% certified sustainable farming; more than [50]% of grassland or less than [15]ha or one-third of the average area of arable land (member states may choose one of these thresholds); farms participating in 'determined agro-environmental/climate programmes with at least [50]% of their area; farms where a major share of the agricultural area is located in a Natura 2000 zone; or farms with significant amounts of afforested land.

Option B2 is the 'menu' approach. Either member states choose at least [3] greening measures from a long list which are compulsory for farmers, or alternatively, member states can allow farmers to choose [3] greening measures out of a longer list to be determined by the member state. In addition to the three measures proposed by the Commission with suitable amendments, an indicative list includes green cover, land planted to willow and other perennial crops, preparation of nutrient and/or soil management plans, certified energy efficiency including provision of alternative energy or renewable raw material, or modulating [≤10]% of the direct payments national ceiling to finance agri-environment measures in Pillar 2. An even longer list could be prepared by member states from which their farmers could choose.

Option C is described as the cross compliance option or the environmental single payment scheme. 'Green by definition' as in option B1 would exempt some farmers from additional conditionality. For the remaining farmers, the Commission's greening measures would be integrated into the cross-compliance standards and there would be only one premium (the environmental single payment scheme). Member states choosing Option C would thereby be choosing to run two parallel payment schemes, a basic payment scheme for those farmers 'green by definition' and the environmental single payment scheme for all others. As a final element of flexibility, member states attracted by this option could decide to combine (sic) options B and C, in that they could decide to replace only [1] of the Commission's greening measures by cross compliance standards. Member states who foolishly wanted to try this would end up administering three parallel schemes – a basic payment scheme, a green payment scheme and an environmental single payment scheme, all with different conditions and requirements.

2. [3] Agri-environmental operations are defined as priorities 1+4+5, thus including payments to areas facing natural or specific constraints.

A 'menu approach. Flexibility in applying greening measures across 27 Member States that have very different geology, geography, climate and other natural conditions makes perfect sense. A one-size-fits-all approach is likely to result in sub-optimal solutions. Thus allowing member states the flexibility to choose from a wider menu of more locally-tailored options has many attractions, but there are potential drawbacks. The major objection is that it would lead to farmers in different countries being treated differently, with implications for the level playing field within the single market.[4] Some member states might be tempted to design their national measures in a way that made minimal demands on their farmers; other member states might have a much higher level of ambition for the delivery of environmental public goods and might seek to 'gold-plate' their national measures. Farmers in the high-ambition countries will feel aggrieved that their government is putting them at a competitive disadvantage. Environmental groups will worry that flexibility would allow low-ambition countries to get away with minimal effort.

Allowing for different levels of ambition is justified where the environmental public goods are local. The menu approach then allows for differences in national preferences over the environment and competing land uses to be expressed (although why local public goods should be financed from the EU budget in the first place under the subsidiarity principle would need to be explained). To the extent that the environmental public goods being pursued through EU regulation are EU-wide public goods (for example, because they derive from international obligations collectively undertaken by the EU, or because they are genuinely transboundary), then requiring a minimum level of effort is appropriate. If national governments wish to pursue more ambitious goals (because environmental public goods are more valuable to their citizens), there is no reason to forbid this through legislation. This is then a matter for decision in national legislatures which provide the appropriate checks and balances.

The real test of the menu approach is practicality. The Commission's approach to greening Pillar 1 requires simple, annual, generalisable measures that apply across all farms. The more differentiated and varied the measures sought to green Pillar 1 payments, the stronger is the argument for delivering these measures through Pillar 2. Presenting a range of greening options in legislation from which farmers could choose for a Pillar 1 payment will greatly complicate the definition of the baseline for Pillar 2 schemes. For example, assume that a measure is offered to farmers in a particular country as part of the menu of green options for the Pillar 1 payment, but that a particular farmer decides not to opt for this measure but chooses other measures in order to gain eligibility for the Pillar 1 green payment. Would this farmer then be barred from receiving a payment for this measure if he or she enrolled in a Pillar 2 AEM on the grounds that this was now considered part of the cross-compliance baseline? By implication, the wider the menu offered to farmers in Pillar 1, the narrower the range of options that would

3. [4] The same issue currently arises with GAEC standards. COPA-COGECA highlights the situation as follows: "The measures under GAEC, in particular the optional ones, vary considerably between Member States. In some countries farmers are obliged to meet a measure under GAEC for no compensation for the additional costs; in other countries farmers can fulfil the same measure on a voluntary basis with compensation (as agrienvironmental measures under pillar 2) and in other countries farmers have neither the obligation nor any support if they adopt such a measure" (COPA-COGECA, 2011).

remain available to farmers in Pillar 2. This could undermine the attraction and viability of more effective Pillar 2 schemes.

'Green by definition'. The Commission Regulation would allow organic farmers to automatically qualify for the green payment on the grounds that these farmers contribute at least as much in terms of environmental public goods as would be provided by compliance with the three green measures. This exemption has led a number of stakeholders to argue that automatic qualification ('greening by definition') should be extended to other groups of farmers demonstrably following sustainable farming practices. The argument is that this would ensure consistency between greening in Pillar 1 and other environmentally targeted schemes; it would simplify the green payment by taking advantage of already existing schemes and controls; it would provide an incentive for farmers to get involved in these higher-level environmental schemes; and it would enhance the flexibility available to MS.

Broadly, two categories of farmers are envisaged as qualifying for exemption under this 'green by definition' route. One is farmers who are already enrolled in an AEM under Pillar 2. The other is farmers who comply with the growing number of environmental certification schemes (e.g. annual energy audit, carbon footprint, water efficiency, integrated farm management). The Commission has indicated that it is open to allowing the inclusion of farms operating under an agri-environmental scheme or an environmental certification scheme directly into greening, provided that the whole farm is covered by the scheme and that the commitments go beyond the greening baseline (Commission, 2012). These options are also supported in the COMAGRI rapporteur's report. In the Council, some member states want to go further. The Presidency has suggested amendments to include in addition farmers with more than [75]% of the eligible agricultural area covered by grassland, while noting that a few member states argued that this would make the fulfilment of greening too easy (Council, 2012a).

By definition, 'green by definition' exemptions would not provide taxpayers with any additionality in terms of agri-environmental public goods – farmers are currently providing these services in return for payment in an AEM. Providing the green payment automatically to farmers who are enrolled in a Pillar 2 AEM appears hard to justify given the legal requirements governing CAP payments which prevent paying for the same actions in both Pillar 1 and Pillar 2. The Capoulas Santos report acknowledges that this proposal might mean that farmers could receive a double payment under both the greening and agri-environment-climate measure in rural development programmes. It proposes to exclude this possibility by amending the Rural Development Regulation to make sure that all agro-environment-climate measures go beyond the greening requirements. But either the AEM measures build on the basic requirements in Pillar 1 or they are a substitute for them. It seems impossible to avoid that many farmers in a Pillar 2 AEM including organic farmers would receive a double payment in Pillar 1 and Pillar 2 under the 'green by definition' option. There is also a danger that linking Pillar 2 requirements

to eligibility for the green payment might compromise the WTO green box status of these payments.[5]

If farmers in a certification scheme do not receive payments under Pillar 2, then this problem does not arise. A certification scheme then becomes a way for Member States to introduce additional measures to qualify for the greening payment beyond the three proposed by the Commission. In principle, this flexibility should be welcomed, but it introduces a completely new instrument into the CAP, the operation of which is currently unknown. The Presidency's suggested amendment would require the Commission, by means of implementing acts, to further specify the conditions relating to the commitments and the certification schemes, including the level of assurance to be provided by those certification schemes as regards their effectiveness, objectivity and transparency.

Strengthening cross-compliance. Another approach to greening sought by some member states is to introduce the Commission measures as additional GAEC standards in cross-compliance. It would involve establishing a menu of measures that would be mandatory in application but only where relevant and appropriate. This is in line with the current approach to GAEC which confines the application of GAEC standards to relevant territories and circumstances. This option was reviewed by the Commission in its impact assessment (European Commission 2011b). If greening is effectively a requirement in the direct payments system, then would it not be simpler to work instead on enhancing cross compliance? The Commission rejected the option in the following terms:

"Although this line of reasoning is put forth arguably on simplification grounds, it hides the complexities inherent in Member States defining and administering GAEC tailored to regional specificities. As the experience with the optional GAEC on crop rotation has shown, this approach would not necessarily ensure that the entire EU territory is effectively greened. At the same time, it would meet with considerable resistance from farmers as it would be framed as a requirement rather than an incentive, and arguably do away with the political visibility of greening direct payments that is one of the main drivers of this reform."

However, varying standards across member states is an issue which will arise with any move to provide greater flexibility and is not specific to GAEC – it would also be present in the menu approach or allowing 'green by definition' exemptions. If participation in the greening measures is truly mandatory for those farmers receiving the basic payment, then the green measures are a form of super cross compliance already. The political visibility argument betrays the motivation of the Commission's proposal as primarily about justifying the existing payments rather than designing an effective environmental scheme. Including green measures as

[5] This point was raised by Mr George Lyon, MEP in a question for written answer to the Commission on 9 February 2012, E-001236/2012. The Commission replied it is the observation of the environmentally-friendly production method which is required and rewarded under the 'greening' payment. On this basis, the Commission does not consider that including organic farming endangers the Green Box compliance of the greening payment in any way, which remains a fully decoupled measure.

4.

part of cross compliance is the approach adopted in Switzerland whose experience shows that biodiversity can be enhanced at a continental scale under cross compliance (Matthews, 2012).

Greening through Pillar 2. Some member states and many environmental NGOs would prefer to see greening pursued through Pillar 2. Pillar 2 measures offer member states the flexibility they seek. As programmed, multi-annual measures they have the potential to deliver significantly greater environmental improvements than the measures proposed in Pillar 1. Pillar 2 AEMs do have drawbacks. They have high transactions costs, and the lack of baseline monitoring and clear objectives at member state level means that it can be difficult to assess the contribution that they make (ECA, 2011). A recent review of experience with AEMs concluded that they have had mixed success depending on the schemes and indicators under investigation (Uthes et al., 2011). Although there is some evidence that AEMs reverse negative trends in bird monitoring data, particularly in diversified, small-scale landscapes, studies in intensively farmed regions have reported less successful results and concluded that much more and different conservation efforts are needed.

The Commission did not pursue the option of further greening the CAP by expanding the funding for Pillar 2. It has emphasised the voluntary nature of Pillar 2 measures and the fact that only a minority of farms are enrolled in AEMs. It may also have been influenced by an awareness that shifting resources from Pillar 1 to Pillar 2 was unlikely to get political support in the Council, in part because of opposition from finance ministers to co-financing and in part because of the desire of agricultural interests to hold on to the maximum flow of direct payments. It is also proposing to include a minimum threshold for spending on agri-environment-climate measures only as a guideline but to remove its mandatory nature, so there would be no guarantee that increased resources for Pillar 2 would result in increased environmental spending in the next MFF period.

However, it would allow in its proposed regulation member states to voluntarily transfer up to 10% of their Pillar 1 ceilings to Pillar 2 expenditure on agri-environment-climate measures but with co-financing required. The Capoulas Santos rapporteur's report would make the modulation possibility more flexible. Member states less favourably placed with regard to rural development should be able to add to the transfer. Specifically, Belgium, Denmark, France, Germany, Ireland, the Netherlands, Spain, Sweden and the United Kingdom may decide to increase the percentage of their annual ceilings transferred to 20%. In addition, all member states should be able to supplement the transfer by a sum proportional to those monies unallocated under the heading of support for areas with natural constraints. They should also have the option of transferring unspent monies for "greening" so as to provide additional support for agro-environmental rural-development measures. However, there should be a cumulative limit of 20% of the national ceilings (excluding unused greening funds). All monies thus transferred should be used without co-financing.

Voluntary modulation is not popular among farming groups which argue that it creates unfair conditions of competition because farmers in different member states receive different levels of direct payments. Leaving aside the presumption strongly defended by the EU in the

WTO that its direct payments are decoupled and thus have minimum effects on production, the Commission's proposals envisage continuing differences in the value of entitlements between member states for some time to come.

We noted earlier that setting aside 30% of direct payments national envelopes would imply a quintupling of support for agri-environment-climate measures. Increased funding of this magnitude on its own would attract additional enrolment in AEMs. With a greater focus on objectives and results, member states should be incentivised to design schemes which are attractive also in intensively-farmed areas. More generous AEM payments can be complemented by strengthening GAEC by including appropriate greening standards as part of cross-compliance, along the lines of the Swiss model. This would go a long way to ensuring the universality sought by the Commission in its legislative proposals.

6. CONCLUSIONS

The Commission proposal would allocate a budget of almost €13 billion annually to further green the CAP. One way to think about the optimal way forward is to ask: how could this budget best be spent to get the maximum agri-environmental benefits?

The Commission strategy is to propose shallow, one-size-fits-all, greening measures in Pillar 1. This appears mainly designed to justify the continuation of the current level of CAP Pillar 1 spending. Greening of Pillar 1 is proposed predicated on the assumption that there is no political willingness in the Council of Ministers to shift resources from Pillar 1 to Pillar 2 and to use the additional resources to invest more heavily in Pillar 2 AEM schemes.

The analysis in this paper strongly supports the advantages of pursuing greening through Pillar 2. The major criticism of the Commission proposals is that requiring every farm in the Union to follow exactly the same measures is both inefficient and ineffective. The approach is prescriptive and rules-based and will not encourage the support and commitment of farmers to better environmental management. Member states have sought additional flexibility in implementing the Commission measures. But to be meaningful, such flexibility would have to operate at the farm level, where farmers would have a choice among a range of options to gain eligibility for the green payment. Such flexible menu schemes belong in Pillar 2 and not in Pillar 1, at least with the current regime for the administration, monitoring and inspection of Pillar 1 payments.

The Commission proposals also raise broader issues of fairness and proportionality among member states. Not all member states and regions face the same environmental pressures. Some Member States and regions will have a range of viable alternatives to engage in greening (e.g. in terms of crop diversification, there may be a range of competitive alternatives in some regions but very few in another). This means that the costs of greening differ widely across Member States, as the Commission impact analysis shows. Wide differences in the land area enrolled in Pillar 2 AEMs demonstrate that also the current intensity of agri-environment policy measures differs across member states. Some member states would be introducing Pillar 1 greening measures in the context where many farmers are already enrolled in agri-

environment schemes. While this has fuelled the demand for exempting these farmers from the additional compliance measures under the 'green by definition' label, as discussed earlier this is not a satisfactory outcome from the viewpoint of the taxpayer and raises potential problems of double payment and WTO compatibility. The introduction of green measures in Pillar 1 could even lead to reduced interest among farmers in Pillar 2 schemes because the baseline for entry to Pillar 2 schemes will now be higher. These are all reasons to include further greening measures in Pillar 2 rather than Pillar 1.

The main objection to relying on Pillar 2 AEMs, apart from the presumed unwillingness of the Council to increase the Pillar 2 budget, is that participation in Pillar 2 AEM is selective. The evidence shows that the more intensive farms with a poorer environmental profile are less likely to participate. In part, this is a question of the design of Pillar 2 schemes. Flat-rate schemes will inevitably be most attractive to those farms which must make the minimal changes to their farming practice to comply. But it is possible to design AEM (through the use of auctions, for example) which specifically target problematic environmental issues and areas within a region.

Where universal coverage is felt to be important, a complementary approach is to include one or more specific greening measures in the cross-compliance conditions for the basic payment. Whether a basic income payment is needed or justified is debated (Swinbank, 2012), but while Pillar 1 continues to include a basic income payment the cross-compliance conditions could be enhanced to address environmental needs, for example, by including additional standards as part of good agricultural and environmental conditions. One attraction of this approach is that flexibility is left to member states how they wish to implement these standards. While some criticise this as leading to an uneven application of standards across the EU, this is an inevitable, and even desirable, outcome of allowing flexibility to Member States to address their environmental problems in the best way that they see fit.

Thus, the most desirable way forward would be to promote more ambitious targeted and flexible Pillar 2 AEM schemes. This would require a further shift of funds from Pillar 1 to Pillar 2, in line with the trajectory pursued since the Agenda 2000 reform. If the General Council decides not to alter the Commission MFF proposal in this respect, it would still be possible to amend the direct payments regulation to allow further modulation of the Pillar 1 national ceilings without co-financing so that the green component of this budget could be transferred to Pillar 2 in those Member States that wanted this. Greening Pillar 1 in the manner proposed by the Commission is very much a second-best option in terms of both environmental effectiveness and economic efficiency.

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