

The new delivery model of the CAP: Some relevant issues

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ABSTRACT: A key element of the European Commission's proposal for the post-2020 CAP is the requirement for the EU Member States to present their proposed interventions in the form of a Strategic Plan. We address six sensitive issues: Similarities between the new architecture and the Rural Development historical management; performance reserve and duration of the financial perspectives; declared ambitions for the Strategic Plans; lengths of those Plans and an administrative challenge, in Spain and perhaps in other Member states. Our conclusion is that a real change is achievable but we should give time to time and that a step-by-step implementation is advisable.

El nuevo modelo de aplicación de la PAC: unos temas importantes

RESUMEN: Una clave de la propuesta de la Comisión para la PAC post 2020 es el requisito de que los Estados miembros presenten sus intervenciones en forma de un Plan Estratégico. Se abordan seis cuestiones: las similitudes entre la nueva arquitectura y la gestión histórica del desarrollo rural; la reserva de eficacia y la duración de las perspectivas financieras; las ambiciones declaradas de los Planes Estratégicos; su duración y un desafío administrativo al menos en España. Concluimos que podemos estar en puertas de un cambio real pero que hay que dar tiempo al tiempo y una implementación por etapas sería recomendable.

KEYWORDS / PALABRAS CLAVE: CAP, New delivery model, Strategic Plan / PAC, Nuevo Modelo de Gestión, Plan estratégico.

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1. Introduction

The current CAP rules are officially running until the end 2020, which is also the end of the current financial perspectives of the EU. The European Commission published its Communication on the ‘Future of Food and Farming’ on 29 November 2017, setting out broad ideas for the future direction and focus of the Common Agricultural Policy (CAP) for the following period 2021-2027 (EC, 2017).

As explained by McEldowney & Kelly (2019), “a key element of the European Commission’s proposal for the modernisation and simplification of the CAP for the post-2020 period is the requirement for the EU Member States to present their proposed interventions in the form of a Strategic Plan. The New Delivery Model (NDM) for the CAP is set out ‘to streamline its governance, improve its delivery on EU objectives and to decrease bureaucracy and administrative burden’”.

This is seen as a shift towards a more ‘performance based delivery model’, a shift of focus from compliance to performance and a rebalancing of responsibilities between the EU and the Member States, a way of ‘moving from one-size-fits-all to more tailor made solutions’.

Table 1 is a summary of the proposal, which summarizes the issue (IEEP, 2018).

TABLE 1

Outline of the new performance base delivery system from the communication

- The European Union would set the basic policy parameters (objectives of the CAP, broad types of intervention, basic requirements). The CAP objectives would fulfil the EU Treaty obligations as well as existing agreed objectives and targets, e.g. for environment, climate and SDGs;
- Member States should bear greater responsibility and be more accountable as to how they meet the objectives and achieve agreed targets. They would:
 - Be in charge of tailoring CAP interventions to maximize their contribution to EU objectives.
 - Be accountable for providing credible performance monitoring and reporting, underpinning the assurance of the budget.
 - Have a greater say in designed the compliance and control framework applicable to beneficiaries (including controls and penalties).

To achieve this:

- Member States would have to develop CAP Strategic Plans which would cover interventions in both Pillar 1 and Pillar 2 and should focus above all on the objectives and expected results.
- The Commission would assess and approve these plans with a view to maximizing the contribution of the CAP to EU priorities and the achievement of MS’s climate and energy targets.
- The Commission would also oversee the delivery of results and the respect of basic EU rules and international commitments through the framework of an audit and assurance system. This needs to be adapted to the requirements of a result-driven policy design including the development and application of solid and measurable indicators and of a credible performance monitoring and reporting system.

Source: COM (2017) 713 final.

Importantly, the Communication states that the planning process underpinning this new delivery approach should be much simpler and less complex than current

Rural Development programming, marking a shift from an emphasis on compliance to a focus on results and performance.

The Communication states that prescriptive compliance elements such as measures' details and eligibility rules would be eliminated from EU legislation. A new system of nationally generated plans would aim to favor integrated and innovative approaches and make the policy framework more adaptive and innovation friendly.

These proposals raise many questions about how this new delivery approach might work in practice, if taken at face value and with a genuine intention to shift all elements of the CAP towards being more performance driven.

This NDM issue is quite recent in the political and academic debate. We try to take note of the relevant articles, blogs entries and reports and decide not to address in this ex-ante analysis the environmental aspects of the proposal, covered amongst others by several papers produced by the Institute for European Environmental Policies (IEEP). At the opposite, we have not found any evaluation on the concrete NDM practicability that we address here. We believe that this ex-ante analysis is not only necessary to feed the political and social debate, but also could be a reference later on when ex-post evaluation will be carried on.

We conclude that a real change is achievable, but we should give time to time and that a step-by-step implementation is more than advisable.

2. Preliminary remarks

What is proposed by the Commission is a complete change of paradigm for the CAP (Féret, 2019). It implies a lot more subsidiarity for the MS, and it requires a new way of administering the policy, both on EU and national level.

There are, as usual, a large set of motivations behind this move. On one hand, there is a need to increase the social acceptance of the European policies in general and the CAP in particular (Kirylyuk-Dryjska & Baer-Nawrocka, 2019). Its potential role to deliver and climate action, for instance, is underlined (German Scientific Board on Agricultural Policy, Food and Consumer health Protection at BMEL, 2019) in contrast with its current lack of ambition (IEEP, 2017). But "there is a growing demand from public opinion across Europe to address the challenges of climate stabilisation and to move food production on to a more sustainable development path" (Matthews, 2019; IPES, 2019).

On the other hand, with further cuts expected of the agricultural budget (in the order of 5-10 %, depending on the basis of comparison used) the CAP has to be more results oriented (Was *et al.*, 2018; Stierle, 2018; Féret, 2019). The European Court of Auditors has been urging a "greener, rigorously performance-based and more accountable" CAP (ECA, 2018).

The proposal implies a lot more subsidiarity for the MS in how to meet common EU objectives. More flexibility may lead to higher returns of the money distributed, because of the possibility of better targeting, but it may also have the contrary effects if MS are not capable of, or interested in, looking for the highest results of its

investments. This last point is supported by the way many MS have implemented the current CAP. They have taken advantage of the different available flexibilities allowed for by the existing legislation in order to downgrade the environmental level of ambition and commitments.

TABLE 2

The proposed general and specific goals of the CAP in the period 2021-2027

Fostering a smart and resilient agricultural sector ensuring food security	Bolstering environmental care and climate action and contribution to the environmental and climate related objectives of the EU	Strengthening the socio-economic fabric and rural areas
Support viable farm income and resilience across the EU territory to enhance food security.	Contribute to climate change mitigation and adaptation, as well as sustainable energy.	Attract young farmers and facilitate business development in rural areas.
Enhance market orientation and increase competitiveness including greater focus on research, technology and digitalization.	Foster sustainable development and efficient management of natural resources such as water, soil and air.	Promote employment growth, social inclusion and local development in rural areas, including bioeconomy and sustainable forestry.
Improve farmers' position in the value chain.	Contribute to the protection of diversity, enhance ecosystem services and preserve habitats and landscape.	Improve the response of EU agriculture to societal demands on food and health, including safe, nutritious and sustainable food, as well as animal welfare.
Fostering knowledge, innovation and digitalization in agriculture and rural areas.		

Source: Erjavec *et al.* (2018).

The new delivery model implies a new way to administer the policy, with challenges for the Commission services and the national administrations.

In order to take on the new role that the new delivery model would require, the Commission would have to develop its analysis and evaluation capacities. Until now, the main role of the Commission services has been to control the process, the way the direct payments are distributed in the case of the first pillar, the correctness and the proper implementation of the Rural Development programs for the second pillar.

With the new delivery model, the Commission would have to agree with each Member State its specific contribution to the global objectives and the consistency of its Strategic Plan with national targets, the relevant indicators and their expected evolution (all in line with the EU international commitments and other political priorities). The Commission would take on the role as a referee, assessing the degree of fulfilment of the plan of each MS.

The Member States, and often the regional authorities, would have to elaborate the Strategic plan, take full responsibilities for its implementation, collect the

relevant data for the calculation of the indicators, and elaborate a report on the results observed and why they are different from those expected.

Each Member State will have its Strategic Plan, which makes sense in order to increase the consistency of the actions, as the European commitments are done at EU or Member States level.

However, at the same time, in many cases, it seems logical that the national targets agreed with the Commission should be distributed on a regional level. This would increase the implementing challenges in the federal (or similar) Member States. When entering in the details of the specific commitments, the internal negotiations between the different regions and the central administration, and between the regional Administrations themselves, will not be easy. As is already the case today with the financial corrections imposed by the EU auditors, each region should be held responsible and share its fair part of the burden, in particular if the mechanism of the reserve of efficiency is activated.

We will first present a summary of the content of the Strategic Plan (Point 3), address the calendar issue (Point 4) but the core of the article is the analysis of some sensitive issues (Point 5) which, in our opinion, deserves special attention. They are the similarities between the new architecture and the Rural Development historical management; the performance reserve and the duration of the financial perspectives; the declared ambitions for the Strategic Plans; the lengths of those Plans and an administrative challenge, at least in Spain and perhaps in other Member States.

For obvious reasons of space, those are only 6 amongst many potential issues which could be addressed. Often, the focus is concentrated on the environmental issues, well addressed, for instance, by several IEEP reports. Our issues are certainly less “popular” but also relevant for a proper implementation of the New Delivery Model.

3. A “comprehensive” Strategic Plan

A “comprehensive” strategic Plan should include overall objectives, targets associated with them, ex ante conditionalities, eligibility criteria, monitoring process, control process, indicators for measuring progress, definition of measures/instruments to be used, and ex ante evaluation of plan to determine coherence and intervention logic (including Strategic Environmental Assessment and Carbon Impact Assessment).

Chapter II of the proposed Regulation “establishing rules on support for strategic plan” devotes 9 articles to define the future contents of the strategic Plans. It shall include the following:

3.1. An assessment of needs

The Plan should include an identification and description of needs for all nine specific objectives of the draft Regulation regardless whether they will be addressed in the CAP Strategic Plan or not.

It will have to specifically describe the needs in relation to risk management in connection with the specific objective of support for viable farm incomes and resilience. They should then be ranked and prioritized, and a sound justification of the choices made should be given, including why certain identified needs might not be addressed or only partially addressed in the Strategic Plans.

3.2. An intervention strategy

This section should set out quantitative targets and milestones to achieve each specific objective addressed in the Strategic Plan. Targets should be defined using a common set of result indicators, included in an Annex to this draft Regulation. The value of the targets should be justified by reference to the needs assessment.

The intervention strategy should also set out the interventions proposed to reach these targets drawn from the menu set out in the Regulation. It should describe how the interventions allow reaching the targets and how they are mutually coherent and compatible.

There are additional specific requirements (article 97.2). It includes firstly an overview of the environmental and climate architecture showing the complementarity and coherence between the proposed conditionality attached to receipt of farm payments, the eco-scheme in Pillar 1 and the AECM measures in Pillar 2 and how this architecture contributes to meeting long-term national targets set out in relevant environmental legislation.

Secondly, it shall contain, in relation to the specific objective “attract young farmers and facilitate their business development” the overall package of measures included in the Plan should be described, including their interplay with relevant national instruments.

Thirdly, if coupled supports and other sector-related interventions are included in the Plan, it should detail the justification for targeting the sectors concerned, the list of interventions per sector, their complementarity, as well as the possible specific additional targets related to the interventions should be described.

Lastly, it should also cover an explanation as to which interventions will contribute to ensure a coherent and integrated approach to risk management.

3.3. Elements common to several interventions

Using Matthews (2018) wording, “this is a catch-all heading that refers to a few disparate requirements”. The most important is a description of the system of conditionality, including a detailed account of how each Good Agricultural and Environmental Conditions (GAEC) standard in the Regulation will be implemented and, specifically, how it will contribute to the environmental and climate specific objectives.

Member States should also include information on the specific definitions they have adopted for some of the terms in the Regulation that are left up to Member

States. This is, for instance, the case of the definitions of agricultural activity, agricultural area, eligible area, genuine farmer, small farm and young farmer.

It should also include details on the use made of technical assistance, on the functioning of payment entitlements where the Member State opts to continue their use, on the uses made of revenues raised by capping and digressively as well as an overview of the coordination, demarcation and complementarities between the European Agricultural Fund for Rural Development (EAFRD) and other Union funds active in rural areas such as the Regional, the Cohesion or the Social funds.

3.4. Direct payments

The strategic Plan should also include a description of the direct payments, sectoral and rural development interventions foreseen. This should include an account of the design of the intervention and its eligibility conditions, the annual planned outputs for the intervention, the annual planned unit amount of support and its justification and the resulting annual financial allocation for the intervention.

Member States should also show how the intervention relates to the criteria for determining whether measures are trade-distorting or not in the WTO Agreement on Agriculture, and whether the intervention falls outside the scope of Article 42 TFEU and is subject to State aid assessment.

3.5. Target and financial plans

These should build on the annual financial allocations per intervention as well as detail transfers between Pillars and confirm that any minimum spending requirements set down in the Regulation have been met.

3.6. Governance and coordination system

The most important element here is information on the control system and penalties including the integrated administration and control system and the control and penalty system for conditionality. It should describe also the foreseen monitoring and reporting structure.

3.7. Modernisation

This covers two specific obligations; an overview how the Strategic Plan will contribute to the fostering and sharing of knowledge, innovation and digitalisation and encourage their uptake. It will include a description of the Agricultural Knowledge and Innovation Systems (AKIS) organisational set-up and the advice and innovation services provided.

It will also describe the strategy for the development of digital technologies in agriculture and rural areas and for the use of these technologies to improve the effectiveness and efficiency of the CAP Strategic Plan interventions.

In addition, each CAP Strategic Plan should contain the following five annexes:

- Ex-ante evaluation and the strategic environmental assessment (SEA),
- The SWOT analysis,
- The consultation of the partners,
- The crop-specific payment for cotton and
- The additional national financing provided within the scope of the CAP Strategic Plan.

All aspects that are to be included are complicated by nature to define and to assess. For instance, Spain, the country we know the best, is one of the Member States that is today well advanced. Until now, the quantity and the quality of the information and analysis done and publicly available in the webpage of the Ministry¹ is impressive but the exhausted civil servants of the Ministry are well aware of the tremendous tasks which are still behind before completing the exercise. Erjavec *et al.* (2018) already have underlined that this “strategic planning will represent a substantial administration burden for member States”.

4. The calendar

The EU decision-making process is long. In order for the New Delivery Model to be properly in place by 1 January 2022, with only one year of delay², a political agreement is needed by the end of 2020 at the latest.

Shortening the negotiation period is not only difficult but also imply worse ending results as the technical experts in the MS and in the EP would not be left with enough time to analyse the potential consequences of the proposal and suggest changes. This is not a desirable scenario. Rushing the implementation once an agreement has been reached also puts at risk the quality and the ambition level.

In simple terms, the process from axis to table for a legal proposal is the following. The Commission publication of the Communication was the starting point (in this case November 2017). The Commission approved its regulation proposals on 1 June 2018. Some elements of the proposal have been included in the Commission proposal of financial perspectives 2021-2027 approved some weeks before, on 2 May 2018³.

When writing this article⁴, the Council has made significant progress, as the Finnish Presidency has presented its “Multiannual Financial Framework (MFF)

¹ <https://www.mapa.gob.es/es/pac/post-2020/default.aspx>.

² <https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-581-F1-EN-MAIN-PART-1.PDF>.

³ http://europa.eu/rapid/press-release_IP-18-3570_en.htm.

⁴ January 2020.

2021-2027: Negotiating Box”, but the European Parliament has not been able to adopt its corresponding negotiating mandate, at least for agriculture. Therefore, the “trilogues”, between both institutions and the Commission, has not even started. In addition, the negotiations on the agricultural issues will not really develop until there is an agreement on the financial perspectives.

After the political agreement, there needs to be a legislative check and a legislative approval. In addition, different Delegated and Implementing acts will still have to be prepared by the Commission and then negotiated and agreed. Officially, the implementation of the new CAP is delayed only one year, until 1 January 2022. This seems to us optimistic.

The national ministries/agencies have to approve and negotiate with the Commission their Strategic Plan, which can then be communicated to the farmers. In the meeting that take place on January 2020, the national control authorities have already unanimously requested for a 2 years transition period for implementing all the required changes in their processes. Farmers need to know by early spring 2022 (at the very latest, the ideal would be the autumn of 2021) what rules to adapt to as they need the information by the time, they take production/seeding decisions for the year, and before they apply for support.

Time is running short.

5. Six sensitive issues

The implementation of this radical shift in the way the agricultural policy is managed in Europe open a large list of issues and unknown developments. This article will only develop 6 issues which are not normally in the centre of the debates, but which deserves in our opinion to be taken seriously. Those six issues are the similarities between the new architecture and the Rural Development historical management; the performance reserve and the duration of the financial perspectives; the declared ambitions for the Strategic Plans; the lengths of those Plans and an administrative challenge, at least in Spain and perhaps in other Member States.

5.1. A large “Rural Development Plan”?

Jongeneel, et al. (2019) suggests that the proposed new model of policy delivery draws on the established model of Rural Development Programming and essentially the same governance system. This seems to be also the (secret) believe of several (many?) high-level DG AGRI civil servants working in the Rural Development Directorates. Erjavec study doubts that the proposed arrangements will lead to a genuine results-based policy. It sees limited incentives for Member States to make efforts for better policies and highlights an “accountability gap” and a “systemic weakness in the intervention logic” in the new delivery model. It is too easy for Member States to draw up Strategic Plans mainly designed to minimise the hassle associated with the absorption and distribution of funds.

Nevertheless, the former Commissioner Hogan (2018) has been clear on this issue: “Some people have asked if we are imposing the current system of rural development on the first pillar. The answer is no”.

Firstly, whereas the current second pillar is based on compliance, the future delivery model should be based on performance. Today, there is a list of detailed measures and sub-measures in the rural development regulation linked to eligibility and implementation rules. These set out how Member States develop and define their operations and schemes.

It has sometimes caused issues, for instance with new innovative ideas that go beyond what was imagined at the time of drafting the regulation. These issues have often created difficulties in the program approval phase.

In future, it is intended to do away with these restrictions. One way to illustrate this is by means of the investment measure. Instead of having a variety of investment measures and sub measures that define eligible beneficiaries and types of cost, a broad intervention called “investments” is foreseen. Member States will have to fill it with content and purpose, to establish eligibility criteria and support rates suitable to their purpose and their delivery towards the pre-defined EU objectives.

It is true that, when the Commission puts emphasis on strategic planning, there is some resemblance to what is done today under Rural Development. After all, it is strategic programming. However, there are key differences and a large potential for simplification in the proposals if properly implemented.

The current regulations set 6 priorities, 18 focus areas, contributing to 3 CAP objectives and 11 Thematic European Structural Investment Fund (ESIF) objectives. It sounds unnecessarily complicated.

The declared intention of the Commission is therefore to have a limited number of CAP specific objectives which reflect Treaty objectives but also Commission priorities; European Union commitment to the Sustainable Development Goals, and the implementation of the COP 21 agreement. For each specific objective, a number of result indicators for target setting and for monitoring annual implementations, will be established.

In addition, the European Court of Auditors (2017), in its Special report “Rural Development Programming: Less complexity and more focus on results needed” has “found that the approved Rural Development Programs (RDPs) are long and complex documents with shortcomings that limit the potential to enhance the focus on performance and results. Significant administrative effort on the part of national authorities was needed to meet the extensive content requirements. They also found that despite Commission’s efforts, RDPs’ implementation started late and the planned spending began more slowly than in the previous period”.

5.2. The performance reserves

A reward system is proposed depending on the performance level. The proposal foresees that a “performance reserve” of 5 % of the national Rural Development bud-

get of the last year of the financial perspective, would be set aside and released once result indicators have achieved at least 90 % of their target by, initially, 2025.

On a regular basis (each year as proposed initially by the Commission or each 2 years as preferred by a majority of Member States), the MS will present to the Commission a progress report. If one or more result indicators deviates by more than (25 %) from the ad-hoc milestone or initial target, the MS will have to explain what is happening and why. MS and the Commission will negotiate an action Plan. Based on its results, the MS will (or will not) have access to the performance reserve.

This reward mechanism is not compatible with the current length of the financial perspectives for several reasons.

Firstly, the new CAP implementation is already delayed for, at least, one year. Secondly, it always takes a time before Rural Development programs starts. Thirdly, even if properly implemented, their impacts on the ground will also take some time. Fourthly, time is also needed for the collection of data required and for the proper calculation of the indicators. Some of them will be easier to collect than others, in particular when regional authorities are involved.

Based on those indicators, the Member State will have to prepare, internally negotiate and finally approve the report, which will be send to the Commission. If needed, an action plan would be negotiated and then implemented. Some years later, based on its results, the financial decision on the performance reserve would be taken. **Not all that can be done before 2027.**

The Budget Committee of the European Parliament has already adopted 2 reports on the expenditure and revenue sides of the next multi-annual financial framework. It proposed aligning the MFF's duration to the legislative cycle so after 2027; it would apply for 5+5 years, with a mandatory mid-term revision. From the "new delivery model" point of view, the 5+5 option makes more sense.

5.3. *An ambitious Strategic Plan?*

The Council and the European Parliament have a political dilemma: To include in the regulation serious commitments at European level and mechanisms of control, monitoring and sanctions or to limit them to what is strictly necessary.

Until now, the evolution of the discussion in the Council of Ministers suggests that the second option is the preferred one. There is a practical alliance between the most conservative Member States, in particular less enthusiastic on environmental issues, and those that want to minimize Commission margin of manoeuvre, control and (financial) sanctions, even if they are ready to deliver.

During the negotiations of the current CAP rules, the European Parliament has been even more conservative than the Council of Ministers (Zamburlini & García Azcárate, 2015). It is true that exclusively the Commission for Agriculture led the negotiation and that, today, the Environment Committee is expected to play a major role. However, it is difficult to believe that the underlined previously trend could be reversed. Matthews assessment (2019) "is that the status quo will prevail".

The former Commissioner, Phil Hogan, was alarmed by the pushback from AGRI Committee members and in the Council. He circulates a paper on “The post-2020 Common Agricultural Policy Environmental benefits and Simplification”⁵ to try to convince both the Honourable Members of the European Parliament and the high level civil servants who are negotiating in the Council, that they have to catch this (last?) opportunity to modernise and consolidate the Common Agricultural Policy for the years to come.

The new Polish Commissioner is, at the time to close this article, still a mystery even if its previous records do not show that he will be as “reform oriented” as his predecessor.

5.4. A 100 page “Strategic Plan”?

Member States are required to submit their Strategic Plans no later than 1 January 2021. Article 106.2 explicitly foresees that “the Commission shall assess the proposed CAP Strategic Plans on the basis of the completeness of the plans, the consistency and coherence with the general principles of Union law, with this Regulation and the provisions adopted pursuant to it and with the Horizontal Regulation, their effective contribution to the specific objectives set out in Article 6(1), the impact on the proper functioning of the internal market and distortion of competition, the level of administrative burden on beneficiaries and administration.

The assessment shall address, in particular, the adequacy of the strategy of the CAP Strategic Plan, the corresponding specific objectives, targets, interventions and the allocation of budgetary resources to meet the specific CAP Strategic Plan objectives through the proposed set of interventions on the basis of the SWOT analysis and the ex-ante evaluation”.

This Commission assessment is particularly relevant in order to answer to the “main challenge” identified by Blagoeva & Ignat (2019), “to keep the policy common and, at the same time better tailored to the needs of the regions of the EU”.

The delays are (apparently) very strict. The Commission can address observations to the Member State within three months of receiving the Plan, and the Member State is required to provide any additional information requested and, if necessary, to revise the proposed Plan.

The approval process should not take longer than eight months after submission of a Plan. Nevertheless, this time limit excludes any time required for a Member State to respond to Commission observations. Partial approval is possible which, in practice means that the approval of Pillar 1 measures (in particular the direct payments) will not be delayed by the potential complexities of Pillar 2. Member States can amend their Plans at any stage by following the prescribed procedure.

Confronted with the need to approve in this very short period the 27 Strategic Plans of the Member States, the Commission services are now confronted with an

⁵ https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/key_policies/documents/cap-post-2020-environment-benefits-simplification_en.pdf.

elephant task. Even if DG AGRI will be the reception desk and the main partner for the Member States, each Strategic Plan will be checked by other services, in particular (but not exclusively) by DG Environment, DG Climate Change, DG Regio and DG Competition. An inter-service consultation and negotiation will take place. In addition, experiences with Rural Development Programs show that there is an urgent need for consistency between the different Plans. Today certain measures are eligible to the EU funding in some Member States (or regions) and forbidden in others. This should not be acceptable in the case of the Strategic Plan, the cornerstone of the next pluriennial CAP.

This is why some high-level civil servants are advising that the Strategic Plan should be short and simple, for instance around 100 pages. On one hand, they have to be comprehensive and well prepared and on the other, they have to be short. Both things seem contradictory.

Once again, the dilemma is between delivering a good assessment, which take time, or respecting formally the legal requirements and the timetables. Both issues cannot be deliver in a so short period.

5.5. An administrative legal challenge

This administrative challenge is real in Spain and, perhaps, also in other Member States. Spain is, in practice, federal-like state (Fernández Farreres, 1993) where the regions have assumed the core of the legal responsibilities and legislative power on issues such as agriculture and food. The central government plays mainly a role in coordinating and promoting convergences and synergies between the different policies developed in the regions (“Comunidades Autónomas”).

There is an exception to that, which is the implementation of the directly applicable European Policies (Regulations) as the Member State is Spain. This does not apply to European Directives and even in the agricultural case, the core of the second Pilar is directly under the control of the regional authorities.

The issue is the legal status of the approval of the strategic Plan. If it is a Regulation, the national government will have capacities to ensure the follow-up of its implementation. As it will be a Commission approval, it can be a Delegated act, an Implementing act or a Decision. If it is a Decision, the capacity of central government will be limited which seems contradictory with the fact that, it, is will be a national Strategic Plan.

If it is a Delegated or Implementing act, the other Member States and, in the case of the Delegated act also the members of the European Parliament, will have the legal capacity to amend or even reject the Plan. This would delay even more the implementation of the new CAP.

If it is only a Commission decision, Erjavec *et al.* (2018) are right when they alert the European Parliament that the new delivery model change completely the distribution of competence between the different European Institutions, massively weakening the role and the legislative and control capacity of the European Parliament.

5.6. An increase legal uncertainty

A “short and simple” Plan can also leave ample room for future interpretations. Matthews (2018) insists that “an under-researched topic to date in the evaluation of the New Delivery Model (NDM) is the role that the EU audit process will play. This process has come in for heavy criticism in recent years for its allegedly heavy-handed controls and its dampening effect on innovation”. He draws the attention of his readers to a “well-documented *cri du coeur*” from Freistaat Sachsen (2016).

The German Scientific Board on Agricultural Policy, Food and Consumer health Protection at BMEL (2019) insists on the need of “clear requirements for the approval of the CAP Strategic Plan, thus increasing transparency and planning predictability”.

The New Delivery Model has a clear precedent, the National Strategy implemented in the fruit and vegetable sector with the 2007 reform. In exchange of a larger subsidiarity for the Member States, they had to build a consistent strategy on what should and could be done for the fruit and vegetable sector, in both CAP pillars.

In addition, they have to approved “a National Frameworks for environmental actions (NEF)” and send to the Commission the “Member States’ reports of the evaluation of their National Strategies”. All those reports and information are publicly available and published in the webpage of the European Commission⁶. All these requirements were implemented to increase the legal security of national Administrations.

Bijman (2015) conducted for the European Parliament an analysis of the functioning of this new regulation, particularly useful to assess ex-ante some of the practical challenges of the NDM.

Among his conclusions, the author emphasizes that, after years of growth, the degree of organization of producers is stagnating, especially in the traditional Member States. The positive global evolution highlighted by the Commission’s statistics is essentially due to the slow growth of Producers Organisations (POs) in the new Member States.

He concludes that new rules were necessary. Very elegantly, he confirmed that “a higher level of legal certainty is desperately necessary”, which can be achieved with a simplification of the applicable regulations and a greater orientation by the Commission.

In particular, he underlined “the different interpretations of the same regulation by different services of the Commission, the Market Unit on one hand and the audit services on the other. One of the objectives of the 2007 reform was to increase flexibility and stimulate the creativity of national administrations, as a way to simplify the management of the Regulations. However, once the new regulation was implemented, the audit services imposed very strict interpretations, transforming flexibility and creativity into legal uncertainty... The consolidation of producer organizations in Europe requires real and profound changes in the role of auditors”. The author took

⁶ https://ec.europa.eu/agriculture/fruit-and-vegetables/country-files_en.

as an example of this drift the evolution of the rules regarding the outsourcing of activities by the POs.

In our report on the Commission proposal for new regulation of agricultural markets in the CAP post 2020, carried out for the European Parliament (García Azcárate, 2018), we developed some conclusions from the analysis carried out by Jos Bijman.

The issue of the relationship between “flexibility” and “different opinions between different services of the Commission” is of extraordinary importance.

In the new CAP, the “national strategy” has been transformed into the “Strategic Plan” and the “discussion and publication on the Commission’s website” into the approval of the national strategy” (but not of its annexes) by the European Commission. The experience of the 2007 fruit and vegetable reform is of great relevance.

Taking the same example of the “outsourcing” developed by Jos Bijman, we wrote in our Report that “the spirit of fruit and vegetable regulation was clear to all who actively participated in the negotiations. A Producer’s Organisation is a company that can outsource all activities that are best performed outside. Although the Commission’s auditors actively participated in all internal discussions and in the Management Committees meetings, a few years later they used another criterion”. Due to the very strict internal mobility rule applied in the Commission, five years later, no single Commission civil servant who participated in the negotiation and implementation of the reform, was still in place.

The (new) auditors imposed that “essential” functions of the PO could not be outsourced, a new concept not explicitly defined in the regulations. As Jos Bijman recalls, “in some cases, auditors have questioned the democratic control of farmers over the marketing of their products when key activities were outsourced”.

Therefore, to avoid a financial correction, when a new European regulation is implemented, the national responsible authorities (and sometimes the regional one) adopt the “precautionary principle”, making their interpretation as prudent and restrictive as possible, multiplying controls and procedures to anticipate what the Commission’s auditors might request when they will come, several years later.

The needed definition of infringements could be one of the best examples to illustrate the relevance of this issue. Will there have minor, medium and important infringements? How much “minor” infringements will be equivalent to a “medium”? How much “medium” infringements will be equivalent to an “important”? How those categories would be defined? Which would be the consequences?

Simplification is, rightly, a core political objective. New technologies can allow significant decrease of the administrative burden for both the administrations and the farmers. However, this should not compromise the level of ambition of environmental commitments and controls required, in order to ensure that European taxpayers receive high value for their money and that the international commitments are achieved. A large share of those issues will be developed and clarified in Delegated and Implementing acts.

We concluded that “retroactive interpretations of regulations should not be allowed. Auditors should become the best allies of farmers and national and regional authorities, in order to generalize the best experiences and anticipate possible problems”.

The Commission seems to have, at least partially understood the issue and take note of this negative experience. It explains in the last paragraph of chapter 2 “Towards a new delivery model” of its Communication that “another crucial function of the Commission would consist of course, in monitoring the delivery of results and respect for basic EU standards and international commitments within the framework of a well-designed audit and guarantee system. To this end, the assurance process would need to adapt to the requirements of a results-oriented policy design, including the development and application of solid and measurable indicators and credible performance monitoring and reporting”. Monitoring has to become “the basis of the audit system” (Fährmann & Grajewski, 2018).

This conclusion is key to the success of the change in the management model of the CAP and the Strategic Plans. As there is no guarantee that this initial position will be developed and maintained, it could be advisable for the national Ministries to present to the Commission for its approval the more comprehensive and complete Strategic possible Plan, in order to increase their legal security.

6. Conclusion: A real change is achievable

The New Delivery Model represents therefore a real change of paradigm for the CAP, moving from a “compliance-oriented” policy to a “result-oriented” which has been generally welcome. However, rushing its negotiation and implementation puts at risk the quality and the ambition level.

Potentially, the New Delivery System can represent a significant step towards a modern policy, more result-oriented, improving the capacity of the rural and agricultural actors to answer to the identified challenges. We have presented here some of the issues which are in discussion and which, in our opinion, are key to ensure the success of this radical change of paradigm. If we should underline one, it will be the need to have a comprehensive Strategic Plan able to increase the legal securities of the different actors and to promote “out-of-the-box” initiatives and thinking.

We conclude also that the (still) official calendar for implementing the NDM is not compatible with the declared aims pursued by the Commission and the administrative capacities of the Commission and the Member States.

An alternative scenario for the implementation of the NDM, which until now has not been (publically at least) taken into consideration, is possible and, in many aspects, desirable. It is called in the informal discussions which take place, the “step by step” approach: A political agreement on time but a gradual implementation during the current financial perspective. By 2027, at the latest, the new delivery model should be fully implemented and operational. The recent statement of the national control authorities seems moving in this direction.

This option looks apparently less ambitious but has the advantage to make compatible a high level of ambition with the calendar urgencies.

The full scheme would have to be implemented before the end of the programming period. However, in order to avoid “business as usual approaches”, lack of innovation, downgrading of the expected objectives and so on, time would be given for a proper implementation.

In addition, the (in all case) needed change in the MFF’s duration 5+5 years, with a mandatory mid-term revision, would allow the new performance reserve mechanism to deliver.

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