The fate of green direct payments in the CAP reform negotiations: the role of the European Parliament

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July 2014

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1 INTRODUCTION AND CONTEXT

At the start of the CAP reform process in 2010, one of the key issues on the table was the need to make environmental management and the delivery of public goods a more integral part of agricultural support to address the environmental challenges facing the EU. This was considered vital if the CAP was to have legitimacy in the longer term (Hart et al, 2011; Matthews, 2012). As a means of achieving this, one of the most significant elements of the proposals put forward by the Commission was the change to the architecture of Pillar 1 direct payments, with the introduction of three ‘greening’ measures that would be compulsory for farmers and to which Member States would allocate 30 per cent of their direct payments budget (approximately €12 billion/year). On the face of it, this proposal represented an opportunity to provide a basic level of environmental management across all farms receiving CAP support in Europe. It had the potential to mark a turning point for the CAP and set a trajectory for future reforms.

However, the proposal to green Pillar 1 proved to be an exceptionally contentious move, becoming one of the issues which attracted most attention during the CAP reform debate. Fiercely debated, even before the proposals were announced, ‘greening’ direct payments soon became a symbol of Commissioner Cioloş’s reform and a major political battleground, battles which continued beyond the formal CAP agreement and into the discussions on the content of the delegated acts.

The greening proposals were met with widespread criticism from the majority of actors from the outset. Although they were seen by some as a way of shifting the focus of payments increasingly towards rewarding environmental public goods, placing environmental priorities more centrally within agricultural policy, it was still felt that the proposed measures needed strengthening if they were to achieve that goal. Others saw them as undermining Europe’s ability to contribute to ensuring food security (for example, by requiring land to be taken out of production for the Ecological Focus Area requirement), threatening income support payments to farmers and thereby their livelihoods as well as increasing the complexity of the CAP (Hart and Baldock, 2011; Matthews 2012). For most environmental organisations, the proposals to green Pillar 1 were already a second best option. They would have preferred to see a continued shift of funding towards rural development policy, following the trajectories of previous reforms (see for example BirdLife International, 2008). However, given the economic climate, it was considered unlikely that there would be appetite for increasing the rural development budget to fund an increase in environmental activity, rather that this part of the CAP budget would be at risk of cuts (Allen and Hart, 2013; BirdLife International and European Landowners’ Organization, 2010).

As the negotiations proceeded, calls for increased flexibility, both by those who wanted to strengthen their ability to achieve environmental benefits and by those who saw it as a way of minimising their impact, led to the content of the measures being increasingly watered down and a long list of exemptions introduced. By the end of the formal negotiation process, environmental actors who had stood by the Commission and sought to improve the proposals had become increasingly sceptical about the ability of this new greening payment to provide any environmental additionality. This was made worse when considered alongside the weakening of cross compliance requirements and the reduced budget for rural development policy, risking funding for incentives to encourage more demanding
environmental management. Initial hopes that this reform might serve to reorient the CAP towards a greater focus on the delivery of public goods to set the path for a long-term future of a sustainable and competitive agricultural sector in the EU had been thwarted, with some even questioning that this reform process has been a step backwards for the integration of environmental concerns into the CAP (Brunner 2013; Bureau 2013a; IEEP 2013).

This paper considers the extent to which the European Parliament (EP) contributed to the ‘watering down’ of the proposals for the introduction of the green direct payments during the CAP reform process. It does not consider the broader greening agenda, such as the fate of policy mechanisms such as cross compliance and measures under rural development policy.

The influence brought to bear by the EP has to be set within the context of the overall dynamics and politics of the reform debate as it developed over time. To do this, a chronological perspective is taken, starting in 2010, with the publication of George Lyon MEP’s own initiative report which sought to set the EP’s agenda for CAP reform, prior to the Commission’s Communication in November 2010. The following three phases of the reform process are examined:

- **Orientation and setting the scene** – developing thinking in the period leading up to the Commission communication in November 2010 to publication of the legislative proposals a year later on how the CAP should be refocused.
- **Development of negotiating mandates** – from the publication of the legislative proposals by the Commission in October 2011 to April/May 2013
- **Trilogues and political agreement** – from April/ May 2013 to September 2013 (with formal agreement in December 2013).

The debate and subsequent changes to the proposals centred on a few key areas. First was the content and architecture of the measures themselves. Second was the definition of who might already be deemed to be compliant with the measures and therefore exempt from their requirements (‘green by definition’). Third was the debate about whether there were acceptable alternative ways of meeting the requirements, which became known as ‘equivalence’. Fourth was the issue of whether or not the green measures should provide a baseline for Pillar 2 area payments on agricultural land, such as agri-environment-climate payments. And fifth was the debate about whether or not farmers should be penalised for non-compliance with the measures through reductions in their basic payments. All these issues appear as recurring themes through the chronological sections and are brought together at the end.
2 ORIENTATION AND SETTING THE SCENE – THE LYON AND DESS REPORTS

The context for the development of the EP’s negotiating position for CAP reform was set already during 2010 and 2011 with the publication of the Lyon own initiative report in March 2010, followed by the Dess report in February 2011.

The EP’s first official view on the direction that the future CAP should take, including support for the environment, was set out in George Lyon’s (ALDE) own initiative report, adopted by the EP Plenary on 8 July 2010 (European Parliament, 2010a), ahead of the Commission’s Communication in November of the same year (European Commission, 2010).

The first version of the report presented to COMAGRI emphasised that a future CAP should ensure sustainable production, environmental protection and a fair income for farmers. In terms of greening Pillar 1, it proposed contractual top-ups to the single payment to provide Member States with the flexibility to make greening payments focused on climate change, measures to improve production efficiency and grassland payments. This climate focus for the greening payments continued into the text approved by the EP, which stated that ‘an EU-funded top-up payment should be made available to farmers through simple multiannual contracts rewarding them for reducing their carbon emissions per unit of production and/or increasing their sequestration of carbon in the soil through sustainable production methods and through the production of biomass that can be used in the production of long-lasting agro-materials’ (para 71). However, the process of adopting the report already exposed divisions over the extent to which the environment should feature as a focus for the future CAP, with the issue of support for public goods proving particularly sensitive. An amendment, tabled by the European People’s Party (EPP) between the COMAGRI and Plenary votes, which was subsequently agreed\(^2\), set the tone for later negotiations. This defined food security and food safety as ‘first generation’ public goods that should provide a core rationale for the CAP, alongside the environment (defined as ‘second generation’) (European Parliament, 2010b). In so doing, the EP made it clear early on that it would resist any re-structuring of the CAP that was considered to reduce support for farming activity.

Once the Commission had presented its Communication on the future CAP in November 2010, it fell to Albert Dess (EPP) to present the EP’s response to the Commission’s proposals. Controversially, his report rejected the proposal to have ‘greening measures’ under Pillar One, suggesting instead that direct payments should be conditional upon farmers undertaking a number of simple environmental measures that go beyond cross-compliance requirements situated as agreements in Pillar Two. This plan was presented as intending to encourage Member States to build on existing agri-environment schemes and to avoid the introduction of ‘new, bureaucratic environmental conditions into the first Pillar’ (European Parliament, 2011).

The report was not well received within COMAGRI, with many feeling that his greening proposals were overcomplicated and would not necessarily lead to any environmental additionality. The negative response to the report was not solely to do with its content, and

\(^2\) The motion for this amendment passed through the Parliament with a vote of 356 for, 219 against and 18 abstentions with the majority of opposition coming from the Socialist and Democrat, and Greens/EFA parties.
not helped by the fact that it had not been developed in a collaborative manner, with no preparatory discussions with other political groups prior to its publication. In retrospect, this attempt to propose a complete departure from the Commission’s proposals on greening as a means of demonstrating that the EP was an equal partner in the reform process with its own ideas was counterproductive. Proposed at a time when the EP was in the early stages of determining how to position itself in the forthcoming negotiations with the other EU institutions, on both the CAP and the MFF, if the EP had supported the Dess greening proposals, it would have signalled a clear divide between the EP and the Commission on an issue that was becoming increasingly symbolic of the reform. In the event, the EP did not take this risk. The greening part of the report was amended significantly, as a result of considerable behind the scenes efforts, with a series of 61 compromise amendments put to COMAGRI, whittled down from the 1,200 amendments proposed (Anon, 2011a; European Parliament Committee on Agriculture and Rural Development, 2011). The agreed final text was sufficiently ambiguous that it could be interpreted in a number of ways, both in support of the essence of the Commission’s proposals for greening Pillar 1, as well as appearing to leave open the door for the Dess approach.

By remaining vague and somewhat ambiguous therefore the EP’s response to the Commission’s greening proposals could be seen to be consistent with both the Lyon report, the original Dess proposals and in keeping with the broad principles of the Commission’s proposals. While a success in damage limitation, in many ways the Dess report was a missed opportunity to steer and shape the Commission’s legislative proposals and cement the EP’s position on the back of the earlier Lyon report. Rather than providing a major contribution into the debate, and a strong position on greening around which the EP could orient itself, instead it served to expose political differences, widen the fault lines between political parties and allowed Agriculture Commissioner, Dacian Cioloș to feel that he had the endorsement he needed to proceed with his legislative proposals.

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3 This can be characterised as the introduction of an EU-wide scheme consisting of simple measures to ensure farm sustainability and long-term food security

3 PUBLICATION OF THE COMMISSION’S PROPOSALS AND THE DEVELOPMENT OF NEGOTIATING MANDATES

The Commission’s proposals for the 2014-2020 CAP were launched on 12 October 2011 and were presented as providing ‘a new partnership between Europe and its farmers in order to meet the challenges of food security, sustainable use of natural resources and growth’. Commissioner Cioloş billed the reform as one of the most ambitious for many years, enhancing both the ‘economic and ecological competitiveness of agriculture’ (European Commission, 2011a). Although the greening proposals signalled a significant change to the structure of Pillar 1, it should be remembered that these were part of a much broader restructuring of Pillar 1 direct support to farmers to achieve a more equitable distribution and targeting of support both between and within Member States - issues which were arguably far more politically contentious than the greening proposals. With the publication of the Commission’s proposals, the focus of the debate turned to the Member States (through the Council) and the EP, co-legislators on the CAP for the first time.

In relation to greening, the proposals represented a significant change in the architecture of Pillar 1. The Commission proposed that all Member States would have to allocate 30% of their direct payments envelope to three agricultural practices beneficial to climate change and the environment (greening practices) which would be compulsory for all farms. Organic farms were considered ‘green by definition’ and therefore would automatically receive the ‘green’ payment and farmers within Natura 2000 areas would need to comply with the greening measures unless they are incompatible with the practices required on the particular site. The three measures were:

- **Crop diversification** - 3 different crops to be grown on arable land over 3 ha, with none of the three crops covering less than 5% of the arable land and the main one not exceeding 70%;
- **Permanent grassland** - maintenance of 95 per cent of the area of permanent grassland on the holding as declared in 2014; and
- **Ecological Focus Areas (EFAs)**: 7% of the holding (excluding permanent grassland) to be managed as ecological focus areas, with an EFA to comprise one or more of the following elements: Land left fallow; terraces; landscape features, eg hedges; ponds; ditches; trees in a line, in a group or isolated; field margins; buffer strips – with no production on them; areas afforested with funding from EAFRD.

However, the proposals provided no detail on how these measures might work in practice or what their impact was likely to be environmentally. The Impact Assessment that accompanied the proposals (European Commission, 2011b) had little information within it on the likely environmental impacts of the measures and in addition it had been prepared on the basis of measures proposed in the 2010 Commission Communication, not those that were eventually included within the legislative proposals. In terms of the content of the measures, the Commission retained the power to define the detail through delegated acts,

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5 For example in the 2010 Communication the Commission had proposed crop rotation rather than crop diversification as well as soil cover, which was not included in the final legislative proposals.
which left a lot of questions unanswered about precisely what would be required under the greening measures and how they would operate.

Reactions to the greening proposals were almost universally negative (Anon, 2011b), with few stakeholders feeling that they constituted a cost-effective way of bringing about a substantial improvement in the environmental management of the EU’s agricultural land. Indeed, as reported by Euractiv at the time, ‘absolutely no one, except for the European Sugar Users association (CIUS), seems happy with the Commission’s legal proposal to reform the CAP, presented on 12 October’ (Matthews, 2011). Farming organisations criticised the obligation to ‘set aside’ seven per cent of arable land for ecological purposes, arguing that it would require farmers to find ways of increasing production on remaining land and damage the ability of farmers to respond to market signals (Copa-Cogeca, 2011). On the other hand, environmental organisations expressed disappointment with the proposals, questioning whether the ‘green’ element of the direct payment would deliver anything more than was already being delivered through cross compliance. BirdLife’s press release at the time stated that ‘if the CAP of the future was to be the one proposed by the Commission … people might be excused for wondering whether the product is worth the price tag’ (BirdLife International, 2011). Some economists also criticised the proposals as being an extremely inefficient means of providing environmental public goods (see for example Koester, 2011).

In the Agriculture Council, criticisms on the greening proposals were voiced, expressing concern that the proposals would not only lead to more red-tape and bureaucracy for farmers and administrators but were insufficient to meet the future challenges facing Europe and the agricultural sector, in particular food security and climate change. The proposal to retain seven per cent of cropped land as an ecological focus area was considered ‘unwise’ at a time when demand for food was increasing. In addition, there was criticism that the measures were too rigid, with calls for greater flexibility to allow them to be tailored to local conditions and the proportion of the Pillar 1 envelope to be allocated to these green payments was considered by some to be too high (Anon, 2011c; Antoine, 2011).

The reactions from the EP were broadly similar. At a public debate in November 2011, hosted by the EP, a common concern voiced among MEPs was the apparent lack of simplification in the proposed regulations and the suggested conflict of managing seven per cent of the cropped area for environmental purposes (the EFA measure) with food security objectives. MEP George Lyon (ALDE) argued that ‘set aside’ (as the EFA measure was increasingly being described) was inappropriate, stressing that food security should be the number one priority. The implied simplistic, production-focused view of European food security was never really challenged, and environmental counter arguments were voiced but failed to gain much purchase.

As the discussions progressed, the divide between those seeking to improve the environmental benefits that could be achieved through the measures and a larger group who wanted to maintain the status quo and minimise the degree to which the measures impinged on productive farm activities widened. Both sides sought to propose changes to the Commission’s proposals. There was a fundamental difference between supporters of ‘greening’ who saw it as an opportunity to deliver genuine environmental improvement and those who saw it as a means of rewarding different farm types on the basis of their perceived environmental worth (e.g. permanent crops), or making minor adjustments to the
allocation of funding within a largely unchanged CAP. The EP commissioned two pieces of work themselves to inform the development of their negotiating position (Hart et al, 2011; Matthews, 2012). However alternatives for delivering environmental public goods that were in keeping with the ethos of the Commission’s proposals to green Pillar 1 were few and far between (Hart and Little, 2012).

Within the EP and the Agriculture Council, it became clear that three key issues were coming to the forefront of concerns amongst both MEPS and Member States in relation to the proposed green direct payments: first that Member States wanted more flexibility in the types of green measures they applied in their territory to allow them to tailor them to their own situations; second that the green measures should not impinge upon production; and third that ways should be found to minimise any increase in bureaucracy and administrative requirements. This latter point was stressed particularly for situations in which farmers were considered already to be carrying out similar practices, for example within agri-environment or certification schemes, building on the Commission’s proposal that organic farmers should be considered to be ‘green by definition’. Improving the environmental outcomes for the measures was only a concern amongst a minority of MEPS and Member States.

Another important element in the discussion in both Council and the EP was uncertainty over the total budget for the CAP. Willingness to accept genuine greening measures was, for many, conditional on avoiding a sharp reduction in the level of the budget. Defending a reduction in funding and a new requirement to agricultural interest groups would have been difficult for many political parties across the EU. In those Member States particularly affected by redistribution of direct payments either between or within Member States, this problem was exacerbated. Indeed it has been argued that ‘by proposing greening as a way of legitimising the existing flow of untargeted Pillar 1 payments to farmers, the Commission framed the issue in a way that it was bound to lose’ because the way in which the proposals were drafted provided no means of reducing the direct payments budget if less ambitious greening measures were adopted and therefore there was no incentive on the Council or the EP to maintain the environmental ambition of the green measures (Matthews, 2013a).

Initially, the Commission countered, by stressing the importance of having simple measures that applied to all farmers and promoted sustainable management practices everywhere. In addition, evidence from the Commission’s Impact Assessment (European Commission, 2011b) and other sources (Forstner et al, 2012) was used to demonstrate that many farmers already had a considerable proportion of land that would count towards the seven per cent EFA target (on average about 3.5 per cent - although varying in different parts of Europe). Increasingly the Commission’s line was backed by environmental NGOs who feared that these sustained criticisms risked a significant weakening of the greening proposals. The importance of the greening measures and the belief that they should be mandatory for all beneficiaries of direct payments in order to ‘have a wide application across the EU territory’ was reaffirmed in a letter co-signed by the Commissioners for Agriculture, Environment and climate change in March 2012.

Within the EP, Luis Miguel Capoulas Santos MEP (S&D) was rapporteur for the direct payments dossier with a view to developing the EP’s negotiating position. His challenge was to navigate the different views within his own party, between political parties and those of stakeholders to develop his proposals for amending the Commission’s proposals. Capoulas-
Santos entered the process keen to demonstrate that he was willing to listen to all views before making his mind up on what to propose.

During this period, views started to coalesce around a number of ways of addressing the concerns. Firstly, the idea of a menu approach to the greening measures gained traction. This involved extending the list of greening options and allowing Member States or farmers the flexibility to decide which to implement. Secondly there were calls for a much wider group of farmers to be considered as ‘green by definition’ and therefore automatically eligible to receive the green payment. And finally, it was suggested that penalties for non-compliance with greening should not impinge on the basic payment.

Within the EP, Capoulas Santos would have undoubtedly been presented with strong arguments in favour of a more flexible menu approach to greening, proposals that were being advanced by the EPP and ALDE. However, in developing his report he had to take into account the different views within his own party. Within the S&D were an informal sub-coalition of reform minded MEPs who were keen not to see the environmental aspirations of greening disappear, known as the ‘Viking Group’. They strongly rejected the idea of a menu as they felt this would weaken the greening concept and would run the risk of killing off the greening proposals. Given that these were a central part of Cioloş’s reform package, if Capoulas-Santos were to advocate a menu approach, this would have set the EP against the Commission directly. As a result, when he presented a preliminary outline of his thinking in relation to amendments to the direct payments regulation in April 2013 and formally later in June, his proposals on greening reflected the structure of those originally proposed by the Commission.

The menu approach was being advocated strongly by the Council, however. In April 2012, a series of alternative proposals for greening the CAP were set out in a discussion document, which became known as the Luxembourg paper (Council of the European Union, 2012). Although this had started life as a more ambitious paper by the Stockholm group of Member States which sought to increase the environmental additionality of the proposals, the published document advocated so much flexibility that it essentially left the door open for Member States to implement greening in a way that simply maintained the status quo, seriously undermining the intended environmental ambitions of the proposals. This was immediately criticised by the environmental NGOs as overly complex and likely to result in ‘a complete weakening of the Commission’s proposal and the creation of several layers of loopholes that would allow Member States to keep pumping money into the pockets of farmers without any environmental delivery being assured’ (BirdLife International, 2012).

In May 2012, in response to the increasing calls for greater flexibility, the Commission published a concept paper⁶, that elaborated the greening proposals and introduced the concept of ‘equivalence’ whereby certain beneficiaries of agri-environment-climate measures and participants in environmental certification schemes would be considered as fulfilling one (or several) of the greening measures. This would be conditional on the coverage of the farm by these measures being the same as the greening measures and that the environmental ambition of the actions undertaken under the schemes should be greater.

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than the ambition of the greening measures. It also proposed changes to the definition of permanent grassland. It proposed increasing the three hectare threshold for crop diversification to 10 hectares and raised the possibility of exempting mixed farms covered by a specified proportion of grassland and under a certain size from this element of the greening payment. Initially this paper caused some confusion. Its status was unclear, although it quickly became viewed as a quasi-official paper. More importantly, however, it was unclear how these revised proposals would work in practice, leading to considerable uncertainty, including within the Commission services. The confusion provided space for the EP and Council to elaborate their own interpretations of what was intended. In addition, by conceding exemptions and increased thresholds for the crop diversification measure, it signalled that these were areas where additional pressure could be brought to bear in subsequent negotiations and worth exploiting, for example in relation to the EFA measure.

The development of the EP’s final negotiating position for the CAP, based on Capoulas Santos’s proposed amendments, was a long, drawn out and intensely political process. Already his proposals signalled a considerable weakening of the Commission’s proposals in the name of simplification and reducing bureaucracy. In keeping with the concept paper, he proposed a broadening of the categories of farmers deemed to be green by definition to include farms which are ‘environmentally certified’ or those which are in agri-environment schemes (AES) and undertaking similar actions as those required under green direct payments. A new measure for permanent crops was proposed, rather than them being included within the EFA requirements as well as an increase in the threshold that should apply to the EFA measure to 20 hectares. For crop diversification he proposed that the threshold for growing three crops should be raised to 20 hectares, with farms between 5 and 20 ha only required to have two crops. In addition, farms with more than 80% of the holding under permanent grassland or permanent crops and an arable area under 50 hectares should be exempt from the measure altogether. He supported an idea, being put forward by the Netherlands and Denmark, that EFAs could be implemented regionally, advocating that farms would only need to allocate five per cent of their cropped area as EFA if they worked together to create ‘continuous, adjacent EFAs’ He also proposed breaking the link between compliance with the green direct payments and receipt of the basic payment, essentially making greening voluntary, with unspent funds transferred to the agri-environment-climate measure under Pillar Two. More positively he was clear that double funding should not be permitted and that Pillar Two environment payments should clearly be additional to those received for Pillar One greening.

There followed a period of intense activity within the EP, with political parties tabling thousands of amendments and compromise amendments being developed to put to the debate and vote within COMAGRI in January 2013.

In this vote, a further weakening of the greening measures took place:

- The proposed break in the link between the greening payment and the basic payment was voted through.
- In relation to the definition of the types of farmers considered to be ‘green by definition’, an amendment was approved to state that the entirety of the holding would be exempt from the greening requirements not just the area under an agri-environment agreement, farmed organically or designated as Natura 2000.
- Double funding would be permitted, i.e. payments for the same activities could be received under Pillar 1 and Pillar 2, confirmed in the vote on the rural development legislative proposals (although only by the narrowest of margins).
- They voted to introduce exemptions to the crop diversification and EFA measures for those farmers on holdings where more than 75 per cent of their land was permanent grassland and where the remaining land did not exceed 50 hectares.
- Farmers with holdings certified under national or regional environmental certification schemes that have ‘at least an equivalent impact as the relevant practices [as greening]’ would be deemed to be compliant with the greening measures. However, the types of measures considered to be equivalent that were proposed included: an on farm nutrient management plan; an on farm energy efficiency plan; a biodiversity action plan; a water management plan; soil cover; or integrated pest management, practices that were not necessarily equivalent at all to the proposed greening measures.

In relation to the three measures, it was the EFA measure that was the most significantly weakened after the ComAgri vote. The amendments proposed that EFAs should only be required on arable areas over 10 hectares\(^7\) and not on land with permanent crops at all. They introduced new elements as counting towards the EFA, including nitrogen fixing crops and stipulated that production should be allowed on EFAs, for example on buffer strips, but as long as no fertilisers or pesticides were used. The percentage of land that was required as EFA was reduced to five per cent and phased in over time, with only three per cent required in the first year. Under the discretion of the Member State, the required EFA percentage could be reduced by three per cent if implemented at the regional level to achieve ‘adjacent ecological areas’. Crop diversification was also weakened, with the amendments proposing that the measure would not apply to arable land under 10 hectares, in keeping with the Commission’s concept paper. Arable land between 10 and 30 hectares would only be required to cultivate two crops, with the main crop not covering more than 80 per cent (as opposed to the Commission’s proposed 70 per cent). The permanent grassland measure fared only marginally better. The amendments weakened the measure by removing the requirement to maintain permanent grassland at the holding level, instead giving Member States the flexibility to apply it at the national, regional or sub regional level. However, on an environmentally positive note an amendment was passed (tabled by the Greens) that introduced a ban on the ploughing of carbon rich soils, wetlands and semi natural grassland and pastures.

This vote, particularly the proposal to permit double funding, caused uproar amongst environmental stakeholders. It led to a concerted campaign to highlight not just the inefficiency of the proposal but the fact that it would contravene a fundamental principle underpinning the rules for public expenditure in the EU that no costs for the same activity be funded twice from the EU budget\(^8\). Negative press coverage, particularly in the UK, ensued and a letter writing campaign to MEPs was mobilised to try and ensure that this amendment was overturned in plenary.

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\(^7\) This was more demanding than the 20 hectares originally proposed by Capoulas Santos but weaker than the Commission’s proposal which had no threshold.

When it came to the plenary vote in March 2013 and the finalisation of the EP’s negotiating mandate, attention focussed primarily on the two contentious issues of double funding and the extent of the ‘green by definition’ exemption. A roll call vote was held on both issues. The amendment to prevent double funding\(^9\) was approved by a significant majority (379 in favour, 285 against and 7 abstentions). On the ‘green by definition’ issue (Article 29), a large number of amendments was tabled, but the intensely political nature of the debate led to political parties voting against one another with the result that none of the amendments were passed. As a result the position of the EP relating to all elements of Article 29 reverted to the original Commission’s proposal. This meant that other proposals to exempt certain types of farm from greening (i.e those that were predominantly grassland) fell. However, in a rather peculiar procedural mix up, in the voting on the recitals referring to the same issue, the original amendment proposed by Capoulas Santos was approved\(^{10}\), stipulating that only the area of land certified as organic, under an agri-environment-climate agreement or designated as Natura 2000 would be considered green by definition. This left some confusion as to what the final negotiating position of the EP was on this particular issue. The content of greening measures remained unchanged from COMAGRI position as did the separation of the penalty for non-compliance with the greening requirements from the basic payment. As a result the final negotiating mandate agreed by the EP (see table 1 in Annex) was closer to the Commission’s proposals than had been intended, but the content of the three greening measures was considerably weakened.

However, the EP were not alone in having a negotiating mandate that significantly watered down the Commission’s greening proposals. A week after the EP plenary vote, the Agriculture ministers agreed their negotiating mandate, known as the ‘General Approach’. In most cases the amendments proposed served to dilute the Commission’s proposal further than those tabled by the EP so as to reduce even further their potential environmental impact, but in a few notable cases it proposed a stronger line (see below). Alongside the three greening measures (which were substantially altered in content), the Council also proposed that Member States, as an alternative to, or in conjunction with the greening measures could identify and use ‘equivalent’ measures carried out under agri-environment agreements or in compliance with national or regional environmental certification schemes. The possibility of developing a standalone certification scheme at the national or regional level that would operate instead of the greening measures was also put forward.

It should be noted that a month earlier, as part of the negotiations on the Multiannual Financial Framework, Heads of State controversially had intervened in the detail of the CAP. Originally Germany, lobbied heavily by the farm lobby, had proposed that the MFF agreement should stipulate a lower proportion of land to be managed as an EFA. This was not agreed, but as a compromise the following text was agreed: that ‘the requirement to have an ecological focus area on each agricultural holding will be implemented in ways that

\(^9\) The rule was set within rural development regulation and the amendment stated very clearly that payments for actions funded under the agri-environment-climate measure must go beyond those under both cross compliance and the green direct payment

\(^{10}\) This stated that only that land actually covered by an agri-environment agreement, registered as organic or designated as Natura 2000 should be considered ‘green by definition’.
do not require the land in question to be taken out of production(...)’. This was to have serious ramifications for the eventual content of the EFA measure, being used by many as an argument for reducing yet further the environmental conditions (and eventually the weightings) placed on practices making up the EFA (for example arguing that pesticides and fertilisers should be permitted within EFAs).

The negotiating position agreed in the Agricultural Council on the standard greening measures, compared to the EP’s negotiating mandate was as follows (see also table 1 in Annex and Anon, 2013a):

**Weaker** – due to the fact that the EP’s position had reverted to that of the Commission on the general requirements for greening, most of the Council’s amendments on greening were weaker environmentally, particularly the list of types of farms to whom the measures would not apply. The Council also proposed that the greening measures should not form the baseline for payments for Pillar 2, thereby leaving the door open for double funding. In terms of measure content the EFA measure was weakened, with the threshold for the application of the measure set at 15 hectares of the eligible area\(^{11}\). The list of elements that could form an EFA were broadened further and the list of situations under which farmers were exempted from the measure was extended considerably. The latter was also true for the crop diversification measure.

**Stronger** – on the positive side, the Council did not approve breaking the link between compliance with the greening requirements and the basic payment. It was proposed that the penalty could reach 125 per cent of the greening payment, giving farmers a much stronger impetus to comply. Member States also proposed that the EFA percentage should be reduced, but only to 5%, rather than the 3% for the first year proposed by the EP, albeit due to administrative considerations rather than environmental reasons. For the EFA measure, the Council introduced a further amendment which allowed Member States to apply weighting factors to different elements of the EFA to reflect their environmental benefit. This idea had its origins in the French weighting system applied to standards of Good Agricultural and Environmental Condition (GAEC) under cross compliance. The weighting factors would be taken into account when calculating the total area required to reach the EFA commitment. It was proposed that these should be set out as an Annex to the legislative text. There was no indication of what these weighting factors might be, leaving their potential environmental impact extremely uncertain and introducing a major risk for further watering down of the EFA measure if weighting factors greater than one were included.

By the time the final negotiations started, overall the Council’s position was rather weaker environmentally than that of the EP, certainly in terms of the content of the standard greening measures and in its position on permitting double funding. The two areas where the EP was weaker were in seeking to remove permanent crops from the EFA requirement and to make the greening requirements essentially voluntary, by breaking the link between compliance and receipt of the basic payment.

\(^{11}\) Although the eligible area was arable and permanent crops as per the Commission’s proposal, whereas the EP had removed permanent crops from the measure

The trilogue discussions between the EP, the Council and the Commission started very quickly once negotiating mandates had been agreed. As anticipated, the greening articles proved particularly contentious, especially given how much weaker both institution’s positions were compared with the Commission’s original texts.

There was, arguably, a structural bias in the trilogue negotiations towards a further weakening of the proposals (see Box 1). The lack of belief, among environmental stakeholders and Member States or MEPs with a commitment to a ‘greener’ CAP, that the Commission’s original proposals would deliver genuine and significant environmental benefits meant that there were few passionate defenders of the original drafting. There were, however, many who were concerned about the cost implications for farms or for administrations; and who were therefore more than willing to accede to amendments from the other institution which reduced those costs, without leaving them with the political blame. In addition, it might be argued that the greening proposals had already succeeded in the sense of protecting the CAP budget from more serious cuts than had been feared in the MFF negotiations. Therefore once the CAP budget had been protected, the content of greening was far less important politically.

Box 1: Structural bias in the trilogue negotiations towards further weakening of the greening proposals

Conceptually, trilogue negotiations can be seen as categorised by the level of overlap in Council and EP positions in terms of: a) ambition or political direction; and b) text.

Where there is a clear distinction between political direction there is likely to be a clear political debate, with (ideally) predictability on whether there is a likely landing zone, with the Commission well-placed to steer discussion in that direction. Where there is relatively similar political direction, and not much distinction between texts, the trilogue process is likely to be even more straightforward. But where – as in the case of greening – the level of political ambition is not dissimilar (with both Council and Parliament having a wide spread of levels of ambition), but there is a significant divergence in text, the discussion is likely to be confused, with a lack of clarity on tactics on both sides, and allow opportunistic participants to agree to text in the opposing institution’s position which helps their objectives, without saddling them with any political downsides.

Arguably, the lack of a clear description from the Commission early in the process of the environmental benefits to be delivered by greening, made it difficult for the Commission and others to clarify the extent to which successive weakenings of the text mattered for the delivery of outcomes. There were few participants – other than the Commission – genuinely convinced by the value of the original proposals. Therefore there was little incentive to defend the proposal, particularly given that it was difficult to point to specific damage particular changes to the text might have in relation to the scale of environmental ambition. Conversely, a number of participants had either strong political pressures (farming stakeholder concerns) or funding pressures (an interest in reducing complexity, or reducing the number of farms covered by greening in order to reduce administrative costs) which meant they were biased towards accepting amendments in the other institution’s position which helped them in this regard.

Source: personal communication, UK negotiator

Table 1 in the Annex shows how the final legislative texts, formally adopted in December 2013, compare with the negotiating positions of the EP and the Council. The extent to which
the final outcome represented a weakening of the greening measures is associated mainly with the outcomes on five key areas (see also Bureau, 2013a and Matthews, 2013b):

i) the exemptions introduced which reduce the number of farms and area of land that must adhere to the greening measures (while still receiving the funding);

ii) the content of the measures, particularly in relation to what can constitute an EFA and the weighting factors;

iii) the nature of the equivalent practices;

iv) the extent to which the greening measures provide a baseline for area based payments under Pillar 2; and

v) the link between penalties for non-compliance and receipt of the basic payment.

Each of these is dealt with in turn to determine the extent to which the EP’s negotiating mandate, marginally stronger from an environmental perspective, was reflected in the final agreement.

**Exemptions and ‘green by definition’**: Both the EP and the Council were responsible for the introduction of major exemptions to the greening measures, reducing significantly the proportion of farms and land that would need to adhere to the greening requirements (while still receiving the payment). These took the form of size thresholds as well as exempting farms with certain types of land.

In some areas there was a good deal of agreement or only minor differences in negotiating mandates, for example in relation to the introduction of size thresholds for farms, below which the crop diversification and EFA measures would not apply\(^\text{12}\); and changing the application of the maintenance of permanent grassland requirement from farm level to national/regional level. In areas where there were differences, both institutions won significant changes, which weakened yet further the original proposals. The EP, for example strongly advocated the removal of permanent crops from the EFA requirement, amidst concerns that this would lead to the grubbing up of permanent crops in the Mediterranean. Although this position would leave the permanent crop sector without any obligations to carry out greening measures in Pillar 1 and there was little evidence to suggest the likely magnitude of this risk, this was agreed. The Council, on the other hand, was arguing for significant exemptions to the crop diversification and EFA measures for certain types of farms\(^\text{13}\). Most of these were approved in a similar form (excluding beneficiaries of agri-environment schemes), although a compromise was reached whereby the exemptions only applied if the arable land on the farm was under a certain size limit (30 ha). These exemptions were not dissimilar to those that the EP had agreed in the COMAGRI vote prior to the falling of all related amendments in the Plenary vote (see above). It is therefore likely that the EP was sympathetic to this position and may not have countered the Council’s position on this issue strongly.

**Measure content**: Responsibility for watering down the content of the EFA measure, the measure which was considered to have the potential for delivering the greatest

\(^{12}\) The position on the threshold for the EFA differed (EP-10 ha / Council 15 ha) and final agreement reflected the Council’s position

\(^{13}\) For example farms with over 75% of land under grass, cultivated with crops under water, in an agri-environment scheme.
environmental benefits (Bureau, 2013b; Polakova et al., 2011) can be seen to lie perhaps more with the Council that the EP, although the EP certainly made considerable efforts in this direction. Both institutions worked hard to extend the list of practices that could contribute to an EFA and to ensure that production was permitted on these areas. The Council produced a longer list of practices that they wanted to see included compared to that of the EP (green cover, catch crops, short rotation coppice in addition to the nitrogen fixing crops proposed by the EP) and most of these were reflected in the final deal. Although the EP’s negotiating mandate had stipulated that no fertilisers or pesticides should be permitted on EFAs, this did not make it through to the final agreement. Nonetheless, both institutions argued for a smaller proportion of the eligible area to be subject to an EFA than the Commission’s proposal of seven per cent. Although the EP wanted to reduce this to three per cent in the first year, rising to five per cent from year two, once it became clear that implementation of the new legislation would be delayed until 2015, they were happy to agree the five per cent figure, which was the same as that proposed by the Council, with a possible uplift to seven per cent from 2017. In relation to the latter, the EP were successful in insisting that such a decision should be subject to co-decision.

However, the EP did play an important role in averting what could have been an extremely environmentally damaging intervention from the Council late in the negotiations, in relation to the proposed weighting matrix for EFAs. The Council’s mandate had proposed that a set of conversion factors and weighting coefficients for the various elements that farmers could choose to make up their EFA, should be included as an Annex to the basic act. However, this matrix had not been seen during the negotiations. Eventually it was tabled by the Irish Presidency during the final week of discussions on greening, however the coefficients proposed increased the potential contribution of certain features to the EFA so excessively that it brought into question the point of implementing an EFA at all14. The proposals were leaked and heavily criticised by a number of commentators as yet another attempt by the Council to reduce the actions that farmers would need to take to comply with the EFA measure (IEEP, 2013). The EP subsequently objected to the figures within the matrix, arguing that this was a level of detail that should be worked up in the delegated acts by the Commission, based on a systematic assessment of the evidence. As a result, an empty matrix was added as an Annex to the regulation, stipulating which of the EFA elements would be subject to weighting coefficients, but with the coefficients themselves to be decided by the Commission via a delegated act. Given the importance of the matrix for the seriousness of the EFA requirement, this arguably goes beyond what delegated acts should be used for: however, the time pressures on adoption of the legislation and the late stage at which this idea was introduced meant that the option of a protracted negotiation on it was unattractive. It is interesting to note, however, that the EP and Member States have been extremely active in seeking to influence the content of the weighting matrix (and other details of the EFA measure) as it has been developed in the delegated act15. Their main aim was to minimise the impact that the EFA measure will have on production, claiming that

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14 For example it proposed that a single tree could count as 200 m² towards a farmer’s EFA requirement and that one metre of hedge would count as 25 m² or 50 m² if the farmer owned fields on both sides

what was being proposed was not in keeping with the intention of basic act or the MFF agreement. In so doing, they have weakened yet further the environmental ambition of the measure. The EP continued to exert pressure on the Commission, once the delegated acts were published on 11 March by threatening to reject them if certain concessions were not made in relation to the greening measures. This led to a declaration by the Agriculture Commissioner on 2 April to say that ‘the Commission has decided to adjust the coefficient in the Annex – in time for implementation of the reform in 2015 - such that 1 hectare of a nitrogen-fixing crop such as alfalfa, clover or lupins can be equivalent to 0.7 ha of EFA (rather than 0.3 ha in the original text) in order to make the option more attractive’, a proposal for which was subsequently published in July 2014. Chairman of COMAGRI, Paolo de Castro (S&D) claimed the nitrogen-fixing crops amendment as a victory for the Parliament\textsuperscript{16}, however environmental NGOs were outraged, writing in a letter to the Agricultural Commissioner that this ‘weakens the greening yet further and really marks a low point in EU governance’, with the declaration essentially demonstrating that the ‘rules just adopted are not to be taken seriously because even weaker rules will be adopted in a few months’ time\textsuperscript{17}.

A positive move made by the EP in relation to the content of the greening measures relates to the permanent grassland measure. In its negotiating mandate the EP had proposed that there should be a ban on ploughing carbon rich soils, wetland and semi-natural grasslands and pastures to give them stronger protection. A similar requirement had been put forward by the Commission under cross-compliance but had been rejected by both institutions. Although what was agreed finally was much weaker than what the EP had proposed\textsuperscript{18} and voluntary in nature, due to resistance from the Council (partly because of concerns that it applied to carbon-rich soils already in arable production), it did provide the hook for a compromise proposal to be put forward by the Commission for the voluntary protection of carbon rich soils on permanent grassland outside of protected areas, which it could not otherwise have done. This was subsequently adopted.

**Equivalent practices and the use of national certification schemes:** A third area that risked weakening the environmental credentials of the green measures were the proposals that Member States would be permitted to adopt national means of achieving the same (or greater) environmental outcomes as the standard three greening measures via the use of certification schemes. The idea of using national certification schemes as a means of delivering greening had first been muted in the Commission’s concept paper. Taking this idea further, the Council had proposed that Member States should be permitted to use a national certification scheme as the sole route for farmers to meet their greening requirements, as a means of introducing more flexible ways of implementing the greening with the ability to tailor the measures to local circumstances. Although the proposed amendment had been introduced by Member States (primarily the UK) who wanted to use

\textsuperscript{16} ENDS Daily, 3 April 2014
\textsuperscript{17} Open letter from BirdLife and EEB to Commissioner Cioloş
\textsuperscript{18} Member States were given the option of designating additional areas to those protected under the habitats and birds directives which were considered environmentally sensitive and in which no ploughing of permanent grassland could take place, including permanent grassland on carbon rich soils
this flexibility to increase the environmental benefits achieved through greening, it was seen by many as a potential loophole through which Member States would seek to avoid the greening requirements.

Linked to this, were the discussions about which practices could be considered ‘equivalent’ to the greening measures, both within national certification schemes as well as within agri-environment-climate agreements. During negotiations, the Commission produced the details of which practices could be considered to be equivalent (this eventually became Annex IX of the basic act). This reduced the flexibility (and therefore minimised the potential loopholes) of using national certification schemes as an alternative route to greening, and in so doing also appears to have limited the extent to which Member States are likely to take advantage of this option. The EP played little part in this debate. It is not clear why this was the case, however, by not making any strong interventions it meant that the equivalence proposals held and made it through into the final agreement.

**Greening baseline and double funding:** One of the issues to receive the most attention during the reform process, at least in terms of lobbying activity and press coverage, was the extent to which CAP payments could be permitted for essentially carrying out the same activities under Pillars 1 and 2 (see above). Whilst the EP eventually voted against permitting double funding, perhaps as much because its supporters could see that this was a measure whose faults were capable of easy communication to a wider public than because of deep disagreement with the principle per se, the Council rejected the Commission’s proposal that agri-environmental type measures in Pillar 2 should build on Pillar 1 greening as the environmental baseline. The fact that the EP’s position not to permit double funding coalesced with that of the Commission, meant that the Council were unlikely to win this argument, especially given that it would have represented poor value for money, risked undermining trust from wider society and reputational damage. Added to this, there would have been a risk of challenge in the WTO, it was counter to the EU Treaty and there were Member States which could have been driven out of the Qualified Majority if this were included. In the event therefore double funding was rejected and the final agreement made it clear that Pillar 2 agricultural area payments must go beyond the green payments in Pillar 1.

**Penalties for non-compliance:** Finally, there were repeated attempts during the reform process to reduce the penalties for non-compliance with the greening payments within Pillar 1, by removing the link between non-compliance and receipt of the basic payment. The EP advocated this approach strongly during the trilogues. However the Commission stood firm against this proposal and given that Council’s position was also to maintain the link, the EP’s attempts here failed. However, as part of the compromise, it was agreed that the penalties for non-compliance would be phased in over time, with no incursion into a farmer’s basic payment receipts for the first two years.

As a result of these decisions, it has been estimated that 48% of farmland and 88% of farms will be completely exempt from the EFA measure, slightly smaller numbers exempt from the crop diversification measure and the permanent grassland measure only applies at the

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19 the UK, for example, seems to have reached the view that the additional environmental benefit which could be achieved is not worth the complexity of control arrangements
national or regional level (Brunner, 2013; Hart and Baldock, 2013; Pe’er et al, 2014). In relation to the EFA measure, those who are not exempt have a much longer list of options to choose between to contribute to their EFA requirement, some of which now permit continued production, including with the use of fertilisers and pesticides in some cases. The EP secured the exclusion of permanent crops from any greening requirements under Pillar 1, thereby reducing the reach of the green direct payments yet further and clearly contravening one of the original principles of the greening measures that they should apply across all types of farmland. The positive outcomes of the negotiations from an environmental perspective, were largely the prevention of perverse amendments going through, rather than any positive improvements to the proposals. Some of these were issue that should never have been on the table in the first place, such as the proposal to allow double funding of the same activities via different parts of the CAP.

Both the EP and the Council, however, voiced satisfaction with the outcome. Although reactions from MEPs varied, with differences mirroring political interests, overall there was a general sense that they had been able to ‘improve the proposals while defending the Parliament’s mandate’ (Spence, 2013). Council President Simon Coveney stated that ‘...the three European institutions have come together to agree ... a policy that I believe secures the sustainable development of the sector up to 2020 and beyond’. He continued to state that he had supported the Commission’s desire to imbue the direct payments system with a stronger environmental character, and welcomed the balance struck between Member States, the EP and the Commission on the practical implementation of the three proposed greening criteria (Anon, 2013b). Looking for something positive from the greening agreement, one commentator reflected that ‘the principle that at least a share of a farmer’s direct payment should be justified by environmentally-friendly management practices is now established even if the impact on the ground of the new green payment in the coming period will be extremely limited. Looking back at the history of innovation in the CAP, there is a pattern whereby a Commission proposal is often initially accepted in a very watered-down version only to be strengthened in later reforms. Perhaps greening will follow this path in the future. But it could also be a fruitless path if there are real limitations to what can be achieved through greening direct payments in Pillar 1’ (Matthews, 2013c).
5 DISCUSSION AND CONCLUSIONS

So who was responsible for this drastic weakening of the Commission’s original Pillar 1 greening proposals? It is clear from the analysis above that both the EP and the Council had a significant role to play; and that a lack of clarity from the Commission on what the measurable environmental benefits of the proposals were, made it difficult in practice for them to defend them rigorously. A betrayal by both the EP and Member States is how BirdLife reflected on the outcome (Brunner, 2013). Taking a more dispassionate analysis of the negotiating mandates of the two institutions and the outcome of the final agreement, more of the amendments proposed by the Council to weaken greening were adopted than those from the EP. The EP’s amendments led to some fundamental weakening too, however, particularly the exclusion of permanent crops from the greening requirements. However, simply comparing negotiating mandates with the final outcome does not give the full picture. The political significance attached to securing different amendments will have varied, including within the EP and Council delegations, and therefore the strategies adopted by the EP and Council negotiating teams will have varied accordingly. Given that the trilogues took place behind closed doors it is difficult to ascertain how hard the different institutions negotiated on different points; and it is likely that the process described above, of opportunistic support of amendments in the other side’s position, will have played a role. In addition, the fact that the EP’s negotiating mandate was somewhat unclear on the general requirements for greening20, meant that the EP was likely to be sympathetic to the Council’s position in this area.

However, both the Council and the EP managed to constrain some of each other’s amendments which would have weakened the greening measures even further. The fact that the EP had rejected double funding helped to head off Council’s position that it should be permitted21. The Commission managed, with half-hearted Council support, to retain the compulsory nature of the green measures by maintaining the link between non-compliance and receipt of basic payment; although in practice the limits on penalties, and the scope for Member States to implement them progressively, make it unlikely that many if any farms will suffer significant losses of their basic payment. More positively the EP prepared the ground for a new element to the permanent grassland measure to be introduced, allowing Member States to designate environmentally sensitive areas on which no ploughing should take place. However, it should be remembered that this outcome is still considerably weaker than the GAEC standard proposed by the Commission to protect carbon rich soils, which was rejected by both the EP and the Council.

On balance, however, the Commission also should bear part of the responsibility for the weakening of the proposals. First the green measures in the legislative proposals were already weaker from an environmental perspective from those suggested in the original

20 In the EP Plenary vote in March 2013, all amendments relating to Article 29 of the draft direct payments regulation had fallen which meant that the EP’s negotiating mandate reverted to the Commission’s proposal text, however the related statements in the recitals reflected a different position.
21 Although ironically, perhaps the January COMAGRI vote in favour of double funding had emboldened the Council to adopt the position in favour of double funding in the first place.
Communication (European Commission, 2010), with perhaps the exception of the EFA measure. Second, by proposing that organic farmers should be considered ‘green by definition’ in the legislative proposals, it had introduced a principle that participants could – and frequently did - argue should be extended to other types of land or farming systems. Third, the publication of the concept paper relatively early in the process, although it was motivated in large part by a desire to head off Council and EP discussions on a fundamental rewriting of greening by allaying key concerns, nevertheless demonstrated that the Commission was prepared to make concessions long before the negotiating mandates of the EP and the Council had been agreed. This opened the door for the EP and Council to push for greater changes for than perhaps might otherwise have been the case and in retrospect perhaps it was premature to give so much ground so early in the negotiations.

There are a number of points that can be drawn from this process. First, the very differing opinions between political parties in the EP and the process for tabling amendments led to a long and protracted process of developing the negotiating position, with thousands of amendments to be reviewed, digested and consolidated into compromise amendments. Second it was clear from the outset that supporters of strong greening of direct payments were in the minority, especially within COMAGRI and therefore the environmental arguments were drowned out by those whose primary concern was to protect support to farmers. However, where they made their presence felt, such as within some elements of the S&D group and the Greens, and via shadow rapporteurs from other committees, they did help push back against some of the more extreme amendments. It seems clear that it was easiest to do this on issues – such as double funding – where there was a clear case that could be taken to a wider test of public opinion. It would be interesting to have seen whether the outcome would have been any different had the membership of COMAGRI been different or if the opinion-giving Committees had had a stronger role in the greening debate. Arguably, the political importance attached to membership of the COMAGRI by political groups has not yet caught up with the application of codecision to the CAP, with a significant bias towards producer interests still present.

Third, with so much resistance to move away from the status quo from MEPs, Member States and a very effective farm lobby group, the introduction of strong greening measures within Pillar 1 was always going to be fraught with political difficulties and inevitably watered down. In many ways it is an achievement that the Commission’s original proposals for three green measures in Pillar 1, funded using 30% of the direct payments budget still stand, even if their content is far weaker than had been intended. It is also true to say that the introduction of amendments that should have been clearly untenable (for example double funding) meant that a lot of attention of lobbyists was diverted into trying to reverse these perverse decisions, rather than being able to spend the time countering the weakening of the greening measures, particularly the EFA measure. Whether this was intentional is not documented, but it certainly coloured the debate.

However finally and more fundamentally, there were significant limitations to what could have been proposed for greening under Pillar 1 given the rules and controls that are

22 The Commission’s 2010 Communication had suggested a crop rotation measure instead of the more limited crop diversification measure as well as a green cover measure on soils to avoid bare soil, particularly over the winter months
associated with direct payments. This meant that the Commission’s proposals in relation to two of the three measures proposed (crop diversification and maintenance of permanent grassland) were already sub-optimal environmentally making them difficult to defend. The lack of strong support from the environmental stakeholders at the start, although entirely justified, demonstrated the weak points of the proposals which were subsequently exploited, and meant that there were few environmental voices in Council or Parliament that saw much to be gained in environmental terms from a protracted defence of proposals whose environmental delivery looked likely to be disappointing. It also meant that there was a limit to the alternative options for inclusion within Pillar 1 that it was possible to develop that might have been better environmentally. Alternatives that were available were all more radical and not seen as politically feasible. Those compatible with the Pillar 1 approach that were put forward (crop rotation, protection of semi-natural grassland for example) were rejected for a variety of technical and control grounds. In the end, the additional measures incorporated into greening, mainly within the EFA measure, all weakened the proposals rather than strengthening them, with the exception of the optional protection of carbon rich soils under the maintenance of permanent grassland measure.

This then leads us back to the crucial question of the most effective means of achieving environmental outcomes on rural land through the CAP. Throughout the debate, commentators have time and again reiterated that the multi-annual approach of Pillar 2 which allows measures to be tailored to local needs and priorities is a far more effective and ultimately efficient means of delivering environmental benefits (see for example: Matthews, 2013a; Hart and Baldock, 2011). Having attempted to green Pillar 1 and seen the resistance and extremely weak final outcome, it will be important not only to assess the level of environmental additionality that has been achieved via this route but also to take the lessons from this reform process to inform the debate on the structure of the CAP post 2020 and how this can best be designed to ensure the long term socio-economic and environmental sustainability of EU’s rural areas.


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### ANNEX 1

Table 1: Comparison of the Commission’s proposals, the European Parliament and the Agriculture Council’s negotiating mandates and the final legislative agreement.

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<tbody>
<tr>
<td><strong>General Requirements</strong></td>
<td>All farms must comply with greening requirements</td>
<td>All farms must comply with greening requirements</td>
<td>Farms involved in relevant Pillar Two agri-environment schemes would be exempt from one or more of the requirements.</td>
<td>Green practices apply to the whole eligible area of the holding.</td>
<td>Exemptions moved to individual measures.</td>
</tr>
<tr>
<td></td>
<td>Green by Definition = Organic</td>
<td>Farm managers farming land within Natura 2000 areas are only required to comply with the greening measures insofar as these are compatible with the requirements of these areas</td>
<td>Farms with at least 75% of land enrolled in a nationally or regionally-certified environment scheme would be exempt from greening.</td>
<td>Green by Definition - land being farmed organically and those participating in the small farmers scheme (in countries where this is offered).</td>
<td>General requirements remain similar to Commission’s original proposal</td>
</tr>
<tr>
<td></td>
<td>Land managers farming land within Natura 2000 areas are only required to comply with the greening measures insofar as these are compatible with the requirements of these areas</td>
<td>Farms comprising at least 75% permanent grassland qualify as 'green by definition'</td>
<td>Holdings with more than 75% covered by grassland or cultivated with leguminous crops also exempt.</td>
<td>Land managers farming land within Natura 2000 sites or river basins covered by the water framework Directive (WFD) are only required to comply with the greening measures insofar as these are compatible with the requirements set under the birds, habitats or water framework Directives.</td>
<td>EP</td>
</tr>
<tr>
<td><strong>P2 agri-environment conditions must go beyond EFA baseline</strong></td>
<td>P2 agri-environment conditions must go beyond greening measures</td>
<td>Greening requirements not included in P2 baseline.</td>
<td>Pillar 2 agricultural land management payments must go beyond the greening requirements to avoid double funding</td>
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| Crop diversification | Arable areas < 3 ha = exempt | Arable areas under 10ha = exempt | Arable areas under 10 ha = exempt. Other exemptions are:  
- where 75% of eligible area is grassland or cultivated with crops under water  
- where > 50% arable land is interchanged with other farmers annually  
- where 75% eligible area is under equivalent practices under agri-envt agreement  
- where > 75% of arable land is used to produce grass, is fallow, cultivated with leguminous crops or a combination of these | Only applicable on arable areas of holdings over 10 ha  
These rules do not apply to holdings:  
- where > 75% of arable land is used for the production of grasses or other herbaceous forage, land laying fallow, or subject to a combination of these uses, provided the arable area not covered by these uses does not exceed 30 ha.  
- Where > 75% of the eligible agricultural area is permanent grassland, used for the production of grasses or other herbaceous forage or crops under water or a combination of these uses, provided the arable area not covered by these uses does not exceed 30 ha. |  |  |
| --- | --- | --- | --- |  |  |
| - | Penalty for non-compliance = loss of the 30% greening component | Penalty for non-compliance = loss of the 30% greening component plus 25% extra penalty (i.e. 37.5% of overall entitlement lost) | Penalty for non-compliance = loss of the 30% greening component plus 25% extra penalty but phased in over time. | Council |  |
| 3 different crops to be grown on arable land over 3 ha. | Farms with arable areas of 10-30 hectares must plant at least two crops a year and those over 30 ha must have at least 3 crops (except holdings north of 62 parallel) | Farms with arable areas of 10-30 ha must plant at least two different crops and those with arable areas > 30ha would have to cultivate at least three crops. | Farms with 10 - 30 ha of arable land are required to have a minimum of two crops.  
Farms with more than 30 ha are required to have a minimum of three crops | EP/Council |  |

EP/Council – thresholds  
Council – further exemptions
None of the three crops shall cover less than 5% of the arable land and the main one shall not exceed 70% of the arable land.

<table>
<thead>
<tr>
<th>Arable Area</th>
<th>Maximum Area to Be Sown</th>
<th>Minimum Area to Be Sown</th>
</tr>
</thead>
<tbody>
<tr>
<td>10-30 ha</td>
<td>Maximum area to be sown to a single crop = 80%.</td>
<td>For arable areas &gt; 30 ha - Maximum to be sown to a single crop is 75% and two crops = 95%</td>
</tr>
<tr>
<td>&gt; 30 ha</td>
<td>Maximum area to be sown to main crop = 75%</td>
<td>For arable areas &gt; 30 ha - Maximum to be sown to a single crop is 75% and two crops = 95%</td>
</tr>
</tbody>
</table>

Where the arable area is 10-30 ha (and not entirely cultivated with crops under water for a significant part of the year, at least two different crops must be grown and Maximum area to be sown to main crop = 75%)

Where the arable area > 30 ha at least three crops must be cultivated and Maximum to be sown to a single crop is 75% and two crops = 95%
<table>
<thead>
<tr>
<th>Permanently grassland</th>
<th>Maintain 95 per cent of the area of permanent grassland on the holding as declared in 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Ratio of permanent grassland/pasture (in 2014) to total UAA (reference area) is maintained – to be applied at national, regional or sub-regional level</td>
</tr>
<tr>
<td></td>
<td>5% conversion of the reference area is permitted except carbon rich soils, wetlands and semi-natural grasslands and pastures</td>
</tr>
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<td></td>
<td>Farmers must maintain area of permanent grassland as declared in 2014</td>
</tr>
<tr>
<td></td>
<td>Member States can choose not to apply requirement if in 2012 the ratio of permanent grass: total UAA has not decreased or decreased &lt; 5% in relation to reference ratio (as set under current regulations). If so, they must ensure ratio is maintained</td>
</tr>
<tr>
<td></td>
<td>If monitoring systems are in place for PG, an alternative system can be implemented, with different requirements on farmers depending on annual change in reference ratio.</td>
</tr>
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<td></td>
<td>Two types of obligation apply under this measure:</td>
</tr>
<tr>
<td></td>
<td>• Farmers must not convert or plough permanent grassland in areas designated by Member States as being environmentally sensitive. Member States are required to designate permanent grassland, peatlands and wetlands deemed to be environmentally sensitive within Natura 2000 areas and have the option of designating further areas outside N2K areas, including permanent grassland on carbon rich soils</td>
</tr>
<tr>
<td></td>
<td>• Member States have to ensure that the ratio of the land under permanent grassland does not decrease by more than 5% at national, regional or sub-regional level (to be decided by member states) compared to the situation in 2015. If it does, Member States must require land to be converted back to permanent pasture through placing obligations on farmers to do so.</td>
</tr>
<tr>
<td></td>
<td>The exception to this is where the decrease below the threshold results from afforestation, provided such afforestation is compatible with the environment and does not include plantations of short rotation coppice</td>
</tr>
</tbody>
</table>

EP / council

EP for enabling the introduction of the voluntary protection of carbon rich grasslands
| Ecological Focus Area | 7 per cent of the holding (excluding permanent grassland) must be managed as ecological focus areas | Christmas trees or fast growing trees for energy production. | 'Ecological Focus Areas' (EFAs) to cover 3% (excluding permanent pasture and permanent crops) in 2014, rising to 5% from 2016 – further increases subject to review  
Only applies to eligible areas > 10 ha | 'Ecological Focus Areas' (EFAs) to cover 5% (excluding permanent grassland) in 2015, rising to 7% from 2018 pending review  
Up to half of EFA requirement may be met by pooling commitments among groups of farmers  
Only applies to eligible areas > 15 ha  
The following farms are exempt:  
- >75% eligible area is grassland, cultivated with crops under water or a combination;  
- >75% of arable area is entirely used for grass or other herbaceous forage, land laying fallow, cultivated with leguminous crops, or subject to a combination of these uses;  
- Areas where ratio of forest to farmland is at least 3:1. | 'Ecological Focus Areas' (EFAs) to cover 5% of the arable area from 2015, rising to 7% from 2018 if deemed necessary subject to a review in 2017  
Up to half of EFA requirement may be met at the regional level by pooling commitments among groups of farmers - Member States would need to designate the areas and the obligations for farmers participating. The aim of the designation and obligations shall be to underpin the implementation of Union policies on the environment, climate and biodiversity.  
Applies to arable areas > 15 ha  
The obligations do not apply to the following:  
- holdings where>75% of the eligible agricultural area is permanent grassland, used for the production of grasses or other herbaceous forage or cultivated with crops either under water for a significant part of the year or for a significant part of the crop cycle or a combination of those uses, | Council in general  
But EP won argument to remove permanent crops from eligible land. |
<table>
<thead>
<tr>
<th>The EFA can be made up of different elements, including:</th>
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<tbody>
<tr>
<td>- Land left fallow</td>
</tr>
<tr>
<td>- Terraces</td>
</tr>
<tr>
<td>- Landscape features, e.g. hedges; ponds; ditches; trees in a line, in a group or isolated; field</td>
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<tr>
<td>- terraces</td>
</tr>
<tr>
<td>- landscape features, including features situated in an area contiguous to an eligible parcel;</td>
</tr>
<tr>
<td>- buffer strips without</td>
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</tr>
<tr>
<td>- terraces</td>
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<tr>
<td>- landscape features, including features adjacent to eligible agricultural areas covered by arable land;</td>
</tr>
<tr>
<td>- buffer strips including those</td>
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provided the arable area not covered by these uses does not exceed 30 ha.

holdings where >75% eligible area is entirely used for production of grass or other herbaceous forage, land laying fallow, cultivated with leguminous crops, or subject to a combination of these uses, provided the arable area not covered by these uses does not exceed 30 ha.

In addition, Member States where over 50% of the land area is covered by forests, may choose not to apply the greening measures in Areas of Natural Constraint as defined under the rules set out in rural development policy provided certain conditions are met in relation to the rate of forest land to agricultural land in the ANC unit.

The EFA can be made up of different elements, including:

- Land left fallow
- Terraces
- Landscape features, e.g. hedges; ponds; ditches; trees in a line, in a group or isolated; field

The EFA can comprise:

- land left fallow
- terraces,
- landscape features including hedgerows, ditches, stonewalls, in field trees and ponds,
- land planted with nitrogen-fixing
| - Buffer strips – with no production on them; | - Areas afforested with funding from EAFRD | - Fertilisation and pesticides including buffer strips covered by permanent grassland which may be grazed and/or cut; | - Agro-forestry as supported under EAFRD; |
| - Areas afforested with funding from EAFRD | - Areas afforested under EAFRD | - Areas of permanent crops with more than 20 but less than 250 trees per hectare; | - Areas with short rotation coppice; |
| | - Buffer strips | - Strips of eligible hectares along forest | - Areas afforested under EAFRD; |
| | - Areas afforested under EAFRD | - Areas under agri-environment agreements, established as equivalent practices | - Areas with catch crops or green cover established by the planting and germination of seeds; |
| | Production is permitted but without use of fertilisers or pesticides | - Areas of permanent crops on slopes > 10% gradient | - Nitrogen fixing crops.
| | | - Areas with short rotation coppice | |