

**EUROPEAN COMMON AGRICULTURAL
POLICY AND ANIMAL WELFARE**

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SUMMARY: 1. Introduction – 2 The CAP 2014-2020 – 3. The “European Green Deal” and the new CAP 2023/2027.

1. – Since the late 1990s, the European Union has introduced strategic protections of commercial livestock species, granting certain payments under the first pillar of the Common Agricultural Policy upon the enactment of specific safeguards of their wellbeing. Animal welfare was thus fundamental to certain measures of Council Regulation (EC) No. 1257/1999 on support for rural development ¹ (second pillar) ² though it was with the so-called Fischler Reform of 2003 that the Union began to deploy more effective tools toward the objectives of animal safety and welfare on European farms ³.

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¹ Council Regulation (EC) No. 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations.

² In particular, one of the functions of both the investment measure and Art. 33 was the improvement of animal welfare, which was listed amongst the potential goals of such support.

³ The ‘Fischler’ reform – Council Regulation (EC) No.1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No. 2019/93, (EC) No. 1452/2001, (EC) No. 1453/2001, (EC) No. 1454/2001, (EC) 1868/94, (EC) No. 1251/1999, (EC) No. 1254/1999, (EC) No. 1673/2000, (EEC) No. 2358/71 and (EC) No. 2529/2001 – began as an Agenda 2000 ‘mid-term review’ serving to verify the effect of the 1999 reforms but, in reality, evolved into a more incisive reform of Agenda 2000 itself, considerably furthering the reorganisation of the tools and the very purpose of European farmers’ financial support. The main objectives of the 2003 reform were: a) to improve European agricultural competitiveness; b) to reorient production toward the market; c) to promote sustainable and socially acceptable agriculture; d) to strengthen rural development; e) to simplify the agricultural support system; f) to make the CAP more responsive to WTO commitments.



It was precisely with the 2003 Fischler Reform that the new concept of environmental cross-compliance was introduced, which aimed – through the granting of economic support – to reward and incentivise agricultural entrepreneurs' maintenance of environmentally respectful production practices: minimising waste and the degrading of soil and air while respecting ecosystems, biodiversity, future generations and, indeed, animal welfare throughout the agri-food chain.

Environmental cross-compliance underpinned the so-called 'decoupling policy' governing aid to agricultural enterprises; indeed, since 2003 the system of entrepreneurial agricultural production has become all-encompassing,⁴ oriented towards a plurality of heterogeneous objectives (no longer only geared toward guaranteeing public access to primary products or to the safety of those products themselves), which constantly evolve in response to the new imperatives of climatic-environmental stewardship (understood in *latu sensu*) – or, in short, of sustainability – periodically distinguished by Europe.

As scholars have noted⁵, the 2003 reform represented the beginning of a transition process toward sustainable agriculture⁶, marking a move away from the evaluation of outcomes in quantitative terms both in relation to products and the scale of agricultural enterprises. The same reform signalled the adoption of wider and more differentiated objectives of an ecological and social character, among which was indeed the welfare of farm animals.

Regulation (EC) No. 1782/2003 was subsequently repealed under Article 149 of Council Regulation (EC) No. 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No. 1290/2005, (EC) No. 247/2006, (EC) No. 378/2007 and repealing Regulation (EC) No. 1782/2003.

⁴ Francesco Emanuele Celentano, *L'ordinamento dell'Unione europea alla prova del diritto al benessere degli animali*, in Abdulkareem Azeez et. al, *Scritti su etica e legislazione medica e veterinaria* (Bari: Cacucci editore, 2017), p. 28; Hans Bruyninckx, *Towards global sustainability*, in *European Environment Agency Newsletter*, 14 September 2015, p. 1ff.

⁵ Cf. Alessandro Sorrentino and Roberto Henke, *The Common Agricultural Policy after the Fischler Reform: National Implementations, Impact Assessment and the Agenda for Future Reform* (New York: Routledge, 2016); Celentano, pp. 27ff.; Luigi Russo, *Legami tra terreno, allevamento e pagamento unico: Trasferibilità dei diritti*, in *Aestimum*, no. 63 (2009); Luigi Costato, *Alimenti e crisi finanziaria*, lecture at the Accademia dei Georgofili, Florence, 26 November 2008.

⁶ On the concept of 'sustainability', see note 3.

2003, just so, saw a shift from an exclusively production-based system of agricultural policy to one connected to the 'area used for agriculture': an area used not only in agricultural production itself but also in land management (or that of other bases of production potentially suitable for agricultural enterprise) consistent with the agronomic and environmental conditions stipulated by European regulations and in the NSPs and RDPs of each Member Country. Furthermore, in Regulation (EC) No. 1782/2003, agri-environmental measures were renamed 'agri-environment and animal welfare', thus making 'animal welfare' a compulsory concern for farm management as of 2003⁷.

In order to draw a clear picture of CAP initiatives in the livestock sector, and in order to better understand the strategic directions now incorporated into the 2023–2027 CAP, it seems apt to cite Regulation (EC) No. 1698/2005 on support for rural development⁸, which conclusively recapitulated the revised approach introduced by 2003's medium-term Fischler Reform.

Indeed, to compensate for the higher costs that farms would have to bear to improve the welfare of their livestock, Art. 40 of Regulation (EC) No. 1698/2005 introduced Measure 215, 'Animal Welfare Payments', which financed livestock farmers' amelioratory efforts in the 2000s for a duration of between five and seven years. With the stated aim of promoting husbandry practices that improved animal welfare more decisively than corresponding mandatory standards, the measure offset the higher costs of their application⁹.

The measure was inspired by the so-called 'five freedoms' of the Brambell Report¹⁰, drafted by the British government in 1965 and known as the first

⁷ Cf. Manuela Scornaienghi, *L'applicazione in Italia della misura "pagamenti per il benessere degli animali"*, in Maria Carmela Macrì, ed., *Il benessere degli animali da produzione* (Rome: INEA, 2012), pp. 97–120.

⁸ Council Regulation (EC) No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

⁹ Art. 40, para. 2, Regulation (EC) No. 1698/2005: 'Animal welfare payments cover only those commitments going beyond the relevant mandatory standards established pursuant to Article 4 of and Annex III to Regulation (EC) No. 1782/2003 and other relevant mandatory requirements established by national legislation and identified in the Programme.' For a broader analysis of Measure 215 (Animal Welfare Payments), as discussed in Art. 40 of Regulation (EC) No. 1698/2005, see Scornaienghi, pp. 97–119.

¹⁰ 'Report of the Technical Committee to Enquire into the Animal Welfare of Animals Kept under Intensive Livestock Husbandry systems' ('Brambell Report'), Command Paper 2836, HMSO, London, 1965.

international (albeit non-binding) attribution of various rights and freedoms to all the planet's animals, consisting of ethical 'soft law' guidelines also recognised at an extra-European level ¹¹.

The aforementioned mandatory standards, a prerequisite for access to funding under Measure 215, corresponded to the baseline indicators outlined in Art. 27 of Regulation (EC) No. 1974/2006 ¹², which addressed: 'water and feed closer to [animals'] biological needs; housing conditions, such as space allowances, bedding, natural light; outdoor access; absence of systematic mutilations, isolation or permanent tethering; prevention of pathologies mainly determined by farming practices or/and keeping conditions'.

In general terms, the CAP has not only increasingly oriented itself toward sustainability (at once economic, environmental and socio-ethical) but also toward protecting food consumers from the risks that they would incur were there no stable regulatory framework for food security. This is apparent in the robust and still in-force food safety regulatory framework dictated by Regulation (EC) No. 178/2002 (General Food Law) ¹³ and by the so-called 'hygiene package' ¹⁴.

¹¹ In particular, the Brambell Report recognised animals' entitlement to five 'freedoms': freedom from hunger and thirst; access to a diet sufficient to maintain good health; freedom to live in an appropriate physical environment; freedom from pain, injury and disease; freedom to exhibit normal species-specific behaviour; freedom from fear.

¹² Commission Regulation (EC) No. 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No. 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

¹³ Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.

¹⁴ The 'Hygiene Package' governed questions of food hygiene and safety. It regulated controls and served to ensure an elevated protection of European citizens' health by granting market access only to safe and healthy food. Ensuring that food is free from health hazards depends on the judicious management of each step in the agri-food chain. One of the package's primary objectives was the standardisation of all member states' legislation in order to establish identical food safety obligations.

The hygiene package consisted of the following legislation: Regulation (EC) No. 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs; Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin; Regulation (EC) No. 854/2004 of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption; Council Dir. (EC) No. 99/2002

In the livestock sector, this 'duality' is inherent in the regulations established over the most recent CAP planning phases (both 2013 and 2021), given their constant reference to two areas monitored in parallel: animal welfare, on the one hand, and the reduction of antimicrobial resistance on the other.

These two concerns form an indissoluble partnership that might be generally defined as 'farm animal safety and welfare'¹⁵. The issue's importance lies in the fact that animal welfare influences the other aspects of livestock farming, particularly food safety and the environment. It is now well established that good husbandry practices, which pay due heed to animals' state of wellbeing, reduce the spread of clinical or sub-clinical diseases to the benefit of efficiency and productivity. Such practices constitute the most effective means of reducing environmental impact and of reducing the need for veterinary antimicrobials.

Thus, sustainability cannot be conceptually separated from the improvement of animal welfare, which is commensurate with better output and reproductive performance, improved health and reduced use of pharmaceuticals in livestock farming¹⁶.

The Union's concern for animal welfare has certainly become more substantial in recent times as compared to historic regulations implicitly concerned with food security (which the same concern now accompanies rather than follows), a consequence of a considerable diffusion of socio-ethical val-

of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption.

¹⁵ Or 'sustainable farming', though only with regard to the treatment of animals; as is widely known, sustainability is a multifaceted and all-encompassing (economic, social and environmental) concept, and requires the integration of numerous further elements before a farm can be legitimately considered sustainable.

¹⁶ On closer inspection, it has emerged from a study conducted by the European Commission's Directorate-General for Agriculture and Rural Development – the 'Study on CAP measures and instruments promoting animal welfare and reduction of antimicrobials use: Final report', Publications Office of the European Union, December 2022, available at <https://data.europa.eu/doi/10.2762/122586> – that the correlation between animal welfare and antimicrobial use varies from case to case. In fact, though it has been noted that animal welfare is generally associated with low antimicrobial use, it may adversely affect animal welfare by increasing pain and suffering linked to injury and disease. Animal health and welfare management practices therefore require appropriate use of antimicrobials where necessary.

ues aimed at animal welfare throughout the agri-food chain. It is widely agreed that the founding legislative act of this ethico-legal current was animals' recognition as 'sentient beings' under Art. 13 of the TFEU¹⁷.

Although the latter was not an entirely new concept – being as animals' sentience had already been recognised in Protocol 33 of the 1997 Treaty of Amsterdam – the express mention of animal welfare in the Treaty of Lisbon officially and definitively declared it as a value common to the entire European Union and, as such, a priority to which the Union's policies aspire: first among these is the Common Agricultural Policy¹⁸, though it is not alone.

2. – Given these premises, the 2014–2020 CAP provided for a heightened focus on animal welfare, to which it dedicated specific measures offering financial support to agricultural entrepreneurs both in the first pillar (EAGF), through the provision of cross-compliance measures via Art. 93 of Regulation (EU) No. 1306/2013, and – more incisively – in the second pillar (EAFRD), through the provision of rural development-focused measures specifically outlined in Arts. 16 and 33 of Regulation (EU) No. 1305/2013.

As can be seen from Whereas Clause 54 of Regulation (EU) No. 1306/2013, the aforementioned cross-compliance rules contribute to the CAP's responsiveness to the expectations of a society increasingly sensitive to issues of the hygiene and sustainability of the livestock industry's supply chain, through the improvement of its conformity to environmental poli-

¹⁷ Certainly Article 13 was the legislative innovation that had the greatest impact throughout the EU legal system, although it should indeed be noted that even before 2007 animals' recognition as sentient beings had already been enshrined in Protocol 33 on protection and welfare of animals, annexed to the 1997 Treaty of Amsterdam.

¹⁸ More precisely, while it is true that in Art. 13 the TFEU made animal welfare a central element of European legislation – albeit 'while respecting the legislative or administrative provisions and customs of the Member States' – a foundational tension is evident therein regarding the formal status of animals, which, while recognised as 'sentient beings' in Art. 13, are subsequently defined as 'agricultural products' in Art. 38. In particular, Art. 38 para. 1 (formerly Art. 32 of the TEC) states: "Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.' It further states that: 'References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.'

cies, public health and the health and wellbeing of both animals and plants.

Consistent with the provisions of the regulation's Whereas Clauses, its Art. 93 para. 1 – entitled 'Rules on cross-compliance' – refers to animal husbandry both with regard to animal health (subpara. b), thus guaranteeing high standards of food security, and with regard to their welfare (subpara. c), accommodating ethical factors that contribute to food safety standards.

The statutory management requirements (SMRs) for the cross-compliance alluded to in Article 93 of Regulation 1306/2013 are expressly cited in Annex II and consist, with regard to food and feed safety, of compliance with Regulation (EC) No. 178 /2002 (SMR 4)¹⁹ and of 'prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and beta-agonists', as detailed in Directive 96/22/EC (SMR 5)²⁰; with regard to the identification and registration of animals, of compliance with Directive 2008/71/EC on pigs (SMR 6)²¹, Regulation (EC) No. 1760/2000 for the registration of 'bovine animals' and for the labelling of foodstuffs derived from them (SMR 7)²² and of Regulation (EC) No. 21/2004 for the registration of 'ovine and caprine animals' (SMR 8)²³; of compliance with rules for the prevention and treatment of animal diseases detailed in Regulation (EC) No. 999/2001, concerning the prevention and control thereof (SMR 9)²⁴; and finally, concerning animal welfare, of com-

¹⁹ In particular, Arts. 14, 15, 17 paras. 1, 18 and 19 of Regulation (EC) No. 178/2002 (on general food law); see footnote 30.

²⁰ In particular, Arts. 3 paras. a, b, d and e and Arts. 4, 5 and 7 of Council Directive 96/22/EC of 29 April 1996 concerning the prohibition on the use in stockfarming of certain substances having a hormonal or thyrostatic action and of β -agonists, and repealing Directives 81/602/EEC, 88/146/EEC and 88/299/EEC.

²¹ In particular, Arts. 3, 4 and 5 of Council Directive 2008/71/EC of 15 July 2008 on the identification and registration of pigs.

²² In particular, Arts. 4 and 7 of Regulation (EC) No. 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No. 820/97.

²³ In particular, Arts. 3, 4 and 5 of Council Regulation (EC) No. 21/2004 of 17 December 2003 establishing a system for the identification and registration of ovine and caprine animals and amending Regulation (EC) No. 1782/2003 and Directives 92/102/EEC and 64/432/EEC.

²⁴ In particular, Arts. 7, 11, 12, 13 and 15 of Regulation (EC) No. 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies.

pliance with Directive 2008/119/EC on the protection of calves (SMR 11)²⁵, Directive 2008/120/EC on the protection of pigs (SMR 12)²⁶ and General Directive 98/58/EC 'concerning the protection of animals kept for farming purposes' (SMR 13)²⁷.

In the rural development measures required as of 2013 for access to the EAFRD, Whereas Clause 23 of Regulation (EU) 1305/2013 states – echoing the implications of Whereas Clause 54 of Regulation (EU) 1306/2013 – that, 'responding to the increasing demand of society for the use of environmentally friendly farm practices and for high standards of animal welfare', second-pillar payments should have encouraged agriculturalists' conversion to organic farming and their adaptation to new welfare standards on livestock farms.

To this end, Art. 16 para. 1 subpara. b granted support under the second pillar of the 2014–2020 CAP to farmers and groups of farmers' new participation in 'quality schemes, including farm certification schemes, for agricultural products', in recognition of 'specific product characteristics, specific farming or production methods, or a quality of the final product that goes significantly beyond the commercial commodity standards as regards public, animal or plant health, animal welfare or environmental protection'²⁸.

²⁵ In particular, of Arts. 3 and 4 of Council Directive 2008/119/EC of 18 December 2008 laying down minimum standards for the protection of calves.

²⁶ In particular, of Arts. 3 and 4 of Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs.

²⁷ In particular, Art. 4 of Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes. On CAP 2014–2020 cross-compliance, see for example Luigi Russo, 'Le nuove condizionalità e il greening', *Quaderni dei Georgofili*, ser. 8, vol. 9 (2012), pp. 51–66.

²⁸ Established under the following regulations and provisions: a) Regulation (EU) No. 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs; b) Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2092/91; c) Regulation (EC) No. 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No. 1576/89; d) Council Regulation (EEC) No. 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails; e) Part 2, Title 2, Chapter 1, Section 2 of Council Regulation (EU) No. 1308/2013, concerning the wine sector.

Although this measure does not expressly refer to the reduction of industrial or intensive livestock farming, it conveys the EU's intention of countering the exercise of such techniques given their potential harm to public and animal health, which conflicts with the high standards of sentient animals' welfare anticipated by the same 2014–2020 CAP regulations. It is no coincidence that most of the initiatives that have qualified for support have specifically concerned a transition to extensive farming methods, often associated with factors comprised in the macro-domains of 'housing conditions' or 'outdoor access'.

The only European region that in the 2014–2020 period integrated a certification system (to which adherence remains voluntary) into its RDP – serving as a means of instituting CAP animal welfare measures on livestock farms and transitioning to extensive forms of animal husbandry – was the German region of Baden-Württemberg, through the 'tierschutzlabel' certification, issued by the German animal protection association, the Deutsche Tierschutzbund²⁹.

Similarly, the institution of voluntary certification frameworks as a means of defining national and regional strategies, which themselves pursue CAP objectives (including cross-compliance/conditionality), appears to be endorsed by the new Italian National Strategic Plan (NSP Italy) for the 2023–2027 CAP.

To conclude discussion of the 2013 rural development measures pertinent to animal welfare and more generally to a safe and ethical livestock industry, Measure 14 – 'Animal welfare payments', outlined in Art. 33 – cannot go unmentioned. Measure 14 is aimed at compensating, in whole or in part, any loss of income or additional costs resulting from farmer-entrepreneurs' efforts beyond relevant mandatory requirements.

²⁹ The 'Für Mehr Tierschutz' was first established by the Deutsche Tierschutzbund only with reference to broiler chickens and fattening pigs before being extended to eggs and milk. It consists of two tiers – entry and premium – which set binding standards for breeding, transport and slaughter. According to the Deutsche Tierschutzbund (the German animal welfare association), the label's purpose is not to promote the consumption of animal products but, for those consumers who have not already reduced such consumption or renounced it completely, to simplify and encourage consideration of animal welfare in purchasing. Indeed, in Germany it is held that the improvement of animal welfare on farms is closely linked to reducing the consumption of animal products. In this connection, see Miriana Zanon, *L'animal welfare nelle filiere alimentari: Etichettatura e certificazioni* (Trento: Trento Law and Technology Research Group, 2021), pp. 114ff.

A sector study has found that only fifteen Member States have incorporated this measure into their NSPs and RDPs³⁰. Amongst these, Italy is the country that has included it in the greatest number of RDPs.

Measure 14's low level of implementation at EU level has undoubtedly led European institutions to investigate its issues and to identify adequate tools for its improvement and correction in the new CAP programming periods.

3. – With the passing of time, having had the opportunity to assess the impact of the 2014–2020 CAP's measures throughout the European agricultural sector, including their effect on animal welfare, the European Commission sought to identify correctives to its previous approach as early as 2017, when it published the communication 'The Future of Food and Farming'³¹.

In the communication, the Commission looked forward to a new CAP (which was planned for 2021 but entered into force in 2023 due to the pandemic) that could grant Member States greater subsidiarity in strategic approaches and their implementation so as to better adapt their 'interventions to maximise their contribution to EU objectives'. This is a recognition of the ineffectiveness of an excessively rigid and unilaterally 'top-down' strategic approach as a means of directing a transition into primary-sector sustainability on the part of Member States that are profoundly different, whether geographically, climatically, culturally or socially.

The Communication's subsection 3.5 urges States to improve their response to citizens' concerns 'regarding sustainable agricultural production, including health, nutrition, food waste and animal welfare'.

In particular, the Communication emphasises that the new 2023–2027 CAP must be able to – and must – 'help farmers to improve the application of EU rules on animal welfare and to further increase standards through voluntary initiatives aimed at promoting the market value of animal welfare both within and outside the EU'. Furthermore, the document does not fail to underline a fundamental objective of the new CAP: a greater and more concrete response to 'critical health issues such as those related to antimicrobial resi-

³⁰ Maria Carmela Macrì and Manuela Scornaienghi, *Le politiche europee per il benessere degli animali da produzione*, in *Agriregionieuropa*, no. 48 (2017).

³¹ COM(2017) 713 final, Brussels, 29 November 2017, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'The Future of Food and Farming'.

stance (AMR) caused by inappropriate use of antibiotics³², highlighting the need for a stable regulatory apparatus to protect the ‘duality’ cited above.

‘The Future of Food and Farming’ was followed by the December 2019 Communication entitled ‘The European Green Deal’³³, comprising a detailed programme of policy initiatives aimed at making Europe the world’s first climate-neutral continent by 2050³⁴.

The many initiatives of the Green Deal, presented as an implementation of Agenda 2030, do not leave unaddressed the problem of industrial and intensive livestock farming, which exploits and kills millions of animals yearly and is responsible for about 17% of Europe’s total anthropogenic greenhouse gas emissions. Such practices consume and deplete water and land, constituting the foremost cause of environmental pollution in Europe and worldwide³⁵. The Green Deal is also focused on the integration of (not only environmental) sustainability into all EU policy³⁶.

³² ‘In line with an ambitious and encompassing approach with regard to human and animal health – as embodied by the “One Health” concept – it should also promote the use of new technologies, research and innovation to reduce risks to public health.’

³³ COM(2019) 640 final, Brussels, 11 December 2019, Communication from the Commission to the European Parliament, the European Council, the Council, the Economic and Social Committee and the Committee of the Regions: ‘The European Green Deal’.

³⁴ More specifically, the Green Deal ‘aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.’ COM(2019) 640 final, 11 December 2022, p. 2.

³⁵ Although livestock farming is not explicitly mentioned in the document, reference is made on several occasions to the problem of emissions deriving from it, as well as to animal welfare being a central objective to be incorporated into future EU strategies. Cf. Leonardo Molinaro, *L’attività politico-normativa dell’Unione Europea a seguito del principio di tutela del benessere animale sancito dall’Articolo 13 TFUE: Analisi della politica agroalimentare e della disciplina inerente alla sperimentazione animale*, in *Nuovi orizzonti sulla tutela degli animali*, ed. Ettore Battelli et al. (Rome: Roma-Tre Press, 2022), pp. 96–116; Luigi Russo, *Emergenza Covid-19 e Politica Agricola Comune*, in *Rivista di diritto alimentare* 15, no.1 (2021), pp. 45–53.

³⁶ See Mariagrazia Alabrese, *Politiche climatiche, politiche agricole e il bisogno di coordinamento*, in *Rivista di diritto alimentare* 14, no. 1 (2020), pp. 618–643; Sonia Carmignani, *SDGs e agricoltura: Una breve riflessione*, in *Le regole del mercato agroalimentare tra sicurezza e concorrenza: Diritti nazionali, regole europee e convenzioni internazionali su agricoltura, alimentazione, ambiente*, eds. Sonia Carmignani and Nicola Lucifero (Naples: Editoriale Scientifica, 2020), pp. 207–220; Eloisa Cristiani, *Quali regole per un’agricoltura sostenibile?*, in *Rivista di diritto agrario* 98, no. 4 (2019), pp. 645–663; Antonio Jannarelli, *Il diritto agrario nel nuovo millennio tra food safety, food security e sustainable agriculture*, in *Rivista di diritto agrario* 97, no. 4 (2018), pp. 511–

The Communication proposed two specific strategies as a means of transitioning to a system of food production at once sustainable and respectful of the environment and biodiversity. Published on 20 May 2020, these are: the Farm to Fork Strategy ('for a fair, healthy and environmentally-friendly food system')³⁷ and the EU Biodiversity Strategy for 2030³⁸.

The Farm to Fork Strategy in particular, by aiming at a 50% reduction in total EU sales of antimicrobials for farm animals by 2030, has exerted the single greatest influence on the new CAP regulations.

The Action Plan for Animal Welfare, which provides for the evaluation and revision of existing regulations – including those concerning animal transport and slaughter – contributes to the reduction of antimicrobial sales in Europe, making good use of the understanding that improvements in animal welfare (understood in a broad sense, including ethical factors) correlate to a proportional improvement in the safety and security of the food produced – in this case, that is, to the production and commercial availability of food from animals free of antimicrobial resistance. In such a way, the Plan embraces a 'sustainable' approach whereby attention to certain factors is closely linked to the improvement of others, all of which are indispensable to the same objective of sustainability.

In other words, such measures – which Europe has tried to enshrine in the new 2023–2027 CAP regulations and thenceforth to enact through a more rigorous supervision and evaluation of individual States' NSPs – propose a holistic approach, differentiated for regional specificities, varied pro-

556; Pamela Lattanzi, *Il new Green Deal, la PAC 2021–27 e la sostenibilità nelle produzioni alimentari*, in *Trattato di diritto alimentare italiano e dell'Unione europea*, ed. Paolo Borghi et al. (Milan: Giuffrè Francis Lefebvre, 2021), pp. 705–713; Silvia Manservigi, *Il ruolo emergente del diritto agroalimentare tra economia circolare e SDGs di Agenda 2030*, in Carmignani and Lucifero eds., pp. 843–876; Lorenza Paoloni, *La sostenibilità etica della filiera agroalimentare*, in *Rivista di diritto alimentare* 14, no. 4 (2020), pp. 5–20.

³⁷ COM/2020/381 final, Brussels, 20 May 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system.'

³⁸ COM(2020) 380 final, Brussels, 20 May 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: 'An EU Biodiversity Strategy 2030; Bringing nature back into our lives.'

duction formats and varied livestock categories, as a means to CAP objectives. They thereby deemphasise compliance with the Union's detailed standards in favour of performance – that is, individual States' outcomes relative to general objectives framed in overarching terms, thus dividing the respective responsibilities of the Union and its Member States with decidedly greater subsidiarity than in the past³⁹.

Thus, through the framework of the new 2023–2027 CAP, the Union has limited itself to establishing, in general terms, the objectives of protecting animal welfare and reducing the sales of antimicrobials for livestock farming, on which initiatives access to the two pillars (EAGF and EAFRD) depends. Regarding the means of achieving these general objectives and indicators, it offers States wide interpretative leeway through their own NSPs.⁴⁰

In gross summary, an inspection of the Whereas Clauses of Regulation (EU) No. 2115/2021 already seems to confirm the importance of a 'healthy' agri-food production process that is also 'respectful' of the environment, public health, plant health and animal welfare; whereby the latter is now linked to all of the former upon its every legislative mention.

Indeed, as of 2021 and contrary to previous programming periods, the 2023–2027 CAP regulations expressly include the protection of animal welfare in their so-called 'eco-schemes', implicitly classifying animal welfare as an objective toward environmental and ethico-social sustainability.

The fundamental rules – such as the cross-compliance framework essayed in Article 12 – 'better take into account the environmental and climate challenges and the new environmental architecture of the CAP, thus delivering a higher level of environmental and climate ambition', consistent with the European Commission's 2017 'Future of Food and Farming' Communication (see Whereas Clause 41), and also serve to 'make the CAP more compatible

³⁹ Lattanzi, p. 712.

⁴⁰ Whereas clause 99 of Regulation (EU) No. 2115/2021 states that: 'In the process of development of their CAP Strategic Plans, Member States should analyse their specific situation and needs, set targets linked to the achievement of the objectives of the CAP and design the interventions which will allow those targets to be reached, while being adapted to the national and specific regional contexts, including those of the outermost regions. Such process should promote more subsidiarity within a common Union framework, while compliance with the general principles of Union law and the objectives of the CAP should be ensured. It is therefore appropriate to set rules on the structure and content of the CAP Strategic Plans.'

with the expectations of society' regarding the aforementioned concerns (see Whereas Clause 42).

As for the value that the new CAP ascribes to animal welfare (understood, in this case, in a broad sense) – in keeping with the leaning toward subsidiarity of (EU) No. 2115/2021 (though also of Nos. 2116/2021 and 2117/2021) and also with the issue's increasing centrality in recent years courtesy of widespread social awareness – its express mention in Art. 6, 'Specific Objectives', should be noted.

Indeed, in the interest of helping create sustainable supply chains, Art. 6 outlines the objective of improving 'the response of Union agriculture to societal demands on food and health, including high-quality, safe and nutritious food produced in a sustainable way, to reduce food waste, as well as to improve animal welfare and to combat antimicrobial resistance' (Art. 6 para. 1 subpara. I) ⁴¹.

States have also received greater incentives toward ecologically improved systems for achieving their general objectives, which, with regard to the livestock sector, mainly concern the reduction of AMR and ensuring baseline animal welfare standards on farms ⁴².

However, despite the new CAP's evident and increased focus on animal welfare in (non-exclusive) consideration of the objective of food safety, it is still subject to some significant issues.

On one hand, the 2013 CAP's inadequate sanctioning apparatus for agriculturalists and livestock farmers' violations of their agri-environmental commitments has still not been bolstered post-2021. Indeed, pursuant to Art. 84 of Regulation (EU) No. 2021/2116, administrative sanctions consist of reduction or revocation of the total value of payments granted or due to

⁴¹ A combined reading of Whereas clause 65 and the specific objective of Art. 6 para. 1 demonstrates that the new CAP, by implementing an integrated approach comprising direct payments under the first pillar (EAGF) and rural development measures under the second pillar (EAFRD), has provided greater incentives for states to establish strengthened ecological schemes while allowing them full latitude in the planning thereof.

⁴² An example of this is Whereas Clause 65, which states: 'It should be possible for Member States to establish eco-schemes as 'entry-level schemes' as a condition for farmers for taking up more ambitious environmental, climate-related and animal welfare commitments under rural development. To ensure simplification, Member States should be able to establish enhanced eco-schemes. Member States should also be able to establish eco-schemes for supporting practices on animal welfare and combatting antimicrobial resistance.'

be granted to the beneficiary concerned, with reference to support applications submitted or due to be submitted during the calendar year in which the non-compliance is determined. However, as one study has pointed out⁴³, sanctions of so purely administrative a nature preclude actions for damages or liability against non-compliers.

Furthermore, still to be taken is the seemingly appropriate step, which would also help better protect animal welfare, of making reference in the new CAP regulations to animals' nature as sentient beings, thus lending vitality to the TFEU's Art.13 while reaffirming its importance to the changed European socio-legal animal welfare framework.

⁴³ Celentano, p. 30.

Abstract

Il presente contributo si propone di tracciare un quadro della Politica Agricola Comune emersa negli anni a sostegno degli animali e, più in generale, della sostenibilità ambientale ed etica della filiera della carne e del latte.

This contribution aims to outline a picture of the Common Agricultural Policy that has emerged over the years in support of animals and, more generally, the environmental and ethical sustainability of the meat and milk supply chain.