

GURSEN DE MIRANDA E THEMIS ELOANA

ORGANIZADORES

DIREITO AGRÁRIO

Compreensão Jurídica à COP 30



Publicação Oficial da
Academia Brasileira de
Letras Jurídicas Agrárias





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**Gursen De Miranda
e Themis Eloana**

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Belém do Pará



2024

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À Guisa de Anais do XVI Congresso Mundial de Direito Agrário realizado na cidade de Belém do Pará no período de 10 a 13 de setembro de 2024.

ISBN: 978-65-982411-4-8

Capa: Arte em logo do **XVI CONGRESSO MUNDIAL DE DIREITO AGRÁRIO.**

Editoração: Themis Eloana e Juliana de Castro Menezes Rangel

Projeto gráfico e diagramação: Eliane Miotto Nemer

Editor: Alcir Gursen De Miranda

Dados Internacionais de Catalogação na Publicação (CIP)
(Câmara Brasileira do Livro, SP, Brasil)

Direito Agrário : compreensão jurídica à COP 30 /
organização Themis Eloana, Gursen De Miranda.
-- 1. ed. -- Belém, PA : Biblioteca Gursen de
Miranda, 2024.

Vários colaboradores.
Bibliografia.
ISBN 978-65-982411-4-8

1. Agronegócio - Brasil 2. Direito agrário -
Brasil I. Eloana, Themis. II. Miranda, Gursen De.

24-213324

CDU-347.243(81)

Índices para catálogo sistemático:

1. Brasil : Direito agrário 347.243(81)

Aline Grazielle Benitez - Bibliotecária - CRB-1/3129

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THE NEW DELIVERY MODEL OF THE EU COMMON AGRICULTURAL POLICY IS NOT DELIVERING ON SUSTAINABILITY

Mariagrazia Alabrese (Itália)¹⁰⁰

Abstract: The Common Agricultural Policy (CAP) is pivotal for European agriculture, yet its sustainability impact is debated. This article examines CAP's role in fostering sustainability, exploring strengths and weaknesses of selected features of the current policy framework. The analysis reveals past flaws and evaluates CAP 2023-27, highlighting findings from CAP Strategic Plans. It discusses challenges of Member State implementation, including coherence, consistency, and accountability in EU-wide agricultural goals.

Keywords: Common Agricultural Policy (CAP); Sustainability; New delivery model; Implementation challenges; climate measures.

Summary: 1. Introduction 2. The longstanding gap: Environmental and climate performance of the CAP below expectations. 3. Strengths and weaknesses of key features of CAP 2023-27. 4. Concluding remarks.

1. INTRODUCTION

The Common Agricultural Policy (CAP) stands as a bedrock of European agriculture, yet its effectiveness in fostering sustainability remains a subject of ongoing debate.

This article delves into the pivotal question of the CAP's role in steering agriculture towards sustainability. It unravels the potential strengths of the CAP while critically scrutinizing how its existing framework may impede progress towards a sustainable food system.

To begin, the article will shed light on notable deficiencies observed in past policy implementations concerning environmental and climate measures (Section 1). Section 2 will provide an overview of key aspects

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This study has been carried out within the framework of the Jean Monnet Centre of Excellence SUSTAIN on EU actions for Sustainable Farming and Food Systems (101127247 – SUSTAIN). Funded by the European Union. Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union. Neither the European Union nor the granting authority can be held responsible for them. Contato: email – m.alabrese@santannapisa.

of the current policy, CAP 2023-27, examining both its merits and shortcomings. This section will elucidate the principal findings collected from a comparative analysis of the CAP Strategic Plans. Lastly, Section 3 will draw the discussion to a close by pondering the challenges arising from the reliance on Member States for the implementation of the CAP. It contemplates how such reliance might compromise coherence, consistency, and accountability in achieving overarching agricultural and rural development objectives across the European Union. Furthermore, it explores the potential for distortions between Member States, which could reverberate through the functioning of the European single market.

2. THE LONGSTANDING GAP: ENVIRONMENTAL AND CLIMATE PERFORMANCE OF THE CAP BELOW EXPECTATIONS

The Common Agricultural Policy has undergone significant transformations over the past six decades (Bianchi & Fischer Boel, 2012; Cardwell, 2004). Initially, it prioritized productivity with minimal consideration for environmental concerns. Its objectives also included ensuring fair incomes for the agricultural community and affordable food for consumers. While these objectives remain central to the CAP, its scope has gradually broadened to encompass environmental concerns. Indeed, over time, the policy has evolved to incorporate various measures, both mandatory and voluntary, aimed at incentivizing environmentally friendly practices and enhancing food quality (Canfora, 2007; Cristiani, 2004; Di Lauro, 2019)¹⁰¹.

The 1990s marked a pivotal period when the concept of agriculture's multifunctionality gained traction (Bodiguel, 2008). This highlighted the recognition that agriculture not only supplies food and fibers but also contributes to ecosystem services, social cohesion, environmental protection, and cultural heritage¹⁰². In 2003, the "mid-term review", known as the Fischler reform, was implemented. This reform initiated a transition from coupled direct payments to decoupled farmer support, aiming to reduce the intensity of agricultural activity. Furthermore, it introduced mandatory eco-conditionality for direct payments, requiring farmers to

101 In fact, 1991 marked the introduction of the first EU regulation on organic agriculture (Reg. EEC 2092/91), followed by the EU regulations on denominations of origin in 1992 (Reg. EEC 2081/92 and 2082/92).

102 On this path, Agenda 2000 reform officially launched the Rural Development Program (RDP), partially due to compliance to WTO regulation.

adhere to agro-environmental, ecological, food safety, and animal welfare standards. Failure to comply with these standards could result in reduced or withheld payments, thereby increasing environmental constraints and bureaucratic obligations for farmers (Frascarelli, 2017). The 2014-20 CAP reform aimed for a gradual shift from indiscriminate income support to support for the production of public goods. Its concrete expression was the so-called «greening» scheme, which attempted to compensate for the environmental goods produced by agriculture. In this direction, agro-climatic-environmental payments and other environmental measures under the pillar of rural development were introduced. However, these measures were not appreciated by farmers, as they contributed to complicating the procedures for accessing European aid payments. Nor were they valued in relation to their environmental impact, being the greening measures too modest compared to the biodiversity and climate change objectives that needed to be achieved. (Bodiguel, 2014; Strambi, 2016).

These outlines illustrate the CAP's endeavor to address environmental and climate concerns. There has been a perhaps slow but progressively consistent move towards environmental sustainability. Was it enough? Were all these reforms beneficial to the climate and the environment? Despite the introduction of new and targeted measures, the environmental performance of the CAP has fallen short of expectations. This discrepancy is highlighted in various reports from the European Court of Auditors (ECA). For instance, in the Special Report 31/2016, the ECA found that there had been no significant shift towards climate action in the areas of agriculture and rural development, despite the target to allocate at least 20% of the EU budget for 2014-20 to this purpose. Similarly, the Special Report 21/2017 titled "Greening: a more complex income support scheme, not yet environmentally effective" concluded that the greening measures introduced by the CAP had limited impact, with changes in farming practices observed on only about 5% of all EU farmland. Furthermore, Special Report 16/2021 highlighted that, despite allocating over a quarter of the CAP's budget to mitigate and adapt to climate change during the 2014-2020 period, the impact on emissions was minimal. Farm emissions, particularly from livestock and drained peatlands, have not significantly decreased, indicating that the CAP primarily finances measures with low potential to mitigate climate change.

Until the CAP 2014-20, the effectiveness of the policy in achieving tangible environmental benefits remained limited. The next section raises the question of whether the subsequent policy has been able to improve sustainability performance.

3. STRENGTHS AND WEAKNESSES OF KEY FEATURES OF CAP 2023-27

The adoption of the European Green Deal¹⁰³ alongside the Farm-to-Fork¹⁰⁴ and Biodiversity¹⁰⁵ Strategies marked a significant shift in the objectives and expectations of the Common Agricultural Policy¹⁰⁶. The ambitious vision outlined in these strategies placed agriculture at the forefront of efforts to address climate change, biodiversity loss, and sustainable development within the European Union. Under this new context, the CAP was increasingly expected to contribute to a range of multifaceted objectives beyond traditional production concerns. While ensuring food security remains paramount, the EU agri-food sector is also tasked with playing a pivotal role in achieving broader environmental and sustainability goals. This includes making significant strides towards climate neutrality, protecting and restoring natural habitats and biodiversity, and aligning with the principles of a circular and sustainable economy (Vito Rubino & Stefano Masini, 2021).

The reformed CAP for the 2023-2027 term has been strategically redesigned to meet the heightened expectations set forth by the European Green Deal and its associated strategies (Mariagrazia Alabrese & Eloisa Cristiani, 2022). Its main features revolve around ten specific objectives, with nine organized to reflect the three pillars of sustainable development:

103 EU Commission, 'The European Green Deal' COM(2019)640 final.

104 EU Commission, 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system' COM(2020) 381 final.

105 EU Commission, 'EU Biodiversity Strategy for 2030 Bringing nature back into our lives' COM(2020)380 final.

106 The 2023-27 CAP reform covers three main regulations: one setting out rules for support in CAP Strategic Plans (EU Regulation 2021/2115); one horizontal regulation establishing rules for the financing, management and monitoring of the CAP (EU Regulation 2021/2116); and the third amending the Common Market Organisation Regulation, the rules on quality schemes and aid measures for agriculture in the outermost regions (EU Regulation 2021/2117).

economic, social, and environmental¹⁰⁷. A further cross-cutting tenth objective is dedicated to fostering knowledge and innovation, acknowledging the crucial role of research and technology in driving sustainable agricultural practices forward. In pursuing these objectives, the CAP embraces the traditional concept of sustainable development, as articulated in the Brundtland report.

One key innovation in the 2023-27 Common Agricultural Policy is the introduction of a new delivery model. Central to this model is its commitment to performance-based implementation, signaling a notable departure from previous approaches that primarily centered on rule adherence. This paradigm shift underscores a focus on achieving tangible results and impactful outcomes. To gauge the effectiveness of this approach, a comprehensive set of indicators has been crafted, each linked to the nine key objectives delineated within the policy framework. These indicators serve to facilitate the assessment of progress and ensure accountability at every stage of implementation¹⁰⁸.

What are the strengths and weaknesses of this innovation? On a positive side, it is essential to acknowledge the potential greater efficacy of a result-based approach compared to a compliance-based one. Such an approach has the potential to address concerns raised by the European Court of Auditors regarding effectiveness. Conversely, the efficacy of monitoring and evaluation heavily relies on the quality of selected indicators. Particularly concerning environmental and climate objectives, these indicators may not consistently capture the true impact of an intervention. Furthermore, a performance-based approach does not always ensure alignment with the intended outcomes, such as the tangible impact of actions on reducing greenhouse gas emissions or conserving biodiversity. The climate indicators include targeting and monitoring the

107 The objectives are: to ensure a fair income for farmers; to increase competitiveness; to improve the position of farmers in the food chain; climate change action; environmental care; to preserve landscapes and biodiversity; to support generational renewal; vibrant rural areas; to protect food and health quality; fostering knowledge and innovation.

108 Regulation (EU) 2021/2115 establishes the performance monitoring and evaluation framework (PMEF). The PMEF supports the shift in policy focus from compliance with rules to performance and results. This new performance-based delivery model uses a set of common performance indicators which includes: output indicators, which will be used for monitoring the implementation of the CAP; result indicators, which will be used to monitor EU countries' progress towards pre-set targets; context and impact indicators, which will be used to assess the overall policy performance against CAP objectives. The PMEF is one of the key elements of new delivery model.

share of land covered by measures to reduce emissions, store carbon or adapt to climate change. A result indicator measures, for example, the share of agricultural area under management contracts aimed at sequestering soil carbon, yet it may not necessarily estimate the actual amount of carbon sequestered. A study commissioned by the European Parliament's Committee on Agriculture and Rural Development and published in June 2023 has drawn attention to specific deficiencies within the envisaged framework of evaluative indicators targeting distinct objectives. The study noted that the current climate and environmental result indicators, expressed in terms of areas committed to an environmental topic, fall short in assessing the environmental effectiveness of CAP-related interventions (Münch et al., 2023)

These weaknesses may arise from technical challenges in measuring impact. However, there may be a lack of political will to implement measures that could potentially affect farmers. This issue leads to the next key point: the role of the Member States in the new delivery model.

A significant responsibility for the implementation of this policy has been transferred to Member States, which were required to present their proposed interventions in the form of CAP strategic plans (CSPs). EU Member States were tasked with designing their CSPs based on the CAP objectives. They used the aforementioned indicators to set their own targets and milestones. Implementation of the CSPs is subject to an annual review meeting and biennial performance review by the European Commission.

When discussing the strengths of the new model, the EU Commission emphasizes that in the Union's diverse agricultural and climatic landscape, a one-size-fits-all approach is inadequate for achieving the desired outcomes and European Union added value¹⁰⁹. With the new model, Member States have the flexibility to tailor their approach according to national needs and preferences, utilizing the available options and embracing flexibility.

However, there are several weaknesses and challenges associated with this transition. Implementing this new model necessitates a significant shift in mindset, the acquisition of new skills, institutional capacity building, and political will at the Member State level. This transformation may entail making decisions that are not always well-received by local

109 EU Commission, 'The future of food and farming' COM(2017)713 final, 9.

farmers. The cited analysis of the 28 CAP Strategic Plans (CSPs) reveals mixed outcomes concerning environmental and climate considerations. Despite efforts to diversify, “Direct payments remain dominant,” maintaining a distribution similar to that of EU funding proportions from the previous CAP period. Notably, the share of coupled payments¹¹⁰ has slightly increased (from 10,8 in 2019 to 12,3 in 2023), signaling potential challenges in transitioning away from these forms of support (Müncch et al., 2023, p. 24). This is particularly concerning given that direct payments and coupled payments are recognized as the most distorting and potentially most environmentally harmful forms of support (OECD, 2023).

Furthermore, the same comparative analysis indicates that coupled income support for animal production constitutes a significant portion, accounting for 70% of the total coupled income support, with some Member States using coupled direct payments for animal production only¹¹¹. In comparison to the previous period, some countries, such as Germany, have reintroduced coupled income support, while countries like Luxembourg and Estonia have also augmented their share of coupled payments to total direct payments. The rationale behind this resurgence in coupled support has been attributed to factors such as the Russian invasion of Ukraine. However, the heightened reliance on coupled support for livestock in the 2023-2027 period raises concerns regarding its potential adverse effects on greenhouse gas (GHG) emissions and nutrient loss reduction efforts. This trend risks diverting resources away from addressing global public goods, including GHG emissions, biodiversity, and other environmental considerations, thus undermining the overall environmental objectives of the CAP.

The shortcomings of the new delivery model become even more evident when examining some key innovations in supported measures.

One significant addition is the introduction of social conditionality (Irene Canfora & Vito Leccese, 2022). For the first time, CAP payments are partially contingent upon compliance with specific living conditions of individuals working in rural areas. This development underscores the

110 Voluntary coupled income support provides Member States the possibility to link direct payment support to agricultural production in specific sectors, such as: cereals, oilseeds, protein crops, grain legumes, flax, hemp, rice, nuts, starch potato, milk and milk products, seeds, sheep meat and goat meat, beef and veal, olive oil, silkworms, dried fodder, hops, sugar beet, cane and chicory, fruit and vegetables and short rotation coppice.

111 Belgium/Flanders, Germany, Sweden, and Austria.

imperative of considering labor conditions within agriculture. While it represents a crucial initial step, it should be noted that it applies solely to area-based direct payments, which constitute a significant portion of CAP funds but do not encompass all agricultural sectors¹¹². Nonetheless, it represents progress towards fostering sustainable farming practices, particularly those emphasizing labor-intensive approaches like agroecology, given the need for a larger workforce in diversified farming systems. At the national level, Member States are tasked with establishing mechanisms compliant with their respective domestic legal systems. The primary challenge lies in effective implementation with robust sanctions to ensure tangible improvements in the working conditions of agricultural workers. Member states are responsible for determining the extent to which a farm's CAP funds should be reduced in the event of a breach of social conditionality rules. However, it is worth noting that the effectiveness of social conditionality hinges on the adequacy of existing control systems within member states for labor and social regulations. Thus, a potential weakness arises from the reliance on these existing checks and controls, considering the known challenges associated with them.

As far as the environmental and climate requirements are concerned, the CAP2023-27 aims for heightened ambition in these areas. It introduces a revamped 'green architecture' featuring eco-schemes, comprising mandatory environmental criteria and voluntary incentives. Conditionality requirements are obligatory for all CAP beneficiaries, while eco-schemes and agri-environment-climate measures offer additional support for farmers implementing sustainability practices. Unlike the previous compulsory greening, eco-schemes are voluntary for farmers but mandatory for Member States. These schemes incentivize farmers to adopt practices beneficial for climate, environment, and animal welfare (Article 31, Regulation (EU) 2021/2115)¹¹³.

112 For example, farms in sectors such as fruits and vegetables, where most abuses occur due to the employment of many seasonal and informal workers, do not receive as many direct payments.

113 Eco-schemes may be supported under two different approaches (Article 31 §7 a and b), namely: payments additional to the basic income support (a); payments compensating active farmers or groups of active farmers for all or part of the additional costs incurred and income foregone as a result of the commitments made and taking into account the targets for eco-schemes; those payments may also cover transaction costs (b). Only Hungary and France exclusively apply the basic payment method (7a). All other Member States have chosen the compensatory method (7b), alone, or in combination with basic payments according to the individual eco-scheme measures.

Eco-schemes must represent at least 25 % of pillar I budget allocations (direct income support) over 2023–2027, and agri-environment climate measures must represent at least 35 % of pillar II (rural development funding). Eco-schemes in the National Strategic Plans must cover at least two areas among climate (mitigation or adaptation), water management, soil management, biodiversity, sustainable and reduced use of pesticides, animal welfare, and anti-microbial resistance.

Member States are required to avoid any backsliding compared to the environmental and climate achievements under the previous CAP programming period (Article 105, Regulation (EU) 2021/2115). Derogations to the basic rule of a minimum of 25% of direct payments for eco-schemes are possible (Article 97.2, Regulation (EU) 2021/2115) if environment, climate, or animal welfare funding exceeds 30% of total EAFRD contributions (fund for rural development) (Articles 70,72,73,74).

According to the comparative analysis carried out by Mùch et al. 2023, 18 Member States allocated levels lower than 25% to eco-schemes¹¹⁴. Four of these Member States allocated around 15% of their direct payments to eco-schemes (but have respectively allocated more than 40% of their EAFRD to the environment and climate)¹¹⁵. On the other hand, six Member States allocated more than 25% to eco-schemes¹¹⁶.

It is easily understandable that there are significant concerns about the green architecture's ability to effectively address climate action. In addition to potential derogations, we must consider that the eco-schemes outlined in EU regulations are vaguely defined, allowing Member States ample room for intervention and elaboration. This may result in the continuation of funding measures with limited environmental impact, essentially functioning as additional support mechanisms. Furthermore, national CAP budgets are predetermined under the European Multiannual Financial Framework, irrespective of the ambition of CSPs. Consequently, the European Commission lacks effective incentives or penalties to bolster the environmental ambition levels of CSPs.

114 These EU Member States are: Belgium-Flanders, Bulgaria, Cyprus, Germany, Denmark, Greece (Ellas), Spain, France, Croatia, Ireland, Italy, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania, Sweden.

115 These EU Member States are: Austria, Finland, Hungary, Slovenia.

116 The Analysis reports 26% for Belgium-Wallonia and Latvia, 28% for Slovakia and Estonia, 30% for Czech Republic and 32% for Netherlands.

The newly established European Scientific Advisory Board on Climate Change¹¹⁷ confirmed these concerns in its 2024 assessment report titled “Towards EU climate neutrality. Progress, policy gaps and opportunities”. The report highlighted that agricultural emissions have remained stagnant since 2005, emphasizing the need for reductions to align with the EU’s climate objectives. The board also noted a policy inconsistency at the EU level, as the Common Agricultural Policy continues to provide direct support to emission-intensive agricultural practices, such as livestock production, while a significant portion of the CAP budget is allocated to activities that do not inherently contribute to climate mitigation. Consequently, the European Scientific Advisory Body suggested that «the CAP should be reformed to include standalone emission reduction objectives in addition to obligations to pursue other environmental and sustainability objectives».

CONCLUDING REMARKS

The extremely succinct overview of certain elements of the CAP 2023-27 presents a concerning array of objectives that appear unattainable, rules that lack clarity for effective implementation, and indicators that fail to measure tangible environmental and climate impacts. Analyses of the CAP’s implementation and anticipated outcomes in terms of environmental and climate performance paint a pessimistic picture. It appears that the CAP is falling short of meeting the ambitious goals set forth by the Green Deal agenda.

In addition to the structural weaknesses of the policy, the opposition from stakeholders that have sparked protests among farmers across Europe, and, more importantly, concerns about European food security induced by the outbreak of the war in Ukraine, have led to a reconsideration of the initial perspectives. Under the Common Agricultural Policy in force until 2022, Member States have been authorized to derogate from conditions related to the greening payment, including the use of plant

¹¹⁷ The European Scientific Advisory Board on Climate Change is an independent scientific advisory body providing the EU with scientific knowledge, expertise and advice relating to climate change. The Advisory Board identifies actions and opportunities to achieve the EU’s climate neutrality target by 2050. The Advisory Board was established by the European Climate Law of 2021 (Regulation (EU) 2021/1119) with a mandate to serve as a point of reference for the EU on scientific knowledge relating to climate change by virtue of its independence and scientific and technical expertise.

protection products, for the claim year 2022 concerning fallow land declared to meet the crop diversification or ecological focus area requirements. These derogations aim to address the impact on the supply and demand for agricultural products by allowing an increase in the total arable land area available for the production of food and feed. The effectiveness of green and climate measures has been further undermined by subsequent derogations in 2023 and 2024 .

Besides the derogations that are further weakening an already struggling agricultural governance system, and alongside the deficiencies in indicator development, a notable challenge emerges from the accountability delegated to EU Member States. Agriculture is a delicate sector, and implementing measures aimed at fostering more sustainable food systems can pose challenges, potentially affecting farmers and leading to higher food prices.

The implementation of the new CAP is facilitated through the 28 CAP Strategic Plans. This innovation has the potential to tailor the Common Agricultural Policy to accommodate the diverse farming models across Europe. However, entrusting the implementation of the Common Agricultural Policy to Member States presents several challenges and drawbacks.

Granting Member States full control over CAP implementation may lead to variations in ambition and commitment to CAP objectives. Some Member States may prioritize certain aspects of the CAP, such as economic interests, over others, such as environmental sustainability or social welfare. This could result in a dilution of the CAP's intended impact and hinder progress towards overarching EU goals, such as climate action and biodiversity conservation. Many EU countries have demonstrated reluctance to introduce environmentally-oriented measures, opting instead to allocate significant funds to agricultural practices that barely exceed the status quo or minimum requirements for receiving EU agricultural funds.

Moreover, the new implementation system may foster inconsistency and fragmentation in the application of CAP measures across different Member States. This could lead to unequal treatment of farmers and regions within the European Union. Such lack of uniformity has the potential to undermine the overall effectiveness of the CAP in achieving its objectives.

Over time, environmental sustainability objectives have been complemented by considerations for social sustainability. The introduction of social conditionality marked a significant stride toward improved protection of agricultural workers. However, within this positive framework, the absence of a harmonized sanctioning system may result in varying treatment of farmers across the EU. Granting Member States discretion over the extent of sanctions could create an unequal playing field for producers in different EU countries, which could be exacerbated by varying levels of diligence in monitoring.

While allowing Member States flexibility in CAP implementation can address local needs, the reliance solely on Member States for implementation poses risks. It may undermine coherence, consistency, and accountability in achieving EU-wide agricultural and rural development objectives. Moreover, it opens the door to potential distortions between Member States, which could impact the functioning of the European single market.

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