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## Contradictions in the evolution of the CAP

### Contraddizioni nell'evoluzione della PAC

The subject of this article is contradictions in the evolution of the Common Agricultural Policy. The considerations aim to identify these contradictions and their negative consequences. Starting from the peculiarities of the demand for agricultural produce, the author discusses the importance of the Common Agricultural Policy and presents six successive phases of its development. He concludes with a synthesis of the contradictions of the CAP evolution and their negative consequences. He also raises a question as to whether it would be possible to subject commercial activity in agriculture, like in other sectors of the economy, to free competition among a group of states or globally, on the assumption that such competition would be reciprocal and subject to the same standards of quality and food safety.

**Keywords:** Common Agricultural Policy, CAP objectives, prices, market policy, competition

L'articolo si concentra sulle contraddizioni nell'evoluzione della politica agricola comune. Le considerazioni sono volte a determinare le contraddizioni richiamate e a mostrarne le conseguenze negative. L'autore parte da una riflessione circa una peculiarità della domanda di prodotti agricoli, discute l'importanza della politica agricola comune e presenta sei fasi successive del suo sviluppo. Nella parte conclusiva, propone una sintesi di contraddizioni nell'evoluzione della PAC e delle loro conseguenze negative. Formula una domanda circa la possibilità di sottoporre, come avviene in altri settori dell'economia, le attività commerciali svolte in agricoltura alla libera concorrenza tra un gruppo di Paesi oppure a livello globale, sempre che essa sia reciproca e soggetta agli stessi standard di qualità e di sicurezza alimentare.

**Parole chiave:** politica agricola comune, obiettivi della PAC, prezzi, politica di mercato, concorrenza

## 1. The peculiarities of the demand for agricultural products

The economic system, traditionally based on agriculture, changed substantially after the industrial revolution and, above all, has been changing in the 20th century (since the 1930s in the US and since the late 1960s in Europe). There have been two main reasons for this change: an enormous production of goods (including agricultural products) and the invention of fast and cheap means of transport capable of making these products available to everyone quickly, cheaply and in excellent condition anywhere in the world.

These two facts (high production and fast and cheap transportation of goods) have influenced all economic sectors. It is evident that higher production, together with other scientific advances, have raised the standard of living of the people and have positively influenced the various economic sectors. However, agricultural activity has not been affected in the same way as other economic sectors due to certain peculiarities which, on the contrary, have contributed to the relative loss of its importance, to its permanent crisis and, ultimately, to lower farmers' incomes than in other activities.

It can be said that these two facts have configured a new paradigm of agricultural activity.

a) Fast and cheap transportation has resulted in the non-existence of a relative autarchy imposed by nature: we are in a globalised world. The agricultural economy, because of this circumstance, together with the possibility of food preservation, has been transformed into an economy that is not necessarily autarchic, as it has been (with the exception of a few non-perishable products) throughout history.

b) Overproduction of food, in an economic sector governed by inelastic demand, has had two fundamental consequences, among others.

1. The fall in prices and the relative decline in farmers' income. Engel's Law and the "King effect." The very high production achieved not many decades ago means more supply and, consequently, lower product prices. However, this fact has not had the same effect on the different economic activities in general and on agriculture in particular, because there is one fact that differentiates them: while the increased production of non-food products can be absorbed by people (demand increases), this is not the case with foodstuffs, because their consumption is limited by nature.

The conclusion is obvious: farmers' incomes have fallen relatively, that is, they have fallen compared to those obtained in other economic sectors. What is more: a very high food overproduction that cannot be absorbed by

the market may cause such a drop in prices (below their costs which then creates the well-known “King effect”) that farmers will suffer losses.

When considering the specialty of agricultural activity,<sup>1</sup> following Alberto Germanò, José María de la Cuesta Sáenz considers that the specialty of the agricultural activity is based on two economic reasons: (i) that it is an activity subject to factors beyond human control (such as climate and environmental risks); (ii) that it’s a “commercial aspect is notably influenced by the inelasticity of demand, which does not grow with consumers’ disposable income (Engel’s Law), and that for this very reason it suffers from the so-called “King effect,” which explains why prices fall more than proportionally to the excess supply, to the production surpluses that periodically arise, as well as to the seasonality of many productions.”<sup>2</sup>

Based on this postulate, the author concludes, following Germanò, that the farmer, “whether his production is abundant or scarce, may on the one hand suffer insufficient income to meet his costs, and, on the other hand, cannot expect that the improvement in income and collective welfare will result in a higher consumption and increased demand for his products.”<sup>3</sup>

It is important to note that the considerations made are only predictable when there is a huge food production (when supply exceeds demand), which is typical only of today’s industrial societies. In previous times, production, except occasionally in some years and with regard to some specific product, was systematically lower than the demand, and therefore agriculture, compared to other activities, was a profitable activity and the farmer in general enjoyed a higher standard of living than those engaged in other activities.<sup>4</sup>

2. Reduction of production costs: reduction of the agricultural population. Given a certain quantity of food produced with more productive means implies that less effort will be needed to achieve the desired result, i.e.

<sup>1</sup> For the jurisdictional field, see E. Muñoz Espada, *La especialización de los órganos judiciales en Derecho agrario*, Madrid 2023.

<sup>2</sup> J.M. de la Cuesta Sáenz, *El Derecho agrario y su especialidad. Fuentes y reparto competencial*, in: E. Muñoz Espada, P. Amat Llombart (eds.), *Tratado de Derecho agrario*, Las Rozas (Madrid) 2017, pp. 45–46.

<sup>3</sup> *Ibidem*, p. 47.

<sup>4</sup> J. Clemente Ramos, *La economía campesina en la corona de Castilla (1000–1300)*, Barcelona 2004. It tells us (especially pp. 239 ff.) of the relative good economic level of the peasantry of Castile in the period between the 11<sup>th</sup> and 13<sup>th</sup> centuries. An exceptional synthesis of the influence of agriculture and land ownership on law and society can be seen in J.B. Vallet de Goytisolo, *Relaciones jurídicas estudiadas por la ciencia del Derecho agrario*, in: J.M. de la Cuesta Sáenz et al. (eds.), *Libro Homenaje a Alberto Ballarín Marcial*, Madrid 2008, especially pp. 3–10.

a production costs decrease. This cost reduction is basically due to the use of machinery and automatic systems (think of the high degree of automation, the use of drones, new technologies and the so-called intelligent agriculture<sup>5</sup>), which has made it possible to dispense (as in other sectors) with a large part of the labour force, which is increasingly scarce in farms.

At the same time, low profitability has driven many farmers, especially smallholders, out of the production market.

The result has been a continuous and accelerated decline in the agricultural population (farmers and employees) and a rural exodus, the latter more pronounced in areas with a shortage of industries and services.

c) An increase in the price of agricultural products does not always imply a decrease in their demand. Food, as with other products (e.g., luxury goods), has a behaviour in the economy that, in many cases, differs from the general behaviour of the different products. Among these exceptions, the one that concerns us now, called Giffen's paradox, is very interesting.<sup>6</sup>

## 2. Meanings of the CAP

In contrast to the non-intervention of the public authorities, in accordance with the market economy advocated by the EU in general for the various economic sectors, agriculture, as is customary in most countries, is subject to intervention, with the existence of the Common Agricultural Policy (CAP) within the EU.

As the European Parliament itself acknowledges, the reasons (motives and purpose) justifying a CAP were partly similar to those generally put forward for this purpose,<sup>7</sup> except that – and this is important – they do not

<sup>5</sup> Regarding the risks derived from the use of new technologies and smart agriculture and the subsequent need for protection against cyber attacks, see E. Muñoz Espada, *Derecho agroalimentario y ciberseguridad*, Madrid 2019.

<sup>6</sup> R.A. Bilas (*Teoría microeconómica*, Madrid 1986, p. 32) summarises it for us with the following words: “Although the law of demand suggests that demand curves slope downwards to the right, there is an exception, as happens to almost all rules and laws. This exception is the classic case of the so-called *Giffen goods*, for which – bread, for example – an increase in price causes such a significant reduction in the resources of a poor working family that it is forced to reduce its consumption of goods. meat and other expensive foods; and since bread continues to be the least expensive food, it will be demanded in greater quantities to meet the family's food needs.”

<sup>7</sup> In the official website of the European Parliament, the existence of a CAP in the Treaty of Rome was justified, among others, by the following reasons: “On the other hand, intervention in agriculture was based on the principle, very widespread at that time, of the specificity of the sector, which was highly dependent on climate and geographical conditions, and experi-

include among these reasons the overproduction of food (“when there is little supply...”) and the consequent “King effect.”

Since the EEC came into being at a time of food shortages (the Second World War had just ended), it seems more understandable or justifiable, at least in principle, that an interventionist and productivist agricultural policy was adopted with the aim of ensuring supply at affordable prices and guaranteeing a fair level of income for farmers.<sup>8</sup>

Although with certain variations in the means used, the same objectives have remained the same in the successive amendments to the Treaties. According to Art. 39.1 TFEU (former Article 33 TEC): “The objectives of the common agricultural policy shall be:

a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

c) to stabilise markets;

d) to assure the availability of supplies;

e) to ensure that supplies reach consumers at reasonable prices.”

It is important to highlight the following facts in this matter.

In the first place, although all of them are qualified as objectives, in reality, a distinction must be made between the objectives or aims in the proper sense (letters b, d and e of the transcribed Article) and the means to be used to achieve those objectives (letters a and c of the precept).

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enced systemic imbalances between supply and demand, and, consequently, strong price and income volatility. [...] Food demand is not flexible, that is, it varies little depending on price fluctuations; On the other hand, the duration of production cycles and the immutability of production factors make the global supply of agricultural products very rigid. Therefore, an abundant supply causes price drops and, conversely, when there is little supply, prices rise. All these elements lead to permanent market instability. Faced with this situation, public authorities have always tended to regulate agricultural markets and maintain producers’ income, a trend that the CAP has inherited.” See: <https://www.europarl.europa.eu/factsheets/es/sheet/103/la-politica-agricola-comun-pac-y-el-tratado> [accessed on 16.11.2021].

<sup>8</sup> Basically, as T. Prieto Álvarez, *Agricultura*, in: A. Calonge Velázquez (ed.), *Políticas Comunitarias. Bases jurídicas*, Valladolid 2002, p. 54, “starting from the premise, unquestionable at that time – and still today – of the need to maintain public supervision over agriculture, by virtue of its special characteristics, the replacement of national measures to support agriculture was essential. agriculture by common regimes. In short, those protection measures, more or less strict depending on the States, could not be abandoned without causing serious repercussions on the social level.”

Secondly, there seems to be a double contradiction in the commented precept:

- on the one hand, there is a clear contradiction between the objectives (which are really means to achieve the objectives) of “increasing agricultural productivity” and that of “stabilising markets” (respectively, letters a and c of the article)<sup>9</sup>;

- on the other hand, there also seems to be a clear contradiction between the objectives included in letters b) and e): to increase farmers’ income and ensure supplies to consumers at reasonable prices, as we will see in the following pages, apart from the fact that, if these objectives could be achieved at the same time, it would be at the expense of the consumer as a taxpayer.

The bases on which the common agricultural<sup>10</sup> policy has been based are three: market unity, that is, the free circulation of products between member states; community preference, under which the CAP protects the internal market against foreign agricultural products; and financial solidarity, which means that the CAP is financed by all Member States, and for this purpose the European Agricultural Guidance and Guarantee Fund (EAGGF) was created in 1962.

The instruments or means used by the CAP to achieve its objectives are four: price and market policy, foreign trade policy, socio-structural policy and harmonisation of legislation. For the purpose of this study, we shall deal only with the first two of these means or instruments, which, as we shall see, can basically be merged into a single means.

In economic history, it is common for the authorities to intervene in agricultural activity by regulating prices and markets in order to keep it away from free competition. Some authors have put forward political or customary reasons for this. The fact that an economic activity is subject to production factors beyond human control (such as climate and environmental risks) has also been cited.<sup>11</sup> It does not seem, however, that this circumstance justifies the intervention of the legislator in the regulation of prices and markets, but rather in other aspects that affect agricultural production and that make up

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<sup>9</sup> J.L. Palma Fernández, *Los derechos de producción en las explotaciones pecuarias*, “Revista de Derecho privado” 1997, no. 81 (1), p. 6.

<sup>10</sup> The term agriculture must be understood in a broad sense, therefore, as established in Art. 38 TFEU (former article 32 TEC), “agricultural products mean products from the land, livestock and fisheries, as well as first processing products directly related to them.”

<sup>11</sup> On the issue, see L.A. Bourges, *Evolución del Derecho de la agricultura: las fases históricas y la redefinición del Derecho de la agricultura frente a los nuevos desafíos del siglo XXI*, in: E. Muñiz Espada, P. Amat Llombart (eds.), *Tratado...*, pp. 69–103.

the traditional content of agricultural law, whether they refer to the subjects of this activity (such as the rules relating to the individual farmer, agricultural companies or professional organisations and chambers<sup>12</sup>), to production itself (plant and animal health or food quality, etc.) or to other aspects: insurance, rural leases and a long etcetera.<sup>13</sup>

The real reason for public intervention in prices and markets that is commonly admitted is the fact (of a commercial nature and already analysed) of the consequences of an inelastic demand in an era, such as the present one, in which there is an agricultural overproduction: “the decrease in prices in this sector which leads irremediably to a decrease in farmers’ income.”

To remedy this consequence, and in contrast to what happens in other sectors generally governed by the free market, public intervention is intended to maintain or increase agricultural income. To this end, two types of means, compatible with each other, are generally used:

1) Direct aid to farmers (“social option”),<sup>14</sup>

2) Price support (“economic option”), i.e., the establishment by the authority of a price higher than that determined by the market in order to increase farm income, forcing the authority to purchase surpluses at the pre-established price. Within this class, either for one, a group or all agricultural products, one or more (sometimes in combination) of the following models are adopted: simple price support, price support by reducing production, compensatory payments; and, with regard to foreign trade, among others: the imposition of tariffs and the establishment of export subsidies.

### 3. The different stages in the evolution of the CAP’s prices and market policies

#### 3.1. The first phase: from the beginning of the EEC until 1991

a) The content of the CAP at this stage. As we know, the protection of agricultural activity is usually carried out basically through two systems: (i) through the establishment of guaranteed prices (the so-called “economic option”); and (ii) through the granting of direct aid to farmers (the so-called “social option”).

<sup>12</sup> See for both European and Spanish law: J.L. Palma Fernández, *Las organizaciones interprofesionales agroalimentarias. Regulación jurídica*, Madrid 2023.

<sup>13</sup> J.M. de la Cuesta Sáenz, *El Derecho agrario...*, pp. 47–48.

<sup>14</sup> About the different types of support, see E. Muñiz Espada, *Hacia unas nuevas relaciones entre el Registro Mercantil y la actividad agraria*, Madrid 2020.

In this first long stage, in which obviously at least two different phases or periods can be distinguished, the objectives of the CAP (fundamentally to guarantee an equitable level of the agricultural population) were intended to be achieved through the system of guaranteed prices and not through the system of aid to farmers. The instruments used from the beginning to achieve these objectives were so called Common Market Organisations (CMO), with four main types, in which almost all products were included.<sup>15</sup>

Therefore, in order to achieve its objectives, the CAP opted for “increasing agricultural productivity” (Art. 39(a) TFEU), which, depending on the different types of CMOs, took the form of: fixing a guaranteed minimum price (intervention or withdrawal price), measures on exports and imports, complementary aid (basically to the olive oil processing industry) and, finally and residually, flat-rate aid (only affecting products representing 1% of the FAP).

b) Criticism of this first stage. Opting at this stage for “increasing agricultural productivity” (Art. 39(a) TFEU), the CAP developed a market policy, boosting prices, which resulted in unlimited overproduction, with supply far exceeding demand. This being said, two phases or periods can be distinguished in this stage.

For the first of these, which lasted until the end of the 1960s, a period in which there was no major food production (recall in this regard the justification for the CAP given by the European Parliament and transcribed above), the solution adopted by the CAP was more understandable.

However, after that date, in a second period or phase, once food self-sufficiency had been achieved in the EEC, there was little justification for continuing with the same policy of encouraging production and, nevertheless, it

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<sup>15</sup> 1) The first type was made up of CMOs with intervention and protection from the outside, which of, etc. They were characterised by different measures. One was the setting of a guaranteed minimum price (intervention or withdrawal price), while particularly for the avoidance of the import from abroad of products at very low prices – measures were established on exports and imports (customs duties, safeguard clauses, etc.). 2) The second type was made up of CMOs for protection from the outside, since they were made up of very competitive products: flowers, quality wine, etc. 3) The third type (which included olive oil) were CMOs with complementary aid (basically to the processing industry), in which protection mechanisms against the outside world were prohibited. 4) Finally, there were the CMOs with global aid to producers, in which flat-rate aid was granted (for example: per hectare, per quantity produced). They included products such as seeds or silkworms and represented only 1% of the production of the Final Agricultural Production (PAF).



was not corrected; on the contrary, the measures adopted led to the existence of a huge amount of surpluses.<sup>16</sup>

1) Effects of the CAP in this second period: The negative effects were evident. ones in particular? Well, all those derived from a price support policy, among which we will highlight the most important ones.

- high production, since, having been guaranteed a price above the market price, farmers will tend to produce in greater quantities. High production, which has been reiterated here several times because of its importance, is also the cause of most of the other negative aspects;

- the increase in production costs. Production costs increase for two reasons: (i) because when a price is set above that which corresponds to the free market, farmers tend to produce more in order to obtain higher profits; and this always implies an increase in costs: purchase of fertilizers, seeds, machinery, etc. and (ii) because there is an artificial increase in the price of land and other specialised resources, which leads to an increase in production costs<sup>17</sup>;

- no benefit to small farmers;

- a large cost to taxpayers as a result of surpluses.<sup>18</sup>

2) Conclusion. This was a truly artificial market (not subject to the much-appreciated and much-vaunted law of supply and demand, also for agricultural products within the EU), against which not only the taxpayer but also the producing third countries were entitled to protest. Moreover, it

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<sup>16</sup> J.L. Palma Fernández, *Derecho agroalimentario*, Madrid 2018, p. 54, with reference to the end of the 60s of the last century, he says that “self-sufficiency in community food postulated a regime of a CMO for each product, defining common prices for each year, intervention authorizations and subsidies (restitutions) to export.”

<sup>17</sup> E.C. Pasour Jr, R.R. Rucker, *La agricultura y el Estado. Un análisis crítico sobre la intervención del Estado en la agricultura*, Madrid 2018, p. 199: “When the price of the product is increased above the market level [...], the prices of land, rights to produce, skilled workers and other specialised resources are pushed up, so that expenditures on production tend to equal the price. of the product.”

<sup>18</sup> In a price support system (e.g. guaranteed prices) a price above the market price is set and the authority setting the price purchases (purchases) the surplus. It can easily be seen how in a system in which overproduction is promoted, the costs of acquiring surpluses are enormous. The funds allocated to the CAP at this stage were obviously immense. Since its inception, the European Agricultural Guidance and Guarantee Fund (EAGGF) has been increasing its budget, which led the Community to a financial crisis: at the end of the 80s of the last century it represented 75% of the community budget, which was clearly disproportionate and unjustified. It should be noted that the continuous increase in resources was largely due to the financing of European products compared to foreign ones with a more competitive price.

was a system which, due to agricultural overproduction, had led to a major environmental degradation.

Notwithstanding the above, the most criticisable aspect of this stage is that, having achieved food self-sufficiency, the main objective of the CAP – to guarantee a fair standard of living for the agricultural population – has not been achieved. The European legislator, by promoting overproduction, proceeded in ignorance of the special nature of agricultural activity in this respect, establishing a system that had already failed, i.e. one that had already experienced the same consequences (see the work cited above) in the USA thirty years earlier.

No account was taken of the fact that overproduction, even when it results from price support, does not increase the income of farmers, and especially of small producers: on the contrary, it normally decreases it.

In this context, the CAP made “traders richer than farmers” and “the rural exodus took on major proportions.”<sup>19</sup>

### 3.2. The second phase: from 1992 to 1998

a) The content of the CAP at this stage. In order to alleviate the problems of the CAP and taking into account the reasons for its failure (failure to increase agricultural incomes and, above all, the endemic problem of surpluses and the costs they entail for taxpayers), a 180-degree turn has been made in this area.<sup>20</sup> Indeed, the criterion of supporting increased production (Art. 39(a) TFEU) had been discarded and the opposite criterion, i.e. “stabilising markets” (Art. 39(c) TFEU) adopted. The main features of this stage are as follows.

1) Reduction of production (“extension of stabilisers”) in order to reduce EAGGF-Guarantee expenditure<sup>21</sup> in order to reduce production, stabilisers were extended to almost all agricultural products. The so-called stabilisers

<sup>19</sup> T. Prieto Álvarez, *Agricultura*, p. 73.

<sup>20</sup> In what is known as the “Commission Green Book,” adopted on July 23, 1985, a diagnosis of the CAP is made and it can be said to be the inspiration for this second stage.

<sup>21</sup> When community legislation spoke of “extensification of production,” the opposite was meant, that is, extension or expansion of production stabilisers (quotas, limitations, etc.). This is a translation error, as is evident simply by taking into account Council Regulation (EEC) No. 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures, whose Art. 3.2 states: “Extensification shall be considered the reduction, over a period of at least five years, of the production of the product in question by at least 20%, without thereby increasing the quantities of other surplus products. However, this increase may be accepted if it is proportional to an eventual increase in the useful agricultural area of the holding.”

were aimed at curbing production and consisted basically of quotas and other limitations on production, temporary and quantitative restrictions on production, etc. Among all the measures of this reformed CAP, two groups stand out.

One was the lowering of guarantee prices, which was counterbalanced or cushioned by a system of direct subsidies without taking production into account: for example, aid per head of livestock, per area sown, etc.

The second group of measures to reduce production consisted of various subsidies for reducing certain types of production (e.g. sheep) and the introduction of production quotas for dairy products.

2) Alongside this reduction in production, “complementary socio-structural measures were put in place,” which basically had two aims: to contribute to the adjustment of supply and demand by reducing cultivated land,<sup>22</sup> and to compensate farmers for the negative impact of the stabilisers (reduction in production) on their income level.<sup>23</sup>

b) Criticism of this stage- the ultimate aim of agricultural support is to guarantee farmers’ incomes. However, the reform not only failed to achieve this main purpose, but also had other negative aspects.

1) The bulk of the reform was to replace the previous system of simple price support with one of price support by reducing (or controlling) production. To a large extent, the same approach as the US legislator had used decades earlier was followed and, logically, the results were similar: restrictions on land use had not led to the expected decrease in production; moreover, this restriction and the quotas had the effect of increasing production costs.<sup>24</sup>

2) A system such as the one described above obviously turns agriculture into an assisted sector, which, moreover, means an imposition of obstacles to the future of rural areas, all linked to an obvious reality: the lesser weight of agriculture in human productive activity. In this context, it is undeniable that when aid is granted on a flat-rate basis (per head of livestock, per hectare sown, even if it is not harvested), it encourages neither work nor the modernisation

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<sup>22</sup> To achieve this first goal, two measures were established: a regime for withdrawing land from production (with payment of premiums to farmers who withdraw their land from cultivation) and a regime to encourage the cessation of agricultural activity (early retirement).

<sup>23</sup> To this end, two measures were introduced: a regime of direct aid to farmers (transitional and decreasing) and a system of reconversion of surplus products, such as, for example, premiums for the use of intensive cultivation techniques.

<sup>24</sup> E.C. Pasour Jr, R.R. Rucker, *La agricultura y el Estado...*, especially pp. 213–215, 220–221.

and competitiveness of farms. In this sense, as José Luis Palma Fernández stated, “the peculiar method of abandoning land or certain crops (especially cattle) is an agricultural measure with anti-farming overtones: it is an attempt to fix agriculture by expelling (with incentives, of course) many farmers, who would have been quasi-delict in another era under other legislation.”

3) On the other hand, this system established a bureaucratic control system that was not only cumbersome and difficult to comply with, but also (and this is the most serious) conducive to fraud: there were well-known reports such as the “transfer” of livestock on the day of administrative control or those concerning olive groves in Italy, where there were cardboard (and transportable) olive trees, a circumstance that could not be detected by aerial photographs or satellites.

### 3.3. The third phase: from 1999 to 2008

In this stage of the CAP, in addition to correcting the shortcomings of the previous one, budgetary reasons, international pressures to free up markets and the planned enlargement of the EU, among other circumstances, were also taken into account.

Two phases or periods should be distinguished within this stage.

a) “Agenda 2000” – this began in 1999 with the extensive legislative content of the so-called “Agenda 2000,”<sup>25</sup> which covered four main and closely related aspects: CAP reform, structural policy reform, accession instruments and the new financial framework. This covered four main and closely inter-related aspects: the reform of the CAP, the reform of the structural policy, the accession instruments and the new financial framework.

The objectives of the new CAP were: to increase the competitiveness of EU agricultural products, both on the European and world markets; to protect

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<sup>25</sup> The origin lies in the Communication “Agenda 2000: for a stronger and broader Union” (COM [97] 2000), which the EC Commission presented to the Member States on 16 July 1997. This Communication contained certain priorities that were particularly highlighted: the need to maintain economic and social cohesion policy, continue the reform of the CAP, promote growth, employment and living conditions through internal EU policies and allowing the accession of new states, while maintaining budgetary rigor. To specify the aforementioned priorities in legal instruments, on March 18, 1998, the Commission presented a series of legislative proposals on the different aspects contained in its communication. At its meeting in Berlin on 24 March 1999, the European Council reached a political agreement on the Commission’s proposals, allowing the European institutions to continue analysing the “Agenda 2000” legislative package and adopt definitive measures. before or very shortly after the June 1999 elections to the new European Parliament.

the environment; to protect consumers; to guarantee fair incomes for farmers; to improve food safety; to simplify agricultural legislation and decentralise its application; to achieve economic and social cohesion; to strengthen the EU's position in the next round of WTO negotiations and to stabilise agricultural expenditure, in real terms, at the 1999 level. It was also intended, and this is the second pillar of the CAP, to develop rural policies to promote alternative employment to agriculture in the strict sense of the term.<sup>26</sup>

In order to achieve its objectives, the new CAP adopted two types of regulations in the area of market and price policy: on the one hand, regulations amending the CMOs in certain sectors and, on the other hand, regulations establishing horizontal measures.<sup>27</sup>

b) The mid-term review of 2003 a reform of the CAP in 2003 was foreseen in Agenda 2000, but after some vicissitudes it was approved in June 2003, to be implemented from 2004 until December 2007.<sup>28</sup> The three fundamental new features of the reform relating to the market and prices were the single payment, cross-compliance and modulation. It is a radical reform, a turning point for the CAP, as it definitively departs from the system that has traditionally supported agriculture. This is a radical reform, a turning point for the CAP, as it is a definitive departure from the system that has traditionally supported agriculture. As José María de la Cuesta Sáenz states, “it is the liberalising requirements [...] that provide the basis for the decoupling of

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<sup>26</sup> For the period 2000–2007, see C. Vattier Fuenzalida, *La política agrícola común y el desarrollo rural*, in: Á. Sánchez Hernández (ed.), *Principales novedades legislativas en el régimen jurídico de la actividad agraria*, Logroño 2007, pp. 11–20.

<sup>27</sup> The new regulations reforming some CMOs affected several sectors. Firstly, to arable crops, beef and milk, in which the intervention price was progressively reduced, while, in compensation, a series of direct aid was granted, calculated on the basis of production. annual of the agricultural product in question. Secondly, the new regulation on the wine market limited production, for which purpose the prohibition on new plantations was maintained until 2010. Furthermore, the community premiums could be supplemented with other national ones. A horizontal regulation, applicable to the different CMOs, contemplated compliance with environmental and employment requirements by farmers for the granting of direct aid, the purpose of which was to “improve competitiveness both in internal markets and in the world championships, thus limiting the risk of a return to the production of expensive surpluses and, in part, without the possibility of being sold.”

<sup>28</sup> Among the regulations, the Council Regulation (EC) No. 1782/2003 of 29 September 2003 stands out, establishing common provisions applicable to direct support schemes within the framework of the common agricultural policy and establishing certain support schemes for farmers and amending certain Regulations. This Regulation establishes in its title III a new single payment regime.

the single aid from production and the conditionality of its collection with respect to the “statutory management requirements.”<sup>29</sup>

Indeed, the new system “abandons the policy of price and production support and adopts a more general policy of income support for farmers.”<sup>30</sup>

The reform introduces, among others, a transcendental novelty: a single aid, the *single payment*, which means that production aid is replaced by aid to farmers. This is a system of aid that is decoupled from the production of each farm and conditional (*cross-compliance*) on compliance with a set of food safety, environmental and animal welfare requirements and the maintenance of the farm in good agricultural condition.

*Modulation* consists of a reduction in direct aid to farms receiving more than €5,000 per year in direct aid, in order to finance the new rural development measures.

It is important to note that Council Regulation (EC) No. 1234/2007 of 22 October 2007 establishes a Single CMO, integrating the 21 agricultural sectors which until then had been were organised in individual CMOs. This introduces a single legal framework in the internal and external market, characterised by the fact that, “as far as price support is concerned, only intervention prices are retained as guaranteed prices below which quantities produced are bought in and stored by an intervention agency designated by the Member States.”<sup>31</sup>

### c) Criticism of the third stage

1) The 1999-2002 reform is not consistent in granting direct aid with the objective of “improving competitiveness on both domestic and world markets, thus limiting the risk of a return to the production of costly and, in part, unsaleable surpluses.” Let us explain: direct aid to improve competitiveness does not necessarily have to have the consequence of improving competitiveness; but, in any case, competitiveness (which really consists of

<sup>29</sup> J.M. de la Cuesta Sáenz, *La política agrícola común y la aplicación en España del pago único*, in: Á. Sánchez Hernández (ed.), *Principales novedades legislativas...*, pp. 22–23.

<sup>30</sup> Á. Sánchez Hernández, *La Organización Común del Mercado del vino: una propuesta entre el presente y el futuro. Propuesta de Reglamento del Consejo por el que se establece la Organización Común del Mercado vitivinícola y se modifican determinados Reglamentos [Bruselas, 4/7/2007 – COM (2007) 372 final]*, in: J.M. de la Cuesta Sáenz et al. (eds.), *Libro Homenaje...*, pp. 507–529. The author (p. 509), to the three novelties referred to, adds two other aspects as keys to the reform: “a reinforced rural development policy” and “a financial discipline mechanism that guarantees that the agricultural budget set until 2013 is not overcome.”

<sup>31</sup> P. Gil Adrados, J.M. Suárez Peces, *Régimen jurídico de la producción ganadera en las distintas políticas de la Unión Europea y su implementación en España*, in: E. Muñoz Espada, P. Amat Llobart (eds.), *Tratado...*, p. 666.

producing more or the same at lower costs) is incompatible with trying to achieve at the same time, as is advocated, a decrease in production.

On the other hand, preventing beef surpluses by granting slaughter and production reduction premiums (extensification) may constitute an administrative intervention which, except in exceptional situations, is certainly uneconomical. As for the prohibition of new vine plantings, apart from being alien to the principles on which private property is based (Art. 348 of the Spanish Civil Code), it is clearly contrary to the competitiveness so much sought after at this stage.<sup>32</sup>

2) The 2003 reform introduced *the single payment* that is open to criticism insofar as farmers are allocated payment entitlements calculated on the basis of the support they received in a certain reference period (the years 2000-2002), thereby establishing a payment decoupled from production (decoupling); in other words, the farmer is granted support regardless of whether he produces or not.

This system is reminiscent of the Ancien Régime, of a time of guilds and social groups. It seems clear that linking support to historical rights is, moreover, contradictory to the very essence of a modern state (social justice and equality) and to the very purpose of the CAP, which is to ensure that farmers (all farmers) achieve “a fair standard of living” and “an increase in the individual income of those engaged in agriculture” (Art. 39 TFEU).

Surprising is also the strange figure of the lump sum, which was certainly conceptualised in the following terms: “Now, specifying to a greater extent the qualifications that have been made, it must be agreed that this subjective patrimonial right that has an incorporeal object, is ultimately nothing other than a kind of credit *vis-à-vis* the Public Administration, consisting of a periodic monetary benefit – annual to be more exact – and of an indeterminate amount, but annually determinable in accordance with the applicable regulations.”<sup>33</sup>

We cannot be surprised, therefore, by the special legal nature of the single payment (decoupled from production), since, among other particularities, “similar to the old rights or production quotas, the new right to aid not only constitutes a new legal good, with all that this entails, but can circulate freely in the market and even, under certain conditions, independently of the land.”<sup>34</sup>

<sup>32</sup> The current regulation was Regulation (EC) No. 1493/1999, of the Council, of May 17, 1999, establishing the common organisation of the wine market, later repealed by Regulation (EC) No. 479/2008, of the Council, April 29, 2008.

<sup>33</sup> J.M. de la Cuesta Sáenz, *La política agrícola común...*, p. 29.

<sup>34</sup> C. Vattier Fuenzalida, I. Espín Alba, *Derecho agrario*, Madrid 2005, p. 247. On the legal regime of the single payment see: J.M. de la Cuesta Sáenz, *La política agrícola común...*,

Finally, this peculiar single payment, granted for the simple fact of owning land and not for producing, also has as an added effect – this is inevitable – an increase in the price of land ownership and rentals, since the owners, who doubts it, increase the rent in proportion to the income that the tenants obtain from the aid.<sup>35</sup>

3) Let us address a crucial question, the so-called social legitimacy, which basically alludes to the fact (and we stick to the scope of the CAP) of whether it is justified, because it is fair and equitable, that at the expense of the budget (that is, with citizens' taxes) certain aid is granted to agriculture. Well, as we already argued for the previous stages, the system introduced in 2003 can be perfected. Let us see, then.

As Eugenio Cejudo García and Juan Carlos Maroto Martos point out, “one of the reasons – at least that is how it was expressed by its promoters – that promoted the 1992 reform was the realisation that 20 percent of European agricultural holdings received 80 percent of the community aid. The reform approved in those years – and maintained without essential changes in Agenda 2000 – based on historical performance and far from any updating modification, also made it more socially visible. This meant questioning not only the system but also the agricultural aid itself. [...] As we have already stated, the unequal distribution of agricultural aid continues and the system of dissociation based on the aid received during the reference period 2000–02 will not change.”<sup>36</sup>

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p. 30 ff. where, regarding its acquisition, it distinguishes between the original and the derivative (*mortis causa* and *inter vivos*).

<sup>35</sup> Furthermore, *conditionality*, as it was conceived, had negative aspects in that it represents a considerable increase in operating costs.

<sup>36</sup> E. Cejudo García, J.C. Maroto Martos, *La reforma de la PAC 2003: desacoplamiento, condicionalidad, modulación, desarrollo rural*, “Scripta Nova: Revista electrónica de geografía y ciencias sociales” 2010, vol. XIV, no. 318. And then they explain the data: “In effect, with data from the years 2002–04 (European Commission, 2003; 2004b), the recipients who received average annual aid of less than €10,000 for the entire EU-15 were the 86.91 percent, monopolising 25.7 percent of the funds. 28.12 percent of the funds went to 1.56 percent of the recipients who received on average more than €50,000 for the period, while those who received between €10 and €50,000 were 11.53 percent and They accounted for 44.4 percent of the funds. These values are similar to those observed for our country with an important nuance: the greater significance of small recipients compared to the European average to the detriment of those who earned more than €50,000. In fact, small recipients were almost 90 percent of the total (88.88%, two points more than in the EU-15) and obtained 34.08 percent of the aid (6.5 points more than the EU-15). 15) while the maximum recipients are reduced to a mere 1 percent (half a point less than in the EU-15) and 21.74 percent of aid (6.5 points less than in Europe).”



What is more: the beneficiaries of agricultural aid, and this is unacceptable, frequently are not farmers. In the *Annual Report of the Court of Auditors of the European Communities on budget execution*, relating to the 2006 financial year, there is included Observation 5.69 which states: “Among the new beneficiaries [of direct aid], the Court highlighted the railway companies, the riding horse breeding, golf leisure clubs and town councils in Germany, Denmark, the United Kingdom and Sweden (see sections 5.25 to 5.27). The allocation of rights to landowners who have never carried out an agricultural activity and who simply keep the land in good agricultural and environmental condition has led to a significant redistribution of Community aid from farmers to landowners, in particular in the dynamic hybrid model.”<sup>37</sup>

### 3.4. The fourth phase: from 2009 to 2014

As a consequence of the Communication entitled “Preparing for the ‘health check’ of the CAP reform,” of 2007, presented by the Commission to the Council, the previously analysed Regulation 1782/2003 was repealed and others were approved, among which is worth highlighting Regulation (EC) No. 73/2009, of the Council, of January 19, 2009.<sup>38</sup>

This new legislation, in which resources allocated to the CAP continue to be reduced, could be described as transitional, and in it “the Council of EU Agriculture Ministers adopts legislative proposals on the main elements of debate agreed to apply the adjustments necessary and respond to three major pressing questions for European agriculture: simplify and make the direct aid system more effective; “adapt market support instruments in the global context and face the new challenges posed by climate change, the promotion of renewable energies, water management and biodiversity.”<sup>39</sup>

<sup>37</sup> *Informe Anual del Tribunal de Cuentas de las Comunidades Europeas sobre la ejecución presupuestaria, relativo al ejercicio 2006*, approved at its meeting on September 27, 2007 (2007/C 273/01) and published in the OJEU on November 15, 2007. This Observation (5.69) is contained in Chapter 5 of the Report, relating to the CAP. On the issue, see R. Compés López, *Los principios básicos de la reforma “intermedia,”* in: J.M. García Álvarez-Coque (ed.), *La reforma de la Política Agraria Común: preguntas y respuestas en torno al futuro de la agricultura*, Madrid 2006, pp. 35–60.

<sup>38</sup> Council Regulation (EC) No 73/2009 of 19 January 2009 laying down common provisions applicable to direct support schemes for farmers within the framework of the common agricultural policy and establishing certain support schemes aid to farmers and amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003. The 2008 reform, due to an erroneous translation into Spanish, was known as the “CAP medical check.”

<sup>39</sup> P. Gil Adrados, J.M. Suárez Peces, *Régimen jurídico...*, pp. 665–666.

In the area of market instruments, intervention in the dairy sector and certain plant products was maintained and intervention in the pork sector was eliminated.

In the area of aid, the following measures stood out: additional modulation to the payment of direct aid (which was progressively decoupled from production), support for sectors with difficulties, continuing the single payment system with historical references. Also, the 1% annual increase in the volume of milk quotas was increased and the conditionality regime was simplified.

With fewer resources allocated to the Price and Market Policy, the reform was not very well received by farmers. In this sense, in the corresponding UPA Report it was stated that “the reforms cause more subsidiarity, more cuts and less market regulation.”<sup>40</sup>

### 3.5. The fifth phase: from 2015 to 2020. Its extension until 2022

a) The content of the CAP at this stage<sup>41</sup> – in this last period, there is a huge amount of European legislation, mainly represented by Regulation (EU) No. 1307/2013, of the European Parliament and of the Council, of December 17, 2013, which establishes rules applicable to direct payments to farmers under the support schemes included in the framework of the Common Agricultural Policy and repealing Council Regulations (EC) No 637/2008 and (EC) No 73/2009.<sup>42</sup> Spanish state legislation is also extensive.<sup>43</sup>

At this stage the markets are regulated and there is provision of direct aid.<sup>44</sup>

Regarding the regulation of markets, among others the following measures are or have been contemplated: intervention (through public storage and

<sup>40</sup> Informe UPA, “*Chequeo médico*” de la PAC, “La Tierra” 2008, no. 211, p. 10.

<sup>41</sup> For this stage, see especially Agrodigital.com, la web del campo (<https://www.agrodigital.com/>).

<sup>42</sup> In addition to the aforementioned, four other important Regulations were issued: a) Delegated Regulation (EU) No. 639/2014, of the Commission, of March 11, 2014; b) Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014; c) Regulation (EU) 2017/2393, of the European Parliament and of the Council, of December 13, 2017, and which affected numerous other Regulations; d) Delegated Regulation (EU) 2018/1784, of the Commission, of July 9, 2018.

<sup>43</sup> 10 Royal Decrees have been issued on the matter: four of December 19, 2014 (no. 1075 to 1078); 1172/2015, of December 29; 745/2016, of December 30; 980/2017, of November 10; on 27/2018, January 26; 1378/2018, of November 8; and 628/2019, of October 31.

<sup>44</sup> Regarding direct payments to livestock, see P. Gil Adrados, J.M. Suárez Peces, *Régimen jurídico...*, pp. 669–672.

aid for private storage); export restitution (subsidies), although with little relevance; aid to fruit and vegetable producer organisations; and certain aid to the wine sector (promotion of wine in third countries, green harvesting, etc.).

With respect to direct aid, two stand out: the basic payment and the associated aid. At the same time, the additional requirement of conditionality is established, applicable to direct aid and rural development.

1) The basic payment, which replaces the previous single payment, is a payment granted independently of production (decoupled payment) whose amount is determined with reference (regionally) to the 2013 campaign. This basic payment is actually included within a multifunctional payment system, as pointed out by the European Parliament.<sup>45</sup>

2) Aid associated with production is coupled aid and is received for growing a certain crop or for raising a certain type of livestock, within the sectors that are eligible for aid. They differ, therefore, from the basic payment, since this is received regardless of the type of cultivation carried out or for the simple fact of keeping the land in good condition for pasture or cultivation.

According to FEGA data, “Spain will allocate 12% of the amount of direct payments to aid associated with production, in total, €584.9 million annually. Likewise, €60,841 million annually will be allocated to the specific payment for cotton cultivation.”<sup>46</sup>

3) Conditionality, which applies to direct aid and rural development, according to the FEGA, is “the response of the Common Agricultural Policy to society’s sensitivity towards the maintenance of our natural and productive resources. [...] The handling of livestock in conditions of health and well-being, and the traceability of products, both agricultural and livestock, throughout the entire food chain constitutes a guarantee for consumers. The

<sup>45</sup> Parlamento Europeo, *El primer pilar de la política agrícola común (PAC): II – Los pagos directos a las explotaciones*, <https://www.europarl.europa.eu/factsheets/es/sheet/109/el-primer-pilar-de-la-politica-agricola-comun-pac-ii-los-p> [accessed on 10.05.2019]: “Single payments per farm are replaced by a multifunctional payment system, around seven components: 1) a basic payment per hectare, harmonized according to economic or administrative criteria, at national or regional level, and subject to a process of convergence (called ‘internal’); 2) an ecological component, as complementary aid to offset the costs associated with the provision of environmental public goods not remunerated by the market; 3) a supplementary payment to young farmers; 4) a ‘redistributive payment’ to reinforce support for the first hectares of a farm; 5) additional income support in areas affected by natural limitations; 6) aid linked to production for certain areas or types of agriculture for economic or social reasons; 7) an optional simplified scheme for ‘small farmers,’ with payments of less than 1 250 euros. The first three components are mandatory for Member States and the last four are optional.”

<sup>46</sup> FEGA, *Política Agrícola Común 2015–2020, Nota Técnica N° 04*, <https://www.fega.es/> [accessed on 16.03.2019].

aid provided for in the CAP remunerates these functions. They compensate the income of farmers and ranchers for practicing forms of production that will allow us to maintain our natural heritage and pass it on to future generations and consume safe food.”<sup>47</sup>

In this matter, a distinction must be made between the environmental conditionality of aid and the green payment (the so-called greening: Arts. 43 et seq. Regulation 13/2013) for practices beneficial to the climate and the environment.

The conditionality of direct aid does not affect “small farmers whose regime is regulated in Title V of Regulation 1307/2013, nor the beneficiaries of agro-environment and climate aid under art. 28 of Regulation 1305/2013. However, this exception does not affect the obligation to respect the applicable provisions of sectoral legislation or the possibility of being controlled and sanctioned, under said legislation.”<sup>48</sup>

b) Criticism of this stage. Some of the criticisms formulated for the previous stages are applicable to this one: thus, the intervention of the markets continues, although to a lesser extent. The main question remains to decide whether it is worth it, in view of the social and economic results achieved (lower farmers’ income, rural exodus...), to dedicate 43.5 billion euros per year to the price and market policy of the CAP.<sup>49</sup>

The basic payment (which represents 90% of direct aid), even if conditional on compliance with certain practices, is still a subsidy for not producing, with the aggravating factor that, with few exceptions, it is of a historical nature (having the right to the subsidy in 2013).

The aid associated with production, since it is recognised only for certain types of crops and livestock, does not fit very well with the freedom of enterprise, in this case agriculture, distorting the market.

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<sup>47</sup> Ibidem. The national legislation cited above establishes the requirements on management and good environmental practices that farmers must meet to receive direct aid.

<sup>48</sup> E. Vieira Jiménez-Ontiveros, *Desarrollo rural. Condicionalidad de las ayudas directas*, in: E. Muñoz Espada, P. Amat Llobart (eds.), *Tratado...*, pp. 943–944.

<sup>49</sup> I. Jordana (ed.), *Atlas de la PAC. Hechos y cifras sobre la Política Agrícola Común (2019)*, Madrid 2019, p. 11, synthesises the data: “Currently, the CAP still represents the largest budget item in the EU, 38% or in other words, around 58 billion euros per year. In other words, each citizen pays 114 euros to the EU agricultural fund. Although it is being reduced: in 1988, it was 55% of the budget; and by 2027 it is expected to be 27%. This budget is divided into two parts or ‘pillars.’ The first pillar, the European Agricultural Guarantee Fund, represents 75% of the money. This fund is used to make payments to farmers based on the area they cultivate: an average of €267 per hectare across the EU. Because farms vary in size, 82% of the total goes to only 20% of recipients. The second pillar, the European Agricultural Fund for Rural Development, covers the remaining 25% of the funds.”

And there are still other hints, such as the continuity of the so-called “green harvest,” traditionally referred to the vine, which translates into “helping the destruction or total elimination of the bunches of grapes when they are still immature so that the yield of the plot is reduced to zero, and there cannot be unharvested grapes on the vineyard plot that is the object of the aid. The Ministry of Agriculture, Fisheries and Food may decide to grant aid to the green harvest in order to avoid a market crisis and recover the balance between supply and demand in the wine market.”<sup>50</sup>

This measure, contrary to the most basic economic principles, and which aims to artificially balance supply and demand, can also be granted, given certain circumstances, to other products such as fruits.

In short, in this context it has been possible to affirm that “almost three quarters of the budget of the Common Agricultural Policy is allocated to direct payments to farmers. Designed to stabilise agricultural income, these have ceased to meet their objective, being granted without clear compensation and benefiting large farms more than less productive ones,” concluding that direct payments are “inefficient, ineffective, unfair.”<sup>51</sup>

With a new CAP planned for the period 2021–2027, Regulation (EU) 2020/2220 extended the current CAP rules until December 31, 2022, with the aim, largely, of the different States adapting their structures (administrative, computer, etc.) and prepare their respective National Strategic Plans (PEN), and present them to the Commission for verification and approval.

### 3.6. The sixth phase: the current regime (2023–2027)

a) Justification of the reform. Approval of a new CAP. Fundamental in this aspect is the fact that on June 1, 2018, the European Commission presented legislative proposals on the CAP for the period 2021–2027.<sup>52</sup>

<sup>50</sup> FEGA, *Política Agrícola Común...*

<sup>51</sup> I. Jordana (ed.), *Atlas de la PAC...*, p. 14. According to the Ministry of Agriculture, Fisheries and Food (MAPA), the green harvest consists “of the destruction or total elimination of immature grape clusters from a plot. Up to 50% of the direct costs of the destruction or disposal of the bunches plus the loss of income linked to the destruction or disposal may be financed with Union funds.” See: <https://www.mapa.gob.es/es/agricultura/temas/regulacion-de-los-mercados/organizaciones-comunes-de-mercado-y-regimenes-de-ayuda/ocm-vitivinicola/programa-apoyo.aspx> [accessed on 20.09.2023].

<sup>52</sup> E. Muñiz Espada, *Derecho agroalimentario...*, p. 103 ff.; A. Massot Martí, *La reforma de la PAC pos 2020 en tiempos de crisis pandémica. Apuntes críticos sobre las propuestas de la comisión*, “Revista Española de Estudios Agrosociales y Pesqueros” 2021, no. 257, pp. 131–222.

The Commission, in the corresponding Fact Sheet, clarifies: “The CAP is leading the transition towards more sustainable agriculture. It must promote the resilience of the sector and support farmers’ income and the viability of their farms. It must make agriculture fully play its role in relation to the environment and climate change and it must fully incorporate digital innovations that facilitate the work of farmers, reduce bureaucracy and support generational change. As more than 50% of the EU population lives in rural areas, we need to strive to keep them attractive and vital as living spaces in terms of not only growth and employment, but also infrastructure, mobility and basic services. By contributing to the economic dynamism of rural areas and their socio-cultural life, EU agriculture plays an important role, as does the new CAP in aiming to maintain sustainable agriculture throughout Europe and invest in the development of communities and rural areas.”<sup>53</sup>

The Commission proposed to moderately reduce CAP financing (around 5%), due to the decrease in contributions from the future EU.<sup>54</sup>

After more than three years of negotiations, and with a budget lower than that of the 2014-2020 period (–13.3%), the new CAP reform was adopted by the EU on December 2, 2021 through three Regulations, published on December 6 of that year.<sup>55</sup> This agreement complemented the pact reached

<sup>53</sup> Comisión Europea-Hoja Informativa, *Presupuesto de la UE: la política agrícola común más allá de 2020*, Bruselas, 1 de junio de 2020, [https://ec.europa.eu/commission/presscorner/detail/es/MEMO\\_18\\_3974](https://ec.europa.eu/commission/presscorner/detail/es/MEMO_18_3974) [accessed on 19.10.2023].

<sup>54</sup> The Commission clarifies: “The Commission proposal for the multiannual financial framework (MFF) 2021-2027 includes €365.000 million for the CAP (in current prices). This corresponds to an average share of 28.5% of the total EU budget for the period 2021–2027. Of this amount for the CAP, €265.200 million goes to direct payments, €20.000 million to market support measures (EAGF) and €78.800 million to rural development (EAFRD). An additional amount of €10.000 million will be available through the EU research program Horizon Europe to support specific research and innovation projects in food, agriculture, rural development and the bioeconomy.”

<sup>55</sup> 1) Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 laying down rules regarding support for strategic plans to be drawn up by Member States within the framework of the common agricultural policy (CAP strategic plans), financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), and which repeals Regulations (EU) No. 1305/2013 and (EU) no. 1307/2013; 2) Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) no. 1306/2013; 3) Regulation (EU) 2021/2117 of the European Parliament and of the Council of December 2, 2021 amending Regulations (EU) no. 1308/2013, which creates the common organisation of markets in agricultural products, (EU) no. 1151/2012, on quality regimes for agricultural and food products, (EU) no. 251/2014, on the definition, description, presentation, labeling and protection of geographical indications

a year earlier on the Multiannual Financial Framework 2021-2027 and the Post-COVID-19 Economic Recovery Plan (“Next Generation EU” Plan – PGUE).

b) Objectives. Regulation (EU) 2021/2115 establishes in its Art. 6.1 a total of nine specific objectives: “The general objectives will be achieved through the following specific objectives: a) support a viable agricultural income and the resilience of the agricultural sector throughout the territory of the Union in order to improve long-term food security and agricultural diversity, as well as ensure the economic sustainability of agricultural production in the Union; b) improve market orientation and increase the competitiveness of agricultural holdings in the short and long term, including through greater attention to research, technology and digitalisation; c) improve the position of farmers in the value chain; d) contribute to adaptation to climate change and its mitigation, including by reducing greenhouse gas emissions and improving carbon capture, as well as promoting sustainable energy; e) promote sustainable development and efficient management of natural resources such as water, soil and air, including the reduction of chemical dependency; f) contribute to stopping and reversing the loss of biodiversity, enhancing ecosystem services and conserving habitats and landscapes; g) attract and support young and new farmers and facilitate sustainable business development in rural areas; h) promote employment, growth, gender equality, including women’s participation in agriculture, social inclusion and local development in rural areas, including circular bioeconomy and sustainable forestry; i) improve the response of Union agriculture to social demands regarding food and health, including the demand for good quality, safe and nutritious food produced sustainably, reducing food waste, improving animal welfare and combating antimicrobial resistance.”<sup>56</sup>

Of the nine principles, the first three are of an *economic-agrarian nature*: the next three are *environmental* in nature, and the last three are of a *socio-territorial* nature.

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of aromatised wine products, and (EU) no. 228/2013, which establishes specific measures in the agricultural sector in favor of the outermost regions of the Union.

<sup>56</sup> Paragraphs 2 and 3 of art. 6 establish: “2. The objectives established in section 1 will complement and interconnect with the transversal objective of modernising agriculture and rural areas, promoting and sharing knowledge, innovation and digitalisation in agricultural and rural areas and promoting their adoption by farmers, by improving access to research, innovation, knowledge exchange and training. 3. To achieve the specific objectives set out in paragraphs 1 and 2, Member States, with the support of the Commission, shall take appropriate measures to reduce the administrative burden and ensure simplification in the implementation of the CAP.”

c) The continuity of aid and subsidies for agriculture. The continuity of income aid – framing them within the “Instrumental News,” Albert Massot Martí and Soldimar Ureña synthesize them into six, of which we can highlight the first three, as reproduced below:

1) The slight modification of the direct payment system, giving rise to three mandatory payments (the “basic payment,” the “ecological regimes” or “eco-schemes” to promote beneficial practices for the climate and the environment, replacing of the green payment, up to 25% of the total direct payments; and the “redistributive payment” in favour of the first hectares of each farm, with the option of distinguishing thresholds and modulating amounts, for 10% of the total payments ) and two optional payments (to “young farmers,” up to 3% of the total; and those “coupled to production,” open to all sectors, up to 15% of the national total).

2) With regard to the redistribution of direct payments specifically, their progressive reduction is imposed above 60,000 euros per year per beneficiary with a maximum limit of 100,000 euros, with the possibility of deducting half of the salaries and costs social costs incurred by exploitation.

3) The new “green architecture” gains flexibility both with regard to its design and its management, which is entrusted to national authorities. Broadly speaking, it is based on: a) “reinforced conditionality,” mandatory for the collection of direct payments and rural development actions, based on respect for a list of “Good Agricultural and Environmental Conditions” (BCAM) and “ Legal Management Requirements” (RLG), or regulations in force at the community level; b) the replacement of the current “green payments” within the direct payment system with the aforementioned “ecological regimes,” to be established by the States according to the various prevailing agronomic systems, with fixed amounts per hectare based on its contribution to the environment and the fight against global warming; and c) measures in favour of the environment and climate of the Second Pillar of the CAP, for 35% of the total budget of the EAFRD.<sup>57</sup>

d) Intervention in prices and market – most of the CMO Regulation will remain unchanged in the future CAP, with some exceptions. It should be noted that the rules of the Regulation “address a wide range of aspects: the market safety net (public intervention and support for private storage) [...]” Public intervention continues through so-called market measures. Financed by the FEAGA and regulated in Regulation (EU) No. 1308/2013, on CMO

<sup>57</sup> A. Massot Martí, S. Ureña, *El Nuevo modelo europeo de PAC*, p. 11, [https://www.comunidad.madrid/sites/default/files/2022\\_politicas-ue\\_agricola\\_2.pdf](https://www.comunidad.madrid/sites/default/files/2022_politicas-ue_agricola_2.pdf).



(subsequently reformed), they aim to stabilize agricultural markets, prevent crises from worsening, stimulate demand and help the agricultural sectors of the EU to better adapt to market changes. In summary, this intervention is materialised through three means.

1) Direct public intervention (Arts. 11–16) – intervention is contemplated to buy and store products to resell them later, with the aim of preventing prices from falling too much. This intervention is currently allowed in sectors such as cereals, beef and certain dairy products.

Public intervention can be carried out either through a fixed price mechanism or through tenders.

2) Aid to farmers for the storage of products in the private sector (Art. 17–21) – in times of low market prices, the EU can also help farmers in the private sector to pay storage costs of its products for a certain period of time, which limits the impact of excess supply in the short term. Currently, private storage aid can be granted in the following sectors: white sugar, olive oil, beef, certain dairy products, pork, sheep and goat meat and flax fibre.

3) Exceptional measures – exceptional measures are allowed in the event of a crisis or risk of crisis and as a specific response to avoid a sudden drop in prices or mitigate its consequences (Art. 219–222).

e) The new CAP in Spain<sup>58</sup> – a novelty of the current system is that all EU States must approve a Strategic Plan in which the measures with which to achieve the objectives of the CAP and the European Green Deal are specified. The Spanish Strategic Plan (PEPAC) was approved by the Commission on July 31, 2022 and has a budget of 32,549 million euros for the period 2023–2027.

The first pillar of the CAP includes decoupled aid (direct aid, independent of production) and sectoral measures (direct aid aimed at certain sectors and sectoral programs).

Specifically, there are five types of direct aid.<sup>59</sup> Pablo Amat Llombart summarises them as follows.

<sup>58</sup> MAPA. Gobierno de España, *La Política Agrícola Común 2023–2027 y el Plan Estratégico*, <https://www.mapa.gob.es/es/pac/pac-2023-2027/> [accessed on 11.10.2023].

<sup>59</sup> There are two basic rules in which it is regulated: 1) Royal Decree 1048/2022, of December 27, on the application, from 2023, of interventions in the form of direct payments and the establishment of common requirements in the framework of the Strategic Plan of the Common Agricultural Policy, and the regulation of the single request for the integrated management and control system. 2nd) Royal Decree 1045/2022, of December 27, on basic income support rights for the sustainability of the Common Agricultural Policy, and Royal Decree 1048/2022, of December 27, on the application, as of 2023, of interventions in the form of direct payments and the establishment of common requirements within the framework

a) Basic Income Support for Sustainability (ABRS) replaces the existing Basic Payment Rights in the Common Agricultural Policy 2014–2020. All sectors have access to this aid (including fruit, vegetables and wine). [...] In turn, the farmer receiving this aid will suffer capping when he receives more than 60,000 euros of aid, not being able, in any case, to receive more than 200,000 euros gross of aid, once the labour costs allowed by the normative provision.

b) The Redistributive Payment becomes a complement to the Basic Income Assistance for the Sustainability of the farmer. It is paid for the first hectares of all farms and has a double threshold system that especially favours medium-sized professional farms.

c) Eco-regimes remunerate agricultural and livestock practices beneficial to the climate and the environment through voluntary commitments [...].

d) Supplementary income aid for young people seeks to facilitate generational change. The amount of this aid amounts to the regional average value of payment rights up to a maximum of 100 hectares [...].

e) Aid associated with certain sectors or types of farms in difficulty, especially livestock sectors [...], but also agricultural ones. They try to promote the sustainability and viability of these sectors. They consist of annual payments per hectare of cultivated area or per eligible animal that meets the general and specific requirements established in each case.”<sup>60</sup>

#### 4. Critical conclusions

In the present study we have highlighted some contradictions and negative consequences of the CAP; and it has become clear that they are largely the result of an excessively interventionist policy, to which is inherent – by imposition of nature and economic laws – the fact that an attempt to maintain or increase farmers’ income is, in a democratic State with a free economy, not only almost a utopia, but also a task from which harmful social and economic collateral effects also arise. For these reasons, a certain interventionist measure and the opposite, on numerous occasions, have the same result, usually of little benefit.

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of the Strategic Plan of the Common Agricultural Policy, and the regulation of the single application of the integrated management and control system.

<sup>60</sup> P. Amat Llobart, *Evolución histórica y modernas tendencias normativas del derecho agrario contemporáneo comunitario y español*, “Revista Española de Estudios Agrosociales y Pesqueros” 2023, no. 261, pp. 201–203.

This reality is basically derived from an economic rule already mentioned: the drop in prices in a super-productive economy, when demand is inelastic (as it is in agricultural products), will cause the income of producers, if they are not subject to the free market, do not increase and even decrease.

Let us synthesise these contradictions and negative consequences.

a) Some contradictions in the CAP's price and market policy – it is interesting to note how one measure and the opposite (contradictory) solutions which imply a swing in the CAP, ultimately reflect the difficulty of achieving the maintenance of agricultural income through the intervention of prices and markets. Thus, we have witnessed, among others, the following events.

- encouragement of production and, years later, attempts to limit it, even by subsidising the withdrawal of land, the sacrifice of animals or destroying the fruits (green harvesting, for example). Sometimes production has been encouraged or limited, depending on the products;

- attempts to increase agricultural income by increasing prices (first through simple price support; later, with price support and production limitations) and then replacing the (failed) system or combining it with another system, completely different: the granting of compensatory income aid;

- granting aid linked to production and, at a later time, granting aid without taking into account production: by number of heads of livestock, by number of trees (for example, olive trees) or, finally, by area planted without the obligation to harvest;

- encouragement of the cessation of agricultural activity or early retirement and, other times, facilitating access to the activity for young farmers;

- protection of certain competitiveness in production and recognition, at the same time, of the existence of so-called “historical rights,” which turn the agricultural sectors into authentic new unions;

- defending the objective of a CAP that results in greater income for farmers, but not legislating adequately to repress fraud (the Italian case of the mobile cardboard olive trees is very significant) or, even, bringing benefits to people outside the community engaged in agricultural activity (we saw it) or with an effect that, due to certain legal twists and turns, farmers end up benefiting to a greater extent than was precisely anticipated.<sup>61</sup>

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<sup>61</sup> Sufficient is an example offered by the *Annual Report of the Court of Auditors of the European Communities on budget execution, relating to the financial year 2006* (Observation 5.32): “A simple transfer of exploitation between members of the same family during or after the reference period was sufficient to increase the number and value of rights allocated for exploitation. In Ireland, a farmer who had stopped farming his land in 2002 leased the farm to his son. The father had received rights worth €38,000 based on premiums paid in 2000 and

b) Some negative consequences of the CAP's price and market policy – without intending to be exhaustive, let us highlight the following.

1) As it negatively affects third world countries with a basically agricultural economy, many voices have been raised against the CAP for its contribution to the impoverishment of these countries which cannot compete with highly subsidised European products, to which must be added the existence of the same aid policy, among other countries, in the USA and Japan.

The incoherence of the agricultural subsidy policy developed by many rich countries is evident and, at the same time, defend international solidarity, the contribution of 0.7 (or more) to the development of poor countries and a host of measures to support our well-being. Would it not be simpler to not intervene in markets in rich countries (eliminate aid, tariffs and other similar measures) so that poor countries with high agricultural production can achieve their well-being on their own?

2) Limiting our considerations only to Spain, but which will be equally applicable to other European regions or countries, the following realities should be taken into account:

- the relative importance of the agricultural sector has decreased, with all the consequences that this implies, despite the immense public resources it has received;

- in agricultural (rural) areas the bleeding of depopulation has not stopped, especially in the interior of Spain, and this despite the fact that the so-called Rural Development, the second of the pillars of the CAP, has been added.<sup>62</sup> For this reason, it was also possible to affirm “the limited influence of the CAP on territorial cohesion”<sup>63</sup>;

- the income (purchasing power) of farmers has decreased and unemployment has increased enormously, the complete opposite of the objectives of the TFEU and the CAP;

- the subsidies, which are obtained with the contributions of taxpayers (we already gave some information on the matter), fall in a very high percentage into the hands of the largest fortunes and even to those who are not farmers;

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2001, while the son obtained the new farmer accreditation benefiting from rights worth €87,000 based on premiums paid. in 2002. In 2005, the father transferred the land and rights to his son free of charge, giving him rights worth 125,000 euros. On the other hand, if the transfer had not occurred, the rights assigned to the exploitation would have been 67,800 euros.”

<sup>62</sup> For rural development, see, in general E. Vieira Jiménez-Ontiveros, *Desarrollo rural...*

<sup>63</sup> On the issue, see E. Muñiz Espada, *La urgencia de legislar sobre la cohesión territorial. Urbanismo y espacio rural*, “Revista de Derecho agrario y alimentario” 2013, no. 63, pp. 93–140.

- it is very common (we can say almost inevitable) that agricultural aid does not benefit the professional farmer, but rather the rentier owner;
- encouraging agricultural production or non-production, outside the market, has negative results. Incentivising it does not generate more income for farmers and can even lower it considerably (“King effect”). Discouraging production, even if positive reasons are given for it, is uneconomical and alien to the ordinary meaning of work. In both cases, the possible transfer of income to farmers will be assumed by taxpayers or consumers, which, in many cases, constitutes an unsupportive solution.
- the so-called “historical rights” establish a system with echoes of the past (the union society, of social groups) that present difficult justification: they not only go against free competition, but also against equality among the farmers themselves.

c) Avoiding the contradictions and negative consequences of the CAP, which reveal that the intended results have not been achieved with public policies on agriculture, seems to us achievable by subjecting agricultural commercial activity in general, like other sectors, to free competition, obviously when it is reciprocal, between a group of States or global, and subject to the same standards on quality and food safety. The opposite would clearly constitute unfair competition.<sup>64</sup>

This idea can be argued or defended, among others, with the following reasons:

- the complete elimination, within the EU, of tariffs and in general of aid for different activities. This circumstance has demonstrated its goodness: the EU is an industrial power and, under the same conditions, agriculture would also benefit, especially since Europe is a leading world power in the agricultural sector. Not being governed by a system like the one described means ignoring largely the modern paradigm of agricultural activity and, consequently, a failure to obtain the expected results;
- the speciality of agricultural activity (guaranteeing the vitally important food supply of a country or supranational area) cannot be an argument against free competition;
- and one last reflection: if free competition is good for the internal market, why should it not be good for the foreign market? In this sense, history teaches us that agriculture has evolved, in general terms, towards free competition. First, local tariffs were abolished (in Spain after the abolition

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<sup>64</sup> A defense of free competition in agriculture, in a work that anticipated the times (guessed the future), can be seen in F. de Castro y Bravo, *El Derecho agrario de España*, “Anuario de Derecho Civil” 1954, no. 2, pp. 387–388.

of the Old Regime<sup>65</sup>) as they prevented the free competition and circulation of goods, a regime under which the town councils could make competition difficult (the price was higher due to the tariffs) and subsequently within the EU. In both cases we can see that the measure was a happy solution: why doubt that extending free competition in agriculture to the world will not be equally positive?;

– in the sense now exposed, Casanueva Sánchez speaks out addressing the issue analysed, and points out “that for decades the developed world has given the imposition of obstacles to the importation of foreign products, limiting it or imposing tariffs that compensate for the difference in market price. But new trends suggest that a greater degree of north-south solidarity is advisable, not only from an altruistic point of view, but because if developing countries increase their income, then they will have the possibility of buying processed products that they do not have but want, from the north. This will open the borders to products from the south; The question is not if this is going to happen, but how to face it and how to prepare for it.”<sup>66</sup>

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<sup>65</sup> G.M. de Jovellanos, *Informe de la Sociedad Económica de esta Corte al Real y Supremo Consejo de Castilla en el expediente de la Ley Agraria*, Madrid 1975.

<sup>66</sup> I. Casanueva Sánchez, *Perspectivas para el Derecho agrario del siglo XXI*, in: J.M. de la Cuesta Sáenz et al. (eds.), *Libro Homenaje...*, p. 37.

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