



REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF AUDITORS' SPECIAL REPORT

EU efforts for sustainable soil management
unambitious standards and limited targeting

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This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

I. THE COMMISSION REPLIES IN BRIEF

The Commission welcomes the relevant analysis on the role of the soil and good description on the pressures impacting the soil. The Commission also notes that the report has taken into consideration the on-going initiatives developed by the Commission for the next decade, especially the EU Soil Strategy for 2030 and the upcoming proposal on Soil. The Common Agricultural Policy (CAP) is a major policy and funding instrument to preserve soil health in European farmland. Soil preservation is gaining importance in the new CAP period 2023-2027, which can be seen by the various instruments used. In the new CAP, the Good Agriculture and Environmental Conditions (GAEC) have been reinforced and ensure that all farmers receiving CAP area payments respect a minimum set of requirements to protect soil. Moreover, voluntary measures traditionally funded under the second pillar (agro-environmental-climate measures), and since 2023 under the first pillar with the eco-schemes as well, are being supported by the CAP for farmers engaging in practices beneficial for soil.

The Commission takes note of the indicative estimate of CAP financing for sustainable soils and manure management, which is set at around EUR 85 billion for the period 2014-2020. This figure includes financial envelopes under rural development allocated to focus areas 4C (soil), 5D (emissions) and 5E (carbon), together with a share of the greening payment (40 and 100% depending on the practice) and other direct payments (10%).

The purpose of GAEC and their role under the CAP is to address specific environmental and climate matters such as soil quality and to establish a minimum set of requirements to be fulfilled across Europe by farmers receiving support from EU budget. The Commission highlights that there have been yearly assessments of the GAECs completeness and pertinence and an ex-post evaluation of the GAECs relevance and effectiveness throughout the period 2014-2022. This has provided better guidance to design the new CAP framework.

As regards the new CAP and the enhanced conditionality, the Commission points out that the new GAEC scope reflects higher environmental ambition compared with the previous programming period (2014-2022), since many of the existing standards were strengthened (e.g. GAEC 7, 8) and new ones added (e.g. GAEC 2). The combination of all GAECs and the consideration of cross-effects need to be factored in when assessing this area of the policy.

For the new programming period implemented via national CAP Strategic Plans, it is of utmost importance to look at the overall ambition with regard to the different objectives defined under the CAP, not only to each of the different stand-alone instruments of the policy. The intervention logic (the so-called green architecture) developed in each of the plans should allow deploying synergies between them in order to achieve the targets set. A specific section of the CAP Strategic Plans is devoted to such issue. In this context, Member States have designed the voluntary tools and their interplay with conditionality, according to the needs identified and the strategy pursued in order to deliver on the CAP common specific objectives.

The Commission highlights the importance of research and innovation efforts towards healthy soils and, in particular, the EU Mission 'A Soil Deal for Europe'. More than a dozen EU Green Deal strategies, communications or action plans, have identified the Mission as a tool to deliver on their policy ambitions, and the Mission is creating a large-scale mobilisation of stakeholders and citizens. The Mission has already deployed around EUR 300 million for the period 2021-2023 from the R&I framework programme Horizon Europe and receives support from other EU Programmes such as

LIFE¹, the Circular Bioeconomy Europe², PRIMA³ and the EIC⁴. The Mission will support far more than 1,000 sites all across Europe and soil types, that will lead to a quicker deployment of new solutions for healthy soils by 2030.

The Commission welcomes ECA's observations and the data supporting its subsequent recommendations on the derogations and data gaps in relation to the Nitrates Directive. The Commission agrees on the importance of a full implementation of the Nitrates Directive and the achievement of its objective in all EU countries, including in Member States having been granted a derogation. The Commission recognizes the important contribution of the Nitrates Directive in reducing nutrient losses from agriculture and its key role in the achievement of the EU and Member States commitments to reduce nutrient losses by 50% by 2030. The Commission will apply an integrated and coherent approach when analysing potential future requests for derogations under the Nitrates Directive. To obtain accurate data on the level of implementation in the Member States of the Nitrates Directive, compliance with its reporting obligations must be achieved. In this respect, although data collection on gross nutrient balances will become mandatory as of 2026, the Commission envisages to take action in improving the quality of data collected and/or offered voluntarily by the Member States, already for the reporting period that covers 2020-2023.

¹ LIFE (europa.eu)

² Home | Circular Bio-based Europe Joint Undertaking (CBE JU) (europa.eu)

³ PRIMA: Partnership for Research & Innovation in the Mediterranean area (prima-med.org)

⁴ European Innovation Council (europa.eu)

II. COMMISSION REPLIES TO MAIN OBSERVATIONS OF THE ECA

1. Good Agriculture and Environmental Conditions ambition level and the new enhanced conditionality

GAECs are one of the drivers to improve soil health and GAECs as defined by Member States should address the need to achieve good soil health. GAECs related to soil aspects contribute to mitigate soil degradation by ensuring a minimum common baseline. For this reason, they are defined as a basic requirement to be applied across EU. Therefore, in order to trigger improvements of soil health, GAECs need to be supplemented by additional more ambitious voluntary actions.

Based on this rationale, for some GAECs⁵, the requirement can be rather simple e.g., imposing a ban of arable burning stubble and often corresponds to existing practices. The Commission is aware of this dimension and points out that the GAEC obligations are applicable across EU territory, creating an EU-wide baseline and avoid the continuation of harmful practices. As regards the ban of burning stubble, it is increasingly becoming a common practice, but there may still be gaps between Member States. The Commission reminds that those EU farmers who do not apply for CAP support are not bound by the baseline created by GAEC requirements, which go beyond legal obligations stemming from environmental law.

As regards the level of ambition of the GAECs⁶, the Commission has carried out regular assessments in the 2014-2022 period. The Commission has performed an annual review of the GAEC definition proposed by Member States from the perspective of completeness and relevance. Following audits performed by the Commission, further checks can be carried out to assess in more detail the GAEC implementation conditions set by the Member States. Furthermore, under ex post evaluation, the Commission has carried out different evaluations on the CAP contribution to sustainable resource management including a specific study on sustainable management of the soil published in November 2020. In this context, the GAECs related to soil have been analysed more deeply based on 5 criteria, including efficiency, effectiveness and added value. As a result, the Commission has observed some deficiencies as regards GAEC implementation and took them in consideration in some case vis à vis the Member States concerned, but mainly during the negotiations of the new GAEC scope with the co-legislators.

As regards the programming period 2023-2027⁷, the Commission considers that the scope and the level of ambition of the GAECs has been reinforced significantly, the former practices under greening have been modified, new GAEC 7 on crop rotation has replaced crop diversification and new GAEC 8 has set a percentage of arable land only based on non-productive elements such as fallow land and landscape features, which was not the case before. In addition, the scope of new GAEC 6 on minimum soil cover is indeed more comprehensive compared to the former GAEC 4. Therefore, a comparative analysis between both periods 2014-2022 and 2023-2027 should integrate all changes in the scope of GAECs and intended synergies between a variety of instruments aiming to improve the soil organic matter.

⁵ See ECA observation 31, 34 and 99

⁶ See ECA observation 39, 40 and 42

⁷ See ECA observation 48

2. Targeting of voluntary measures and assessment of their impact

On CAP voluntary measures⁸, the Commission acknowledges that targeting support is and will remain an important factor for any funding instrument, including the CAP. The overall targeting of measures is embedded in the existing legal framework under the principle of shared management. In this context, Member States must propose measures to be funded by the EAFRD in line with the SWOT analysis, the identified needs and the strategy of their rural development programmes (RDP), which is then subject to Commission approval. The Member States are best placed to target the available measures to the identified needs, in their territory, as well as the availability of EU and national instruments and funding, which explains the choices made. Whereas some Member States had chosen a rather broad approach, others focussed on a limited number of priorities with the intention to increase effectiveness.

The Commission acknowledges that as a result of the choices made in the design of the rural development programmes of the period 2014-2022, the potential of the CAP to contribute to sustainable soil practices was not fully exploited since some additional more efficient measures could have been envisaged by the Member States.

However, the external evaluation support study on soil found that numerous agri-environment and climate measures were designed to support conservation agriculture (including no or reduced tillage, crop diversification and covers crops). Beside measures exclusively focussing on sustainable soil management, Member States programmed a range of support activities that bring positive effect both for soil and biodiversity and/or water: e.g. establishing/maintaining landscape features, establishing cover/catch/winter crops, and limiting the use of pesticides and fertilisers⁹. This is also why, for the programming period 2014-2022, budget allocation for support addressing mainly sustainable soil and manure management cannot be estimated precisely as many support instruments have secondary, not negligible effects on the improvement of soils. Furthermore, positive contribution of investments in better machinery (e.g., better manure application, direct-seeding machines, and equipment for conservative and precision agriculture¹⁰), advisory services and knowledge exchange should also be acknowledged.

Some of the Member States audited also mentioned programmes run outside of the CAP support to address soil and manure problems¹¹. In the case of agri-environment and climate measures the level of payments per hectare programmed did not always fully cover costs incurred and income foregone associated with the respective commitments, in particular in areas with the most acute soil problems. This may have resulted in a low uptake in those areas of high risk, but potentially higher uptake in areas with lower risk of severe soil problems¹².

⁸ See ECA observation 52-69.

⁹ EEIG Alliance Environnement (2020) Evaluation support study on the impact of the CAP on sustainable management of the soil. Brussels. Impact of the CAP on sustainable management of the soil (europa.eu).

¹⁰ While saying this, the Commission is of course also aware that investments in machinery can potentially also have negative impact, e.g. by increasing soil compaction through heavy machinery.

¹¹ For example, Lower Saxony mentioned the 'Investments and Future Programme 2021-2024' with EUR 1 billion for agri-environment measures and support for investments, including among others investments in manure management and manure application technics. Lower Saxony stated to have a share of 21 to 28% in aid applications under this programme (as of 31.12.2021), depending on the categories of support.

¹² See ECA observations 55, 56, 58.

For the programming period 2023-2027, as explained by the ECA¹³, the CAP's 'green architecture' is the set of rules and tools to improve the environmental and climate performance of farming activities and foster changes towards more sustainable production models. It encompasses both obligations (conditionality) and supported interventions (e.g., through various area-related schemes, green and non-productive investments, knowledge exchange and cooperation) and thereby has the potential to pave the way to more sustainable soil and manure management. The set of voluntary commitments is broader than before, now including eco-schemes, in addition to the voluntary management commitments under rural development, for additional (or more ambitious) practices/commitments (**Box 1**)¹⁴.

Box 1

The French CAP Strategic Plan (CSP) increases ambition with regards to soil quality and protection by:

- Remunerating farmers who set up a plant cover under permanent crops on > 75% of the soil (eco-scheme).
- Strengthening the budget for coupled support on leguminous and protein crops.
- Increasing the budget for the conversion to organic farming.
- Implementing the agri-environment and climate commitments for soil quality and protection.

The Dutch CAP Strategic Plan (CSP) revised the strategy on soils:

- Soil and manure management was not a priority in the previous programming period and are changing this in the 2023-2027 period.
- Action has been taken outside and within the framework of the CAP with the aim of having all agricultural soils sustainably managed by 2030, including the reinforcement of GAECs (GAEC 4, GAEC 6).
- Specific action plan on peatlands in Natura 2000 sites or a specific 24,3 billion Fund outside the CAP to address the nitrogen surplus issue.

On data collection, the new Performance Monitoring and Evaluation Framework (PMEF) has a far more differentiated set of result indicators to express the percentage of utilised agricultural area (UAA) under dedicated practices. Among others, 47.4% of the EU's total UAA will be covered by supported commitments beneficial for soil management to improve soil health (such as reducing tillage, soil cover with crops, crop rotation included with leguminous crops) and 15.2% will be covered by supported commitments related to improved nutrient management.

3. The effectiveness of the Nitrates Directive

In cooperation with the Member States, the Commission is following up on the recommendations addressed in the 2021 implementation report of the Nitrates Directive¹⁵, and furthermore it is pursuing its enforcement action. The Commission opened infringements against a number of Member States and this has made it possible to improve effectively the implementation in the Member State concerned through a thorough follow-up on the effectiveness of the proposed solutions, and to advance the interpretation of the Directive for all Member States. The Commission acknowledges that the infringement procedures can be lengthy, but it recalls that this is due to several factors: the infringement procedure itself has several steps laid down in the Treaty and, for the Nitrates Directive, this may also involve the referral to the CJEU; the Commission bears the burden of proof and may

¹³ See ECA observation 13 and figure 4.

¹⁴ See ECA observations 43-51.

¹⁵ https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5110

not rely on any presumption in order to establish the breach of EU law, which is challenging for Directives requiring scientific assessments; the identification, adoption and implementation of the necessary measures to implement the Directive may require time for the Member States concerned.

In addition, the analysis of potential future derogation requests within the broader EU policy context regarding nutrient management issues, will be accomplished in an integrated approach. These derogations will be granted without prejudice to Member States' obligations to apply other EU related legislation and the rulings of the Court of Justice of the European Union. The analysis will among others, focus on that authorising additional amounts of manure per hectare per year do not delay or put at risk the requirements of other existing European Union legislation (in particular for which nitrogen and phosphorous pollution could be an obstacle in achieving its objectives). The Commission agrees as well on the importance of complying with the reporting obligations under the Nitrates Directive to have an accurate understanding on the level of implementation of the Nitrates Directive in Member States and the sufficiency of the measures in place.

The Commission is aware of data gaps on nutrients balances and is taking action to remedy the situation. Regulation (EU) 2022/2379¹⁶ on statistics on agricultural input and output sets the obligation for Member States to report on the nutrients balances as of 2026. The first mandatory data transmission by the countries will be in 2029. The Commission further envisages to take action in cooperation with Member States to fill the data gaps before 2026, despite the absence of legal obligation.

III. COMMISSION REPLIES TO THE RECOMMENDATIONS OF THE ECA

1. Recommendation 1 – Review and report on the level of ambition of the standards and assess the results of their implementation

In respect of the period 2023-2027, the Commission should:

- (a) during the programming period, report on the results of a specific regular review of the implementation by member states of all GAECs and include an assessment of their level of ambition;**
- (b) after the end of the programming period, assess the results of the implementation of the GAECs specifically on sustainable soil and manure management practices.**

Target implementation date: (a) 2026 and (b) 2031

The Commission accepts recommendation 1(a) and 1(b).

- (a) During the programming period, the Commission will report to the Council and the European Parliament in relation with obligations based on Article 141 of Regulation (EU) 2021/2115

¹⁶ Regulation (EU) 2022/2379 of the European Parliament and of the Council of 23 November 2022 on statistics on agricultural input and output, amending Commission Regulation (EC) No 617/2008 and repealing Regulations (EC) No 1165/2008, (EC) No 543/2009 and (EC) No 1185/2009 of the European Parliament and of the Council and Council Directive 96/16/EC (Text with EEA relevance), OJ L 315, 7.12.2022, p. 1–29

which establish different deadlines and scope for reporting. These reports will cover specifically the GAECs as well as the other elements of the “green” architecture. Regular review is foreseen on a yearly basis following the submission of the Annual Performance Report by the Member States.

In particular, according to Article 141(3) of Regulation (EU) 2021/2115, the Commission will, by 31 December 2025, submit a report to the European Parliament and the Council in order to assess the consistency and combined contribution of their interventions in Member States’ CAP Strategic Plans to achieving environmental and climate-related commitments of the Union. Moreover, the Commission will carry out an interim evaluation to examine the effectiveness, efficiency, relevance, coherence and Union added value of the EAGF and the EAFRD by 31 December 2026.

- (b) As regards reporting after the programming period and following Article 141(4) of Regulation (EU) 2021/2115, the Commission will, by 31 December 2031, submit a report to the European Parliament and the Council including a full assessment of the performance of the CAP. This report will be underpinned by evidence resulting of ex post evaluation carried out the Commission. A more comprehensive evaluation of the contribution of the GAEC will be conducted under this framework. The evaluation will look in details at the green architecture.

2. Recommendation 2 – Report on the targeting of CAP voluntary measures on the most pressing local soil problems

For the programming period 2023–2027, the Commission should:

- (a) assess and report specifically on whether the arrangements in member states for targeting and funding CAP voluntary measures are adequate to achieve the expected improvements in soil management.**
- (b) with the member states, develop a consistent approach to monitoring and evaluating the contribution of the CAP voluntary measures towards sustainable soil and manure management in a timely manner.**

Target implementation date: 2026

The Commission accepts recommendation 2(a) and 2(b).

The Commission will assess the implementation of the CAP Strategic Plans on a yearly basis following the submission of the annual performance reports by the Member States. Moreover, reporting by the Commission will follow the cases laid down in Article 141 of Regulation (EU) 2021/2115. Finally, consistent and comprehensive monitoring of CAP support is set in Regulation (EU) 2021/2115 and Regulation (EU) 2022/1475¹⁷.

The ex-post evaluation will cover the efficient management of natural resources by 2031 and thus will also cover voluntary measures for soil and manure management. Based on an evaluation plan drawn up for each CAP Strategic Plan, Member States have to evaluate all specific objectives (including thus the protection of natural resources) relevant to their needs and intervention logic. The European evaluation helpdesk ensures consistent approach to evaluation, providing guidelines,

¹⁷ Commission Implementing Regulation (EU) 2022/1475 of 6 September 2022 laying down detailed rules for implementation of Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the evaluation of the CAP Strategic Plans and the provision of information for monitoring and evaluation, OJ L 232, 7.9.2022, p. 8–36

sharing best practices and working with Member States to enhance the quantification of CAP impacts. In view of the low update frequency of the impact indicators on soil organic carbon and soil erosion, these indicators are not part of the list in Annex III of Regulation (EU) 2022/1475, for which Member States shall quantify the contribution of the CAP Strategic Plans to their development.

3. Recommendation 3 - Limit the use of derogations and review conflicting objectives in other policy areas

When deciding whether to grant derogations, the Commission should ensure that they only apply to those areas already achieving the Nitrates Directive objective, and include in its assessment a review of potential conflicting objectives arising in other EU policy areas.

Target implementation date: from 2024

The Commission accepts recommendation 3.

When analysing potential future derogation requests, the decision to grant a derogation is based on the specific situation of the Member State requesting the derogation in line with the requirement of the Directive, and takes into account the water quality and the trends, the results achieved from previous national measures, as well as the ambition and impact of the national measures in place, furthermore paying particular attention to areas with higher livestock concentration where the derogation would apply. When analysing future derogation requests, in line with the promotion of an integrated approach to the nutrient cycles, the Commission will analyse that authorising additional amounts of manure per hectare per year do not delay or put at risk the requirements of other existing European Union legislation for which nitrogen and phosphorous pollution could be an obstacle in achieving its objectives (such as the Water framework Directive, the Birds and Habitats Directives, or the NEC Directive).

4. Recommendation 4 - Improve consolidated data at EU level

In its management of the implementation of the Nitrates Directive, the Commission should follow up the data gaps at member state level identified in its review of the nitrates reports in order to be able to provide more comprehensive and reliable consolidated data and forecasts at EU level on manure management and water pollution.

Target implementation date: from 2024

The Commission accepts recommendation 4. In preparation of the next implementation report for the Nitrates Directive, covering the period 2020-2023, the Commission will take action to address the data gaps identified in the ECA report. As regards data gaps on the forecasts on water quality, this is an obligation under the Nitrates Directive, and the Commission will update the guidelines for the next implementation report together with the Member States in early 2024.

As regards data gaps on nutrient balances, there is no obligation to report this data under the Nitrates Directive. The obligation for Member States to collect data on nutrients balances will enter into force as of 2026 under regulation EU/2022/2379. For the data collection obligations coming into force in 2026 (gross nutrient balances), the Commission will from 2024 encourage member states to fill in the data gaps on a voluntary basis. In 2024 and 2025, the Commission will therefore not be able to ensure full data collection on nutrient balances but will nevertheless strive to work in this direction together with the Member States.