

# Complaint to the European Ombudsman

Maladministration of the Commission in the preparation of the 2024 CAP revision and failure to respond to access to documents request

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## 1. Context

In this complaint, ClientEarth and BirdLife Europe and Central Asia (“**Complainants**”) submit that the manner in which the European Commission (“**Commission**”) prepared the legislative proposal COM(2024) 139 final (“**Proposal**”)<sup>1</sup> amending two regulations of the Common Agricultural Policy (“**CAP**”) constitutes maladministration. Specifically, this complaint raises the failure of the Commission to conduct an impact assessment or otherwise demonstrate that it based its decisions on the best available evidence; to carry out a public consultation; to guarantee the minimum principles and standards of conducting a targeted consultation; and to convey objectivity and impartiality in communications on the Proposal to the public. This is evidenced by the failure of the Commission to respect the Better Regulation Guidelines<sup>2</sup> and Code of Good Administrative Behaviour<sup>3</sup> when preparing the Proposal.

The manner of handling BirdLife Europe and Central Asia’s (hereafter “BirdLife”) access to documents request No. 2024/1102 concerning Member States’ CAP Annual Performance Reports (“**CAP APRs**”), in particular the failure to respond to its confirmatory application in accordance with Article 7 of Regulation 1049/2001, also constitutes maladministration.

Section 2 of the complaint describes the context and background of the complaint. Section 3 gives an explanation of the underlying facts surrounding the preparation of the Proposal, the exchange of letters between the Complainants and the Commission, and the process of handling BirdLife’s request for access to documents. Section 4 provides an overview of the relevant CAP provisions, and the legal framework for the Better Regulation Guidelines, evidence-based decision-making, stakeholder consultations and the duty of objectivity and impartiality of EU officials. Section 5 focuses on specific instances of maladministration regarding the preparation process of the Proposal, in particular failures to follow the Better Regulation Guidelines and Toolbox, and the failure to demonstrate objectivity and impartiality of the Commission’s actions.

Section 6 focuses on maladministration with regard to access to documents request No. 2024/1102, in particular the failure to respond to the confirmatory application.

Finally, Section 7 concludes and respectfully requests the European Ombudsman to reach a finding of maladministration and issue appropriate recommendations.

## 2. Background

The CAP was introduced in 1962 to ensure food security, market stability and a fair standard of living for the agricultural community by transferring national intervention mechanisms to the Community level.<sup>4</sup> Under the CAP, agriculture in the EU has undergone a transition towards increasingly intensified practices,

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<sup>1</sup> Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards good agricultural and environmental condition standards, schemes for climate, environment and animal welfare, amendments to CAP Strategic Plans, review of CAP Strategic Plans and exemptions from controls and penalties, [COM\(2024\) 139 final](#).

<sup>2</sup> European Commission, Better Regulation Guidelines, [SWD\(2021\) 305 final](#), 03.11.2021.

<sup>3</sup> Rules of Procedure of the Commission, [C\(2000\) 3614](#) of 23.04.2020.

<sup>4</sup> European Parliament, [The Common Agricultural Policy \(CAP\) and the Treaty](#), Factsheet on the EU, 2024.

with considerable effects on the environment.<sup>5</sup> Agricultural activities are the most frequently reported sources of pressure for both habitats and species and therefore an important contributor to biodiversity loss.<sup>6</sup> Agriculture also contributes to air, soil and water pollution and is responsible for 11-13% of the EU's greenhouse gas emissions.<sup>7</sup> In addition, the CAP raises questions of fairness linked to the distribution of support, with 20% of CAP beneficiaries receiving 80% of direct payments in the past years.<sup>8</sup>

As a consequence, the CAP has progressively broadened its scope to integrate other considerations, including environmental ones. However, attempts in 2014-2020 to make the CAP more environment-friendly – in particular with the so-called cross-compliance and greening measures – fell far short of meeting biodiversity and climate needs. Overwhelming evidence<sup>9</sup> found that the CAP 2014-2020 had not been able to halt the decline of biodiversity, contribute to mitigating climate change or be consistent with the Water Framework Directive. On the contrary, the CAP continued to generate environmental degradation.

In June 2018, the Juncker Commission issued three regulation proposals for a CAP post-2020, namely the CAP Strategic Plans Regulation,<sup>10</sup> the CAP Horizontal Regulation<sup>11</sup> and the Common Market Organisation Regulation.<sup>12</sup> The proposals were informed by an impact assessment and a broad public consultation which gathered 322,912 online contributions from across all Member States.<sup>13</sup> While CAP cycles usually apply for 7 years (following the lifespan of the Multiannual Financial Framework), tense negotiations on these regulation proposals caused their entry into force to be delayed, and the current cycle to only apply from 2023 to 2027. In a context where the EU Green Deal of the newly elected

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<sup>5</sup> See e.g., Guy Pe'er *et al.* (2020), *Action needed for the EU Common Agricultural Policy to address sustainability challenges*, People and Nature, Volume 2, Issue 2, pp. 305-316, <https://doi.org/10.1002/pan3.10080>.

<sup>6</sup> "Land-use change is the major direct driver of the loss of both biodiversity and ecosystem services in Europe and Central Asia. Production-based subsidies have led to intensification in agriculture and forestry, and, together with urban development, have led to biodiversity decline." IPBES, The regional assessment report on Biodiversity and Ecosystem services for Europe and Central Asia, Summary for Policymakers, 2018, p. 11; Reif J. *et al.* (2024), *Accelerated farmland bird population declines in European countries after their recent EU accession*, Science of The Total Environment, Volume 946, 174281, <https://doi.org/10.1016/j.scitotenv.2024.174281>.

<sup>7</sup> EEA, *Agriculture and food system*, Key facts, 04.03.2024 (last consulted: 10.07.2024).

<sup>8</sup> European Commission, *CAP performance: 2014-20: A summary of CAP performance and impact across the EU*.

<sup>9</sup> European Court of Auditors, *Greening: a more complex income support scheme, not yet environmentally effective*, Special Report n. 21/2017; *Biodiversity on farmland: CAP contribution has not halted the decline*, Special Report 13/2020; *Common Agricultural Policy and climate: Half of EU climate spending but farm emissions are not decreasing*, Special Report 16/2021; *Sustainable water use in agriculture: CAP funds more likely to promote greater rather than more efficient water use*, Special Report 20/2021; *Climate spending in the 2014-2020 EU budget – Not as high as reported*, Special Report n. 09/2022; Guy Pe'er *et al.* (2020), *op. cit.*

<sup>10</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 ("**CAP SPR**").

<sup>11</sup> 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.

<sup>12</sup> Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union.

<sup>13</sup> European Commission, *Factual Summary: Online public consultation on "Modernising and Simplifying the Common Agricultural Policy (CAP)"*, 3.05.2017.

Commission President Ursula von der Leyen was the center of discussions, a major contentious item was the extent to which the CAP should increase its environmental and climate ambition.

In May 2020, the Commission presented its Farm to Fork and Biodiversity Strategies, both forming part of the EU Green Deal. The Farm to Fork Strategy<sup>14</sup> lays down the Commission's plans to transition to sustainable food systems, and underlines that this transition must be supported by a CAP that focuses on the Green Deal. The Biodiversity Strategy,<sup>15</sup> on the other hand, notably notes that certain agricultural practices are a key driver of biodiversity decline and that it is therefore important to work with farmers to support and incentivise the transition to fully sustainable practices. In a Staff Working Document titled '*Analysis of links between CAP Reform and Green Deal*'<sup>16</sup> accompanying the two Strategies, the Commission also emphasises that a substantial share of EU funding for biodiversity comes from the CAP, that the CAP will play a major role in supporting the achievement of the EU biodiversity commitments for 2030, and identifies the steps needed to fully align the CAP with the Green Deal and the twin Farm to Fork Strategy and Biodiversity Strategy.<sup>17</sup>

After a long co-decision process, the CAP regulations eventually entered into force on 1<sup>st</sup> January 2023. The CAP Strategic Plans Regulation ("**CAP SPR**") introduces several novelties meant to increase the contribution of the CAP to environmental and climate objectives. The CAP SPR establishes as one of the CAP's three general objectives that support from the European Agricultural Guarantee Fund (EAGF, or "Pillar 1") and the European Agricultural Fund for Rural Development (EAFRD, or "Pillar 2") must contribute to "*support and strengthen environmental protection, including biodiversity, and climate action and to contribute to achieving the environmental and climate-related objectives of the Union, including its commitments under the Paris Agreement*" (Article 5(b)). The CAP's general objectives must be achieved through nine specific objectives that the CAP SPR lists, with three of them relating to climate, natural resources and biodiversity. The CAP SPR also introduces the new tool of "eco-schemes" and a reinforced environmental conditionality (formerly referred to as "cross-compliance").<sup>18</sup>

However, against the backdrop of Russia's invasion of Ukraine, a derogation from conditionality was already granted the first year of the CAP's entry into force.<sup>19</sup> This derogation allowed Member States to exempt farmers from requirements to practice crop rotation (so-called Good Agricultural and Environmental Condition ("**GAEC**") 7) for the year 2023 and to devote a certain share of agricultural area to land laying fallow (GAEC 8).<sup>20</sup>

Over the past year, farmer protests spread across Europe. They led to real-time electoral consequences, for example with the inclusion of the party Farmer-Citizen Movement (BBB) in the Dutch government. At

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system, [COM\(2020\) 381 final](#), 20.05.2020.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Biodiversity Strategy for 2030, [COM\(2020\) 380 final](#), 20.05.2020.

<sup>16</sup> European Commission, Analysis of links between CAP Reform and Green Deal, [SWD\(2020\) 93 final](#), 20.05.2020.

<sup>17</sup> *Ibid.*, p. 2.

<sup>18</sup> European Commission, [The common agricultural policy: 2023-27](#) (last consulted: 10.07.2024).

<sup>19</sup> Note that following Russia's invasion of Ukraine, a derogation was also granted under the previous CAP cycle which concerned the implementation of certain conditions relating to the greening payment for claim year 2022. See [Commission Implementing Decision \(EU\) 2022/484](#) of 23 March 2022 providing for derogations from Regulation (EU) No 1307/2013 of the European Parliament and of the Council and from Commission Delegated Regulation (EU) No 639/2014 as regards the implementation of certain conditions relating to the greening payment for claim year 2022.

<sup>20</sup> [Commission Implementing Regulation \(EU\) 2022/1317](#) of 27 July 2022 providing for derogations from Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the application of the standards for good agricultural and environmental conditions of land (GAEC standards) 7 and 8 for claim year 2023.

EU level, an access to documents request filed by a journalist<sup>21</sup> revealed that on 20 December 2023, EU Commissioner for Agriculture Janusz Wojciechowski sent a letter to President von der Leyen in which he wrote: *“I wanted to bring to your attention an issue of political concern that can spiral further with a potential effect on the European election next year”*. The Commissioner then explained: *“Even though I reminded the Ministers in AgriFish Council and the Members of the European Parliament in my answers to them that from a legal perspective a prolongation of the derogations would require tabling a proposal to amend the CAP Strategic Plan Regulation with a co-decision procedure, because any modification could not be done again via a Commission implementing act, calls for a further derogation are coming in. (...) I also pointed out that any opening of the basic act would be a lengthy process and could have unforeseeable consequences for the entire Regulation. (...) In addition, from an economic point of view, a further derogation could lead to more production with a consequence of further falling prices.”* (see Annex 1)

Despite these statements, on 31 January 2024, the Commission presented a new proposal introducing a derogation to GAEC 8 for the year 2024, which was adopted on 12 February.<sup>22</sup> Another derogation was adopted on 12 March, this one amending the standard of GAEC 1 to weaken requirements on the maintenance of permanent grasslands.<sup>23</sup> Shortly after that, on 15 March 2024, the Commission presented its Proposal to revise two CAP regulations following an expeditious preparation process. This process involved no impact assessment or consultations with the public or a broad range of stakeholders. Politico had reported on 13 March that *“[t]he Commission is finalizing a series of legislative proposals that would severely weaken environmental requirements for farmers. The proposals, seen by POLITICO, would end a requirement to set aside land to promote biodiversity, making it and other measures — like minimizing tillage to prevent soil erosion — voluntary. Taken together, they would enable farmers to get EU subsidies even if they don’t meet the most basic environmental standards, known as conditionality. What about the science? The dramatic policy reversal by Ursula von der Leyen’s Commission comes at the urging of national governments desperate to quell protests by farmers pushing against red tape — but it also ignores calls from the EU’s own scientists for urgent action on agriculture if the Continent is to avoid catastrophic floods, years-long droughts and scorching heatwaves.”*<sup>24</sup> The Commission’s legislative initiative was covered by multiple other EU-level and national media outlets, who pointed in particular at different concerns regarding issues of transparency, public participation and evidence-based decision-making.<sup>25</sup>

These proposals that significantly weaken environmental requirements in the CAP were indeed presented without the Commission communicating how it took into consideration recently published scientific

<sup>21</sup> AskTheEU.org, [https://www.asktheeu.org/en/request/derogation\\_for\\_gaec\\_7\\_and\\_8\\_in\\_2\\_5](https://www.asktheeu.org/en/request/derogation_for_gaec_7_and_8_in_2_5).

<sup>22</sup> Commission Implementing Regulation (EU) 2024/587 of 12 February 2024 providing for a derogation from Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the application of the standard for good agricultural and environmental conditions of land (GAEC standard) 8, dates of eligibility of expenditure for contribution from the EAGF and rules concerning amendments of CAP Strategic Plans for modifications of certain eco- schemes for claim year 2024.

<sup>23</sup> Commission Delegated Regulation (EU) 2024/1235 of 12 March 2024 amending Commission Delegated Regulation (EU) 2022/126 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council as regards the rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1.

<sup>24</sup> Politico, Sustainability Insights, 13.03.2024.

<sup>25</sup> See for example: ENDS, *Is Brussels flouting better regulation guidelines in farming policy revamp?*, 14.03.2024; Euractiv, *Commission unveils new package exempting small farms from environmental controls*, 15.03.2024; Le Figaro, *Colère des agriculteurs: les 27 examinent une révision de la PAC, tracteurs attendus à Bruxelles*, updated on 26.03.2024; RTBF, *Nouvelle manifestation des agriculteurs à Bruxelles : quelles sont leurs revendications ? Et de quoi discutent les 27 ?*, 26.03.2024 ; Euronews, *Record approval of farming reform raises legal, climate concerns*, 25.04.2024; Deutsch Sprechen, *EU-Politik. Die Rekordzustimmung zur Agrarreform wirft rechtliche und klimatische Bedenken auf*, 25.04.2024; Meteogiornale, *Approvazione record della riforma Agricola europea: le preoccupazioni legali e climatiche*, 27.04.2024.

evidence from authoritative bodies underlining the urgent need for a transition of farming towards environmental sustainability, with improvements in the CAP seen as an important priority notably for EU efforts on tackling climate change.<sup>26</sup>

## 3. Facts

### 3.1. The preparation of the legislative proposal

On 22 February 2024, the Commission announced on its press webpage that it “sent a paper to the Belgian Presidency outlining first possible actions to help reduce the administrative burden weighing on farmers’ shoulders. The document, which will be discussed with Member States in the agricultural Council of 26 February, lists a range of short- and mid-term actions that can be taken to achieve simplification. This will serve as the basis for discussions and joint action with EU countries.”<sup>27</sup> (see Annex 2) The document, which takes the form of a “non-paper” (see Annex 3), was not published by the Commission, but entered the public domain<sup>28</sup> as a result of a “leak”. At the time this Complaint is submitted, to the best of the Complainants’ knowledge the Commission has not made the document available to the public through its official channels.

The press release succinctly indicated that “[t]he actions listed in the paper take into account the contributions by national administrations, major EU farming organisations and the European Parliament’s agricultural committee”. Only the “leaked” document itself provides the names of four EU-level farming organisations that were consulted.

The exchanges of the Agriculture and Fisheries Council on the “non-paper” took place behind closed doors; a live streaming was made available to the public for the press conference.

On 7 March, the newspaper Politico<sup>29</sup> quoted Commissioner Wojciechowski, following his 6 March interview with Polish radio RMF FM: “The Commission will unveil proposals next week to cut red tape and make green farming requirements voluntary (...). It will be a package of solutions that should take all the worries away from farmers, not so much with the Green Deal, but with its elements that are in the Common Agricultural Policy. (...) The Commission will also seek to reassure farmers that there will be no penalties or cuts to direct payment this year for those who fail to meet environmental or climate standards.” Politico then commented that “[t]he Polish commissioner is known for expressing his own views before decisions are made official by Brussels, and after his comments caused a stir in his country amid farmer protests

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<sup>26</sup> EEA, Report 01/2024: European Climate Risk Assessment, Executive summary, pp. 18-19; European Scientific Advisory Board on Climate Change, Assessment Report 2024, January 2024, see in particular pp. 11-12. See also EEA, Briefing: Rethinking agriculture, October 2022 (updated April 2023), which reads that “The European Green Deal and its farm to fork strategy represent a fundamental step towards achieving agriculture and food system sustainability. These commitments should not be undermined by short-sighted responses to rising food prices and fears of global food shortages resulting from the invasion of Ukraine (IPES-Food, 2022).”

<sup>27</sup> European Commission, Press release: The European Commission presents options for simplification to reduce the burden for EU farmers (last consulted: 10.07.2024).

<sup>28</sup> European Commission, Non-paper, Reducing the administrative burden for farmers: next steps, [https://www.pan-europe.info/sites/pan-europe.info/files/public/resources/other/SI\\_2024\\_120\\_REDUCING%20THE%20ADMINISTRATIVE%20BURDEN%20FOR%20FARMERS-NEXT%20STEPS.pdf](https://www.pan-europe.info/sites/pan-europe.info/files/public/resources/other/SI_2024_120_REDUCING%20THE%20ADMINISTRATIVE%20BURDEN%20FOR%20FARMERS-NEXT%20STEPS.pdf) (“European Commission non-paper”).

<sup>29</sup> Politico, Morning Agriculture & Food, 07.03.2024.



*that turned violent, the EU executive was quick to issue a clarification. “Commissioner Wojciechowski was speaking in a personal capacity which in no way reflects the official position of the Commission,” the executive said in a statement. “The measures already implemented by the Commission this year, as well as those which will be proposed shortly, do not weaken the climate and environment ambition of the CAP.”*”  
The Commissioner had also addressed an open letter to Polish farmers on 8 February (see Annex 4), in which he listed 10 measures meant to meet their demands. Among those, he cited: “3. pesticide restriction has been withdrawn (I was against it from the beginning); 4. Fallowing of 4% of land has been suspended for the third time on my initiative; (...) 9. Agriculture, at my request, was exempted from mandatory CO2 reductions by 2040.”

On Friday 15 March, the Commission published its legislative Proposal amending two CAP regulations. The Proposal explains that “[w]ith a view to the political urgency of tabling this proposal, which aims to respond to a crisis situation in EU agriculture, no impact assessment has been carried out”. It refers to Tool #1 of the Better Regulation Guidelines “that stipulates the importance of their flexible and proportionate application.” The Commission further mentions the “extensive external assessment of the 28 approval CAP Strategic Plans that the Commission commissioned and that formed the basis for its report to the European Parliament and the Council of 23 November 2023: “Summary of CAP Strategic Plans for 2023-2027: joint effort and collective ambition”.<sup>30</sup> It also relies on the impact assessment accompanying the CAP legislative proposals tabled in 2018, arguing that this impact assessment provides important background information relevant to the Proposal, in particular on “key differences between the options assessed in 2018 related to the balance of voluntary (“eco-scheme”) or obligatory (“conditionality”) environmental requirements. While the Regulation finally adopted is a mix of both approaches, the impact assessment (p. 35) demonstrates the advantages and drawbacks of both. On the basis of the changed situation and the experiences in the first year of application, the Commission proposes to rebalance in the direction of a more voluntary approach.”

The Proposal also refers to the consultation of the four EU-level farming organisations as an “ad-hoc consultation process that lasted one week”.

During an intervention at the European Parliament’s Committee on Agriculture and Rural Development of 19 March, Commissioner Wojciechowski noted that over the past months, farmers had taken to the streets and raised their voice on a number of significant issues, and that the Commission listened to these concerns and delivered responses. He strongly encouraged the co-legislators to adopt the new rules as soon as possible and before the Parliament’s elections of June 2024.<sup>31</sup>

The legislative proposal was approved by the European Parliament on 24 April 2024<sup>32</sup> – less than six weeks after its presentation by the Commission – and formally adopted by the Council on 13 May 2024.<sup>33</sup> Regulation (EU) 2024/1468 entered into force on 25 May 2024.<sup>34</sup>

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<sup>30</sup> Report from the Commission to the European Parliament and the Council, Summary of CAP Strategic Plans for 2023-2027: joint effort and collective ambition, COM(2023) 707 final, 23.11.2023.

<sup>31</sup> European Parliament Multimedia Centre, Committee on Agriculture and Rural Development of 19 March 2024. See the relevant intervention from minutes 09:42:30 to 09:55:30.

<sup>32</sup> European Parliament News, Press release of 24 April 2024: Parliament approves a revision of the EU’s common agricultural policy.

<sup>33</sup> Council of the European Union, Press release of 13 May 2024: Council gives final green light to a targeted review of the common agricultural policy.

<sup>34</sup> Regulation (EU) 2024/1468 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2021/2115 and (EU) 2021/2116 as regards good agricultural and environmental condition standards, schemes

## 3.2. ClientEarth and BirdLife's letters to President von der Leyen

On 6 March 2024, in reaction to the press release of the Commission (Annex 2) and the press conference held after the Agriculture and Fisheries Council meeting of 26 February, the Complainants and fifty-nine other civil society organisations sent an open letter to President von der Leyen (see Annex 5).<sup>35</sup> The NGOs expressed several concerns, including the lack of transparency, public participation and evidence-based decision-making that characterised the preparation of the proposal revising the CAP. In particular, they drew the President's attention to the fact that the "non-paper" laying down the Commission's plans to derogate from and revise the CAP regulations, was not made accessible to the public by the Commission's services and was discussed behind closed doors during the Agrifish Council meeting. They called on the Commission to guarantee the meaningful consultation of all concerned stakeholders, including NGOs and scientists, ahead of the formulation of any upcoming legislative and policy initiatives on agriculture, in line with EU law and the Better Regulation Guidelines. They also called on the Commission to abide by the principles of evidence-based and coherent policy-making, as required by the Better Regulation Guidelines.

On 25 March 2024, following the presentation of the Proposal, the Complainants and fourteen other actors from the civil society wrote another open letter to President von der Leyen (see Annex 6).<sup>36</sup> The letter, which was sent by Anaïs Berthier, Head of ClientEarth Brussels office, on behalf of all signatories, put the emphasis on several issues that had emerged during the administrative process that led to the presentation of the Proposal. In particular, the NGOs regretted that the Commission did not act transparently, and that the Proposal was presented without prior impact assessment, consistency assessment of the Proposal with the objective and targets of the European Climate Law, nor meaningful stakeholders consultations. According to the NGOs, the Commission failed to demonstrate how the proposed CAP revision ensured policy coherence<sup>37</sup> and stability in line with the EU Green Deal and key Union environmental laws, and did not sufficiently justify the need to resort to an institutional emergency procedure to meet this objective. They submitted that the Commission disregarded the potentially major impacts that the proposed measures would have on the environment and ignored the most recent scientific evidence showing that the transition of farming towards sustainability should be seen as a priority for EU efforts on tackling climate change. The signatories urged President von der Leyen to withdraw the CAP legislative proposal and to abide by Union law and the Better Regulations Guidelines to guarantee that any future initiatives on EU agriculture respect the well-established safeguards for a high level of transparency, public participation and evidence-based decision-making.

## 3.3. The Commission's reply

In a letter dated 4 June 2024 and addressed to Anaïs Berthier, Wolfgang Burtscher, Director-General for Agriculture and Rural Development (DG AGRI), replied to the letter of 25 March 2025 on behalf of the Commission's President (see Annex 7).

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for climate, environment and animal welfare, amendment of the CAP Strategic Plans, review of the CAP Strategic Plans and exemptions from controls and penalties.

<sup>35</sup> Open letter of ClientEarth, BirdLife and 59 other civil society organisations to President von der Leyen, [Joint letter to the EU Commission to reconsider the loosening of the CAP's green architecture](#), 06.03.2024.

<sup>36</sup> Open letter of ClientEarth, BirdLife and 14 other civil society organisations to President of the European Commission Ursula von der Leyen, [Joint request to withdraw the EU Commission's proposal to revise the CAP](#), 25.03.2024.

<sup>37</sup> In breach of Article 7 TFEU requiring the Union to ensure consistency between its policies and activities.

The Complainants submit that the reply of the Commission fails to satisfactorily respond to key aspects of the concerns expressed in their letters of 6 and 25 March 2024, in particular the failure to apply Better Regulation Guidelines with respect to participatory and evidence-based policy-making. They examine the Commission's reply and its failure to provide sufficient reasoning for not complying with the basic principles of Better Regulation Guidelines in the preparation of the Proposal in Section 5 below.

### 3.4. The request for access to documents

On 27 February 2024, a few days following the Commission's announcement on its press webpage, BirdLife sent an access to documents request to the European Commission via the EASE portal, which was registered on the same day with the case number 2024/1102. The Complainant requested access to the "annual performance report – CAP strategic plan" ["CAP APRs"] for all Member States/all CAP strategic plans (including both Belgian regions) for financial year 2023" and was attributed a first time-limit on 19 March by the Access to Documents team of the Directorate-General for Agriculture and Rural Development (DG AGRI) (see Annex 8).

This deadline was extended by 15 working days on 19 March, in line with Article 7(3) of Regulation 1049/2001, bringing the new time-limit to 12 April. (See Annex 9)

On 25 March, the Directorate-General for Agriculture and Rural Development Wolfgang Burtscher sent a letter ("**Decision**") to BirdLife in which he indicated that the Commission had identified 16 documents as falling within the scope of the request (see Annex 10). A list of documents was provided in an annex to the Decision (see Annex 11). However, the request to access the documents was denied on the justification that disclosure of these documents would seriously undermine an ongoing decision-making process and, consequently, considered that the exception laid down in Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 applied to these documents.

BirdLife submitted a confirmatory application on 22 April 2024 by e-mail to [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu) (see Annex 12). BirdLife argued that the exception of Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 had been misapplied and that there exists an overriding public interest requiring the Commission to disclose the requested documents, considering that "[t]imely public access to this information is in particular pertinent in the view of Commission's intention to propose changes to CAP legislation with the view "to help reduce the administrative burden weighing on farmers' shoulders", including by weakening several GAEC requirements and introducing new flexibilities to Member States to grant exemptions from the GAEC 8 rules." The confirmatory application also noted that the Commission had failed to identify all documents falling within the scope of the request, considering that during the meeting of the "Expert Group on the Implementation of the CAP Strategic Plans Regulation" that took place on 18 March 2024, the Commission reported to Member States that 22 CAP APRs had been submitted by 15 February 2024 (a date anterior to that of the request) while the reply only identified 16.<sup>38</sup>

The Secretariat-General acknowledged receipt of the confirmatory application, with a sending date of 22 April, registration on 23 April, and the indication that the time-limit would expire on 16 May (see Annex 13). On 15 May, BirdLife was informed that the Secretariat-General had "not yet been able to gather all the

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<sup>38</sup> See document "3 – APR\_18\_03/2024" which reads that "22 APRs have been submitted by 15 February 2024", available on the Register of Commission Expert Groups and Other Similar Entities, [Expert Group on the Implementation of the CAP Strategic Plans Regulation of 18 March 2024](#).

*elements necessary to carry out a full analysis*” of the request (see Annex 14). A new time-limit was set on 7 June 2024.

The Commission failed to meet this last deadline. To the date of submission of this Complaint, BirdLife has not received a final decision on its request, nor any further communication on the status of the confirmatory application.

## 4. Legal and policy context

### 4.1. The Common Agricultural Policy

The CAP regulations in place for the years 2023-2027 organise the spending of the EAGF (Pillar 1) – amounting to €291.09 billion – and the EAFRD (Pillar 2) – with a budget of €95.51 billion.<sup>39</sup> Together, they account for almost a third of the EU budget.

The CAP 2023-2027 introduces the so-called New Delivery Model to shift the current compliance-based system to one based on performance. The main element of novelty in the governance structure of the CAP is the requirement for Member States to draw up a national Strategic Plan, which provides higher flexibilities for Member States: in their Strategic Plans, Member States present an intervention strategy to tailor the implementation of the regulations’ requirements to domestic-specific needs. The Strategic Plans therefore further delineate the conditions for attributing payments financed by the EAGF and the EAFRD to beneficiaries.

Each Strategic Plan must contribute to achieving the EU specific objectives for the agricultural sector,<sup>40</sup> three of which relate to environmental protection:

- to contribute to climate change mitigation and adaptation, including by reducing greenhouse gas emissions and enhancing carbon sequestration, as well as to promote sustainable energy;
- to foster sustainable development and efficient management of natural resources such as water, soil and air, including by reducing chemical dependency;
- to contribute to halting and reversing biodiversity loss, enhance ecosystem services and preserve habitats and landscapes.<sup>41</sup>

The CAP SPR also introduces a new “green architecture”, based on:

- a system of enhanced conditionality, whose policy rationale is to tie payments and rural development interventions to the respect by beneficiaries of minimum legal requirements and basic good agronomic practices (the GAEC standards), as listed in its Annex III;
- eco-schemes, which consist of standards for the environment, climate and animal welfare that provide farmers whose practices go beyond the requirements of conditionality with payment top-

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<sup>39</sup> European Commission, Common agricultural policy funds.

<sup>40</sup> Article 104 CAP SPR.

<sup>41</sup> Article 6(1), (d) to (f) CAP SPR.

ups from Pillar 1. Member States must tailor eco-schemes to their national circumstances, and farmers voluntarily decide if they want to join the schemes;

- environmental, climate and other management commitments under Pillar 2.

In addition, the “no backsliding” principle finds an application in the CAP SPR: according to Article 105, Member States must aim to raise, through their Strategic Plans, their overall contribution to the achievement of the three environmental specific objectives, compared to the 2014-2020 CAP period.<sup>42</sup>

The entry into force of the Strategic Plans is conditioned upon the Commission’s approval. In its assessment, the Commission must notably consider if the plans make an effective contribution to the achievement of the CAP’s specific objectives.

In its Proposal of 15 March 2024, the Commission made significant amendments to conditionality which are very likely to significantly adversely affect biodiversity, the quality of soil and water, and mitigation and adaptation efforts to climate change.<sup>43</sup> On conditionality, the Commission opened the possibility for Member States to establish specific exemptions for GAEC 5 (tillage management), GAEC 6 (soil cover), GAEC 7 (crop rotation) and GAEC 9 (preservation of environmentally-sensitive permanent grasslands in Natura 2000 sites).<sup>44</sup> It also created an option to temporarily derogate from the GAECs in cases justified by weather conditions.<sup>45</sup> In addition, the Proposal loosens requirements under GAEC 6, GAEC 7 and GAEC 8 by modifying their descriptions in Annex III of the CAP SPR.<sup>46</sup> For example, the Proposal completely removes from GAEC 8 the obligation for beneficiaries to dedicate a minimum share of agricultural area to non-productive areas or features.

As a sole compensation to all the above, the Commission proposed to include a requirement for Member States to introduce an eco-scheme covering practices for the maintenance of non-productive areas, such as land lying fallow, and for the establishment of new landscape features (e.g. hedges or trees) on arable land.<sup>47</sup> It was indeed the stated willingness of the Commission to rebalance the CAP “*in the direction of a more voluntary approach.*”<sup>48</sup>

In addition, the Commission suggested to exempt Member States from their obligation under Article 120 CAP SPR to adapt their Strategic Plans to amendments of legislative acts listed in the CAP SPR’s Annex XIII (Union legislative acts concerning the environment and climate) which enter into force after 31 December 2025.<sup>49</sup>

Amendments to the Horizontal Regulation were also introduced by the Proposal, with the effect of excluding holdings not exceeding 10 hectares from controls and penalties.<sup>50</sup> Last but not least, the Commission proposed to discharge itself of some of its powers in approving amendments to the Strategic Plans.<sup>51</sup>

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<sup>42</sup> Article 105 CAP SPR.

<sup>43</sup> See e.g. the blog piece by scientists Lakner S. and Röder N, [Farmers’ protests: EU Commission shreds environmental standards in agriculture](#), 02.04.2024.

<sup>44</sup> Article 1(2), (a) of the Proposal.

<sup>45</sup> Article 1(2), (b) of the Proposal.

<sup>46</sup> Article 1(6) of the Proposal.

<sup>47</sup> Article 1(3) of the Proposal.

<sup>48</sup> Proposal, p. 6.

<sup>49</sup> Article 1(5) of the Proposal.

<sup>50</sup> Article 2 of the Proposal.

<sup>51</sup> Article 3 of the Proposal.

In this complaint, the Complainants will argue that considering the likelihood that the policy options foreseen by the Commission generate significantly adverse impacts on biodiversity, the quality of soil and water, and mitigation and adaptation efforts to climate change,<sup>52</sup> putting in jeopardy the achievement of the CAP's environmental objectives, the Commission should have been specifically diligent and put in place the necessary procedures to ensure it took into consideration the best available evidence and consults broadly to inform its decisions.

## 4.2. The European Commission's Better Regulation Guidelines

The Better Regulation Guidelines define 'better regulation' as *"a way of working that allows political decisions to be prepared in an open and transparent manner, informed by the best available science, including via the comprehensive involvement of stakeholders. This is to ensure that the EU acts in line with the overarching principles of subsidiarity and proportionality."*<sup>53</sup> Among the key concepts and principles that comply with and complement those in the Treaties and the EU Charter of Fundamental Rights, 'better regulation' requires to adopt:

- A participative approach: all interested parties, be they experts or individuals or groups affected by EU laws and regulation, should be able to contribute to policymaking by expressing their views and providing relevant data;
- An evidence-based approach: policy decisions need to be informed by the best available evidence (including scientific evidence, where available);
- Learning from experience: this requires the 'evaluate first' principle to apply whenever legislation is revised.

Although the Better Regulation Guidelines and the associated Toolbox are not a binding legislative act and provide space for flexibilities, they are a set of concrete rules and tools to implement the public's right to democratic participation in legislative processes enshrined in Articles 10(3) and 11 of the Treaty on European Union<sup>54</sup> ("TEU"). By analogy, the General Court has stated concerning internal rules and policies developed by other EU bodies such as the European Investment Bank (EIB): *"It should be recalled that, for the purposes of achieving the objectives of the TFEU, the bodies of the EIB adopt, in particular in the form of policies, strategies, appraisals, principles or standards, internal policies of general scope, duly published and implemented, which, irrespective of their binding nature or not in the strict sense, limit the exercise of the EIB's discretion in the exercise of its activities."*<sup>55</sup> Thus the General Court recognised that internal rules and policies are taken into account by the courts of the European Union when examining the legality of an act adopted by an EU body such as the EIB.<sup>56</sup>

Through continuous application of Better Regulation Guidelines, in particular the key elements of Chapter II regarding public participation, the public also has a legitimate expectation that the Commission will be consistent in its continued application of the guidelines. The Commission itself has repeatedly renewed its continued commitment to adhere to the Better Regulation Guidelines stressing that *"looking forward, the*

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<sup>52</sup> See also the blog piece by scientists Lakner S. and Röder N, [Farmers' protests: EU Commission shreds environmental standards in agriculture](#), 02.04.2024.

<sup>53</sup> Better Regulation Guidelines, Chapter I, Section 1.

<sup>54</sup> Consolidated version of the Treaty on European Union (TEU), OJ C 202, 7.6.2016.

<sup>55</sup> General Court, [Case T-9/19, ClientEarth v European Investment Bank](#), ECLI:EU:T:2021:42, para. 123.

<sup>56</sup> *Ibid.*

*need for evidence-based policymaking supporting EU political priorities is only growing stronger. Better regulation is increasingly an integral part of the institutional culture of the Commission and is widely supported by stakeholders who want to be involved even more in our policymaking and in a more meaningful way.”<sup>57</sup>*

Similarly, the Ombudsman has noted that *“the Commission has committed itself to a set of rules and principles to ensure a transparent, evidence-based and inclusive policy and law-making process. The rules and principles are laid down in the Better Regulation Guidelines and the associated Better Regulation Toolbox.”<sup>58</sup>* These rules ensure consistency, transparency and avoid any sense of arbitrariness in the way the EU administration works.<sup>59</sup> Therefore, the Better Regulation Guidelines set binding rules on the manner of conducting public consultations and limit the discretion of the Commission to guarantee the right of the public to democratic and participatory decision-making enshrined in Articles 10(3) and 11 TEU.

### 4.3. The obligation to base decision-making on the best available evidence

In line with the concepts and principles of participative approach, evidence-based approach and learning from experience presented in Section 4.2., the Better Regulation Guidelines set out that EU policy-making should be supported by evaluations and impact assessments. *“Evaluations gather evidence to assess how a specific intervention has performed (or is working), taking account of earlier expectations in the context of an impact assessment and/or ensuing from the adopted legislation and whether there were unintended or unexpected effects that were not anticipated and taken into account in the impact assessment or the adopted act.”<sup>60</sup>*

Impact assessments, on the other hand, *“collect evidence (including evaluation results) to assess whether future legislative or non-legislative EU action is justified and, if so, how it can be best designed to achieve relevant policy objectives. (...) The Commission’s impact assessment system follows an integrated approach that assesses the environmental, social and economic impacts of a range of policy options thereby mainstreaming sustainability into Union policymaking and the implementation of the UN sustainable development goals.”<sup>61</sup>*

Policy coherence is one of the key principles of EU decision-making. Article 11 TEU states that *“the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are transparent and coherent.”* The Better Regulation Guidelines state further that the principle of coherence applies to all stages of the policy-making process and means that *“EU laws and regulations cannot be adopted in isolation. The ‘better regulation’ framework is helpful in checking*

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<sup>57</sup> Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of Regions Empty, Better regulation: taking stock and sustaining our commitment, [COM\(2019\) 178 final](#), 15.04.2019, Section 4.

<sup>58</sup> European Ombudsman, Decision in case 1474/2018/TE on alleged shortcomings and biases in the European Commission’s preparation of its policy and legislative proposal on the reduction of single-use plastic products, [Case 1474/2018/TE](#), 22.03.2019, paras. 28-30.

<sup>59</sup> European Ombudsman, Decision in case 1474/2018/TE on alleged shortcomings and biases in the European Commission’s preparation of its policy and legislative proposal on the reduction of single-use plastic products, [Case 1474/2018/TE](#), 22.03.2019, paras. 29.

<sup>60</sup> Better Regulation Guidelines, Chapter I, Section 3.3.

<sup>61</sup> Better Regulation Guidelines, Chapter I, Section 3.4.

*consistency with high-level and long-term policy objectives, e.g. by applying the ‘do no significant harm’ and ‘digital by default’ principles, implementation of the European Climate Law, by advancing the digital transition through digital-ready policymaking, and by incorporating the United Nations sustainable development goals (SDGs) and strategic foresight.”<sup>62</sup>*

This means that consultation processes and policy-making processes more broadly must take full account of other areas of EU law, long-term policy objectives and apply the “better regulation” framework to ensure necessary steps are taken to ensure consistency. The principle of coherence covers all stages of decision-making, including consultation processes, analysis, review, and quality control.<sup>63</sup>

The Better Regulation Toolbox further explains that “*coherence across different policy domains and between related policy instruments is essential.*”<sup>64</sup>

#### 4.4. The obligation to consult the public and relevant stakeholders

The right to participate in EU decision-making processes in environmental matters is protected by EU law. First, the TEU enshrines the democratic principles which underlie the right to participation. These underlying principles are the concept of openness and proximity of decision-making to the citizen, key concepts under EU law, as stated in Article 1(2), and reiterated in Article 10(3). Article 1(2) states that “[d]ecisions shall be taken as openly and as closely as possible to the citizen”, while Article 10(3) specifically states that “[e]very citizen shall have the right to participate in the democratic life of the Union.”

Article 11(1) TEU places an obligation on the institutions of the European Union to, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action. The Commission in particular must carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.<sup>65</sup> According to the Better Regulation Guidelines, public consultations are required on topics of broad public interest and initiatives that should be accompanied by an impact assessment.<sup>66</sup>

Public participation is key to enhancing the quality and the implementation of environmental decisions. Participation in environmental decision-making contributes to public awareness of environmental issues and gives the public the opportunity to be heard: to express its concerns and ensure they are taken into due account by the authorities in their decision-making process.<sup>67</sup> The European Ombudsman has observed that public participation “[i]s crucial to enhance the legitimacy of, and public trust in, the EU's decision-making process. Transparency and participation are considered particularly important when it comes to EU decision making related to the environment.”<sup>68</sup>

In the context of environmental matters, the right to public participation is also guaranteed under the Aarhus Convention, which the EU ratified on 17 May 2005. It provides for the right of the public to

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<sup>62</sup> Better Regulation Guidelines, Chapter I, Section 1.

<sup>63</sup> Better Regulation Guidelines, Chapter II, Section 3, box. 3.

<sup>64</sup> Better Regulation Toolbox, Tool #1, section 2.1.

<sup>65</sup> Article 11(3) TEU.

<sup>66</sup> Better Regulation Guidelines, Chapter II, section 2, p.13.

<sup>67</sup> UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ([Aarhus Convention](#)), Preamble, Recital 8.

<sup>68</sup> European Ombudsman, [Public consultation on transparency and participation in EU decision making related to the environment \(SI/5/2022/KR\) - Background information](#), 08.09.2022.



participate in decision-making on specific activities (Article 6), as well as in the elaboration of plans and programmes and policies relating to the environment (Article 7), and the preparation of generally binding normative instruments (Article 8).<sup>69</sup> More broadly, the right to public participation in environmental decision-making stems from every person's right to live in an environment adequate to his or her health and well-being.<sup>70</sup> Effective participation in environmental decision-making is not only fundamental for preserving that right, but also an important means of fulfilling the duty of every person, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.<sup>71</sup>

#### 4.5. The duty of objectivity and impartiality of EU officials

The Treaties of the European Union place great importance on the independence and impartiality of the Commission. As the EU organ promoting the general interest of the Union and enforcing EU legislation, the Commission and its members are required to act independently and impartially. According to Article 17 TEU, *“the members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt. In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office, or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.”* Article 245 of the Treaty on the Functioning of the European Union (“TFEU”)<sup>72</sup> requires that the Members of the Commission refrain from any action incompatible with their duties and that Member States respect their independence and do not seek to influence them in the performance of their tasks.

The Annex of the Rules of Procedure of the European Commission, adopted in accordance with Article 249 TEU, contains the Code of Good Administrative Behaviour for the staff of the European Commission in Relations with the Public.<sup>73</sup> According to the Code of Good Administrative Behaviour, quality service calls for the Commission and its staff to be courteous, objective, and impartial.<sup>74</sup> The staff and members of the European Commission have a duty, when fulfilling their functions, to remain objective, impartial and act in the public interest. Section 2 of the Code of Good Administrative Behaviour for staff of the European Commission in their Relations with the Public requires the Commission staff to always *“act objectively and impartially, in the Community interest and for the public good. They shall act independently within the*

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<sup>69</sup> While the Aarhus Convention does not cover public authorities acting in a legislative capacity, the European Commission has committed to participatory and evidence-based decision-making, including in the legislative process. The principles of effective and timely public participation under the Aarhus Convention can be used to interpret and guide obligations that the European Commission has under Articles 10 and 11 TEU and the Better Regulation Guidelines.

<sup>70</sup> Preamble, Recital 7 of the Aarhus Convention.

<sup>71</sup> Preamble, Recital 7 of the Aarhus Convention.

<sup>72</sup> Consolidated version of the Treaty on the Functioning of the European Union (TFEU), OJ C 326, 26.10.2012, p. 47–390, preamble – Quality Service.

<sup>73</sup> Consolidated text: Rules of Procedure of the Commission, [C\(2000\) 3614](#), 23.04.2020.

<sup>74</sup> Rules of Procedure of the Commission, Annex “Code of Good Administrative Behaviour for Staff of The European Commission in their Relations with the Public”, Preamble, “Quality service”.

*framework of the policy fixed by the Commission and their conduct shall never be guided by personal or national interest or political pressure.*<sup>75</sup>

Similarly, Article 8 of the European Code of Good Administrative Behaviour, developed by the European Ombudsman and first endorsed by the European Parliament in 2001, requires that “[t]he official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.”<sup>76</sup>

Finally, Principle 3 of the European Ombudsman’s Public Service Principles states that “civil servants should be impartial, open-minded, guided by evidence, and willing to hear different viewpoints. (...) In procedures involving comparative evaluations, civil servants should base recommendations and decisions only on merit and any other factors expressly prescribed by law.”<sup>77</sup>

Objectivity and impartiality are particularly important for the public officials representing the Commission, which is tasked with the protection of the general interests of the EU and holds the power to initiate legislative changes. This, along with evidence-based decision-making, is an important guarantee against arbitrariness and abuse of power in the exercise of public functions. Transparent communication of evidence at the basis of the Commission’s decisions<sup>78</sup> assures the public of the objectivity and impartiality of decision-makers and the decision-making process as a whole. The Better Regulation Toolbox stresses that “reliable evidence is the cornerstone of ‘better regulation’ (...). To ensure transparent policymaking and demonstrate that evidence is robust, all data and evidence steps – from gathering, use, and communication – should be documented systematically.”<sup>79</sup> Transparent disclosure of evidence in particular can alleviate any doubts as to the reasons or logic of decision-making.<sup>80</sup>

## **5. Failure to comply with Better Regulation Guidelines and other applicable rules in preparing the 2024 CAP revision**

In its letter of 4 June 2024, the Commission stresses that the Proposal enjoyed broad support and was subsequently adopted into legislation by the European Parliament and the Council (see Annex 7). The Complainants would like to clarify that the concerns raised in their letters to President von der Leyen and in the present complaint relate to maladministration in the preparation process of the Proposal by the Commission. They do not question the fact that the Proposal was subsequently adopted by the European Parliament and the Council; and note that the subsequent adoption of the Proposal should not be regarded as invalidating the need to apply the Better Regulation Guidelines and other applicable rules, and a

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<sup>75</sup> Rules of Procedure of the European Commission, Annex “Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public”, Section 2, “Objectivity and impartiality”.

<sup>76</sup> Article 8 of the European Code of Good Administrative Behaviour, European Ombudsman, 2016.

<sup>77</sup> Public service principles for the EU civil service, European Ombudsman, 19.06.2012.

<sup>78</sup> See on the commitment and importance of evidence-based decision-making the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee and the Committee of Regions Empty, Better regulation: taking stock and sustaining our commitment, [COM\(2019\) 178 final](#), 15.04.2019, Section 2.

<sup>79</sup> Better Regulation Toolbox, Tool #4, Section 1.

<sup>80</sup> *Ibid.*

justification for serious failures to comply with the basic principles of open and transparent decision-making.

## 5.1. Failure to demonstrate that the decision-making on the Proposal took into consideration the best available evidence

The Complainants submit that the Commission failed to conduct an impact assessment or otherwise communicate relevant sufficient evidence (including the best scientific data) presenting the potential environmental impacts of the Proposal, to convincingly explain how the Proposal respects the proportionality principle, and to ensure respect for the principle of coherence.

The Better Regulation Guidelines state that “[s]ound policymaking starts with good planning, focusing on the priorities reflected in the President’s political guidelines and the Commission’s work programme.”<sup>81</sup> The Complainants note that the Commission Work Programme 2024<sup>82</sup> did not include any of the plans presented in the non-paper, nor a general indication that the Commission was considering legislating on the topic of agriculture and the environment. According to the Complainants, the Proposal amending the CAP regulations with the view to exempt farmers from environmental obligations and controls constitute a major legislative proposal that should have been carefully planned beforehand and included in the Commission Work Programme or at least undergone proper preparation process, including impact assessment and gathering of relevant evidence from the public and all major stakeholders as it was done before the adoption of the three CAP regulations that entered into force in 2023.

The Complainants submit that the Commission misused the flexibilities provided for in the Better Regulation Guidelines to depart from them, which include the eventuality of a “*political imperative to move ahead quickly*” or “*an emergency that requires a rapid response*”.<sup>83</sup> The Commission failed to provide detailed and concrete reasons as to what constitutes the political urgency justifying the presentation of such a major legislative proposal which was not included in its Work Programme 2024, and why it completely deviated from the well-established practices on evidence-based decision-making that are laid down in the Better Regulation Guidelines.

Even in circumstances that would call for urgent action, the Better Regulations Guidelines require the Commission to make sure that it has “*relevant and timely information on which to base its decisions. Similarly, the depth of analysis should reflect the significance of the impacts or effects that a given initiative or intervention may have within and outside the EU.*”<sup>84</sup> Importantly, “[a]n impact assessment is required for Commission initiatives that are likely to have significant economic, environmental or social impacts or which entail significant spending, and where the Commission has a choice of policy options.”<sup>85</sup> In the Complainants’ view, an impact assessment was required considering the wide economic and social impacts that the Commission expected the new CAP measures to make; the significant environmental impacts that should have reasonably been anticipated (see Background section); the significant share of the EU budget that is spent through the CAP (see Section 4.1.); and the fact that the Commission had a

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<sup>81</sup> Better Regulation Guidelines, Chapter I, Section 3.1.

<sup>82</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Commission work programme 2024, [COM\(2023\) 638 final](#).

<sup>83</sup> Better Regulation Guidelines, Chapter I.

<sup>84</sup> *Ibid.*

<sup>85</sup> Better Regulation Guidelines, Chapter IV, Section 1.

choice of policy options, as notably illustrated by the conduct of an ad-hoc consultation to help identify such options.

As discussed in Section 4.2., the Better Regulation Guidelines make concrete obligations stemming from the Union's primary law and as such, the good practices they lay down should be followed diligently. The Court of Justice has confirmed that there are situations where an impact assessment can be dispensed with provided the EU legislature "*has sufficient information enabling it to assess the proportionality of the measure.*"<sup>86</sup> As the Court further confirmed, "*in order to exercise their discretion properly, co-legislators must take into account, during the legislative procedure, the available scientific data and other findings that became available.*"<sup>87</sup>

Carrying out broad consultations with interested parties is a duty under Article 11 TEU, and constitutes an "*important means of collecting evidence to support policymaking.*"<sup>88</sup> The Better Regulation Guidelines designate the research community as a category of stakeholders that is important to consult and that might need to be specifically targeted, as it can "*provide evidence based on rigorous scientific methods and peer review processes.*"<sup>89</sup> In a recent decision, the European Ombudsman stressed that good administration involves the duty of policy-makers to engage with the public on the substance of scientific arguments raised in relation to policies of high public interest. The European Ombudsman stated in relation to the regulation of genetically modified organisms that "*[i]n this context, and as a matter of good administration, the Commission should openly engage with the substance of scientific and other arguments raised by the public questioning its policy choices. It may also request specialised EU bodies advising it, such as EFSA, to engage with any substantial concerns.*"<sup>90</sup>

In the present case, the Commission did not explain if and how it took into consideration the best available evidence, including scientific data and other findings that became available since the CAP impact assessment of 2018. It also failed to demonstrate how removing basic environmental requirements from the CAP constitutes a proportionate solution to reduce the administrative burden for farmers.

As indicated in Section 3.1., the Commission invoked the impact assessment of 2018 as providing important background to the adjustments contained in the Proposal, suggesting it would contain sufficient information to adapt the CAP's measures mix to "*the changed situation and the experiences in the first year of application*". However, it is evident that an impact assessment that was carried out six years before the Proposal was presented could not contain the most recent evidence relevant to meet the identified objective (including but not limited to, the main difficulties faced by farmers across the Union since the entry into force of the CAP regulations, the current status of the environmental factors concerned by the envisioned measures, and the interplay between the two). The report '*Summary of CAP Strategic Plans for 2023-2027: joint effort and collective ambition*' (which the Commission also mentions in the 'impact assessment' section of the Proposal,<sup>91</sup> see Section 3.1.) does not bridge this gap, since it was "*published during the first year of implementation of the Plans – whereas data on uptake by farmers and other beneficiaries are due only in 2025. This report therefore relies on the values of indicators planned in the*

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<sup>86</sup> Judgment of 3 December 2019, *Czech Republic v Parliament and Council*, C 482/17, EU:C:2019:1035, para. 85.

<sup>87</sup> *Ibid.*, para. 86. See also paras 87-92 where the Court looks concretely at whether there were sufficient scientific studies or reports available.

<sup>88</sup> Better Regulation Guidelines, Chapter II, Section 1.

<sup>89</sup> Better Regulation Guidelines, Chapter II, Section 5.1.2.

<sup>90</sup> European Ombudsman, Decision on how the European Commission dealt with concerns about how it carried out an impact assessment of 'new genomic techniques' in relation to the application of EU legislation on genetically modified organisms, *Case 346/2023/MIK*, 15.04.2024, para. 37.

<sup>91</sup> Proposal, p. 5.

*approved CSPs and on qualitative appraisal of the potential effects of the choices. The actual impacts will depend on the cumulative effects of interventions and can only be determined through evaluations. Those impacts will need to be seen in conjunction with the impact of other EU and national instruments that address the needs identified in the CSPs – as well as with other external factors.”<sup>92</sup>*

Already in its ‘*Analysis of links between CAP Reform and Green Deal*’<sup>93</sup> accompanying the Farm to Fork and Biodiversity Strategies, and which was published *after* the 2018 impact assessment, the Commission clarified the essential character that it conferred to CAP conditionality, explaining that it constitutes “*a broad and enhanced “foundational” level of environmental care*”. Back in 2020, the Commission clearly designated crop rotation, soil cover and landscape features (some of the conditionality requirements which the Proposal considerably weakens) as essential standards to respect the “no backsliding” principle (currently enshrined in Article 105 CAP PR), with the precision that “[p]artial replacement of these mandatory standards by voluntary payments in either CAP pillar would produce less positive results – as was confirmed by the impact assessment accompanying the Commission’s legal proposals.”<sup>94</sup> More recently, in a letter dated July 2023, Commissioner Wojciechowski was writing to the Lithuanian Association of Agricultural Companies LUZBA that “[i]n the long-term, helping farmers to adapt to the new climatic conditions and increasing their resilience is the appropriate way forward. Conditionality contributes to these long-term objectives and should not be undermined by further derogations.” In July 2023, the Commission still noted concerning GAEC 8 that the Strategic Plans contribute to increasing the presence of high diversity landscape features towards the Biodiversity Strategy target of 10% of agricultural land by 2030 but that, overall, more attention should be dedicated to these efforts.<sup>95</sup>

In its reply letter of 4 June 2024, the Director-General for Agriculture and Rural Development explains that although no impact assessment was carried out, “*in line with our Better Regulation guidelines, the Commission is preparing an analytical document to present, to the extent possible, the costs and benefits of the proposal.*” (see Annex 7) The Complainants note that the Better Regulations Guidelines indeed mention the option of presenting analytical reports should the Commission be unable to produce an impact assessment where one should have been prepared. However, they are of the view that this alternative does not lift the Commission’s duty to gather sufficient evidence in the preparation of a legislative initiative such as the Proposal. In particular, where the proposal is likely to have a significant environmental impact and is of broad public interest, the public must be able to present its views. The Complainants also note that according to the Better Regulations Guidelines, such an analytical report should be prepared within three months of the adoption of the initiative.<sup>96</sup> This document, if it has been prepared, was not communicated to the public by the time the Complainants submitted this complaint. The Complainants note that a late communication of the analytical report deprives it from its useful effect.

The Complainants submit that, in addition to the failure to conduct an impact assessment or otherwise demonstrate that it based its decisions on the best available evidence, the Commission failed to comply with its legal obligation under Article 6(4) of the European Climate Law. This provision contains a procedural requirement inspired by the principle of coherence which obliges the Commission to assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the 2050 climate-neutrality objective and the Union climate targets and with ensuring progress on adaptation. The Commission is also under an obligation to make the result of the consistency assessment publicly available

<sup>92</sup> [COM\(2023\) 707 final](#), *op. cit.*, p. 2.

<sup>93</sup> [SWD\(2020\) 93 final](#), *op. cit.* p. 6.

<sup>94</sup> [SWD\(2020\) 93 final](#), *op. cit.*, p. 17.

<sup>95</sup> [COM\(2023\) 707 final](#), *op. cit.*, p. 8.

<sup>96</sup> Better Regulation Guidelines, Chapter IV, Section 1.

at the time of adoption, where relevant by including it in the impact assessment accompanying the measures or proposals.<sup>97</sup>

To the best of the Complainants' knowledge, the Commission has not conducted a consistency assessment of the Proposal with the Union's climate objective and target and with ensuring progress on adaptation, thus breaching its obligation under Article 6(4) European Climate Law. As a result, the Commission also did not demonstrate that it took into consideration the best available evidence relevant to the mitigation of the impacts of agriculture on climate change when forming its policy decisions as well as the adaptation of agriculture to climate change, therefore breaching EU law in a way that also qualifies as maladministration.

In light of all the above, the brief assertion in the "Proportionality" section of the Proposal that "[t]he proposal modifies the existing Regulations only to the extent strictly necessary to achieve the objectives" fails to demonstrate sufficient and convincing proof to support that statement.

Finally, the Complainants submit that maladministration in the process of preparing the Proposal led the Commission to disregard the principle of coherence. For the sake of clarity, the Complainants understand that the Commission has the prerogative to adopt a proposal amending certain provisions of the CAP and the substance of that proposal is not the subject matter of this Complaint.

However, broad consultations, evaluations and impact assessments, and the consistency assessment legally required by the European Climate Law, are all tools that help to guarantee EU laws are not adopted in isolation. As a consequence of the absence thereof (see Section 5.2. and Section 5.3. in connection to consultations), the measures presented in the Proposal have been depicted by civil society and the media as being at odds with the stance taken by the Commission during the previous years of President von der Leyen's mandate (see the references to the Farm to Fork Strategy, the Biodiversity Strategy and the '*Analysis of links between CAP Reform and Green Deal*' in the Background section).

A correct application of standards on evidence-based decision-making would have resulted in the exploration of policy options that could meet both the objective to reduce the administration burden on farmers and the long-term policy objective that the CAP drives forward the EU Green Deal,<sup>98</sup> therefore guaranteeing respect for the principle of coherence.

In sum, the Complainants submit that the failure by the Commission to conduct an impact assessment to inform the preparation of such a major legislative proposal, or to otherwise demonstrate that it based its decisions on the best available evidence, constitutes maladministration. The Complainants also submit that the failure by the Commission to conduct a consistency assessment as required by Article 6(4) of the European Climate Law constitutes a breach of EU law, which also qualifies as maladministration. As a result of this maladministration, the Commission failed to convincingly explain how the Proposal took into consideration the proportionality principle, and to ensure respect for the principle of coherence.

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<sup>97</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ([European Climate Law](#)), Article 6(4).

<sup>98</sup> Note the reference made to the EU Green Deal in Recital 125 of the CAP SPR: "The Commission should submit a report to the European Parliament and the Council in order to assess the operation of the new delivery model by the Member States and combined contribution of the interventions set out in Member States' CAP Strategic Plans' to achieving the environmental and climate-related commitments of the Union, in particular those emerging from the European Green Deal."

## 5.2. Failure to conduct a public consultation

The Better Regulation Guidelines establish that “[u]nder Article 11 of the Treaty on European Union (TEU), the Commission has a duty to carry out broad consultations with interested parties in order to ensure that EU action is coherent and transparent.”<sup>99</sup> The Better Regulation Guidelines also require that stakeholder consultation explicitly includes environmental and digital aspects where this is relevant.<sup>100</sup>

The principles and process of consulting the public in accordance with Article 11 TEU are set out in the Better Regulation Guidelines and Better Regulation Toolbox.<sup>101</sup> According to Chapter II of the Better Regulation Guidelines, public consultations should follow four general principles – participation, openness and accountability, effectiveness, and coherence. The principle of participation requires the Commission to “take an inclusive approach by consulting as widely as possible”. Openness and accountability require to “make the consultation process and how it has affected policymaking transparent to those involved and to the general public, including to persons with disabilities”. The principle of coherence requires to “ensure the consistency (across all services) of consultation processes, analysis, review, and quality control.” Last but not least, the principle of effectiveness requires to “consult at a time when stakeholder views can still make a difference, taking account of proportionality and specific constraints.”<sup>102</sup>

As a general rule, stakeholders should be consulted when preparing an initiative accompanied by an impact assessment.<sup>103</sup> In such cases, it is mandatory for the Commission to conduct an internet-based public consultation of minimum 12 weeks.<sup>104</sup>

The Complainants submit that the Commission failed to carry out a public consultation in the preparation of the Proposal, in breach of the principle of broad public participation.

In Section 5.1., the Complainants submitted that the Proposal should have been accompanied by an impact assessment, considering that the Proposal constitutes an initiative likely to have significant economic, environmental or social impacts and entails significant spending, and that the Commission had a choice of policy options. It follows that the impact assessment should have been accompanied by a public consultation.

The Better Regulation Guidelines provide for an exception to the general rule requiring to carry out public consultations: the Commission can decide to organise a targeted consultation “for very technical initiatives of limited interest for the general public”.<sup>105</sup>

In the case at hand, the Commission did not communicate that it derogated to the general principle of broad public consultation to apply this exception. Nonetheless, would the Commission consider that the “ad-hoc consultation” constituted a targeted consultation, the Complainants submit that the Commission derogated from the principle of broad public consultation without regard for the conditions attached to the use of the exception for targeted consultations. Certainly, the revision of two CAP regulations that affect how almost a third of the EU budget will be spent for the years to come cannot be construed as “a very technical initiative of limited interest for the general public.” Based on the preparation process of the CAP regulations adopted in 2021, the Commission was fully aware of the broad range of stakeholders besides

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<sup>99</sup> Better Regulation Guidelines, Chapter II, Section 1.

<sup>100</sup> Better Regulation Guidelines, Chapter II, Section 2.

<sup>101</sup> European Commission, [Better Regulation Toolbox](#), 2023.

<sup>102</sup> Better Regulation Guidelines, Chapter II, Section 3, Box.3.

<sup>103</sup> Better Regulation Guidelines, Chapter II, Section 4.

<sup>104</sup> Better Regulation Guidelines, Chapter II, Box 4.

<sup>105</sup> Better Regulation Guidelines, Chapter II, Section 4.

the four farming organisations that have an interest and are engaging in discussions on the CAP. For instance, the last public consultation on the CAP received 322,912 online contributions from across all Member States. Out of those, 97% were submitted by individuals (in some cases, with the support of civil society), of which only 7% identified themselves as involved in farming.<sup>106</sup> Stakeholders others than farming organisations are also regularly present in the Commission's expert groups on EU agriculture, such as the Civil Dialogue Groups<sup>107</sup> and the Advisory Group on Sustainability of Food Systems<sup>108</sup> – this is notably the case of the Complainants. BirdLife is also a participant in the Strategic Dialogue on the Future of EU Agriculture.<sup>109</sup> Letters sent by civil society organisations to the Commission, such as the one of 6 March 2024, as well as the wide coverage by the press (see the Background section) also illustrate the continued public interest in initiatives of the Union concerning the CAP.

In its reply to the letter of 25 March 2024, the Commission indicates that the Strategic Dialogue on the Future of EU Agriculture “*will contribute to developing a joint understanding of the future EU farming and food system among actors across the whole agri-food chain, as well as non-governmental organisations and civil society representatives, financial institutions, and academia. By combining different perspectives, the dialogue aims to foster the creation of new solutions and to bring about a common vision for the future.*” (see Annex 7)

This reply does not answer the Complainants' concerns over the lack of public participation to inform the decision-making on the Proposal and their demand to guarantee that any future initiatives on EU agriculture respect the well-established safeguards for a high level of transparency, public participation and evidence-based decision-making. The Complainants note that the Strategic Dialogue cannot replace an open and transparent public consultation and the gathering of the best available evidence (including scientific evidence) to inform EU decision-making on agriculture. The Strategic Dialogue has a restricted attendance, and is organised under rules of strict confidentiality. It means non-members, such as the general public, many organisations (including ClientEarth), and the broader research community, cannot actively take part in the discussions that are being held and that might influence the future of the EU initiatives on agriculture, including the CAP. Moreover, despite the Strategic Dialogue being in place when the Commission prepared its Proposal, the latter did not reflect positions commonly agreed in this group.

Considering that the initiative should have been accompanied by an impact assessment or that the Commission should have otherwise demonstrated that it based its decisions on the best available evidence; the environmental significance of the Proposal; and the continued broad public interest in initiatives of the Union concerning the CAP, the Commission should have carried out a broad public consultation to inform its decision-making. The absence thereof amounts to maladministration.

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<sup>106</sup> European Commission, Factual Summary: Online public consultation on “Modernising and Simplifying the Common Agricultural Policy (CAP)”, 3.05.2017.

<sup>107</sup> European Commission, Agricultural civil dialogue groups; ClientEarth participates through its membership to the European Environmental Bureau.

<sup>108</sup> European Commission, Advisory Group on Sustainability of Food Systems (AGSFS).

<sup>109</sup> In September 2023, during her State of the Union address, President von der Leyen announced the setting up of a ‘Strategic Dialogue on the future of EU agriculture’. The creation of this Strategic Dialogue was confirmed in the Commission Work Programme 2024 (COM(2023) 638 final), and officially initiated in January 2024. The stated aim of the Strategic Dialogue is to “shape a shared vision for the future of the EU’s farming and food system”, by bringing together organisations representative of farmers, of other actors from the value chain such as retailers and shop owners, as well as consumer organisations, environmental groups, financial institutions and academia (see European Commission, Strategic Dialogue on the future of EU agriculture).



### 5.3. Failure to follow Better Regulation Guidelines on targeted consultations

In Section 5.2., the Complainants submit that, would the Commission consider that the organisation of an “ad-hoc consultation” qualifies as a targeted consultation, the conditions to derogate from the principle of broad public participation were not met. In the present section, the Complainants express their views that the “ad-hoc consultation” cannot be regarded as a targeted consultation within the meaning of the Better Regulation Guidelines. At the very least, the Commission did not abide by the general principles of broad participation, openness and accountability, and effectiveness, nor the minimum standards of targeting, outreach, sufficient time for participation and publication of contributions and results.<sup>110</sup>

These principles and minimum standards apply to all stakeholders consultations, public or targeted. Targeted consultations are also not exempt from most rules laid down in the Better Regulation Guidelines, unless explicitly specified.<sup>111</sup> As clearly stated in Section 5.1.2. of the Better Regulation Guidelines, an important element of any consultation strategy is to identify and map the stakeholder groups that should be consulted, the basic rule being to consult “*broadly and transparently among stakeholders, who might be concerned by the initiative, seeking a whole spectrum of views in order to avoid bias or skewed conclusions promoted by specific constituencies (‘regulatory capture’). (...) One important category of stakeholders is the research community, that can provide evidence based on rigorous scientific methods and peer review processes, and that might need to be specifically targeted.*”

The Better Regulation Guidelines insist that, in the case of targeted consultations, “[o]ne should avoid granting privileged access to some stakeholders.”<sup>112</sup>

Yet, the Proposal indicates that only four EU-level farming organisations were consulted “[i]n view of the widespread farm protests and to analyse the administrative burden weighing on farmers’ shoulders.” Therefore, the very selective and one-sided “ad-hoc consultation” process carried out by the Commission only involved a few organisations representing solely agricultural interests. To the Complainants’ best knowledge, the Commission did not communicate whether a stakeholder mapping was conducted and if so, how it led the Commission to select these four organisations in particular, to the exclusions of all other stakeholders. This is particularly concerning in light of the vast experience the Commission has in engaging with other stakeholders on the CAP (see Section 5.2.).

In its reply letter of 4 June 2024, the Commission explained that, next to the consultation of the four EU-level farming organisations, it launched a study on simplification, which includes a survey asking farmers directly about the sources of their administrative burden and in-depth interviews with selected respondents. (see Annex 7) The Complainants note that this survey did not inform the preparation of the Proposal, since it only closed on 8 April 2024 while the Proposal was presented on 15 March 2024 (see Annex 15).

Furthermore, since the measures presented in the Proposal are not confined to lowering the administrative burden of farmers, but remove several environmental conditions attached to the spending of the CAP budget, it was the Commission’s duty to take an inclusive approach by consulting as widely as possible, and as a minimum to select stakeholders representing the interests directly impacted by the Proposal,

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<sup>110</sup> Better Regulation Guidelines, Chapter II, Box 3.

<sup>111</sup> Better Regulation Guidelines, Chapter II, Section 2.

<sup>112</sup> Better Regulation Guidelines, Chapter II, Section 5.1.2.

including environmental protection, as well as to seek inputs from the research community, in its ad-hoc consultation.

The Complainants also submit that the Commission did not act transparently when organising the ad-hoc consultation, to the effect that citizens could not exercise their right to participate in public decision-making in decisions that are of broad public interest and significantly affect the environment. As such, the Commission did not abide by the stakeholder consultation's general principles of transparency, openness and accountability.

The ad-hoc consultation also happened at a time when no information concerning a potential revision of the CAP regulations was available to the public, to the effect that stakeholders who were not directly consulted by the Commission were not given any other opportunity to make their views known. The Commission only informed the public about the ad-hoc consultation after this process had closed, when it vaguely reported on its press webpage that “[t]he actions listed in the paper take into account the contributions by national administrations, major EU farming organisations and the European Parliament's agricultural committee.” (see Annex 2) The names of the four farming organisations consulted, as well as a brief summary of their views, only entered the public domain due to the publication of the “leaked” version of the non-paper.

In light of the above, the Complainants submit that the failure of the Commission to respect the general principles and minimum standards for stakeholder consultation laid down in the Better Regulation Guidelines when organising the ad-hoc consultation constitutes maladministration.

#### 5.4. Failure to convey objectivity and impartiality in communications to the public regarding the Proposal

The Complainant would like to stress that with regard to objectivity and impartiality, proper communication and appearance are as important as fulfilling the guarantees themselves. To maintain the public's trust in European institutions, EU decision-makers must not only make decisions objectively and impartially but it must also be convincingly demonstrated to the public. Therefore in all decisions, but particularly in those where there is any objective doubt that a public official may have a personal interest or bias, the Commission must display extra care in making sure that the evidence basis for any decision is properly reflected and communications are conducted in a manner that leaves no doubt about the objectivity and impartiality and sound reasoning of Commission's decision-making.

The Complainant submits that the Commission failed to act in a manner that conveys objectivity and impartiality in launching and conducting the ad-hoc consultation. This followed firstly from the extremely narrow and seemingly arbitrary selection of four EU farming organisations as sole stakeholders invited to provide their input. Secondly, by the extremely short period of time awarded to respondents of the ad-hoc consultation and the brief report that was made of the respondents' contributions. Thirdly, by the lack of evidence communicated to the public to justify the choice of the legislative measures taken by the Commission, including the refusal to grant access to documents requested by one of the Complainants. Last but not least, several statements made by a high Commission official in the media further conveyed the lack of objectivity and impartiality. This failure to convey objectivity and impartiality undermines the public's trust in the EU institutions and their trust in the Commission's ability to adopt effective initiatives that serve the interests of the EU as a whole.

On the first point, the Complainant submits that the Commission failed to convey impartiality and objectivity in the organisation of the ad-hoc consultation, in particular by selecting four EU-level farming organisations as the sole stakeholders to consult in preparation of the Proposal. This glaringly excluded other voices previously shown to have interest in the formulation of the CAP: the farming community, civil society, the research community and citizens, among others. Neither was the public informed that a consultation feeding the preparation of a legislative proposal was taking place. The Better Regulation Guidelines make clear that the role of broad consultations, because they lead to better quality of policy initiatives, is also to guarantee the credibility of these initiatives – and therefore acceptance and trust among EU citizens.<sup>113</sup>

A second element that contributes to questioning the impartiality and objectivity of the Commission in the process of preparing the Proposal is the time period that was granted to the four farming organisations to answer the ad-hoc consultation. One week can hardly be considered sufficient for stakeholders to make timely, informed and effective contributions, when the Better Regulation Guidelines provide for intervals running from 4 to 12 weeks depending on the initiative considered (and minimum 12 weeks for initiatives that undergo an impact assessment, typically when preparing a legislative proposal as in the case at hand). This element is also to be considered in light of the decision taken by the Commission to follow the recommendation of only one of the organisations to reduce the environmental ambition of the CAP, while two other organisations explicitly opposed this.<sup>114</sup>

Therefore, the Commission created a perception that it had already taken its policy decisions regardless of the results of the ad-hoc consultation, which would then amount to a mere check-the-box exercise to legitimise its Proposal. The European Ombudsman has previously found that “*the Commission’s efforts to consult the public would risk being significantly undermined were respondents to consider that the Commission had already made up its mind on the outcome of the consultation.*”<sup>115</sup> The flaws of the ad-hoc consultation call into question the quality of the Proposal, and therefore its credibility, acceptance and trust among citizens.

Thirdly, the Complainants submit that the Commission further conveyed a lack of impartiality and objectivity by failing to disclose any relevant and independent scientific evidence, including evidence on the expected environmental effects of removing several GAECs, to justify the adequacy and proportionality of its Proposal (as discussed in section 5.1.). By failing to provide any supporting evidence, the conclusion in the reply letter of 4 June 2024 that “*the Commission proposal is well-targeted and limited*” and that “[i]t maintains the CAP’s role and overall ambition in supporting the transition of European agriculture to sustainable farming, while providing necessary flexibilities in implementation in light of the first year of implementation of the CAP Strategic Plans and the need to reduce the administrative burden on farmers” (see Annex 7) conveys a lack of evidence-based decision-making and thereby, a lack of objectivity.

Finally, the declarations made by Commissioner Wojciechowski in its letter to Polish farmers and on national radio (see the Section 3.1.) suggested a clear preference of the Commissioner (and thus the Commission) to exempt farmers from a series of existing or foreseen environmental measures. This demonstrated a clear preference to move away from the implementation of the EU Green Deal through the CAP and was reinforced by the failure to include environmental organisations or assessments in the

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<sup>113</sup> Better Regulation Guidelines, Chapter II, Section 1.

<sup>114</sup> European Commission non-paper, *op. cit.*, p. 2.

<sup>115</sup> European Ombudsman, [Decision in case 1081/2018/SRS](#) on a public consultation carried out by the European Commission on reforming investor-state dispute settlement (ISDS) by creating a multilateral system, 10.07.2018, para. 21.

decision-making in any capacity. Against this background, the trust in objectivity and impartiality of decision-making on the revision of the CAP was severely undermined.

Taking into consideration the context of the upcoming elections of the European Parliament and the doubts casted about the objectivity and impartiality of the Commission, in particular President von der Leyen and Commissioner Wojciechowski, in handling the response to the farmer's protests, it was particularly important to display undoubtable impartiality and objectivity in the process leading up to any potential revision of the CAP regulations. Given the sensitivity of the subject, the broad public interest, the significant involvement of the agriculture lobby, and the electoral context, it was crucial for the Commission to refrain from any communications that could cast doubt on the impartiality of the Commission's decision-making and to conduct the preparation of the Proposal to represent a broad range of views on all aspects of proposed changes. The Commission should have conducted a broad and inclusive public consultation and an impact assessment or otherwise demonstrated that it based its decisions on the best available evidence, assuring the public of the objectivity and impartiality of its analysis in making the policy choices included in the Proposal.

For the reasons stated above, the Commission has failed to demonstrate the required objectivity and impartiality in launching and conducting the ad-hoc consultation and in taking its policy decisions. This amounts to maladministration.

## 6. Maladministration with regard to access to documents request

### 6.1. Legal framework relating to access to documents

The TEU enshrines the democratic principles which underlie the right of access to documents. These underlying principles are the concept of openness and proximity of decision-making to the citizen, key to the European Union project, as stated in Article 1 (paragraph 2), and reiterated in Article 10(3) – under the title of “Provisions on Democratic Principles” – which states that “[d]ecisions shall be taken as openly and as closely as possible to the citizen.”

The TFEU establishes the general right of access to documents by providing in its Article 15(3) that “[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union institutions.”

In addition, the Charter of Fundamental Rights of the European Union (“CFR”),<sup>116</sup> which is legally binding on the European Union, its institutions, and the Member States under Article 6(1) of the TEU, reiterates the general right of access to documents and thus characterises this right as a fundamental right. Article 42 of the CFR reads “[a]ny citizen of the Union, and any natural or legal person residing or having its registered office in a Member State has a right of access to documents of the institutions”.

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<sup>116</sup> Charter of Fundamental Rights of the European Union (CFR), OJ C 326, 26.10.2012, p. 391–407.

Similar to all fundamental rights, limitations on the exercise of the right must respect the essence of that right, and may only be applied if they are necessary and genuinely meet the objectives of general interest recognised by the Union, as provided by Article 52(1) of the CFR.

Regulation 1049/2001 further provides the principles, conditions, and limits governing the right of access to all documents held by European institutions. Firstly, its Recital 11 recognises that “[i]n principle, all documents of the institutions should be accessible to the public”. It also ensures that the right of access to documents is broad in scope: according to Article 1, the Regulation aims to provide access to documents “in such a way as to ensure the widest possible access to documents”. Given these objectives and principles, the exceptions to the right of access to documents provided by Regulation 1049/2001 must be interpreted and applied strictly.<sup>117</sup>

The obligations of transparency and openness placed on the EU institutions by Regulation 1049/2001 have, as one of their goals, the development of a culture of good administration in the EU. Article 15(1) of Regulation 1049/2001 requires that such a culture should extend to the treatment of applications for access: “[t]he institutions shall develop good administrative practices to facilitate the exercise of the right of access guaranteed by this Regulation”. The principle of good administration is furthermore enshrined as a fundamental right in the CFR. Article 41(1) of the CFR provides that “[e]very person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, offices, bodies, and agencies of the Union”. Article 41(2), third indent, of the CFR makes clear that the right to good administration includes the obligation of the administration to give reasons for its decisions.

Article 8(1) of Regulation 1049/2001 states that “[a] confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the institution shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal.”

## 6.2. Lack of response to the Confirmatory Application

As noted in the statement of the facts above (Section 3.4.), in its confirmatory application BirdLife contested the Commission’s refusal to disclose the requested documents, providing arguments to support its claim. It also noted that the Commission had failed to identify all documents falling within the scope of the request, considering that during the meeting of the “Expert Group on the Implementation of the CAP Strategic Plans Regulation” that took place on 18 March 2024, the Commission reported to Member States that 22 CAP APRs had been submitted by 15 February 2024 (a date anterior to that of the request) while the reply only identified 16.<sup>118</sup>

However, BirdLife received no response within the extended deadline, which expired on 7 June 2024. No response has been received as of the filing date of this complaint.

The Commission’s failure to reply to the Complainant within the timeframe set out for the processing of a confirmatory application constitutes an implied and unmotivated decision to refuse access within the

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<sup>117</sup> Grand Chamber, [Case C-64/05 P, Sweden v Commission and Others](#), ECLI:EU:C:2007:802, para. 66; and Grand Chamber, [Joined Cases C-39/05 P and C-52/05 P, Sweden and Turco v Council](#), ECLI:EU:C:2008:374, para 36.

<sup>118</sup> See document “3 – APR\_18\_03/2024” which reads that “22 APRs have been submitted by 15 February 2024”, available on the Register of Commission Expert Groups and Other Similar Entities, [Expert Group on the Implementation of the CAP Strategic Plans Regulation of 18 March 2024](#).

meaning of Article 8(3) of Regulation (EC) No 1049/2001 and is, therefore, a violation of the Commission's obligations in terms of Regulation 1049/2001 and an instance of maladministration.

In addition, as noted by BirdLife in its confirmatory application, Article 134(12) of the CAP SPR states that "[t]he annual performance reports, as well as a summary for citizens of their content, shall be made available to the public", without designating Member States as the only entities responsible for such publication. To the Complainants' best knowledge, despite the requirement of Article 134(2) of the CAP SPR, the CAP APRs have not been made available to the public to date by either Member States or the Commission. The Commission has neither disclosed the documents or otherwise communicated to BirdLife when it could expect this publication to happen.

## 7. Conclusion

Based on the above, we urge the European Ombudsman to find maladministration in the manner in which the preparation of the Proposal was carried out and the access to information request handled by the Commission.

In addition, we urge the European Ombudsman to recommend that the Commission makes publicly available prior detailed and concrete reasons for any deviations from Better Regulation Guidelines should they occur in the preparation of future proposals, including reasons as to why the preparation of proposals deviates from the obligation to carry out an impact assessment, as well as the obligation to carry out broad public consultations, including format, timeframe, manner of collecting the opinions as well as transparency and feedback to the contributions received.

We would like to thank you for your consideration of our complaint and remain at your disposal in case any further information is required.

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## Annexes

- Annex 1 Letter from Commissioner Wojciechowski to the Commission President von der Leyen, with reference Ares(2023)8746495 [20.12.2023].
- Annex 2 Screenshot of the European Commission *Pressroom* webpage, Press release (first published on 22.02.2024 and updated on 28.02.2024): The European Commission presents options for simplification to reduce the burden for EU farmers [screenshot of 10.07.2024].
- Annex 3 Commission non-paper, Reducing the administrative burden for farmers: next steps.
- Annex 4 Screenshot of the open letter to Polish farmers published by Commissioner Wojciechowski on the X platform [08.02.2024].
- Annex 5 Open letter of ClientEarth, BirdLife and 59 other civil society organisations to Commission President von der Leyen with subject “Joint letter to the EU Commission to reconsider the loosening of the CAP’s green architecture” [06.03.2024].
- Annex 6 Open letter of ClientEarth, BirdLife and 14 other civil society organisations to Commission President von der Leyen with subject “NGOs request the withdrawal of the Commission’s proposal to revise the CAP and call for the maintenance of a democratic process in EU policy-making” [25.03.2024].
- Annex 7 Letter of the European Commission, Directorate-General for Agriculture and Rural Development to Ms Berthier following the letter referred to in Annex 6, with reference Ares(2024)4021218 [04.06.2024].
- Annex 8 Screenshot of DG AGRI acknowledgement receipt of BirdLife’s initial access to documents request in case 2024/1102 [27.02.2024].
- Annex 9 Screenshot of extension of deadline to reply the initial request in case 2024/1102 by DG AGRI [19.03.2024].
- Annex 10 DG AGRI negative reply to initial request in case 2024/1102 [25.03.2024]
- Annex 11 List of identified documents and type of disclosure sent by DG AGRI in attachment to the negative reply in case 2024/1102 [25.03.2024].
- Annex 12 BirdLife’s confirmatory application in case 2024/1102 [22.04.2024].
- Annex 13 Screenshot of the Secretariat-General acknowledgement receipt of BirdLife’s confirmatory application in case 2024/1102 [23.04.2024].
- Annex 14 Screenshot of extension of deadline to reply the confirmatory application in case 2024/1102 by DG AGRI [15.05.2024].

Annex 15      Screenshot of the European Commission *Press corner* webpage, Press release: The European Commission invites farmers to participate in online survey on simplification [07.03.2024].

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