

UDC: 338.43.02(4-672EU)
Received: Review paper
December 25, 2022.
Accepted: December 30, 2022.
Corresponding author: dusan.dabovic@minpolj.gov.rs

NEW LEGISLATIVE FRAMEWORK ON EUROPEAN UNION COMMON AGRICULTURAL POLICY

Dušan Dabović

Ministry of Agriculture, Forestry, and Water Management;
e-mail: dusan.dabovic@minpolj.gov.rs

Abstract: The purpose of this paper is to analyze the legal basis of the new Common Agricultural Policy of the European Union (CAP), i.e., the three European Union Regulations that will be applied from 2023, forming the legislative framework for the development of agriculture in the EU Member States in the coming period. These are Regulation (EU) 2021/2116 on the financing, management, and monitoring of CAP, and repealing Regulation (EU) 1306/2013, Regulation (EU) 2021/2115 on establishing rules for the implementation of national strategic plans for CAP and repealing Regulation (EU) 1305/2013 and (EU) 1307/2013, as well as Regulation (EU) 2021/2117 updating Regulations 1308/2013 establishing a common organization of the markets for agricultural products, Regulation (EU) 1151/2012 on quality schemes for agricultural products, Regulation (EU) 251/2014 on definition, description, presentation, labelling and the protection of geographical indications of aromatized wine products and Regulation (EU) 228/2013 laying down measures for agriculture in the outermost regions of the EU.

In the paper, the methods of textual analysis, formal-legal method and comparative method were used. Since its creation in 1962, CAP has undergone numerous phases of development following the development of the EU and the needs of agricultural producers and consumers. Therefore, in 2018, the European Commission suggested to change the legal basis of the CAP for its greater simplicity and efficiency and better compliance with the European Green Plan in terms of sustainability. The previous legal framework of CAP, adopted in 2013, was formally replaced by the new legal framework adopted on December 2, 2021, and will be effective as of January 1, 2023.

The current Agriculture and Rural Development Strategy of the Republic of Serbia states that the adoption of the EU measures of the CAP can support the restructuring of

the domestic agriculture sector, and it is rational and valuable for the domestic agricultural policy to gradually align with the principles and requirements of the CAP, even before our accession to the EU. Therefore, domestic regulations in this area will be harmonized with the new structural regulations of the CAP in the coming period, as well as with special European regulations that will eventually be harmonized with their legal framework.

Keywords: Common agricultural policy, agriculture, regulations, European Union, alignment.

INTRODUCTION

Since its inception in 1962, the CAP has aimed to create a partnership between society and agriculture and between Europe and its agricultural producers.¹ First of all, this policy aims to achieve support for producers in this area, ensuring a safe supply of adequate food to the population. Also, one of the main goals is to enable farmers to reach an acceptable standard of living. In addition, European agriculture has to be aligned with climate change protection and sustainable management of natural resources. At the same time, it is necessary to preserve rural areas and protected landscapes throughout the EU. With its measures, this policy must also keep the rural economy alive, promoting employment in this area and the processing industry and related economic sectors. Therefore, the CAP is a common tool for all the Member States managed at the level of the Union and financed from the European budget.²

1. LEGISLATIVE FRAMEWORK ON NEW CAP

Following the development of the EU, the CAP went through several stages, the previous one established by the regulations adopted in 2013. In 2018, the European Commission initiated the adoption of a new CAP, and after several years of harmonization among the Member States, the legal basis of the new CAP was established by adopting the three mentioned Regulations on December 2, 2021.³

1 European Council, Council of the European Union (2022), Feeding Europe 60 years of Common Agricultural Policy, European Commission, Agriculture, and Rural Development, <https://www.consilium.europa.eu/en/60-years-of-common-agricultural-policy/>

2 *Ibidem.*

3 *Ibidem*; See, The Robert Schuman Foundation (2022) The Common Agricultural Policy 2023-2027: change and continuity, *RSF*, <https://www.robert-schuman.eu/en/european-issues/0607-the-common-agricultural-policy-2023-2027-change-and-continuity>; Young Farmers of Serbia (2022) Mladi su okosnica poljoprivrede i jedan od specifičnih ciljeva nove Zajedničke poljoprivredne politike, *MPS*, <https://podrskamps.org.rs/2022/11/29/ek-mladi-su-okosnica-poljoprivrede-i-jedan-od-specificnih-ciljeva-nove-zajednicke-poljoprivredne-politike/>;

1.1. Regulation (EU) 2021/2116 on financing, management, and monitoring of CAP

Regulation 2021/2116 deals with the financing, management, and monitoring of the CAP, particularly the financing of expenditures within the CAP, management, and control systems to be established by the Member States, and customs clearance and compliance procedures.⁴ In the first section, which refers to the management of European agricultural funds, after the introductory provisions, the Regulation stipulates the general provisions of these funds, stating that CAP measures will be financed by the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), which were also formed in the previous Regulation in this field. At the same time, it is stated that the EAGF will primarily finance the following costs through shared management: measures to regulate or support agricultural markets, financial contribution to interventions in specific sectors, interventions in the form of direct payments to farmers, financial contribution to informing and improving measures for agricultural products on the internal market and third countries, as well as a financial contribution to specific measures for agriculture in the outer regions. In addition, it is defined that the EAGF will finance the promotion of agricultural products through direct management either directly by the Commission or through international organizations, measures taken following Union legislation to ensure the conservation, characterization, collection, and use of genetic resources in agriculture, as well as the establishment and maintenance of information systems for agricultural accounting. The EAFRD is meant to be managed jointly by the Union and the Member States. This fund will finance the contribution to interventions in the field of rural development, as stated in the strategic plans of the CAP. In addition to European financial bodies, this part of the Regulation also defines the competencies of national bodies that participate in financing CAP, such as the competent national body at the ministry level, the payment agency, coordination bodies, certification bodies, etc.⁵

The financial management of the EAGF is regulated by Articles 14 to 26 of this Regulation, whereby a particular regulation determines the annual budget limit at the beginning. However, there is a possibility of adjusting this limit, both in terms of exceeding it and not reaching it, upon a reasoned proposal from the European Commission (EC). In addition, it is envisaged that a special reserve will be established at the beginning of each year in the EAGF to provide additional support for the agricultural sector to be able to react quickly in case of crises affecting agricultural production or distribution (in the amount of 450 million euros, according to current prices). This is followed by specific provisions on financial and budgetary discipline and a detailed section on the payment procedure. In a separate part, the Regulation authorizes the EC to monitor agricultural

4 Consolidated text: 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, (OJ L 435 6.12.2021, p. 187).

5 *Ibidem*, art. 1-13.

resources for more thorough financial discipline for the purposeful spending of funds by providing agro-economic and agro-ecological-climatic monitoring of the use of agricultural land and the change of use of agricultural land to agro-forestry, as well as monitoring quality of soil, crops and agricultural landscapes, to enable assessment of the resilience of agricultural systems and progress towards the relevant United Nations Sustainable Development Goals.

The section on the financial management of the EAFRD stipulates that payments from this fund cannot exceed the budget limit, and the procedure for payments from the fund is also different compared to the EAGF procedure. Also, in this part, there are provisions on pre-financial arrangements, temporary payments, payment of the balance, and closure of interventions for rural development in the strategic plan of the CAP and others. As a common provision, it is stated that the budget year ends on October 15 and that the next budget year begins on October 16. Another common provision states that other sources of financing from the EU cannot finance the activities financed by these two funds. However, the EAFRD is also an exception in this case, so in defined cases, specific funding originating from different EU bodies will not be considered funding, and there will be no violation of the aforementioned common provision. Regarding the effect of payment deadlines, it is stated that the payment shall not be settled from these funds if the payment deadlines are indicated, and the paying agency has paid the beneficiary before the earliest possible payment date or after the latest possible date. In addition, it is stipulated that if a member state has severe deficiencies in the proper functioning of the management system, the Commission shall, if necessary, ask a member state to submit an action plan including the necessary corrective actions and clear indicators of progress, and a member state is obliged to respond within two months of the Commission's request.⁶

In the section related to security systems, it is stated that, within the framework of the CAP, while respecting the applicable management systems, i.e., the adoption of all laws, regulations, and administrative provisions, they will take all other measures necessary to ensure the adequate protection of the financial interests of the Union such as checking the legality and regularity of operations financed by the EAGF and EAFRD, ensuring effective prevention against fraud, especially in areas with a higher level of risk, preventing, detecting and correcting irregularities and fraud, applying penalties that are effective, proportionate and following regulations of the Union, or national law, seeking the immediate return of payments with interest and implementing appropriate legal procedures in that domain, if necessary. In addition, the Member States are advised to establish effective management and control of this system to ensure compliance with Union legislation. Therefore, to help the Member States in this regard, the Commission undertakes to make available to them data research tools for risk assessment in the presented projects, beneficiaries, contractors, and contracts while ensuring a minimum administrative burden and adequate protection of financial interest. In this sense, the Commission has committed to producing a report by 2025 evaluating the use of this unique data research tool with an overview of

⁶ *Ibidem*, art. 27-47.

its generalized use by the Member States. In addition, the Regulation stipulates that the management and control systems set up by the Member States should include systematic checks aimed at the areas where the risk of errors is most significant. At the same time, the Member States must ensure that they carry out an adequate level of checks to effectively manage risks to financial interests.⁷

The Regulation stipulates that each member state in this area must have an integrated administrative and control system that applies to the activities of these funds in the areas of both land and domestic animals. To the extent necessary, the integrated system will also be used to manage and control fund interventions in the wine sector. The integrated system consists of the following elements: an identification system for agricultural plots; a geospatial system and, where applicable, an animal-based delivery system; an area monitoring system; a system for identification of users of interventions and measures; a control and penal system; a system for identification and registration of payment entitlements where applicable; a system for identification and registration of animals. The integrated system works based on electronic databases and geographic information systems and will enable the exchange of data between these systems.⁸

Concerning the verification of transactions, it is envisaged that the Member States will carry out a systematic verification of commercial documents taking into account the nature of the transaction to be examined. The Member States shall ensure that the choice of the subject of verification provides the best possible assurance of the effectiveness of measures to prevent and detect irregularities. The choice of subject will take into account other risk factors in addition to the financial importance of the audit. The accuracy of the primary data will be confirmed by numerous cross-checks, including comparisons with commercial documents of suppliers, customers, carriers, and third parties.⁹

The final part regulated numerous technical issues, with the repeal of Regulation 1306/2013 announced, and a table with the correlation of articles between this and the previous Regulation was given in the Annex.

1.2. Regulation (EU) 2021/2115 on establishing rules for the implementation of national strategic plans for CAP

Regulation 2021/2115 deals with general and specific objectives that should be implemented through the support of the Union and which are financed by the EAGF and the EAFRD within the CAP, as well as related indicators.¹⁰ Also, it regulates the Strategic

7 *Ibidem*, art. 59, 60.

8 *Ibidem*, art. 61-76.

9 *Ibidem*, art. 77, 78; See, Cagliero, R., Licciardo, F., Legnini, M., (May 2021) The Evaluation Framework in the New CAP 2023-2027: A Reflection in the Light of Lessons Learned from Rural Development, *Sustainability*, <https://doi.org/10.3390/su13105528>

10 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

Plans of the CAP, which should be carried out by the Member States, and which set goals, specify the conditions for interventions, and allocate financial resources. The Regulation determines the methods of coordination and management for all these activities, as well as monitoring, reporting, and evaluation.

In the first part, the Regulation deals with the types of assistance in detail, as well as the conditions, procedures, and threshold amount of individual agricultural products subject to support. One of the planned support tasks is establishing agricultural advisory services in the Member States. Namely, it is prescribed that agricultural advisory services cover economic, ecological, and social areas, taking into account existing agricultural practices and providing advanced technological and scientific information developed through research and innovation projects, including public goods. In addition, as a form of support, direct payments are provided, which can be: basic income support for sustainability; complementary income support for young farmers; schemes for climate, environment, and animal welfare, etc. The Member States can provide linked support to active farmers concerning a hectare of land or domestic animal. Linked income support can only be granted to the following sectors and production or certain types of agriculture where they are essential for socio-economic or environmental reasons: cereals, sunflower, rice, hemp, milk and milk products, sheep and goat meat, fruits, and vegetables, etc.¹¹

The Member States may provide linked support in payments per hectare only for areas they have determined to be eligible. If the linked income support refers to cattle, or sheep and goats, the Member States shall set as eligibility conditions for support requests for identification and registration of animals by a specific date of the year.¹²

The Commission is authorized to adopt delegated acts supplementing this Regulation with measures to avoid support beneficiaries getting into an unenviable situation due to structural market imbalance in the given sector. Those delegated acts can allow the Member States to decide that income-related support could continue to be paid until 2027.¹³

The part related to rural development states that these are activities related to ecological, climatic, and other management obligations, natural or other limitations specific to this area, specific disadvantages, investments, development of young farmers and new farmers and starting a rural business, risk management tools, as well as cooperation, knowledge sharing, and information dissemination. In this sense, it is prescribed that the Member States should include agro-environment and climate obligations, as well as other types of management, among the interventions in their strategic plans. The Member States may authorize payments for natural or other area-specific constraints. Payments for this intervention will be awarded annually, based on hectares of agricultural land. Young and new farmers can be paid a maximum of 100,000 euros per year, which also applies

by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, (*OJ L 435*, 6.12.2021, p. 1–186).

11 *Ibidem*, art. 1-33.

12 *Ibidem*, art. 34.

13 *Ibidem*, art. 35.

to forms of cooperation in this area, and this is possible only for the first five years of the existence of such organisations.¹⁴

The Regulation establishes an obligation for the Member States to design CAP strategic plans in their territory following this Regulation and their national regulations for the period 2023–2027. In doing so, it is prescribed that the strategic plan should contain: an assessment of needs, intervention strategy, elements common to several interventions, direct payments, interventions in specific sectors and interventions for rural development, target, and financial plans, management and coordination system, elements that ensure the modernization of the CAP. Also, if strategic plan elements are established at the regional level, there should be a brief description of the national and regional setting of a member state, and in particular, which elements are established at the national and regional levels. It also defines which annexes the strategic plan of the CAP should contain. The Member States should set up a management body to implement the strategic plan, a supervisory body, and technical assistance. In addition, a member state has to submit annual reports to the Commission on implementing their strategic plan and biennial reports on established trends in given areas.¹⁵

In the final considerations of the Regulation, it is stated that the Commission shall implement necessary and justified acts in a state of emergency to solve specific problems. Such enforcement acts may derogate from some of the provisions of the Regulation to the extent that it is strictly necessary, with the validity of a maximum of one year.¹⁶

Fourteen annexes are attached to the Regulation, explaining and supplementing some of the mentioned provisions in more detail.

1.3. Regulation (EU) 2021/2117 on the establishment of a common organization of the market of agricultural products

This Regulation amends Regulation (EU) 1308/2013 establishing a common organization of the markets for agricultural products, Regulation (EU) 1151/2012 on quality schemes for agricultural products and foodstuffs, Regulation (EU) 251/2014 on the definition, description, presentation, labeling and protection of geographical indications of aromatized wine products and Regulation (EU) 228/2013 laying down measures for agriculture in the outermost regions of the EU.¹⁷

Regarding the initial idea for adopting this CAP, in the introductory part of the Regulation, it is stated that the Communication of the Commission of November 29, 2017,

14 *Ibidem*, art. 69-84.

15 *Ibidem*, art. 107-147.

16 *Ibidem*, art. 148.

17 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 organization 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, labeling and the protection of geographical indications of aromatized wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union, (*OJ L 435*, 6.12.2021, p. 262–314).

entitled “The Future of Food and Agriculture”, set the challenges, goals, and orientations for the CAP after 2020. These objectives include that the CAP is driven by results by strengthening modernization and sustainability, including economic, social, environmental, and climate sustainability of agricultural, forestry, and rural areas, as well as helping to reduce the administrative burden on beneficiaries. Therefore, it was concluded that the Union should set the basic parameters of the CAP, such as the goals of the CAP and its basic requirements, while the Member States should bear greater responsibility for the way they achieve these goals. In order to ensure the coherence of the CAP, all interventions of the future CAP should be part of a strategic plan that would include the types of interventions in specific sectors provided for in Regulation (EU) 1308/2013.¹⁸

Therefore, it is prescribed that from Regulation (EU) 1308/2013, redundant and outdated definitions and provisions authorizing the Commission to adopt implementing acts should be deleted. Also, it is proposed to update the provisions in which Great Britain, which has since left the Union, is mentioned. In addition, it is stated that all provisions mentioning various types of financial support, which are not harmonized with the new aid system presented in the new CAP and are now financed only by EAGF and EAFRD, are inappropriate.¹⁹

In the winemaking sector, doubts were expressed about the further direction of development. The European wine policy, with the existing authorisation scheme, has enabled the orderly growth of vine planting since 2016, increasing the competitiveness of the Union’s wine sector and encouraging high-quality production. Although the wine sector has achieved a balance between production supply, quality, consumer demand, and exports in the world market, this balance is still not sufficiently long-term or stable, especially when the wine sector faces severe market disturbances. In addition, there is a trend towards a continuous decrease in wine consumption in the Union due to changes in consumption habits and lifestyles. Consequently, the liberalization of new grape varieties risks jeopardizing the balance achieved so far between the supply capacity of the sector in the long term, a fair standard of living for producers and reasonable prices for consumers – these risks jeopardizing the positive developments achieved through Union legislation and policy in recent decades.²⁰

This Regulation also provides for an amendment to Regulation 1308/2013 as regards the application of World Trade Organization rules. Namely, the Ministerial Decision on export competition from Nairobi, December 19, 2015, sets the rules on export competition measures by requiring WTO members to revoke their rights to export subsidies from the date of adoption of that Decision. Therefore, the Union provisions on export refunds referred to in Article 196 of Regulation 1308/2013 should be deleted. Regarding export credits, export credit guarantees and insurance schemes, state-owned agricultural export undertakings, and international food aid, the Member States could adopt national measures

18 *Ibidem*, intro. 1-5.

19 *Ibidem*, intro. 6, 11, 19.

20 *Ibidem*, intro. 12.

that comply with Union law. Since the Union and its Member States are simultaneously members of the WTO, such national measures should also comply with the mentioned WTO Ministerial Decision rules.²¹

In addition, this Regulation foresees that the procedures related to the registration of protected designations of origin, protected geographical characteristics, and traditional specificities, which is guaranteed in Regulation (EU) 1151/2012, should be simplified to ensure that new trade names can be registered in shorter periods. At the same time, the complaint procedure should be simplified with all the grounds for the objection and the details of those grounds presented. This should not prevent the authority or the objecting person from working out additional details during the consultation referred to in Article 51(3) of Regulation (EU) 1151/2012.²²

The Regulation stipulates that considering the limited number of registrations of geographical indications of flavored wine products according to Regulation (EU) 251/2014, the legal framework for the protection of geographical indications for those products should be simplified. Namely, it states that flavored wine products and other alcoholic beverages, with some exceptions, should have the same treatment and procedures as other agricultural products and foodstuffs. Also, it is stipulated that a smooth transition should be ensured for market names protected by Regulation (EU) 251/2014.²³

Regulation (EU) 228/2013, which refers to the remote French territories, was amended at the end of this Regulation.

CONCLUSION

The legal framework of the Common Agricultural Policy of the European Union consists of three Regulations that refer to the primary areas of this policy: The Regulation (EU) 2021/2116 financing, management, and monitoring of CAP; the Regulation (EU) 2021/2115 on the establishment of rules to support national strategic plans; and the Regulation (EU) 2021/2117 on the establishment of various agricultural markets. These Regulations, which were adopted in December 2021 and will be applied as of January 1, 2023, modify or change the regulations that formed the legal basis of the previous CAP, which were adopted in 2013. The main goals of the new CAP are simplification and greater efficiency, with a more vital emphasis on sustainability, environmental protection, and the fight against climate change, which are aims that follow the European Green Plan and support United Nations programs.

21 *Ibidem*, intro. 59.

22 *Ibidem*, intro. 74.

23 See, Candiago, S., Tscholl, S., Bassani, L. et al. (2022) A geospatial inventory of regulatory information for wine with protected designations of origin in Europe, *Sci Data*, no. 9, 394; Dabovic, D. (2019) Regulations on labeling of wine geographically indicated - in Serbian, *Европско законодавство*, Vol. 17, no. 70, pp. 5-26..

REFERENCES

1. Young Farmers of Serbia (2022) Mladi su okosnica poljoprivrede i jedan od specifičnih ciljeva nove Zajedničke poljoprivredne politike, *MPS*, <https://podrskamps.org.rs/2022/11/29/ek-mladi-su-okosnica-poljoprivrede-i-jedan-od-specificnih-ciljeva-nove-zajednicke-poljoprivredne-politike/>;
2. The Robert Schuman Foundation (2022) The Common Agricultural Policy 2023-2027: change and continuity, *RSF*, <https://www.robert-schuman.eu/en/european-issues/0607-the-common-agricultural-policy-2023-2027-change-and-continuity>;
3. Mazăre, S. (2020) European Funds Help Romanian Agriculture. *World Science*. No. 9(61).
4. Cagliero, R., Licciardo, F., Legnini, M., (May 2021) The Evaluation Framework in the New CAP 2023-2027: A Reflection in the Light of Lessons Learned from Rural Development, *Sustainability*, <https://doi.org/10.3390/su13105528>
5. Guth, M., Smędzik-Ambroży K., Czyżewski B., and Stępień, S. (2020) The Economic Sustainability of Farms under Common Agricultural Policy in the European Union Countries, *Agriculture*, <https://doi.org/10.3390/agriculture10020034>
6. Candiago, S., Tscholl, S., Bassani, L. et al. (2022) A geospatial inventory of regulatory information for wine with protected designations of origin in Europe, *Sci Data*, no. 9, 394.
7. Dabovic, D. (2019) Regulations on labeling of wine geographically indicated - in Serbian, *Европско законодавство*, Vol. 17, no. 70, pp. 5-26.