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Research Article

## Legitimizing the CAP: The European Commission's Discursive Strategies for Regaining Support for Direct Payments

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## Abstract

In its public discourse, the European Commission presented the EU's most recent Common Agricultural Policy (CAP) as a paradigm change. Many observers of the CAP reform process, however, describe the recent agreement as a lost opportunity for change. This article describes and analyses the Commission's discursive strategies in response to the legitimacy challenges regarding the CAP's direct payments. We draw on the work of Mark Suchman (1995) to analyse these responses. The analysis reveals a progression of legitimization strategies that can be linked to the broader institutional environment, the setting of the ongoing policy process and the (critical) reaction of civil society organisations to these strategies. Besides shedding light on the progression of legitimization strategies, this article contributes to the literature on the Commission's legitimization strategies more generally by linking the Commission's public discourse to its public consultation regime.

## Keywords

Legitimation strategies; European Commission; Common Agricultural Policy; consultation

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The Common Agricultural Policy (CAP) has never been taken for granted. Since its inception in the early 1960s, it has attracted criticism and gone through continuous reform. Policy instruments of market intervention (guarantee prices, import levies and export subsidies) dominated the CAP in its first three decades. The production surpluses that resulted from this created budgetary problems as well as conflict with trading partners, as the EU used export subsidies to sell these surpluses on the world market (Davis 2003). The MacSharry Reforms in 1992 introduced a scheme of direct payments, rather than production support, to solve these problems.

The direct payment scheme brought new challenges for the CAP: consumers, taxpayers and environmental groups leveled criticism at this instrument, claiming farmers did not provide sufficient services for society, such as environmental stewardship. In response, the European Commission sought to improve the environmental image of the CAP by introducing a second rural development pillar in 1999. Although the various legitimacy challenges to the CAP have resulted in the abolition or change of various of its policy instruments (Grant 2010), the different reforms have not resulted in an increase in support for the CAP: many observers claim that the policy continues to experience a legitimacy crisis (Bréhon 2011: p. 2). The direct payments scheme in particular continues to receive criticism: environmental groups continue to criticise its polluting effects; (Eastern) member states and farmers criticise the unequal distribution of direct payments between member states and farm types; and citizens and consumers demand more value for (public) money.

In this article, we analyse the discursive or communicative strategies the Commission used during the most recent CAP reform in an effort to increase the policy's legitimacy. Throughout the reform process the Commission expressed its concerns about the legitimacy of the CAP. More specifically, the article focuses on those strategies that relate to the so-called direct payments scheme, which accounts for more than 60 per cent of the total CAP budget.

The analysis sheds light on the discursive strategies of the Commission by using a typology of legitimization strategies by Mark Suchman (1995) and demonstrates how the concerns of civil society organisations (CSOs) were addressed by and reflected in the Commission's public discourse. Given

the share of the EU budget that goes to the CAP (almost 40 per cent), it is worth analysing this case on its own. However, the case can also be used in a more instrumental way to provide insights into the different legitimisation strategies of the Commission: in the presented case, as said, the Commission made legitimisation an explicit goal of the reform process. Moreover, the CAP reform process was debated widely in public, which allows us to consider the Commission's legitimisation efforts during the policy-making process and their resonance. It is therefore a good case to illustrate how the legitimisation strategies of the Commission are affected by the EU's institutional setup, its decision-making procedures and the setting of the ongoing policy debate. In doing so, this article also contributes to the literature on the Commission's legitimisation efforts in general.

More specifically, we will discuss the role of different legitimisation strategies in relation to the Commission's consultation regime. The Commission increasingly perceives the involvement of 'civil society' as a source of legitimacy (Kohler-Koch 2010: 101, 104). Nowadays, the concerns of civil society are addressed through the Commission's consultation regime (Saurugger 2010): by doing so, the Commission tries 'to improve the EU's image in the eyes of the citizens' (Fischer-Hotzel 2010: 341).

The Commission's consultation regime, however, is (necessarily) orientated towards the mobilisation of input into the policymaking process. This is so due to the fact that the Commission can propose, but not vote on, EU legislation (Kohler-Koch 2010: 104; Kröger 2008: 30). Initially the involvement of civil society was considered helpful in increasing the so-called *output* legitimacy (Scharpf 1999); their expertise contributed to more efficient policies. Since its White Paper on Governance, which stressed the need for consultation (European Commission 2001), the Commission also expects a positive effect on the *input* legitimacy of its policies (Bouza Garcia 2010).

In order to use the input of CSOs as a source of input legitimacy, however, the Commission must demonstrate how this input is linked to the later decision *taking*. This requires ongoing communication between the Commission and CSOs: during and after the consultation process the Commission must provide feedback on how the input is used in the policy making and taking process. While the Commission recognises the need to do so (e.g. European Commission 2007 in Hüller and Kohler-Koch 2008: p. 166), the literature suggests that it often remains unclear what is taken into consideration and on what grounds (Kröger 2008: 33). Our analysis shows how and to what extent the Commission provided feedback on this during the policy process. While previous research has turned to the Commission's consultation regime (e.g. Saurugger 2010, Quittkat and Finke 2008) as well as to its public communication strategies (e.g. Herranz-Surrallés 2012, Fouillieux 2004), this article contributes to the literature on the Commission's legitimisation strategies by explicitly linking both efforts.

## LEGITIMATION STRATEGIES

We follow discursive institutional scholars who have analysed how policy reforms are shaped and legitimated through discourse (e.g. Schmidt 2008). Vivien Schmidt has distinguished between so-called coordinative and communicative discourses. Whereas the former refers to the interactions between policy actors directly engaged in deliberation - the Commission, Council and European Parliament (EP), for example - who argue and bargain in order to reach agreement on policies, the latter involves the interactions between political actors and the public. In the communicative discourse, policy ideas are communicated to, contested amongst and legitimated to a broader audience (Schmidt 2008). We turn to the communicative discourse in this article, as the Commission explicitly aimed to legitimate the CAP to the wider public.

While Schmidt's discursive institutionalism provides a general approach for investigating the role of ideas and discourse in policy change, the literature on legitimation strategies in organisations adds a useful conceptualisation of different discursive strategies that actors can pursue. To analyse the discursive strategies of the European Commission, we will draw here from the work of Mark Suchman (1995). Based on strategic and institutional approaches towards legitimacy, Suchman defines legitimacy as a 'generalized perception or assumption that the actions of an entity are desirable, proper, or appropriate within some socially constructed system of norms, values, beliefs, and definitions' (Suchman 1995: 574) and argues that organisations can seek legitimacy at a pragmatic, moral or cognitive level. These three forms of legitimacy can be explained as follows:

- *Pragmatic* legitimacy involves an assessment of a particular activity in terms of an audience's (material) self-interest. The legitimacy of an organisation or its activities is based on the value of the organisation to the audience. Organisations that seek pragmatic legitimacy for certain policies will therefore show how their audience can gain from them (Suchman 1995: 578). Suchman's concept of pragmatic legitimacy is related to what Schmidt terms 'cognitive' arguments in a legitimating discourse: arguments that justify positions and policies with reference to an interest-based logic (Schmidt 2008).
- *Moral* legitimacy is based on a normative evaluation of the moral propriety of an organisation. Audiences assess whether an activity is the right thing to do. These assessments can involve some self-interest, but are fundamentally different to those grounded in material self-interest. In searching for moral legitimacy, organisations are likely to appeal to more general norms and values ('it is the right thing to do'). Schmidt labels such arguments 'normative'; positions and policies are legitimated through reference to their appropriateness (Schmidt 2008).
- *Cognitive* legitimacy, finally, involves an evaluation of the necessity or understandability of an activity. In assessing the cognitive legitimacy of an organisation or its activities, an audience asks whether it makes sense, is sound or is inevitable. Typically, cognitive arguments appeal to the problem and the necessity of policies to solve it ('it cannot be done any other way') (Suchman 1995).

Suchman also developed a typology of legitimacy strategies. As legitimacy rests largely on public discussion, most of these strategies rely on communication. By communicating with their audiences, organisations attempt to influence the evaluation of their actions (Suchman 1995: 585). In developing his typology, Suchman sets out a number of broad strategies that are related to the *challenge* of legitimacy: organisations may need to *gain*, *maintain* or *repair* their legitimacy. Depending on the type of challenges, different strategies can be pursued. These are discussed below.

- *Gaining legitimacy*. The challenge of gaining legitimacy is especially pertinent when organisations engage in new lines of activity. They are likely to pursue three general strategies in that case. First of all, organisations can decide to *conform* to the expectations or demands of the constituents within their environment; this can be achieved by changing a new policy or its outward form by bringing it more in line with existing demand and expectations. Secondly, they can decide to *select* among their environments; organisations may search for a public with specific expectations or norms that will support their practices without demanding too many changes to their actions. Finally, organisations may pursue a strategy of *manipulation* to gain legitimacy by creating new audiences or new legitimating beliefs. This last strategy will most likely be used when new practices depart (too) greatly from the existing expectations of the public.

- *Maintaining legitimacy.* The challenge to maintain legitimacy involves two basic strategies: foreseeing future challenges and protecting previous accomplishments. The first strategy involves monitoring the public's values, beliefs and reactions. This requires that organisations do not lose sight of external developments that might bring its legitimacy into question. While not a discursive strategy per se, organisations often communicate that they foresee changing demands and expectations. The second strategy entails an effort to highlight or exaggerate the accomplishments that have been achieved in the past. Through this strategy, 'organisations may seek to buttress the legitimacy they have already acquired' (Suchman 1995: 595) and situate their current activities in the same perspective.
- *Repairing legitimacy.* The different strategies to gain or maintain legitimacy can also be used to repair the legitimacy of an organisation, provided that the organisation still enjoys some credibility amongst its audiences. Establishing this can be an important first strategy. In case of a legitimacy crisis, organisations can also pursue several other strategies. One is to *formulate a normalising account*. In using this strategy, specific challenges are separated from challenges to the organisation as a whole. The account can offer denials, excuses, justifications or explanations for particular faults. In the case of excuses, for example, organisations often blame others; in the case of justification, organisations redefine goals and means retrospectively (Suchman 1995: 589). A final strategy is *restructuring*, where organisations selectively confess that limited aspects are flawed and act to remedy these faults.

Table 1: Overview of Legitimation Strategies and Indicators

Legitimacy challenge	Strategy	Indicated by:
<b>Gaining legitimacy</b>	Conform	<i>a publicly expressed ambition to act in line with existing demand and expectations.</i>
	Select	<i>a reference to new audiences, demands or expectations that support existing practices.</i>
	Manipulate	<i>an effort to create new audiences or new legitimating expectations or demands.</i>
<b>Maintaining legitimacy</b>	Foresee and communicate future challenges	<i>an explicit recognition and expression that there are changing demands and expectations.</i>
	Protect previous accomplishments	<i>an effort to highlight or exaggerate past accomplishments.</i>
<b>Repairing legitimacy</b>	All of the above	<i>all of the above.</i>
	Normalise	<i>a usage of denials, excuses, justifications or explanations for particular faults.</i>
	Restructure	<i>a selective confession that aspects are flawed and an expression of the ambition to act to remedy these faults.</i>

## METHODS

Our analysis of the Commission's communicative discourse is based on all documents related to the CAP that could be found on the website of the Commission. These documents consisted of press releases, transcripts of speeches, communications, policy documents and background information. We analysed all the documents that were published between April 2010 and June 2013. Using a qualitative discourse analysis, each text was analysed on the basis of the general strategies specified and described by Suchman: keywords, concepts or arguments indicating the various strategies provided the basis for this analysis. An overview of these indicators is provided in Table 1. We firstly coded the texts to indicate the position adopted by the Commission<sup>1</sup> in relation to direct payments; secondly, we analysed the content and type of arguments used to underpin this position.

In selecting particular arguments for our analysis, we focused on those that targeted the challenges to the CAP's direct payments scheme. In this respect, we present a selective interpretation of the Commission's communicative discourse in relation to the CAP. Doing so, however, does allow us to gain a detailed understanding of how specific legitimacy challenges are responded to and how these strategies change during the policy-making process. Apart from our own interpretation of the Commission's discourse, we relied also on the responses of critical 'CAP commentators and watchers'. We turned in particular to blogs and websites such as CAP Reform.eu and CAP2020, as well as to news media such as Agra Europe and European Voice, to do so. The references to statements of the Commission from these media provided an indication of the relevance and reception of particular arguments made by the Commission. In the case analysis below, the various strategies are described in a narrative form: this makes it possible to consider the changes in these strategies during the decision-making process.

## CASE ANALYSIS

### *The Ongoing Debate*

From the start of the policy debate on the CAP reform, the CAP's legitimacy crisis was well foreseen by the Commission, as is revealed in the speech of Agriculture and Rural Development Commissioner Dacian Cioloş to the EP in 2010: 'Sometimes the citizens express concerns, questions, legitimate expectations. (...) Certainly, there are criticisms. There are imperfections. There are hopes for reform. All of these must be taken into account' (Commissioner Cioloş 12 April 2010).

In his speech, Cioloş clearly communicated the legitimacy challenges and the need to repair the CAP's legitimacy at a pragmatic, moral and cognitive level. Legitimacy challenges at the pragmatic level are reflected in the Commissioner's reference to citizens' possible benefits from the CAP:

We have to make agriculture able to respond to the challenges from society. Challenges such as food security, [...] [and] economic growth of rural areas. [...] In this way, citizens and taxpayers will better understand that the Common Agricultural Policy is *their* policy. It is a policy that is *made for them* (Commissioner Cioloş 12 April 2010 emphasis added).

Challenges facing the CAP at the moral level are revealed in the Commissioner's acknowledgment that besides the production of sufficient food, the general public connects other demands and values with agricultural production: 'European agriculture must address the demands of the market

and the *expectations of society* concerning public goods, the environment and climate change' (Commissioner Ciolos 12 April 2010).

Finally, the Commission recognised the cognitive legitimacy challenges that the CAP, the direct payments in particular, faces. This is reflected in the following statement:

The effectiveness of our current policy has lessened over time. The current payments [...] have lost their effectiveness. They are undermined by their *lack of credibility and transparency* in the eyes of the public. [...] We need to restore the *meaning, the sense* of the CAP. That is what we want to do with this reform [...]; make our instruments *coherent* again, particularly direct payments (Commissioner Ciolos 12 April 2010 emphasis added).

### **Public Money for Public Goods**

In its effort to maintain and regain the legitimacy of the CAP, the Commission in its public communication clearly expressed its conformity to the idea of 'public goods'. The concept of public goods had evolved in the policy debate around the so-called Health Check of the CAP in 2008. The basic idea is that public money can be given to farmers for the public goods they provide in addition to the production of food, such as maintaining the countryside or taking agri-environmental measures. The slogan 'public money for public goods' became a powerful demand in the CAP debate and quickly came 'to serve as a banner for those who favour an agricultural policy that promotes a greater level of spending on delivering environmental outcomes than the current CAP' (Institute for European Environmental Policy (IEEP) 4 January 2009). According to different CAP commentators, 'there has been recognition of this agenda [of public goods] as one of real gravity and legitimacy' (Thurston 2010, cf. Agra Europe editor 2010a).

### **Public Consultation**

The Commission started its efforts for a new CAP by launching a public debate in April 2010 before it presented a Communication on the CAP in November 2010. By doing so, the Commission sought to reestablish its link to the general public:

We must involve citizens and civil society. We must give them the opportunity, time and space to make their voices heard so that then - in our future initiatives - we can take their opinions into account in a coherent fashion. [...] I want to launch a public debate on the role of agriculture in European society [...] on the objectives which the CAP should meet. We must do this (Commissioner Ciolos 12 April 2010).

In various speeches held between the launch of the public debate in April 2010 and the presentation of the Commission's Communication on the CAP in November 2010, Commissioner Ciolos emphasised the importance of the public debate and the objective that a new CAP should ensure that citizens and taxpayers would be better able to understand the CAP. Later, interestingly, the Commission also explicitly differentiated the public debate from the more formal decision-making process on the CAP (based on a form of representative democracy) involving the EP and the Council: 'the political and administrative legitimacy of the decision-making process must be underpinned by a legitimacy that reflects the whole of society through its various channels of representation (Commissioner Ciolos 13 July 2012).

From the statement above alone, it is not possible to discern whether the Commission sincerely expressed its concern about the needs of civil society, or whether it merely used civil society as a

strategic resource to improve the chances of gaining support for the CAP reform plans. Doing the latter would be in line with the Commission's earlier discourses, in which its responsiveness to public expectations was often invoked as a justification for CAP reforms (Fouilleux 2004). In light of the new involvement of the EP as co-legislator, the Commission's emphasis on the distinct legitimacy of the direct participation of civil society can be seen as a strategy to uphold the argument that it is the Commission that responds best to the wishes of EU citizens.

### *The Commission's Communication*

During the public debate, the Commission already stressed the need to a) have agriculture contribute to tackling important societal and environmental challenges such as climate change; and b) reform the CAP in such a way that the link between support for agriculture and the market supply and public goods it provides is made crystal clear (Commissioner Ciolos 12 April 2010: 7). Commissioner Ciolos repeatedly emphasised the balance between economic and environmental concerns that would contribute to citizen and taxpayer understanding of the CAP (Commissioner Ciolos 20 July 2010: 3).

However, from the Commission's discourse surrounding the presentation of its Communication, it became increasingly clear that the public goods argument was used in particular to justify the continuation of public spending on direct payments. This was already reflected in the Commission's 'questionnaire' that was used during the public consultation, which included questions such as:

How can we create more straightforward instruments so that taxpayers understand the link between support for agriculture, market supply and remuneration for public goods provided by agriculture? What instruments can ensure a minimum level of stability for agricultural incomes? What direct aid should be available to farmers? And in return for what? (Commissioner Ciolos 12 April 2010: 7).

Therefore in their effort to regain support we can see that the Commission did not rely fully on the public goods argument to justify direct payments to farmers. Under its preferred *Option 2* in the Communication, the Commission maintained the argument that farmers need support because their income is far more volatile than that in other sectors. Direct payments were still mainly presented as having an economic function, as basic income support for farmers. The Commission, however, showed its awareness that this was no longer a sufficient legitimation for continuing the direct payments in the same way as before. To regain the legitimacy of direct payments, a 'redistribution, redesign and better targeting' of direct income support would be necessary (European Commission 2010: p. 8). The redesign and better targeting of direct payments in particular needed to increase the legitimacy of the CAP in the eyes of citizens and taxpayers.

This strategy can be seen as one of restructuring: the Commission confessed only selectively that limited aspects of the direct payments scheme were flawed and acted to remedy these faults. The latter was to be achieved by targeting support at active farmers only; by capping support at a certain level; and finally, by linking the direct payments more closely to the actual services or goods provided to society by introducing a mandatory 'greening' component (Commissioner Ciolos 6 January 2011: 4-5).

In its public discourse, interestingly, the Commission stated very openly that changes in the CAP to meet the public demands and expectations could not be too radical, due to vested interests. In this respect the Commission formulated a normalising account, through which it shifted the blame for maintaining much of the existing situation on others. At the same time however, Commissioner Ciolos stressed that more gradual or incremental changes can also lead to a change in the CAP: 'The [CAP] has never been written in stone - it is a living policy, which has changed enormously over the past 25 years' (Commissioner Ciolos 6 January 2011: 4-5).



CSOs received the Communication ‘cautiously positively’ (IEEP 2010d). In general, CSOs and other CAP commentators acknowledged the intention to reform and the fact that reasonable steps were proposed by the Commission: ‘In framing the case for a CAP post 2013, the dominant discourse [...] focuses on the use of the CAP to provide public goods in line with society demands’ (IEEP 2010a). It was understood that this marked a significant shift in policy. Yet at the same time it was stressed that ‘the text is somewhat unclear on what the proposal for direct payment might mean in practice [...] whether this is a major change or light greening depends on detail’ (IEEP 2010c).

The Commission’s only selective conformity to the public goods concept was clearly recognised and criticised as such by CSOs: ‘Unfortunately, *but not surprisingly*, [the Communication] skirts round the weak rationale of the current direct payments’ (IEEP 2010c emphasis added); ‘the farm income question [...] is rapidly emerging from the shadows as the fundamental justification for the CAP’ (Thurston 2011). CSOs made clear that ‘it will not be sufficient to make marginal changes to direct payments based on new criteria [...]. If these opportunities [for greening] are firmly seized into real changes this could mark the beginning of a genuinely progressive CAP reform’ (IEEP 2010b).

The response of various CSOs also shows that the Commission’s normalising account for the lack of a radical reform was not accepted: this account was interpreted as an ‘early surrender’ by different CSOs. While some commentators adopted a more understanding stance towards the Commission - ‘it is only doing what the majority of EU farm ministers have asked it to do’ - the lack of radical reform and of greater leadership by the Commission was seen generally as a missed opportunity (Agra Europe editor 2010b).

### ***The Commission’s Legislative Proposal***

The Commission presented the legislative proposals for the CAP reform in October 2011 (European Commission 2011). These largely followed the lines suggested in its Communication under Option 2. The Commission discourse at the time of the proposal contained rather more technicalities than previously - as may be expected, because of the detailed and technical nature of legislation. With respect to the direct payments, a ‘basic income payment’ scheme was proposed, moving away from historic references as the basis for the distribution of payments; this would decrease differences between and within states. A compulsory greening linked to direct payments was also introduced: 30 per cent of national direct payments envelopes were linked to certain agricultural practices beneficial to the climate and the environment. Three specific conditions had to be met to be eligible for these payments: crop diversification, permanent pasture and a seven per cent so-called ecological focus area (EFA). Finally, the Commission proposed that direct income support would be capped for farms receiving more than 150,000 EUR in support annually.

The arguments underpinning the policy changes in direct payments do not differ significantly from those used by the Commission previously. However, additional arguments and aspects are emphasised. Whereas thus far, meeting citizen or taxpayer expectations has been used as the main normative argument for changing the direct payments policy, several more cognitive and pragmatic arguments were stressed in the proposal as well. With respect to the capping of direct payments for example, the Commission mainly employs a cognitive argument to change the existing policy. It does this by turning to the notion of ‘economies of scale’ and the underlying idea of direct income support:

Due to economies of size, larger beneficiaries do not require the same level of support for the objective of income support to be efficiently achieved. It is therefore fair to introduce a system of capping (European Commission 2011).

With economies of scale, there comes a moment when we can no longer justify the level of support payable (Commissioner Ciolos 29 November 2011).

Greening was communicated not only as part of a normative argument but also linked to pragmatic arguments:

The CAP must also be able to meet the challenge of both economic and environmental sustainability. These two forms of sustainability cannot be separated in a sector that derives its existence and its economic performance from natural resources and their use [...] We must encourage farmers to consider long-term competitiveness [...], thanks to sustainable agricultural production practices. Through this mechanism [of greening] we clearly put both farmers and taxpayers in a 'win-win' situation (Commissioner Ciolos 12 October 2011).

Both agricultural economists and environmental NGOs, however, showed their disappointment with the legislative proposals from the Commission. While the proposed compulsory greening of direct payments was welcomed, the associated measures were criticised as being ineffective:

the proposal leaves doubt over how much really will be delivered. Bold ambitions to green the CAP become diluted by a focus on legitimacy for direct payments - at the expense of measures capable of maximising the delivery of environmental public goods (Baldock and Hart 2011).

At a conference with civil society that the Commission organised 'to bring together the expertise and views of civil society to feed into the ongoing CAP reform process [...] and to re-state the rationale behind their reform proposals', Commissioner Ciolos explicitly addressed this criticism:

During the public debate, the voices heard the most loudly were those who wanted to change the CAP. During the negotiations [...] those in favour of leaving things as they are as far as possible are the ones making their presence felt the most. From our standpoint, the objective is to introduce changes which are as far-reaching as possible, mak[ing] sure that everyone is on board, with expectations taken into account as well as what is feasible from the social, economic, budgetary and political angles (Commissioner Ciolos 13 July 2012).

At the same time, Ciolos stressed that 'the reform signals progress in numerous areas. But the processes set in motion, the long-term developments for the CAP, for the next seven years and beyond, represent the most significant step forward (Commissioner Ciolos 13 July 2012).

Hence, the Commission again presented a *normalising account* to justify the lack of any radical reform by blaming those that wanted to protect the status quo.

### **Decision Taking: First Reading**

Apart from the conference with civil society, the Commission adopted a low profile during the first reading of its legislative proposals by the European Parliament (EP) and the Council of Ministers, which took well over a year. It awaited the formal voting by the EP as well as the Council's agreement during the first reading before re-entering the public debate on the CAP reform.

A first vote on the proposal was taken by the EP Committee on Agriculture (COMAGRI) at the end of January 2013, when after a year of negotiations, its final reports included more than 7,000 proposed amendments. The EP plenary was to vote on the proposal and these amendments in March 2013. With regard to the greening measures, considerable amendments were proposed by the committee. While it voted in favour of greening payments in addition to the basic payments, the link to the basic

payments was removed: non-compliance with greening measures would only affect the 'greening payments', not the basic payments. In effect, this made greening a voluntary option for farmers. The COMAGRI vote also included a proposal that made it possible for farmers to receive double funding for agri-environment measures that were funded by the second pillar of the CAP: these would also be funded as greening measures (Jambor 2013a).

The COMAGRI vote was cautiously welcomed by Ciolos. In a short press statement he referred explicitly to the expectations expressed by society during the 2010 public debate. He stressed that these 'expectations have to be converted into a consistent toolbox of simple and efficient measures, with no double funding and no 'green-washing', without further comments' (Commissioner Ciolos 24 January 2013).

The concerns about green-washing<sup>2</sup> and double funding indicate the Commission's responsiveness to the concerns of civil society. Various draft reports by COMAGRI and so-called CAP Reform Progress Reports<sup>3</sup> from the Council that were published before the committee vote - which already included proposals for separating green measures from the basic payments and for allowing double payments - had been publicly condemned by CSOs. The Commission's response to the COMAGRI vote clearly anticipated the critical reaction to it.

Indeed, after the COMAGRI vote, a range of highly critical press releases and statements were issued by environmental NGOs. All stressed that the COMAGRI vote, if endorsed by the plenary, would be environmentally damaging, and would 'actually [be] marking a step backwards in terms of the environmental advances made in past reforms' - as was stated by a representative for BirdLife (IEEP 2013).

Concerns about green-washing and double funding were reiterated by the Commission during the plenary voting when Ciolos made a speech:

[We] cannot fall to the temptations of green-washing or to artificial measures which would have a doubtful effect and which would be very complicated, leading to unacceptably high error rates. For taxpayers' money to be used efficiently [...] it is important that the greening measures be the baseline for the 2nd pillar agri-environment measures (Commissioner Ciolos 12 March 2013).

The eventual plenary vote on the CAP reform proposals on 13 March was largely in line with the amendments passed by COMAGRI. A number of decisions related to direct payments were changed though, such as the proposal to permit double funding. However, MEPs did vote in favour of the amendment to separate the penalty for non-compliance with the greening requirements from the basic payment. Furthermore, the actual requirements under the three greening measures as proposed by the Commission were weakened by the plenary vote: the EP decided to allocate only an initial three per cent of a farm's area to having an ecological focus, rising to five per cent in January 2016, rather than the seven per cent proposed by the Commission (Jambor 2013b).

A week after the plenary vote in the EP, the Council adopted its negotiation position.<sup>4</sup> Regarding the greening of direct payments, among other things, it agreed to allow greater flexibility for the member states by clarifying the scope of so-called equivalent practices (i.e. practices which yield an equivalent or higher benefit for the climate and the environment than the greening practices proposed by the Commission). It also agreed on various changes to the greening measures as proposed by the Commission. With regards to EFAs, for example, the Council agreed on a gradual application of the EFA requirement, starting with an initial five per cent of each farm's area to be set aside. The scope could increase to seven per cent in 2018, but only after an evaluation report from the Commission in 2017 (Council of the European Union 2013).

The Commission released press statements after both votes, in which Ciolos stressed the extent to which the various positions of the Council and the Parliament reflected the position of the Commission. In response to the EP plenary vote, for example, Ciolos made clear that on certain subjects, such as double funding, the plenary vote brought 'the Parliament's position closer to the Commission's proposals' (Commissioner Ciolos 13 March 2013). Similarly, in reaction to the Council's agreement, Ciolos stated that 'there are a number of points on which the Council seems to be closer [...] [to the Commission's position and] more reasonable than the Parliament' (quoted in Keating 2013a). In both responses, Ciolos stressed the fact that important steps were taken to reach a final political agreement. He remained critical, however, about what needed to be done to meet public expectations. In his response to the plenary vote he made clear that

we will be in a position to start the last phase of the reform negotiations. These aim in particular at making the CAP fairer, more sustainable, more reactive in market management terms, and more open to the diversity of our rural areas, as sought by the wider EU public within the framework of the public debate [...] launched by the European Commission 3 years ago (Commissioner Ciolos 13 March 2013).

### **Decision Taking: Trialogue Meetings**

During the various trialogue meetings between Parliament, Council and Commission, the Commission kept a low profile in public. It only broke its relative silence in June when a political agreement on the proposals and amendments was reached by the three parties after 30 meetings. The final political agreement included a range of exemptions with regard to greening direct payments, making all three criteria easier to meet. Concerning the greening of direct payments, it was agreed that the amount of land to be set aside would be reduced from seven to five per cent. Provisions were also added that effectively exempted more than 35 per cent of agricultural land from greening measures, thereby excusing nearly 90 per cent of farmers (Keating 2013b).

Despite these changes, which watered down the original greening elements, Ciolos presented the final deal as a *paradigm change* in the CAP in his press conference. Again, he referred to the public debate and the extent to which the input of CSOs was linked to the final outcome:

I am delighted with this agreement which gives the Common Agricultural Policy a new direction, taking better account of society's expectations as expressed during the public debate in spring 2010. This agreement will lead to far-reaching changes: making direct payments fairer and greener, strengthening the position of farmers within the food production chain and making the CAP more efficient and more transparent. (Commissioner Ciolos 26 June 2013)

The Commission's framing of the reform in terms of a paradigm change was not accepted by CSOs, which showed distinct disappointment with the end result. It was clear to all parties that the resulting policy for 2014-20 barely reflected the Commission's ambitions when it first released its ideas. As stated in EuropeanVoice, 'the new CAP has ended up resembling a continuation of the status quo', a fact that 'has left many feeling disillusioned' (EuropeanVoice 3 July 2013). For many, the final result represented 'a missed opportunity to really reform the CAP' (Agricultural and Rural Convention 2013); 'the reform does not lead to a decisive paradigm shift in favour of a "public money for public goods" philosophy' (Matthews 2013). Explicit reference was also made to the effect of the deal on public support for the CAP. The World Wide Fund, for example, stated openly that 'the well of public support for a European subsidy system for farmers has just dried up' (World Wide Fund 2013).

## CONCLUSIONS

In concluding his article on legitimation strategies, Suchman stressed that more research is needed on the process of legitimation: ‘currently [we] can say very little about the nature (or even the existence) of “typical” legitimation progressions’ (Suchman 1995: pp. 602-3). Our study has shed light on the legitimation progression in a setting in which the input of CSOs was explicitly sought by the Commission, but the eventual political decision was taken by other institutions. It shows which legitimation strategies are pursued by the Commission and how these changed *during* the policy-making process. In this respect, the strategies of Suchman have provided for a useful conceptualisation of Schmidt’s discursive institutionalist approach, shedding light on the different strategies that actors can use to legitimate new policies. The various strategies pursued are summarised in Table 2 below.

Table 2: Progression of Legitimation Strategies

Policy-making stage	Strategy	Example
<b>Ongoing debate</b>	Foresee and communicate future challenges	<i>Various legitimacy challenges to the CAP were foreseen and explicitly stated by the Commission in public.</i>
<b>Public consultation</b>	Conform	<i>The Commission publicly expressed its willingness to follow the concepts of ‘public goods’ and ‘greening’ as expressed by civil society to regain support for the CAP.</i>
<b>Communication</b>	Restructure	<i>To regain support for direct payments, the Commission (eventually) only partly turned to the ‘public goods’ / ‘greening’ argument. It also continued to justify direct payments for having an economic function as income support for farmers.</i>
<b>Legislative proposal</b>	Normalise	<i>The Commission very openly stated that changes in the CAP to meet the public expectations could not be too radical due to vested interests.</i>
<b>Decision taking</b>	Conform	<i>The political agreement was justified eventually by referring to the idea of ‘greening’, as expressed by civil society.</i>

The analysis shows that the Commission was well aware of the legitimacy challenges the CAP faced. Initially it signaled its *conformity* to the concept of public goods in order to repair the legitimacy of the CAP. In addition, it sought to increase its connection with the broader public and different CSOs - a necessary condition for the successful usage of the strategy of conformity - by launching a public debate. As the policy debate continued, however, the Commission altered its strategy: instead of fully accepting the various legitimacy challenges and addressing these by acting in line with the public goods concept, it pursued a strategy of *restructuring*: the Commission maintained much of the

existing direct payments scheme and only limitedly confessed that aspects of the CAP were flawed, addressing these flaws by turning to the concept of greening. The pursuit of this restructuring strategy was justified largely on the basis of pragmatic arguments: in the first place, we see that the Commission aimed to formulate a *normalising account* to justify the limited changes: the Commission's account included both excuses and explanations for the limited proposed reform. At the same time, however, we see the Commission promising further reforms and stressing the importance of meeting the input of the public debate: the Commission's proposal was pictured as a first step in a new direction during the negotiations. After a political agreement was reached, however, the Commission *did* present the agreement as a radical reform of the CAP.

While the Commission's account of and commitment to linking the policy-making process to the input of civil society may have been sincere, it hardly affects CSOs' evaluation of the legitimacy of the CAP. In evaluating the reform process, most CSOs base their judgments on whether the eventual changes are 'the right thing to do' or 'make sense' and are hardly affected by the normalising account of the Commission. In as far as the Commission's feedback on the policy-making process' outcome affected CSOs' view of the legitimacy of the reform in a positive way, this was limited to the role of the Commission in the reform process.

These findings are not only relevant to the CAP, but also to other EU policy-making processes in which the Commission seeks and welcomes the input of civil society to strengthen the legitimacy of EU policies, but has only limited powers to take a decision on future changes and depends on the EP and Council. As this is the case with many EU policies, the order of the different legitimisation strategies pursued could well reflect a 'typical' legitimisation progression in the EU. The present case does not allow for such a broad generalisation; however, it does point to a number of directions for future research. A more systematic comparison between cases, clearly, would be needed to draw stronger conclusions on the typical progression of legitimisation strategies in the EU. Another direction for future research relates to previous research on the Commission's consultation regime, which showed that the Commission often used inputs from CSOs 'to improve its own proposals and increase its own legitimacy vis-à-vis other European institutions' (Broscheid and Coen 2003 in Kröger 2008: p. 30). Research on the CAP has also shown that this has been part of the Commission strategy (Fouilleux 2004). This study suggests that this strategy has lost its impact in the case of the CAP. With the EP involved as a formal decision taker, the 'responsive to public demands' argument loses force in the policy debate. While references to public demands and the provision of feedback from the decision-making process to CSOs, as said, may still strengthen the legitimacy of the Commission, this study shows that this has little effect on the legitimacy of the CAP itself.

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<sup>1</sup> In this study we treat the Commission as a unitary actor as its work is based on a principle of collegiality: its decisions and actions - including speeches by individual Commissioners - are thus a joint responsibility of all Commission members. While the Commission can be internally divided, we can assume that its public communication reflects the position of the Commission as a whole.

<sup>2</sup> The term green-washing refers to the attempt to minimise the additional measures that need to be taken by farmers to protect the environment under the green payments. The result is a policy that is green only on the surface.

<sup>3</sup> Including, among other subjects, the main amendments suggested by the Council's Presidency and key issues which remained outstanding for each of the proposals.

<sup>4</sup> Slovakia and Slovenia did not sign the Council's negotiation position.

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