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The paper tigers of the Common Agricultural Policy

Assessing the delivery of Statutory Management
Requirements for Biodiversity

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By BirdLife Europe & Central Asia with contributions from BirdLife Austria, BirdWatch Ireland, Czech Society for Ornithology (BirdLife Czechia), LPO (BirdLife France), LIPU (BirdLife Italy), OTOP (BirdLife Poland), SOS/BirdLife Slovakia, SEO/BirdLife Spain

Contact:

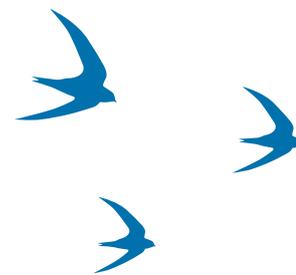
Marilda Dhaskali - marilda.dhaskali@birdlife.org

Tatiana Nemcova - tatiana.nemcova@birdlife.org

Design: Caroline Herman

*Cover: A 10-hectare wetland, crucial for the Aquatic Warbler (*Acrocephalus paludicola*) and located on agricultural land within a Natura 2000 site, was destroyed by drainage in 2023. The Aquatic Warbler is the rarest and only globally threatened passerine bird found in mainland Europe. Its conservation status is currently “vulnerable” and populations are in decline. Poland hosts the largest population in the EU. Despite its significance, the site lacks a conservation management plan and has not been designated as an environmentally sensitive grassland, even though it meets the qualifications. The supposed protection under SMRs has proven to be ineffective in practice, failing to prevent the destruction of this invaluable habitat. Cover photo: © Krzysztof Antczak*

Executive Summary



The Common Agricultural Policy (CAP) demands that farmers benefiting from its subsidies adhere to basic environmental and other standards known as 'conditionality'. This includes requirements related to nature and biodiversity protection. Statutory Management Requirements (SMRs), a component of conditionality, are automatically imposed without intervention or influence from the Commission during the CAP approval process. Member States are responsible for translating these requirements into practical farm-level standards, ensuring that farmers are able to implement and respect them, while also facilitating enforcement by relevant authorities. In response to concerns raised by authoritative reports regarding the effective implementation of these biodiversity requirements, this briefing aims to evaluate the national implementation of SMRs related to biodiversity (SMR 3, SMR 4, and SMR 8) in eight countries. By incorporating insights from the national level, this evaluation aims to gauge the effectiveness of these measures in ensuring compliance and actual protection of species and valuable habitats.

Our analysis indicates that concerning SMR 3 (Birds Directive), seven out of eight countries and, for SMR 4 (Habitats Directive), six out of eight countries have not translated the overarching legal obligations into distinct and comprehensive farm-level requirements crucial for effective enforcement. Even in instances where detailed guidelines were provided, they either present a limited interpretation of the legal obligations or there are notable enforcement issues. Regarding SMR 8 (Sustainable Use of Pesticides Directive), a newly introduced standard in this CAP, none of the analysed countries have incorporated specific, mandatory, farm-level restrictions pertaining to the use of plant protection products in Natura 2000 areas under SMR 8.

The deficiencies in implementing and enforcing SMRs highlighted in this briefing extend beyond administrative issues. Member States are failing to safeguard the financial interests of the European Union by continuing

to provide CAP subsidies to those who do not comply with the EU's environmental legislation. Notably, the lenient system in place falls short of providing adequate protection for valuable EU sites and habitats. A case in point is the observed destruction of semi-natural grasslands across the EU which poses a significant threat to both climate and biodiversity. It is unacceptable that such violations remain undetected and CAP funds continue to be granted to the offenders. To make SMR standards related to biodiversity effective, the following actions are recommended:

At EU-level:

- Provide clear guidance to Member States on integrating SMR standards into national frameworks.
- Enhance enforcement and take legal action against non-compliant Member States, including suspending CAP subsidies.
- Promote advanced technologies for monitoring and verification.
- Ensure consistency in penalties for SMR breaches across Member States and Regions.

At national-level:

- Define clearer SMR requirements to eliminate subjective interpretation.
- Offer accessible and relevant guidance to farmers and advisors.
- Improve controls with Information and Communication Technologies (ICT) and impose dissuasive, harmonised penalties.
- Establish training programs for inspectors to enhance their expertise in biodiversity protection.

List of Abbreviations

ARC	Activities Requiring Consent
CAP	Common Agricultural Policy
CSP	CAP Strategic Plans
ECA	European Court of Auditors
EU	European Union
GAEC	Good Agricultural and Environmental Conditions
ICT	Information and Communication Technologies
NAP	National Action Plans
SMR	Statutory Management Requirements
SCI	Sites of Community Importance
SPA	Special Protection Area



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1. Introduction

All farmers receiving Common Agriculture Policy (CAP) subsidies must comply with basic standards concerning the environment, climate change, public health, plant health, and animal welfare known as ‘conditionality’. The new CAP’s conditionality builds upon the previous cross-compliance system, which was in effect until 2022 and encompassed over 80% of EU agricultural land. The conditionality standards outlined in Annex III of the CAP Strategic Plans (CSPs) regulation include both the Statutory Management Requirements (SMRs) and the Standards of Good Agricultural and Environmental Conditions of Land (GAECs).¹ The link of direct payments with conditionality is used as a rationale for including them as a contribution to biodiversity funding.²

The Commission played a role in shaping the design of national GAEC standards within the framework of CSPs’ approval. But it is important to emphasise that SMRs are automatically applied. The specific procedures for the implementation and enforcement of SMRs are established by national rules. These rules must be implementable at farm-level and it is the responsibility of Member States to inform farmers of their obligations. However, there is a clear lack of information on how this has been done so far and to what extent the SMR standards related to biodiversity contribute to the protection of species and habitats.

Authoritative reports on the CAP’s role in biodiversity protection, including the implementation of biodiversity-related SMRs in previous periods, and insights from BirdLife experts on the ground, highlight substantial

concerns about the effective delivery of these biodiversity standards. The report titled ‘Evaluation of the impact of the CAP on habitats, landscapes, biodiversity’ found that *‘there is evidence that some Member States are not adequately and/or clearly incorporating the legal requirements of the relevant provisions in the Birds and Habitats Directives into their rules on cross-compliance’*.³ Additionally, *‘There is some evidence that cross-compliance measures are not widely enforced’*. The report by the European Court of Auditors (ECA) on the CAP’s contribution to safeguarding biodiversity raised several problematic issues and concluded that those standards *‘have high potential, on paper, to contribute to farmland biodiversity’*.⁴

Building on the findings of above-mentioned reports and knowledge of BirdLife’s agriculture experts, the aim of this briefing is to examine the national implementation of the SMR standards related to biodiversity and habitat protection (SMR 3, SMR 4, and SMR 8). As we come close to the first year of implementation of the new CAP with most administrative systems established, the focus lies on evaluating the effectiveness of these standards in ensuring compliance with EU nature legislation.

¹ [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 \(CAP Strategic Plans\)](#)

² The EU is committed to spending 7.5% of the 2021-2027 Multiannual Financial Framework (MFF) to biodiversity objectives as of 2024, and 10% in 2026 and 2027, with most of it coming from CAP. Details on methodology for tracking this commitment: [The new biodiversity tracking methodology](#)

³ [Alliance Environment \(2019\). Evaluation of the impact of the CAP on habitats, landscapes, biodiversity](#)

⁴ ECA (2020). [Biodiversity on farmland: CAP contribution has not halted the decline](#)



Poland: A ploughed wet meadow located in the Natura 2000 site "Ostoja Biebrzańska" PLB200006, which hosts at least 36 bird species from the Annex I of the Birds Directive and 23 species from the Polish Red Book. About 170 bird species nest here, including the Eurasian Curlew (*Numenius arquata*) and the Great Snipe (*Gallinago media*). An increasing trend of ploughing meadows in areas like this one is being witnessed in Poland every year. This is primarily due to the high demand for fodder for dairy cows, resulting in meadows being converted into maize fields.
Photo: © Michał Korniluk

2. Methodology

An assessment of the implementation of SMR standards related to biodiversity was conducted with input from national experts within the BirdLife Partnership, specifically SMR 3, SMR 4, and SMR 8, with a particular emphasis on Article 12 of SMR 8, which is related to the Sustainable Use of Pesticide Directive. The analysis covers Austria, Czechia, France, Ireland, Italy, Poland, Slovakia, and Spain. The assessment focused on:

- Whether all relevant articles of the respective SMR standards had been adequately incorporated.
- Whether the standards allow effective verification on the farm level.
- Determining whether farmers had access to clear and easily accessible information regarding the requirements outlined in the SMR standards.

Additionally, data acquired from national paying agencies in Poland and Slovakia, concerning violations related to SMRs associated with the Birds and Habitats Directive under the previous CAP, offered some insights into the level of enforcement.

3. Overview of biodiversity-related Statutory Management Requirements

This briefing utilises eight Member States as case studies to pinpoint the most challenging areas in the enforcement of SMRs related to biodiversity. It formulates recommendations for improvements at both national and EU levels. The SMRs are delineated in Annex III (Rules on conditionality pursuant to Article 12) of the CAP strategic plans regulation, alongside GAEC standards. Notably, SMRs pertinent to biodiversity and landscapes are SMR 3 and SMR 4. SMR 8 governs, among other things, the use of pesticides in Natura 2000 areas.

3.1 SMR 3

Specifically, SMR 3 concerns the Birds Directive, encompassing its Article 3(1), Article 3(2), point (b), and Article 4(1), (2), and (4).

Articles 3(1) and 3(2) require Member states to take measures to preserve, maintain or re-establish sufficient diversity habitats and areas for protected birds in accordance with their ecological needs.

Articles 4 (1) and 4(2) emphasise the need for special conservation measures for Annex 1 species and migratory species to ensure their survival and reproduction in their area of distribution. Article 4(4) mandates steps to prevent habitat pollution, deterioration, or disturbance within and outside designated protection areas.

Examples of possible farm-level requirements related to the sites and habitats covered by the SMR 3 standard include:



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- Prohibition of drainage on the sites
- Prohibition of altering the site's relief
- Prohibition of ploughing grasslands
- Ensuring no overgrazing by livestock occurs above a recommended density
- Ban on cutting, burning, or destroying vegetation on uncultivated land during the breeding period
- Prohibition of removing shrub and trimming or removing hedges during the breeding period
- Obligation to employ specific bird-friendly land management methods
- Prohibition of deliberate destruction of nests or breeding habitats
- Restriction on certain agrotechnical operations during periods when birds are particularly sensitive, e.g., a ban on nighttime mechanical harvesting in intensive permanent crops located near tall hedges or dense foliage where birds nest or roost
- Site-specific requirements as outlined in management plans

3.2 SMR 4

SMR 4 concerns the Habitats Directive and covers Article 6(1) and (2).⁵

Article 6(1) mandates Member States to establish conservation measures and management plans for special areas of conservation in accordance with ecological requirements for habitat types and species. Article 6(2) obliges member States to prevent significant disturbance and deterioration of natural habitats and species within these special areas.

Examples of possible farm-level requirements related to the sites and habitats covered by SMR 4 standard include:

- Prohibition of drainage on the sites
- Prohibition of altering the site's relief
- Prohibition of ploughing grasslands
- Grazing-related prescriptions
- Site-specific requirements as outlined in Natura 2000 site management plans

3.3 SMR 8

SMR 8 is related to the Sustainable use of pesticides directive and is a newly introduced standard in the CAP for 2023-2027. SMR 8 covers Article 5(2) and Articles 8(1) to 8(5) 12, and 13.⁶

Specifically, Article 12 is relevant in terms of limitations on pesticide use in protected areas defined by Directive 2000/60/EC and Natura 2000 legislation. Articles 13(1) and 13(3) address the handling and storage of pesticides and the disposal of remnants. Please note that, regarding SMR 8, this briefing centres on Article 12.

Examples of possible farm-level requirements related to the sites and habitats covered by SMR 8:

- Ban on the use of (certain) pesticides or a requirement for an authorisation for the use of pesticides

⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7–50)

⁶ Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71)

4. National implementation and enforcement of SMR 3, SMR 4 and SMR 8

4.1 Implementation of SMR 3, SMR 4 and SMR 8 on national level

Tables 1, 2, and 3 summarise how effectively SMR standards were incorporated into national rules. 'Clear' refers to the extent to which the definition is likely to enable efficient verification and is easily understandable for farmers.



Table 1: SMR 3 Birds Directive

Country	Clear	Explanation/Further comments
Austria	No	The formulation for compliance with SMR 3 is general, aligning with the relevant articles of the Birds Directive.
Czechia	Yes	The details on what constitutes compliance with SMR 3 are clearly defined in a methodological manual prepared by managing authorities. The criteria for assessing non-compliance are based on factors such as range, severity, and permanence. ⁷ The compliance is controlled by the Czech Environmental Inspection.
France	No	Compliance with SMR 3 is very broadly defined in the corresponding national legislation as adherence to measures for the protection of habitats of birds. ⁸
Ireland	Partial	Compliance with SMR 3 is formulated in an Explanatory handbook for conditionality requirements. ⁹ It defines what SMR 3 means for a farmer, including visuals, and what will be checked by the inspector. However, the handbook does not go into sufficient detail on the relevant Birds Directive articles included in SMR 3 and how the farmer should comply. For instance, there is an emphasis on rules regarding hedge cutting restrictions, which, while essential as legal requirements in both national and EU legislation, are not directly related to Articles 3 or 4. Article 3(1) requires the preservation and maintenance of sufficient biodiversity of habitats on farmland. This implies an understanding of the unique habitats that exist on individual farms, with appropriate advice provided to support their maintenance.

⁷ Discovering mechanically killed birds or destroyed nesting sites is crucial for establishing non-compliance. A violation of a requirement with a high degree of severity includes deliberate destruction of occupied nests or harmful interference with the natural development of birds, which poses a threat to the local population of the target species.

⁸ [Arrêté du 17 mars 2023 relatif à la mise en œuvre de la conditionnalité et de la conditionnalité sociale en métropole à compter de la campagne 2023](#)

⁹ DAFM (2023). [Explanatory handbook for conditionality requirements](#)

Country	Clear	Explanation/Further comments
		<p>Additionally, Article 3(2)(b) requires ongoing management in accordance with the ecological needs of habitats inside and outside the protected areas. This requirement does not have a time limit as suggested by the example of hedge cutting. The section on Special Protected Areas (SPAs) and the requirement to meet Activities Requiring Consents (ARCs) is good and relates directly to Article 4(1). However, the text falls short on information on compliance with Articles 4(2) and 4(4) regarding protection of migratory species which may be found outside of protected areas and the requirement to avoid deterioration of habitats. There are a range of other relevant bird habitats such as wetland habitats outside of SPAs, including wet grasslands and ponds, where Article 4(4) is directly applicable. The text does not include information on the species that might be found and provides suggestions on how farmers might avoid disturbance or deterioration of habitats. For example, avoiding deterioration of water quality would be key for waterbird species such as the Northern Lapwing (<i>Vanellus Vanellus</i>), Common Kingfisher (<i>Alcedo Atthis</i>), ducks etc). In addition, many farms contain buildings where birds might nest but these habitats or recommendations to avoid impacts on birds are not mentioned.</p>
Italy	No	<p>Compliance with the SMR 3 standard is very broadly defined as compliance with provisions of the national legislation related to the Birds and Habitats Directive.¹⁰</p>
Poland	No	<p>Compliance with SMR3 is linked with the Nature Conservation Act and with the obligatory requirements resulting from the conservation management plans for bird protection. As it is very complex, most farmers are unlikely to be aware of their obligations.</p>
Slovakia	Partial	<p>Compliance with SMR 3 is defined in guidelines prepared by managing authorities. These guidelines include definitions of terms and specify terms of compliance. They provide detailed requirements for the general protection of birds and breeding habitats but are vague when it comes to defining violations related to habitat deterioration or damage. It only includes a general statement and references to the SPA management plans.</p>
Spain	Partial	<p>Compliance with SMR 3 is defined in a Royal decree as compliance with relevant articles of the Birds Directive and related national laws. It builds on the design and defines practices of management plans of legally protected areas (SPA) or species. The latter is mostly not specific enough. Since 2011, there has been a ban in place on mechanical night-harvesting of intensive olive groves based on both the Birds Directive and national nature protection law.</p>



Photo: © Tatiana Nemcova

Table 2: SMR 3 Birds Directive

Country	Clear definition of rules?	Explanation/Further comments
Austria	No	Compliance with SMR 4 is formulated in a general way as compliance with relevant Birds Directive articles.
Czechia	Partial	Compliance with SMR 4 is defined, but it is relatively general. There are some examples which can be considered as a violation of conditions, that are useful. The criteria for assessing non-compliance are based on factors such as range (small, medium, large), severity (low, medium, high), and permanence (removable, irremovable). ¹¹ The details are set in methodological guidelines prepared by managing authorities.
France	No	Compliance with SMR 4 is broadly defined in the pertinent national legislation, emphasising adherence to measures for the protection of habitats and species in Natura 2000 sites. ¹²
Ireland	Partial	Compliance with SMR 4 is formulated in an explanatory handbook for conditionality requirements. ¹³ It defines what SMR 4 means for a farmer, including visuals, and what will be checked by the inspector. However, the handbook provides a very limited interpretation of Article 6(1) and 6(2) of the Habitats Directive.
Italy	No	Compliance with SMR 4 standard is generally defined as compliance with provisions of the national legislation related to the Birds and Habitats Directive. ¹⁴
Poland	No	Compliance with SMR 4 is linked with the obligatory requirements resulting from the conservation management plans for habitats and species. As it is very complex, most farmers are unlikely to be aware of their obligations.
Slovakia	Yes	Compliance with SMR 4 is clearly defined as the prohibition to remove or damage listed natural elements and to damage or destroy habitats of European importance. The most damaging activities are also explicitly enumerated.
Spain	Partial	Compliance with SMR 4 is broadly defined in a Royal decree adherent to the relevant articles of the Birds Directive and related national laws. It builds on the design and defined practices of the management plans of legally protected areas, Sites of Community Importance (SCIs), or species, which are mostly not specific enough.

10 Article 5 of the Decree of the Ministry of the Environment of 17 October 2007 no. 184 concerning the 'Minimum uniform criteria for the definition of conservation measures relating to Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)' and the provisions of Article 4 of Presidential Decree no. 357 of 8 September 1997

11 For example, a violation of the requirement in a small area is defined as occurring in an area up to 30% of the expected occurrence area of the protected object

12 [Arrêté du 17 mars 2023 relatif à la mise en œuvre de la conditionnalité et de la conditionnalité sociale en métropole à compter de la campagne 2023](#)

13 DAFM (2023). [Explanatory Handbook for Conditionality Requirements 2023 -2027 Version 23-034](#)

14 Article 5 of the Decree of the Ministry of the Environment of 17 October 2007 no. 184 concerning the 'Minimum uniform criteria for the definition of conservation measures relating to Special Areas of Conservation (SACs) and Special Protection Areas (SPAs)' and the provisions of Article 4 of Presidential Decree no. 357 of 8 September 1997

Tab 3: SMR 8 Sustainable Use of Pesticides Directive (Article 12 only)

Country	Clear definition of rules?	Explanation/Further comments
Austria	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
Czechia	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
France	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
Ireland	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
Italy	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
Poland	No	There are no restrictions related to the use of plant protection products in Natura 2000 areas.
Slovakia	No	Compliance with SMR 4 is clearly defined as the prohibition to remove or damage listed natural elements and to damage or destroy habitats of European importance. The most damaging activities are also explicitly enumerated.
Spain	Yes, but not compulsory	Compliance with SMR 8 is established through a Royal decree, generally emphasising adherence to the relevant articles of the SUD and associated national laws that contribute to the development of the National Action Plan (NAP). The NAP includes a specific chapter for sensitive areas, addressing specific practices under Integrated Pest Management (IPM) guidelines by crop (with uniform recommendations for all crops) and any compulsory restrictions stipulated in the site management plan.

Photo: ©drakuliren/AdobeStock



The analysis of the implementation of national SMR rules indicates that only Slovakia, Czechia, and Ireland, have detailed definitions for compliance with SMR 3 and SMR 4 set in dedicated guidance documents. Conversely, Austria, France, and Italy, employ more general language, simply referencing relevant articles of SMR standards in their national legislation. Some countries like Poland, Italy, and Spain refer to rules set in the Nature Conservation Act and/or the Natura 2000 management plans.

Despite including detailed and clear guidelines, some national SMR rules provide very limited interpretation of obligations outlined under the relevant Birds and Habitats Directives articles, as is the case for Ireland.

The situation is particularly worrying for SMR 8. It appears that none of the analysed countries included specific, compulsory, farm-level restrictions regarding the use of plant protection products in Natura 2000 areas. Instead, the focus remains on general requirements for legal and good use of agrochemicals, as prescribed by technical advisors for main crops.

Regarding France, the absence of precise regulatory provisions governing the reduction of pesticides in Natura 2000 zones in the new CAP is particularly notable. This observation is surprising given that in its decision of November 15, 2021, the French Council of State mandated the government to implement necessary measures for reducing pesticide use in the Natura 2000 areas. In fact, the Council of State determined that the existing regulatory provisions that were in effect at the date of its decision failed to guarantee that the use of plant protection products was systematically regulated or prohibited in terrestrial Natura 2000 sites.

4.2 Enforcement of SMRs

The rules on controls and penalties related to conditionality (both GAECs and SMRs) are

set in Chapter IV (Articles 83 to 85) of the CAP Horizontal regulation. Member States are required to establish a system for verifying compliance with conditionality with an option of a simplified system for small farmers.¹⁵ To fulfil their control obligations, Member States must perform on-the-spot checks, may use administrative checks, and can employ remote sensing or monitoring technologies with control samples covering at least 1% of the beneficiaries.

There is no doubt that control systems are put in place across all Member States. However, there is a noticeable scarcity of publicly available information that would enable an assessment of the effectiveness of these control systems in detecting breaches of SMRs related to biodiversity. Based on our assessment, a positive and rather exceptional example of transparency on the implementation and enforcement of conditionality are regular reports prepared by the Spanish authorities. They provide information about the number of controlled beneficiaries and rate of infringements.¹⁶ European Auditors '*observed significant variations between Member States in the application of penalties for infringements. [They] found that infringement rates for several requirements and standards were below 1%. The SMRs related to the conservation of wild birds and natural habitats*'.¹⁷ Looking at this number with a positive mind could indicate very good compliance with the rules. But a more rational explanation indicates that there is a problem with detection of non-compliance.

Data obtained from the paying agency in Poland reveals an exceptionally low number of infringements related to SMRs associated with the Birds and Habitats Directive during the previous CAP period.¹⁸ Between 2015 and 2022, the number of infringements ranged from 9 to 61 farmers (see annex). There are 1.3 million farms in Poland according to Eurostat 2020. Applying a control rate of 1% is equivalent to 13,000 farms. Yet, the infringement rate in this context is

¹⁵ 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

¹⁶ INFORME DE CONDICIONALIDAD 2022 (CONTROLES 2021)

¹⁷ Biodiversity on farmland: CAP contribution has not halted the decline

¹⁸ The SMRs under the previous CAP (2014-2022) were set in the CAP '[Horizontal regulation](#)' No 1306/2013. SMR 2 was related to Birds Directive and SMR 3 to the Habitats Directive. The number of SMRs under previous CAP are not being used in the text to avoid confusion with the current numbering.

significantly below 1%. In 2022, it was observed to be as low as 0.09%. This suggests a strong likelihood that there are issues with detecting infringements. Data from Slovakia paints a similar picture. Between 2016 and 2021, there was just one recorded infringement annually concerning SMRs associated with the Birds and Habitats Directive, except in 2019, during which there were two infringements. All of these infringements were connected to the Habitats Directive, and none were related to the Birds Directive. National reports on conditionality controls and compliance in Spain, based on data from 2021, uncover infringement rates of 7.57% for SMRs related to the Birds Directive and notably lower, only 0.68% for SMRs related to the Habitats Directive. This discrepancy suggests that there may be more specific or easily controllable requirements under the SMRs associated with the Birds Directive SMRs compared to those associated with the Habitats Directive.

Article 59 of the CAP Horizontal Regulation mandates that Member States must apply penalties that are *'effective, proportionate and dissuasive'*. Undoubtedly, the efficiency of penalties plays a crucial role in promoting adherence to regulations. This briefing does not include an analysis of the penalties, as it falls outside its scope. Nevertheless, it has to be noted that the report of the European Court of Auditors (ECA) states that *'there are no standard cross-compliance penalties corresponding to biodiversity-relevant SMRs and GAECs, and penalties for detected infringements are low'*.

Ploughed meadows in the Biebrza valley, Poland, can be easily recognised from orthophoto maps. Better utilisation of remote sensing technologies is imperative for effective detection of breaches of the EU's nature legislation. source: geoportal.gov.pl



5. Summary of findings & discussion

Mandatory environmental cross-compliance was introduced in 2005 and has since evolved through subsequent CAP reforms into the current conditionality framework. Several improvements have been implemented, particularly concerning the GAECs. With the introduction of programming for both Pillar 1 and Pillar 2, GAEC standards have been part of the CSP approval process by the European Commission and are subject to stakeholder scrutiny on the national level. While there are several new, positive elements included, our 2022 report 'CAP Unpacked...and Unfit' summarises that due to numerous derogations and a lack of ambition, it still falls short of the necessary standards.¹⁹ Regrettably many of the issues related to SMRs that were identified in our 2009 report, 'Through the Green Smokescreen: How is CAP Cross-Compliance Delivering for Biodiversity?' remain unaddressed.²⁰ The apparent lack of oversight by the European Commission regarding the SMR system, combined with a deficiency in public scrutiny due to limited available public data, has not generated the necessary impetus for improving the system at the national level. In numerous countries, the definitions of SMR standards have been retained from the previous CAP periods without undergoing revision.

It is noteworthy that when cross-compliance was first introduced as part of the Direct Payments Regulation, the European Commission was mandated to provide reports on its application.²¹ However, in subsequent CAP legislation, there is no longer a specific reporting obligation imposed on the Commission regarding cross-compliance. It remains unclear whether such reporting requirements have been integrated into other reporting obligations in a

meaningful manner. Despite information from Member States indicating regular transmission of this data to the Commission, we were unable to ascertain specifics. In general, there is limited information available regarding the practical implementation of cross-compliance and conditionality, particularly concerning the SMRs, at both the EU and national levels.

After the ECA's report on cross-compliance in 2008, which identified serious weaknesses in its implementation, the Commission took steps to assist Member States in better defining the requirements and standards that farmers must adhere to.²² This effort included the publication of detailed guidelines in 2009 on on-farm requirements and standards, including those related to the Birds and Habitats directives.²³ However, upon reviewing documents obtained through an access to documents request in October 2023, it seems that updated guidance on translating SMR standards into enforceable on-farm requirements has not been issued since.

According to the CSPs regulation, the SMRs need to be operational at the farm-level to ensure equal treatment of farmers. The lack of clear rules and definition of compliance as shown in chapter 4 may lead to varying levels of understanding and hence, adherence among farmers. For instance, in the case of Poland, the connection between SMR 3 and SMR 4 with conservation management plans is complex. It is highly probable that many farmers are unaware of their responsibilities delineated in these plans. This lack of awareness is often attributed to the limited access to the actual management plans and the pertinent information they contain, or the plans themselves may not impose specific restrictions or conditions

¹⁹ [CAP unpacked..and unfit](#)

²⁰ [Through the Green Smokescreen](#)

²¹ [Council Regulation \(EC\) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers](#)

²² ECA, 2008: [Is cross compliance an effective policy?](#)

²³ European Commission, 2009: Working Document On-farm requirements and standards under cross compliance

for farming. In Italy, finding the rules can be a challenge for farmers as they are based on the minimum criteria outlined in ministerial decrees or site-specific management plans, each of which varies according to the site.

Even with well-defined rules established in dedicated guidance, achieving a high level compliance may prove challenging without effective controls, as demonstrated by the suspiciously low number of infringements in Slovakia. Similarly, in Poland, the data indicates a remarkably low rate of infringements. However, the reality on the ground tells a different story. In the case of certain Natura 2000 sites, where extensive maintenance of permanent grasslands is mandated, two concerning trends are observed: these areas are either left abandoned or subjected to intensification, with no enforcement of sanctions for non-compliance.

More significantly, the lenient system in place falls short in offering sufficient protection to valuable habitats, such as semi-natural grasslands, which

“ The apparent lack of oversight by the European Commission regarding the SMR system, combined with a deficiency in public scrutiny due to limited available public data, has not generated the necessary impetus for improving the system at the national level. ”

are not adequately covered by GAEC 1 and GAEC 9 where Member States seem to have neglected safeguarding the Union’s financial interests by The concerns about inadequate implementation and enforcement of biodiversity-related SMRs extend beyond administrative issues, continuing to provide CAP subsidies to those who don’t comply with EUs environmental legislation. 9.^{24, 25} The observed destruction of semi-natural grasslands in multiple EU countries is a calamity from both climate and biodiversity perspectives. It is unacceptable that such violations go undetected while CAP funds continue to flow to offenders. Equally important, the concerns that SMR 3, 4, and 8 remain primarily on paper for most of the EU’s farmland disproportionately exaggerate the CAP’s contribution to biodiversity, including from a financial perspective.

The CAP for 2023-2027 has just begun, presenting a window of opportunity for further improvements to be made to the implementation of SMRs within this CAP period.



24 'Maintenance of permanent grassland based on a ratio of permanent grassland in relation to agricultural area at national, regional, subregional, group-of-holdings or holding level in comparison to the reference year 2018.

Maximum decrease of 5 % compared to the reference year.' - This GAEC can limit overall decrease in the area of grasslands but it does not prevent destruction of valuable grasslands regionally or locally.

25 'Ban on converting or ploughing permanent grassland designated as environmentally-sensitive permanent grasslands in Natura 2000 sites.' - Not all grasslands in Natura 2000 areas have been designated as environmentally-sensitive, so they do not benefit from protection under GAEC 9.

6. Recommendations

To ensure that Sustainable Management Regulation (SMR) standards related to biodiversity make a meaningful impact on biodiversity conservation efforts, the following actions should be undertaken:

6.1 At EU-level

- **Guidance for Member States:** The European Commission should provide clear and comprehensive guidance to Member States on how to effectively integrate SMR standards into their national legislative and administrative frameworks, with meaningful and controllable requirements on the farm-level.
- **Enhanced enforcement:** The Commission should assess the national-level implementation of SMRs and initiate legal proceedings against Member States that fail to adhere to the legislation. CAP subsidies should be suspended if Member States face infringements related to the SMR legislation.
- **Utilised technology:** The Commission should actively promote and facilitate the adoption of advanced technologies, such as remote sensing and area monitoring systems, to enhance the monitoring and verification of compliance with SMRs.
- **Harmonised sanctions:** Steps should be taken by the Commission to ensure consistency and harmonisation in the penalties and sanctions for breaches related to SMRs across Member States and regions. This will foster uniformity in enforcement.

6.2 At national-level:

- **Clear requirements:** Member States must unambiguously define all requirements stemming from SMRs, eliminating any room for subjective interpretation. Clarity in the standards is essential for their effective implementation and level playing field amongst the farmers.
- **Farmer guidance:** Provide farmers and agriculture advisors with accessible, clear, and readily available guidance on the necessary actions to achieve compliance with SMR standards, including clear definitions of what constitutes a breach of these rules. The information needs to be relevant to the farmer's agricultural residence. For example, if a farmer operates within a specific Natura 2000 site, the information should include the specific restrictions arising from the legislation or management plan of that site.
- **Enhanced controls and implementation of dissuasive penalties:** Member States must enhance controls using remote sensing and other ICT technologies. The penalties must be dissuasive and harmonised in countries with regional structures.
- **Inspector training:** Member States should establish regular and specialised training programs for inspectors. These programs should focus on enhancing their expertise in identifying and



7. Annexes

7.1 Legal text of provisions under SMR 3, SMR 4, and SMR 8

Table 4: Legal text of provision under SMR, SMR 4, and SMR 8

SMR 3: Birds Directive (2009/147/EC) Article 3(1), Article 3(2), point (b), Article 4(1), (2) and (4)
<p>Article 3.1. In the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1</p>
<p>Article 3.2. The preservation, maintenance and re-establishment of biotopes and habitats shall include primarily the following measures:...</p> <p>(b) upkeep and management in accordance with the ecological needs of habitats inside and outside the protected zones;</p>
<p>Article 4.1</p> <p>1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.</p> <p>In this connection, account shall be taken of:</p> <p>(a) species in danger of extinction;</p> <p>(b) species vulnerable to specific changes in their habitat;</p> <p>(c) species considered rare because of small populations or restricted local distribution;</p> <p>(d) other species requiring particular attention for reasons of the specific nature of their habitat.</p> <p>Trends and variations in population levels shall be taken into account as a background for evaluations.</p> <p>Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical sea and land area where this Directive applies.</p>
<p>Article 4.2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.</p>
<p>Article 4.4. 4. In respect of the protection areas referred to in paragraphs 1 and 2, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.</p>
SMR 4: Habitats Directive (92/43/EEC) Article 6(1) and (2)
<p>Article 6.1</p> <p>For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.</p>
<p>Article 6.2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.</p>

SMR 8: Sustainable use of pesticides directive (Article 5(2) and Article 8(1) to (5) Article 12 with regard to restrictions on the use of pesticides in protected areas defined on the basis of Directive 2000/60/EC and Natura 2000 legislation; Article 13(1) and (3) on handling and storage of pesticides and disposal of remnants. The focus of this briefing is Article 12 only related to Natura 2000 areas

Article 12: Reduction of pesticide use or risks in specific areas. Member States shall, having due regard for the necessary hygiene and public health requirements and biodiversity, or the results of relevant risk assessments, ensure that the use of pesticides is minimised or prohibited in certain specific areas. Appropriate risk management measures shall be taken and the use of low-risk plant protection products as defined in Regulation (EC) No 1107/2009 and biological control measures shall be considered in the first place. The specific areas in question are: protected areas as defined in Directive 2000/60/EC [Water framework directive] or other areas identified for the purposes of establishing the necessary conservation measures in accordance with the provisions of Directives 79/409/EEC [Birds Directive] and 92/43/EEC [Habitats Directive].

7.2 Overview of number of violations of SMRs related to Birds and Habitats Directive in Poland and Slovakia under SMR 3, SMR 4, and SMR 8

Table 5: Overview of number of violations of SMRs related to Birds and Habitats Directive in Poland

Year	All violations of cross-compliance requirements (number of farmers)	SMR linked to the Birds Directive violations (number of farmers)	SMR linked to the Birds Directive violations (number of farmers)	Total violations linked to the Bird and Habitat Directives
2015	10889	7	2	9
2016	7563	5	10	15
2017	5123	51	5	56
2018	5110	45	6	51
2019	6708	45	16	61
2020	4832	16	10	26
2021	5836	6	3	9
2022	5968	6	6	12

Table 6: Overview of number of violations of SMRs related to Birds and Habitats Directive in Slovakia

Year	All violations of cross-compliance requirements (number of farmers)	SMR linked to the Birds Directive violations (number of farmers)	SMR linked to the Birds Directive violations (number of farmers)	Total violations linked to the Bird and Habitat Directives
2016	291	0	0	0
2017	219	0	1	1
2018	248	0	1	1
2019	216	0	2	2
2020	119	0	1	1
2021	137	0	1	1



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