An Claíomh Glas

Consultation response to

Public Consultation on draft Scoping Report for the Environmental Assessment of Ireland's CAP Strategic Plan 2023-2027

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1. Introductory remarks:

The following submission is made on behalf of Irish eNGO An Claíomh Glas.

The public consultation and consultation with environmental authorities on the scope and level of detail of the information to be included in the environmental report for the CAP strategic plans is welcome.

The Consultation provides a number of suggested questions to be considered by respondents as follows:

- Is there additional information that needs to be considered as part of the baseline data?
- Do you consider that the range of issues covered is appropriate?
- Are there any changes that in your consideration should be made a) to the proposed environmental objectives and b) to the guide questions including the consideration of alternatives?
- Do you have further suggestions regarding the scope of the Strategic Environmental Assessment and its proposed assessment of the CAP Strategic Plan?

However the format taken in this submission is to consider and be driven by the relevant legislative requirements and in that way the responses to the posed questions are addressed.

The following brief comments and submission are made constructively to assist this process at this important juncture. However they are clearly without prejudice to the right to comment in more detail on i.a. the resulting draft strategic environmental assessment required under the SEA Directive, and draft Natura Impact Statement and draft Appropriate Assessment required under the Habitats Directive for the draft CAP strategic plan. [These remarks should be considered as supplementary to **]

In relation to such subsequent consultation phases, this submission highlights a transposition and implementation issue in respect the SEA Directive and SI 435 of 2004, where the Department's scoping consultation web page indicates:

> "The environmental assessment will be carried out in accordance with EU Directive 2001/42/EC and the European Communities (Environmental Assessment of Certain Plans and Programmes) Regulations 2004 SI 435 of 2004"

While it is acknowledged that efforts have been made to include the public affected and other concerned organisations, and some relevant environmental non-governmental organisations during the current consultation on the scoping phase - there is a risk that the consultation on the subsequent phases and draft plan and assessment reports will not be addressed adequately, given the issue in the Irish regulations.

The requirements of Article 6 of the SEA Directive are highlighted and provide as follows: (emphasis added)

"2. The authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

3. Member States shall designate the authorities to be consulted which, by reason of their specific environmental responsibilities, are likely to be concerned by the environmental effects of implementing plans and programmes.

4. Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, **including relevant non-governmental organisations, such as those promoting environmental protection** and other organisations concerned."

However, unlike the provisions in Article 6 above, the approach in SI 435/2004 as amended by SI 192 of 2011 and SI 200 of 2011 is much narrower, and provides as follows[1]: (emphasis added)

Article 13(1)

"A Competent authority shall

(a) send notice and a copy of the draft plan or programme, or modification to a plan or programme, and associated environmental report **to the environmental authorities specified in article 9(5)**, as appropriate, and state that a written submission or observation with respect to the draft plan or programme, or modification to a plan or programme, and associated environmental report made to the competent authority within a specified period of not less than 4 weeks from the date of the notice will be taken into consideration before the finalisation of the plan or programme, or modification to a plan or programme, and

(b) publish notice, in accordance with sub-article (2), of the preparation of the draft plan or programme, or modification to a plan or programme, and associated environmental report in at least one newspaper with a sufficiently large circulation in the area covered by the plan or programme, or modification to a plan or programme."

In summary, the list of environmental authorities specified under the referred to and amended article 9(5) is very limited, and clearly does not accord with any reasonable and

[1] The effect of Delegations under SI 192 etc are not reflected in the extract quoted for 9(5)b, only the changes to Art 9(5)c under SI 200/2001 are included given they are the relevant ones for the point to be illustrated.

purposive interpretation of the scope of bodies required under the Directive Article 6. This includes an express failure to specify and include eNGOs, providing only the following[2]:

> "Prior to making a decision under sub-article (2) or (3), a competent authority shall give notice in accordance with sub-article (6) to the following environmental authorities—
>
> (a) the Environmental Protection Agency,
>
> (b) where it appears to the competent authority that the plan or programme, or modification to a plan or programme, might have significant effects in relation to the architectural or archaeological heritage or to nature conservation, the Minister for the Environment, Heritage and Local Government,
>
> (c) where it appears to the competent authority that the plan or programme, or modification to a plan or programme, might have significant effects on fisheries or the marine environment, the Minister for Agriculture, Marine and Food, and the Minister for Communications, Energy and Natural Resources"

Notwithstanding the provisions for notice in newspapers to the wider public, the notification standard indicated for eNGOs is entirely inadequate in the Irish regulations. Thus the Department is reminded of the judgment of the Court of Justice in case c-378/17[3] (*Minister for Justice and Equality and Commissioner of the Garda Síochána*) where the Court clarified the obligation on public authorities to disapply provisions of national law in breach of EU law. Therefore:

- **The Department must make very specific and transparent provision in respect of meeting all the requirements of the SEA and Habitats Directive in particular in respect of this process.**

A further general remark on the approach to the scoping of the assessments is the importance of facilitating the standard of public consultation required for the actual draft plan and the various draft assessments. Article 6(1) of the SEA Directive requires that the public are providing with an: "effective opportunity within appropriate time frames to express their opinion on the draft plan or programme". Therefore, given the volume of information and the complexity of it and related reports, generous provision should be made to ensure the further consultation required is not compromised as deadlines to deliver the strategic plan loom. So a fundamental recommendation is that

- **The scoping of the environmental assessments should ensure they are adequately resourced, and that the timelines of the assessment versus the preparation of the draft plan and required ex-ante assessments under Article**

[2] The effect of Delegations under SI 192 etc are not reflected in the extract quoted for 9(5)b, only the changes to Art 9(5)c under SI 200/2001 are included given they are the relevant ones for the point to be illustrated

[3] Judgment of the Court, 4 Dec 2018, case c-378/17 EU:C:2018:979, para 50 refers.

125 of the proposed CAP Strategic Plan Regulation[4] are structured and managed to ensure adequate opportunity is provided to the public for an effective consultation prior to the submission of the plan.

Specific comments on the scoping consultation follow.

[4] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council

2. The Assessment Requirement under Article 5 of the SEA Directive

The overarching comment in relation to the scoping of the environmental assessment under the SEA Directive is

- **The scoped assessment must suffice to meet the fundamental requirement for the environmental report is set out in Article 5 of the SEA Directive.**

Further more granular recommendations are set out below.

Article 5(1) of the Directive with reference to Annex I provides as follows:

> "1. Where an environmental assessment is required under Article 3(1), an environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I."

The referred to Annex I then provides as follows:

> "Information referred to in Article 5(1)
>
> The information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:
>
> > (a) an outline of the contents, main objectives of the plan or programme and relationship with other relevant plans and programmes;
> >
> > (b) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;
> >
> > (c) the environmental characteristics of areas likely to be significantly affected;
> >
> > (d) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to Directives 79/409/EEC and 92/43/EEC;
> >
> > (e) the environmental protection objectives, established at international, Community or Member State level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
> >
> > (f) the likely significant effects (1) on the environment, including on issues such as biodiversity, population, human, health, fauna, flora, soil, water, air, climatic factors, material assets, cultural heritage including architectural and

archaeological heritage, landscape and the interrelationship between the above factors;

(g) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;

(h) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;

(i) a description of the measures envisaged concerning monitoring in accordance with Article 10;

(j) a non-technical summary of the information provided under the above headings."

Further considerations then in respect of the standards and level of detail, and other reports required and their inter-relationships etc are set out in Article 5(2) and (3).

In respect of the above some general, but not exhaustive remarks and recommentations include:

i) In respect of a) above the scoping consultation document does not provide any real granular insight into the potential nature of the objectives for the draft CAP Strategic Plan. It relies entirely on the highlevel objectives set out in the proposed CAP regulation, and the interventions provided for. It is therefore difficult to comment with any degree of specificity on the adequacy of the scope proposed.

- **The adequacy of the scope of the environmental assessment needs to be revisited and considered against some practical insight into the nature of the emerging CAP Strategic Plan.**

ii) In relation to Annex 1 (f) above, Section 5 of the Consultation document is particularly of concern. It is entitled "Proposed Framework for Assessing Significant Environmental Effects" The concern here is that it appears the intended approach is to collapse the very distinct and separate requirements of Annex 1 paragraphs e) and f) above into one thing whereas in fact they are materially different. Section 5 states:

"This section outlines the framework upon which the SEA will assess the draft CAP Strategic Plan 2023-2027 for Ireland. It presents the draft Strategic Environmental Assessment Objectives which are the key criteria against which the environmental assessment of the draft plan will occur"

The subsequent table 5 in the then lists Strategic Environmental Objectives, SEOs based on the elements listed in f) above.

However two key points need to be made firstly while section 5 may suffice for the purposes of para e) above – it does not suffice for para f); secondly the table entirely fails to consider the interaction between factors and to reflect an objective accordingly. Meeting one objective can very often compromise the achievement of another and this is nowhere provided for in the SEOs. – thus failing.

While setting an associated environmental objective and evaluating whether it is achieved or not is an interesting exercise and necessary to comply with e) above– **that is <u>NOT</u> the same as conducting an assessment of the environmental impact of the plan on the factors which are required to be assessed under f) above in order to comply with the Directive.** The consultation document states:

> "Table 5 below presents the Draft SEA Objectives that are proposed to test the potential environmental effects of the draft CAP Strategic Plan 2023-2027. These are based on the understanding of existing environmental issues as outlined in the preceding chapters and where considered relevant are taken from national plans or the recent SEA Scoping of the Agri Food Strategy (DAFM 2020). These SEOs will be used in the both the plan assessment matrix as well as the Consideration of Alternatives and reflect key environmental issues that will be considered during the assessment process."

It is of the most serious concern that there is such explicit focus on such objectives and a total failure to specify the methods and approach to the actual assessment required to be done. It is acknowledged some reference is included in section 5.3 and 5.3.1 however the overall emphasis of the text are of concern on where the emphasis in assessment will lie.

- **It is essential that an actual assessment of the impacts on the specified factors is done to reflect the obligation in Annex 1(f), with relevant baseline information, and in accordance with standards of data and methodological approach required by the Directive. This is <u>not</u> the same as evaluating whether a SEO set by the Department is achieved or not in accordance with Annex 1(e) , as appears to be the potential proposal and primary focus per Table 5 of the consultation document and associated text.**

iii) In relation to Annex 1 (e)

- **the SEO's in section 5 need to be augmented to:**

- **Include objectives which reflect the potential interaction across SEOs.**
- **Ensure there are no dysfunctional incentives created for example it will be essential to avoid land eligibility issues where there are benefits for maintaining scrub for biodiversity as has happened in the past.**
- **Close gaps and provide for a level of meaningful granularity in respect of how the effects and outcomes are achieved in Table 5**
- **Augment the following subheadings in table 3**

  Biodiversity: Makes Natura 2000 designation a sought after attribute on land. Add Special Amenity Area Orders, Floral Protection Orders, proposed Natural Heritage Areas consistently, Tree Protection Orders, Animal Welfare Considerations. Include: Reduce importation of unsustainable soy products and feed products for intensive agriculture

  Under Population and Human Health: Reduce human health risks associated with intensive agricultural practices and use of chemicals, pesticides, hormones etc. Reduce the burden associated with farmer indebtedness for small farmers, Animal Welfare Considerations given both wellbeing considerations in respect of concerns for sentient species and associated human health impacts

  Under Water: Reduce pressure for water abstraction for agriculture Reduce nitrogen consumption and application and associated GHGs.

  Under Climate Change: Reduce nitrogen consumption and application and associated GHGs. Reduce importation of unsustainable soy products for intensive agriculture

  Under Air Quality: The objective is framed very negatively where the target appears to be pollute up to the maximum level permitted.

  Under Landscape: Reflect areas and features protected by Special Amenity Area Orders, Tree Protection Orders, Areas of Outstanding Natural Beauty.

  Cultural Heritage: Needs to reflect cultural heritage on or adjacent to farm land.

  Material Assets: Needs to reflect reduction in hazardous waste

iv) In relation to b), c) and d) above, there are significant gaps in the data identified in the scoping consultation document necessary to support such assessments. For eg

- The full set of equivalent set plans & programmes for Northern Ireland in many instances will be required to be considered to ensure compliance with assessment of transboundary and cumulative impacts of environmental factors at risk across the jurisdictional border, which is not reflected in the natural world. So for example, River Basin Management Plans for Northern Ireland.
- Key plans in process such as the Hen Harrier Threat Response Plan
- The new Forestry Programme
- The existing IFORIS database and other databases of forestry activity, this needs to include forestry in private estate not just Coillte forests which is all that is referred to in Table 5.
- Databases on hedgerows
- The reports produced under Articles 11 and 17 of the Habitats Directive, Art 10 of the Birds Directive.
- The management and conservation frameworks set out for the Natura 2000 network under Article 6(1) and (2) of the Habitats Directive.
- Species Action Plans and Threat Response Plans for all relevant species in Ireland listed under Annex IVa of the Habitats Directive
- Data in relation to unassessed water bodies not yet assessed under the Water Framework Directive.
- Relevant data available under the Inspire Directive and from satellite imaging.

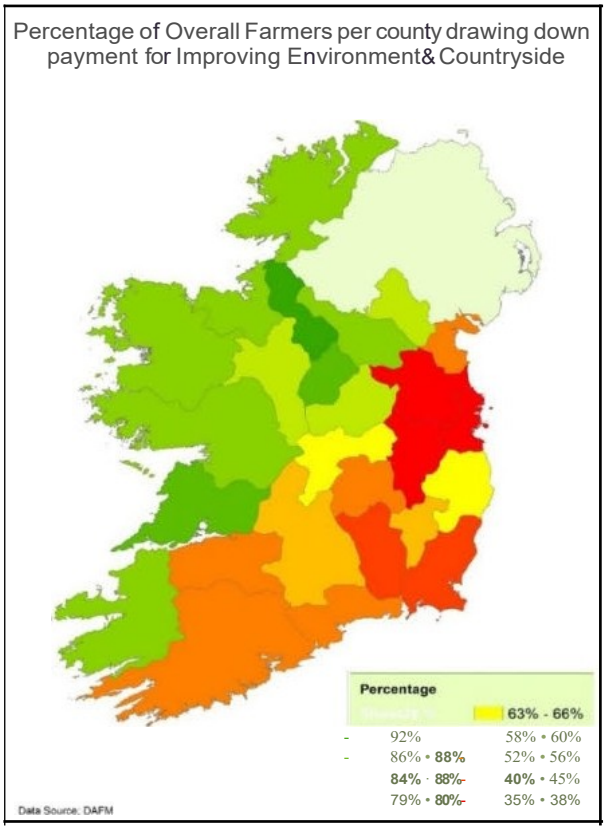
➢ **It is essential that a comprehensive and meaningful set of data is compiled and where necessary created to provide for a meaningful baseline, and to facilitate subsequent assessment and monitoring**

2. More general comments on the scoping of the assessment:

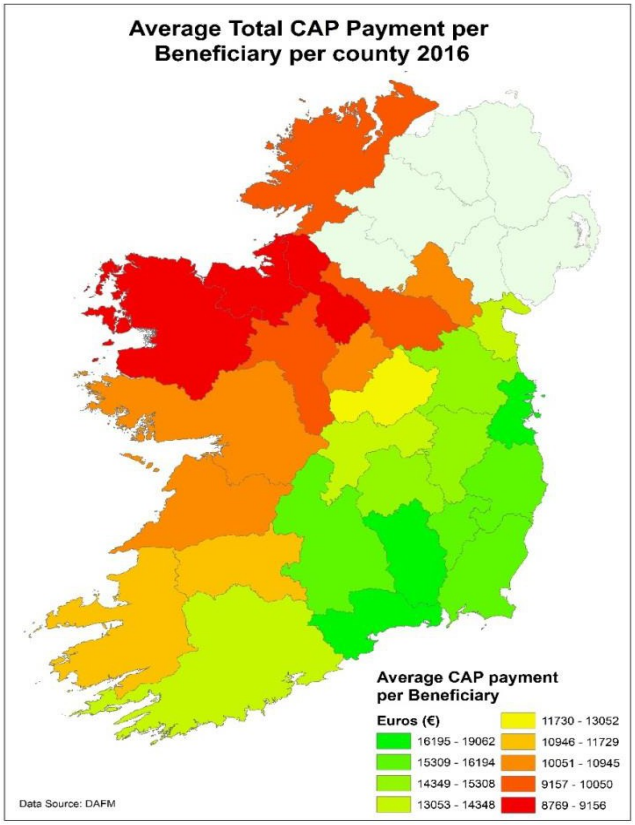
Ire land 's Agri-Food Strategy and the intersection with the CAP Strategic Plans .

The Environm ental Pillar's very public and considered withdrawal from Ireland's Agri-Food Strategy 2030 Committee signals very clearly the dysfunct ional and unsustainable direction of travel for the Agri-Food sector. This strategy undoubted ly has in the past and will in the future have a material impact on the approach to the CAP in Irelan d given the significant interests at play, and in maintaining the status quo in respect of t he current unsatisfactory distribut ion of payments from the CAP, wh ich clearly fail to support small farmers income adequately and fail to reward farmers for real tangible and measurable positive environmental services and outcomes.

The following analysis conducted by Birdwa tch Ireland in 2016 paints a graphic illustration of the issue.



For 2016, number of farmers (as%} drawing down payments from CAP P2
{incl Agri-Env & ANC schemes) for Improving Environment & Countryside
as a % of overall farmer numbers



Displays the average total CAP payment received by individual beneficiaries in each county of Ireland for 2016.

There is

- A clear north-west: south-east divide
- Scale of payments issue also:
    - Kilkenny(K) & Waterford (W) receiving **twice** the average CAP payment of farmers in
    - Mayo(M) Sligo (S) Leitrim (L) ,
    - Yet it looks like half the proportion of farmers undertake Environmental Management Measures compared to NW

Note:

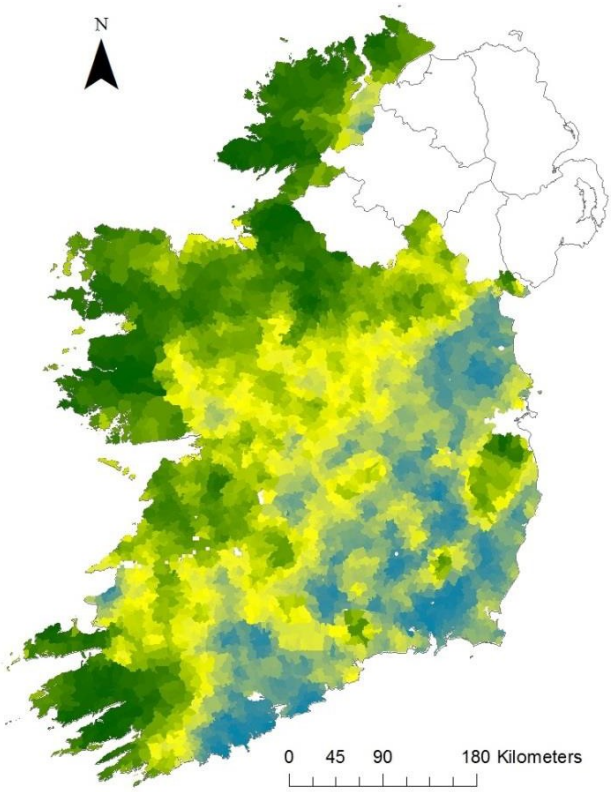
Farmer numbers derived from the CSO farm census 2010

Data derived from CAP beneficiaries database: (https://www.agriculture.gov.ie/agri-foodindustry/euinternationalpolicy/commonagriculturalpolicycap/capbeneficiariesdatabase/) ; accessed Jan-18 Analysis credited to Alex Copland, formerly BWI.

Yet High Nature Value, HNV Farming occurs in the North West in particular

- Where overall CAP payments are lowest

- Where P2 payment drawdown highest



Map showing likelihood of HNV farming in Ireland; indicating:
green high likelihood;
yellow intermediate likelihood
blue low likelihood of having HNV farmland.

(Map sourced from IDEAL-HNV (http://www.high-nature-value-farmland.ie/hnv-distribution/)

The implementation of the CAP needs to be transformed in Ireland so that Natura 2000 designation is seen as a blessing not a blight.

The flight from the land by smaller farmers and the negative perceptions and experience that is being effected around Natura 2000 designation is enabling larger and less sustainable operators perpetuate their less sustainable holdings and models with creative accounting and reporting when they buy at discounted rates smaller unviable holdings. The current system needs a radical overhaul to make farming work again for farmers and their families.

Dysfunctional incentives driven from an unsustainable Agri-Food strategy which stimulate vertical integration in the supply chain and farmer indebtedness need to be transformed with a truly innovative approach to supporting farmers, farm income, and positive environmental outcomes and making farming an attractive option for current and future generations.

For the environmental assessment of the new CAP Strategic Plan to be truly effective – it needs to be assessing a multiplicity of complementary and indirect factors which will contribute to this transformation, and ultimately to the positive outcomes for the environment and for farmers which are the objectives of the CAP. Thus the scoping of the CAP environmental assessment needs to accommodate the evaluation of such incremental and contributory factors, and their relationship and environmental impact.

Monitoring:

The assessment provided for under the scoping needs to be able to be subsequently supported by a meaningful, effective and relevant monitoring and governance framework. Therefore

- **There needs to be consideration in the scoping of the assessment for the subsequent phases and requirements in the overall process in respect of monitoring, governance, reporting, and adjustment of what is assessed now, and what will facilitate these essential later requirements in the overall CAP strategic plan process.**

Appropriate Assessment:

- **Our overarching comment in respect of the scoping of detail and materials needed to support the assessment required under Article 6(3) of the Habitats Directive, is that it needs to support the standard of certainty required by the Court of Justice.**

Leveraging the SWOT

Access to the SWOT analysis done would have assisted the public in its consultation responses. It is unclear why it wasn't made available and why it isn't reflected in the consultation document.

- **The SWOT analysis needs to inform the considerations and approach to the scoping exercise for the environmental assessment,**

The Ex-ante evaluation required under Article 125 of the proposed CAP Strategic Plan Regulation.

Of particular concern is the absence at this juncture of key aspects of the Ex-ante evaluation required under Article 125 of the proposed CAP Strategic Plan Regulation, "the regulation". This should have been available to support the consultation and should have been reflected in the scoping consultation document proposals.

It is understood that this ex-ante evaluation should be an ongoing exercise which needs to accompany the development of the strategic plan. Moreover the ex-ante assessment needs to be compatible and consistent with the other environmental assessments. A, key element of this ex-ante assessment is include the outcome from monitoring of previous plans and the considerations arising from that.

Article 125 of the proposed Regulation states i.a. :

> "The ex-ante evaluation shall appraise:
>
> (a) the contribution of the CAP Strategic Plan to the CAP specific objectives, taking into account national and regional needs and potential for development as well as lessons drawn from implementation of the CAP in previous programming periods;
> .."

This is an essential element to inform the CAP Strategic Plan and therefore the scoping and associated environmental assessments required under the SEA Directive and Habitats Directive need to be considering and reflecting the lessons learned from previous CAPs and ensuring the relevant considerations are then specified and the scoping includes their assessment. However there is no mention of this in the scoping consultation document.

The inadequacies of previous assessments and monitoring also need to be acknowledged so that these can inform the current cycle.

- **Considering and reflect the lessons learned from previous CAPs and ensure the relevant considerations are then specified and the scoping includes their assessment.**

- **The inadequacies of previous assessments and monitoring also need to be acknowledged so that these can inform the current cycle.**

EU Commission and Country Specific Recommendations:

Just before the end of 2020, the European Commission published EU-wide recommendations and 27 **country-specific recommendations including for Ireland** directed to the national authorities. The Commission's Staff Working Documents contain an in-depth analysis of the challenges faced by agriculture, forestry and rural areas in the Member States, as well as a list of non-binding recommendations to design ambitious CAP Strategic Plans in line with the Green Deal objectives. These documents are generally considered to be helpful in outlining the problems and should therefore appropriately inform the scoping of considerations for the environmental assessments. If we are to respond to the 17 very specific recommendations detailed for Ireland in our CAP Strategic Plan – we need to be assessing that response including assessing the environmental dimension of that response. However these general and 17 Ireland specific recommendations or more specifically the associated quite detailed country specific analysis do not appear to be referenced or considered in the scoping consultation document or to have informed its approach. This would appear to be a particular issue in respect of the coherence of the response, the plan and the specification of appropriately scoped and/or additional Strategic Environmental Objectives

- **The scoping response needs to reflect the detailed country specific analysis and recommendations of the EU Commission and its overall recommendations, and an environmental assessment thereof.**

The questions provided in the consultation to prompt the public in responding

One of the questions in the consultation is: "Are there other plans or programmes that should be identified and reviewed as part of the Strategic Environmental Assessment process?"

Section 2.5 lists plans and programmes at international, national and regional level.

It also includes extensive but incomplete list of EU Directives, a selective list of international conventions. It is not entirely clear what the intent is behind their inclusion and if the intention is intended to encompass all plans and programmes under such provisions. The listing includes the EIA Directive for example – but this is not a plan or programme but various portals and databases reflecting the projects being pursued under various sectoral legislation be it planning, aquaculture, forestry, mining, extraction etc would appear to be a relevant consideration. Similarly, major plans and programmes resulting from a comprehensive list of environmental legislation should therefore be included.

- **Major plans and programmes resulting from a comprehensive list of environmental legislation should therefore be included**
- **Outputs from the Climate Action and Low Carbon Development (Amendment) Bill 2021, when enacted need to be reflected to include elements of the**

framework such as Carbon Budget Programmes, Sectoral Carbon Budgets, Climate Action Plans, Long Term Climate Strategies, Adaptation Plans

- **A mirroring of all national plans & programmes with those for Northern Ireland, given the immediate potential for transboundary impact considerations on the island of Ireland – so for example River Basin Management Plans for both jurisdictions need to be considered.**

More generally Environmental assessment considerations however should be informed by national, EU and international legislation. In that regard:

- **Update to include:**
  UNECE Convention on Environmental Impact Assessment in a Transboundary Context