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AGRARIAN LAND LAW IN THE NETHERLANDS

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I. Introduction

A. Agrarian land in the Netherlands

The Netherlands is a small and densely populated country. In an area of a little more than 4 million ha live 15 million inhabitants. Half of the total area of the Netherlands is cultivated land (1.1 million ha are used for grassland, 0.8 million ha for arable farming, and 0.1 million ha for horticulture). Although farmers make up less than 6% of the Dutch working population, agriculture contributes approximately 25% to the annual exports and so considerably to the Dutch economy. The Netherlands has an intensive agricultural industry that produces for consumption at home and abroad. As a result the Dutch have to share their country with some 14 million pigs, 4.7 million cattle, and 93 million chickens. This gives rise to a serious environmental problem (see section IVC).

As a result of Holland's high population density the Dutch countryside is the site of intense competition between conflicting interests, such as urbanization and industrialization, infrastructure developments, outdoor recreation, nature conservation and – of course – agriculture. During the 1970s the annual loss of farmland to other purposes was about 10000 ha; during more recent years, about 5000 ha. So the Dutch have to be careful with their land. They have adopted stringent measures to control the allocation of land for different purposes in a system of physical planning (see section II).

B. Administrative context

In the administrative organization of the Netherlands there are three levels of government: central government, twelve provinces and some 700

municipalities. Each level has its own specific, politically constituted bodies: the State General (Parliament) and Government; Provincial Council and Provincial Executive; and Municipal Council and Municipal Executive.

The relations between these three levels of administration are determined by the decentralized unitary state – decentralized because the different territorial parts of the state (provinces and municipalities) have independent legislative and administrative powers, while the unity of the state is maintained by supervision of higher authorities over the exercise of these powers. In principle, each level of administration is free to conduct a policy of its own and to promulgate its own regulations, provided that it does not come into conflict with the policy or regulations of a higher authority. In case of conflict, central government has powers to undo the decisions of the lower authorities.

On the national level the government and parliament exercise legislative power jointly, but the government can regulate in many areas by decree (called *Algemene maatregel van bestuur*), when such regulation is authorized by statute.

C. Land-use policy

To realize land-use policies the government (national and provincial, as well as municipal) can try to influence land owners and users, for instance by land-use plans (see section IIA2) or by offering management agreements (see section IIIB). In some situations the goals of government policy can only be achieved when the government has control of the land, to make sure that public works are realized or that the present situation is maintained. First of all this can be done by buying the necessary land. In rural areas the purchase of agricultural land for non-urban purposes is a task of the Bureau for Agricultural Land Management (*Bureau beheer landbouwgronden*). The Bureau has the status of a juridical person. It is in charge of the acquisition, temporary management, and transfer of real property as required to carry out specific laws or regulations, such as in land development areas and reserve areas (see sections IIIA and B).

If the government cannot obtain the necessary land in an amicable way, in certain situations it has the right of compulsory purchase. The largest percentage of all compulsory purchases in the Netherlands takes place on the basis of a land-use plan. In land development areas, too, there is the right of compulsory purchase. The procedure leading to compulsory purchase has many time limitations that may not be exceeded, to prevent the landowner from being kept in uncertainty for too long. The first part of the procedure serves to establish the plots for which purchase by the government will be necessary. In judging this issue the Crown tries to

establish whether the owner of a plot is prepared to realize and also capable of realizing what the designated land-use objective is. If this is the case, the compulsory purchase will usually not be approved. After the decision of the Crown, the compulsory purchase claim can be brought before the Court (an independent judge), but first the municipality or other government must make one final attempt to purchase the land by way of amicable agreement. In this second part of the procedure the Court checks whether the formal requirements of the first part have been complied with, proclaims the compulsory purchase, and determines the amount of compensation (established by experts). The real value of the property, that is the market value of the premises, with certain correction factors, has to be paid to the owner (Brussaard, 1987, pp. 27–8).

For the realization of certain public works (for instance, pipelines and powerlines) compulsory purchase of the land will not be convenient, because such a measure would reach much further than necessary. In that case the government can oblige the owner to allow the work to be carried out on his land, again with compensation.

II. Physical Planning Law

In the Netherlands the physical planning legislation plays an important role in the designation of land uses. Physical planning (or spatial planning) can be described as 'the search for and the establishment of the best possible mutual adaptation of space and society, for the benefit of society' (*Oriënteringsnota*). This physical planning is based on the Physical Planning Act (*Wet op de Ruimtelijke Ordening*, Stb. 1962, p. 286), a law that applies to rural as well as urban areas. This law gives the national, provincial and municipal governments the responsibility of establishing the goals for the use of real estate. (This paragraph is partly adapted from Grossman and Brussaard, 1988.)

A. Instruments of physical planning

1. National and provincial instruments

At the national level, the Minister of Housing, Physical Planning and Environment is responsible for the preparation of government policy on physical planning. The most important documents expressing this policy are the successive reports on physical planning, which contain the main outlines and principles of national spatial policy. The *Fourth Report Extra* (the most recent) was published in 1990.

Besides these more general reports, government policy on physical

planning also can be expressed in plans for specific aspects of national spatial policy. Such plans can consist of Structural Outline Sketches, Structural Outline Plans, and concrete policy decisions that are important for national spatial policy. Both reports and plans are adopted according to the procedure for national physical planning of key decisions (a special procedure used for particularly important spatial decisions on the national level).

A Structural Outline Sketch (*Structuurschets*) provides insight into possible developments that in the long term can be significant for national spatial policy. A Structural Outline Plan (*Structuurschema*) contains main outlines and principles that are generally important for national spatial policy, but directed to a specific sector of that policy. So far eleven structural outline plans have been published. For the rural areas, the most important are the Structural Outline Plans on land development, nature and landscape conservation, and outdoor recreation. Structural Outline Sketches and Structural Outline Plans are revised regularly after an operational period of 5–10 years, in the light of intervening developments.

At the provincial level the Regional Plan (*streekplan*) is the most important instrument by which the provincial administration can articulate its spatial policy. Such a plan indicates the main outlines of the future development of the entire province or a part of the province. All spatially relevant measures within a plan area are weighed in a Regional Plan. The plan also indicates the extent to which the Provincial Executive is allowed to deviate from the plan. The Executive cannot deviate from decisions designated as essential; to deviate from these decisions, the plan must be revised.

A Regional Plan is meant to steer the provincial planning process. Although it has no direct legal consequences, it has particular administrative significance as a guide for the province's own policy and for the assessment of the policy of municipal authorities. Thus, the Regional Plan provides the basis for the Provincial Executive's policy for approving municipal Land-use Plans and for issuing directives. The Regional Plan, however, can also give direction outside the direct field of physical planning. For example, a Land Development Plan or Programme must be evaluated in connection with provincial spatial policy as set out in the Regional Plan, before it is established by the Provincial Council (see section IIIA1).

Although provinces are not obliged to make Regional Plans, such plans currently exist for practically all the Netherlands.

2. The local Land-use Plan

The municipal administrative level has two plan models to express its spatial policy: the Structure Plan (*structuurplan*) and the Land-use Plan (*bestemmingsplan*). In a Structure Plan, the Municipal Council indicates

the future development of that municipality or a part of it. The making of a Structure Plan is not obligatory.

The Land-use Plan (*bestemmingsplan*) has a different nature and significance. It is the only plan regulated by the Physical Planning Act that is directly binding on the citizen. Thus, it reaches much further than other plan models. Practically all physical planning decisions at the municipal level are in one way or another linked with the Land-use Plan. Consequently, the plan is the more important physical planning instrument at the municipal level.

A Land-use Plan indicates, insofar as necessary for satisfactory policy, the appropriate use or designation (*bestemming*) for the land involved in the plan. If necessary, the plan also provides instructions for the use of land, buildings, and structures in the plan area. The Municipal Council is obliged to establish a Land-use Plan for the rural area of the municipality. Within the built-up area the plan is optional.

What the Land-use Plan intends to regulate is expressed in the system of land-use designations on the map and in the goal description provided for each designation. Such a land use can be singular (for example, agricultural area, traffic goals) or plural in character (for example, agricultural area combined with water collection; nature conservation combined with outdoor recreation). Land-use designations and goal descriptions are further elaborated in the instructions for use, indicating what is allowed and, especially, what is not allowed within a specific land-use objective. They can contain provisions that prohibit, but may not contain injunctions. The instructions should restrict the most appropriate use only for urgent reasons. They should not contain requirements concerning the structure of agricultural businesses. This means that the municipal government is not allowed to make regulations on the size of agricultural holdings. Among their other provisions, instructions often indicate the types of works or projects for which a construction permit will be required.

Because the Land-use Plan directly binds the citizen, it can impose restrictions on the citizen's right to use property through, for example, building and construction permit requirements and instructions for use. Government agencies (for example, land development authorities), are bound by the Land-use Plan and need a permit from the Municipal Executive for buildings and other constructions. Moreover, land can be compulsorily purchased on the basis of the Land-use Plan (see section IC). Compulsory purchase is possible both to execute a Land-use Plan (for example, urban and village expansions) and to keep an existing situation (for example, nature reserves) in agreement with the plan.

As a result of these significant legal consequences, the Physical Planning Act bases establishment of the plan on a thorough procedure with many legal protections. The procedure involves two administrative levels: the Municipal Council establishes the plan, and the Provincial Executive

approves it. In addition, there is the subsequent possibility of an appeal to a third level, the Crown. This appeal to the Crown suspends the effectiveness of the plan.

Apart from the possibility of compulsory purchase, a Land-use Plan is realized and maintained by building and construction permits.

Construction of buildings is allowed only in conjunction with a building permit issued by the Municipal Executive. If a building would be in conflict with a Land-use Plan, the Executive must refuse the permit.

A construction permit for the execution of works or projects is needed only if explicitly required in a Land-use Plan. Construction permits may be required only insofar as necessary to prevent a terrain from becoming less suitable for the realization of a land-use designation assigned to it or to maintain and protect an already realized land use. Thus the plan can require a construction permit for such activities as cutting hedges, digging ditches, levelling land, or paving roads. Here too the permit must be refused if the construction would be in conflict with a Land-use Plan.

In addition, a Land-use Plan can simply prohibit the execution of certain building works and projects and certain types of use, if these activities in all circumstances would entail a threat to the desired land use.

B. Spatial policy between administrative levels

The establishment of spatial policy in the Netherlands is characterized by a process of consultation. Thus, lower authorities normally influence the establishment of spatial policy of higher authorities and *vice versa*. This influence usually takes the form of direct consultations, sometimes prescribed compulsorily by law or regulation. At the same time, every authority can express its views on plans of other authorities through objection procedures and public inquiry. This process of consultation also means that the various administrative levels will be well informed about the spatial policy at other levels.

This climate of co-operation helps to ensure that the spatial policy of lower authorities will remain within the limits set by the policy of the higher authorities. However, the lower authority is not obliged to remain within these limits. In accordance with the principle of decentralized administration in the Netherlands, the lower authorities are in principle free to determine the contents of their own policy and plans. Insofar as the lower authority could conflict with the policy of the higher authority in an unacceptable manner, the higher authority may interfere by orders or directives.

For example, the Minister of Housing, Physical Planning and Environment can issue an order to oblige the Provincial Council to establish or to revise a Regional Plan within a certain time. Insofar as the correct execution of government policy requires establishment or revision of physical

planning measures, the Minister can, in such an order, issue directives on the contents of the Regional Plan. Thus, a directive is more than an order. An order instructs only that a plan must be established or revised; a directive specifies the contents of that plan or its revision. After the Minister has issued an order and a directive, the Provincial Council is obliged to establish a Regional Plan or to revise it in accordance with the directive given. If the Council fails, the Minister will establish or revise the plan at provincial expense. Because it involves significant interference, this power of directive has been used sparingly.

The Minister also possesses similar powers with respect to the municipal administrative level, if correct execution of central government policy requires establishment or revision of a Land-use Plan.

In addition to these specific physical planning instruments, annulment (a general administrative–judicial instrument) is significant in the context of physical planning. The Crown can annul the decisions of lower authorities (Provincial Executive, Provincial Council, and Municipal Executive) if they are in conflict with the law or the public good.

The elaboration of provincial spatial policy at the municipal level (which is usually based on the Regional Plan) will also take place primarily through consultation. The most important instrument to ensure implementation of the provincial administration's policy is the requirement that municipal Land-use Plans be subject to the approval of the Provincial Executive. If the Provincial Executive completely or partly withholds its consent to a Land-use Plan, the Municipal Council must establish a new plan within a year, taking into account the Provincial Executive's decision.

Like the Minister at the national level, the Provincial Executive has the power to order the Municipal Council to establish or revise a Land-use Plan within a specific time. Moreover, to the extent that supra-municipal interests require, the order can include directives on the contents of the plan. Provincial administrations have made moderate use of their directive powers.

III. Agrarian Land Legislation

A. Land development

In the Netherlands from 1924 onwards there has been legislation to encourage agricultural development of rural areas, financed by the government. This legislation was intended primarily for agricultural purposes by providing land consolidation and thus improving agrarian productivity conditions. However, in the 1960s and 1970s, societal developments led to changes in the functions and value of rural areas, such as expansion of

towns, increasing mobility, higher recreational needs, and the enhanced value assigned to nature and landscape. New legislation was framed, recognizing both agricultural and non-agricultural claims on land in rural areas, especially nature and landscape values and outdoor recreation. This Land Development Act (*Landinrichtingswet*, Stb. 1985, p. 299) came into force in 1985. (This paragraph is partly adapted from Grossman and Brussaard, 1988.)

1. Instruments of land development

In the Land Development Act physical planning policy is taken as guidance for land-development decisions. This is formulated in article 4 of the Land Development Act: 'Land development strives toward the improvement of the countryside in conformity with the functions of that area, as they are specified in the framework of physical planning.' That the countryside must accommodate several land-use functions is elaborated by the provision in the law that land development can include, but is not limited to, measures and provisions for arable agriculture, horticulture, and forestry; for nature and landscape; for infrastructure; for open air recreation; and for cultural history. The close correspondence of land development with physical planning is implemented in the law by numerous requirements for co-ordination of land-development decisions with physical planning decisions and decision-making authorities.

Land development in the Netherlands takes place in the context of comprehensive policy planning, articulated in the Structural Outline Plan for Land Development. This plan delineates the main principles governing national land development policy and provides special insight into the spatial aspects of that policy. Thus, this document stands at the intersection of physical planning policy and land-development policy. It therefore is adopted in accordance with the procedure for national physical planning key decisions (see section IIA1).

Because the Land Development Act is designed to accommodate varied interests, these require different land-development approaches and different decision-making processes. Thus, the law includes four statutory types of land development:

1. Consolidation (*ruilverkaveling*), modelled after methods long used in the Netherlands and other West European countries, is intended for areas in which agriculture is the primary function and in which other functions are less important. It usually involves re-allocation of land in the entire area. The decision to proceed with consolidation needs the approval of a majority of the landowners or users.

2. Redevelopment (*herinrichting*) is a new method and is intended for areas in which important non-agricultural functions must co-exist with agri-

culture. Thus this method is appropriate for areas within the urban sphere of influence or with important nature and landscape values. Reallocation of land will normally occur in a redevelopment area, but redevelopment can also proceed without reallocation.

3. Adaptation (*aanpassingsinrichting*) is also new and is derived from German legislation (*Flurbereinigungsgesetz*). It is designed to be used in conjunction with an infrastructural improvement or development (a road or a canal) to modify the unfavourable land-use effects of that project.

4. Consolidation by agreement (*ruilverkaveling bij overeenkomst*), the oldest method of consolidation, regulates a procedure by which three or more landowners voluntarily exchange land to achieve better parcelling.

The choice between consolidation and redevelopment is especially difficult and closely related to physical planning policy. Therefore the Structural Outline Plan for Land Development provides general guidelines for that choice.

The decision-making about land development involves a complicated and time-consuming procedure, which can take some 10 to 20 years. This procedure is initiated with a written request to the Minister of Agriculture, Nature Management and Fisheries, submitted by a government or other public body, an eligible organization, or a group of landowners and users representing together at least 30% of the ground involved. If the land development is consistent with the land development and physical planning policy, and if land development in the area is desirable, the Minister places the area on the List of Land Development Projects in Preparation (*Voorbereidingsschema Landinrichting*). The list is annually amended, on recommendation of the provincial governments. An important part of the provincial evaluation process involves ensuring that land development will be consistent with provincial spatial policy. The provincial government also recommends the appropriate type of land development and the preferred method of preparation. After an area is placed on the list, a local land development commission is appointed, which is responsible for the preparation and implementation of the land development project.

The Land Development Act authorizes two methods of preparation for land development: simplified and phased. The simplified method involves immediate preparation of a Land Development Plan, which serves as the basis for a decision as well as the guide for implementing the project. In areas where problems are complicated and especially where non-agricultural functions are significant, first a rather general Land Development Program is prepared on which the decision is based, followed by a plan that guides the implementation. In practice, the majority of land development projects will use simplified preparation. This is particularly appropriate for consolidation areas, where a detailed plan is necessary for landowners and users to vote meaningfully on the project.

The preparing of the Land Development Plan or Program by the local commission is based on extensive research. Here, too, careful co-ordination with physical planning policy is prescribed. Thus, the plan or programme must be examined in light of its consistency with the spatial policy of the province, normally expressed in a Regional Plan. Often this plan will give direction to the decisions made about the Land Development Plan or Program. In addition, the Land Development Act requires consultation about a proposed plan or programme with municipal authorities. This consultation should identify possible conflicts with the local Land-use Plans (see section IIA2). After several opportunities for public comment, the provincial government makes a decision about establishing the plan or programme and chooses between consolidation and redevelopment.

When a land development project has been identified as redevelopment, the decision to proceed with the project is made by the provincial government at the time the plan is established. In case of consolidation, landowners and tenants have the opportunity to vote on the project. In the election, a decision to proceed with the consolidation results if there is an affirmative vote of *either* a majority of the number of votes *or* a majority of the amount of ground surface represented in the election.

2. Implementation

After the decision about redevelopment or consolidation, a rather lengthy process of implementation starts. This process involves public as well as private components. The public aspects include acquisition of land for a number of agricultural and non-agricultural purposes. This land will be used for public infrastructure facilities (roads and watercourses) as well as for nature or landscape protection and recreation. In addition, some land is needed to increase the size of farms and to make the land exchange operate more smoothly.

The Land Development Act provides mechanisms for both voluntary and involuntary transfers. As a general principle in land development, each owner of land within a block has the right to receive, in the reparcelling and reallocation, land of the same type and agricultural value as the land that owner contributed to the project. This general principle is modified, however, for the purpose of obtaining ground for public purposes. To affect owners fairly, the law permits a reduction (*korting*) in the value of land that each owner is entitled to receive in the reallocation. Owners receive compensation for this reduction. The reduction should be used only when necessary; most of the land needed should be obtained through voluntary sale.

The public purposes for which land acquired through reduction can be used are specified by law. For land development projects involving redevelopment, the reduction can be used only for public roads and watercourses.

Other public purposes can be achieved by using compulsory purchase if the required ground cannot be obtained through voluntary sale. Compulsory purchase is not available in consolidation.

The final stage in the construction of facilities for public purposes in land development areas is the establishment of the Delimitation Plan (*begrenzingenplan*) and the finalization of the related provisions for ownership, management, and maintenance of public facilities. The Delimitation Plan is the official administrative-cadastral document that describes the situation concerning roads, watercourses, and other public areas within the block.

Land development involves a process of land exchange combined with improvement of access, water management, and parcelling. Landowners are required to contribute to the cost of the land development process in an amount related both to the benefits received from the project and to the increased value of land received through the Reallocation Plan (*plan van toedeling*). Thus, the law prescribes a two-stage process of land valuation designed to establish the initial value of parcels in the development block as well as the enhanced value of that land after redevelopment.

The Reallocation Plan, which establishes the reallocation of parcels of farmland, is one of the last stages of the land development process. Landowners and users have the opportunity to state their wishes with respect to the Reallocation Plan. The plan is formulated by the local commission, but actually designed by the Land Registry Office (*kadaster*), which has detailed records concerning geographic and legal aspects of landownership. Actual transfer of ownership pursuant to the plan occurs through the deed of reallocation, which vests title to property in the new owners.

As the implementation phase is lengthy, it is often necessary for ground to be available for use by an individual or an entity other than the recognized owner or user long before the land registry record of land ownership is adjusted. The Land Development Act thus permits interim use of land within the land development block pursuant to a formally adopted plan of temporary use. Under such a plan, for example, public works or facilities may be constructed on land not yet actually owned by the government, and provisions for maintaining landscape and nature values may be made early in the execution process. The owner or user of that land is compensated either with other land or with money.

B. Management agreements

Rural areas in the Netherlands must fulfil various purposes. Therefore, Dutch land-use policy distinguishes between situations involving integration or separation of land uses. Integration has particular relevance for

agricultural land with special landscape or natural values: that is some 500000 to 700000 ha (one-quarter to one-third of all cultivated land in the Netherlands). Characteristic of these areas is the direct connection between the natural conditions and the farming situation. On one hand, existing landscape and nature values are threatened there by agricultural developments; on the other hand, those values can only exist together with certain forms of agrarian land use.

In 1975, the Dutch government introduced in the Relationship Report (*Relatienota*) a policy programme for specialized agricultural land management. The report distinguishes two types of areas:

1. Management areas: areas where maintaining the present nature and landscape values is just as important as continuing the agricultural use and production. In these areas, integration of land-use functions is the goal. Therefore, farmers are offered the opportunity to enter voluntary contractual management agreements (*beheersovereenkomsten*), under which they will receive financial compensation for adapting their farming practices to the requirements of nature and landscape preservation.
2. Reserve areas: areas where the values of nature and landscape are so high that effective agricultural production will be impossible in the long run. The goal in these areas therefore is to end farming entirely by purchasing the land. Farmers cannot be forced to sell, but if they offer their land for sale, the government has an obligation to purchase. In the meantime, farmers in reserve areas have the opportunity to enter transitional management agreements.

So the *Relatienota* policy has two goals: the maintenance and development of nature and landscape values in the most vulnerable agrarian cultural landscapes by adaptation of agricultural management, and the financial subsidization of the position of farmers who carry out the farm business in those areas. This policy is limited to a number of geographically defined regions of particular value and vulnerability (up to 200000 ha). The instruments to carry out this policy are embodied in the Decree on Management Agreements (*Regeling beheersovereenkomsten 1988*, Stcrt. 1988, p. 149), which also incorporates the Dutch translation of the EC programme for farming in less favoured areas (Directive 75/268 on mountain and hill farming and farming in less favoured areas).

For every province the Minister of Agriculture, Nature Management and Fisheries has indicated the number of hectares to which the *Relatienota* policy will be applicable. It then becomes the responsibility of the provincial governments to establish the boundaries of the areas, indicate which areas are management areas and which are reserve areas, and establish a Management Plan for each area. This plan indicates the range of possible practices (actions to be taken or to be omitted in the area) and the corresponding compensations. In every management area there is a limited

number of packets of management provisions, depending on the management goals for that area (for instance maintenance of natural handicaps, protection of nearby nature reserves, botanical management, meadowbird management, migratory bird management, or maintenance of landscape).

Once the Management Plan for an area is established, farmers can enter into management agreements. Such an agreement is a private contract between an individual farmer and the government. A management agreement lists the packet of specific management treatments (measures to be taken and activities to be avoided) to which the farmer is obligated and the compensation he will receive. Participating farmers can choose only from the management packets indicated in the plan. The government is not obligated to contract for parcels that would not further the management goals. A management agreement is normally entered for a duration of 6 years, and is presumed to be renewed for the next 6-year period unless a party gives notice before the end of the period. The government's right to end the agreement, however, is limited. The farmer can also end an agreement after a trial period of one year (Grossman, 1988).

The implementation of management agreements had a very slow start. The procedure for establishing the management plans was lengthy, and farmers were reluctant to enter management agreements. Now farmers are getting increasingly interested in entering management agreements. (Section IIIB is partly adapted from Grossman and Brussaard, 1988.)

C. Setaside

In 1988, the European Community introduced the setaside regulations (EC Regulation no. 1094/88). These regulations aim to stimulate farmers to take arable land out of production and at the same time to maintain the agricultural productivity of that land. The regulation is applicable on land on which crops are cultivated for which a European market regulation exists. If farmers meet certain conditions, they can get financial compensation. In the Dutch translation of this regulation (*Beschikking ter zake van het uit produktie nemen van bouwland*, Stcrt. 1988, p. 158) farmers who want to make use of this possibility have to be younger than 65 years and are obliged to keep their land out of production for a period of 5 years. They have the choice of three possible measures:

1. laying fallow the land, with a possibility of crop rotation;
2. afforesting; or
3. use for non-agricultural purposes.

In the case of laying fallow, farmers have to meet several obligations. They are not allowed to use organic waste matter or animal manure, and only the insecticides, pesticides, and herbicides approved by the Minister of

Agriculture are allowed. Furthermore, the land must be cultivated with a 'green manure', i.e. a conservation cover crop, like clover or marigolds. This green manure may not be removed from the land or used for animal feed or commercial purposes. It is to be ploughed under at the end of the setaside period or when the land is put into use again for crop rotation within that period.

In the case of afforestation the land must be afforested with quick-growing trees. Although the explanatory note to the regulation presumes that afforesting land is an agricultural activity, in fact a problem may exist, because the designation of land uses in a Land-use Plan is a municipal concern. Certain parts in the north of Holland are characteristic for their treeless and open landscape, and especially the farmers in this part of the country are in trouble now because of decreasing prices. If they should want to afforest their land, it is possible that municipal physical planning regulations would prevent them from doing so.

If farmers agree to use their land for non-agricultural purposes (the third possibility the regulation offers), they are not allowed to use the land for the production of any form of vegetable or animal products (Brussaard, 1991, pp. 1533–4).

The compensation the farmer gets paid for setting aside his land is 700 ECU (European Currency Unit) per hectare per year in the case of laying fallow and afforesting, and 300 ECU in the case of non-agricultural use.

D. Land lease

Thirty-five percent of Dutch agricultural land is leased. The acreage under lease is declining: in 1970, still 48% of the land was leased. However, as approximately 54% of all Dutch farm holdings are totally or partly leased, land lease is still of great importance for a majority of farmers.

Land lease is regulated by the Agricultural Lease Act (*Pachtwet*, Stb. 1958, p. 37). The Act aims to protect the lessee (who is supposed to be in a weaker position) as well as to protect the common good of agriculture in general. The heart of the Act is the regulation of the agricultural lease contract, which deviates on essential points from the normal contract rules in the Civil Code, and involves a substantial amount of government influence.

In the Agricultural Lease Act an agricultural lease contract is defined as: every contract, in any form and under any name, in which one party takes upon it to provide the other party, in return for a compensation, the use of land or a farm, for agricultural purposes. As soon as a contract fits within the terms of this definition, the rules of the Agricultural Lease Act apply, even though the parties may have given another name to their agreement and even if they have no written agreement. In accordance with the Act an

agricultural lease contract must be concluded in writing and approved by a Land Control Board (*Grondkamer*). These boards are administrative bodies, entrusted by the government with the control of the enforcement of the Act; they are situated in each of the twelve provinces of the Netherlands. The Land Control Boards examine, among other things, whether the lease contract complies with the agricultural lease standards given by government (along with the maximum rent), and whether the contract contains 'excessive obligations' from an agricultural point of view for the lessee. The Boards can approve, change or nullify the lease contract. They can modify the rent and other obligations of the lessee. Nullification is only allowed if there are no possibilities to change the contract within the law. Decisions of the boards can be brought in appeal to the Central Land Control Board (*Centrale Grondkamer*).

The legal duration of an agricultural lease contract is 12 years for a farm and 6 years for land without farm buildings. Contracts for a longer period are allowed; for a shorter period, only under extraordinary circumstances and with approval of the Land Control Board. Lease contracts concluded for the normal duration are *de jure* continued for a period of 6 years, unless one of the parties informs the other party, within a certain period before the termination of the contract, that he or she does not wish to prolong the contract. The lessee can oppose such a non-renewal notice. Verbal lease contracts, or written lease contracts that are not offered for approval to the Land Control Board, are valid for an indefinite period and cannot be terminated by either one of the parties. Termination is possible again when the contract is changed in writing and approved by the Land Control Board.

Disputes about agricultural land lease cases are heard by special law courts in two instances: the Tenancy Tribunal (*Pachtkamer*), one with every cantonal court and consisting of a cantonal judge and two lay experts; and in appeal the Tenancy Tribunal of the Court of Appeal at Arnhem, consisting of three judges and two lay experts. In the case of a non-renewal notice, the lessee can request the Tenancy Tribunal to continue the contract. The Tribunal decides on the request in accordance with the principles of equity, provided that the Agricultural Lease Act makes no exception. The Act mentions several exceptions: refusal of renewal is obligatory if the lessee has seriously failed his obligations, if the lessor wants to use the leased object for purposes other than agriculture and that use is in accordance with the common agricultural good, and if the lessor or spouse wants to use the leased object personally for an agricultural purpose. However, the latter case is again decided according to equity when refusal or renewal would seriously endanger the foundations of the social position of the lessee, and the personal use is not of overriding importance for the lessor or for the people who derive their rights from the lessor. If the interest of both lessee and lessor are deemed to be of equal importance, continuation is refused.

If the lessor wants to sell the leased property, it has to be offered first to the lessee. If the parties cannot agree on a price, the lessor can ask the Land Control Board to value the leased object. The board has to base its valuation on the leased status of the object. This reduces its value generally by about 45%. As a result of the rather low maximum rents prescribed by the government, and the far-reaching protection of the lessee, the value of an object in leased condition is about 55% of its value if it were not leased.

So the Agricultural Lease Act offers a system with strong influence from government policy. The powers of the Land Control Boards can interfere significantly with the intentions of the contracting parties. For example, this system makes it difficult to insert in agricultural lease contracts obligations for the lessee directed at the maintenance of nature and landscape, because this would mean an 'excessive obligation' from an agricultural point of view, even when the lessee will agree with such an obligation. Therefore a bill was introduced in Parliament to amend the Agricultural Lease Act (Tweede Kamer, 1987–1988, 20617, n. 1–2). This amendment will make it possible for lessees to agree to lease contract obligations (with compensation) to maintain the values of nature and landscape. This will open another opportunity for nature and landscape protection in agricultural means, which until now was mainly based on management agreements (see section IIIB) (Walda, 1991).

At the same time the government started a discussion about a further liberalization of the land lease system. The government proposals involve, among other things, the introduction of a new kind of land lease, the 'extraordinary lease', on which the approval by the Land Control Boards and the other limitations will not be applicable (De Hoog, 1991).

IV. Nature and Environment in Rural Areas

A. Forestry

The object of the Dutch forest legislation is to maintain a forest acreage of reasonable dimension and quality. In accordance with the Forestry Act (*Boswet*, Stb. 1961, p. 256) the owner of a wood or trees that have been cut down or have perished otherwise (for instance through storm or fire) is obliged to plant the same area of trees again. This obligation must be fulfilled on the same spot or, with permission of the head of the Forestry Department, somewhere else. Before starting to fell a wood or some trees, the owner has to inform the head of the Forestry Department. In exceptional situations, to protect natural and scenic beauty, the Minister of Agriculture, Nature Management and Fisheries can prohibit the cutting down of woods and trees for a maximum period of 5 years. The obligations to

inform and to plant, and the possibility of a prohibition to cut down trees do not apply in case the trees have to be cut down for the realization of public works in conformity with a Land-use Plan (see section IIA2).

For the protection of woods with natural scientific significance, the Nature Conservation Act (see section IVB), rather than the Forestry Act, is the appropriate instrument.

B. Nature conservation

The oldest nature conservation legislation in the Netherlands is the 1928 Nature Protection Act (*Natuurschoonwet*, Stb. 1928, p. 205). This Act seeks to support country estates whose continued existence is desirable from a viewpoint of scenic beauty, by offering tax benefits. The Minister of Agriculture, Nature Management and Fisheries, together with the Minister of Finance, selects the country estates for which the Act is applicable. When the owner maintains his estate for 25 years, the value on which the owner must pay annual capital-tax is reduced to half, and even to nil if the estate is open to the public too.

Since 1968 the Netherlands has had a Nature Conservation Act (*Natuurbeschermingswet*, Stb. 1967, p. 572). This Act makes it possible to protect nature areas by designating them as 'protected nature areas' (*beschermd natuurmonument*) or as 'State nature areas' (*Staatsnatuurmonument*). Such a designation has certain legal consequences.

Nature areas are described by the Act as: terrains and waters, which are of common interest for their natural beauty or their natural scientific significance. Agricultural grounds can be part of such terrains and waters in certain situations: when those grounds have sufficient intrinsic nature value to justify a designation under the Nature Conservation Act, or when they are an integral part of the designated nature area.

The decision about designation of protected nature areas is made by the Minister of Agriculture, Nature Management and Fisheries, in agreement with the Minister of Housing, Physical Planning and Environment. After that decision the owner needs a licence from the Minister of Agriculture for all actions that are harmful or disfiguring for the area. The Minister, in agreement with the owner, can draw up a management plan to maintain or restore the natural beauty or natural scientific significance.

Areas that are already owned by the government can be designated as State nature areas.

C. Soil protection

The use of agricultural land also is regulated from an environmental point of view. The most important law here is the Soil Protection Act. This act

came into force in 1987 and authorizes the national government to issue decrees on various aspects relating to soil protection. Until now, the main regulations on this point concern manure.

The Netherlands has a serious manure problem. The Dutch livestock industry, which is concentrated in the eastern and southern parts of the country, produces a gigantic quantity of animal manure. Livestock farmers have been spreading most of this manure for years on their own lands, or it was spread in the immediate surroundings. This has often resulted in an overdosing, sometimes extreme, of minerals (nitrogen, phosphate, and potassium) and heavy metals (copper, cadmium, and zinc) found in the manure. This overdosing causes serious harm both to the agricultural sector and to the environment, such as decline in soil fertility, decrease in quality of crops, health hazards for livestock, decline in quality of groundwater, deposition of potentially acidifying substances, and stench nuisance. This problem has given rise to an elaborate system of manure regulation (based on the Soil Protection Act in conjunction with the Fertilizer Act) regulating the use of animal manure, the trade in fertilizing products, the removal of surplus manure, and the production of animal manure. Since 1987 this legislation has applied to manure produced by cattle, pigs, chickens, and turkeys (because these animal types produced by far the greatest part of the total animal manure in the Netherlands), but from 1992 the manure regulations also apply to ducks, rabbits, sheep, goats, minks and foxes. The manure legislation standardizes the use and the production of manure in relation to the quantity of phosphate found in the manure.

With respect to the use of animal manure on agricultural land, this matter is regulated by a government Decree on the Application of Animal Manure (*Besluit gebruik dierlijke meststoffen*, Stb. 1987, p. 114). This decree establishes standards for the maximum quantities of manure (expressed in kilograms of phosphate) that may be applied on agricultural land per hectare per year. Since the extent to which phosphate is absorbed from the soil can differ with various crops, a distinction has been made between grassland, fodder cropland (i.e. land on which corn is cultivated), and arable land. These standards are implemented in a number of phases, because implementation of a final standard at short notice would have lead to enormous manure surpluses and serious problems for the livestock industry. The final standards, when the amount of manure applied will be in equilibrium with the amount the soil can digest, must be reached before the year 2000. The decree includes rules that allow fewer phosphates to be applied on phosphate-saturated ground, and more on ground with little phosphate. The inventory of phosphate-saturated grounds that has been drawn up recently indicates that in the areas where the livestock industry is concentrated 60% of all agricultural land is saturated with phosphate already. As the use of animal manure in autumn and winter carries extra risks of nitrogen and phosphate leaching and running off to groundwater or

surface water, the manure legislation also has provisions about manure spreading during those periods. Here too, the implementation of these provisions is phased: by the end of 1994 the prohibition to spread manure for the majority of all grounds will last from 1 September until 31 January. In connection with the evaporation of ammonia that may occur when manure is applied, the regulation also contains provisions about incorporation of the spread manure into the soil (Brussaard and Grossman, 1990, pp. 91–5).

The Soil Protection Act also gives the provincial governments the possibility to designate soil protection areas, in conjunction with their physical planning policy. In those areas the provincial states can draw up rules to protect the chemical, physical, and biological qualities of the soil.

Conclusion

The picture of Dutch agrarian land law shows, in some aspects, similarity to that of other West European countries. In the Netherlands also land uses are influenced by physical planning legislation, although that influence, via the Land-use Plan, may be stronger than in other countries. Also the tradition of land consolidation and land lease is, with differences, shared by neighbouring countries, and the rules about setaside are based on the same EC regulation.

Where the Netherlands differs greatly from other countries is in interweaving agriculture and nature and landscape conservation. The recent legislation on land development offers possibilities of a new approach to the use of rural areas, and the same applies to the management agreement.

On one subject the Dutch legislation is unique: the elaborate system of regulations concerning the manure problem. The Dutch hope to lose that extraordinary position as soon as possible.

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