PROTECTING AGRICULTURAL RESOURCES IN EUROPE: A REPORT FROM THE NETHERLANDS[1]

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I. Introduction

The countries of Western Europe, and especially the Member-States of the European Community, are all more or less in the same position where the protection of agricultural resources is concerned. The amount of agricultural land is limited and is still permanently diminishing through conversion to other uses. The use of the remaining agricultural land has to put up with limitations, as a result of the natural circumstances or in connection with other interests that are playing a role in the same area (especially nature and landscape values). To this must be added that agriculture is increasingly the cause and the victim of serious environmental problems. At the same time there is surplus production of certain agrarian products. This complicated situation gives rise to several measures, both on the national scale and on the level of the European Community.

Agricultural resources in the Netherlands too stand under heavy pressure. Although the Netherlands is, after the USA and France, third in exports of agricultural products, the area of agricultural land is limited: 2 million hectares (half of the total Dutch area) are cultivated land. As a result of Holland's high population density the Dutch countryside is a place of much 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 10,000 hectares, during the last years about 5,000 hectares.

So the Dutch have to be careful with their agricultural land. Therefore they have, since 1924, legislation to encourage agricultural development of rural areas financed by the government, to ensure that the agrarian productivity conditions are optimal. As in large parts of rural Holland agrarian activity is closely interwoven with nature and landscape, in 1985 new legislation made possible the development of rural areas for agricultural as well as other purposes (see par. III). In that legislation too a close connection was laid with physical planning policy (see par. II).

In line with the government policy concerning rural areas the government tries to ensure in certain vulnerable areas that farmers adjust their farming practices to the needs of nature and landscape, and get financial compensation for that. The regulations on that subject are dealt with in par. IV.

Agricultural developments can get dangerous for the environment. One

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of the most threatening problems the Dutch have to deal with at this moment is a gigantic surplus of manure from the Dutch livestock industry. This causes serious pollution of soil, water and air. The government was forced to introduce strong measures to fight this problem and to keep agrarian land productive in the long run (see par. V).

The good productivity conditions have another reverse side too. Thus the production of milk mounted up so high that there is a substantial surplus now. To reduce the production the European Commission has imposed a "superlevy" on milk. At the same time the Commission stimulates farmers to "set aside" parts of their arable land for nonagricultural purposes (see par. VI).

II. PHYSICAL PLANNING POLICY

The high population density on the relatively small area of the Netherlands has for a long time required optimal use of the limited land. Thus the Dutch have adopted stringent measures to control the allocation of land for different purposes. They have a comprehensive system of physical planning; this physical planning is described as "the search for and the establishment of the best possible mutual adaptation of space and society." Physical planning policy is a concern of the three levels of government: central government, the twelve provinces and the 714 municipalities.

As the Netherlands is a decentralized unitary state, each level of government is free to conduct its own policy and to promulgate its own regulations, provided it does not come into conflict with the policy or regulations of a higher authority. Physical planning is based on the Physical Planning Act (Wet op de Ruimtelijke Ordening, 1965, amended 1985).

A. At the **national level** the government policy on physical planning is expressed in the Government Reports on Physical Planning, which contain the main outlines and principles of national spatial policy, and the Structural Outline Plans (Structuurschema's), which contain outlines and principles that are generally important for national spatial policy but directed to a specific sector of that policy (for instance Land Development, see par. III.A). Both Reports and Plans are adopted according to the procedure for national physical planning key decisions (a special procedure used for particularly important spatial decisions on the national level).

B. At the **provincial level** the Regional Plans (streekplannen) outline in general terms the future development for the province. A Regional Plan is meant to steer the provincial planning process; it has significance as a guide for the province's own policy and for the approval of municipal land-use plans. Outside the direct field of physical planning it provides the basis for the assessment of Land Development Plans or Programs (see par. III).

C. The **municipal level** has two spatial plan models: the Structure Plan, indicating the future development of the municipal area,

and the Land-use Plan (bestemmingsplan), prescribing the use of land in the plan area. The Land-use Plan is the most important plan, because it is directly binding on the citizen. For rural areas a Land-use Plan is mandatory. The plan indicates the appropriate use or designation (bestemming) for the land involved. It is forbidden to change the use of the land to a function inconsistent with this designation, and building and construction permits must be refused in case of conflict with the Land-use Plan. Thus, land designated for agricultural use can be protected from conversion to nonagricultural uses. Land can be compulsorily purchased on the basis of the Land-use Plan. The plan needs approval of the Provincial Government.

References:

Wet op de Ruimtelijke Ordening (Stb. 1962, 286), reprinted in Schuurman en Jordens 64 (1986).

W. Brussaard, The Rules of Physical Planning 1986, Ministry of Housing, Physical Planning and Environment, The Hague, The Netherlands (1987).

J.F. Garner and N.P. Gravells (eds), Planning Law in Western Europe, Elsevier Science Publishers B.V. (North-Holland), Amsterdam (1986).

M.R. Grossman and W. Brussaard, Planning, Development, and Management: Three Steps in the Legal Protection of Dutch Agricultural Land, 28 Washburn L.J. 86-149 (1988).

R. Held and D. Visser, Rural Land Uses and Planning: A Comparative Study of the Netherlands and the United States (1984).

III. LAND DEVELOPMENT

"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" (art. 4 Land Development Act). In its present form the law recognizes both agricultural and nonagricultural claims on land in rural areas. Land development (landinrichting) involves a complicated legal scheme and a high level of government involvement in landownership and use.

A. Because the Land Development Act (Landinrichtingswet) is designed to accommodate varied interests, these require different land development approaches and different decisionmaking 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 reallocation of land in the entire area. The decision to proceed with a 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 nonagricultural functions must coexist with agriculture. 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 new too and derived from West 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 unfavorable 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 voluntary exchange land to achieve better parcelling.

Especially the choice between consolidation and redevelopment is difficult and closely related with physical planning policy. Therefore the Structural Outline Plan for Land Development (see par. II.A) provides general guidelines for that choice.

B. The decisionmaking about land development involves a complicated and time-consuming **procedure**, which can take some 10 to 20 years. The most important steps in this procedure are:

1. The 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. 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). A local land development commission is appointed, which is responsible for the preparation and implementation of the land development project.

2. The local commission prepares 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 nonagricultural 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.) After several opportunities for public comment, the provincial government makes a decision about establishing the Plan, in relation to the provincial physical planning policy. Then too the choice between consolidation or redevelopment is made. In case of consolidation this decision needs approval of a majority of either the number of votes of landowners and tenants or of the amount of ground surface represented in the election.

3. After this decision the rather lengthy process of implementation starts. The land brought into the project is appraised; roads, waterways and other infrastructural facilities are improved or constructed; land is acquired for public purposes and reallocated. Owners and users have a right to receive the same amount and quality of land that they brought into the project, or get compensated. After the reparcelling, the new situation and the rights of the owners are established in the Reallocation Plan.

References:

Landinrichtingswet (Stb. 1985, 299), reprinted in Schuurman en Jordens 101 (1986).

F. Steiner, Farmland Protection in the Netherlands, 36 J. Soil and Water Conservation 71 (1981).

M.R. Grossman and W. Brussaard, The Land Shuffle: Reallocation of Agricultural Land under the Land Development Law in the Netherlands, 18 Cal. W. Int'l L.J. 209-289 (1988).

The Land Development Act - an Outline, Government Service for Land and Water Use (1988).

IV. MANAGEMENT AGREEMENTS

Rural areas in the Netherlands have to fulfill different purposes. Therefore in Dutch land-use policy a distinction is made between situations involving integration or separation of land-uses. Integration has particular relevance for agricultural land with special landscape or natural values: some 500,000 to 700,000 hectares (1/4 to 1/3 of all cultivated land in the Netherlands). Characteristic of these areas is the direct connection between the natural conditions and the farming situation. On the 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.

A. In 1975 the Dutch government introduced in the Relationship Report (Relatienota) a policy program 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 this areas therefore is to end farming entirely by purchasing the land.

Farmers cannot be forced to sell, but if they offer their land the government has an obligation to purchase. In the meantime farmers in reserve areas have the opportunity to enter transitional management agreements.

B. 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 200,000 hectares). The instruments to carry out this policy are embodied in the Decree on management agreements, in which too is incorporated the Dutch translation of the EC program for farming in less favored areas.

1. For every province the Minister of Agriculture, Nature Management and Fisheries has indicated the number of hectares for which the Relatienota policy will be applicable. After that it is the responsibility of the provincial governments to establish the boundaries of the areas, to indicate which areas are management areas and which are reserve areas, and to 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).

2. Only after 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. Participating farmers can only choose from the management packets indicated in the plan. The government cannot be obliged to conclude contracts for parcels on which no contribution would be made to the management goals. A management agreement is entered normally for a duration of six years, and is presumed to be renewed for the next six-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.

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. By the end of 1989, management plans were operational for 135 areas, covering some 50,000 hectares, and 2137 farmers had entered management agreements, covering some 13,000 hectares.

References:

Regeling beheersovereenkomsten 1988 (Stcrt. 1988, 149), reprinted in Schuurman en Jordens 101-I.

Commission of the European Communities, Agriculture and Environment: Management Agreements in Four Countries of the European Communities, Eur 10783 (1986).

M.R. Grossman, Management Agreements in Dutch Agricultural Law: The Contractual Integration of Agriculture and Conservation, 16 Denver J. Int'l Law and Pol'y 95 (1988).

V. MANURE LEGISLATION

In past decades the Dutch livestock industry has developed so significantly, that on a large number of farms (much) more manure is being produced than the quantity needed on the agricultural lands of those farms. As a result there is a large surplus of manure, not only in the regions where the livestock industry is concentrated, but also on a national scale. As livestock farmers have spread most of this manure for years on their own lands and in the immediate surroundings, this has resulted in an overdosing (sometimes extreme) of minerals and heavy metals found in the manure. This overdosing causes serious harm both to the agricultural sector and to the environment. Other countries in Western Europe are confronted with the same problem: Denmark and (parts of) West-Germany on a similar scale as the Dutch, other countries to a lesser extent.

Since 1987, the Netherlands has an entirely new system of legislation to abate pollution from manure, based on the Soil Protection Act (Wet bodembescherming) and the Fertilizer Act (Meststoffenwet). For the time being, this legislation applies to manure produced by cattle, pig, chickens and turkeys (because these animal types produce by far the greatest part of the total animal manure in the Netherlands), but the Minister of Agriculture has the power to bring other types of livestock and poultry as well under the force of the law. The manure legislation standardizes the use and the production of manure in relation to the quantity of phosphate found in the manure.

A. The use of manure on agricultural land is regulated by a government decree on the application of animal manures on or in the soil (Besluit gebruik dierlijke meststoffen). This decree establishes standards, based on the phosphate level of the different types of manure, for the maximum quantities of manure that may be applied on agricultural land per hectare per year, distinguished between grassland, fodder cropland, and arable land. These standards will be implemented in a number of phases, as follows:

Application of Animal Manure -- Maximum Standards
(kg. phosphate/hectare/year)

Time period	Grassland	Fodder cropland	Arable land
1 May 87-1 Jan. 91	250	350	125
1 Jan. 91-1 Jan. 95	200	250	125
1 Jan. 95-	175*	175*	125*
From 2000*	Final	Final	Final

* Approximate

For the first and the second phases, the government has already established the standards, for the third and final phases the standards will be established more specifically depending on further developments. The decree includes rules that allow less phosphates to be applied on phosphate-saturated ground, and more on ground with little phosphate. The inventory of phosphate-saturated grounds that is drawn up at this moment indicates that in large parts of the Netherlands most grounds are saturated with phosphate already.

As the use of manure in fall 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 the spreading of manure during these periods. In connection with the evaporation of ammonia that may occur when manure is applied, the regulation also contains a provision about incorporation of the spread manure into the soil.

B. To regulate the **production** of animal manure, the maximum quantity of manure (expressed in kilograms of phosphate) that can be produced on a farm is related directly to the amount of agricultural land belonging to that farm. The main regulation is that manure production up to 125 kilograms of phosphate per hectare per year is free; above this limit expansion and new establishments are forbidden. In connection with this rule manure producers were obliged to hand over the data about the starting situation at the time the Fertilizer Act came into force (the number of animals on the farm and the quantity of their manure production, and the area of agricultural land belonging to the farm). In addition producers of animal manure are obliged to keep manure bookkeeping up to date. If the manure production of a farm proves to be more than the quantity of phosphate that may be applied on the land of that farm, then the producer has to pay a levy on the surplus. The transfer of manure production to another farm business or to another location is restricted.

C. The efficient **transport** of surplus manure is also regulated by the Fertilizer Act. In addition to the rules about manure bookkeeping by the producers, dealers in animal manure and managers of storage places and processing facilities are also obligated to keep bookkeeping up to date. Furthermore, the sale of animal manure must always be accompanied by proofs of delivery. These proofs

must be sent to the Manure Bank.

This Manure Bank is an aid for the efficient transfer of excess manure. It is charged with accepting surplus manure and mediating trade in excess manure. It is designated to supervise observance of the manure bookkeeping provisions.

References:

Meststoffenwet (Stb. 1986, 592), reprinted in Schuurman en Jordens 191 (1987).

Wet op de bodembescherming (Stb. 1986, 374), reprinted in Schuurman en Jordens 147-VI b (1986).

W. Brussaard en M.R. Grossman, Legislation to Abate Pollution from Manure: the Dutch Approach, 15 N.C.J. Int'l L. and Com. Reg. 85-114 (1990).

VI. EUROPEAN REGULATIONS

Developments in Dutch agriculture are not only influenced by the Dutch situation and regulated by Dutch legislation, of course they have an European dimension as well. The Common Agricultural Policy of the European Economic Community (EC) has led to surplus production in various sectors of agriculture, necessitating production limitations. Measures to deal with surplus production have been taken by the EC till now with regard to cereals, sugar-beets and milk.

A. The **Superlevy** on milk, for example, based on EC-Council Regulation no. 856/84, seeks to fix the amount of milk delivered from farms in the Community to the amount delivered in 1983 minus a given percentage. If milk is delivered above this reference quantity (the milk quota), a levy must be paid (the super levy), nearly as high as the price of milk. This system was developed to balance supply and demand of milk again. Delivery of milk without a levy is only possible for producers insofar as a quota is registered in their name. This milk quota is also tied to the dairy farm, in addition to the producer personally. When an entire farm is transferred, the corresponding milk quota shall be transferred in full to the producer who takes over the farm. Transfer of a part of the farm leads to a proportional transfer of the quota: the quota is distributed between the producers in proportion to the area of land used for milk production.

This EC-regulation was translated by all the Member-States of the Community into national legislation. It has led to a lot of indistinctness about the interpretation of the decree, a lot of bureaucracy and a lively trade in milk quotas.

B. Another EC-regulation (no. 1094/88) stimulates farmers to "**set aside**" (take out of production) arable land on which crops are cultivated for which an European market regulation exists. Under certain conditions they can get financial compensation. In the Dutch translation of this regulation the farmers who want to make use of this possibility are obliged to lay fallow their land (with a possibility of crop rotation), to afforest the land, or to use

it for nonagricultural purposes. In case of laying fallow, the land must be cultivated with a "green manure" (a conservation cover crop, like clover or marigolds, which is to be ploughed under at the end of the period). The farmer has to keep his land out of production for at least five years.

This regulation too is meant to diminish surplus production. As it is relatively new, there is not much experience with how effective it is.

C. Since the 1988 amendments of the European Treaty, the protection of the environment is one of the explicit goals of the European Community. It is to be expected that in coming years this will lead to new European regulations affecting the protection of soil and water.

References:

Beschikking Superheffing 1988 (Stcrt. 1988, 64), reprinted in Schuurman en Jordens 110S (1987).

Beschikking ter zake van het uit produktie nemen van bouwland (Stcrt. 1988, 158).

H.C.A. Walda, The legal status of agro-industrial enterprises and their relation with landowners and agricultural workers, Netherlands reports to the thirteenth International Congress of Comparative Law, Montreal 1990, T.M.C. Asser Instituut - The Hague, 171-185 (1990).

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