

# AGRARIAN LAND LAW IN THE EUROPEAN COMMUNITY

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## I. Introduction

Agriculture is the chief land user in Europe: more than half of the total European Community area is agricultural land (Eurostat, 1990)<sup>1</sup>. By adding forests, rough pastures and marshes used for extensive grazing, Meeus *et al.* (1988, p. 15) set the share of land used by agriculture even higher: to 95% of the total territory.

Agriculture is the chief policy domain in the European Community (hereafter EC)<sup>2</sup>: about three-quarters of the total EC legislative production is directly related to the regulation of agriculture. By adding those authoritative decisions that sustain the EC's institutional structure, and are thus indirectly relevant for agriculture, the claim of agriculture on the EC agenda is even greater.

These proportions are commensurate with the place of agriculture in the EC budget. For some time the proportion of EC expenditure that is devoted to agriculture has exceeded 60% of the total annual budget. Currently it amounts to 58%.<sup>3</sup>

The share of agriculture in the employed civilian working population in the EC as a whole is, however, currently only 7% (Commission, 1991d). It varies from 2.2% in the United Kingdom to 27% in Greece. The proportion of the total population employed in agriculture has declined markedly since the foundation of the Community. Even taking into account any increase in employment in related sectors, such as foodstuffs or the environment, the trend is clear. If this trend is compared with the relatively fixed proportion of the budget that agriculture constitutes, it is apparent that agricultural spending represents potentially (and does so in fact) a significant political issue. Indeed, many of the recent changes in the EC's agricultural policy are a response, more or less direct, to this issue.

It would be easy to assume that the important role occupied by agriculture on the EC agenda is reflected by direct legal powers of the EC and its

institutions<sup>4</sup> in relation to agricultural land. Such an assumption, however, would be misleading and indeed incorrect. The EC Treaty states expressly in article 222 that it shall in no way prejudice the rules in Member States governing the system of property ownership. Moreover, even within this wide framework, the EC has little direct control of land. Nor does it have a physical planning policy or a land consolidation programme. Legal powers regarding the ownership of agricultural land, together with these related instruments, are within the domain of the Member States.

Nevertheless, the EC's common agricultural policy confers broad regulatory powers on the EC institutions (Snyder, 1985, 1990a). Within the scope of this policy, and to some extent as a politically unavoidable consequence of its effects, the EC has taken numerous measures which have had a direct effect on the use of agricultural land. For example, it has forbidden the use of land for vineyards or hops. Dairy farming is restricted to those parcels where dairy farming existed in 1983, or to which it has been transferred in accordance with EC regulations since then. These and other restrictions are based ultimately on the EC Treaty and are enshrined in EC regulations.

These wide-ranging - if apparently indirect - powers of the EC over land use are potentially available for all agricultural production that comes within the realm of the common agricultural policy. In this way, one of the main policy fields of the EC in terms of policy formulation, budget expenditure, regulation and litigation, has a great indirect, and increasing direct, relevance for land use.

To explain this relevance of EC law for land use, we will first describe the law that implements the common agricultural policy. This body of law can be divided into the law relating to market management and the law relating to structural policies. Both have seen an increase in direct regulation of land use, which culminated in the setaside, extensification and conversion programmes under the recent structural policy regulation.

After this condensed description of the law relating to the common agricultural policy, we describe the EC law concerning the rights of entry into farming: the rights of property, land tenure and establishment as a farmer.

The continued attempts at renewal of EC policies have taken two directions, which for our purposes are closely related. On the one hand, the EC has sought to make agriculture simply part of a more broadly defined policy of rural development or environmental management. On the other hand, it has attempted to expand its policy domains and legal competence, thus diminishing the relative importance of agriculture. In the final part of this chapter we consider relevant aspects of these attempts to widen the scope of EC law, emphasizing in particular their relevance for the EC's powers with regard to land use.

## **II. The Common Agricultural Policy**

### **A. Agriculture in the EC Treaty**

In a few broad strokes the Treaty establishing the European Community assigns to agriculture its central place in West European integration. The activities of the European Community must include the adoption of a common policy in the sphere of agriculture (EC Treaty, article 3(d)). Agriculture ranks among the foundations of the Community. The common market shall extend to agriculture and trade in agricultural products. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy (EC Treaty, article 38).

The Treaty does not define the concepts 'agriculture' or 'agricultural holding'. However, 'agricultural products' are defined as the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products (EC Treaty, article 38(1)). These products are listed in Annex II to the Treaty.

The objectives of the common agricultural policy are stated in the EC Treaty, article 39(1):

1. to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour;
2. thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
3. to stabilize markets;
4. to assure the availability of supplies;
5. to ensure that supplies reach consumers at reasonable prices.

The Treaty specifies three factors that must be taken into account in working out the common agricultural policy (article 39(2)):

1. the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
2. the need to effect the appropriate adjustments by degrees; and
3. the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

As the objectives of the common agricultural policy are disparate and potentially conflicting, they may not all be simultaneously and fully attained. Consequently, the Community institutions may give any one of them temporary priority in light of economic factors or conditions. In doing so, however, they may not discriminate between producers or consumers

within the Community (EC Treaty, article 40(3), para. 2). They must also, where necessary, take account, in favour of farmers, of the principle of Community preference.

The EC Treaty provides two pillars to support the common agricultural policy: market management and structural policy. Of these two pillars, market management attracted the main attention of the founding fathers. Structural policy remained largely the Member States' affair. In the more than 30 years of its existence, the market management pillar dwarfed the structural pillar, resulting in an obvious imbalance. The reasons for this imbalance were both economic and political, as Member States were reluctant to concede the EC real powers concerning structural policy.

Eventually, however, both the market management and structural policy pillars were modified. One reason was the accession to the EC in 1973 of the United Kingdom (together with Denmark and Ireland), then of Greece in 1980, and finally of Spain and Portugal in 1986. With a very small percentage of the population engaged directly in agriculture, the United Kingdom opposed the allocation of such a large proportion of the EC budget to the agricultural sector. The three Mediterranean countries have very different agricultural structures from those of the northern European countries and tended to benefit more from structural policy. Another, more important reason was the problem of chronic over-production. Efforts to resolve this problem were taken only gradually and reluctantly. As a result, the restructuring of the common agricultural policy – its instruments, policy mix and expenditure – has taken a very long time (Snyder, 1990b).

## **B. Market management**

Article 40, paragraph 2 of the EC Treaty states that a common organization of agricultural markets must be established. This article leaves three options as to the type of regulatory scheme. In practice, however, Community-wide market organizations for nineteen particular products, or groups of related products, have been set up, covering the majority of temperate zone agricultural products<sup>5</sup>. Thus not all agricultural production is directly protected by a common market organization. However, a side-effect of the existing market organizations is that land that might otherwise be used for unprotected production is tied to protected agricultural production. Hence the effects of the common agricultural policy extend outside the immediate range of the products covered by the various regulations.

The common market organizations may include all measures required to attain the objectives of the common agricultural policy. The Treaty mentions in particular the regulation of prices, aids for the production and marketing of the various products, storage and carry-over arrangements

and common machinery for stabilizing imports or exports. The common market organizations are limited to the pursuit of the objectives of the common agricultural policy (EC Treaty, article 40(3)).

The common organizations of markets establish and regulate prices for agricultural products, and control import and export trade in these products. The details of each common market organization differ according to the importance and characteristics of each product group. The main structure of the common market organizations centres on intervention buying (van der Velde, 1992), the imposition of levies on imports, and the subsidization of exports. Here we are concerned only with the first, because it has the most direct relevance for land use.

The aim of intervention buying is to stabilize the markets in agricultural products. Where the intervention system applies, a guaranteed minimum price is set for the relevant agricultural products. Originally, the Community had a legal obligation to purchase every quantity of Community-produced products offered to it at that guaranteed intervention price. This price, and other prices for the regulation of import and export, are set by political agreement in the decision-making authority of the European Community: the Council deciding on a proposal of the Commission. Agricultural price decisions are in fact taken by the 'Agricultural Council', consisting of the EC Member States' agricultural ministers. This yearly agreement is then written into the law of the EC by the formulation of a plethora of regulations.

At the beginning of the common agricultural policy the European Community was not self-sufficient for the entire range of temperate zone agricultural products. Community preference, that is the protection of EC grown crops and the exclusion of the same products grown outside the EC, combined with other aspects of the common agricultural policy and technological innovation to cause a sharp increase in self-sufficiency.

However, from the very start of the common agricultural policy, surplus production has been endemic in some product sectors. This was shown clearly in 1958 in the first General Report on the Activities of the Community (Commission, 1958). In a few decades the self-sufficiency rate of the Community grew rapidly into a chronic excess of production over demand in an increasingly wider range of products.

The architects of the market management system intended the prices fixed by decision-making in the Commission and Council tandem to be set at a level that would give a modern rationally operated family farm a profitable margin. The price would not be so high as to keep inefficient obsolete farms in production. For these obsolete farms the second pillar, the structural policy, was to improve production circumstances by speeding up the introduction of modern farming standards throughout the EC. As a result of such structural changes, these farmers could then derive an adequate income from the market management schemes.

However, the year-by-year decision-making process repeatedly resulted in prices that were higher than the Commission found wise. Driven by national concerns, the Council pushed the pedals of the tandem decision-making machine harder than the Commission, leaving it no choice but to step out or go along. The Commission went along.

In time the Community budget could no longer support limitless intervention buying with the attendant stock-piling of products that had to be dumped on the world market, exported as food aid or given away through various schemes. The common organization of the agricultural markets had to move into the direction of putting quantitative restrictions on the obligation of the Community to buy home-grown products, as well as of measures controlling total production. In this way land use restrictions were woven into the largest pillar of common agricultural policy, the market management schemes.

Various mechanisms were devised to limit expenditure. A guarantee threshold set the quantities for intervention buying beforehand. If this threshold was surpassed by actual production, the guaranteed prices would be lowered by a given formula in the following year. The guarantee threshold remains the main mechanism for the common organization of the market in cereals (Regulation 2727/75, article 3a, as amended<sup>6</sup>).

In the common organization of the market in milk and milk products, the Community went further by combining intervention buying with a prefixed amount of production eligible for support. In 1984 production quotas were set for this product group (Regulation 804/68, article 5c). The quota was tied to the holding, which in most Member States is interpreted as being tied to the land (van der Velde, 1991, 1992). Hence the use of land for dairy farming is directly regulated by the market management system of the Community. In order to be able to deliver milk to the market, a dairy farmer has to have land with milk quotas. The Member States are to register these quotas and the land to which they belong. Transfer of dairy quota to other parcels of land must be effected by the Member States. By giving up dairy quota farmers can obtain compensation for cessation of production. Member States can exclude from these cessation schemes those areas where erosion abatement, and especially the prevention of desertification, gets preference (Regulation 1637/91).

Earlier, surplus production in the common organization of the market in wine led the EC to place the new planting and replanting of vines under Community control. In principle, all new planting of vines is prohibited until 31 August 1996 (Regulation 822/87, article 6(1), 1st para.), with the exception of new planting in respect of areas intended for the production of quality wines the production of which is recognized as being far below demand. This general prohibition is, however, subject to some important exceptions. Among these exceptions are areas intended for new plantings carried out under measures for the consolidation of holdings or measures

concerning compulsory purchase in the public interest adopted under national legislation.

Any natural or legal person or group of persons intending to carry out new planting must apply in writing for authorization to the competent bodies appointed by the Member States. The replanting of vines in plots previously under vines but from which they have been grubbed is only permissible where a natural or legal person or group of persons either has a replanting right under Community law or has acquired such a right on the basis of prior national law.

The European Court of Justice's case law on restrictions on the use of farmland may be illustrated by Case 44/79 *Liselotte Hauer v Land Rheinland-Pfalz* (1979) ECR 3727 (1980) 3 CMLR 42<sup>7</sup>. The main action concerned a challenge to an administrative decision refusing to authorize the planting of vines. Interpreting Community law, the European Court held the restriction on use of land by prohibition on planting of new vines under Council Regulation 1162/76 to be justified by the objectives of general interest, in particular the reduction of agricultural surpluses, pursued by the Community in application of the common agricultural policy. It gave special emphasis to the temporary nature of the prohibition and concluded that the prohibition did not infringe the plaintiff's right to property.

### C. Structural policies

The smaller pillar of the common agricultural policy, structural policy, became in time the locus for more efforts to curb production by regulating land use.

The common agricultural policy envisaged by the EC Treaty takes account of structural diversity in terms of natural conditions, farm size, production methods, the age and education of farmers, and economic and social differences (EC Treaty articles 39(2)(a) and 41).

In 1968 the Commission set up a framework for a substantive structural policy (Commission, 1968). One of the salient features of this framework, known as the Mansholt Plan after the then EC Commissioner for Agriculture, was to take at least five million hectares of EC agricultural land out of production on a permanent basis between 1970 and 1980. The Council did not adopt this major feature of the plan, but other elements were adopted by resolution in 1971 (O.J. C 52/1). The usual form for Community action was to be joint programmes between the Community and the Member States to which the Community would make a financial contribution, generally of 25%.

The resolution was subsequently implemented by several directives. In 1972 the Council issued the three basic structural policy directives: Direc-

tive 72/159 concerning the modernization of agricultural undertakings, Directive 72/160 on the promotion of cessation of farming and incentives for the use of arable land for improvement of the agricultural structure, and Directive 72/161 on socio-economic information and the training of persons employed in agriculture.

The original system proved to be little used by the Member States (Druesne, 1986, pp. 318–19). In response, the Council replaced the structural policy directives by Regulation 797/85 on the improvement of the efficiency of farming structures, which regrouped the system and strengthened it. In 1987, the Council amended this basic structural policy regulation by Regulation 1760/87 to introduce conversion and extensification of production.

Both regulations, and their subsequent amendments, were replaced in 1991 by Regulation 2328/91 (O.J. L 218/1). Its first article states as its aims: to introduce a common measure to help restore equilibrium between production and market capacity; to contribute to the improvement of the efficiency of farms by developing and reorganizing their structures; to maintain a viable agricultural community, including mountain and hill areas and less-favoured areas; to contribute to the protection of the environment and the lasting conservation of the natural resources of agriculture.

Member States were required by the original Directive 72/160 to introduce measures to encourage the cessation of farming and the reallocation of the resulting agricultural area for the purposes of structural improvement. Although the directive has been replaced by Regulation 797/85, the latter did not reproduce a specific Community scheme for the cessation of farming and land reallocation. This issue has been taken up by Regulation 1096/88 to encourage the cessation of farming.

The modernization directive 72/159 was carried over into title IV of Regulation 2328/91, the support for investments in agricultural holdings to make them more profitable and to improve living conditions and production circumstances. To be eligible for this support farmers must meet certain criteria (article 5): farming must be their main occupation; they must have adequate occupational skill and competence; they must keep proper accounts; they must draw up an approved development plan which when accomplished will produce a level of earned income comparable with that received for non-agricultural work in the region in question; and the level of earned income prior to the planned development either must be less than the modernization objective or the plan proposed does not provide for an income in excess of 120% of that objective.

Farmers whose applications are accepted and whose plans are approved are eligible for a range of incentives (articles 6 and 7). Among these are interest rate subsidies on investments made for necessary improvements and aid for investments in the adaptation of the holding for the purposes of

reducing production costs, saving energy, and protecting and improving the environment.

Aid is however prohibited for certain situations relating to products for which no normal market outlets can be found. Limits are set on the amount of financial assistance that may be provided, with the exception of aid for the construction of farm buildings, for the transfer of farm buildings when justified in the public interest and for land improvements, and investments to protect and improve the environment (article 12).

### *1. Setaside of agricultural land*

In 1988, the basic structural policy regulation was amended by Regulation 1094/88 to incorporate a setaside scheme for arable land to be implemented by the Member States. Regulation 2328/91, Title I, has the two-fold object of rendering the land that is set aside more fertile and reducing the pressure of surplus crops on the Community agricultural market.

Member States have an obligation to introduce an aid scheme designed to encourage the setaside of agricultural land. Aid for setaside may be granted for all arable land, irrespective of the crops grown, provided that the land has in fact been cultivated for a reference period to be determined by the Member States. Land growing crops not covered by a common market organization is excluded from the scheme. The agricultural land withdrawn from production must represent at least 20% of the arable land on the farm concerned.

The regulation defines withdrawal from cultivation: the land must be left fallow for a period of at least 5 years, with the possibility of termination after 3 years. Crop rotation is possible. Alternatively the land may be afforested or used for non-agricultural purposes.

The relevance of setaside for agricultural land use is underlined by the provision that Member States have to take the necessary measures to keep the land in good agricultural condition. They can make the necessary provisions for managing the land so that the environment and natural resources are protected (article 2(3)).

Member States determine the amount of aid to be paid per hectare of land setaside, subject to a minimum set by the Community of 100 ECU<sup>8</sup> and maximum of 606 ECU per year (article 2(5)). In exceptional cases the Commission can set a higher maximum amount of 700 ECU per hectare per year.

The setaside scheme has been amended to insert the opportunity for Member States to introduce an aid scheme for the use of arable land to grow products that are not to be used for human or animal consumption (article 2(4)). To be eligible for this aid, farmers have to set aside at least 30% of their arable land. In the case of cereals to be used for non-food goals, the maximum acreage is 50% of the holding.

## *2. Extensification of production*

Member States have to introduce an aid scheme to promote extensification of the production of surplus product. For this purpose surplus products are defined as products for which there are consistently, at Community level, no normal unsubsidized outlets (article 3(1)).

Extensification is defined as a reduction of at least 20%, for a period of at least five years, in the output of the product concerned without any increase in other surplus production capacity (article 3(2)).

Member States determine the conditions for granting aid, the amount of aid, the reference period for the product concerned and the proof to be given by the beneficiary for the purposes of verifying that production has in fact been reduced.

## *3. Conversion of production*

Article 4 of Regulation 2328/91 contains the obligation for Member States to introduce an aid scheme to encourage the conversion of production towards non-surplus products. The Council has to adopt a list of products towards which production may be converted and has to lay down the conditions and procedures for the granting of the aid.

## *4. Farming in less-favoured areas*

Areas in the Member States that suffer from permanent natural handicaps present special problems for agriculture. They are typically dependent on agriculture, but their economic viability is threatened by a tendency towards depopulation and a decline in agricultural activity. In 1975 the Council issued Directive 75/268 supporting schemes designed to deal with the needs of such less-favoured areas. This directive has been partly incorporated into Regulation 2328/91. The remaining provisions of the original 1975 directive are necessary to understand the system. The principal aim of both measures is to maintain reasonable incomes for those farming in certain disadvantaged areas.

Regulation 2328/91, article 17, authorizes Member States to introduce a special system of aids to encourage farming and to increase farm incomes in those areas to which Directive 75/268 applies, taking into account the situation and development objectives of each region. Under Directive 75/268 Member States were to notify the Commission of the areas to which they proposed to apply this scheme. To qualify as a less favoured farming area in the Community, areas nominated by the Member States had to possess certain characteristics. For the purposes of the directive, less-favoured farming areas, in principle, included mountain areas in which farming is necessary to protect the countryside, particularly against erosion,

or to meet leisure needs, and other areas in which the maintenance of a minimum population or the conservation of the countryside are not assured (Directive 75/268, article 3(1)). Such areas had to have adequate access roads, be supplied with electricity and drinking water and, in tourist or recreation areas, with sewage disposal. For mountain areas to qualify they had to comprise local government districts, or parts of them in which the possibilities for using the land were subject to considerable limitation together with an appreciable increase in the cost of working it (article 3(3)). Such characteristics had to be due either:

1. to altitude and consequentially difficult climatic and growing conditions; or
2. at lower altitudes to the predominant presence of slopes too steep for mechanical cultivation or requiring expensive special equipment; or
3. to a combination of both these factors.

Areas in danger of depopulation, or in which countryside conservation was necessary, qualified as less-favoured farming areas, if they were made up of homogeneous farming areas that exhibited the following three characteristics:

1. infertile land, unsuitable for cultivation except at excessive cost;
2. low productivity with results appreciably lower than the mean in the general economic situation in agriculture; and
3. a low or dwindling population predominantly dependent on agriculture, where acceleration of population decrease would threaten the viability and continued habitation of the area (article 3(4)).

The Council drew up and adopted (under EC Treaty article 43(2)) the Community list of less-favoured farming areas that may benefit from the aids granted under the directive.

Regulation 2328/91 adopts the Community list of less-favoured farming areas laid down by the Council under the 1975 directive. In such areas Member States may grant an annual compensatory allowance to assist farming activities. The allowance is to be fixed with reference to the nature of the permanent natural handicap as defined by the earlier directive. Assistance may only be granted to farmers with at least 3 ha of cultivated area. This requirement is lowered to 2 ha for Spain, Portugal, Greece, the French overseas departments, the Mezzogiorno area, and the islands of Italy.

A farmer must undertake to pursue a farming activity that will increase the farm income for at least 5 years. This undertaking will not be enforced if the farmer ceases farming in the area concerned or receives a retirement pension, and in cases of force majeure (article 18). Member States may introduce additional conditions for the grant of assistance. They may set additional conditions to make farming methods consistent with the require-

ments of environmental protection and landscape maintenance (article 18(3)).

The amount of allowance paid to a particular farmer will be fixed with reference to the severity of the permanent natural handicap and the number and type of livestock and the particular agricultural product to be marketed (article 19). Aid may be granted towards joint investment schemes for fodder production and to improve and equip pasture that is jointly farmed, to joint investments in water-points in mountain areas, and to the provision of minor roads for immediate access to pastures and in the provision of shelters for herds (article 20). If economically justifiable, aid may be granted in addition to small-scale irrigation works provided that they are compatible with protection of the environment. Upper limits are set on expenditure eligible for Community assistance: collective investments shall receive no more than 100.293 ECU, investments in pastures no more than 501.4 ECU per hectare, and irrigation schemes no more than 5000 ECU.

#### *5. Environmentally sensitive areas*

Earlier national measures such as the management agreement system in the Netherlands, and the United Kingdom scheme for Environmentally Sensitive Areas, gave rise in 1987 to the introduction on the EC level of aid in areas sensitive as regards protection of the environment and of natural resources and as regards preservation of the landscape and the countryside.

Title VII of Regulation 2328/91 enables Member States to start a specific aid scheme for farmers who undertake to introduce or maintain, for at least 5 years, farming practices compatible with the requirements of the environment and of natural resources or with the requirements of the maintenance of the landscape and of the countryside. The maximum aid consists of an annual premium of 150.4 ECU per hectare covered by the farmer's undertaking. The aid scheme serves the dual purpose of adapting agricultural production to market needs, and contributing to the introduction of the farming practices mentioned before. The aid is to compensate the farmer for the income losses resulting from this introduction. Member States determine the environmentally sensitive areas and define the required production practices.

#### *6. Afforestation on agricultural holdings*

Member States may grant aid to farmers for the afforestation of their agricultural land. This aid may be combined with the aid schemes for setaside or cessation of production (article 25). To farmers whose chief occupation is farming, aid may be granted for investments in certain types of woodland improvements and for forest roads. The aid may cover the cost of adapting

agricultural machinery for forestry work. Member States receive compensation for their expenses from EC funds up to certain maximum amounts, for instance up to 1824 ECU per hectare afforestation. Member States may grant an annual premium of 150.4 ECU per hectare for a period of no more than 20 years to those farmers who do not already receive a cessation allowance (article 26).

### III. Access to Farm Land

Access to farm land is potentially affected by the provisions of the Treaty of Rome concerning the free movement of workers and the freedom of establishment. Article 48 EC provides that the free movement of workers shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work or employment. Article 52 EC provides for the abolition of the restrictions on the freedom of establishment of nationals of Member States. According to the second paragraph of this article, freedom of establishment includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms, under the conditions laid down by the host member state for its own nationals. Both articles 48 and 52 have been held by the European Court of Justice to create rights that individuals can rely upon against the state in their national courts.

#### 1. As farmer

The definition of 'agricultural producer' in Community law has been considered by the European Court in several cases. In Case 139/77 *Denkavit Futtermittel GmbH v. Finanzamt Warendorf* (1978) ECR 1317, it was held that the concept of 'agricultural producer' was not precisely defined in the Treaty. It was to be defined *ad hoc* in relation to each particular agricultural rule or set of rules derived from the Treaty. Any national legislative definition was permissible and not discriminatory so long as it was based on objective distinctions and compatible with the purposes of the applicable EC regulations and the Treaty. Similarly, in Case 36/79 *Denkavit Futtermittel GmbH v. Finanzamt Warendorf* (1979) ECR 3439, German legislation giving priority to agricultural producers who worked the soil, as against feed lots, was held not to be discriminatory within the meaning of article 40(3) EC.

A number of directives affect the ownership of farmland as a farmer. The farm manager Directive 63/261 provides for the right of an agricultural worker for at least 2 years to switch to independent farming. By its

terms a special permit for aliens is still allowable but it must be granted as of right. Directive 63/262 provides for the right to pursue agricultural activities on agricultural holdings that have been abandoned or left uncultivated for at least 2 years. No special permit is required. Directive 67/530 provides that farmers of at least 2 years' standing are entitled to transfer from one holding to another.

The French Court de Cassation held in *Von Kempis v. Geldof* (1976) 2 CMLR 152 that, by virtue of Article 52 EC, the need to obtain an administrative permit to farm must be abolished.

Directive 67/531 provides for the abolition of discriminatory restrictions on the application of the law on agricultural leases. Directive 63/261 concerns the right to take on lease any property.

## 2. As landowner

Article 222 of the EC Treaty, stating that it shall in no way prejudice the rules in Member States governing the system of property ownership, was in question in Case 339/82 *Commission v. Ireland*. Section 45 of the Irish Land Act forbade aliens to acquire non-urban land without the prior consent of Land Commission. The case was settled out of court.

Article 54(3)(e) EC provides that the Council and the Commission shall carry out their duties to achieve the freedom of establishment, *inter alia* by enabling a national of one member state to acquire and use land and buildings situated in the territory of another Member State, insofar as this does not conflict with the principles laid down in article 39(2) concerning the common agricultural policy. Directives 63/261 and 63/282 concern the right to acquire, occupy or exploit any property.

Directive 67/530, article 3(2) requires Denmark to abolish the Danish rule that persons not resident in Denmark and companies and firms not registered there, wishing to acquire immovable property obtain prior authorization from the Ministry. In Case 182/83 *Robert Fearon & Co. Ltd. v. Irish Land Commission* (1984) ECR 3677, (1985) 2 CMLR 340 the European Court of Justice held permissible, so long as there was no discrimination, the expropriation of Irish farmland owned through an Irish company by five United Kingdom nationals, none of whom lived within 3 miles of the land.

## IV. A Broader Policy Domain

In addition to existing market management and structural policy, the Community has special programmes to broaden the scope of its activities. To mention but a few: a programme for intensifying collective irrigation

projects in the Italian Mezzogiorno (Regulation 1362/78); a common action for afforestation in certain Mediterranean areas of the Community (Regulation 269/79); a special programme to stimulate the development of agriculture in certain problem areas of Western Ireland (Regulation 1820/80); and a special programme for the development of agriculture in Portugal (Regulation 3828/85). Mediterranean programmes and integrated development programmes have increasingly taken up an important position on the EC agenda (Commission, 1990b and 1991c, paras 408–10). The purposes of these programmes are, among others, to increase the quality of the soil, to combat erosion by afforestation and to stimulate land consolidation. The Commission has also adopted Community Support Frameworks (CSFs) for poorer regions in seven Member States (Commission, 1990a, point 1.3.145). Taken as a result of reforms to the structural funds by Regulation 2052/88, these programmes are based on the specific needs and development potential of local areas. They are drawn up by the Commission together with national, regional and local authorities.

The internal market programme, embedded in the Single European Act to amend the European Communities' Treaties, added to the EC Treaty new titles concerning economic and social cohesion (Title V, articles 130a–130e) and the environment (Title VII, articles 130r–130t). Each of these new titles affects agriculture.

The strengthening of the economic and social cohesion of the Community aims particularly at reducing disparities between the various regions and the backwardness of the least-favoured regions. In order to achieve this goal, the various structural policies are co-ordinated by Regulation 2052/88 to establish a partnership between the Community and the Member States in the integrated development of backward regions. The structural policies under Regulation 2328/91 are to be co-ordinated into a programme of rural development, the so-called objective 5(b). Commission Decision 89/426 (O.J. L 198) lists the rural areas eligible for funding under objective 5(b).

The environmental programme of the EC has led to an increased emphasis on the need to integrate environmental concerns with the Community's agricultural policy (EC Treaty, article 130r(2)). The Environmental Impact Assessment Directive 85/337, article 4(3), provides that projects of certain listed classes shall be made subject to an environmental impact assessment where Member States consider that their characteristics so require. With regard to agriculture, these classes include:

1. projects for the restructuring of rural land holdings;
2. projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;
3. water-management projects for agriculture;
4. initial afforestation where this may lead to adverse ecological changes

and land reclamation for the purposes of conversion to another type of land-use.

In addition, a European Environmental Agency has been established by Regulation 1210/90 to monitor and provide information on environmental protection measures. For the immediate future its role is to be primarily the collection and evaluation of environmental data and the drafting of expert reports in order to help the Community to monitor the application of its legislation. The Council has also enacted Directive 90/313 on freedom of access to environmental information. It is designed to require public authorities to make information relating to the environment available to any natural or legal person on request and without having to prove an interest. These reforms are likely to have a great effect on land use in the EC in the future.

## **V. Impending Changes in the Common Agricultural Policy**

Confirming the reorientation of the common agricultural policy since the adoption of the Single European Act, Mr Ray MacSharry, the EC Commissioner for Agriculture, recently proposed guidelines for reforming the common agricultural policy. His 'Reflections Paper' (Commission, 1991a), approved by the Commission on 31 January 1991 and currently being debated by the EC Council, was a response to the continuing growth in surplus production, the failure of the common agricultural policy to increase farm incomes, environmental problems due partly to intensive agriculture, and the escalation of the financial burden on the Community. Mr MacSharry identified the policy's base failing as the fact that price support is linked directly to the quantity produced, thus creating a permanent incentive to greater production and further intensification. His proposed solution, one means of integrating agriculture into the internal market, is essentially a policy of social regulation.

Mr MacSharry proposed to control production by the implementation of substantial cuts in price support, together with a significant redistribution of support, for example by means of income aids on a full, partial but degressive, or conditional basis. In his view, this combination of economic instruments represents a return to the correct application of the basic principles of the common agricultural policy; however, it requires a redistribution of support (Commission, 1991a, p. 12). It will be targeted mainly towards smaller farms, leaving the larger, usually more efficient farms to rely mainly on the market. As summarized in the Commission's 'Press Notice,' dated 1 February 1991, (Commission, 1991b, point 1.2.131), '[t]he basic objectives of the reform are to reorientate the common agricul-

tural policy socially and economically so as to enable a sufficient number of family farms to remain on the land and thereby preserve the natural environment and contribute to rural development'.

Two aspects of the 'Reflections Paper', in particular, raise very significant legal issues. The first is the proposal's overtly 'social' or redistributive aim seeking to protect the larger number of small farmers, numerically the vast majority in the Community, while leaving the larger, more competitive farmers to fend for themselves. This aim raises, though of course it does not necessarily violate, the basic principle of non-discrimination among producers, as stated in article 40(3) EC. Secondly, the Commission proposal attempts to re-interpret the objectives of the common agricultural policy, as stated in article 39 EC. It involves a much greater emphasis on structural policy, and indeed an attempt to insert into the common agricultural policy aims properly so-called, as stated in article 39(1), the list of factors to be taken into account in making agricultural policy, which are given in article 39(2) EC, and usually viewed as distinct (see this chapter, section IIA). It is therefore noteworthy that the European Court of Justice has also recently taken a broader view of the objectives of the common agricultural policy".

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## Notes

1. Eurostat, *Agriculture Statistical Yearbook 1990*, p. 7 gives 225 830 000 ha for total EC 12 as of 1988, of which 128 507 000 ha is used by agriculture, 53 776 000 ha is wooded area, 39 777 000 ha is other area and 3 570 000 ha is water.
2. Here we are concerned only with the European Economic Community (EEC), not the European Coal and Steel Community (ECSC) or the European Atomic Energy Community (Euratom). The three Communities are legally distinct, each being based on a separate treaty, but they share the same institutions. The EEC is the most general in scope. By virtue of its founding treaty, the 1957 Treaty of Rome, it includes the common agricultural policy. Conventionally, the three communities are known together as EC. The 1992 Treaty on European Union article G renames the EEC as European Community. We will use the abbreviation EC throughout.
3. The total 1990 budget of 49 milliard ECU showed 26.5 milliard ECU for the

- Agricultural Guarantee Fund and 2.1 milliard ECU for Agricultural Structures. Source: Office (1991, p. 62). See note 8 for significance and value of the ECU.
4. There are four EC institutions: an Assembly, a Council, a Commission and a Court of Justice. The Assembly calls itself the European Parliament, but has in the main only the powers of advice. The Council consists of the representatives of the Member States, and is the central power both as legislator and executive. The Commission is the independent executive, supervising the Member States, participating in legislation with the exclusive right of initiative, and exercising the powers conferred on it by the Council. The Court of Justice ensures the observance of the law by adjudicating cases brought before it by the institutions, Member States and, with some restrictions, private citizens. National judges can, and in some circumstances must, ask the Court's advice on the interpretation of the directly effective EC law.
  5. The exceptions are alcohol, honey, potatoes, wood, and wool.
  6. EC regulations are published in the *Official Journal of the European Communities* (O.J.). They are frequently changed, without making a complete new version available. Readers are referred to the *Repertory of Community Legislation*, published with the *Official Journal*, to ascertain the latest collection of the original version and subsequent changes.
  7. The case-law of the Court of Justice is collected in the *Reports of Cases before the Court*, usually abbreviated as ECR. The *Common Market Law Reports* (CMLR) is another source.
  8. The European Currency Unit (ECU) is the weighted basket of the currencies of all the Member States, calculated daily. The ECU evolved from an accounting unit into a parallel currency. In 1990 the average value of 1 ECU was 0.71 UK pound or 1.26 US dollar.
  9. See Case C-331/88 *Regina v. Minister of Agriculture, Fisheries and Food ex parte Federation Europeenne de la Santé Animale (FEDESA)* (1991) 1 CMLR 507; and Case 131/87 *Re Trade in Animal Glands: EC Commission v. EC Council* (1991) 1 CMLR 780.

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