

XXIXth European Congress on Rural Law

Lille 21-23 September 2017

Commission III

General Report

**Dr Ludivine Petetin
Lecturer in Law
Cardiff University**

Significant Current Developments in Rural Law

1. Introduction

The period since the XXVIIIth European Congress on Rural Law held in Potsdam has seen changes along various axes. A central axis is the integration of environmental concerns (broadly defined to include food, social, ethical and cultural characteristics) into farming activities and resulting food products. Another cross-cutting theme that emerges is the relationship between agriculture and legal instruments. Indeed, multiple reports highlight the often-weak nature and status of the existing legislative instruments to deal with farming and protect farmers. Crucially, these instruments are often accompanied by too much bureaucracy and too much red tape at multiple levels – sometimes preventing innovation. Their ability to handle current issues and demands is strongly questioned. In particular, questions were raised as to the data and (scientific) expertise used to establish new provisions and mechanisms. A modernisation of existing legal and regulatory instruments, both in qualitative and quantitative terms, felt required to update the Common Agricultural Policy (CAP), especially those applicable to the rural economy, climate versatility, price volatility and competitiveness.¹

National Reports submitted to Commission III developed strong links between initiatives and legislation at European Union (EU) and national level.² Overall, National Rapporteurs have set positive outlooks and perspectives on difficult but critical issues over agriculture. Accordingly, five broader themes have been identified, these being as follows:

- The situation in the dairy sector
- The use of new technologies in farming
- Multifunctionality in agriculture
- Access to land
- Brexit and agriculture

2. The Situation in the Dairy Sector

Many national reports highlight the difficulties the dairy farming industry is experiencing following the end of the milk quotas in March 2015. Until that date, the milk market in the EU

¹ These objectives are confirmed in the 2017 CAP Communication from the Commission. See Communication from the Commission, ‘The Future of Food and Farming’ COM(2017) 713 final.

² Commission III included eleven National Reports and one Individual Report.

was one of the most regulated and subsidised worldwide. The removal of milk quotas, that is the basic legal instrument functioning in this market, led to considerable modifications of the market and the power relationships within it. Agricultural producers lost guarantees that used to stabilise supplies. Milk prices have been steadily falling since April 2015. Additional EU and national legislative acts were adopted to support milk producers.

In Spain, measures were established to support the struggling dairy industry (Spain p. 3). Direct payments coming from the national Spanish budget and the European budget (under the Commission Delegated Regulation (EU) 2015/1853 of 15 October 2015 providing for temporary exceptional aid to farmers in the livestock sectors³) have been put in place to absorb shocks and imbalances in the international dairy market. Similarly, Poland – despite being ranked 12th in the worldwide production of milk and dairy products – has been particularly affected by the disappearance of milk quotas and has also been the recipient of European aid for milk producers (Poland p. 19). France also enacted a law in December 2016 that aims to strengthen the role of milk producers when signing contracts with companies. Under this statute, farmers are considered as the weak party in the contract and benefit from specific protection (France p. 16). Similarly in Spain, the Spanish Code of Good Business Practices in Food Procurement Contracting aims to improve farmers' livelihoods (including dairy farmers) by creating a 'fairer contractual environment' in which they operate since farmers are the weakest link in the contractual relationship (Individual Report, p. 4).

In contrast, the Netherlands anticipated the removal of milk quotas and perceived this change as an economic opportunity (Netherlands p. 3). The media nicknamed the end of milk quotas: 'liberation day'. In 2013-14, the Dutch milk production reached above 4% of the national milk quota and in 2014-15 the production raised another 4.1%,⁴ whilst the number of cows grew from 1,55 million to 1,57 million. Around 70% of the Dutch dairy farmers have built new cowsheds or planned to expand the size of their farming infrastructures shortly. However, these changes are problematically increasing the phosphate production of animals.

Both the Netherlands (Netherlands p. 3) and Spain (Spain p. 4) have set limits to the number of cattle permissible on a single farm for different reasons. In Spain, this was undertaken to not encourage milk production in order to strengthen the position of the farmer in the food supply chain. In the Netherlands, it is to diminish the production of manure. Indeed, to solve the issue of overproduction of manure, the Dutch government introduced a new production instrument (Netherlands p. 4). Phosphate-rights aim to reduce the number of cattle to get under the national phosphate ceiling.⁵ These rights consist of a production ceiling based on the 2014 production level attached to a prohibition to expand beyond that level. These rights are transferable between farmers. Interestingly, this has led to the disappearance of the surplus of manure and to the emergence of a black market.

In Germany, there are generally fewer cows on the farm because livestock farming conditions as they stand are no longer accepted by the population due to animal health and welfare concerns as well as ethical and cultural factors. This is also applicable to other types of livestock.

³ Commission Delegated Regulation (EU) 2015/1853 of 15 October 2015 Providing for Temporary Exceptional Aid to Farmers in the Livestock Sectors [2015] OJ L271/25.

⁴ Kamerstukken II, 2014/15, 33979, No. 99.

⁵ W. Bruil – Onder het Fosfaatplafond! TVAR 2017/3, p. 99.

3. The Use of New Technologies in Farming

New technologies in farming can provide economic opportunities, such as higher yields and improved competitiveness, but can raise structural issues and environmental and health concerns. Biotechnologies and genetically modified organisms (GMOs) are such examples. For instance, Spain wants to avoid ‘cross-border pollution’ from GMO cultivation (Spain p. 2). In line with the principle of subsidiarity and to solve the EU GMO authorisation deadlock, Directive 2015/412 amending Directive 2001/18 was adopted.⁶ The amended provisions create an ‘opt-out’ clause, as it is often called, that gives flexibility and autonomy to Member States and their regions to ban or restrict the cultivation of authorised GMOs on their territories. Italy opted-out from the cultivation of six GM corn varieties. In the UK, Wales, Scotland and Northern Ireland have decided to ban GMOs but England has not chosen the same policy decision. After Brexit, these contrasting choices could lead to the establishment of obstacles within the UK internal market.⁷

Issues of the utilisation of antibiotics for farmed animals and plant protection products have come to the fore because of their impact on the environment and human health – for instance antibiotics resistance (Argentina p. 6; US p. 8; France p. 2). Further, the patenting of plant varieties has also been the subject of the legislator in different states (Germany p. 14; Poland p. 14; France p. 8). In the US, for example, plant breeders who have developed seed are protected by patent law and the Plant Variety Protection Act.⁸ In 2016, a Chinese national (who was a permanent US resident) was prosecuted, convicted and sentenced to a 36-month prison term for conspiracy to steal trade secrets (US p. 6). The stolen inbred, or parent, corn seeds were the trade secrets of DuPont Pioneer and Monsanto.⁹

Big data and digitalisation have been identified as offering tremendous opportunities and appear key to future CAP reforms (Spain p. 7). They also generate growing concerns, such as the use, storage, exchange, ownership and protection of data. In Germany, access to internet, and more specifically broadband, is lacking in rural areas, whilst Germany wants to be leading with broadband. The legislation aims to improve the situation but it has been unsuccessful so far, according to experts. The lack of good quality internet in Germany is problematic. For instance, with precision farming if there is a mistake or an accident due for instance to the poor quality of the internet, with for example a tractor, who will be responsible or accountable? Old laws and regulatory frameworks cannot cope with these newer types of technologies. The farming sector could suffer from technological (and regulatory) mistakes. Finally, the cost of agri-technology leads to another set of problems in the farming world. Small farms as well as those who are financially struggling cannot offer these new expensive technologies, potentially widening further the gap between small and large farms.

⁶ Directive (EU) 2015/412 of the European Parliament and of the Council amending Directive 2001/18/EC as regards the Possibility for the Member States to Restrict or Prohibit the Cultivation of Genetically Modified Organisms (GMOs) in their Territory [2015] OJ 68/1.

⁷ L. Petetin, ‘GMO Cultivation in the UK: Brexit, the Devolved Administrations and International Trade’ (Brexit and Environment Network, The UK in Changing Europe) (11 January 2018), <https://www.brexitenvironment.co.uk/2018/01/11/gmos-devolution-trade/>. See also, L. Petetin, ‘Managing Novel Food Technologies and Member States’ Interests: Shifting More Powers Towards the Member States?’ in M. Varju (eds) *Between Compliance and Particularism: Member State Interests and European Union Law* (Springer, 2019) in press.

⁸ Pub. L. No. 91-577, 84 Stat. 1542 (1970) (codified as amended in sections of USC titles 7 and 28).

⁹ US Federal Bureau of Investigation, Protecting Vital Assets: Pilfering of Corn Seeds Illustrates Intellectual Property Theft (19 December 2016), <https://www.fbi.gov/news/stories/sentencing-in-corn-seed-intellectual-property-theft-case>.

4. Multifunctionality in Agriculture

The multifunctionality of agriculture progressively focuses on alternative approaches to farming activities whilst respecting the quality of the end-product, citizens and the environment.

a. Social agriculture

Increasingly, legislative frameworks allow for the expansion of the social side of farming, including the role of rural communities. The legislator is regulating new areas of social relations in agriculture and in connection with agriculture¹⁰, as well as expanding legal regulations to include more detailed solutions, concerning, for example, the criteria of selection of groups that may obtain EU financing or the trade of agricultural real property (Poland p. 24).

Social agriculture focuses on the development of social, socio-sanitary, educational and socio-professional features as well as improving the quality of life of farmers. It also intends to improve access to rural services and is evolving into a key means for rural communities to thrive and to maintain social links within rural areas and in particular disadvantaged regions. The Italian legislator is also encouraging the participation of all part of the population in farming, including from handicapped and disadvantaged workers as well as ensuring their education (Italy p. 5).

The Polish State has recently decided to facilitate the retail and sale of agricultural products on the farm by allowing farmers to run small-scale processing activities within the farm holding (Poland p. 8).¹¹ Farmers taking up such activities benefit from tax incentives. The introduced changes aim to improve the economic situation of small farmers and to give consumers direct access to a wider access of fresh products. Social agriculture is an example of food democracy¹² to restore ‘the traditional role of farmer as producer and processor of food, while opening up a new market of natural and healthy food for consumers’¹³ (Poland p. 12; Italy p. 5; Argentina p. 34).

For many Member States, direct payments are crucial to support farmers and should be confined to active (real?) farmers – not owners of land. In Spain, CAP support is perceived as a way to create fairness between the agricultural industry and other productive industries/sectors as well as ensuring multifunctionality and food security (Spain p. 5 and 8). Another problem with farming is that many farms are not profitable. In contrast, young people want to live off their business and making a living with their work and produce. Often, this is one of the reasons why the number of young entrants is low.

b. Food

¹⁰ R. Budzinowski, *Problemy ogólne prawa rolnego: Przemiany podstaw legislacyjnych i koncepcji doktrynalnych* [General Problems of Agricultural Law: Transformations of Legislative Bases and Doctrinal Concepts], Poznań 2008, p. 42.

¹¹ Act of 16 November 2016 on the Amendment of Certain Acts in order to Facilitate the Sale of Food by Farmers. It entered into force on 1 January 2017 (Journal of Laws, item 1961).

¹² L. Petetin, ‘Food Democracy in Food Systems’ in P.B. Thompson and D.M. Kaplan (eds), *Encyclopedia of Food and Agricultural Ethics* (2nd edn, Springer, 2016) p. 1.

¹³ See grounds of the Act of 16 November 2016 (n 11).

Food waste is becoming an important policy focus and constitutes one of the main pathways to achieve food security (Spain; Argentina; Poland; Italy; Germany). The Italian report explains how this issue has become a central governmental, regional and local issue. The Italian government distinguishes between waste within the food supply chain or in food outlets and restaurants, and household food waste (Italy p. 7). For the first time in 2015, the Italian Environment Ministry allocated 500k euros to undertake research, communication and sensitisation for the prevention against food waste (Italy p. 11). Fifteen out of twenty Italian regions have or are in the process of legislating against food waste. Further, over 700 municipalities have adopted similar policies.¹⁴ In 2016, a new Italian act¹⁵ was promulgated to facilitate the recovery and donation of food and pharmaceutical surpluses and limit the negative impacts of waste on the environment and natural resources caused by the product's life cycle (Italy p. 11). The Italian legislator encouraged the reduction of food waste and social solidarity prior to EU intervention.¹⁶

In Germany, only market initiatives have so far been adopted to deal with food waste. There is no law applicable. There are only programmatic governmental declarations (Germany p. 43). Food security has, however, been at the centre of the attention of the German legislator. In 2017, the new Food Safety and Health Assurance Act (ESVG) merged two existing laws (Germany p. 32). The purpose of the new act is to provide a basic supply of food to the population in the event of a military situation, as well as in the event of a non-military supply crisis, for example, natural disasters or strikes.

Citizens are gradually interested in the provenance and origin of their food (Argentina, *passim*). Hungary has adopted a decree¹⁷ on the labelling of GM-free food and feedstuffs when producers wish to indicate the GM-free nature of their produce (Hungary p. 16). This decree was enacted because it was felt that the EU obligation to label GM foods and feed under the 2003 Food and Feed Regulation and Traceability Regulation¹⁸ contained too many exceptions. According to the decree, a product is allowed to contain a maximum of 0.1% of a GMO authorised by the EU (which is the level that can be measured by current technologies). Fish, meat, milk or egg, and foods can be considered as GM-free only if the feed given to the animal meets the requirements of the decree on GM-free feed.

In the US, this interest is becoming wider and includes many products. Marketing claims include meat products that came from animals that did not receive hormones or beta agonists (US p. 6) or GM-free products. More importantly, the US Congress enacted the 2016 National Bioengineered Food Disclosure Standard (GM Disclosure Law), which requires labels for GM

¹⁴ Bologna, 24 November 2014. *Stop Food Waste – Feed the Planet: La Carta di Bologna contro gli Sprechi Alimentari*.

¹⁵ Law of 19 August 2016, No. 166. Provisions Concerning the Donation and Distribution of Food and Pharmaceutical Products for Social Solidarity and the Limitation of Waste (OJ 30 August 2016, No. 202).

¹⁶ European Parliament Resolution of 16 May 2017 on Initiative on Resource Efficiency: Reducing Food Waste, Improving Food Safety ([2016/2223\(INI\)](#)).

¹⁷ FM decree 61/2016 (IX.15.).

¹⁸ Respectively Regulation (EC) 1829/2003 of the European Parliament and of the Council of 22 September 2003 on Genetically Modified Food and Feed [2003] OJ L268/1; and Regulation (EC) 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the Traceability and Labelling of Genetically Modified Organisms and the Traceability of Food and Feed Products produced from Genetically Modified Organisms and amending Directive 2001/18/EC [2003] OJ L268/24. For more on GM foods, see L. Petetin, 'Precaution and Equivalence – The Critical Interplay in EU Biotech Foods' (2017) 42 *European Law Review* 831.

food¹⁹ (US p. 4). In Italy, there has been a rise in public demand to identify the origin of staple foods, including milk, pasta and rice (Italy p. 20). People are also interested in the quality, the ethics and the safety of the foods they eat. France has similar priorities with a nationwide debate on food (the 2017 *Etats Généraux de l'Alimentation*) that will bring change to the law and to agricultural production. However, when operations of processing occur in different countries, issues of labelling the origin of the food remain to be solved at EU level.

c. A Greener Agriculture

In multiple reports, the drive for a more sustainable agriculture can be felt (Bulgaria p. 2; Germany p. 34; Poland, *passim*). More generally, in France, the new article L. 110-1 II of the Environment Code establishes fundamental environmental principles to guide the drafting of further environmental norms: the principle of ecological solidarity; the principle of sustainable use; the complementarity between the environment, agriculture, aquaculture and sustainable forest management; and the principle of non-regression (France p. 6). In the Netherlands, a major legislative operation is underway to compile around thirty formal acts in one Code for the Physical Environment. The Zoning Act, the Environmental Management Act, Nature Conservancy Act are included as well as other acts on land use and agriculture. The Code will enter into effect in 2019 (Netherlands p. 1). In the US, the state of Maryland became the first state to restrict the application of neonicotinoids (insecticides that could harm beneficial insects, such as bees) by consumers, in the Pollinator Protection Act of 2016²⁰ and there is growing concerns in relation to the use of glyphosate (as in the EU) (US p. 11 and 12). Further, the UK and Poland call for a sustainable agriculture placing at its heart ecosystem services (UK p. 19; Poland p. 5).

5. Access to Land

Various Member States have established measures to restrict the acquisition of land by (foreign) companies to prevent land grabbing. Poland has modified its laws relating to the acquisition of farming land in Poland in the Act on the Agricultural System (AAS). The act restricts the acquisition of farming land exclusively to active farmers ('individual famers' in the text of the act) running family farm holdings.²¹ Prior to this reform, the provisions of the AAS led to speculative acquisitions and to land being sold to non-farmers. This resulted in a concentration of land ownership in a few hands, including foreign companies, not interested in agriculture production but property ownership (Poland p. 6). However, the current rules appear to make it difficult for young farmers to buy land due to the conditions established. The act defines 'individual farmers' as natural persons with qualifications specified in the AAS, who have been running a family farming holding of no more than 300 hectares for at least 5 years and residing throughout this period within the territory of the municipality in which at least one real property forming part of the farming holding is located (Poland p. 6). The act nonetheless provides for exceptions to the next of kin and family members more generally. Another

¹⁹ Public Law 114-216, 130 Stat. 834 (2016), amending the Agricultural Marketing Act of 1946 by adding Subtitles E and F, codified at 7 USC §§ 1639-1639c, §§ 1639i-1639j, § 6524. However, the USDA is in the process of setting the threshold for GMO labelling. A high threshold would lead to few products being labelled as containing GM ingredients.

²⁰ Maryland SB 198/HB 211, codified as Annotated Code of Maryland, §§ 5-2A-01 to 5-2A-05. Beginning 1 January 2018, only certified pesticide applicators, farmers using the pesticide for agricultural purposes, or veterinarians may use neonicotinoids.

²¹ Act of 14 April 2016 on Suspending the Sale of Real Properties included in the Agricultural Property Stock of the State Treasury and amending some other acts, which took effect on 30 April 2016.

exception exists if the buyer wants to establish a family farm for at least 10 years (Poland p. 7).

The EU Commission has launched infringement procedures against the land acquisition reforms in various Member States, including Hungary and Bulgaria (Bulgaria p. 1). In Hungary, a ban on legal entities owning land is central to the reform to ‘avoid the uncontrollable chain of ownership which would be in contradiction with keeping the population preserving ability of the country’.²² France has also enacted measures to prevent land grabbing on its territory. Recent laws ensure that land is not bought by companies only (France p. 1).²³ In Germany, land acquisition was also problematic because only big investors were purchasing land modifying the agricultural landscape. New governmental measures prevent the sale of land to big non-agricultural investors (Germany p. 10).

Land abandonment has become a salient problem in many countries across Europe (Spain; Germany; Italy). This phenomenon has many negative consequences ranging from the lack of intergenerational change (due to an ageing rural and farming population) to a lack of successors as well greater risks of fires in drier parts of Europe because of the lack of maintenance of the land. Less land being farmed means less land available to produce food, which is detrimental to food security.

In Spain, there is a lack of funds available to purchase land, especially for young farmers. Further, leasing agricultural land in Spain is too costly and the legal regimes are favourable to the owner. The role of banks in providing loans, especially to young entrants, should be developed and could provide impetus to intergenerational change. Also in Spain, 99% of farm successions are no longer used as farms. The land is kept by the family but not to farm. In Italy, a bank of agricultural land has been created to ensure the appropriate use of agricultural land and to facilitate the acquisition of land by young farmers (under 40 years old).²⁴ This data bank has been complemented with measures to encourage agricultural self-entrepreneurship and the establishment of young farmers, as well as some corresponding financial aid.²⁵ Further, Germany’s countryside is becoming increasingly deserted because of its lack of attractiveness and rural vitality.

6. Brexit and Agriculture

Brexit was identified as a current and future issue that ought to be addressed by the EU as well as the UK (Germany p. 40; Spain p. 6). In the UK, Brexit presents a ‘once-in-a-generation’ chance to renationalise rights previously exercised by the EU. This opportunity comes with challenges that need to be addressed to ensure a smooth transition between a pre-Brexit and post-Brexit UK. The repatriation of competences from the EU to the UK on matters of environmental protection and agriculture is attracting particular attention as these areas have been devolved to the Northern Ireland Assembly, the Scottish Parliament and the National Assembly for Wales. Currently, the devolved regions can set their own standards and

²² R. Anikó, ‘Topical Issues of the Hungarian Land-Transfer Law’, *CEDR Journal of Rural Law*, 2017/1, in press.

²³ Act 20 March 2017, No. 348.

²⁴ Act 28 July 2016, No. 154, especially Article 16.

²⁵ Ministerial Decree, No. 1192, 8 January 2016; and Ministerial Decree, No. 8254, 3 August 2016 (Avis n° 60690 du 10/08/2017 - Concernant les Caractéristiques, les Modalités et les Formulaires de Soumission des Demandes d'Accès aux Contrats de Filière et de District).

frameworks so long as they remain compliant with EU Law. After Brexit, divergences in standards between the four Nations of the UK could lead to problems, especially relating to the UK single/internal market as trade within the UK could be restricted. For the British Government, ensuring harmonisation and the absence of barriers to trade within the UK internal market is crucial.²⁶ Various bills (including one on agriculture) are in the process of being drafted to tackle these issues.

Another point of contention is how to support farmers once the application of the CAP comes to an end. The UK is moving towards a support system based on payments for ecosystem services (UK p. 19). However, the compatibility of this future framework with the Agreement on Agriculture of the World Trade Organization, especially whether such support would fall under the Green Box (as opposed to the Amber Box) is questioned. Currently, it appears that payments for ecosystem services could not fall under the definition of Annex 2 of the Agreement on Agriculture and be considered as Green Box subsidies (where received payments can be unlimited) (UK p. 17). This is problematic for the UK because if payments for ecosystem services were indeed Amber Box subsidies, they would automatically be considered as trade distorting and be subject to limits in the amount of payments allowed.²⁷

²⁶ L. Petetin (n 7).

²⁷ For more, please see L. Petetin, 'Post-Brexit Agricultural Support and the WTO: Using Both the Amber and Green Boxes?' *Brexit and Environment Network* (2018) <https://www.brexitenvironment.co.uk/2018/06/21/post-brexit-agricultural-support-wto-using-amber-green-boxes/>.