

Paper published originally on the Arkelton Centre web site in 2000,
<http://www.abdn.ac.uk/arkleton/>
and subsequently published as a chapter in Dalton et al, (Eds.); European Rural Policy at the
Crossroads, Selected Conference Papers, The Arkelton Centre for rural Development Research,
University of Aberdeen, Aberdeen, Scotland, 2003, ISBN: 0 902604 98 8



UNIVERSITY
of
ABERTAY DUNDEE

Dundee Business School

From Cork to GATT and beyond:
an analysis of the legal framework and constraints
of the evolving European Rural Policy

Maria O'Neill

Dundee Business School
University of Abertay Dundee
Bell Street
Dundee DD1 1HG

Conference:
European Rural Policy at the Crossroads,
The Arkelton Centre,
University of Aberdeen, Scotland.
July 2000

Abstract.

The Framework of EC Law

Subsidiarity

EC Rural Policy

The Legal Basis of Rural Policy

State Aids

Agriculture

EC Cultural Policy

Conclusion

Abstract

This paper proposes to look at the legal implications of the proposals outlined in the Cork Declaration, the implications on the Common Agricultural Policy on GATT 1994 accession, the impact of the European Regional Policy, and to examine possible avenues for development of a coherent legal structure for the European Rural Policy.

The Framework of EC Law

The law of the EC is based on the treaties,¹ and is supplemented by secondary legislation.² It comprises the first pillar of a three pillared structure referred to as the EU. As the EC is a legal entity³ which operates on the basis of the rule of law, all activities of the EC must be provided for firstly, by way of treaty, and then may be elaborated upon by way of secondary legislation. This created a supranational legal jurisdiction of EC law, which, as a result of European Court of Justice case law, is, in the case of conflict with national law, is supreme over national law of any Member State,⁴ with EC law being enforceable not only by the EC institutions, but also by all courts and tribunals in every member state.

The policies of the European Community have been classified into two groups,⁵ the principle aims and objectives of the EC,⁶ and “horizontal and flanking policies”, which is any other policy referred to in the treaties.⁷ The horizontal or flanking policies are subject to the principle of subsidiarity, which was introduced into the EC Treaty by the Maastricht Treaty in 1992.⁸ The Treaty of Rome, as amended by subsequent treaties, is classified as primary law, reflecting the amount of, and limits to, the sovereignty transferred from the Member States to the EC, with the secondary law of the EC, namely regulations, directives and decisions, relying on the provisions in the Treaties for their validity. While the

¹ Treaty of Rome, Single European Act, Merger Treaty, Maastricht Treaty, Amsterdam Treaty

² Regulations, Directives and Decisions.

³ Article 281 EC (Article 210 EC pre Amsterdam).

⁴ Case 6/64 *Costa v. ENEL* [1964] ECR 584.

⁵ Bull EC 10-1992, 121.

⁶ 1. the free movement of goods, persons, services and capital, 2. the development of a Common Commercial Policy, and, 3. the development of European Competition Law, 4. the Common Agricultural Policy, 5. the Common Fishery Policy, and 6. the Transport Policy.

⁷ “Introduction to the Law of the European Communities” 3rd edition, Ed. Laurence W. Gormley Kluwer 1998

⁸ Otherwise known as the Treaty on European Union 1992.

European Court of Justice has, at times, been imaginative in its interpretation of the provisions of the Treaty of Rome, it must still respect the limits of that Treaty. Only the Member States by way of an amending treaty, such as the Maastricht Treaty or the Amsterdam Treaty, can transfer further power to the EC institutions. This is important in this context as there is no reference to a “Rural policy” in current version of the Treaty of Rome, and this will pose a problem for the development of this policy area.

Subsidiarity

Subsidiarity is a term often used in the context of Rural Policy, however it would appear that the meaning of this word varies according to the context in which it is used. The legal concept of Subsidiarity is now enshrined, to the extent that it affects the EC, in Article 5.⁹ This article recognises that the Community must “act within the limits of the powers conferred upon it by the Treaty and the objectives assigned to it herein”. The article goes on to say, however, that “in areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of the scale of effects of the proposed action, be better achieved by the Community”. The issue of whether this article can be used effectively as a legal tool, and be pleaded in court, as opposed to an administrative or political tool, remains unresolved.

The concept of subsidiarity as referred to in the Rural Policy directive,¹⁰ at recital 14, would appear to be used in a different context. Here the term is used to refer to measures clearly adopted by the EC, as opposed to individual member states, but which in its operation by the EC, will operate from the bottom up, rather than from the top down, as evidenced in the operation of LEADER and LEADER II. Adopting the definition of Subsidiarity as utilised in Article 5 EC, measures pursuant to the EC Agricultural Policy, being a principal policy of the EC, can not be challenged on the basis that they, utilising Article 5 EC, should be taken by the Member States, rather than the EC. However, measures pursuant to a horizontal or flanking policy, such as Economic and Social Cohesion, or the Cultural policy, which will be referred to later in this paper, could be so challenged, and would have to satisfy the test of being a measure

⁹ Post Amsterdam.

¹⁰ Council Regulation (EC) No. 1257/99 OJ L EN 16080/2661999

whose objectives “cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”. This paper will argue that the current incarnation of the Rural Policy is overly Agricultural in orientation, to satisfactorily achieve the aims of the Cork Declaration. However, to the extent that Rural Policy currently operates out with the parameters of the CAP, and to the extent that it will be required to diversify its emphasis, in line with the statements in the Cork Declaration that “Rural Development must address all socio-economic sectors of the countryside” and that “Rural development policy must be multi-disciplinary in concept, and multi-sectoral in application” then the provisions of Article 5 EC will increasingly come into play.

EC Rural Policy

Upon examination of the EC treaty as amended there is no “Rural Policy”. There are, however, a number of policy areas which would deal with rural issues. These principally are the Common Agricultural Policy the Common Fisheries Policy, and the Policy on Economic and Social Cohesion. It is interesting to note that the Leader programme has been conducted pursuant to Article 8 Reg. (EEC) No 4256/88,¹¹ which deals with DGVI Financing of the CAP. The positioning of Rural funding of this type, under one of the “principal aims and objectives of the EC”, namely Agriculture, could, as referred to above, afford valuable protection to LEADER activities in the post Maastricht legal order, when other European harmonisation policies, such as European Corporate harmonisation, may fall foul of the subsidiarity provisions.¹²

This paper proposes to examine the possible routes that can be negotiated through the legal structure of the EC, in the development of a Rural policy in line with the vision set out in the Cork Declaration,¹³ not only during the time frame of LEADER III, but beyond, through the prism of a number of EC policies.

The Legal Basis of Rural policy.

¹¹ OJ L 374, 31/12/88, page 28.

¹² Maria O Neill “When European Integration meets Corporate Harmonisation” The Company Lawyer, June 2000

¹³ The European Conference on Rural Development, Cork, Ireland, 7th to 9th November, 1996, <http://www.rural-eurpe.aeidl.be>

The Cork declaration of 1996 heralded the advent of a European Rural Policy, which, after a variety of disjointed measures, led to Council Regulation (EC) No 1257/1999,¹⁴ (hereinafter referred to as the Rural Policy regulation), with the Regulation being somewhat limited in focus, with the emphasis being on agriculture and agri-industries. The Regulation takes as its legal basis Article 39(1) and 39(2),¹⁵ which set out the objectives and other considerations of the Common Agricultural Policy, and Article 130b EC,¹⁶ which deals with Economic and Social Cohesion. The first recital in the regulation reflects the heavy preponderance of agricultural issues addressed in the regulation when it states that “a common rural development policy should accompany and compliment the *other* (emphasis added) instruments of the common agricultural policy”.

The most interesting chapter from a non-agricultural perspective is chapter IX – which deals with the promotion and adaptation and development of rural areas. Among the measures to be dealt with under Article 33 of the directive are the development of basis services for the rural economy and population, the renovation and development of villages and protection and conservation of the rural heritage, the encouragement of tourism and craft industries, the protection of the environment in connection with agriculture, forestry and landscape conservation as well as with the improvement of animal welfare, and financial engineering.

State Aids

With the Cork declaration making the issue of state aids central to Rural policy, by stating that its drafters are “persuaded that the concept of public financial support for rural development... is increasingly gaining acceptance”, the legal position with regard to state aids must therefore be examined. It should, in addition, be noted that two of the 4 main groups of state aid are regional aid and sectoral aid,¹⁷ and that there is a high level of co-ordination of the regional aids policy and the EC policy on Economic and Social cohesion.¹⁸

¹⁴ on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations, OJ L EN, 16080/2661999. This was subsequently elaborated upon by Commission Regulation (EC) No. 1750/1999, of the 23rd July 1999 – OJ L 214, 13, 8, 99 page 31 – 52.

¹⁵ Article 33 EC post Amsterdam.

¹⁶ Article 159 EC post Amsterdam.

¹⁷ as opposed to export aid, aid to specific companies, rescue aid, etc.

¹⁸ Op. Cit. Footnote no. 7.

The EC policy on state aids, which has as its principle the financing of capital expenditure only, not revenue expenditure, is allied to one of the most important policies of the EC, the Competition policy, which is enshrined in Articles 81 and 82 EC.¹⁹ These two articles deal with anti - competitive practices and abuse of dominant positions respectively. While it could be argued that these Articles would be unlikely to be relevant to Rural policy issues, the same could not be said about their accompanying provisions, Articles 87 to 89 EC²⁰ which deal with state aids.

The definition of state aid in Article 87(1) EC is the “creation of an artificial advantage of whatever nature which costs the state money”,²¹ in other words, any financing out of public funds, howsoever accounted for. Aid can be obtained either directly from the state, or indirectly, as a result of state policies, or pressure on private bodies by public bodies to give assistance. Concern in particular would arise where measures “distort competition on the common market and unfavourably affect trade between Member States”.²²

In order to provide for the Common organisations in the operation of the CAP, exceptions were drafted into the Treaty and subsequent secondary legislation allowing for exceptions in the application of the Competition policy and the State aid provisions in Agriculture. Article 36 of the EC Treaty²³ provides a qualification in the area of Agriculture for the application of the EC treaty provisions on Competition,²⁴ whereby “the provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council”. The provisions dealing with Rural policy which do not relate directly to agriculture would not be covered by Article 36 EC, and would therefore be subject, not only to the full rigours of the Competition provisions, but also to the accompanying state aid provisions enshrined in Articles 87 to 89 EC.²⁵ In addition, Article 51 of the Rural Policy Regulation²⁶ states that “Articles 87 to 89²⁷ of the Treaty shall apply to aid granted by Member States for measures to support rural development”.

¹⁹ post Amsterdam. Formerly Articles 85 and 86 EC.

²⁰ Formerly Articles 92 to 94 EC.

²¹ Op Cit. Footnote no. 7.

²² Ibid.

²³ Article 42 post Amsterdam.

²⁴ Enshrined in Articles 81 to 86 EC, numbered Articles 85 to 90 pre Amsterdam.

²⁵ Articles 92 to 94 EC pre Amsterdam.

²⁶ Council Regulation (EC) No. 1257/99, OJ L EN, 16080/2661999.

²⁷ Using post Amsterdam numbering.

As the Commission has deduced state aid provisions, subject to any specific exceptions, are fully applicable to Agricultural²⁸ and rural sector activities “with the exception of those aids which are specifically aimed at the limited number of products which are not covered by common organisations of the market”,²⁹ further examination of the State aids provisions is required. Allied to this the fact that the “de minimis”,³⁰ rule³¹ does not apply to agricultural aid,³² and the financing of any rural policy activity by the state becomes a delicate operation. In addition, it should be noted that aids to promote diversification activities, which are within the Rural Development regulation, but which are not concerned with the “the scope of the production, processing and marketing of Annex I³³ agricultural products,”³⁴ are to be treated as if they are outside the specific agricultural provisions, and are to be treated as mainstream state aids, thereby benefiting from the “de minimis” rule.³⁵

Article 87 EC³⁶ provides that state aids which “threaten to distort competition by favouring undertakings or the production of certain goods shall, insofar as it affects trade between Member States” is “incompatible with the common market”. Certain types of aid, as specified in Article 87 (3) *may* be considered compatible.³⁷ These include

- (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious unemployment;
- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

²⁸ Regulation 26/62 OJ 1962, 993, provides that the competition rules and state aid rules are to apply to the Agricultural sector except where a common organisation operates. These state aids may however be subject to Articles 88(1) and (3), which deal with constant review by the Commission, and the informing of the Commission. The Commission then “cannot oppose the granting of such aids, although it may submit its comments” on such aid. “Information from the Commission – Community Guidelines for State aid in the agriculture sector, OJ C 28, 1/2/2000, page 2 to 22.

²⁹ Information from the Commission – Community Guidelines for State aid in the agriculture sector OJ C 28, 1/2/2000, page 2 to 22

³⁰ De minimus non curata lex – the law does not cure minor breaches.

³¹ Commission Notice on the de minimis rule for State aid (OJ C, 68, 6.3.1996, page 6

³² Information from the Commission – Community Guidelines for State aid in the agriculture sector OJ C 28, 1/2/2000, page 2 to 22

³³ Annex 1 of the EC Treaty.

³⁴ not being covered by the Commission Guidelines on State Aids in the Agriculture sector, OJ C 28, 1/2/2000, page 2 to 22.

³⁵ Op. Cit. Footnote no. 32.

³⁶ Article 92 EC pre Amsterdam.

³⁷ Article 87 (3) EC.

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest.

The provisions in Article 87(3) EC requires a “discretionary evaluation by the Commission”³⁸ as to whether the relevant aid is compatible with the common market. These provisions would appear to give some prospects for the deepening and further development of the Rural policy. Article 87(3)a is quite limited in its geographical application, and could only be applied to a restricted number of rural areas that fall within specific economic criteria. If the conditions are met it should still be remembered that regional aid in sectors where there is over-capacity will not normally be approved by the Commission.³⁹

Article 87(3)c could have a broader application geographically than Article 87(3)a, particularly in light of the fact that this particular exception has been interpreted in case law⁴⁰ as applying more widely than Article 87(3)a. So long as this aid “does not adversely affect trading conditions to an extent contrary to the common interest”.⁴¹ The exception provided in Article 87(3)d, dealing with Culture, should also be examined, particularly in light of the fact that the Commission itself has stated that it “takes a favourable view of such aid”.⁴² The issue of culture and the EC cultural policy is worth examining in the context of Agriculture, with it being possible for similar parallels to be made for the non- Agricultural provisions of the EC Rural policy.

Agriculture

Conscious that the Common Agricultural Policy will have to adapt to new realities (Cork Declaration).

While the Cork declaration recognises that “Rural development policy must be multi-disciplinary in concept, and multi-sectoral in application”, it does recognise that agriculture and forests have a “a strong influence on the character of European landscapes”. It is the issue of landscape and land use, pursuant to the CAP that I wish to examine first, together with the increasing shift from “from price support to direct

³⁸ Op Cit. Footnote no. 7.

³⁹ Ibid.

⁴⁰ Case 248/84 *Germany v. Commission* [1987] ECR 4013 at 4042.

⁴¹ Op Cit. Footnote no. 7.

⁴² Op Cit. Footnote no. 32.

support”, together with the opportunities for the development of rural policies that this provides.

The Common Agricultural Policy has gone through many changes over the years. The introduction under the 1992 Mac Sharry⁴³ reforms of direct payments and “accompanying measures.”⁴⁴ With the future direction of the CAP coming under pressure from internal financial pressure, the pressures of future eastern enlargement of the EC, and legally binding obligations to the WTO, pursuant to GATT 1994, the CAP has very limited room for manoeuvre.

While the WTO Agreement on Agriculture is quite complex, and the legal relationship between the WTO and the EC can at times be problematic, the EC has recognised in a series of cases that the provisions of GATT are legally binding on the EC.⁴⁵ The GATT 1994 chapter on Agriculture classifies agricultural payments into blue and green boxes. Green box status, which is encouraged under GATT rules, is granted to fully decoupled payments.⁴⁶ The green box payments are “de-coupled from production levels or movements in farm prices”, are deemed not to distort international trade, and are therefore permissible. In contrast, blue box payments are given a temporary exemption from the general rule under GATT that trade distorting measures, classified in terms of aggregate measures of support (AMS)⁴⁷ must increasingly be abolished. Blue box payments are typically direct compensation payments to farmers for the reduction in the guaranteed prices for produce. This blue box exemption is expected to apply only as an interim measure, with the expectation that the long term strategic planning of CAP would only provide for green box (fully decoupled) payments. This legal obligation to the WTO, while a cause for concern for traditional Agriculturists, could prove an ideal opportunity for the further development of an EC Rural Policy, as it necessitated further development of the aforementioned direct payments and accompanying measures, which have already resulted in LEADER and LEADER II. Recognising the Cork Declaration’s statement that “Policies should promote rural

⁴³ EC Agricultural Policy for the 21st Century: The 1992 CAP Reforms; European Economy, European Commission DG for Economic and Financial Affairs Reports and Studies, No. 4 1994.

⁴⁴ which for the most part were 50% funded (75% funded in Objective 1 regions) from the CAP budget.

⁴⁵ To include *International Fruit Company N.V. and others v. Productuschap Voor Groenten en fruit (No 3)* Case 21-24/72.

⁴⁶ Defined in Article 13 of the Treaty Texts.

⁴⁷ A member shall not be required to include in the calculation of its Current Total AMS support payments that (i) are product specific, if they do not exceed 5% of the value of production of that commodity, and (ii) non product specific support where same do not exceed 5% of the value of the country’s total agricultural production, Article 6(4) a. For developing countries that de minimis level is 10% and specified agricultural input subsidies are excluded from the AMS (Articles 6.2 and 6.4).

development which sustains the quality and amenity of Europe's rural landscapes", the conjunction between EC Agricultural Policy and EC Cultural Policy is worth examining.

EC Cultural Policy

The EC policy on Culture, which was inserted into the EC Treaty by the Maastricht Treaty, is dealt with in Article 151 EC,⁴⁸ with the Commission stating that the aims of the policy must be to "preserve Europe's past by helping to conserve and increase awareness of our common cultural heritage in all its forms."⁴⁹ How far this policy can be stretched is a moot point. Urban landscape, in the guise of architecture, has been recognised as being protected by cultural policy, with the Commission stating that

"architectural and cultural heritage is of fundamental importance for European culture. It reflects both the different stages in the development of our civilisation and the various expressions of our identity. It is both irreplaceable and vulnerable and must be preserved for future generations, providing as it always has done a constant source of inspiration for contemporary creativity".⁵⁰

Surely the rural landscape, with its roots buried deeper in the mists of time, has had a deeper impact on national and regional psyche should be equally recognised as meriting protection.

With a view to strengthening the provisions of Article 151 EC in its early years of development, it is worthwhile examining the development of EC's Environment policy. In the 1970's, in the absence of specific provisions in the original drafting of the EC treaty, justification for the Environmental policy was gained through utilising Article 2 of the EC Treaty which refers to both "a harmonious development of economic activities" and to "an accelerated raising of the standard of living". Equally the preamble of the Treaty refers to the need for "the constant improvement of the living and working conditions of their peoples."⁵¹ These provisions could also have a role to play in the development of the EC's Cultural policy.

⁴⁸ Which states that "The Community shall contribute to the flowering of the cultures of the Member States, which respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".

⁴⁹ Commission of the European Communities: New prospects for Community cultural action ((1992) COM 149 final, 29 April 1992), David Pollard and Malcolm Ross, European Community Law: Text and Materials: Butterworths 1994.

⁵⁰ Ibid.

⁵¹ Rural Politics Policies for Agriculture, Forestry & the Environment Michael Winter Routledge 1996 Protecting Landscapes, Habitats and Wildlife.

The Social Economische Radd⁵² (the SER), in its analysis of the CAP, has distinguished between the economic function of agriculture, which results in the production of directly marketable products, and, the aspect of agriculture most relevant to the culture argument, agriculture's nature and landscape function, which contributes to the proper management of the landscape and nature in rural areas.⁵³ The current CAP reforms, as outlined in Agenda 2000, continue to place the emphasis on production, with the fragile family farming economies of the arctic, sub-arctic and mountainous regions being treated quite harshly,⁵⁴ with "landscapes comprising hedge rows, stonewalls, ditches, the preservation of wet lands and peat bogs, which contribute valuable habitats for many birds, plants and other species",⁵⁵ being threatened by the current CAP model of economic farming.

While farming which falls under both of the classifications of the SER can benefit from general environmental policies⁵⁶ there is an argument to be proposed that those areas which cannot compete on the world market, while maintaining sustainable agriculture tactics should be, where appropriate, classified nature and landscape reserves, where public funding would be available to maintain landscape and habitats to the highest possible resource level,⁵⁷ with tapering modulation provisions for areas which can be semi-competitive on the world market.

Should a pure economic model of agriculture prevail in Europe, all be it with mechanisms in support of general environmental measures, then the flight from the land in marginal areas will continue, resulting in the abandonment of land use for agricultural purposes. As has been stated by the Commission, this can lead to pressure on landscape and its related bio-diversity.⁵⁸ The Commission has recognised that "a landscape can be regarded as a system comprising a specific geology, land use, natural and built features, flora and fauna, watercourses and climate," to which "should be added habitation patterns and socio-economic factors."⁵⁹

⁵² The Social and Economic Council of the Netherlands.

⁵³ <http://www.ser.nl/engels/adviezen/engels3.html>

⁵⁴ Resolution on a new strategy for agriculture in arctic regions OJ C 175, 21.6.99. 0027

⁵⁵ For the common good: redirecting the economy toward community, the environment, and sustainable future, Hermon E. Daly & John B. Cobb JR Beacon Press, Boston 1994.

⁵⁶ such as Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ L206, p.7, Council Directive 79/409/EEC on the Conservation of Wild Birds OJ L103 1979, and the legislation on water.

⁵⁷ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions Directions towards sustainable agriculture (1999/C 173/02 EN C 173/2 Official Journal of the European Communities 19.6.1999

⁵⁸ *ibid.*

⁵⁹ *ibid.*

Farming on a non intensive scale created many of the landscapes that now form part of national and regional psyche, but “the farmer who chooses economically efficient agricultural practice [...] finds that many traditional landscape features have to be sacrificed.”⁶⁰ If the landscape and biodiversity of Europe, which has been developed over many centuries giving rise “to a unique and semi-natural environment with a rich variety of species”⁶¹ is of value, and is to be preserved, even if only in the non-economically competitive regions, then agricultural activities must be encouraged to continue in a non-intensive manner, and the flight from the land must be stemmed.⁶²

Should such policies not be adopted by the EC, either under Agricultural policy or under Rural policy, then farming will ultimately decline in parts of our countryside to the extent that “scrub and forest encroach and the open landscape will disappear,”⁶³ and it will not be easily recoverable. The traditional free provision by the stewards of the land of environmental, social and amenities while pursuing agricultural production, may now require a valuation, and social compensation, in order to preserve these landscapes.⁶⁴

In recognition that EC environmental policies currently focus on “the prevention of pollution incidents and environmental disasters, and on resource issues rather than the protection of the environment on aesthetic or moral grounds”⁶⁵ the need for a general and coherent habitat and rural “living space” policy within the EC structure is evident. This could operate to compliment directives currently issued under the Environmental policy such as the Conservation of Wild Birds directive and the Habitats directive.⁶⁶ The Habitats directive has set up Special Areas of Conservation, which are defined as sites “of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration... of the natural

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² According to Laurent van Depoele, DG VI's Director of Rural Development, speaking at an Agra Conference in Brussels, June 1999, the active population engaged in agriculture is declining by 200,000 a year. From Wyn Grant's pages.

<http://members.tripod.com/~WynGrant/WynGrantCAPpage.html> .

⁶³ *ibid.*

⁶⁴ as has been recommended by the SER.

⁶⁵ *Ibid.*

⁶⁶ such as Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora, OJ L 206, p. 7, and Council Directive 79/409/EEC on the Conservation of Wild birds OJ L 103 1979, and the legislation on water.

habitats and/or populations...”⁶⁷ The current situation within EC Environmental policy is that the EC can designate areas not so designated under domestic legislation, and may provide finance “in some circumstances”.⁶⁸ It is the proposal of this paper that if these activities were combined with the CAP’s nature and landscape function, as identified by the SER, benefiting from the financial and management resources which will be freed as a result of the realignment of the CAP in line with GATT requirements, larger and better funded special areas of conservation could be established.

These new SER’s could be modelled on MAFF’s⁶⁹ Environmentally Sensitive Areas (ESA). This classification recognises that “particular farming regimes may be essential for environmental protection”, and requires in areas of national environmental significance that an ESA requires the “adoption, maintenance or extension of a particular form of farming practice”, where traditional farming practices are encouraged,⁷⁰ with the maintenance of landscape features such as hedges, ditches, woods, walls and barns.⁷¹

Utilising such a model many of the social and environmental problems of rural Europe could more effectively be addressed. Whether the aims and objectives of the current cultural policy were to be used, or whether a better legal structuring of objectives could be distilled from the current phrasing of the CAP, the Environmental policy, the Cultural policy, and perhaps of the general Social policy of the EC might be more effective would be a matter for the drafters of a future European Treaty.

In the interim the current cultural policy has proven to be quite robust despite its short life on the statute books. It has already proven to be a valid obstacle to free trade in films, in the cases of *Cinetheque*⁷² and *Federacion de Distribuidores Cinematograficos*.⁷³ The classification of SPA status on land has also been highly respected, as proven by the ECJ in its judgement in *Commission v. Germany (Leybucht Dykes)*⁷⁴ dealing with flood protection, where the ECJ “made it clear that general

⁶⁷ Rural Politics Policies for Agriculture, Forestry & the Environment; Michael Winter, Routledge, 1996, Protecting Landscapes, Habitats and Wildlife.

⁶⁸ Ibid.

⁶⁹ UK’s Ministry of Agriculture, Fisheries and Food.

⁷⁰ Op. Cit. Footnote no. 67.

⁷¹ Ibid.

⁷² Cases 60-61/84 *Cinetheque SA and Others v. Federation nationale des cinemas francais* [1985] ECR 2605, [1986] 1 CMLR 365.

⁷³ *Federacion de Distribuidores Cinematograficos v. Estaddo Expanol et Union de Productres de Cine y Television* 1993.

⁷⁴ Case 57/89 *Commission v. Germany (Leybucht Dykes)* [1989] ECR 2849.

economic and recreational interests do not allow for removal or destruction of SPA land”.⁷⁵

Conclusion

As is stated by the Cork Declaration, “rural areas – which are the home of a quarter of the population and account for more than 80% of the territory of the European Union – are characterised by a unique cultural, economic and social fabric, an extraordinary patchwork of activities, and a great variety of landscapes.” Unfortunately this “great patchwork of activities”, has yet to be recognised in EC policy. The current incarnation of the Rural Policy is narrow in its approach, and while it is limited legally in its possible scope, due to the lack of an explicit Rural policy in the EC treaty, with the potential for development of an integrated rural policy is not reflected in the overt acknowledgement by the Commission that rural development policy is to become the second pillar of the Common Agricultural Policy with the primary emphasis being on farming activities, but recognising the need to develop “alternative sources of income as an integral part of rural development policy”.⁷⁶ While the current legal framework provides constraints, it, if approached creatively, as has been done many times in the past by various EC institutions, amongst them the European Court of Justice, it can provide opportunities for future development.

⁷⁵ Ibid.

⁷⁶ Op. Cit. Footnote no. 32.