

RURAL DEVELOPMENT IN THE EUROPEAN COMMUNITY: CHARTING A NEW COURSE?

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1. INTRODUCTION

Following the Agenda 2000 reforms, rural development has become the “Second Pillar” of the Common Agricultural Policy.¹ The motivation for such a

policy shift had been clearly articulated in the Cork Declaration of 1996.¹ This recited that rural areas were still the home of a quarter of the population of the European Union and accounted for more than eighty percent of its territory.² It also emphasised that rural areas were “characterised by a unique cultural, economic and social fabric, an extraordinary patchwork of activities, and a great variety of landscapes (forests and farmland, unspoiled natural sites, villages and small towns, regional centres, small industries).”³ The approach advocated was that “[s]ustainable rural development must be put at the top of the agenda of the European Union.”⁴

In this context, three preliminary matters may be considered. First, as indicated, rural development is closely allied to notions of sustainability. It fits well, therefore, into the more general strategy for sustainable development agreed at the Göteborg Summit of June 2001. Indeed, as stated by Commissioner Fischler, again in 2001, “[s]ustainability’ has become the key word in our policy making. It is how we hope to ensure that our agricultural systems remain viable for future generations to come.”⁵ Likewise, sustainable development remains central to the current Sixth Community Environment Action Programme.⁶

Secondly, rural development is also closely allied to the promotion of the “multifunctional” European Model of Agriculture, where agriculture gives rise to not just production, but also “joint products,” such as the protection of the environment and animal welfare.⁷ Thus, on commencement of the Mid-term Review

1. The “First Pillar” comprises market and price support and, increasingly, direct payments to farmers. *See, e.g.*, Commission of European Communities, Communication from the Commission to the Council and the European Parliament, Mid-term Review of the Common Agricultural Policy, COM (2002) 394 Final, at 9 (July 2002) [hereinafter Communication]. (“The Agenda 2000 reform implied a considerable overhauling, streamlining and consolidation of rural development policy in a single legal framework. It is now applicable in all rural areas of the Union and has become the second pillar of the CAP, accompanying and complementing changes in market and price policy.”).

2. European Commission, *The Cork Declaration: A Living Countryside* (Nov. 1996), http://europa.eu.int/comm/dg06/rur/cork_en.htm (last visited on May 27, 2008) [hereinafter *Cork Declaration*].

3. *Id.*

4. *Id.*

5. *Id.*; *see also* E.U. BULL., no. 11, at I. 3.95 (1996).

6. Dr. Franz Fischler, Member of the European Commission Responsible for Agriculture, Rural Development, and Fisheries, Food Industry Information Day, Speech/01/254, *Agriculture and Agri-food: A Clean Green Future* (May 31, 2001).

7. Commission Decision No. 1600/2002/EC, O.J. L 242/1 (2002) (the Sixth Community of the European Parliament and of the Council Environment Action Programme lasts for a period of ten years from 22 July 2002).

8. *See generally* MICHAEL CARDWELL, *THE EUROPEAN MODEL OF AGRICULTURE* (2004). For a working definition of “multifunctionality,” *see* ORGANISATION FOR ECONOMIC CO-

of the Common Agricultural Policy in July 2002, it was reaffirmed that, “[a]longside market measures and the elements of a competitive European agriculture, rural development offers, in particular, a specific territorial dimension to address the varied needs of the rural world, together with the expectations of today’s society as regards quality, food safety and the environment.”⁸ That said, it may be emphasised that the European Community has stopped short of replacing the Common Agricultural Policy with a “[c]ommon [a]gricultural and [r]ural [p]olicy,” or even a “rural policy.”⁹ Agriculture remains at the heart of the European Model of Agriculture and, notwithstanding the enhanced role of rural development, it is still to “accompany and complement” market and income support policies, rather than have a life of its own.¹⁰

Thirdly, as affirmed in the Cork Declaration, Europe is understood to enjoy the benefit of high value landscape and a rich rural heritage;¹¹ in this respect, a clear attempt is made to draw distinctions between Europe and competitors in other parts of the globe.¹² Moreover, such distinctions have been highlighted in the context of the Doha Development Round negotiations. For example, in a discussion paper submitted to the World Trade Organization, the European Community asserted that, in 2000, even in the most economically developed countries, there should be no automatic discounting of “the potential role of farming in rural development[,]” since different, but nonetheless valid, policy responses may be found.¹³

OPERATION AND DEVELOPMENT, MULTIFUNCTIONALITY: TOWARDS AN ANALYTICAL FRAMEWORK 7 (2001): “*i*) the existence of multiple commodity and non-commodity outputs that are jointly produced by agriculture; and *ii*) the fact that some of the non-commodity outputs exhibit the characteristics of externalities or public goods, with the result that markets for these goods do not exist or function poorly[.]”

9. See Communication, *supra* note 1, COM (2002) 394 Final, at 9.

10. See Council Resolution of 18 June 1998 on the Reform of the Common Agricultural Policy, adopted by the European Parliament, O.J. C 210/180, at 184 (1998)(concerning reform of the Common Agricultural Policy and advocating for a common agricultural and rural policy).

10. Council Regulation (EEC) 1698/2005, O.J. L 277/1, at 1 (2005).

11. See Cork Declaration, *supra* note 2 (Nov. 1996); see also E.U. BULL., no. 11, at I. 3.95 (1996).

12. See, e.g., EUROPEAN COMMISSION, THE FUTURE FOR EUROPEAN AGRICULTURE, http://europa.eu.int/en/comm/dg06/ag2000/agprop/mot_en.htm (last visited on June 3, 1998). However, it may be somewhat simplistic to think that the European Community alone possesses such landscape and heritage. See, e.g., Robert A. Coulthard, *The Changing Landscape of America’s Farmland: a Comparative Look at Policies which Help Determine the Portrait of Our Land - Are There Lessons We Can Learn from the EU?* 6 DRAKE J. AGRIC. L. 261 (2001).

13. See WTO Committee on Agriculture, *Note on Non-Trade Concerns*, G/AG/NG/W/36 (Sept. 22, 2000) (noting discussion paper titled *Agriculture’s Contribution to Rural Development*) [hereinafter *Note on Non-Trade Concerns*].

Against this background, three aspects of European Community rural development policy may be examined. (1) the origins of the policy in the EC Treaty and early legislation; (2) the current legislative framework; and (3) two key issues which continue to cause controversy: the extent to which rural development as the Second Pillar of the Common Agricultural Policy remains “secondary,” and the extent to which the effectiveness of rural development measures is impeded by their uneven implementation across the Member States.

2. RURAL DEVELOPMENT IN THE EC TREATY AND EARLY LEGISLATION

2.1. *The EC Treaty*

Rural development as such is not featured among the objectives of the Common Agricultural Policy set out in the Treaty establishing the European Community.¹⁴ Interestingly, notwithstanding its becoming the “Second Pillar” of the Common Agricultural Policy, this will remain the case even if the Treaty of Lisbon¹⁵ is ratified. However, recognition of social and regional dimensions to the Common Agricultural Policy was to be found *ab initio*. Under Article 39(2) (now Article 33(2) of the EC Treaty) EC, it was stated that:

[i]n working out the common agricultural policy and the special methods for its application, account shall be taken of:

14. See Treaty establishing the European Community, art. 33(1) (formerly art. 39(1)) [hereinafter EC Treaty]. For the consolidated version of the EC Treaty, see O.J. C325/33 (2002). Art. 33(1) reads specifically:

The objectives of the common agricultural policy shall be:

- (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
- (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
- (c) to stabilise markets;
- (d) to assure the availability of supplies;
- (e) to ensure that supplies reach consumers at reasonable prices.

15. See Treaty of Lisbon, O.J. C 306/1 (2007) (amending the Treaty on European Union and the Treaty Establishing the European Community).

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

That said, the European Community contribution to expenditure on structural changes was less than that spent on market and price support¹⁶ and expenditure on structural adjustments was to be financed from the Guidance Section of the European Agricultural Guidance and Guarantee Fund (as opposed to the far larger Guarantee Section, which was to finance export refunds and intervention on the domestic markets).¹⁷

2.2. *Structural Directives*

Despite these relatively hopeful provisions in the EC Treaty, rural development proved a poor relation of price and market support.¹⁸ It was not until 1972, some fifteen years after the signing of the Treaty of Rome, that the first structural legislation of real significance was enacted.¹⁹ This legislation comprised the three “Structural Directives:” Council Directive 72/159/EEC on the modernization of farms;²⁰ Council Directive 72/160/EEC concerning measures to encourage the cessation of farming and the reallocation of utilised agricultural area for the purposes of structural improvement;²¹ and Council Directive 72/161/EEC concerning the provision of socio-economic guidance for and the acquisition of occupational skills by persons engaged in agriculture.²² Nonetheless, even this legislation marked a considerable retreat from the earlier proposals of the Mansholt Plan, which had advocated wholesale consolidation of agricultural holdings,²³ with uneven effectiveness. For example, in 1981 only 16,926

16. Council Regulation No. 25, art.5(2), O.J. L 991 (1962).

17. Council Regulation No. 17/64/EEC, arts.1(2)(3) & 11, O.J. L 586 (1964).

18. *See, e.g.*, Opinion of Advocate General Capotorti, *Bela-Muhle Josef Bergmann KG v. Grows-Farms GmbH & Co.*, Case 114-76, [1977] E.C.R. 1211.

19. FRANCIS G. SNYDER, *LAW OF THE COMMON AGRICULTURAL POLICY* 159-66 (1985).

20. Council Directive 72/159/EEC, O.J. L 96/1 (1972).

21. Council Directive No. 72/160/EEC, O.J. L 96/9 (1972).

22. Council Directive No. 72/161/EEC, O.J. L 96/15 (1972); *see generally, e.g.*, SNYDER, *supra* note 20 at 159-166 (describing the Structural Directives).

23. European Commission, Memorandum sur la Réforme de l’Agriculture dans la Communauté Économique Européenne, COM (68) 1000 (Sicco Mansholt was at that date the Commissioner for Agriculture).

development plans were approved throughout the European Economic Community under Council Directive 72/159/EEC. Further, the majority of these plans were approved in regions that were already wealthy.²⁴

2.3. Support for Mountain and Hill Farming and Farming in Less-Favoured Areas

Far more successful in terms of implementation was Council Directive 75/268/EEC, which made available support “for mountain and hill farming and farming in certain less-favoured areas.”²⁵ Whereas the Structural Directives had been more concerned with economic considerations, this reflected a more regional dimension. The Directive also reflected the importance of hill farming in the United Kingdom, which had recently acceded to the European Economic Community.²⁶ As recited in the Preamble, there was a need to take steps “[t]o ensure the continued conservation of the countryside in mountain areas and in certain other less-favoured areas . . . [with] farming [performing] a fundamental function in this respect.”²⁷ Nonetheless, economic considerations were also recognised, in that emphasis was placed on the maintenance of reasonable income for farmers.²⁸ Thus, the Directive introduced a system of compensatory allowances for permanent natural handicaps;²⁹ and, importantly, these were limited to farmers with at least three hectares of utilized agricultural area who undertook to pursue a farming activity in accordance with the aims of the Directive for a period of at least five years.³⁰ Further, the incentive to produce was maintained and even intensified by the calculation of compensatory allowances for cattle, sheep and goats by reference to livestock numbers.³¹

Over the years following the enactment of this Directive, a considerable proportion of the utilized agricultural area of the European Community became classified as ‘less-favoured.’³² By 1995 the proportion was some fifty-five percent (and ninety-eight percent in the case of Luxembourg).³³ Consequently, this

24. European Commission, *The Agricultural Situation in the Community: 1983 Report* (European Commission, Brussels: Luxembourg, 1984), 73.

25. Council Directive No. 75/268/EEC, O.J. L 128/1 (1975).

26. *Id.* (expressly recognizing that special conditions affect hill farming in the United Kingdom).

27. *Id.*

28. *Id.* O.J. L 128/1, at 2 (1975).

29. *Id.* arts. 5-7, O.J. L 128/1, at 4-5 (1975).

30. *Id.* art. 6, O.J. L 128/1, at 4 (1975).

31. *Id.* art. 7(1)(a), O.J. L 128/1, at 4-5 (1975).

32. See European Commission Directorate General for Agriculture, CAP 2000 Working Document: Rural Developments at 53 (July 1997) [hereinafter CAP 2000].

33. *Id.*

form of support has been persistently criticised both as lacking focus and as liable to boost production in areas ill-suited to more intensive agriculture.³⁴

2.4. *Environmental and Structural Initiatives*

By contrast, a more environment-oriented approach to rural development gained importance during the 1980s. Conservation issues broader than agriculture had already been recognised in, for example, the 1979 Wild Birds Directive.³⁵ Further, the 1986 Single European Act incorporated an environment Title into the EC Treaty itself.³⁶ More specifically in the context of agriculture, two initiatives may be mentioned. First, Council Regulation (EEC) 797/85, as well as consolidating existing legislation on agricultural structures, authorized Member States to introduce special national schemes in environmentally sensitive areas.³⁷ In return for national aid, the undertaking by the farmer was to “[s]tipulate at least that there [will] be no further intensification of agricultural production and that the stocking density and the level of intensity of agricultural production [will] be compatible with the specific needs of the area concerned.”³⁸ However, even this more avowedly environmental initiative also sought to ensure “an adequate income for farmers.”³⁹ In any event, the measure proved very popular and by 1994 in the United Kingdom alone some 2,206,099 hectares were designated as environmentally sensitive areas under the Agriculture Act of 1986.⁴⁰ Secondly, the damaging effect of compensatory allowances under Council Regulation (EEC) 75/268 were addressed by limiting their grant to not more than 1.4 live-

34. See, Court of Auditors, O.J. C 151/1 (2003)(concerning Rural Development: Support for Less-Favoured Areas, Together with the Commission’s Replies)[hereinafter SPECIAL REPORT 4/2003]. It may be noted that, commencing in the late 1970s, the regional dimension of rural development policy was reinforced by a series of targeted measures. These included the “Mediterranean Package,” (for example, a programme to accelerate the restructuring and conversion of vineyards in certain Mediterranean regions in France. See Council Directive 78/627/EEC, O.J. L 206/1 (1978) and also further promotion of less-favoured areas. (See e.g., Council Regulation EEC 1820/80, O.J. L 180/1 (1980) (“[t]he stimulation of agricultural development in the less-favoured areas in the West of Ireland”).

35. Council Directive 79/409/EEC O.J. L 103/1 (1979).

36. EC Treaty, *supra* note 15, arts. 130 r-t (now arts. 174-76).

37. Council Regulation (EEC) 797/85, art. 19, O.J. L 93/1, at 10-11 (1985).

38. *Id.* art. 19(3), O.J. L 93/1 (1985). The level of European Community funding was not, however, determined until 1987, when twenty-five percent reimbursement was instituted; see also Council Regulation (EEC) 797/85, art. 19, O.J. L 93/1 at 10-11 (1985), amended by Council Regulation (EEC) 1760/87, O.J. L167/1 (1987).

39. *Id.* art. 19(1), O.J. L 93/1, at 10 (1985).

40. MARTIN WHITBY, *What Future for ESAs?*, in INCENTIVES FOR COUNTRYSIDE MANAGEMENT: THE CASE OF ENVIRONMENTALLY SENSITIVE AREAS 254, 254 (Martin Whitby ed., 1994).

stock units per hectare of the total forage area of the holding.⁴¹ In addition, Member States could adjust the amount of the compensatory allowance in light of the use of agricultural practices compatible with the requirements for safeguarding the environment and preserving the countryside.⁴²

The 1980s also was the occasion for major reform of the “Structural Funds.”⁴³ This reform took place under Council Regulation 2052/88;⁴⁴ and established five priority objectives, two of which had the potential to impact heavily upon agriculture. Objective 1 was to “promot[e] the development and structural adjustment of regions whose development [was] lagging behind” and Objective 5, with a view to reform of the Common Agricultural Policy, was “(a) [to speed] up the adjustment of agricultural structures and (b) promot[e] the development of rural areas.”⁴⁵ Assistance from the Guidance Section of the European Agricultural Guidance and Guarantee Fund would be geared, in particular, to the following tasks:

- (a) strengthening and reorganizing agricultural structures, including those for the marketing and processing of agricultural and fishery products, including forestry products, especially with a view to reform of the common agricultural policy; (b) ensuring the conversion of agricultural production and fostering the development of supplementary activities for farmers; (c) ensuring a fair standard of living for farmers; [and] (d) helping to develop the social fabric of rural areas, to safeguard the environment, to preserve the countryside (inter alia by securing the conservation of natural agricultural resources) and to offset the effects of natural handicaps on agriculture.⁴⁶

It may be emphasized that, whereas in the case of market and price support, the European Community would fund all expenditure, even in Objective 1 regions the rate of European Community assistance was subject to a maximum of seventy-five per cent of total cost (while amounting, as a general rule, to at least fifty percent of public expenditure).⁴⁷ Besides, in other regions, the respective percentages fell to a maximum of fifty percent of total cost (and, as a general

41. Council Regulation (EEC) 797/85, art. 15(1)(a) O.J. L 93/1, at 9 (1985), *amended* by Council Regulation (EEC) 3808/89, O.J. L 371/1 (1989).

42. *Id.* art. 15(1)(c), O.J. L 93/1 at 10 (1985), *amended* by Council Regulation (EEC) 3808/89, O.J. L 371/1 (1989).

43. On the Structural Funds generally, *see* ANDREW EVANS, *THE E.U. STRUCTURAL FUNDS* (1999).

44. Council Regulation (EEC) 2052/88, O.J. L 185/9 (1988). For the detailed rules, *see* Council Regulation (EEC) 4253/88, O.J. L 374/1 (1988); and Council Regulation (EEC) 4256/88, O.J. L 374/25 (1988).

45. Council Regulation (EEC) 2052/88, art. 1, O.J. L 185/9, at 11 (1988).

46. *Id.* art. 3(3), O.J. L 185/9, at 12 (1988).

47. *Id.* art. 13(3), O.J. L 185/9, at 17 (1988).

rule, at least twenty-five percent of public expenditure).⁴⁸ This sent a message that structural measures enjoyed a less elevated status than market and price support. It also had the effect of rendering the level of support dependent upon the willingness of Member States to co-finance initiatives.⁴⁹

2.5. *The MacSharry Reforms*

The promotion of environmental protection was continued and substantially extended at the time of the 1992 MacSharry Reforms.⁵⁰ Although the keynote of these reforms was the commencement of the shift in support from the product to the producer, a further defining feature was the enactment of the “accompanying measures.”⁵¹ These were three in number: (1) Council Regulation (EEC) 2078/92 (Agri-environment Regulation) “on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside”;⁵² (2) Council Regulation (EEC) 2079/92 on “instituting a Community aid scheme for early retirement from farming[.]”⁵³ and (3) Council Regulation (EEC) 2080/92 on “instituting a Community aid scheme for forestry measures in agriculture.”⁵⁴ In particular, consistent with the requirements of the EC Treaty, as amended by the 1986 Single European Act, the Agri-Environment Regulation affirmed environmental protection to be “an integral part of the common agricultural policy[.]”⁵⁵ It was intended to promote a wide range of measures. The majority were directed to agricultural land use, such as extensification schemes and long-term set-aside of agricultural land for environmental purposes, but there was also encouragement of land management for public access and leisure activities and of appropriate education and training for farmers.⁵⁶ Importantly, emphasis was placed on multiannual zonal programs to “re-

48. *Id.*

49. *See id.* O.J. L 185/9, at 10 (1988) (noting that Community action was intended to be complementary to action by the Member States).

50. *See generally* WILLIAM NEVILLE & FRANCIS MORDAUNT, A GUIDE TO THE REFORMED COMMON AGRICULTURAL POLICY (Estates Gazette 1993); ROBERT ACKRILL, THE COMMON AGRICULTURAL POLICY 92 (Clive Archer, ed., 2000).

51. *See generally* CARDWELL, *supra* note 3, 48-50.

52. Council Regulation (EEC) 2078/92, O.J. L 215/85 (1992).

53. Council Regulation (EEC) 2079/92, O.J. L 215/91 (1992).

54. Council Regulation (EEC) 2080/92, O.J. L 215/96 (1992).

55. Council Regulation (EEC) 2078/92, O.J. L 215/85 (1992). For the policy background, *see, e.g.*, ALUN JONES & JULIAN CLARK, THE MODALITIES OF EUROPEAN UNION GOVERNANCE: NEW INSTITUTIONAL EXPLANATIONS OF AGRICULTURAL POLICY 33 (Gordon Clark et al, eds., 2001).

56. The full list of measures is set out at Council Regulation (EEC) 2078/92, art. 1, O.J. L 215/85, at 86 (1992), these being intended to promote:

flect the diversity of environmental situations, natural conditions and agricultural structures and the main types of farming practised, and Community environmental priorities.⁵⁷ In practice, this led to wide divergences in terms of implementation. Thus, between 1996 and 1997, Austria spent 801 million Ecus on agricultural environmental measures, whereas Spain spent only 72 million Ecus.⁵⁸ In itself, this need not be regarded as a weakness of the initiative, since the Agricultural Environment Regulation was determinedly “targeted” in its application.⁵⁹ However, as highlighted by the Court of Auditors, Austria already enjoyed well-established environmental protection legislation, which had produced benign farming practices, whereas Spain suffered from water pollution, over-grazing and soil erosion.⁶⁰ A partial explanation for this variation may be found in the willingness of Member States to incur national expenditure since, as with the Structural Funds, co-financing did apply (the European Community contribution being seventy-five percent in Objective 1 regions and fifty percent in other regions).⁶¹

2.6. *The Agenda 2000 Reforms*

As indicated, the next major advance in rural development policy took place under the Agenda 2000 reforms, which constituted rural development as the Second Pillar of the Common Agricultural Policy.⁶² This was not just a for-

(a) the use of farming practices which reduce the polluting effects of agriculture, a fact which also contributes, by reducing production, to an improved market balance; (b) an environmentally favourable extensification of crop farming, and sheep and cattle farming, including the conversion of arable land into extensive grassland; (c) ways of using agricultural land which are compatible with protection and improvement of the environment, the countryside, the landscape, natural resources, the soil and genetic diversity; (d) the upkeep of abandoned farmland and woodlands where this is necessary for environmental reasons or because of natural hazards and fire risks, and thereby avert the dangers associated with the depopulation of rural areas; (e) long-term set-aside of agricultural land for reasons connected with the environment; (f) land management for public access and leisure activities; (g) education and training for farmers in types of farming compatible with the requirements of environmental protection and upkeep of the countryside.

For the detailed rules, see Commission Regulation (EC) 746/96, O.J. L102/19 (1996).

57. Council Regulation (EEC) 2078/92, art. 3(1), (4) O.J. L 215/85, at 87 (1992).

58. Court of Auditors, O.J. C 353/1, at Table 7 (2000) (on “Greening the CAP” Together with the Commission’s Replies) [hereinafter SPECIAL REPORT 14/2000].

59. *Id.*, at ¶ 37.

60. *Id.*, at ¶ 38.

61. Council Regulation (EEC). 2078/92, art. 8, O.J. L.215/85, at 89 (1992).

62. The Agenda 2000 reforms were commenced by the European Commission policy document, Agenda 2000: For a Stronger and Wider Union, COM (97) 2000 E.U. BULL. Supp. no. 5, at 17 (1997). They were concluded at the Berlin Summit of March 24-25, 1999; see E.U. BULL.,

mal redesignation, since the Agenda 2000 reforms also saw the enactment of Council Regulation (EC) 1257/1999 (1999 Rural Development Regulation).⁶³ A key purpose of the 1999 Rural Development Regulation was to reorganize and simplify existing rural development instruments.⁶⁴ Accordingly, it brought together under one umbrella both existing structural and agri-environmental measures (including the “accompanying measures” as enacted under the MacSharry reforms).⁶⁵ The full suite of rural development measures extended to: (i) “investment in agricultural holdings[;]”⁶⁶ (ii) “setting up of young farmers[;]”⁶⁷ (iii) “training[;]”⁶⁸ (iv) “early retirement[;]”⁶⁹ (v) “less-favoured areas and areas with environmental restrictions[;]”⁷⁰ (vi) “agri-environment[;]”⁷¹ (vii) “improving processing and marketing of agricultural products[;]”⁷² (viii) “forestry[;]”⁷³ and (ix) “promoting the adaptation and development of rural areas[.]”⁷⁴

That said, the extent of the reform was arguably not so radical. In particular, it was expressly recognized that the 1999 Rural Development Regulation was based upon existing instruments.⁷⁵ Innovation was rather to be found in the method of implementation. As recited in the Preamble, “[g]iven the diversity of the Community’s rural areas, rural development policy should follow the principle of subsidiarity; whereas it should therefore, be as decentralised as possible and emphasis must be on participation and a ‘bottom up’ approach.”⁷⁶ This approach found concrete expression in rural development plans. They were to be drawn up at the geographical level deemed to be most appropriate, their preparation to be carried out by the competent authorities designated by the Member State.⁷⁷ After consultation at the appropriate territorial level, the rural develop-

no. 3 (1999). *See generally, e.g.,* ACKRILL, *supra* note 51, 115-31; and CARDWELL, *supra* note 8, 57-129.

63. Council Regulation (EC) 1257/1999, O.J. L 160/80 (1999). For the detailed rules, *see* Commission Regulation (EC) 445/2002, O.J. L 74/1 (2002).

64. Council Regulation (EC) 1257/1999, O.J. L 160/80, at 80 (1999).

65. *See id.* art. 1, O.J. L 160/80, at 84 (1999).

66. *Id.* arts. 4-7, O.J. L 160/80, at 85-86 (1999).

67. *Id.* art. 8, O.J. L 160/80, at 86 (1999).

68. *Id.* art. 9, O.J. L 160/80, at 86 (1999).

69. *Id.* arts. 10-12, O.J. L 160/80, at 87-88 (1999).

70. *Id.* arts. 13-21, O.J. L 160/80, at 88-90 (1999).

71. *Id.* arts. 22-24, O.J. L 160/80, at 90 (1999).

72. *Id.* arts. 25-28, O.J. L 160/80, at 90-91 (1999).

73. *Id.* arts. 29-32, O.J. L 160/80, at 91-93 (1999).

74. *Id.* art. 33, O.J. L 160/80, at 93 (1999).

75. *Id.* O.J. L 160/80, at 80 (1999).

76. *Id.*, O.J. L 160/80, at 81 (1999). On the principle of subsidiarity generally, *see, e.g.,* ANTONIO ESTRELLA, *THE EU PRINCIPLE OF SUBSIDIARITY AND ITS CRITIQUE* (Paul Craig & Grainne de Búrca eds., 2002).

77. Council Regulation (EC) 1257/1999, art. 41, O.J. L 160/80, at 95 (1999).

ment plan was then to be submitted by the Member State to the European Commission.⁷⁸ A further innovation was that the rural development plans were to cover a substantial period, seven years as from 1 January 2000.⁷⁹

This extended horizon fitted well with the overall financial perspective for the period 2000-2006, as agreed at the Berlin Summit.⁸⁰ Yet, although rural development was elevated to the status of the Second Pillar of the Common Agricultural Policy, it remained far from equal to the First Pillar in terms of expenditure.⁸¹ Notwithstanding increments over the period 2000-2006, the maximum amount that could be devoted to rural development and ancillary measures in 2006 would be only 4.370 million Euros, as opposed to 41.660 million Euros on other Common Agricultural Policy costs.⁸² As stated by Commissioner Fischler, "rural development represents 10% of the budget of the CAP. This is a good start, but only a starting point."⁸³ Further, although under the Agenda 2000 reforms Member States were granted authority to transfer a proportion of funds from the First Pillar to the Second Pillar, there was little appetite for such "modulation."⁸⁴ The option was exercised by few Member States⁸⁵ and, even where it was exercised, no Member State came close to the maximum permitted rate, fixed at twenty percent.⁸⁶ Thus, in the United Kingdom, where almost uniquely government institutions greeted this initiative with enthusiasm, the rate was only to rise to 4.5% for 2005 and 2006.⁸⁷

78. *Id.* art. 41(1), O.J. L 160/80, at 96(1999).

79. *Id.* art. 42, O.J. L 160/80, at 96 (1999); *See* E.U. BULL., no. 3 (1999).

80. European Commission Directorate, *The Common Agricultural Policy: 1999 Review*, 8 (1999).

81. *Id.*

82. *Id.* ¶ 23.

83. Dr. Franz Fischler, Member of the European Commission Responsible for Agriculture, Rural Development and Fisheries, *Putting Our Ideas into Practice: Agricultural Policy and Natura 2000* (April 19, 2002).

84. Council Regulation (EC) 1259/1999, art. 4., O.J. L 160/113, at 114-115 (1999).

85. The Member States where modulation was implemented were: Germany, Portugal, the United Kingdom and, temporarily, France.

86. Council Regulation No. 1259/1999, art. 4, O.J. L 160/113, at 114-115 (1999).

87. *See* The Common Agricultural Policy Support Schemes (Modulation) Regulations, 2000, S.I. 2000/3127 (Eng.); The Common Agricultural Policy Support Schemes (Modulation) Regulations (Scotland), 2000, S.S.I. 2000 /429 (2000); The Common Agricultural Policy Support Schemes (Modulation) Regulations (Wales), 2000 W.S.I. 2000/3294 (W.216) The Common Agricultural Policy Support Schemes (Modulation) Regulations (Northern Ireland), 2000 S.R. 2000/346. The influential Policy Commission on the Future of Farming and Food had advocated a ten percent rate as from 2004, but this proposal was not adopted. *See* POLICY COMMISSION ON THE FUTURE OF FARMING AND FOOD, *FARMING AND FOOD: A SUSTAINABLE FUTURE* 77 (2002).

2.7. *The Mid-term Review*

The 1999 Rural Development Regulation was itself materially amended by the Mid-term Review of the Common Agricultural Policy, initiated in July 2002.⁸⁸ Nonetheless, these amendments appeared minor as compared to reform of support to farmers under the First Pillar of the Common Agricultural Policy. Franz Fischler, the Commissioner for Agriculture, Rural Development and Fisheries, definitely saw the central plank of the Mid-term Review to be the consolidation of most direct payments into the “Single Farm Payment.”⁸⁹

More precisely, the 1999 Rural Development Regulation was expanded by the addition of two new chapters. One provided “[s]upport to help farmers to adapt to demanding standards based on [European] Community legislation in the fields of the environment, public, animal and plant health, animal welfare and occupational safety. . .”⁹⁰ The other provided “[s]upport for agricultural production methods designed to improve the quality of agricultural products and for the promotion of those products. . .”⁹¹ Two further initiatives may also be mentioned. First, animal welfare had already acquired heightened status within the multifunctional European Model of Agriculture, and, indeed, the 1997 Treaty of Amsterdam had added to the EC Treaty a Protocol on Protection and Welfare of Animals.⁹² Consistent with this, the Mid-term Review amended the 1999 Rural Development Regulation so as to provide support to farmers who gave animal welfare, as well as agri-environmental, commitments for at least five years.⁹³ Secondly, the amount of funding available for the Second Pillar was boosted by the introduction of compulsory (as opposed to the earlier voluntary) modulation.⁹⁴ This would commence at the rate of three percent in 2005, rise four per-

88. The reform process was commenced with issue of the Communication, *supra* note 1, COM (2002) 394 Final.

89. See, e.g., Dr. Franz Fischler, Member of the European Commission Responsible for Agriculture, Rural Development and Fisheries, CAP Reform, What Relevance for Cancun? (July 28, 2003).

90. Council Regulation (EC) 1257/1999 art. 21(a), O.J. L 160/ 80 (1999), amended by Council Regulation (EC) 1783/2003, O.J. L 270/70 (2003).

91. *Id.* art. 24a, O.J. L270/70 (2003), amended by Council Regulation (EC) 1783/2003, O.J. L270/70 (2003).

92. See generally, e.g., Tara Camm & David Bowles, *Animal Welfare and the Treaty of Rome - a Legal Analysis of the Protocol on Animal Welfare and Welfare Standards in the European Union*, 12 J. Envtl. L. 197 (2000). But see *Jippes v. Minister van Landbouw, Natuurbeheer en Visserij*, Case 189/01, [2001] E.C.R. I-5689, at I-5718 (where the European Court of Justice held, in part, that the Protocol did not lay down “any well-defined general principle of Community law which is binding on the Community institutions”).

93. Council Regulation (EC) 1257/1999, arts. 22-24, O.J. L160/80 (1999), amended by Council Regulation (EC) 1783/2003, O.J. L 270/70 (2003).

94. See JOSEPH A. McMAHON, *EU AGRICULTURAL LAW* 258 (2007).

cent in 2004 and then remain at five percent from 2007 to 2012;⁹⁵ and it was estimated that some 1.2 billion Euros per annum would be made available to finance rural development once the five percent rate was reached.⁹⁶

3. THE CURRENT LEGISLATIVE FRAMEWORK

3.1. Introduction

With the First Pillar of the Common Agricultural Policy having been fundamentally reformed by the Mid-term Review, there was a switch in policy focus towards rural development.⁹⁷ Some urgency was lent to the task by enlargement of the European Union, since farming and forestry were of substantially greater importance in the Central and Eastern European Countries than in the fifteen “old” Member States.⁹⁸ Thus, taking into account the twenty-five Member States of the European Union, prior even to the accession of Bulgaria and Romania, over half the population lived in rural areas, which covered ninety percent of the territory.⁹⁹ In addition, there was identified a demonstrable need to streamline implementation of rural development measures (an imperative also identified in the United States).¹⁰⁰ As stated by the European Commission, “[t]he large number of programmes, programming systems and different financial management and control systems in the current programming period [2000 to 2006] have considerably increased the administrative burden for the Member States and the Commission and decreased the coherence, transparency and visibility of rural development policy.”¹⁰¹ Accordingly, 2005 saw the enactment of a single funding and single programming framework under Council Regulation (EC) 1290/2005 on the financing of the Common Agricultural Policy¹⁰² as well as the enactment of a new rural development regime under Council Regulation (EC)

95. Council Regulation (EC) 1782/2003, art. 10, O.J. L 270/1 (2003).

96. Dr. Franz Fischler, Member of the European Commission Responsible for Agriculture, Rural Development and Fisheries CAP Reform (July 9, 2003).

97. On the current legislative framework generally, *see, e.g.,* MCMAHON, *supra* note 95, at 266-271.

98. On eastward enlargement generally, *see e.g., id.* at 246-250.

99. European Commission, Proposal for a Council Regulation on Support for Rural Development by the European Agricultural Fund for Rural Development (EAFRD), COM (2004) 490 Final, at 2 (July 2004) [hereinafter Rural Development Proposal]; *see also* E.U. BULL., Supp. no. 5, at 28 (1997) (noting earlier that one consequence of Eastward enlargement to be that the agricultural workforce would at least double).

100. *See, e.g.,* CATHERINE BERTINI ET AL., MODERNIZING AMERICA’S FOOD AND FARM POLICY: VISION FOR A NEW DIRECTION, 55-56 (2006).

101. Rural Development Proposal, *supra* note 100, COM (2004) 931 Final, at 3.

102. *See* Council Regulation (EC) 1290/2005, O.J. L 209/1 (2005).

1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).¹⁰³ Both Regulations came into effect (subject to limited exceptions) as from January 1, 2007.¹⁰⁴ A matter of some importance is that they form part of a larger drive to simplify the law of the Common Agricultural Policy, a defining feature of the policy agenda of Commissioner Fischer Boel.¹⁰⁵ As highlighted in the *Communication from the Commission on Simplification and Better Regulation for the Common Agricultural Policy*, the new legislative framework replaces “two funding sources, five programming systems and three management and control systems. . .”¹⁰⁶

3.2. Council Regulation (EC) 1698/2005: General

As indicated, Council Regulation (EC) 1698/2005 emphasized that “[r]ural development policy should accompany and complement the market and income policies of the common agricultural policy” and, in accordance with Article 33(2) of the EC Treaty, it recited that “account is to be taken of the particular nature of agricultural activity which results from the social structure of agriculture and from structural and natural disparities between the various rural areas.”¹⁰⁷ It was also recited that rural development policy would be best served by complementary action at European Community and at Member State levels.¹⁰⁸ Member States could not alone meet the challenge for several reasons. First, there were such close links between rural development policy and other instruments of the Common Agricultural Policy. Secondly, there were marked disparities between the various rural areas. Thirdly, budgets were tight within an enlarged European Union.¹⁰⁹ That said, the principle of subsidiarity would apply in

103. Council Regulation (EC) 1698/2005, O.J. L 277/1 (2005).

104. Council Regulation (EC) 1290/2005, art. 49, O.J. L 209/1, at 22 (2005); Council Regulation (EC) 1698/2005, art. 94, O.J. L 277/1, at 37 (2005).

105. See, e.g., Mariann Fischer Boel, Member of the European Commission Responsible for Agriculture and Rural Development, *Simplification of the CAP: Meeting the Challenge* (Oct. 3, 2006), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/06/556&format=HTM>.

106. European Commission, *Communication from the Commission on Simplification and Better Regulation for the Common Agricultural Policy*, COM (2005) 509 Final, at II (c) (Oct. 2005).

107. Council Regulation (EC) 1698/2005, O.J. L277/1, at 1 (2005); see also Commission Regulation (EC) 1974/2006, O.J. L368/15 (2006) (providing the detailed rules implementing Council Regulation (EC) 1698/2005, O.J. L277/1 (2005)).

108. Council Regulation (EC) 1698/2005, O.J. L 277/1, at 1 (2005).

109. *Id.*

the adoption of rural development measures.¹¹⁰ Indeed, it forms one of the four “principles of assistance.”¹¹¹

While conceding the importance of the principle of subsidiarity, Council Regulation (EC) 1698/2005 seeks, nonetheless, to ensure a clear framework at European Community level. In particular, it lays down three objectives of support for rural development, together with four principles of assistance. The three objectives are as follows:

(a) improving the competitiveness of agriculture and forestry by supporting restructuring, development and innovation;

(b) improving the environment and the countryside by supporting land management;

(c) improving the quality of life in rural areas and encouraging diversification of economic activity.¹¹²

They are to be implemented by means of four “Axes”: Axis 1 (improving the competitiveness of the agricultural and forestry sector); Axis 2 (improving the environment and the countryside); Axis 3 (the quality of life in rural areas and diversification of the rural economy); and Axis 4 (the Leader initiative).¹¹³

As regards the principles of assistance, these reflect developing notions of governance within the European Community, as found, not least, in *European Governance: A White Paper*, issued by the European Commission in 2001.¹¹⁴ The first principle concerns “complementarity, consistency and conformity[.]”¹¹⁵ Thus, the EAFRD should complement national, regional and local actions contributing to the priorities of the European Community and there is emphasis on the importance of coordinating expenditure as between different European Community funds.¹¹⁶ Not least, there is to be consistency between measures financed by the EAFRD and measures financed by the European Agricultural Guarantee Fund (EAGF), the other Fund charged with Common Agricultural Policy expenditure.¹¹⁷ Accordingly, there would seem to be clear intent to address a longstanding weakness of rural development policy, as forcibly articulated by the Court of Auditors.¹¹⁸ The second principle concerns partnership.¹¹⁹ When implementing

110. *Id.*

111. *Id.* art. 7, O.J. 2005 L 277/1, at 10 (2005).

112. *Id.* art 4(1), O.J. L277/1, at 9 (2005).

113. *Id.* arts. 20-65, O.J. L 277/1, at 14-26 (2005).

114. Commission Notice, *European Governance: A White Paper*, O.J. C. 287/1 (2001) [hereinafter *White Paper 2001*].

115. Council Regulation (EC) 1698/2005, art. 5, O.J. L 277/1, at 9 (2005).

116. *Id.*, art. 5(1), art. 4 O.J. L 277/1, at 9 (2005).

117. *Id.* art 5(5), O.J. L 277/1, at 9 (2005).

118. See SPECIAL REPORT 14/2000, *supra* note 59, at 22-24, ¶¶ 61-69.

EAFRD assistance, there are to be close consultations between the European Commission and the Member States and with the authorities and bodies designated by the Member States under national rules and practices.¹²⁰ These authorities and bodies include not only “the competent regional, local authorities and other public authorities, [but also] economic and social partners [and] any other appropriate body representing civil society. . .”¹²¹ In this context, specific mention is made to “non-governmental organisations, including environmental organisations, and bodies responsible for promoting equality between men and women.”¹²² Again the involvement of civil society conforms with notions of good governance under *European Governance: A White Paper*,¹²³ but debate continues as to the extent that such organisations are themselves representative.¹²⁴ As highlighted, the third principle concerns subsidiarity and expressly affirms that “Member States shall be responsible for implementing the rural development programmes at the appropriate territorial level, according to their own institutional arrangements, in accordance with this Regulation.”¹²⁵ The final principle concerns equality and provides that “[m]ember States and the European Commission must promote equality between men and women and ensure that any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation is prevented during the various stages of programme implementation.”¹²⁶

3.3. *The Strategic Approach to Rural Development*

Central to rural development policy are the European Community Strategic Guidelines. These Strategic Guidelines were adopted after the enactment of Council Regulation (EC) 1698/2005, under Council Decision 2006/144/EC.¹²⁷ They are six in number, one addressing each of the four Axes, one consistency in programming and one complementarity between European Community instruments.¹²⁸ Crucially, it was “on the basis of [the] [s]trategic [g]uidelines [that]

119. Council Regulation (EC) 1698/2005, art. 6, O.J. L 277/1, at 9 (2005).

120. *Id.* art. 6(1), O.J. L 277/1, at 9 (2005).

121. *Id.*

122. *Id.*

123. White Paper 2001, *supra* note 115, O.J. C. 287/1, at 11-12. *See, e.g.*, Olivier De Schutter, *Europe in Search of its Civil Society*, 8 EUR. L. J. 198, 200 (2002).

124. *See, e.g.*, Peter J. Spiro, *The Democratic Accountability of Non-governmental Organizations*, 3 CHI. J. INT'L L. 161, 161-69 (2002).

125. Council Regulation (EC) 1698/2005, art. 7, O.J. L 277/1, at 10 (2005).

126. *Id.* art. 8, O.J. L 277/1, at 10 (2005).

127. Council Decision 2006/144/EC, O.J. L 55/20, at 20 (2006) [hereinafter Strategic Guidelines].

128. *Id.* at 22-28.

each Member State . . . [had to] prepare its national strategy plan as the reference framework for the preparation of rural development programmes[.]”¹²⁹

In relation to the four Axes the Strategic Guidelines are as follows. Axis 1 asserts that “Europe’s agricultural, forestry and food-processing sectors have great potential to further develop the high-quality and value-added products that meet the diverse and growing demands of Europe’s consumers and world markets.”¹³⁰ On this basis, Axis 1 resources should “contribute to a strong and dynamic European agrifood sector by focusing on the priorities of knowledge transfer, modernisation, innovation and quality in the food chain, and on the priority sectors for investment in physical and human capital.”¹³¹ Axis 2 resources should, by contrast, “contribute to three EU-priority areas: biodiversity and the preservation and development of high nature value farming and forestry systems and traditional agricultural landscapes; water; and climate change.”¹³² Thus, under Axis 2, the measures available

[s]hould be used to integrate these environmental objectives and contribute to the implementation of the agricultural and forestry Natura 2000 network, to the Göteborg commitment to reverse biodiversity decline by 2010, to the objectives laid down in Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, and to the Kyoto targets for climate change mitigation.¹³³

Again with a different focus, Axis 3 resources “should contribute to the overarching priority of the creation of employment opportunities and conditions for growth.”¹³⁴ In particular, measures should “be used to promote capacity building, skills acquisition and organisation for local strategy development and also help to ensure that rural areas remain attractive for future generations.”¹³⁵ Moreover, “[i]n [the promotion of], training, information and entrepreneurship, the particular needs of women, young people and older workers should be considered.”¹³⁶ Finally, Axis 4 resources, devoted to the Leader initiative (which promotes local rural development action groups), should contribute to the priorities of the Axis 1 and Axis 2 and, in particular, Axis 3, “but also play an important

129. *Id.* at 20.

130. *Id.* at 24.

131. *Id.*

132. *Id.* at 25 (2006).

133. *Id.* The Natura 2000 conservation network is established under Council Directive 79/409/EEC, O.J. L103/1 (1979) (Habitats Directive). For Directive 2000/60/EC of the European Parliament and of the Council (Water Framework Directive), see O.J. L327/1 (2000).

134. Council Decision 2006/149/EC, O.J. L55/20, at 26 (2006).

135. *Id.*

136. *Id.*

role in the horizontal priority of improving governance and mobilising [the] endogenous development potential of rural areas.”¹³⁷

3.4. Programming

As has been seen, the implementation of rural development policy is to be carried out by means of rural development programs prepared by the Member States, and the reference tool for these are to be the national strategy plans, again drawn up by the Member States. However, consistency at European Community level is to be achieved by not only the requirement that the national strategy plans be based upon the Strategic Guidelines laid down at European Community level, but also the requirement that the plans be approved by the European Commission.¹³⁸ “A Member State [could] submit either a single programme for its entire territory or a set of regional programmes.”¹³⁹ The content of programs is specified in some detail, including, for example, the following: an analysis of the situation in terms of strengths and weaknesses; a justification of the priorities chosen, having regard to the European Community strategic guidelines and the national strategy plan; information on the measures proposed for each Axis; a financing plan; the elements needed for appraisal under competition rules;¹⁴⁰ and information on the complementarity with certain other measures financed by the European Community (and, above all, measures financed by other Common Agricultural Policy instruments).¹⁴¹

A long-term approach is once more provided by the fact that each rural development programme is to cover the period from January 1, 2007 through December 31, 2013.¹⁴² As with funding under the 1999 Rural Development Regulation, the timespan is tied in with the overall financial perspective (in this case the European Union budget for the period of 2007 to 2013, agreed to at the Brussels European Council of December 15-16, 2005).¹⁴³ Specific provisions also

137. *Id.* at 27 (2006).

138. *See id.* at 20. *See also*, Council Regulation (EC) 1698/2005, arts. 11-12, O.J. L277/1, at 10-11 (2005).

139. Council Regulation (EC) 1698/2005, art. 15(2), O.J. L277/1, at 12 (2005).

140. *See generally* EC Treaty, *supra* note 15, arts. 81-89 (setting forth the competition rules). *See also id.* art. 36. Under this last Article the rules apply to production of and trade in agricultural products only to the extent determined by the European Council. In particular, under the same Article 36 the “Council may authorise the granting of aid . . . (a) for the protection of enterprises handicapped by structural and natural conditions; [and] (b) within the framework of economic development programmes[.]” *See generally* McMAHON, *supra* note 95, at 13-19.

141. Council Regulation (EC) 1698/2005, art. 16, O.J. L 277/1, at 12-13 (2005).

142. *Id.* art. 15, O.J. L 277/1, at 12 (2005).

143. European Parliament, Council and Commission, Financial Perspective, O.J. C139/1, at 3 (2006) [hereinafter Financial Perspective].

address the balance of expenditure as between the different objectives. In the case of the 'old' Member States, at least ten percent of the EAFRD total contribution is to be devoted both to Axis 1 and to Axis 3, at least twenty-five percent to Axis 2 and at least five percent to Axis 4.¹⁴⁴ Accordingly, some priority is accorded to measures to improve the environment and the countryside.¹⁴⁵

As with the national strategy plans, rural development programs must be approved by the European Commission. The assessment of proposed programs is to be carried out "on the basis of their consistency with the [Community] strategic guidelines, the national strategy plan and [Council Regulation (EC) 1698/2005]."¹⁴⁶

3.5. The Four Axes

3.5.1. Axis 1

Although the multifunctional European Model of Agriculture is frequently associated with non-trade concerns, such as the protection of the environment and animal welfare, its ability to withstand world market forces has not been ignored.¹⁴⁷ Indeed, "a competitive agricultural sector" was the first objective of the Common Agricultural Policy to be listed at the time of the Mid-term Review.¹⁴⁸ Axis 1, which provides support for "improving the competitiveness of the agricultural and forestry sector," would seem directed to furthering this objective in the context of rural development.¹⁴⁹ It seeks to do this through three main categories of measures.¹⁵⁰

144. Council Regulation (EC) 1698/2005, art. 17, O.J. L 277/1, at 13 (2005). *See also* Press Release, IP/05/766 European Union, Tomorrow's Rural Development Policy: Broader, Simpler, Responding Better to Citizens' Concerns (June 21, 2005), available at <http://europa.eu/rapid/pressReleasesAction.do?Reference=IP/05/766&format=HTML&aged=1&language=EN&guiLanguage=en>; *see also* Commission Press Release, IP/05/766 (June 21, 2005) [hereinafter IP/05/766].

145. IP/05/766, *supra* note 145.

146. Council Regulation (EC) 1698/2005, art. 18(3), O.J. L 277/1, at 13 (2005). For approval of the English Rural Development Plan, see Memo 07/604 European Union, England's Rural Development Plan (Dec. 20, 2007).

147. *See* CARDWELL, *supra* note 8, at 177-182 (with reference to competitiveness in terms of both price and quality).

148. Communication, *supra* note 1, COM (2002) 394 Final, at 2.

149. Council Regulation (EC) 1698/2005, O.J. L. 277/1, at 14 (2005).

150. *Id.*, art. 20(d), O.J. L. 277/1, at 14 (2005). This Article also includes a fourth category which is transitional in nature and extends to Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia. It provides support to, *inter alia*, "semi-subsistence agricultural holdings undergoing restructuring."

The first category covers “measures aimed at promoting knowledge and improving human potential. . .”¹⁵¹ Among those listed are measures that find their origin as far back as the Structural Directives, such as vocational training and early retirement,¹⁵² but there is also enhanced emphasis on advisory services. Thus, support will be made available for “use of advisory services by farmers and forest holders” and for “setting up of farm management, farm relief and farm advisory services, as well as of forestry advisory services[.]”¹⁵³

The second category covers “measures aimed at restructuring and developing physical potential and promoting innovation.”¹⁵⁴ The first of such measures to be listed, “modernisation of agricultural holdings” again harks back to one of the Structural Directives.¹⁵⁵ However, emphasis is now laid upon not just the need to “improve the overall performance of the agricultural holding,” but also the need to “respect the [European] Community standards applicable to the investment concerned.”¹⁵⁶ Other measures within this category include “improving the economic value of forests” and “restoring agricultural production potential damaged by natural disasters and introducing appropriate prevention [schemes].”¹⁵⁷

The third category covers “measures aimed at improving the quality of agricultural production and products” and, in essence, re-enacts the new chapters on meeting standards and food quality added to the 1999 Rural Development Regulation under the Mid-term Review.¹⁵⁸ Measures are directed to the following: “(i) helping farmers to adapt to demanding standards based on [European] Community legislation; (ii) supporting farmers who participate in food quality schemes; [and] (iii) supporting producer groups for information and promotion activities for products under food quality schemes[.]”¹⁵⁹

151. *Id.* art. 20(a), O.J. L 277/1, at 14 (2005).

152. *Id.* art. 20(a) (i), (iii), O.J. L 277/1, at 14 (2005). For the Structural Directives concerned, see Council Directive 72/160/EEC, O.J. L96/9 (1972); Council Directive 72/161/EEC, O.J. L96/15 (1972).

153. Council Regulation (EC) 1698/2005, art. 20(a)(iv)-(v), O.J. L277/1, at 14 (2005). *See also* Council Regulation (EC) 1782/2003, arts. 13-16, O.J. L 270/1 at 10 (2003). (where advisory services have also been accorded importance in the case of direct payments under the First Pillar of the Common Agricultural Policy).

154. Council Regulation (EC) 1698/2005, art. 20(b), O.J. L277/1, at 14 (2005).

155. *Id.* art. 20(b)(i), O.J. L 277/1, at 14 (2005). For the Structural Directive concerned, see Council Directive 72/159/EEC, O.J. L96/1 (1972).

156. Council Regulation (EC) 1698/2005, art. 26(1), O.J. L277/1, at 16 (2005).

157. *Id.* art. 20(b)(ii)-(vi), O.J. L 277/1, at 14 (2005).

158. *Id.* art. 20(c), O.J. L277/1, at 14 (2005). For the earlier chapters on meeting standards and food quality, see Council Regulation (EC) 1257/1999, O.J. L160/80 (1999), *amended* Council Regulation (EC) 1783/2003, O.J. L270/70 (2003).

159. Council Regulation (EC) 1698/2005, art. 20(c), O.J. L 277/1, at 14 (2005).

3.5.2. Axis 2

In the case of Axis 2, improving the environment and the countryside, a distinction is drawn between “measures targeting the sustainable use of agricultural land” and “measures targeting the sustainable use of forestry land.”¹⁶⁰ The former category includes schemes similar to those found in the 1999 Rural Development Regulation. These schemes are: natural handicap payments to farmers in mountain areas, payments to farmers in areas with handicaps (other than mountain areas) agri-environmental payments, and animal welfare payments.¹⁶¹ That said, it extends also, in particular, to Natura 2000 payments and payments linked to the Water Framework Directive.¹⁶² These provide a tighter environmental focus, in that the measures do not, as such, “accompany” agricultural production. Rather, the primary focus of the Natura 2000 conservation network is to preserve wild birds and habitats, with restrictions on agricultural practices being integral to this objective.¹⁶³ Moreover, the legislation is targeted to specific sites and may be characterized as “narrow, but deep”: even when the network is complete, it has been estimated that it will cover only in the region of ten percent of European Community territory.¹⁶⁴ Similarly, the Water Framework Directive is targeted to specific river basins and again restricts agricultural practices.¹⁶⁵ By contrast, agri-environmental payments may generally be characterised as “broad, but shallow,”¹⁶⁶ while, in the case of natural handicap payments to farmers in mountain areas and payments to farmers in other areas with handicaps, there would even seem to be a requirement of production: payment may only be made to farmers who “undertake to pursue their farming activity in [designated areas]

160. *Id.* art. 36 (a)-(b), O.J. L 277/1, at 18-19 (2005).

161. The former two schemes derived ultimately from Council Directive 75/268/EEC, O.J. L128/1 (1975). Agri-environmental payments derived ultimately from the Agri-environment Regulation, Council Regulation (EEC) 2078/92, O.J. L 215/85 (1992). Animal welfare payments were introduced under the Mid-term Review by Council Regulation (EC) 1257/1999, arts. 22-24, O.J. L160/80 (1999), amended by Council Regulation (EC) 1783/2003, O.J. L270/70 (2003).

162. Council Regulation (EC) 1698/2005, art. 36(a)(iii), O.J. L277/1, at 19 (2005).

163. As noted, the Natura 2000 conservation network is established under the Council Directive 79/409/EEC, O.J. L103/1 (1979) and the Council Directive No. 92/43/EEC, O.J. L206/7 (1992).

164. European Commission, White Paper on Environmental Liability, COM (2000) 66 Final (Sept. 2000), at 19-20.

165. Directive 2000/60/EC of the European Parliament and of the Council, O.J. L327/1 (2000).

166. Some agri-environmental measures, however, may be “narrow, but deep”: *see generally e.g.*, Henry Buller, *The Agri-Environmental Measures (2078/92)*, in CAP REGIMES AND THE EUROPEAN COUNTRYSIDE: PROSPECTS FOR INTEGRATION BETWEEN AGRICULTURAL, REGIONAL AND ENVIRONMENTAL POLICIES 199 (Floor Brouwer & Philip Lowe, eds., 2000).

for at least five years from the first payment.¹⁶⁷ Accordingly, although there is a constant focus on the environment and the countryside, the schemes remain disparate and reflect not only their different origins, but also different policy imperatives.

In the context of this Axis, two matters may be highlighted. First, as has been seen, the Court of Auditors had expressed concern at the extent of the areas designated as “less-favoured” by some Member States.¹⁶⁸ The contentious nature of support for such areas was also readily apparent during the process of enactment of Council Regulation (EC) 1698/2005, since it proved impossible to reach timely agreement as to which areas were eligible for natural handicap payments to farmers in mountain areas or for payments to farmers in other areas with handicaps. Consequently, Member States have been placed under an obligation to carry out such designations according to objective criteria,¹⁶⁹ but existing lists of less-favoured areas will only be repealed as from January 1, 2010.¹⁷⁰ Secondly, consistent with earlier legislation, Council Regulation (EC) 1698/2005 requires farmers to go beyond good agricultural practice if they are to benefit from agri-environmental payments or animal welfare payments. More precisely, these payments cannot be made in respect of commitments that merely conform with the various “cross-compliance” obligations that Council Regulation (EC) 1782/2003 has imposed on farmers as an integral part of the Mid-term Review.¹⁷¹ Under that Regulation receipt of all direct payments is conditional upon observing nineteen statutory management requirements relating to public, animal and plant health, the environment and animal welfare; and a general obligation to maintain all agricultural land in good agricultural and environmental condition.¹⁷² But cross-compliance serves only as a baseline and should not attract compensation. By contrast, agri-environmental and animal welfare commitments under Council Regulation (EC) 1698/2005 must exceed that baseline, thereby entitling the farmer to payment for extra effort.¹⁷³ As stated in the Preamble, “[i]n accor-

167. Council Regulation (EC) 1698/2005, art. 37(2), O.J. L 277/1, at 19 (2005).

168. SPECIAL REPORT 4/2003, *supra* note 35.

169. Council Regulation (EC) 1698/2005, art. 50, O.J. L 277/1, at 22-23 (2005).

170. *Id.* art. 93(2), O.J. L 277/1, at 36 (2005).

171. Council Regulation (EC) 1782/2003, art. 3, O.J. L 270/1, at 8 (2003).

172. *Id.* at 3-5, O.J. L 270/1 (2003), at 8. The 19 statutory management requirements are listed at Annex III, *amended by* Council Regulation (EC) 21/2004, O.J. L 5/8 (2004). The European Community framework for the obligation to maintain all agricultural land in good agricultural and environmental condition is set out at Annex IV, *amended by* Council Regulation (EC) 864/2004, O.J. L 206/20 (2004).

173. Council Regulation (EC) 1698/2005, arts. 39(3), 40(2) O.J. L 277/1, at 20 (2005) (in respect of agri-environmental commitments, referring to both the statutory management requirements and the obligation to maintain all agricultural land in good agricultural and environmental

dance with the polluter-pays principle these [agri-environmental] payments should cover only those commitments going beyond the relevant mandatory standards.¹⁷⁴ The rationale for this distinction has been clearly articulated in terms of justification of expenditure to both citizen and consumer. For example, in *Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy* it was asserted that: “[a]s a minimum, farmers should respect general requirements as regards environmental care without specific payment. . . . However, where society asks farmers to pursue environmental objectives beyond good farming practice, and the farmer incurs a cost or foregoes income as a result, then society must expect to pay for that environmental service.”¹⁷⁵

3.5.3. Axis 3

Axis 3, the quality of life in rural areas and diversification of the rural economy, covers four categories of support. The first is measures to diversify the rural economy. This comprises not only diversification into non-agricultural activities, but also support for the creation and development of micro-enterprises (with a view to promoting entrepreneurship and developing the economic fabric) and, importantly, encouragement of tourism activities.¹⁷⁶ The close relationship between tourism and rural development was fully exposed during the 2001 Foot-and-Mouth crisis in the United Kingdom, when the closing of access to the countryside was estimated to have cost over £3 billion.¹⁷⁷ The second category covers measures to improve the quality of life in rural areas, such as village renewal and development, and conservation and upgrading of the rural heritage.¹⁷⁸ The other two categories are, respectively, a training and information measure and a skills-acquisition and animation measure.¹⁷⁹

condition and in respect of animal welfare commitments, referring to just the statutory management requirements).

174. *Id.* O.J. L277/1, at 4 (2005).

175. European Commission, *Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy: Communication from the Commission to the Council and the European Market*, COM(2000) 20 Final (Jan. 2000), at 6-7; *see also, e.g.*, NICOLAS DE SADELEER, *ENVIRONMENTAL PRINCIPLES: FROM POLITICAL SLOGANS TO LEGAL RULES 21-60* (2002); Michael Cardwell, *The Polluter Pays Principle in European Community Law and Its Impact on United Kingdom Farmers*, 59 OKLA. L. REV. 89, 92-93 (2006).

176. Council Regulation (EC) 1698/2005, art. 52, O.J. L277/1, at 24 (2005).

177. DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS, *REPORT OF THE RURAL TASK FORCE: TACKLING THE IMPACT OF FOOT-AND-MOUTH DISEASE ON THE RURAL ECONOMY 12* (2001). On agriculture and tourism generally, see Aliza Fleischer and Yacou Tsur, *Measuring the Recreational Value of Agricultural Landscape* 27 EUR. REV. OF AGRIC. ECON. 385 (2000).

178. Council Regulation (EC) 1698/2005, art. 52(a), O.J. L277/1, at 24 (2005).

179. *Id.* art. 52(c)-(d), O.J. L277/1, at 24 (2005).

3.5.4. Axis 4

Axis 4 is more specific, as it is confined to the Leader initiative.¹⁸⁰ This initiative was already well-established over various stages of development, a key focus being the harnessing of local expertise to provide a “bottom-up” approach to governance.¹⁸¹ An innovation in Council Regulation (EC) 1698/2005 was the extension of this approach more widely into mainstream rural development programming.¹⁸²

3.6. *The Level of European Community Funding*

The European Community budget for the Common Agricultural Policy is now governed by Council Regulation (EC) 1290/2005.¹⁸³ As indicated, this Regulation establishes two separate funds, the EAGF and the EAFRD.¹⁸⁴ Consistent with its title, it is the EAFRD which makes the financial contribution of the European Community to rural development programs;¹⁸⁵ but it may be noted that certain measures financed by the EAGF may be similar in character. For example, it is the EAGF which finances, in a centralized manner and in accordance with European Community legislation, “promotion of agricultural products, undertaken either directly by the Commission or via international organisations” and “measures undertaken, in accordance with Community legislation, to ensure the conservation, characterisation, collection and utilisation of genetic resources in agriculture.”¹⁸⁶

The total amount of European Community support to rural development for the period January 1, 2007 to December 31, 2013 has been fixed by the European Council, together with its annual breakdown and the minimum amount to be concentrated in regions eligible under the Convergence Objective.¹⁸⁷ The task

180. “Leader” is the acronym for “Liaison entre actions de développement de l’économie rurale.”

181. The Leader initiative as found in Council Regulation (EC) 1698/2005, O.J. L277/1 (2005) followed on from: Leader I (Commission Notice, O.J. C73/33 (1991)); Leader II (Commission Notice, O.J. C180/48 (1994)); and Leader+ (see Commission Notice, O.J. C 139/5 (2000) (as amended)).

182. Council Regulation (EC) 1698/2005, O.J. L277/1, at 6 (2005).

183. Council Regulation (EC) 1290/2005, O.J. L209/1 (2005).

184. *Id.* art. 2(1), O.J. L209/1, at 6 (2005).

185. *Id.* art. 4, O.J. L 209/1, at 7 (2005).

186. *Id.* arts. 3(2)(b)-(c), O.J. L209/1, at 6 (2005).

187. Council Regulation (EC) 1698/2005, art. 69(1), O.J. L277/1, at 28 (2005); Council Decision (EC) 2006/493/EC, O.J. L195/222 (2006). *See also* Council Regulation (EC) 1698/2005, art. 2(j), O.J. L277/1, at 8 (2005) (defining the Convergence Objective as “the objective of the action for the least developed Member States and regions according to the Community legislation

has been carried out in accordance with the overall financial perspective for the period 2007-2013, agreed at the Brussels European Council of December 15-16, 2005.¹⁸⁸ Under "Heading 2," this provided a ceiling for expenditure on the preservation and management of natural resources which would fall from 54.985 billion Euros in 2007 to 51.161 billion Euros in 2013.¹⁸⁹ Importantly, within those ceilings most funds would still be devoted to market-related expenditure and direct payments under the Common Agricultural Policy.¹⁹⁰ Such First Pillar measures could account for up to 43.120 billion Euros in 2007, the ceiling falling to 40.645 billion Euros in 2013.¹⁹¹ Nevertheless, considerable emphasis was laid upon the fact the budget for rural development programs could be fueled by additional modulation, over and above the compulsory modulation introduced by the Mid-term Review, up to a maximum of twenty percent of direct payments.¹⁹² It may be noted that any sums so transferred from the First Pillar to the Second Pillar would not be subject to national co-financing, a clear incentive for the Member States, but this did give rise to concerns whether the measures would be compatible with equal treatment across the European Community.¹⁹³

That said, in terms of raw figures, the allocation for rural development programs under Council Regulation (EC) 1698/2005 was still dwarfed by the allocation for market-related expenditure and direct payments. Prior to modulation, for the whole European Community, including Bulgaria and Romania, it would amount to 69.750 billion Euros over the 2007-2013 period.¹⁹⁴ The total sum of 69.750 billion Euros was then broken down into annual appropriations.¹⁹⁵ These fell from 10.710 billion Euros in 2007 to 9.253 billion Euros in 2013¹⁹⁶ and

governing the European Regional Development Fund, the European Social Fund . . . and the Cohesion Fund for the period from 1 January 2007 to 31 December 2013.").

188. Financial Perspective, *supra* note 144, Annex I, at 10.

189. *Id.*

190. *Id.*

191. *Id.*

192. *Id.* As at the date of the December 15-16, 2005 Brussels European Council, the legislation which authorised additional modulation was Commission Regulation (EC) 1655/2004, O.J. L298/3 (2004). This option, however, was only open, on a transitional basis, to Member States which had implemented modulation under the voluntary regime introduced by the Agenda 2000 reforms; as seen, such Member States were few in number.

193. *See e.g.*, Financial Perspective, *supra* note 144.

194. Council Decision 2006/493/EC, Annex, O.J. L195/22, at 23 (2006); *see also* Council Regulation (EC) 1698/2005, art. 69(3), O.J. L277/1, at 28 (2005) (which fixes indexation at two percent per year).

195. Council Decision 2006/493/EEC, Annex, O.J. L195/22, at 23 (2006).

196. *Id.*

it was also provided that at least 27.699 billion Euros should be spent over the period 2007-2013 in the regions eligible under the Convergence Objective.¹⁹⁷

In turn, the European Commission was required to divide the global amount for the European Community among the Member States on an annual basis.¹⁹⁸ In so doing, it was to take into account: (1) the amounts reserved for regions eligible under the Convergence Objective; (2) past performance; and (3) particular situations and needs based on objective criteria.¹⁹⁹ This distribution was carried into effect by Commission Decision 2006/636/EC²⁰⁰ and took into account any sums realized by compulsory modulation in the “old” Member States.²⁰¹ The difference between the amounts received by the Member States is almost startling, even among the “old” Member States, where it can be substantially explained by differing historic levels of enthusiasm for rural development schemes. Thus, over the 2007-2013 period, Ireland will receive 2,339,914,590 Euros, while the whole of the United Kingdom will receive only 1,909,574,420 Euros (notwithstanding that parts of the United Kingdom, but not Ireland, are eligible under the Convergence Objective).²⁰² The greatest beneficiary, however, is to be a “new” Member State, Poland, which over the seven year period will receive a total 13,230,038,156 Euros.²⁰³

In terms of the contribution by the EAFRD to national rural development programs, this is to be calculated on the basis of the amount of eligible public expenditure²⁰⁴ and different rates of contribution apply dependent upon the form of initiative.²⁰⁵ In the case of Axis 1 and Axis 3, the ceiling is seventy-five percent of eligible public expenditure in the regions eligible under the Convergence Objective and fifty percent of eligible public expenditure in the other regions.²⁰⁶ In the case of Axis 2 and Axis 4, the ceiling is eighty percent of eligible public expenditure in the regions eligible under the Convergence Objective and fifty-five percent of eligible public expenditure in the other regions.²⁰⁷ An overarching

197. *Id.*

198. Council Regulation (EC) 1698/2005, art. 69(4), O.J. L277/1 (2005).

199. *Id.*

200. Commission Decision 2006/636/EC, O.J. L 261/32 (2006).

201. *Id.* O.J. L 261/32, at 32 (2006). Such compulsory modulation was carried into effect by Council Regulation (EC) 1782/2003, arts. 10-12, O.J. L 270/1, at 9-10 (2003). For the sums realized in each of the “old” Member States, see Commission Decision 2006/588/EC, Annex, O.J. L240/6, at 8 (2006). *See also* Council Regulation (EC) 1698/2005, art. 69(5), O.J. L277/1, at 28 (2005).

202. Commission Decision 2006/636/EC, Annex, O.J. L261/32, at 34 (2006).

203. *Id.*

204. Council Regulation (EC) 1698/2005, art. 70(2), O.J. L277/1, at 28 (2005).

205. *Id.* art. 70(3), O.J. L277/1, at 28 (2005).

206. *Id.* art. 70(3)(a), O.J. L277/1, at 28 (2005).

207. *Id.* art. 70(3)(b), O.J. L 277/1, at 28 (2005).

minimum EAFRD contribution rate of 20 percent applies in the case of all Axes.²⁰⁸

Finally, it may be emphasized that, in accordance with the principle of “complementarity, consistency and conformity,” there is a concerted effort to ensure that there is no duplication of expenditure within the EAFRD or as between the EAFRD and other sources of European Community funding. Accordingly, an operation may be co-financed by the EAFRD under only one Axis of the rural development program and, if the operation falls under measures from more than one Axis, the expenditure is to be attributed to the dominant Axis.²⁰⁹ Similarly, any expenditure co-financed by the EAFRD is not to be co-financed by way of contribution from the Structural Funds, the Cohesion Fund or any other European Community financial instrument.²¹⁰

4. TWO KEY ISSUES

4.1. *Is the Second Pillar of the Common Agricultural Policy “Secondary”?*

Without doubt rural development is firmly constituted as the Second Pillar of the Common Agricultural Policy, and this taps into a vision of a multifunctional European Model of Agriculture which provides such “public goods” as an enhanced landscape, cleaner environment and higher standards of animal welfare. Indeed, rural development would seem to be a vital arena for achieving three of the objectives of the Common Agricultural Policy as stated at the commencement of the Mid-term Review: “production methods that support environmentally friendly, quality products that the public wants;” “diversity in forms of agriculture, maintaining visual amenities and supporting rural communities; [and] justification of support through the provision of services that the public expects farmers to provide.”²¹¹ Significantly, these rural development objectives reflect the preferred priorities for the Common Agricultural Policy as revealed in Eurobarometer Surveys, conducted by the European Commission.²¹² Thus, in a Special Eurobarometer survey published in 2004, *European Union Citizens and Agriculture from 1995 to 2003*, it was concluded that “[b]esides food safety, envi-

208. *Id.* art. 70(3), O.J. L277/1, at 28 (2005). In addition, a range of particular rules address particular situations. *See, e.g., id.* art.70(6), O.J. L 277/1, at 29 (2005) (technical assistance measures taken at the initiative of the European Commission may, exceptionally, be fully funded by the EAFRD).

209. *Id.* art. 70(7), O.J. L 277/1, at 29 (2005).

210. *Id.*

211. Communication, *supra* note 1, COM (2002) 394 Final, at 2.

212. EUROPEAN COMMISSION, SPECIAL EUROBAROMETER: EUROPEAN UNION CITIZENS AND AGRICULTURE FROM 1995 TO 2003 (Sept. 2004), at 41.

ronment protection is one of the main objectives the CAP should aim at according to an overwhelming majority of EU citizens.”²¹³ The survey also found that “[a]nimal welfare and improvement of life in the countryside are also two important issues for them.”²¹⁴ In consequence, there is a real sense that rural development is “virtuous legislation” that helps to cement the link between civil society and farmers.²¹⁵ As affirmed by Commissioner Fischer Boel early in 2007,

[o]ur situation has changed because the European public now has clearer expectations of our agricultural policy in terms of “public goods”. It wants a policy that preserves the resources of the earth to our liking, that places a high value on animal welfare and food safety. It also wants policy to fall in line with wider environmental concerns – climate change, in particular – while giving the right support to rural communities.²¹⁶

That said, the Second Pillar has not yet come close to the First Pillar in terms of budgetary expenditure. As seen, the Berlin Summit was the occasion which marked the institution of the Second Pillar, but it was also the occasion where the maximum amount that could be devoted to rural development and ancillary measures in 2006 was fixed at only 4.370 billion Euros (as opposed to 41.660 billion Euros on other Common Agricultural Policy costs).²¹⁷ Yet, perhaps even more importantly, there was again no vast improvement when the overall financial perspective for the period of 2007 to 2013 was agreed at the Brussels European Council of December 15-16, 2005.²¹⁸ As noted, under “Heading 2” the ceiling for expenditure on the preservation and management of natural resources would fall from 54.985 billion Euros in 2007 to 51.161 billion Euros in 2013.²¹⁹ Out of these sums, Council Decision 2006/493/EC of June 19, 2006 subsequently provided that annual appropriations for rural development would fall from 10.710 billion Euros in 2007 to 9.253 billion Euros in 2013.²²⁰ While the global figures are considerably greater than those agreed at the Berlin Sum-

213. *Id.*

214. *Id.*

215. *Id.*

216. Mariann Fischer Boel, Member of the European Commission Responsible for Agriculture and Rural Development, *European Agricultural Policy Facing Up to New Scenarios* (Mar. 23, 2007). In addition to rural development measures, it was understood that expectations of the European public would be met by the ‘cross-compliance’ conditions attached to direct payments. As noted, the nineteen statutory management requirements relate to public, animal and plant health, the environment and animal welfare, and, besides, there is a general obligation to maintain all agricultural land in good agricultural and environmental condition.

217. E.U. BULL., *supra* note 83, at ¶ 23.

218. Financial Perspective, *supra* note 144.

219. *Id.* Annex I, at 10.

220. Council Decision 2006/493/EC, Annex, O.J. L 195/22, at 23 (2006).

mit, it may be emphasized that they are to cover the enlarged European Union (including also now Bulgaria and Romania).²²¹ Indeed, over the 2007-2013 period, the fifteen “old” Member States will receive proportionately less than many “new” Member States: as has been seen, Poland will be the greatest beneficiary.²²² Moreover, although the proportion of Common Agricultural Policy expenditure devoted to rural development for the period of 2007-2013 will be nearer the rate of twenty percent than the rate of ten percent which had applied for the period 2000-2006, the proportion was less than had been envisaged in the earlier proposals.²²³ Thus, the European Commission had originally suggested that between 2007 and 2013 88.8 billion Euros should be spent on rural development.²²⁴ Further, just as with other Common Agricultural Policy expenditure, that on rural development will edge downwards between 2007 and 2013.²²⁵ It was perhaps no surprise, therefore, that Commissioner Fischer Boel has expressed concern at the level of resources available to implement rural development policy: “[t]o my mind, one of the larger question marks for the next few years is financial.”²²⁶ Likewise, the retention of the lion’s share of expenditure within the First Pillar did not accord with United Kingdom Government policy, as had been recently articulated in *A Vision for the Common Agricultural Policy*.²²⁷

An at least partial solution to this inequality between the First Pillar and the Second Pillar has been sought in modulation. Compulsory modulation was introduced under the Mid-term Review, commencing at the rate of three percent in 2005, rising to four percent in 2004 and then remaining at five percent from 2007 to 2012.²²⁸ As initially estimated, this has realized some 1.2 billion Euros per annum to finance rural development from the point that the five percent rate

221. *Id.*, art. 2, O.J. L195/22, at 22 (2006).

222. Commission Decision 2006/636/EC, Annex, O.J. L261/32, at 34 (2006).

223. *See, e.g., CAP Review Agreed as UK Reaches Deal on New Budget*, AGRA EUROPE, Dec. 23, 2005. This source also illustrates a history of the budget negotiations, with a focus on the Common Agricultural Policy.

224. *Id.*

225. Financial Perspective, *supra* note 144, Annex I, at 10.

226. Mariann Fischer Boel, Member of the European Commission Responsible for Agriculture and Rural Development, *A Vision for EU Agriculture and Opportunities for UK Farmers* (Jan. 4, 2007).

227. *See* HM TREASURY & DEFRA, *A VISION FOR THE COMMON AGRICULTURAL POLICY* 16 (2005) (advocating the removal of price support, export refunds, and other production or consumption subsidies).

228. Council Regulation (EC) 1782/2003, art. 10(1), O.J. L270/1, at 9 (2003).

was reached.²²⁹ However, modulation will not apply in the “new” Member States until their level of support reaches parity with the “old” Member States in 2013.²³⁰ In 2004 the European Commission did authorize voluntary or additional modulation. As noted, however, this option was only open, on a transitional basis, to the few Member States which had already implemented voluntary modulation under the Agenda 2000 reforms.²³¹ The rationale behind the measure was that otherwise they could have suffered a deficit in the financing of rural development measures, their budgets having been predicated on voluntary rates that were higher than the newly introduced compulsory rate.²³²

More recently, voluntary modulation has been authorized on a more permanent basis,²³³ and the maximum rate of reduction may be up to twenty percent of direct payments.²³⁴ That said, the only Member States which may exercise the option are those which had implemented modulation on the transitional basis, and those which had been “granted a derogation [under] Council Regulation (EC) 1698/2005 from the requirement to co-finance European Community support.”²³⁵ Accordingly, the new rules have the capacity to realize substantial sums for rural development, but only in certain Member States; and the United Kingdom is one in which the new rules have bitten hard. As indicated, it implemented voluntary modulation under the Agenda 2000 reforms and, flowing from that initial decision, it now implements voluntary modulation on a regional basis, as permitted by the European Community legislation.²³⁶ By 2011, some 481.6 million Euros will be realized in this way.²³⁷ Yet, the global sum disguises significant regional variations.²³⁸ Thus, in England, the additional rate will rise from twelve percent in 2007, to thirteen percent in 2008 and will then remain at four-

229. Commission Decision 2006/410/EC, Annex, O.J. L163/10, at 11 (2006); *see also* Commission Decision 2006/588/EC, Annex, O.J. L 240/6, at 8 (2006). For an initial estimate, see Dr. Franz Fischler, *supra* note 97.

230. Council Regulation (EC) 1782/2003, art. 12(a), O.J. L270/1, at 10 (2003), *amended by* Council Regulation (EC) 583/2004, O.J. L91/1 (2004).

231. Commission Regulation (EC) 1655/2004, O.J. L 298/3 (2004); *see also* Council Regulation (EC) 1259/1999, art. 4, O.J. L 160/113, at 114-115 (1999) (authorizing voluntary modulation under the Agenda 2000 reforms).

232. Commission Regulation (EC) 1655/2004, O.J. L298/3, at 3 (2004).

233. Council Regulation (EC) 378/2007, O.J. L95/1 (2007).

234. *Id.* art. 1(4), O.J. L95/1, at 3 (2007).

235. *Id.* art. 1(1)(b), O.J. L95/1, at 2 (2007). (The derogation would arise under Article 70(4) of Council Regulation (EC) 1698/2005, O.J. L 277/1, at 29 (2005)).

236. *Id.* art. 3(1), O.J. L95/1, at 3 (2007).

237. Commission Decision 2007/679/EC, Annex., O.J. L280/25, at 26 (2007).

238. *See, e.g., id.*

teen percent until 2012.²³⁹ When the compulsory rate is added, this will result in a total nineteen percent deduction for the period of 2008 to 2012. By contrast, the additional rate will only reach nine percent in Scotland²⁴⁰ and only 6.5% in Wales.²⁴¹ Given such variation as between not just Member States, but even within Member States, it is encouraging that European Community legislation emphasises the importance of close monitoring of the impact of such measures, “in particular as regards the economic situation of the farms, taking into account the need to avoid unjustified unequal treatment between farmers.”²⁴²

Concerns over such inequality and, more significantly, concerns as to the general level of funding for rural development would be alleviated if there is a significant increase in the compulsory modulation rate, as would seem likely under the 2008 “Health Check” of the Common Agricultural Policy reform.²⁴³ More specifically, it is envisaged that the compulsory modulation rate should be increased by two percent annually over the period from 2009-2012.²⁴⁴ This would “level the playing field” and provide significantly enhanced funds for rural development. On the other hand, in terms of European Community resources, it could be regarded merely as a reallocation within the Common Agricultural Policy budget. Nevertheless, recent price rises for commodities have reduced the imperative of providing support for farmers under the First Pillar.²⁴⁵ This has the

239. *Id.* O.J. L280/25, at 25 (2007); *see also* The Common Agricultural Policy Single Payment and Support Schemes Regulations, 2005, S.I. 2005/219, reg. 11 (Eng.), *amended by* The Common Agricultural Policy Single Payment and Support Schemes Regulations 2007, S.I.2007/3182 (Eng.). *See also* 458 PARL. DEB., H.C. (6th Ser.) (2007) 37-28WS (Written Statement: Secretary of State for Environment, Food and Rural Affairs).

240. Commission Decision 2007/679/EC, O.J. L280/25, at 25 (2007). *See generally* The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations, 2005, S.I. 2005/143, reg.10, *amended by* The Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Amendment Regulations, 2007, S.I. 2007/414.

241. Commission Decision 2007/679/EC, O.J. L280/25, at 25 (2007). *See generally* Press Release, Welsh Assembly Government, 6.5 Per cent Voluntary Modulation for Wales by 2011 (June 12, 2007).

242. Council Regulation (EC) 378/2007, art. 5, O.J. L 95/1, at 4 (2007).

243. *See* European Commission, Proposals for Council Regulations and a Council Decision, COM (2008) 306/4 (May 2008) [hereinafter Health Check]. For the preparatory document, *see* European Commission, Communication from the Commission to the Council and the European Parliament, Preparing for the “Health Check” of the CAP Reform, COM (2007) 722 (Nov. 2007) [hereinafter Preparatory Document].

244. Healthcheck, *supra* note 244, Explanatory Memorandum, at 6-7. In addition, a progressive element would be introduced, so that those in receipt of the greatest amount of direct payments would be subject to the greatest amount of modulation: farmers in receipt of 300,000 Euros or more would face a further nine percent cut. *Id.*

245. The extent of these price rises may be illustrated by the fact that in December 2007 the European Community felt able to suspend import duties on most cereals. *See* Press Release IP/07/1977, Agriculture: European Union Suspends Import Duties on Most Cereals (Dec. 20,

capacity to make the proposal to transfer more funds from the First Pillar acceptable to a greater number of the Member States.²⁴⁶

In addition to the overall level of support being substantially lower than for the First Pillar, it may be argued that the Second Pillar is “secondary” in the sense that co-financing is the norm (whereas the European Community finances in full market-related expenditure and direct payments under the First Pillar). As has been seen, this renders the funding of rural development measures dependent upon the willingness of national governments to provide matching funding, and very different approaches have been adopted. For example, Ireland has demonstrated far greater willingness than the United Kingdom, and this is reflected in the annual breakdown of European Community support for rural development over the period 2007-2013, where a factor governing the size of allocation is “past performance.”²⁴⁷ As highlighted, Ireland will receive over that period 2,339,914,590 Euros, as opposed to 1,909,574,420 Euros for the United Kingdom.²⁴⁸ This difference in good part reflects the fact that the rural development plan for Ireland for the period 2000-2006 had a budget of £3.9 billion, whereas that for England amounted to only £1.9 billion.²⁴⁹

It may be that in this respect a decision will be taken to bring both Pillars into line; but, should this occur, the more likely possibility would seem to be that the First Pillar will also see co-financing become the norm (rather than greater European Community solidarity in Second Pillar expenditure). Indeed, with the 2008 Health Check approaching, this possibility was mooted in Presidency circles.²⁵⁰ An undoubted consequence would be savings in total Common Agricultural Policy expenditure (whereas any increase in the rate of co-financing under the Second Pillar would have the opposite effect).²⁵¹ For this reason, there is like-

2007). Further, in the context of the World Trade Organization, the Hong Kong Ministerial of December 2005 saw the European Community agree to the elimination of export subsidies by 2013. *See* WT/MIN(05)/DEC.

246. *See, e.g.*, Preparatory Document, *supra* note 244, COM (2007) 722 Final, at 5-6. The European Commission remains cautious, however, as to whether this tightness of supply is likely to be ongoing.

247. Council Regulation (EC) 1698/2005, art. 69(4), O.J. L 277/1, at 28 (2005).

248. Commission Decision 2006/636/EC, Annex, O.J. L 261/32, at 34 (2006).

249. *See* Press Release 125/2000, Department of Agriculture Food and Rural Development, EU Approval of Ireland’s £3.9 Billion CAP Rural Development Plan 2000-2006 (Sept. 14, 2000); *see also* Press Release, Ministry of Agriculture Fisheries and Food 435/99, Nick Brown Announces a New Direction for Agriculture (Dec. 7, 1999).

250. *See, e.g.*, *13% Modulation and Aid Capping Planned Under CAP Health Check*, 2277 AGRA EUROPE, Sept. 21, 2007; *but see also* Preparatory Document, *supra* note 244, COM (2007) 722 Final (this possibility not being formally entertained).

251. *See also* Preparatory Document, *supra* note 244 at 10 (relating to budgetary discipline).

ly to be support for such an initiative from net contributors to the European Community budget, whereas fierce resistance may be expected from net beneficiaries.²⁵²

4.2. *Uneven Implementation*

A persistent criticism of rural development policy has been its uneven implementation; and much of the criticism has flowed from the institutions of the European Community themselves.²⁵³ As noted, a key factor behind such uneven implementation has been the varying degrees of enthusiasm of national governments to provide the matching finance which is required for rural development measures.²⁵⁴ With the funding model for the period 2007-2013 being based, at least partially, upon past performance, inequalities are liable to be entrenched. In this light, it was relatively predictable that the United Kingdom Government supported calls to review the funding of the Second Pillar as a component of the 2008 Health Check.²⁵⁵

In addition to purely financial discrepancies, there is also evidence of considerable variety in the rural development schemes implemented by individual Member States. Different measures have been accorded very different priorities; and again this can give rise to distortions in competition. A clear example is provided by support for young farmers. Data from 1993 showed that 8,462 young farmers in France received installation premiums, whereas no such scheme was implemented in the United Kingdom.²⁵⁶ Subsequently, a European Commission report of 1997 noted that, from 1989 to 1990, approximately “23,000 young farmers per year throughout the European Community had benefited from the scheme[,]” with five percent of young farmers in Belgium, France and Luxembourg making applications.²⁵⁷ By contrast, implementation still had not been

252. See, e.g., DAVID BALDOCK ET AL, ENVIRONMENTAL INTEGRATION AND THE CAP 102-103 (Institute for European Environmental Policy 2002).

253. See, e.g., CAP 2000, *supra* note 33, at 53 (noting the disparities apparent in treatment of less-favoured areas); see also SPECIAL REPORT 14/2000, *supra* note 59, at ¶ 57 (noting different aid rates for agri-environmental commitments).

254. See also, e.g., SPECIAL REPORT 14/2000, *supra* note 59, at ¶ 37.

255. See, e.g., 458 PARL. DEB., H.C. (6th Ser.) (2007) 38WS (Written Statement: Secretary of State for Environment, Food and Rural Affairs).

256. EUROPEAN COMMISSION, THE AGRICULTURAL SITUATION IN THE EUROPEAN UNION: 1995 REPORT, at T/159 (European Commission, Brussels: Luxembourg, 1996) (for the relevant European Community legislation at that date, see Council Regulation (EEC) 2328/91, O.J.L 218/1 (1991)).

257. CAP 2000, *supra* note 33, at 63.

effected in the United Kingdom (where the Government had also elected not to implement the early retirement scheme).²⁵⁸

Variation has been particularly marked in the case of support for less-favoured areas.²⁵⁹ It has been seen that by 1995 some fifty-five percent of the utilized agricultural area of the European Community had been classified as “less-favoured,” with the proportion reaching ninety-eight percent in the case of Luxembourg.²⁶⁰ These figures would seem to have remained relatively stable, since by the time of *Special Report No 4/2003 Concerning Rural Development: Support for Less-favoured Areas*, issued by the Court of Auditors, the overall proportion had increased only marginally to fifty-six percent.²⁶¹ Nonetheless, strong concerns were expressed as to the initial method of classification and as to the lack of subsequent review. For example, it was felt that objectively there was no longer a case for arguing that almost all the utilized agricultural area of Luxembourg qualified as less-favoured.²⁶² In particular, there was great concern that uniform criteria were not being operated by Member States.²⁶³ Different national preferences generated different indicators and a consequence was disparity in treatment among beneficiaries.²⁶⁴ Thus, in the context of designating less-favoured areas to prevent land abandonment, Germany applied a far higher figure for overall population density than Ireland (respectively, 130 and 27 inhabitants per square kilometer).²⁶⁵ These problems of classification have remained ongoing, which may be graphically illustrated by the fact that they could not be resolved by the time that Council Regulation (EC) 1698/2005 was enacted. As indicated, Member States are under an obligation to carry out designations of less-favoured areas according to objective criteria,²⁶⁶ but the existing lists will continue in force until the end of 2009.²⁶⁷

258. *Id.* at 63-64. For the relevant European Community legislation at that date, see Council Regulation (EC) 950/97, O.J. L 142/1 (1997).

259. See generally, e.g., Thomas Dax & Petra Hellegers, *Policies for Less Favoured Areas*, in CAP REGIMES AND THE EUROPEAN COUNTRYSIDE: PROSPECTS FOR INTEGRATIONS BETWEEN AGRICULTURAL, REGIONAL, OR ENVIRONMENTAL POLICIES 179 (Floor Brouwer & Philip Lowe eds., 2000).

260. CAP 2000, *supra* note 33, at 53.

261. SPECIAL REPORT 4/2003, *supra* note 35, at ¶ 3. For more recent data, see also T. COOPER ET AL., AN EVALUATION OF THE LESS FAVOURED AREA MEASURE IN THE 25 MEMBER STATES OF THE EUROPEAN UNION (Institute of European Environmental Policy 2006).

262. SPECIAL REPORT 4/2003, *supra* note 35, at ¶ 29.

263. *Id.* at ¶¶ 30-34.

264. *Id.* at 10, ¶¶ 33-35.

265. *Id.* at 10, ¶ 34.

266. See Council Regulation (EC) 1698/2005, art. 50, O.J. L 277/1, at 22-23 (2005).

267. *Id.*, art. 93(2), O.J. L 277/1, at 36 (2005).

Likewise, agri-environmental measures have not been uniformly implemented. The importance of such discrepancies is exacerbated by the fact that, together with support for less-favoured areas, they account for a substantial proportion of the total rural development budget. Indeed, support for less-favoured areas represented 18.7% of that budget for the period 2000-2006,²⁶⁸ and the United Kingdom Government soon intimated that agri-environmental measures would be the focus of national rural development policy for the period 2007-2013.²⁶⁹ Thus, when the English Rural Development Plan was agreed in December 2007, Axis 2 accounted for the vast majority of total public expenditure (4,182,903,442 Euros out of an overall budget of 5,187,145,003 Euros).²⁷⁰

As with less-favoured area schemes, agri-environmental schemes have seen uneven uptake among the Member States and the greatest rate of participation has been in Austria.²⁷¹ The Court of Auditors observed in 2000 that, although it has only two percent of European Community farmland, it had absorbed twenty-one percent of total agri-environmental expenditure.²⁷² This level of financial disparity has been accompanied by very different models of implementation. Notably, in France the *Prime à l'Herbe* Scheme, implemented under the Agri-environment Regulation, proved so popular with farmers that it extended over 5.3 million hectares. Yet, a consequence was that it was criticised for its lack of focus and its inability to deliver clear environmental benefits.²⁷³ By contrast, in the Netherlands there was greater targeting, resulting in higher payments per hectare (260 Ecus, as opposed to 42 Ecus in France).²⁷⁴ Accordingly, although it may be possible to detect both “broad, but shallow” and “narrow, but deep” approaches, the European Commission has been apprehensive at the absence of any hard and fast rule as between the level of payment and the propor-

268. SPECIAL REPORT 4/2003, *supra* note 35, at ¶ 3.

269. 458 PARL. DEB., H.C. (6th Series) 131-132WS (2007) (Written Statement: Secretary of State for Environment, Food, and Rural Affairs).

270. Memo 07/604, European Union, England's Rural Development Plan (Dec. 20, 2007).

271. See SPECIAL REPORT 14/2000, *supra* note 59, at ¶¶ 37-38.

272. *Id.* at ¶ 38.

273. See, e.g., Henry Buller, *The Agri-environmental Measures (2078/92) in CAP REGIMES AND THE EUROPEAN COUNTRYSIDE: PROSPECTS FOR INTEGRATIONS BETWEEN AGRICULTURAL, REGIONAL, AND ENVIRONMENTAL POLICIES* 199 (Floor Brouwer & Philip Lowe eds., 2000); Christopher Rodgers, *Environmental Policy and Reform of European Agriculture Law, in AGRICULTURE AND INTERNATIONAL TRADE: LAW, POLICY AND THE WTO* 277 (Michael N. Cardwell et al, eds., 2003); see also SPECIAL REPORT 14/2000, *supra* note 59, at ¶ 44 (criticism by a European Community institution).

274. Buller, *supra* note 274, at 199, 211.

tion of the utilized agricultural area covered by the particular program.²⁷⁵ As a result, it has concluded that “there is no model programme or common pattern of expenditure: each Member State, and frequently each region, has chosen their own method of implementation.”²⁷⁶

Nevertheless, variety would not of itself seem objectionable. As has been seen, the EC Treaty expressly requires that, in implementing the Common Agricultural Policy, account must be taken of structural and natural disparities between the various agricultural regions²⁷⁷ and the same requirement is reaffirmed in the Preamble to Council Regulation (EC) 1698/2005.²⁷⁸ This diversity would seem all the more relevant now that the European Union extends from the Arctic to Cyprus and Malta. Further, in work undertaken by the OECD, emphasis is laid upon the fact that different countries may have very different perceptions of multifunctional benefits of agriculture, as promoted by rural development policy.²⁷⁹ Agricultural landscape is cited as an example. Even within the same country it is suggested that such landscape located “around urban agglomerations may be valued differently than similar landscape in a remote area” and, accordingly, “the composition of the output bundle [from multifunctional agriculture] that is valued by society will not be the same everywhere, and the relative weights attached to each output may also vary.”²⁸⁰ It may also be reiterated that the European Community has argued for such an approach in the context of the Doha Development Round negotiations.²⁸¹

The mischief to be addressed would seem rather to be unjustified differentiation. In other words, Member States may implement very different rural development programmes, so long as there are objective reasons. Thus, the Court of Auditors criticized the allocation of agri-environmental funds in Germany, in that they were targeted away from the area in greatest need (the Land of North Rhine Westphalia).²⁸² It may also be re-emphasized that Council Regulation (EC) 1698/2005 imposes an obligation on the Member States to carry out the controversial designation of less-favoured areas “on the basis of objective com-

275. DGVI COMMISSION, STATE OF APPLICATION OF REGULATION (EEC) No. 2078/92: EVALUATION OF AGRICULTURE-ENVIRONMENT PROGRAMMES ¶ 8.3 (1998) [hereinafter DGVI Commission].

276. *Id.* at ¶ 8.6.

277. EC Treaty, *supra* note 15.

278. Council Regulation (EC) 1698/2005, O.J. L277/1, at 1 (2005).

279. *See e.g.*, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, MULTIFUNCTIONALITY: A FRAMEWORK FOR POLICY ANALYSIS AGR/CA(98)9 (1998).

280. *Id.* at ¶ 16.

281. *Note on Non-Trade Concerns*, *supra* note 14 (the Discussion Paper concerned was *Agriculture's Contribution to Rural Development*).

282. SPECIAL REPORT 14/2000, *supra* note 59, at ¶ 51.

mon criteria.²⁸³ Similarly, it would seem that “blanket” implementation of rural development measures is equally open to criticism. While such a method appears immediately attractive and fair, it may fail to target particular difficulties; this may be especially so if the basis of zoning is simply an administrative region, as opposed to a homogeneous agricultural area.²⁸⁴ Further, unless there is sufficient focus, some farmers may be undercompensated and others overcompensated.²⁸⁵

In order to address these problems, there has been consistent advocacy of proper benchmarking and monitoring; but, importantly, unless sufficient data has been collected to identify the zones to target, even well-intentioned legislation is likely to miss its mark. The Court of Auditors identified as a key weakness of the Agri-environment Regulation the fact that “the Commission did not carry out a comprehensive analysis on EU level of where and how EU funds could best be spent to maximise environmental impact.”²⁸⁶ In many ways, this absence of verifiable data is unexpected, in that the European Community has been to the fore in the development of environmental indicators. For example, in 1994 the European Commission issued *Directions for the EU on Environmental Indicators and Green National Accounting*;²⁸⁷ subsequent documents included the more agriculturally focused *Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy*, issued in 2000.²⁸⁸ In any event, the need for indicators is now enshrined in Council Regulation (EC) 1698/2005²⁸⁹ and in far fuller form than was found in the 1999 Rural Development Regulation.²⁹⁰ Under Article 81(1) of Council Regulation (EC) 1698/2005, “[t]he progress, efficiency and effectiveness of rural development programmes in relation to their objectives shall be measured by means of indicators relating to the baseline situation as well as to the financial execution, outputs, results and impact of the programmes.”²⁹¹ Moreover, “[e]ach rural development programme [shall] specify a limited number of additional indicators specific to that programme.”²⁹² On the basis of these indicators, the Regulation then imposes a far more specific, yet extensive, moni-

283. Council Regulation (EC) 1698/2005, O.J. L277/1, at 5 (2005).

284. See, e.g., DGVI Commission, *supra* note 276, at ¶ 18.2.1 (chemical use in Italy is cited as an example where the programmes were regionally based).

285. SPECIAL REPORT 14/2000, *supra* note 59, at ¶ 57.

286. *Id.* at ¶ 37.

287. European Commission, *Directions for the EU on Environmental Indicators and Green National Accounting*, COM (94) 670 (Dec. 1994).

288. European Commission, *Indicators for the Integration of Environmental Concerns into the Common Agricultural Policy*, COM (2000) 20 (Jan. 2000).

289. Council Regulation (EC) 1698/2005, art. 81, O.J. L277/1, at 32 (2005).

290. Council Regulation (EC) 1257/1999, art. 48, O.J. L160/80, at 97-98 (1999).

291. Council Regulation (EC) 1698/2005, art. 81, O.J. L277/1, at 32 (2005).

292. *Id.*

toring and evaluation regime than under the 1999 Rural Development Regulation, including annual progress reports.²⁹³

Finally, it may be noted that some impetus for the implementation of objectively justifiable schemes may be derived from *R (On the application of Horvath) v. Secretary of State for Environment, Food and Rural Affairs*, currently before the European Court of Justice.²⁹⁴ The case does not as such concern rural development, but rather the cross-compliance obligations imposed on receipt of direct payments under the Mid-term Review.²⁹⁵ It has the potential, however, to influence the decisions of both Member States and regional bodies in the implementation of rural development programs. In particular, challenge has been made to the fact that English farmers must comply with more onerous obligations (relating to footpaths and bridleways) than farmers in other parts of the United Kingdom.²⁹⁶ The European Community legislation permits obligations that differ at regional level,²⁹⁷ but it is alleged that there has been a breach of the principle of non-discrimination since the differential treatment was not objectively justified.²⁹⁸

5. CONCLUSION

There can be no doubt that rural development forms an increasingly influential component of the Common Agricultural Policy. As seen from Eurobarometer surveys, it is also an arena where European Community legislation is perceived to work to the public benefit; and, in political terms, there is greater appetite for supporting farmers to produce quality foods and an attractive envi-

293. Council Regulation (EC) 1698/2005, arts. 77-87, O.J. L 277/32, at 31-34 (2005). *But see* Council Regulation No. 1257/1999, art. 48-49, O.J. L 160/80, at 97-98 (1999). There was a continuum of policy development over the 2000-2006 period. *See, e.g.*, European Commission, Guidelines for the Mid-term Evaluation of Rural Development Programmes 2000-2006 Supported from the European Agricultural Guidance and Guarantee Fund, (EC) Doc.Star VI/43517 (2002).

294. *See R (on the application of Horvath) v. Sec. of State for the Env't, Food & Rural Aff.*, [2007] E.W.C.A. Civ. 620.

295. *See id.* For the cross compliance obligations, see Council Regulation (EC) 1782/2003, arts. 3-5, O.J. L270/1, at 8 (2003).

296. For the English legislation concerned, see (England) Regulations, The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) S.I. 2004/3196 (Eng.) (these Regulations have now been replaced, but the new legislation is substantially the same). Since the enactment of agricultural legislation has been devolved, Scotland, Wales and Northern Ireland each have authority to implement their own rules.

297. Council Regulation (EC) 1782/2003, art. 5(1), O.J. L270/1, at 8 (2003).

298. For the operation of this principle in the agricultural context, see, e.g., *Klensch v. Secrètaire d'État à l'Agriculture et à la Viticulture*, Joined Cases 201/85 & 202/85, [1986] E.C.R. 3477; *Mulligan v. Minister for Agric. and Food*, Case C-313/99, [2002] E.C.R. I-5719.

ronment than to boost production.²⁹⁹ This rationale underpinned many of the reforms taken during the Mid-term Review and, most importantly, saw the introduction of a new regime for the period 2007-2013 under Council Regulation (EC) 1698/2005.³⁰⁰ Indeed, when this Regulation was proposed by the European Commission, the accompanying Explanatory Memorandum stated that, “[f]ollowing the fundamental reform of the first pillar of the Common Agricultural Policy in 2003 and 2004, the major focus for policy reform in the new financial period will be rural development.”³⁰¹

Nevertheless, it has also been seen that, in terms of policy reform, Council Regulation (EC) 1698/2005 does not introduce a raft of new initiatives. Rather, there may be detected a continuum all the way back to the Structural Directives and the new regime may be regarded in large part as a consolidation of existing measures into four Axes. The novelty of Council Regulation (EC) 1698/2005 is, therefore, arguably more directed to the streamlining of a plethora of earlier schemes, together with a tightening of provisions in relation to programming and monitoring. Accordingly, the focus is on promoting the effectiveness of those earlier schemes, together with greater transparency as to the resulting multifunctional benefits, justifying to the consumer and taxpayer the payment of support to farmers.

Further, rural development continues to come in a definite second to the First Pillar in purely financial terms. Once the overall financial perspective for the period 2007-2013 was agreed to at the Brussels European Council of December 15-16, 2005, there was relatively little scope to redress the balance between the two Pillars. Modulation does offer some opportunities, but the legislation currently enacted provides for a compulsory rate of only five percent, with any percentage above that being at the discretion of the Member State; and, besides, where a Member State shows great enthusiasm for voluntary modulation (such as the United Kingdom), there is a concomitant danger of distortions in competition. Yet, against this background, the 2008 Health Check has already seen see the financing of rural development revisited, with a relatively bold proposal to increase the compulsory rate of modulation from five percent to thirteen percent by

299. It may be emphasised, however, that tight supplies in the cereals sector over the summer of 2007 has resulted in a switch in focus to ensuring food security. In particular, for 2008 set-aside (idled) land may be used for agricultural purposes. *See* Council Regulation (EC) 1107/2007, art. 1, O.J. L253/1, at 1 (2007). That said, as noted, the European Commission has doubts whether this state of affairs will continue. *See, e.g.*, Preparatory Document, *supra* note 244, at 5-6.

300. *See* Council Regulation (EC) 1698/2005, O.J. L277/1 (2005).

301. Rural Development Proposal, *supra* note 100, at 2.

2012.³⁰² Admittedly, even this relatively bold proposal leaves the Second Pillar subordinate to the First Pillar in terms of budgetary expenditure, but it would still seem hard to deny an overarching shift towards a Common Agricultural Policy which places greater emphasis on rural development. In the words of Commissioner Fischer Boel at the 2007 Oxford Farming Conference, “[f]rom modest origins, [rural development policy] has already grown into the ‘second pillar’ of the CAP. My gut feeling is that this pillar will have to grow still taller in the future.”³⁰³

302. See, e.g., Health Check, *supra* note 244, COM (2008) 306/4, Explanatory Memorandum, at 6-7. As indicated, it is also proposed that higher rates of modulation be imposed on those receiving the greatest amount of direct payments, up to a maximum of twenty-two percent in total for those receiving 300,000 Euros or more. *Id.*

303. Mariann Fischer Boel, Member of the European Commission Responsible for Agriculture and Rural Development, A Vision for EU Agriculture and Opportunities for UK Farmers (Jan. 4, 2007).