



Comité européen de droit rural –
European Council for Rural Law
– Europäische Gesellschaft für
Agrarrecht und das Recht des
ländlichen Raums

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COMMISSION I – KOMMISSION I

Statut juridique des conjoints et de leurs enfants dans l'entreprise agricole
Legal status of cohabitees and their children in the agricultural enterprise
Rechtliche Stellung der Partner und deren Kinder im landwirtschaftlichen Unternehmen

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CONCLUSIONS

The Commission embarked upon the task of analysing the legal status of cohabitees and their children in the agricultural enterprise by comparing respective regulatory approaches in different legal systems. In so doing, the Commission found a significant difference between common law systems and civil law systems. In common law systems, agricultural land and farming property is treated basically in the same way as any other real estate and movable property. In civil law systems, on the contrary, farms are preserved against partition and subsequent non-agricultural purposes of use. To that end, land laws in civil law jurisdictions prescribe different prices for the transfer of agricultural land and farming property. Legally prescribed pricing for agricultural land and farming property usually results in prices lower than prices formatted under market conditions. Such a lower price, known as *net value* or *earning rate*, facilitates the transfer of undivided farms to a single and legally privileged beneficiary, traditionally the oldest (or youngest) son of the farmer. Together with other legal

provisions traditionally privileging (male) progeny, civil law systems tend to discriminate, at least indirectly, (female) cohabitees of farmers in case of death, divorce or the dissolution of life partnerships.

Propositions – Empfehlungen

Based on the findings summarised above, the Commission developed several propositions for avoiding discriminatory biases detrimental to cohabitees and their children in the agricultural enterprise, namely:

1.) Clarification of terms

In the Commission, there was broad consent that traditional terms, like farmer and farmwoman, do no longer encompass the variety of modern life forms. The Commission, however, found itself unable to put forward, on its own initiative, a new terminology appropriate for all Member States of the Council of Europe. Therefore, the Commission recommends that the Council of Europe shall take over the task of developing a new terminology in order to formally modernise land laws in Europe.

2.) Market value as guiding principle

As a major obstacle to equal treatment of cohabitees and their children in the agricultural enterprise in civil law jurisdictions, the Commission identified price differentiation between agricultural land and farming property priced by its net value or earning rate, on the one hand, and non-agricultural land priced by its market value, on the other hand. For this reason, the Commission recommends to restrict the application of net value, or earning rate, to the core business of farming. Peripheral businesses, such as agrotourism and direct marketing, on the other hand, shall be subject to market prices. In order to avoid speculation and land grabbing, however, the Commission proposes the implementation of flanking measures for countervailing conceivable increases of land prices.

3.) New retirement arrangements

Inspired by progressive models of social security legislation, *e.g.* the Finnish Farmers' Pensions Act (Maatalousyrittäjän eläkelaki, MYEL 1280/2006), the Commission invites the Council of Europe and its Member States to re-evaluate social security laws concerning cohabitees and their children in the agricultural enterprise. In particular, the Commission submits the proposal that direct payments could, to a certain extent, be granted in the form of new pension schemes for cohabitees in agricultural enterprises.

4.) Elimination of discriminatory fiscal effects

The Commission urges the Council of Europe and its Member States to eliminate fiscal side effects particularly affecting cohabitees in agricultural enterprises. In the first instance, the Commission identified undesirable side effects of real estate transfer taxes as potentially discriminatory to cohabitees in agricultural enterprises. However, in cases of agricultural land and property transfer, undesirable side effects may also stem from

traditional social insurance schemes not satisfying the needs of cohabitees and their children in the agricultural enterprise.

5.) New tax and insurance schemes

Based on a comparative analysis of models of *best practice* in Member States of the Council of Europe, the Commission asks for the development of progressive tax and insurance schemes meeting the needs of cohabitees and their children in the agricultural enterprise. In coordination with already existing EU programmes, e.g. the *Leader+* programme, new tax and insurance schemes could provide additional building blocks for the empowerment of cohabitees, in particular women, in the agricultural enterprise.

6.) Participation in decision-making

The Commission identified the right, or possibility, of cohabitees to co-determine upon the future of the farm as a soft, but critical factor. However, because of the rather socio-cultural dimension of the right to, or possibility for, co-determination in the farming context, the Commission contents itself with the emphasis on the requirement for equal decision-making power for all parties involved in the agricultural enterprise.