



**XXVIe Congrès et Colloque Européens de Droit Rural
Bucarest – 21-24 septembre 2011**

**XXVI European Congress and Colloquium of Agricultural Law
Bucharest – 21-24 September 2011**

**XXVI. Europäischer Agrarrechtskongress mit Kolloquium
Bukarest – 21.-24. September 2011**

Organisé par le Comité Européen de Droit Rural en collaboration avec
l'Université Ecologique de Bucarest

Organized by the European Council for Agricultural Law in collaboration with University of
Ecology Bucharest

Organisiert durch das Europäisches Agrarrechtskomitee in Zusammenarbeit mit der Universität für
Ökologie Bukarest

Commission I – Kommission I

National report – Rapport national – Nationaler Bericht

Espagne – Spain – Spanien

**L'AGRICULTURE ET LES EXIGENCES DU DÉVELOPPEMENT DURABLE – AGRICULTURE
AND THE REQUIREMENTS OF A SUSTAINABLE DEVELOPMENT – DIE LANDWIRTSCHAFT
UND DIE ANFORDERUNGEN AN DEREN NACHHALTIGE ENTWICKLUNG**

Dr. Pablo Amat-Llombart

Profesor Titular de Derecho Civi

Professor of Civil Law at the Universidad Politécnica de Valencia Polytechnic University of Valencia
(Spain)

1. The concept of sustainable development in the Spanish legislation

1.1. The legislative provisions that regulate this concept

At the time of approval of the Spanish Constitution (1978) had not yet appeared the concept of «sustainable development», and just beginning to emerge ecological awareness and environmental protection regulations.

However, in Chapter Three of the Constitution of 1978, titled "Principles governing the social and economic policy" is inserted Article 45 on environmental protection and natural resources, that contains allusions to the same standards required by the principle of sustainable development.

The article begins by stating that "everyone has the right to enjoy an adequate environment for the development of the person and the duty to preserve it."

The fact that the environment, as the common heritage of the Spaniards, "should" be kept by all, walk in the direction of the modern idea of environmental sustainability.

In addition, the article requires public authorities to ensure "the efficient use of all natural resources." Sustainability appears again on the idea of "rationality" when using nature and its resources for the benefit of man.

Some decades later, in the XXI century, several modern Spanish laws have received the concept and principle of sustainable development, especially in diverse areas of action for the protection of the environment.

For example, in the area of assessing effects and impacts of human activity on the environment, we can cite the Law 9/2006 of April 28, on the evaluation of effects of certain plans and environmental programs.

Similarly, in the context of air pollution, Law 34/2007 of November 15, on air quality and protection of the atmosphere.

Also, the Law 42/2007 of December 13, on natural heritage and biodiversity; the Law 43/2003 of November 21, on mountains; and the Law 27/2006 of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters.

Above all, the Law 45/2007 of December 13, on sustainable development of rural areas.

In conclusion, under the Constitution of 1978 has not been explicitly passed the principle of sustainable development, although it appears its substance.

At the level of ordinary laws it was introduced the concept and the principle of sustainable development in various areas of activity, especially in the context of environmental law and rural development.

1.2. Implementing the principle of sustainable development

The practical application and implementation of the principle of sustainable development contained in the aforementioned ordinary laws, usually is done by lower regulations of administrative nature (Royal Decrees, Ministerial Orders) which approved general plans or strategies about the area concerned.

For example, on sustainable development of rural areas, Law 45/2007 provides for the adoption of a " Program on Sustainable Rural Development " at national level.

Well, under Law 45/2007, Royal Decree 752/2010 of 4 June, passed the First Program on Sustainable Rural Development (PSRD) for 2010-2014 period, which is set as the main instrument for action planning of the Central Government in relation to the countryside. It was developed in coordination with the Autonomous Communities (AACC). The PSRD specifies the objectives, plans and actions to be developed by Central Government and those to be passed by consensus with the authorities of the Autonomous Communities.

In that way, the AACC will pass the Regional Strategic Guidelines for Rural Management, to guide and, where appropriate, determine the geographical location of measures under the first PSRD.

AACC also must approve a Plan for Rural Areas, setting out the actions that the competent authorities in each case have to perform in that area.

Currently the Strategic Guidelines and the Plans for Rural Areas are being drawn up and approved by the AACC.

1.3. Effectiveness of measures for general law enforcement

Given the Spanish legal system and the distribution of powers between the State and the Autonomous Communities, in Spain it is necessary to implement a system of executive collaboration and coordination among the various legislative and executive bodies responsible for sustainable development.

I think the best system is one that is quick, economically viable and that will translate into practical and visible results.

The Spanish system can sometimes be quite slow in its applicability to practice, and that reduces its effectiveness.

The negative example exists in the field of sustainable rural development. The law 45/2007 was passed in December 2007. As of June 2010 is not approved the first PSRD 2010-2014. This program is aware of the guidelines and plans of regional governments, which have not yet been approved, and then even more regulation is needed for implementing specific actions and instruments, as the promotion of agriculture land (a future Royal Decree on the contract of rural areas, etc.)

Finally, almost four years after the passage of national law the system is still not functioning. That's not really a sign of effectiveness.

The problem is the multitude of implementing regulations, plans, and regional and state strategies pending of its approval, and the slow in its implementation, in addition to funding shortages that may exist for the system to work.

1.4. Measures to be taken to ensure the implementation and enforcement of the principle of sustainable development that has no binding force

Considering that the "principle of sustainable development" can show the category of "general principle of law" within the meaning of art. 1.4 of the Civil Code, first of all, it has the nature of an extra source of law in the second degree, in the absence of law and custom.

Therefore, under Spanish legal system the principle would have direct applicability as a source of law, although only in the absence of a law or a special custom regulations.

But I think the main function of this principle is «guiding» the legal system. This means that special laws shall be passed by the legislature will include the principle in its provisions, so that the principle will guide the specific regulation as well as concrete measures.

The latter is what has happened in Spain. Several special laws have retained the principle of sustainable development not only as a guiding principle, but as a key objective to achieve their goals.

The practical application of the principle of sustainable development requires the approval by the public authorities of executive and mandatory regulations for public institutions, private companies and individuals. Its infringement will entail proportionate sanctions and require administrative, civil and even criminal responsibility.

In that sense, the Spanish Constitution, in Article 45, paragraph 3, provides: "For those who violate the provisions of the preceding paragraph, in the terms that the law sets, criminal penalties shall be provided or, where appropriate, administrative sanctions and the obligation to restore the damage caused. "

If we consider that in art. 45 can be found part of the contents of the current principle of sustainable development, we conclude that the same article can be used to enforce the principle in its concrete setting by the special laws governing it.

1.5. Political institutions for the promotion of sustainable development. Means used to meet their goals. Effectiveness

The main powers and functions related to sustainable development, and in particular related to environmental sustainability, are allocated to the Ministry of Environment and Rural and Marine Affairs (MERM).

More specifically, there is the Directorate General for Sustainable Development of Rural Areas, whose functions in this area are:

- To design tools for sustainable rural development under the planning of the overall management of the economy.
- To exercise the functions under the Ministry related to Law 45/2007 for sustainable rural development.

The principal means available to achieve the objectives of sustainable rural development are legal and planning.

It has the capacity to develop powers on agro-environmental measures, forestation of crop lands and clearing farm incomes in disadvantaged areas and in areas with environmental constraints.

Also with regard to powers related to the Plan to promote renewable energy to boost the agricultural sector of biomass and biofuels, and the establishment of saving measures and energy efficiency in agriculture.

It has powers to advise and develop guidelines, tools and programs to promote a balanced and sustainable territorial development.

The effectiveness to date in implementing the program established by Law 45/2007 is really low, especially in front to the slow implementation of a legislation in force for nearly four years.

We can also include other bodies involved in this area, but at a lower level, as the Interministerial Commission for rural areas, whose function is to direct and coordinate the various departments in relation to rural areas and in particular, the rural development measures regulated by Law 45/2007, specially for the simultaneous achievement of its economic, social and environmental objectives, according to the Programme for Sustainable Rural Development.

And the Council for Rural Areas, a body of coordination and cooperation between public administrations for sustainable rural development, which aims to inform and be informed about those provisions, plans and projects of general interest, which are submitted and are applicable throughout the state level, and related to sustainable rural development.

Finally, in the framework of Law 27/2006 (article 19), it was created the Environmental Advisory Council, assigned for administrative purposes to the MERM, which seeks the participation and monitoring of general environmental policies aimed at sustainable developing.

2. Implementation of the principles and objectives of sustainable development or sustainable agriculture in strategies, action plans or legislation

We note that the general principle of sustainable development has been embraced in various special laws at the state level, especially in environmental laws and in laws on natural resources and biodiversity protection.

So first, in Law 9/2006 of April 28 on evaluation of effects of certain plans and environmental programs.

The environmental impact assessment is an effective instrument in Spain to achieve "sustainable development" through the consideration of environmental aspects in selected public or private performances.

The assessment is an useful tool to integrate environment into specific policies to ensure sustainable development more sustainable, just and healthy. This way will address major sustainability challenges such as the rational use of natural resources, pollution prevention and reduction, technological innovation and social cohesion.

In short, the Law aims to promote sustainable development in its three dimensions: economic, social and environmental, and therefore aims to achieve a high level of environmental protection and contribute to the integration of environmental considerations in the preparation and adoption of plans and programs by conducting an environmental assessment of those disposals who may have significant effects on the environment.

Also in Law 34/2007 of November 15, on air quality and protection of the atmosphere, you can find objectives such achieving and maintaining a high level of protection of people and the environment from air pollution in a compatible way with sustainable development.

The law seeks to encourage public administrations to incorporate considerations of air quality and protection of the atmosphere in the planning, definition, implementation and development of the various specific policies and make efforts to ensure sustainable development.

In his art. 4.3, provides: "... promoting the integration of considerations relating to the protection of the atmosphere in the various specific policies is a key point for achieving sustainable development."

In his art. 4.4: "In order to achieve sustainable development on air quality and protection of the atmosphere, it will be promoted and disseminated the most effective modalities for the development, implementation and dissemination of technologies, expertise, practices and processes environment acceptable".

And in the art. 22: "... design and implementation of legal, economic, social and institutional tools to contribute to sustainable development."

Moreover, we must quote the Law 42/2007 of December 13, on natural heritage and biodiversity.

In its Preamble we read: "From the perspective of the use of natural heritage, the guiding principles focus: to help to drive improvement processes in "development sustainability" linked to protected natural areas; to promote the rational use of resources to ensure sustainable use of natural heritage; and to integrate the requirements of conservation, sustainable use, improvement and restoration of natural heritage and biodiversity in sopecific policies. "

Art. 2 contains the guiding principles of the Law, including "the contribution of the processes of improving the sustainability of development linked to natural or semi natural areas."

Following with the specific legislation, in Law 43/2003 of November 21, on mountains is said that "the management, conservation and sustainable development of all types of forests are essential for economic and social development, for the environment protection and to protect life support systems on the planet. So forests are part of sustainable development. "

This Law aims to ensure the conservation and protection of the Spanish mountains, promoting the restoration, improvement, sustainability and rational use of them, based on collective solidarity and territorial cohesion.

Specifically, art. 32 defines "sustainable forest management" as "adaptation to the Spanish mountains of criteria and indicators of sustainability, evaluation and monitoring, in accordance with the criteria of international resolutions and conventions to which Spain is party."

Also Law 27/2006 of 18 July, which regulates the rights of access to information, public participation and access to justice in environmental matters, includes the principle analyzed.

Its Preamble states that "the extent to recognize rights that contribute to the realization of rights but also duties, set forth in Article 45 of the Constitution, those rights and duties are a critical tool for strengthening civil society participation in the political decision-making. The "implementation of a model of sustainable development" depends to a large extent on the effective participation of civil society in political decision-making process, so that during the discussion there must be taken into account information and contributions may have done any interested person or participant and in the end result would be palpable and tangible concerns and environmental considerations. "

Moving now to the more specific application of the principle of sustainable development in rural areas and agriculture, we must talk Law 45/2007 of 13 December, on sustainable development of rural areas, which fully includes the principle and aims to apply it in plans, strategies and concrete measures.

From the Preamble of the Law 45/2007 is important to highlight the following:

All rural policy should seek to achieve greater integration of rural land, providing a complementary relationship between rural areas and urban areas, also promoting the sustainable development in rural areas.

The basic object of the Law is to regulate and establish measures to promote the achievement of sustainable rural development through the action of the Central Government and coordinated with other public administrations. Its general objectives are simultaneously economic, social and environmental issues.

This is a law to promote a sustainable development of rural areas, which aims to promote public actions and encourage private initiatives for rural development for the simultaneous achievement of economic, social and environmental objectives. The future of rural areas needs a model of sustainable development.

And within the articles of the Law itself, we can cite the following:

Art. 1.1, which specifies the "Objective of the Law". It provides that the Law is to regulate and establish measures to promote "sustainable development rural areas."

Art. 2, which includes the more specific "Objectives" of the law:

Art 2.1. The general objectives of this Law are:

a) To maintain and expand the economic base of rural areas by preserving competitive and multifunctional activities and diversifying its economy with the addition of new activities compatible with "sustainable development".

c) To preserve and restore the heritage and natural and cultural resources of rural areas through public and private actions that allow their use compatible with "sustainable development".

Art. 4 is very enlightening, because it provides that "the programming of the action of the administrations in relation to rural areas pursue its adaptation to the "principle of sustainable development "...."

On the general framework of actions for sustainable rural development, Law 45/2007 devotes Article 16 to encourage support for the so-called "territorial agriculture".

The public administration, in their respective areas of competence, promote the maintenance and improvement of agriculture, livestock and forestry enough and compatible with a "sustainable development of rural areas", particularly in rural areas classified as priority or where mountain agriculture is practiced.

To achieve these goals, it is regulated and promoted the signing of the so-called "territorial contracts of rural area".

The territorial contract is the instrument which establishes the set of commitments to be signed between the government and owners of agricultural holdings. They will be obligated to guide and encourage its activity for the benefit of a "sustainable development of rural areas."

Finally, art. 24 states: "In order to foster the development and implementation of renewable energy, the program may include measures aimed at:

Energy production from biomass and biofuels production; encouraging energy crops that meet sustainability and prevention criteria; reuse and recycling waste, in that order of priority, favouring the energetic value for those non-reusable or non-recyclable. "

3. Difficulties or enabling factors for achieving the main objectives of sustainable development

3.1. Ensuring food security, preservation of environment and natural resources as well as the needs of agriculture

In Spain the implementation of the principle of sustainable development is closely linked to environmental protection and conservation of rare and precious natural resources.

Among the positive factors to implement the principle, is the increasing environmental awareness of Spanish civil society, and especially of public authorities, institutions and administrations responsible for achieving the goals of environmental protection.

Another positive factor is the increasingly rich and accurate general and specific legislation about environment, which requires the most polluting economic sectors (such industry, energy, transport, urban planning, tourism, etc.) to take serious measures to correction the impacts, and even measures of environmental assessment of projects or activities to be developed, in order to analyze the level of negative impacts on the environment and natural ecosystems.

One of the main difficulties are related to the lack of funding for measures to combat environmental degradation. Moreover, in times of economic crisis, is often put forward the application of principles of production, wealth creation or employment rather than financing measures to preserve the nature.

3.2. Supporting the viability of agricultural activities and improving the quality of life for farmers and society in general

The purpose of the protection and improvement of quality of life of citizens is closely linked to the rational use of all natural resources and environmental restoration, as shown in art. 45.2 of the Constitution.

Also art. 130 of the Constitution has special attention to the need to develop economic sectors such as agriculture, livestock and fisheries, to "equalize the standard of living of the Spanish people."

So under the Constitution of 1978 factors such economic development, environmental protection, the reasonable use of resources and the achieving a decent quality of life, particularly for farmers, had to be balanced.

The principle of sustainability applied to the agriculture, must be an opportunity for maintenance and modernization of agricultural holdings that implement production systems compatible with a long-term environmental protection and conservation of natural resources (land, water, animal and plant biodiversity, landscape, etc.).

In fact, sustainable development means in practice a quality environment, a healthy natural resources and well-preserved, protected landscapes and a rich and alive biodiversity. All of that provide an increase in quality of life of the general civil society, since there are protected public goods and services to the community. And if agriculture and the farmers are actively involved and committed in achieving these goals through the reorientation of agricultural activities they perform, they are more entitled to receive extra public funding and support of society which receive positive the results generated.

Finally, in relation to agriculture, we can cite many positive factors for achieving those objectives, set by national and European legislation, such as agri-environment measures, the compliance of conditionality for collection CAP supports, the incentive of organic farming, the measures to save water in irrigated crops, etc.

3.3. Public participation in decision-making. Specific right of access to information relating to the environment

As we have seen, the Law 27/2006 of July 18, regulates the rights of access to information, public participation and access to justice in environmental matters.

First, it regulates the right to participate in the procedures for making decisions on matters which directly or indirectly affect the environment, matters which drawn or approval correspond to public authorities (Art. 1).

The right to participate means the following:

- The effective and real participation in the development, amendment and revision of plans, programs and general provisions relating to the environment.
- To make representations and comments on such plans, programs or disposals as are properly taken into account.
- To make public the final outcome of proceedings in which he participated. There must be reported the reasons and considerations underlying the decision passed.
- To participate in a real and effective way in administrative procedures carried out for granting authorizations related activities that affect the environment.

The affected areas are:

- a) Protection of water.
- b) Protection against noise.
- c) Protection of the land.
- d) Air pollution.
- e) Land use and urban and rural land use.
- f) Nature conservation, biodiversity.
- g) Forests and forestry.
- h) Waste management.
- i) Chemicals, including biocides and pesticides.
- j) Biotechnology.
- k) Other emissions, discharges and releases to the environment.
- l) Environmental impact assessment.

Second, Law 27/2006 regulates the specific right to access environmental information held by public authorities or other subjects that have this information in their name.

This right is granted to "public": any natural or legal person and their associations, organizations and groups formed under the law applicable to them.

It regulates access to environmental information upon request (Art. 10 et seq) and derogations from the obligation to provide environmental information (Article 13).

4. Appropriate measures for achieving sustainable agriculture. Spanish experience

4.1. Financial Aid

Spain is trying to implement a model of agriculture and farms (called "territorial agriculture") to guide its activities towards sustainable rural development where it is located.

Actual financial aid and government subsidies are the cornerstone to encourage farmers and agricultural holdings to carry out actions for the benefit of rural sustainability.

Royal Decree 752/2010 of 4 June, approving the First Program of Sustainable Development of Rural Areas (2010-2014), provides in Chapter 7 the "budgetary and financial framework."

The financial arrangements of the actions included in the Rural Area Plans are arranged differently depending on whether the following three categories of actions:

1. Competitive actions of the General State Administration.
2. Actions that are declared of general interest.
3. Proceedings of the Autonomous Community competence.

In the first two cases, the implementation and financing of the action corresponds to the Central Government, with or without EU funding.

In the third case, the execution corresponds to the Autonomous Community: 50% financed by the same and 50% by the Central Government, without EU funding. But in any case the actions of Autonomous Communities co-financed from the Program of Sustainable Development of Rural Areas will be, in turn, being financed with EU funds or other funds of the State Administration.

The state co-financing planned for the five-year period reaches to the amount of 905 million euros, with continued funding of 181 million euros each year.

4.2. Criteria for approval and award of grants and subsidies. The principle of cross compliance and its implementation

The Program of Sustainable Development of Rural Areas provides a triple system of priorities at the time of access to supports, benefits and grants.

First, are preferred the owners of priority agricultural holdings (from Law 19/1995), professional farmers (Law 19/1995) and professionals in agriculture (Law 45/2007).

Among such holders shall enjoy priority which in turn hold a «territorial agricultural holding» (defined at art. 16, Law 45/2007), or organic farm located in areas of the Natura 2000 network.

And finally, the measures are applied at the maximum possible support levels when the beneficiary is a woman or a young farmer (holder or co-owner of a farm), agriculture professionals, natural person who obtain at least 50% of its income from agricultural activities, or in the case of cooperatives and agricultural processing companies operating communal land or livestock (art. 16.1 *fine*, Law 45/2007).

As already mentioned, access to grants and subsidies is organized by signing the so called «territorial contracts of rural area» between farmers and the public administration. Still is pending a Royal Decree to determine the content and requirements of such special contracts, which in any case shall be as determined by the Rural Area Plan accordingly.

Moreover, the principle of cross compliance is not applied in the field of Law 45/2007, since it establishes a program to support sustainable development of rural areas (PSDRA) differentiated of European support for rural development by the EAFRD (Regulation 1698/2005).

Therefore, it is clearly stated in the Spanish PSDRA the absolute incompatibility between aid and subsidies included in the territorial contract commitments generating a cost to the PSDRA /2010-2014, and other assistance for commitments co-financed by the EAFRD through Rural Development Programmes of the Autonomous Communities.

In all cases, the additional commitments of territorial contract adopted for the area, with costs financed by the program, must be different and be perfectly defined the commitments contained in the Programme for Rural Development (EAFRD) and general requirements of cross compliance of the CAP. Anyway, to the purposes of management all commitments can be integrated into a single contractual document.

Therefore, until it is fully implemented the PSDRA by means of Plans for Rural Areas and territorial contracts, in Spain will continue to apply normally Rural Development Programmes under Regulation 1698/2005. After the PSDRA under Law 45/2007 will coexist with the PRD of R. 1698/2005.

5. Public participation in the process of sustainable development. Legal effects of the suppression of public participation

5.1. Effective implementation of the regulation on public access to information and justice

In Spain Law 27/2006 of 18 July regulates the rights of access to information, public participation and access to justice in environmental matters.

Its purpose is to define a legal framework that simultaneously meets the commitments made to the ratification of the Aarhus Convention (Convention of the Economic Commission for Europe of United Nations on access to information, public participation in decision-making and access to Justice in Environmental Matters, Aarhus, June 25, 1998). It also carries out the transposition of EU directives on the subject to domestic law (Directive 2003/4/EC of the European Parliament and the Council of January 28, 2003 and Directive 2003/35/EC of the European Parliament and of Council of May 26, 2003).

The Preamble to the Law 27/2006 states: "the implementation of a model of sustainable development depends to a large extent on the effective participation of civil society in political decision-making process, so that during the discussion were taken into account information and contributions may have done any interested party and in the final result will be palpable and tangible environmental concerns and considerations."

Therefore the rights the Law recognizes, regulates and guarantees, are a critical tool for strengthening civil society participation in political decision-making on sustainable development and the environment.

5.2. Legal guarantees and penalties for violation the rights under Law 27/2006. Jurisprudence. "Real" public participation in decision-making. Mandatory procedures

In terms of legal guarantees, Law 27/2006 states: "The public that consider that an act or, where appropriate, an omission attributable to a public authority has infringed his rights under this Law in terms of information and public participation, may pursue administrative remedies contained in Part VII of Law 30/1992 of 26 November on the Legal Regime of Public Administrations and Common Administrative Procedure and other applicable regulations and, where applicable, the

administrative remedy provided in Law 29/1998 of July 13, Regulating Judicial Proceedings "(Article 20).

Therefore, first applied to this area guarantees involving the administrative review of the performance and activity of government, and when this way is finished without an acceptable resolution, then it is open to judicial review proceedings by the competent judge in the matter.

Moreover, in case that any natural or legal person (exercising public functions, assuming public responsibilities or providing public services related to the environment - considered then as "public authority") violate the rights protected by Law 27/2006, the injured party may directly deliver a complaint to the Public Administration under such natural or legal person exercise their activity (see art. 21 in relation to art. 2.4.2 of the Law 27/2006). After, the competent authority shall issue the appropriate resolution, placing the person who violated the right to fulfill it. If the breach continues, it may impose coercive fines to encourage compliance.

Compliance with the guarantees of public participation (art. 16) in processes, modification and revision of the general rules on environmental matters (art. 18.1), is ensured by the so-called "people action" contained in art. 22. Violation of these rights and guarantees may give rise to certain legal persons (non-economic profit persons and which meet the requirements of Art. 23) may appeal against following administrative procedure (appeals of the Law 30/1992) or judicial procedure (judicial review of Law 29/1998).

Moving now to the effectiveness of the right of public participation, the Law 27/2006 aims to promote a real and effective participation of the public in the preparation, amendment and revision of plans, programs and general provisions relating to environment.

To this end, during the approval of procedures it will be obligatory ensured such right as follows:

a) The public must be informed of proposed plans, programs or general rules (including its modification or revision). The information must be understandable and available to the public, including the public administration body available to receive comments or observations.

b) The public is entitled to express comments and opinions when all options are open before decisions on the plan, program or general rule are taken.

c) In making such decisions there must be properly taken into account the results of public participation.

d) After considering the comments and opinions of the public, the public will be informed of decisions taken and the reasons and considerations upon which those decisions are based, including information on the public participation process.

6. Application of the "precautionary principle" and "the polluter pays principle" in the context of sustainable development in relation to environmental and economic perspective. Regulations, procedures and jurisprudence

I believe that proper application of the precautionary principle (or prevention principle) and the "polluter pays principle" principle, among others, is indispensable for the correct approach to a policy of sustainable development of productive or unproductive activities, especially those that impact on rural development and agriculture.

But I understand that there should be a greater emphasis on the implementation of the precautionary principle, because it allows public authorities to act "before" environmental damage occurred, ie, in the presence of certain -more or less- imminent threats to natural elements or

natural resources or the environment itself. This enables corrective action prior to the negative environmental impact, which will prevent the impact and damage from occurring, keeping the natural resource threatened in good condition and avoiding costly remedial action or recovery that surely will be implemented in case of environmental damage.

In short, there is no better conservation policy than the policy of prevention against environmental damage.

The 'polluter pays' principle, in my opinion, should play a double role in the framework of environmental protection and sustainable development.

The first and most important function is to play as a "disincentive" to potential subjects and industries polluting the environment. This means that the principle should get a lowering effect on the use of production systems, or "unclean" energy or products that are not friendly to the conservation of the environment.

Therefore the 'polluter pays' principle must promote, on one hand, the imposition of heavy economic penalties on companies or sectors that employ such polluter production systems. Fear of economic sanctions should cause a reaction to these industries in the way of changing their production system or business so as to comply with the environmental sustainability parameters legally required.

On the other hand, this principle should impose to the person producing the environmental damage all the consequences of their pollutant actions, and above all must impose the obligation to repair the damage: this means that damaged things or goods must return to the natural state they had before the damage occurred, and of course at their expense.

The current application of the mentioned principles in Spain was analyzed by Law 26/2007, October 23, on environmental responsibility. The Law is the transposition of Directive 2004/35/EC of 21 April on environmental liability with regard to the prevention and remedying of environmental damage (see chapter 9.4 of this report).

7. Main instruments used for conserving and improving the quality of the environment, landscape and natural resources

In the area of Spanish administrative law are frequently used tools like the administrative concession and authorization to allow certain activities that might affect the conservation of the environment, as well as other measures, prohibitions and restrictions to protect natural resources and landscape.

For example, the Law on water of 2001 contains a full title (arts. 92 to 111) dedicated to the "protection of public water and water quality." In these provisions there are set environmental objectives to achieve, water pollution is defined, is regulated the water police, the prohibited polluting actions, environmental limitations to authorizations and concessions, is created the Register of Protected Areas (which includes, among others, the areas designated as vulnerable under the rules on protection of waters against pollution caused by nitrates from agricultural sources, protection areas of significant aquatic species, protection areas of certain habitat or species, protection of mineral and thermal waters), the regulation of discharges to water (prohibitions, permits ...), reuse of treated water, state aid for activities that improve water quality, etc.

It is important to mention the Royal Decree 60/2011, of 21 January, aimed at establishing environmental quality standards for priority substances and other pollutants listed in Annex I. The goal is to get a good chemical status of surface waters.

Regarding soil contamination, the Law 21/2011 of 28 July, on waste and contaminated soil contains a title devoted exclusively to alleviate this problem (arts. 33-38). The main system the Law provides is the "declaration of contaminated soil," for which purpose the government will approve and publish a list of potentially polluting activities of soils. Owners of such activities must periodically submit reports that may serve as a basis for carrying out the declaration.

The declaration of a contaminated soil is required to perform the necessary actions to proceed with cleanup and recovery of the soil, in the manner and time in which determined.

The polluters must decontaminate the soil. They will respond in solidarity and, secondarily, in this order, first the owners of the soil and second the holders. The costs of cleanup and recovery of contaminated soils will be borne by the obligor to such operations in each case.

This may involve the suspension of building rights and other land uses in the case of being inconsistent with the cleanup and recovery actions on the soil.

Decontamination of land for any intended use of this may be effected without previous declaration of contaminated soil, by a volunteer restoration project approved by the competent administrative body (Autonomous Community).

Finally, Law 42/2007 of December 13, establishes the basic legal regime for conservation, sustainable use, improvement and restoration of natural heritage and biodiversity.

As a global instrument for this purpose, it is used an specific and strategic planning in relation to assets and resources to protect, knowing the state's of natural heritage and biodiversity (inventories) and implementing Management Plans for Natural Resources (MPNR). The last are the essential legal instrument for regulating the activities and uses within the perimeter of the protected natural area (and even its suburbs), including the restrictions, prohibitions and other requirements and permits required for the development of any activity in the natural area, all with a view to better protection and improvement. In fact MPNR should formulate guiding criteria for specific policies, and criteria to manage economic and social activities, both public and private, to be compatible with the requirements of the Law. MPNR must also identify the capacity and intensity of use of natural heritage, biodiversity and geodiversity, identifying management options and limitations to be established in view of their conservation status, and providing and promoting the implementation of conservation and restoration of natural resources and components of biodiversity and geodiversity that need it.

Talking about the habitat and natural heritage areas, the law distinguishes several categories of protection (protected natural areas), based on its condition, its importance and environmental value. Endangered habitats are catalogued and special attention is paid to Natura 2000 network protected areas.

With regard to biodiversity conservation, on one hand, it is promoted the conservation of wild native species "in situ", I mean giving preference to the preservation of their habitats and providing specific protection regimes.

In particular, its been created the List of Wildlife in Special Protection Scheme. Inside this List you can find the Spanish Catalogue of Endangered Species as follows: a) Threatened with extinction or b) Vulnerable. This set special effects and prohibitions for species included in those lists.

On the other hand it is promoted the conservation of species "ex situ", particularly through the development of breeding programs or spread outside their natural habitat for the species included in the State Catalogue of Threatened Species. The aim will be the establishment of gene pools and / or obtaining specimens suitable for reintroduction into the wild.

Finally, there are taken measures to prevent and control invasive alien species, and regulations regarding hunting and inland fisheries.

8. Role and relevance of social agents participation in policy making and in developing strategies and regulations on sustainable agriculture. Forms of social participation and influence

The social agents and professionals related to the Spanish agricultural sector (trade unions, associations and professional organizations, etc.) perform their duties under the legislation that protects and regulates this organizations, and within the functions and powers attributed to their statutes.

These social agents are considered by politicians and policymakers responsible for developing rules and plans that affect the sector and also in relation to organic farming and sustainable agriculture.

Often the representatives of the most representative organizations are convened to the preparatory meetings, monitoring and decision-making positions or in the most diverse areas.

Their participation in this area is basically "institutional", I mean, even the rules of procedure may indicate that such participation is mandatory in the early stages of consultation, brainstorming and suggestions, preparation of draft laws and regulations, and so on.

This does not mean that in the final decisions the position of the agrarian social agents is always fully accepted, because there may be different approaches and concerns among some groups and others. For example, about transgenic agriculture and organic farming, the position of the Spanish Association of Organic Agriculture will be very different and opposed to the one adopted by the Farmers Association of Pro-biotechnology.

At the end the policy and law makers is the one who makes the policy decision, having attended and consulted the social agents in agriculture.

Moreover, agents of the agricultural sector plays a major role at the 'social' level, ie information campaigns on specific topics of interest (consumer information ...), vindictive protests against actions or policies of the national government to positions taken in Brussels or in situations of crisis (the recent crisis of Spanish cucumber by false contamination with E-coli bacteria), situation of decline of the sector (abandonment of farms, low profitability, financial difficulties...), petition for more aid and support to the sector, and so on.

9. Other factors to achieve sustainable agriculture

9.1. Organic farming in Spain. Measures taken to make organic farming more attractive. Policy measures, strategies or action plans. Specific instruments such as protected appellations of origin (PAO), protected geographical appellations (PGA) or the guaranteed traditional specialty (GTS). Labelling of products derived from organic farming. Presence of institutional aspects of organic farming

Organic farming is legally regulated in Spain since 1989, when approved the Regulation of the generic term "organic farming", which was applicable until the entry into force of Regulation (EEC) 2092/91, on organic farming and indications on agricultural products and foodstuffs. This regulation has now been repealed and replaced by Regulation 834/2007 on organic production and labelling of organic products.

Spain meets the optimal conditions for the development of organic farming, because of its favourable climate and extensive production systems applied in a number of crops.

From the statistical point of view, since 1991 organic farming in Spain has grown steadily and increasingly in 1991 from a cultivated surface area of just over 4,000 hectares to a production in 2010 of 1,650,000 hectares. There has also been an increasing number of producers from about 400 in 1991 to almost 18,000 in 2010.

Talking about promoting, during the years 2007 to 2010 Spain developed the "Plan of Actions for the Promotion of Organic Agriculture." This plan contains the basic ideas for the political action of the Ministries involved in organic farming (Ministry of Agriculture, Fisheries and Food-MAFF, the Ministry of Environment and Rural and Marine-MERM). In its application collaborated other departments of the Central Government, the Autonomous Communities and the Representative Organizations.

Promotion policy in the Plan was based on three objectives:

- a) Promoting the development of organic farming.
- b) Improving knowledge and promoting the consumption and marketing of organic products.
- c) Enhancing institutional cooperation in this matter.

In analyzing the results obtained with the implementation of the Plan, one can notice the support provided under the policy of rural development, research activities in specific training, activities in production, marketing and postgraduate scholarships, improving the treatment of agricultural insurance, information and promotion actions, with special emphasis of the campaign co-financed between the EU and Spain, participating in major trade fairs at national and European level, support for initiatives to improve marketing and grouping of supply and, finally, collaboration on matters of common interest across stable frameworks with representative institutions.

On May 31, 2011 held a "Congress of reflection and debate on organic farming in Spain", from which emerged a document final ideas and conclusions as a basis for the development of possible future guiding lines of action. Available online document in PDF format.

The organic farming agriculture is a sector undergoing consolidation, and suffers from major weaknesses in the phases of distribution and consumption, so the support and promotion policies are still needed.

Coexistence between GM and organic crops does not facilitate the development of organic production, in addition to the high costs to certificate the product. It has been proposed to free the official certification of organic products.

Its been detected the need for improvements in the areas of finance, taxation, flexible aspects or production requirements (health and sanitation), local sales, research and regulation of marketing.

From the consumer point of view of its length there are difficulties such as lack of availability of organic products, food shortages, price (higher than the equivalent conventional product), the unknown of this products by the consumer, competition and certain cultural and ideological barriers.

The phases of the control and certification of organic products in Spain are the responsibility of the autonomous communities and is performed mainly by public control authorities, through Regional Councils or Committees of Organic Farming.

Regarding now to labelling, all packaged units (in addition to its own brand and one of the specific references to organic farming) are imprinted with the code of the control agency or with an specific logo (pointing the name and the code of the control agency), as distinctive for the

consumer to identify products in the market of organic farming. Since July 1, 2010 they shall also be compulsorily printed the Community logo for Organic Farming.

Moreover, in Spain is now fully operational and enforceable a certification system of quality appellations or traditional appellations of agricultural and agri-food products (PAO, PGA and GTS). No objection to a product certified as organic can also obtain certification of PAO, PGA or GTS, provided it meets the legal requirements of each indications of food quality.

Finally, on the institutional side, its been proposed the creation of an agency or unit specifically dedicated to organic agriculture that integrates all the powers of MERM on the subject. Likewise, strategies to support the organic agriculture must be coordinated between the MERM and the AACC to achieve greater effectiveness.

9.2. Promotion of biofuels. Relevance of the production and use of biofuels in Spain. Regulation of its production capacity

In August 2005 the Government approved the Plan of Renewable Energies in Spain (2005-2010) which involved a review of the Development Plan for Renewable Energy in Spain (2000-2010). The reasons justifying the Plan were the increase of energy consumption, high dependence on energy imports from Spain (80%) and environmental objectives undertaken globally and in Europe. IN relation to biofuel, the Plan incorporated the general objective of Directive 2003/30 of May 8, on the promotion of biofuels, scheduled for December 31, 2010: marketing reach at least 5.75% biofuel for transport to total gasoline and diesel sold. The particular focus of Spain was to reach 5.83% by that deadline, and 7% in late 2011.

The development of biofuels in Spain (1999-2004) has been significant but insufficient to achieve the 2010 targets. It is committed to maintaining the main incentive to production, consisting of a total tax exemption on fuel tax. In addition, the Plan supports to exploit all the possibilities offered by the CAP, especially aid for the production of energy crops. In this regard, the Royal Decree 1612/2008 (art. 38) provides a payment of 45 euros per hectare and per year for energy crops. However, it must be remembered that this specific support is in danger of extinction. Regulation 73/2009 of 19 January, states that no sufficient reason exist to grant specific support for energy crops. The last year for granting this aid was in 2009. Moreover, in the field of technological improvements, it will be seek to select vegetal varieties and species optimal for production, and which are best suited to the agronomic characteristics of Spain.

In June 2010 it was approved the "National Action Plan for Renewable Energy in Spain (NAPRE) 2011-2020", which transposes Directive 2009/28/EC of the European Parliament and the Council of April 23, 2009, on the promotion of the use of energy from renewable sources, which sets general objectives of achieving a 20% share of energy from renewable sources in gross final consumption of energy in the European Union (EU), and a 10% share of energy from renewable sources in energy consumption in the transport sector in each Member State by 2020. These objectives have been fully assumed by Spain.

On the other hand, now is in the final stage of approval the new "Renewable Energy Plan (2011-2020)", whose final draft was published last July 26, 2011.

Regarding the data production and consumption in 2009, the biofuel plants in Spain reached an annual production capacity of over 4 million tons. However, the growth of production capacity has not been matched by similar developments in real consumption of biofuels, because in the year 2009 was just over one million tons. In late 2010, the production capacity was over 4 million tons, divided into 464,000 tons of bioethanol (4 plants) and 4,318,400 tonnes of biodiesel (47 plants).

In general, the framework for the promotion of biofuels in Spain is based on two pillars: fiscal incentives (zero taxes), which runs until the end of 2012, and the obligation of use, which is set in ITC Order/2877/2008 and which are part of the objectives approved by Royal Decree 459/2011. Indeed, the Order of October 9, 2008 (developed by the Circular of February 26, 2009), aims to encourage the use of biofuels for transport. It sets a minimum market requirement that operators of petroleum products must meet and demonstrate through a number of certificates of biofuels. Operators that exceed the minimum biofuels sales, will receive public economic compensation for the number of certificates that exceed the mandatory minimum. Operators who do not meet the minimum, will make compensation payments to the National Energy Commission.

And along with it, the regulation of fuel quality, as last referral was the approval of Royal DDecree 1088/2010.

Among the specific measures proposed by the Renewable Energy Plan 2011-2020 include:

- A program of public aid to innovation and demonstration projects for thermal applications and biofuels.
- Obligation to market labelled mixtures of biofuels at service stations.
- Obligation of use of biofuels for concessions on transport lines.
- National Programme on Biofuels Technological Development.
- Tools for promoting energy crops and forestry and logging waste from forestry operations and agricultural crops for energy uses.
- The creation and regulation of Renewable Energy Producer Agricultural Holding.

From the institutional point of view, it should be noted Royal Decree 1130/2008 of 4 July, passing the basic organic structure of the new Ministry of Environment and Rural and Marine Affairs. In Article 9 lays down the functions that correspond to the Directorate General for Sustainable Rural Development. These include the "development of powers related to the Plan to promote renewable energy to boost the agricultural sector of biomass and biofuels". The Ministry has approved certain standard contracts of agricultural products derived from energy crops. For example, the Order of May 27, 2008 approves the contract of sale of rapeseed in the obtaining of biofuels (biodiesel).

9.3. Measures to fight climate change: measures to reduce greenhouse gases caused by agriculture (strategies, plans, provisions)

Spain is committed to meet certain quotas or percentages of GHG emissions. Specifically, for the 2008-2012 period, Spain is committed that total GHG emissions will not exceed, on average, more than 37% of base year emissions. This figure is reached by adding the initial objective of Spain coming from the Kyoto Protocol (+15%) to estimate removals by sinks (a maximum of 2%) and credits to be obtained through the Kyoto Protocol flexible mechanisms (20%).

GHG Inventory in Spain (Edition 2011) analyzes the data collected in the period 1990-2009 and shows the importance of the total inventory for the energy processing sector: increased from 1990 to 2005, reaching finally in 2009 the 77%. Agriculture is in 2009 in a relative share of 10.5%, and in the period falls occurred 2.8%. In the group "Agriculture" there has been a general decrease, highlighting the categories of "agricultural soils" and the processes of "Manure Management".

The *Spanish strategy for climate change and clean energy. 2007-2012-2020 horizon, adopted* by the Council of Ministers on 2 November 2007, includes a section on the 'sinks', whose overall

objective is to increase the absorption capacity of CO₂ from the atmosphere by vegetation, activities from land use, change of land uses and forestry.

Measures to increase the quantity and quality of carbon sinks in the Spanish territory include: increasing the forest areas; restoration of cover vegetation; measures to prevent forest fires; increasing carbon absorbed by agricultural systems, etc.

On the other hand, the *National Plan for Adaptation to Climate Change (2006)*, contains the framework for coordination among public administrations in the areas of impacts assessing, vulnerability and adaptation to climate change in Spain. The areas and sectors involved are: biodiversity, water resources, forests, agriculture, coastal areas, hunting and inland fishing, mountain areas, fisheries and marine ecosystems, transportation, human health, industry and energy, tourism, finance, insurance, planning and building.

Talking about agriculture and forests, we can notice that an important part of the surface of Spanish territory is seriously threatened by desertification, especially because of forest fires and loss of fertility in irrigated soils through saline effect and erosion. Climate change projections show an increase in these problems across the board and especially in Spain in the semi-arid and dry Mediterranean climate.

To mitigate these effects, measures, activities and areas of work for impacts assessments, vulnerability and adaptation include: description of the most vulnerable areas to desertification due to climatic factors; analysis of erosion under different climate change scenarios; impact assessment of the reforestation of marginal land; farming practices aimed at soil conservation; monitoring of degraded land and desertification process (indicators of erosion and evolution of organic carbon in soil).

We can now mention the action guidelines followed in the agricultural sector affected by climate change: agricultural systems management with a view to adapting to climate change in the short term, based on simple strategies (agricultural practices related to changes in planting dates, crop rotations, the varieties used, etc.) supported on the development of agro-climatic applications as a tool for making decisions; identification of adaptation strategies to climate change in long-term and least cost, specifically in fruit plantations, olive crops and vineyards; assessment of needs on reduction quantity of animals; changes in grazing management and other options for adaptation to climate change in the livestock sector.

More concretely the main working lines on adaptation of agriculture to climate change have been agreed in the Second Working Program of the National Adaptation Plan. Among them we highlight the following: analysis and assessment of impacts of climate change on water resource availability in agricultural areas and for different types of crops, including impacts on irrigation demands in Spain in the XXI century; analysis and determination of impacts of climate change on major pastoral areas (sheep, goats and cattle extensive); cost analysis of climate change impacts in areas of the agricultural sector; mobilization of key actors through processes of communication, participation and awareness.

It is planned to produce a sector report for evaluation and monitoring of impacts, vulnerability and adaptation to climate change in agriculture in Spain (2011), along with a document containing the main findings and recommendations.

And regarding forestry, the National Adaptation Plan affects the following aspects: development of guidelines and evaluation techniques and models to implement an adaptive forest management to climate change (control and adjustment of shifts and intensities of use, selection of the provenance of the seeds in reforestation, etc.); assessment and air-ground biomass of forest species and Spanish systems; development and implementation of forest growth models under climate change scenarios; assessment of carbon budgets for different types of Spanish forest ecosystems; evaluation of interactions between drought, fire hazard and the response of

vegetation in adverse situations; identification of a system of forest indicators of climate change; development of a system of surveillance and early warning.

On the other hand, in the Second Working Program we can stress the following actions: guidelines and good practice of adaptive forest management to climate change; guidelines for the selection of species or varieties in afforested and reforested, adapted to future climatic conditions (2011); early warning system for climate change impacts on forests (2011); analysis of altered patterns in pests and diseases, phenology, fire, germination and / or regeneration, invasive species and carbon balance in forests (2011); cost analysis of climate change impacts in pilot areas or areas of forestry; development of the axis of mobilization of key actors (through a process of communication, participation and awareness); develop a sector assessment report on evaluation and monitoring of impacts, vulnerability and adaptation to climate change on forests in Spain (2012), with a triptych of the main findings and recommendations.

9.4. The issue of environmental responsibility in the framework of Directive 2004/35/EC of 21 April. Nature of this responsibility and effectiveness of its implementation in Spain

Law 26/2007, of 23 October, on environmental responsibility produced the transposition to Spain of Directive 2004/35/EC of 21 April on environmental liability with regard to the prevention and remedying of environmental damage.

Law 26/2007 arises from the need of passing an environmental legislation that implements new responsibility systems that effectively prevent environmental damage (precautary principle) and for cases where these do occur, ensure prompt and adequate reparation (polluter pays principle).

With Law 26/2007 was incorporated into the Spanish legislation an environmental liability administrative system. The liability is basically objective and unlimited based on the principles of prevention and the 'polluter pays'. Environmental liability is separated of the classical civil liability where conflicts between the one who caused the damage and the injured are settled in the courts.

In fact Article 1 (Purpose) states: "This law regulates the responsibility of operators to prevent, avoid and repair environmental damage, in accordance with Article 45 of the Constitution and the principles of prevention and the 'polluter pays'."

The Law in Article 3 articulates a *double environmental liability regime*, which includes "preventive" measures in front of imminent threat of damage, as "restorative" of environmental damage already produced, which is based on the distinction between two groups of operators involved in economic or professional activities.

First, the Law provides a liability that applies to professional and economic activities contained in Annex II which are causing imminent threats or environmental damage.

It is an *objective responsibility* because it does not require the demonstration of the will or incompetence of the agent causing the damage. Thus the law applies in such cases *even if there is not fraud, fault or negligence*. Obligations are imposed on the operator without taking into account any fault or negligence that may have existed in their behaviour.

This liability is based on the *refutable presumption (iuris tantum)* of the existence of "adequate causation" for the production of the threat or damage to such holdings or activities in Annex III. To check the presence of that presumption, is sufficient to prove that the activity of the operator or the way it has developed is intrinsically likely to have caused the damage (appropriate cause principle). Thus the law provides, by way of presumption, the *causal link* between the activity of the person responsible and harmful outcome.

This first type of responsibility has a total reach, since it involves the applicability of all the measures envisaged by law. It is also an unlimited liability, because the content of the obligation of restoration (or, where appropriate, prevention) assumed by the responsible operator, consists in returning injured natural resources to its original state, by paying the total costs amounting the appropriate preventive or remedial actions.

In this regard, the Law emphasizes the full restoration of natural resources and their services, prioritizing the environmental value, which means not satisfied with a mere monetary compensation. This way is effective the "polluter pays" principle, by shifting the costs of repairing environmental damage from society to the economic operators receiving benefits from the exploitation of natural resources.

Second, is established an environmental liability regime applicable to professional and economic activities not listed in Annex III.

The difference with the previous liability is that, in this case, the law does put into play the traditional criteria of subjective attribution of responsibility (which does depend on the existence or not of intent or negligence by the operator causing the threat or environmental damage), in order to aggravate or reduce the measures and legal consequences applied.

So on the one hand, in case of fraud, fault or negligence, shall apply to the subject-agent a *subjective responsibility with heavy effects*.

The responsible should carry all the prevention, avoidance and restoration measures under the law. They are the same consequences as those for the activities of Annex III (where the responsibility was objective, without assessing the culpability of the infringer); for the activities not included in Annex III, it is essential to make a subjective assessment of the conduct of the subject-agent.

On the other hand, in the absence of fraud, fault or negligence, shall apply to the subject-agent an *objective liability but with lower effects*. In such cases, the law only requires the damage producer to apply prevention and avoidance measures.

Moving now to the agricultural operators expressly included in Annex III (which are subject to objective liability, in response to particular risk level of their activity), they join the rest of farmers or agricultural holdings, which, even not included directly in the list because their activity does not constitute a special risk to the environment, will be equally subject to environmental responsibility, in the aggravated subjective submodality or in the mitigated objective, the extent or severity will depend on the presence or absence of intent or negligence in the damage action.

With regard to concrete measures, the Law (see art. 2, paragraphs 14 to 16) distinguishes between the phases of "prevention", "avoidance" and "restoration" of environmental damage:

a) "Preventive measure": the one adopted in response to an event, an act or omission that has created an imminent threat of environmental damage; its goal is preventing the production of the damage or minimizing such damage.

b) "Measure of avoidance further damage": once the environmental damage is caused, this measure is intended to limit or prevent further environmental damage, by controlling, containing or eliminating the factors that have caused the damage, or facing them in any otherwise.

c) "Remedial measures" or "restoration measure": means any action or set of actions, including provisional, which is intended to remedy, restore or replace natural resources and services of damaged natural resources, or provide an equivalent alternative as provided in Annex

II.

Finally, regarding *the content of the environmental responsibility* of the operators of economic or professional activities, primarily extends the obligation to report immediately to the competent authority the existence of environmental damage or imminent threat of such damage occurring, and to adopt and implement measures of prevention, avoidance and restoration of environmental damage, to cover their costs and to assist in the implementation of the measures taken by the competent authority (see Art. 9 of the Act).

Articles 17 and 18 of the Law materialize operator's duties in the prevention and avoidance of environmental damage, and the powers of government in these matters.

Articles 19 to 21 of the Law specifies the obligations of the operator in terms of remedying environmental damage, measures to be implemented and administrative powers in the matter.

10. Criteria or suggestions to strengthen the instruments and mechanisms of the European Union to achieve sustainable agriculture

There are various criteria that could help strengthen policies and instruments aimed at achieving sustainable agriculture.

In the framework of the CAP, second pillar dedicated to rural development is best suited to achieve that goal.

On the one hand, in the field of rural development support contained in Axis 2 of Regulation 1698/2005, there should be maintained and strengthened supports for improving the environment and the natural habitats, coordinating support for the sustainable use of agricultural and forest land (agri-environment aid, etc.).

On the other hand, we must maximize the supplemental funding intended for new strategic policy priorities of the European Union, relating to climate change, renewable energies, water management and biodiversity; agriculture can be fully involved in the achievement of such priorities.

For example, agriculture, as major consumer of water resources can be enhanced by the measures and aids for water-saving in irrigation (replacement of flood irrigation by drip irrigation or sprinkler ...) or for the conservation of water quality (avoid nitrate pollution, which is equivalent to the progressive reduction until the suppression of nitrogen fertilizer, or the introduction of organic or integrated farming systems...).

Moreover, it is necessary information and awareness among farmers about the need to introduce organic or sustainable production systems from the environmental point of view. Along this line should strengthen the position of the farmer as "guardian of nature" and as curator of natural resources and landscape, telling them clearly that society valorises that environmental function and is willing to promote and finance it.

In addition, institutions must pay greater attention and support to the implementation and promotion of farming systems compatible with the environment and landscape conservation.

The paradigm of such production systems is organic farming, regulated for years at Community level, but whose developing is still slow and limited. It is necessary to provide more support and incentives for this sector, providing more facilities for distribution and marketing of organic products on the market, making constant promotion campaigns among consumers, and finally, highlighting its value as a product of certified quality, without becoming too high end price to the public.

Also, in relation to protected natural areas (of the category, modality or surface area they may be), it is essential the maintenance of traditional and sustainable agricultural systems, which for years have enabled the conservation of such spaces, as well as the biodiversity within them.

Finally, from an organizational point of view, it is necessary to implement a system of efficient control and supervision of all obligations imposed on the agricultural sector related to environmental protection. Not looking for both the exercise of the police or punitive function, but to on-the-spot check the proper performance, for example, cross compliance requirements for collecting CAP subsidies, or specific requirements related the perception of aid or support within the framework of sustainable agriculture.