

## **LEGAL FRAMEWORK AND IMPLEMENTATION**

### **Support for the CAP in the Netherlands**

The Dutch government not only wishes to discuss the CAP direct payments regulation at cabinet level and in parliament, but also wishes to engage Dutch citizens in a dialogue about the related issues and has undertaken various initiatives to this effect. Various types of public surveys have been and are being carried out.

In 2007, the following question received, for example, a large amount of attention: "To what extent does the Dutch public back plans to link income support for farmers to the provision of services for society to improve the rural landscape, nature, animal welfare, the environment and food quality?"

On the basis of this public survey, it was concluded that linking income support to the aforementioned services would be widely endorsed in the Netherlands, and if the plan went ahead, the Dutch would assign the highest priority to the environment. In this context, it should, however, be remarked that people become much less enthusiastic when their own money is at stake.

Besides public surveys, the Dutch government also obtains advice from various social organisations and knowledge institutes.

In response to the CAP health check in 2007, the Dutch government presented its long-term vision for European agricultural policy (for the period until 2020) in 2008. In this respect, I shall confine myself to the implementation policy for direct income support.

In the opinion of our government, rewarding the social efforts made by the agricultural sector in a way that is easily visible to society as a whole is one of the most important challenges to be overcome. In 2008, the Dutch government indicated that the provision of income support as part of the CAP should mainly focus on rewarding society's existing and new wishes for landscape, nature and environmental improvement in order to create a broader basis for income support in Dutch society. At that time, the Dutch government therefore advocated making radical changes to income support schemes for farmers; making the CAP greener was already part of the Dutch agenda. I will cover this subject in more detail later on.

### **Implementation in Dutch regulations**

Besides working with the directly applicable European regulations, the Netherlands also implements the "CAP Direct Payments Regulation". This regulation provides a framework for various topics, including, for example, the definition of 'active farmer', the procedure for applying for and activating payment entitlements, the forming of a National Reserve, details of climate and environment friendly agricultural practices, payments for young farmers, etc.

From 1 April 2015 to 14 June 2015, (active) farmers in the Netherlands could submit an application to become payment entitlements. To date, the Dutch government still has not made any decisions either to accept or reject payment entitlements.

## **Payment entitlements and standard sums instead of subsidy rights**

As part of the 2003 initiative to reform the CAP, the Dutch government opted to introduce a scheme based on a system of historic subsidy rights. However, following the “CAP health check” in 2008, the European Commission and the Dutch government announced their departure from this system. This was because basing income support received by farmers on subsidies awarded in the past (from 2000 to 2002) was and still is increasingly more difficult to justify.

The transition from a system based on historic rights to a system offering standard sums per hectare will impact severely on many farmers in the Netherlands. The payments received by some farms will be greatly reduced.

The reason why the Netherlands opted to use the possibility of extending the transition period to 2019 was to avoid disruptive financial consequences for farmers.

During the transition (2015 to 2018), payments in the Netherlands will still differ per farm. This is because the value of the “owned” and “rented” subsidy rights held by a farmer on 15 May 2014 forms the starting point for the transition; in practice, this is referred to as the “reference value”. Farmers can claim a “transition payment” based on the reference value of their farms. The higher the reference value, the higher the transition payment per payment entitlement during the transition. In this context, I shall not precisely explain how the system used during the transition works, but suffice by noting that the payment entitlements received by farmers will decrease or increase, depending on the value of the subsidy rights of their farms as of 15 May 2014 (the “reference value”), to bring them in line with the standard sum per hectare in 2019.

At that time, the payment entitlement in the Netherlands is expected to be € 260 basic payment plus approximately € 117 “greening payment”. For the sake of completeness, it should be remarked that the greening payment is equal to 45% of the basic payment (including transition payment).

For approximately 70% of farms, the change in the amount of direct income support lies between -5,000 and + 5,000 euros. About 13% of farms face a subsidy cut of more than 5,000 euros and 17% will receive a subsidy increase of more than 5,000 euros.

The sectors that are most affected by CAP reform in the Netherlands are the more intensive dairy farms, starch potato producers and veal calf farms.

The sectors that are likely to benefit in 2019 are the more extensive dairy farms, arable farms, farms with other grazing livestock, farms with livestock in hutches, market gardeners and mixed farms.

### **Active farmer**

What is an ‘active farmer’ in the Netherlands?

Article 9 of EU Directive 1307/2013 gives various criteria that have to be met in this respect that I shall not go into during this congress.

In the national implementation of the CAP Direct Payments Regulation, the Netherlands has stipulated an additional condition for being classified as an ‘active farmer’. In the Netherlands, subsidies are not paid to farmers or farms that are not listed in the Dutch Trade Register. The Trade Register is kept by the Dutch Government. It lists all legal persons and companies with their details. In the Netherlands, the Trade Register is regulated by the Commercial Registers Act.

Within the meaning of the Dutch Commercial Registers Act, a company can be summarised as an organisational unit operating with sufficient independence, in which one or more persons contribute adequate quantities of labour or resources in order to supply, process or produce goods and services for third parties for the objective of acquiring personal material gain. If, for example, an organisation's commercial activities or turnover are insufficient in scale, it cannot be classified as a company.

To qualify for subsidies, a farm's listing in the Trade Register must detail specific agricultural activities. According to the Dutch criteria, a farm must have at least 0.3 hectares of agricultural land actually in use on 15 May 2015. A threshold is therefore applied to eligibility for the basic subsidy of € 500.

Lastly, the EU explicitly excludes a number of (legal) persons from participating in the new subsidy scheme. This concerns (legal) persons who operate airports, railway services, water works, property services and permanent sport and recreation parks. The Netherlands has decided also to exclude government bodies and government-related organisations.

## **Greening of the CAP**

In 2013, we noticed that 'the green component' of the CAP was more prominent than in previous years. Member states are required to subsidise farmers who apply "climate and environment friendly agricultural practices"; this is referred to as the greening premium.

The original proposals contained "only" three 'basic measures': the conservation of permanent grassland, crop diversification on arable land and the requirement of designating a percentage (*currently: 5%*) of a farm's arable land as an Ecological Focus Area (EFA).

At that time, the Netherlands indicated that the proposals for the green component of the CAP would be insufficiently effective, too limited and cause too many problems for the sector and the government. Within the EU, our government advocated an options menu for greening, which could include additional measures besides the proposals of the European. According to the Dutch government, the additional measures could help overcome challenges associated with greening that are specific to individual member states.

The possibility in European regulations for allowing member states to develop their own alternatives for the three generic measures was consequently received with open arms in the Netherlands.

In this framework, the Dutch government has developed a number of sustainability certificates with the agricultural sector.

This currently concerns two approved certification schemes:

- The Field Verges Package, and
- The Skylark Package.

### *The Field Verges Package*

This certification scheme offers Dutch farmers a possibility for meeting the requirement for creating EFAs in a different way. However, the general requirement that, subject to different weighting factors, 5 per cent of arable land must be designated as an EFA still applies. With respect to the two other green components - the conservation of permanent grassland and crop diversification - this scheme does not contain any deviating practices. For these two components, the standard requirements given in the national CAP Direct Payments Regulation and EU Directive 1307/2013 remain in full force.

The key element of this certification scheme is managed field edge strips or verges. This component is mandatory. Specific conditions have been formulated in this respect.

For example, at least 30 per cent of the EFA requirement must be met using field verges. They must be sown with a mixture of wild plants, if necessary supplemented with grain or grass. They must be at least 3 and a maximum of 20 metres wide. Fertilisers and pesticides may not be used on field verges. In order to provide fauna winter shelter, at least 50 per cent of the plant life on the verges must be left undisturbed during the winter months. After 1 October, a maximum of the half of the field verges may be removed. The remaining 50 per cent must be left undisturbed until at least 1 February of the following year.

In addition to field verges, the following elements or measures carried out as part of the certification scheme count towards meeting the EFA requirement: ditches adjoining field verges, landscape elements or field verges directly adjoining riverbank vegetation, catch crops or nitrogen fixation crops. With respect to the weighting factors and the rules for the width of field verges, the requirements set out in EU Directive 639/2014 apply.

Landscape elements and field verges with riverbank vegetation only count as green components if they are subject to maintenance contracts that have been concluded within the framework of the European Rural Development Programme. The European width requirements as specified in Article 46 of EU Directive 1307/2013 and Paragraph 5, Article 45 of EU Directive 639/2014 also apply to this scheme.

In addition, the use of pesticides is not permitted with catch crops in any case, which also therefore includes catch crops following flax or hemp and the use of nematicides. In addition, irrigation is not allowed and catch crops may not be sown on the same land two years in succession.

Irrigation is also not allowed with nitrogen fixation crops and they may not be sown on the same land two years in succession. Pesticides are not allowed in the cultivation of alfalfa, red clover, vetch, bird's-foot clover and sainfoin, but fertilisers are. Pesticides are allowed in the cultivation of lupine and field beans, but fertilisers are not.

### *The Skylark Package*

The greening requirements for the conservation of permanent grassland and crop diversification set out in EU Directive 1307/2013 and the corresponding Dutch legislation also apply to this certification scheme. Similarly to the Field Verges Package, the equivalent non-standard practices in this scheme involve exclusively the maintenance of EFAs.

Participants are required to have a sustainability plan approved every year. They must also attend at least 8 meetings of the *Stichting Veldleeuwerik* (Skylark Foundation) and meet at least 4 out of 10 of the targets set by the foundation every year. The *Stichting Veldleeuwerik* is an organisation in which farmers and their customers work together to improve the sustainability of food production. By meeting the 10 targets or indicators formulated by the foundation (product value, soil fertility, soil erosion, nutrients, crop protection, water, energy, biodiversity, human capital and local economy), farmers contribute to sustainable production. Farmers must implement measures for each indicator at least once every the 4 years. The participants are required to update the sustainability profile of their farming methods every year. I shall not cover this point in further detail here.

Farmers can meet the requirement of designating 5 per cent of their arable land as an EFA as specified in Article 46 of EU Directive 1307/2013 by implementing one or more of the following measures: the management of field verges or buffer strips, the cultivation of nitrogen fixation or catch crops and the preservation of landscape elements. With respect to the weighting factors and the rules for the width of field verges, the requirements set out in EU Directive 639/2014 apply.

In this certification scheme, field verges and strips must be at least 1 and a maximum of 20 metres wide. Field verges must be sown before 15 April with a mixture of wild plants, if necessary supplemented with grain or grass. They may not be fertilised. With regard to the use of crop protection chemicals, only weed control in local hot spots with a backpack spray unit is permitted. Field verges must be mown at least once per year before 1 October.

The same requirements imposed in the national CAP Direct Payments Regulation also apply to catch crops. However, contrary to the Regulation, catch crops must be on the plot of land for at least 8 weeks in this certification scheme. The combined use of pesticides and fertiliser is not permitted with catch crops. If, for example, a farmer does opt to use pesticides, he must not apply fertilisers. In addition, irrigation is not permitted during the cultivation of catch crops and the same crop may not be sown on the same land two years in succession.

Irrigation is also not allowed with nitrogen fixation crops and they may not be sown on the same land two years in succession. Pesticides are not allowed in the cultivation of alfalfa, red clover, vetch, bird's-foot clover and sainfoin, but fertilisers are. Pesticides are allowed in the cultivation of lupine, field beans and soybeans, but fertilisers are not.

Similarly to the Field Verges Package, landscape elements and field verges with riverbank vegetation only count as green components if they are subject to maintenance contracts that have been concluded within the framework of the European Rural Development Programme. The European width requirements as specified in Article 46 of EU Directive 1307/2013 also apply to this scheme.

### **Young farmers**

Young farmers may be eligible to receive an additional payment above the standard payment entitlement. They can also apply for payment entitlements from the National Reserve, for example, if they are entitled to an initial lump sum subsidy, but can receive subsidies with a higher value from the National Reserve.

Young farmers who work as partners are also eligible for the additional payment. They must, however, meet the requirement of having long-term control of farm management and income, and responsibility for the financial risks.

In the Netherlands, the following policy is implemented in this regard (the policy is incidentally not specifically set out in the national CAP Direct Payments Regulation):

- the respective young farmers must at least have blocking authority in farm-management decisions involving a sum of more than € 25,000 and
- must at least be responsible for the day-to-day farm management.

The additional payment in the Netherlands is approximately € 50 per hectare. The payment is allocated over a maximum of 90 claimable payment entitlements. Young farmers can receive the additional payment for a maximum of 5 years. The years preceding 2015 in which that they were active as young farmers are deducted from the 5-year maximum.

### **Transfer of the subsidy budget to the second pillar**

In the Netherlands, approximately 20 million euros is transferred from the first to the second pillar every year. This is much less than the permitted 100 million euros per year. If the transfer was larger, less money would be available for paying payment entitlements (direct income support). This would mean that farms that do not receive any subsidies or only receive small amounts would not benefit as much from 2015 to 2019 in terms of direct payments than they would without or with only a limited transfer. The transfer of the budget from the first to the second pillar mainly encounters resistance in the Netherlands from agricultural organisations that want to keep as much money in the farmyard as possible via payment entitlements.

### **National implementation and supervision of the CAP**

In the beginning of 2015, the Dutch government set up an internal and an external advisory committee. The internal committee, in which the responsible national government bodies were represented, mainly looked into the possibilities for limiting the implementation problems. The task of the external advisory committee was to generate ideas for scrapping or simplifying European regulations that are currently unnecessary obstacles for the recipients of subsidies. To this end, the external committee organised an internet survey and held a seminar.

The responses received from the survey and during the seminar show that the complexity of the regulations is regarded as a serious problem. There is a large and urgent need for simplification. The people concerned not only think that the CAP is complicated to work with, but it also contains elements that cause a sense of incomprehension. In this respect, they point, for example, to irrelevant rules, and accountability and responsibility burdens that are out of proportion to the sums that people receive.

On the basis of the recommended ideas, the Dutch government has submitted a list of simplification proposals to EU Agriculture Commissioner Phil Hogan.

- In drawing up this list, the following criteria were applied:  
The simplifications may not hinder the attainment of the objectives of the new CAP (especially with regard to sustainability, innovation and competitive strength).
- The simplifications may not jeopardise the financial interests of the EU.

On a number of occasions, the Dutch government has remarked that industry and the implementing bodies need clarification of regulations even more than simplification. For applicants, the criteria they have to meet to be eligible for a subsidy must be perfectly clear. This is unfortunately not always the case.

One of the proposals is to give payment organisations in member states more room and time to detect any unintentional and general errors, to contact the farmers concerned, to supervise them correctly and, if necessary, to issue warnings. It should be possible to correct this type of error without any further consequences, for example, up to two weeks after the application deadline. This is only one (general) example of a CAP amendment proposal.

Dutch farmers can obtain information about the CAP and the regulations that are important to them in different ways. Various advisory firms are active in this area. In addition, the Dutch government has also arranged for the implementation body for the Netherlands also to provide information about applicable regulations. The government makes relevant information available via the internet and farmers can contact the implementation body by telephone (toll-free) to obtain information.

## **Finally**

In the spring of 2015, people in the Netherlands started formulating ideas for the CAP after 2020. The Dutch government wishes to be well prepared for formal and informal discussions about the CAP and has requested various research firms to look into possible outlines for the CAP after 2020. In this framework, an internet survey, in which all Dutch citizens can participate, will once again be carried out.

I therefore expect the Dutch government to be able to present its vision for the future CAP within one or two years. I personally think that the Dutch proposals for the CAP will include further expansion of the greening component and even more specific targeting of subsidies. But time will tell.....