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Commission III

National Report – Rapport national – Landesbericht
Finland

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Commission III

**The Application of the Single Payment
by National Administrations and National Courts**

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1. National administrative action on the single payment regime

1.1 Institutional features of the single payment regime

Finnish Single Farm Payment Scheme

In Finland the implementation of the single payment scheme¹ was managed by the Ministry of Agriculture and Forestry (**MAF**) which prepared the law proposal (bill 17/2005) concerning the implementation. The government gave the law proposal to the Parliament² on the 18th April 2005. According to the enacted law (557/2005) the Single Payment scheme was introduced on the 1st of January 2006³.

The Finnish single payment scheme is a combination model where payment entitlement consists of (regional, even) single farm payment entitlement (basic entitlement and set-aside entitlement) and supplement aid entitlements (farmer specific special aid and set-aside entitlements).

Finland is divided into three single payment zones⁴.

¹ Council Regulation (EC) No 1782/2003.

² The parliament legislative process included hearings in the plenary session and thereafter hearings in the agriculture and forestry committee, in the constitution committee and in the financial committee. 22 members (mainly from the National Coalition party but also from other parties) made a law proposal concerning long-term rental agreements that have been made before the year 2006 i.e. before the single payment scheme.

The agriculture and forestry committee made amendment to the government's law proposal and added new statute that will return the single payment right to the landowner after the rental agreement ends.

The parliament approved the law including this amendment.

³ The Act (557/2005) on the Execution of the Single Payment Scheme came into force already 1st of August 2005. The law was amended (law 618/2006) concerning the Farm Advisory scheme that was introduced the 1st of January 2007.

⁴ Payment entitlement values are in zone A: 246.60, in zone B-C1: 195.84 and in zone C2-C4: 152.67 euros per hectare. Entitlements can be used only inside the zone where it is confirmed.

Authorities - Central Administration

Until the 1st of May 2007 in Finland the MAF functioned as the Paying Agency (**PA**) which was in practice a "virtual authority"⁵ that consisted of:

- Execution Division of the Department of Agriculture of the MAF
- parts of Internal Audit Unit of the MAF and
- parts of the Information Centre of the MAF⁶.

As of May 2007⁷ these paying agency tasks will be managed by the new Agency for Rural Areas (**ARA**)⁸. PA operations will be relocated from Helsinki to Seinäjoki gradually during the years 2008 -2011.

Regional Administration

In Finland there are 15 Employment and Economic Development Centres⁹ (**T&E Centres**). Every T&E Centre has Department of Agriculture that is in charge of e.g. management of payment entitlements, controls, decisions concerning, investment subsidies etc.¹⁰

There is no T&E Centre in autonomous Åland where the State Provincial Office functions as regional level rural industries authority.

Local Administration

Local level administration is taken care by a municipal rural industry administration (in practice "**agriculture secretary**" of the municipality).

Municipals (407 altogether) in Finland have traditionally very strong autonomy. However, there are a few governmental tasks that are with special legislation¹¹ delegated to municipalities. Rural industries administration is one example of this. Gradually quite a few municipalities have joint forces so that they co-operate and have shared personnel that provide these administrative services.

The Role of Administrative Authorities in Implementing the Single Payment Schemes

The MAF is responsible for implementing the European Union's Common Agricultural Policy and Fisheries Policy and decisions within these fields. The MAF is

⁵ The Governmental Act 1061/2003 concerning the MAF, The Working Order of the MAF (544/2002).

⁶ Established in 1993, Tike is an independent organisation which belongs to the administrative sector of the MAF.

⁷ Act (666/2006) on Agency for Rural Areas

⁸ The Law on Execution of Common Agricultural Policy (1100/1994) 2 § (amendment 13th April 2007).

⁹ Employment and Economic Development Centres (T&E Centres) operate under the Ministry of Trade and Industry and are based on the combined forces of the Ministry of Trade and Industry, the Ministry of Labour and the Ministry of Agriculture and Forestry within their remits.

¹⁰ This includes i.e. development of agriculture and forestry and rural non-farming enterprises, production investments, land acquisition, preparing profitability analyses, improving the working environment, investment related to nurturing heritage sites, renovating precious old buildings.

¹¹ The Act (1558/1991) on Rural Industries Administration in Municipalities. See also: The Act (1336/1992) on Rural Industries Aid Procedures.

responsible for the preparation of legislation, the financing of support measures and the monitoring of implementation, as well as the direction and support of research and advice.

As of May 2007 the ARA is responsible for the management and control of the legality of EAGF and EAFRD expenditure. This task includes

- preparation of guidebooks, application forms and services for farmers
- management of ITC
- preparation of measures for controlling (incl. farmer income support including production control)
- preparation of measures for controlling local administration (which is the responsibility of T&E centres)
- preparation of measures for controlling and managing the controls of T&E centres¹²
- managing the payments.

Note! According to Finland's constitution the ARA has no legislative power. All legislation, acts and statutes are given either by the Parliament, the government or by the MAF.

In addition to the tasks mentioned above the ARA has many other responsibilities¹³.

Concerning single farm payment scheme the **T&E Centre** functions as controller. There are approximately 200 civil servants that are responsible for farmer income support (incl. single farm payment) and production control.

Local authorities are responsible for receiving the farmer applications and updating the register with this information. Local authority prepared the granting decisions that were made by the MAF. Later on, local authorities are responsible for the yearly payment decisions. In Finland the first single payment decisions were made at the beginning of the year 2007.

Summary

- The MAF is responsible for the preparation of implementation of EU legislation and decisions.
- The ARA (1.5.2007 onwards) is responsible for the preparation and the management of single payment scheme.
- Local authorities (rural industries authorities in municipalities) are responsible for the management of farmer applications and payment decisions.
- T&E Centres are responsible for the control of single farm payment support.

¹² In the field of agricultural production control and food and veterinary control (respective parts of Annex III of the Council Regulation (EC) No 1782/2003) the responsible authority in Finland is the Food Safety Authority and also municipal veterinarians, State Provincial Offices' administrative veterinarians. The control involves the Laws on Food Safety (23/2006), on Animal Diseases (55/1980), on Animal Medication (617/1997), on Fodder (396/1998), on Pesticides (327/1969) and on Animal Protection (247/1996).

¹³ The ARA is also responsible for the management of quotas, import certificates, and approval of producer organisations and work programmes and also for the management of registers and data releases, see: the Act 1197/1996 on Rural Industries Register. In addition to EU responsibilities the ARA is also responsible for the management and control of the legality of national expenditure for rural development.

1.2 Handling Applications for Single Payment Entitlements and Award of Single Payment Entitlements

1.2.1 «Standard» Single Payment Rights?

Finland implemented single farm payment scheme in 2006. Farmers applied for entitlements first time in spring 2006 (the 29th April 2006).

The requirements were in brief:

- Area must be included to the year 2006 aid application (farm must be at least 0.3 ha, smallest entitlement can be 0.01 ha).
- The area must be in farmer's possession at least 10 months. Occupancy must start between the 1st February - 30th March.
- Entitlement validity: the parcel must be field, permanent pasture, non-food commitment area or energy crops contract area (30th April 2004-10th March 2005).
- Owners of the entitlement must be listed.
- Cross-compliance requirements (guidebooks for farmers) must be complied with.
- Newly cleared fields must be "ready to cultivate" by the 28th March 2006.
- Cultivation was not required but uncultivated field must be plant covered.

Payment entitlements were granted as a rule as applied in November 2006 and single payments were paid to farmers by the end of December 2006. However, the decisions on granted entitlements and the decisions on payments were posted to farmers only in January 2007.

1.2.2 «Special» Payment Entitlements

In Finland in addition to regional, even part of single farm entitlements there are following additional, farmer specific premiums / entitlements

- sugar premium
- bull and steer premium
- potato starch premium
- milk premium
- special premium for those farmers who have not any or who have so small entitled area that the value of one entitlement unit exceeds 5 000 €¹⁴
- sticker¹⁵ entitlement premium based on Article 60 of the Council Regulation (EC) No 1782/2003
- set-aside entitlement¹⁶.

¹⁴ In year 2006 this special entitlement was granted to 30 farmers only.

¹⁵ The total area of sticker (tarralappu) entitlements is 36 000 hectares.

¹⁶ Set-aside requirement concerns farms that produce more than 92 tons of grain (farms of 30,66 – 70,76 ha depending on the location). Set-aside percentages range accordingly from 8,8 % to 5,4 %.

In general the premiums mentioned above were granted on the basis of the production during the three-year period 2000-2002.

Milk premium was granted according to the milk quota in farmer's possession on the 31st April 2006. Between the 1st March 2005 and the 31st April 2006 farm must have had milk production to some extent. The requirement was fulfilled also, if the farmer began milk production not later than 15th May 2006.

The National Reserve of Payment Entitlements

Finland has the national reserve based on the Governmental Act 887/2006¹⁷. General rule is that entitlements that are not used for a period of three years are returned to national reserve. The entitlement granted in 2006 must be used in 2008 at latest. In case of force majeure this general rule is not applied.

The T&E Centres are in charge of granting entitlements from the national reserve.

The national reserve of payment entitlements is 0.8 % of the maximum quota and the value of the national reserve is 1.1 million euros. The amount of the national reserve increases only

- if groundless payment entitlements are returned or
- if farmers voluntarily return payment entitlements

to the national reserve. The government can also decide to cut down the value of all entitlements linearly to increase the national reserve.

The national reserve is also managed by T&E Centres. The list of cases (see above) in which payment entitlements can be granted from the national reserve can be considered as a priority list.

In 2006 only lifting of additional entitlements was possible. However, farmer was granted entitlements from the national reserve if one has bought area that was leased to some other farmer at the time of applying entitlements in 2006. According to an unofficial statistic roughly 7 000 granting decisions were made in 2006.

From 2007 onwards payment entitlements can be granted from the national reserve only in case of

- 1) New farmer
- 2) Leased parcel has been transferred to inheritor
- 3) Acquisition of leased parcels
- 4) Updating of land parcel identification system
- 5) Land consolidation
- 6) Ending of 20-year special environmental agreement
- 7) Court or administrative decision or
- 8) Force Majeure.

Once the entitlements are granted from the national reserve there are special requirements concerning these entitlements such as

- one can not transfer the entitlements within next five years period (inheritance/ advancement is possible though)
- one must use the entitlement every year during next five years period

¹⁷ Amendment: Governmental Act 212/2007.

- the entitlement that is not used returns automatically to the national reserve
- these requirements are also valid for special premiums/entitlements granted from the national reserve.

In year 2007 applications for granting payment entitlements from the national reserve were delivered to the T&E Centres by the 30th of April. For the time being there are not yet any statistics how many applications were delivered and whether there is any need to prioritise applications.

1.2.3 Good agricultural and environmental condition

There are no statistics whether the payment entitlement has been granted to farmers who only maintain their land in "good agricultural and environmental condition". There are no official analyses of sanctions either.

The structural change of the Finnish agriculture has been rapid since Finland joined to the EU. The number of farms has decreased yearly by 5 % with the exceptional year 2006 when the decrease almost stopped. The most probable reason for this stop is single payment scheme and more specifically the unclear situation concerning the management of payment entitlements (see below in chapter 3).

Due to the structural change both acquisition of additional parcels to farm entity - especially leasing additional parcels - is very common, general practice; most of the remaining farms have leased additional parcels to their farms.

However, when farms increase their size by leasing new parcels, these new parcels are most often scattered. The farm structure is, almost as a rule, gradually getting worse. Very often remote parcels are kept set-aside and their maintenance is minimal. It is also common knowledge that farmers maintain their own fields better. As consequence, the crowing condition of leased parcels is weakening year by year and especially the increasing acidity of these fields is becoming a problem.

Due to this Finland proposed in the Rural Development plan 2007 - 2013 for Mainland Finland a new measure, so called "maintenance liming". However (ironically), the EU Commission rejected this measure as an incentive to promote over production.

1.2.3 The administration and the single payment entitlements

The transfer of payment entitlements is described in the MAF Act (367/2007) on Transfer of Payment Entitlements. Granted entitlements are registered in the entitlement register according to the farm identification number (Farm ID) and according to the ID of an individual (or ID of a legal entity). The holder(s) of an entitlement has to have a Farm ID even if one has nothing to do with agriculture. This is the case when the entitlement returns to the landowner after the lease contract ends or e.g. in case of inheritance. Consequently the farm ID can be the ID of an existing, real active farm and if not, municipal authority makes a **virtual farm** for the owner(s) of entitlements without any real agricultural activity. The procedure is basically because of the clarity of the register.

The sale/transfer contract of entitlements can be made informally. Anyhow, the transfer must be registered i.e. both vendor and purchaser must sign¹⁸ a special form that must be delivered to local authority for registering - attached with a (copy of) original entitlement granting form provided by the same local administration.

The transfer of entitlements from the former lease farmer to the new lease farmer takes place in two-phase procedure: 1) the former land leaser whose contract has ended must make the transfer to the landowner where after 2) the land owner can make new transfer to the new land leaser. This reason for this two-phase procedure is discussed more below.

According to the recommendation by MAF agrarian land lease contracts should always be done in writing. However, according to the legislation¹⁹ oral agreements are valid as well. When land lease contract is made, no additional agreement on entitlements is required. Anyhow, either a copy of the original lease contract or a written documentation of oral lease contract must be attached to the transfer registration form.

The act (367/2007) does not name administrative interventions in the procedures for sale of and/or transfer of payment entitlements.

What Is A Farm?

It is rather difficult task to describe a farm precisely while there is great variety of farms (e.g. fulltime / part time) and the owner structure can be complex. One individual farmer can be a member of several heirs. To avoid malpractices of subsidy schemes especially in case of merger of farms the Governmental Act (217/2007) gives criterion for an individual farm. The description takes into consideration

- taxation situation of the farm
- how production has been conducted on the farm and
- how the production facilities are owned/possessed.

However, as it is, the act has no exact criteria but gives the general minimum requirements to be evaluated

- the eligibility of the farmer²⁰ and
- the amount of support.

Somewhat mystified criterion may be due to the too challenging task for the legislator and maybe cryptic criterion may be intentional.

Entitlement's Monetary Value

There are no statistics whether the cross compliance and/or good agricultural practice requirements have direct or indirect influence on the cropping or investment decisions of a farmer. As mentioned above EU legislation (accordingly the

¹⁸ In question of purchase all individuals must sign the form to get the payment entitlement registered to his/her possession. In question of transfer of possession only one signature of the members of farm is needed.

¹⁹ Finnish Act (258/1966) on Land Lease accepts oral lease contracts as far as the contract period is two years or less. The maximum length of agrarian land lease contract is 10 years.

²⁰ E.g. individual person can be linked to several separate farms or vice versa one farm entity may be split into smaller virtual entities even though it is run as one entity.

above mentioned Governmental Act 217/2007) does have some indirect "preventative" influence to farm entity enlargement. For small and medium size farm entities, which make up the majority of all farms, single payment scheme provides steady income level without further investments on machinery and/or on land.

On the other hand investment support schemes are certainly of more importance and have greater effect on rental and land values.

For the time being there are no statistics on the amount of transfers nor on the monetary value of entitlements.

Generally speaking the (capitalized) monetary value of payment entitlements is determined on the market. Payment entitlement is movable property (asset) and therefore the deed of sale (contract) is not regulated. Values of transaction of entitlements or rental values are not registered anywhere²¹.

It is obvious that on the short run the amount of subsidies per hectare will have an effect to the rental prices of agricultural land. Eventually, on the long run because of the Finnish legislation, subsidy level will capitalise to the land value. However, the uncertainty and the degreasing trend of subsidies may weaken the effect of subsidies on land prices.

Access to agricultural property is not regulated. In practice anyone can become a farmer. Another question is whether the farmer is privileged to get some EU or national support – this is essential. National support scheme includes educational requirements for new farmers combined to support (investment) schemes for young farmers to purchase agricultural land. Even though single payment scheme has no age limit for a farmer national support scheme has the age limit for farmer, which is 65 years²². Without any subsidies there would be very few private farms in Finland while the production cost are equal to or exceed the sales prices.

On the long run some studies concerning the monetary value will certainly follow.

Professional and inter-professional groups in the agricultural sector

If we consider farming as an industry and especially in the context of single payment entitlements the question of professional and/or inter-professional groups is of secondary importance in Finland.

The farm advisory scheme²³ that is obligatory for every member state has been introduced at the beginning of 2007; there is a register of approved advisors who are able to help farmers with cross-compliance issues.

There are two major producer organizations in Finland ie.

-The Central Union of Agricultural Producers and Forest Owners (MTK) (92 000 members)

and its sister organisation

²¹While pproperty sale is strictly regulated all deeds of sale are registered(including the sales price). Accordingly there are proper sales price statistics. In 2005 average price of agricultural land varied from 1 299 €/ha in Lapland to 8 788 €/ha in the Southern Finland. (Kiinteistöjen kauppahintatilasto, National Land Survey 2007)

²² At least one member of the farm (actual farmer, in practice one member of the family) must be under 65 years old till the end of the calendar year.

²³The Law (557/2005) on the Execution of Single Payment Scheme §§ 18 a- d.

- *The central union of Swedish-speaking agricultural producers in Finland (SLC) (15 000 members).*

MTK and SLC are interest organisations representing altogether 107 000 members (farmers, forest owners and rural entrepreneurs). However, the work of these two organisations is not linked to the farmer advisory system.

The ARA maintains the official register of approved advisors (who have passed a specific test). Majority of the individually approved advisors are employees of the ProAgria's Rural Advisory Centres but there are also a few private entrepreneurs.

It is not yet possible to assess how popular and how efficient²⁴ this new, obligatory and supported advisory system is.

Generally speaking young farmers are with a professional degree in agriculture and they in principle they are able to follow the administrative etc. guidelines and to make future plans even without the help of advisors. On the other hand the playground is so complicated that younger farmers might find advisory system helpful. On the other hand older farmers have less competence in "paper work" but they are less willing to ask for help.

The Finnish Single Payment Scheme does not make any difference between old and new farmers. On the other early retirement pension, support for new farmers (for investments in producing facilities, land purchase etc.) include efficient incentives to promote structural change in farming business.

Unfortunately the requirements of retirement, levels of investment support etc. change often. As it is, some year new farmer may get better conditions than another young farmer starting in his profession the following year.

Every farmer/every becoming farmer must make decisions for future based on conditional presumptions.

Modulation

The modulation of support has not been discussed much in Finland. Only the minimum facts concerning modulation have been published.

The general idea seems to be that the decrease of support and farm incomes will be compensated by increasing the size of the production units / farms. The number of farms is now roughly 68 000 and it is supposed to decrease even to 35 000 farms in the next 10-15 years.

The producer organisations are actively promoting status qua. Their objective is to keep by using national agricultural policy and national funding the total subsidy levels as high as possible. One of the most crucial questions is so called 141-aid²⁵ for Southern Finland (agricultural areas situated to the south of the 62nd

²⁴ Some examples of the scope: Already in 2004 (before the obligatory advisory system) more than 70 per cent of Finland's cows were included in ProAgria's production monitoring, in other words 81 per cent of the raw materials of the dairy industry were produced using ProAgria's know how. The same year more than 18 000 farms and farm managers had taken part in ProAgria's quality training and apply its leadership principles to developing their businesses. ProAgria Group Report 2004, see: <http://www.proagria.fi/>.

²⁵ The Article 141 (in the chapter Provisions concerning national aids) of the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union says: "Where there are serious difficulties resulting from accession which remain after full utilization of the provisions of Articles 138, 139, 140 and 142, and of the other measures resulting from the rules existing in the Community, the Commission may authorize Finland and Norway to grant national aids to producers so as to facilitate their full integration into the common agricultural policy."

Parallel). The continuity of this 141-aid has been in the past and still is very heated topic between Finland and the Commission. The Commission sees the 141-aid as a transition period measure whereas Finland sees it as an essential long term measure to maintain agricultural activity in Southern Finland.

1.3 Verification and sanctions

1.3.1 Verification of Compliance with Requirements Linked to the Grant of Single Payments

As mentioned above the transactions of entitlements have to comply with the entitlement register information. The IT system of the administration (IACS) does not allow any other transactions to pass systematic procedures.

There are no – and there can not be - any automatic procedures to verify “good agricultural and environmental condition”. The control system applies only to those farms that are controlled anyhow according to (EU and national) legislation. This means that the check up of cross-compliance is one part of the normal on-site control of farms.

If there is a reported case²⁶ (by anyone who so ever) of malpractice in farming such as violation of good agricultural and environmental condition or animal maltreatment, the case will be checked by the T&E Centre controller before the support can be granted/ paid to the farmer. In case of violation of law T&E-Centre must inform the competent authority e.g. in case of offence against the Government Act on Nitrates 931/2000 the competent authority is Regional Environmental Centre). Especially in animal protection cases "neighbour control" is more efficient control method than official random/risk sample method.

1.3.2 Sanctions²⁷ for Violation of the Requirements Linked to the Grant of Single Payments

The legal basis for sanctions is Council Regulation (EC) No 796/2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers.

The laws that that form the basic structure for Finnish rural law are

- The Law (1336/1992) on the Practices Concerning Rural Industries Support Measures
- The Law (1559/1992) on the National Support for Agriculture and for Horticulture
- The Law (1100/1994) on the Enforcement of the EC Common Agricultural Policy.

²⁶ See e.g. 10 § of the Governmental Act (323/2006) on Control of Cross Compliance Environmental Requirements.

²⁷ According to the Finnish legislation sanctions are confidential information and there are no official statistics nor analysed published studies on this topic.

National statutes concerning controls and sanctions are revised yearly. This legislation should be given by Governmental Acts (instead of the earlier practice when acts were given by the MAF²⁸). This new practise should have been applied according to the Finland's new constitution²⁹ from 1.1.2000 onwards.

At present national legislation include inter alia following Governmental Acts:

- 591/2007 on the control of area based subsidies that are fully or partially financed by the EU
- 592/2006 on the control of livestock subsidies that are fully financed by the EU
- 634/2007 on the administration concerning the rural development programmes
- 635/2007 on the control of national subsidies for plant production and for livestock
- 636/2007 on the control of the cross-compliance requirements concerning good agricultural practice and cultivation requirement of the environmental legislation
- 659/2007 on the control of subsidies that are fully financed by the EU
- 660/2007 on the control of environmental and LFA subsidies.

Imposing sanctions

The local (municipal's) rural industries authority imposes the sanctions for violation of the requirements according to the on site control³⁰ findings made by the T&E-Centre controller. According to paragraph 4 of the Act 34/2007 (good agricultural practice, area based subsidies) gives a list of measures that has to be in order:

- 1) the cultivation and the fertilization of the agricultural parcel has been made in a proper way
- 2) the seeding of the agricultural parcel has been carried out so that it makes even sprouting possible
- 3) the plant protection and the prevention of wild oat (*Avena fatua*) has been done according to the requirements
- 4) the plant and its variety as well as the seed amount is suitable for the region and the amount of seeds takes the seed size into consideration

²⁸ There are still a few MAF Acts in force such as:
 - 41/2006 on the control objectives and on general administration
 - 183/2006 on the Requirements of Good Agricultural Practises (amendments 200/2007 and 631/2007)
 - 34/2007 on the control of program period 2000-2006 LFA and environmental subsidy

²⁹ Constitution (731/1999) 80 §: The president, government and a ministry can give acts according to the authorization given in the constitution or if the authorization is given in another law. Any statute that concerns the grounds of individual citizen's rights or responsibilities must be legislated. The Government shall give the act whenever no other authorization is separately given.

³⁰ Note! Control with Remote Sensing is no longer used in Finland while this control mechanism is no longer cost efficient due to the fact that on site control is always needed to control the cross compliance requirements. Control of entitled area is only one part of the control visit.

- 5) the controlled agricultural parcel of strawberry, arctic bramble, currant, gooseberry, raspberry, buckthorn, bilberry and fruit trees fulfil the minimum plant density required
- 6) the growing condition of the agricultural parcel makes it possible to harvest a yield that is valid for market
- 7) the set-a-side parcel is taken care of properly so that set-a-side does not threaten the growing conditions of the parcel.

Finnish integrated administration and control system includes all nationally, partially and fully EU financed both area based subsidy measures and livestock subsidies. In other words, it concerns also the LFA-, environmental subsidy and other direct payment measures of the Rural Development Program of (mainland)³¹ Finland.

Farm control

The T&E-Centre controller makes a protocol of all findings that cause sanctions. The farmer has no right to appeal at this phase but the farmer has right to add his remarks are added to the protocol. A copy of protocol is always delivered to the farmer.

The control protocol includes several pages of checklists. Checklists are made and sanctions are applied according to statutes. The control also takes into consideration environmental commitments given by the farmer (to obtain environmental subsidy) and also special environmental agreements that are made between the farmer and administration³².

The granting decision and imposing of the sanctions³³ takes place only after the control of the farm (that has been taken under control) has been completed. All cases should be controlled in the autumn before the subsidy is paid. Because of the short growing season in Finland the control takes place in a very short time period after the last seeding time which is 15th of June. Accordingly, there are always a few farms whose subsidy paying is pending until the last controls are finished – occasionally just before the winter arrives to the Northern Finland.

If in the farm control is found out that entitlements have been granted groundlessly these entitlements are retaken back to the national reserve. Thereafter premiums per hectare of this farm are to be recalculated.

The farmer can make a complaint to only after the local authority has given the granting decision, which takes place later on, sometimes a few months after the advance³⁴ paying of subsidies has happened.

³¹ Autonomous Åland has its own Rural Program and accordingly the administration and control system varies to some extent from the administration and control system of the mainland Finland.

³² Most of the farmers have made environmental commitment to benefit environmental subsidies. The requirements of these commitments are additional to the cross compliance requirements. All requirements are being controlled at the same control visit.

³³ In practice the IACS-system has inbound procedures to calculate the sanctions automatically according to the statutes.

³⁴ The aim of the Finnish administration is to pay the majority of area based subsidies within the same calendar year especially to avoid e.g. further liquidity and taxation problems for the farmers.

Sanctions; difference between the area declared and the area determined

In case of breach of area declaration the sanction depend on how big the breach the declared and the area determined is. If the lack is no more than 3 % (less than 2 hectares) the subsidy is paid according to the controlled area without any sanctions. If the breach is over 3 % (2 ha) but less than 20 % sanction is calculated based on over declared area which is doubled. If the over declared area is over 20 % of the area, no area based (EU³⁵) subsidy is paid.

As all agricultural land should be reported and some land has not been reported, the sanction depends on how large area is not reported ie. if the area is slightly more than 3 % of the total area, sanction is 1 % and if the undeclared area is considerably larger sanction is 2-3 % of the subsidy.

Qualifying period

If the over declared area exceeds 30 % (single payment, energy crops, protein crops, LFA, environmental subsidies) the farmer is sanctioned with 100 % qualifying time i.e. these subsidies are not paid at all in this year. If the over declaration exceed 50 % the sanction will 3 years qualifying time during which time the farmer shall be excluded once again from receiving aid up to an amount equal to the amount which corresponds to the difference between the area declared and the area determined. That amount shall be off-set against aid payments under any of the aid schemes (see above). If the amount cannot be fully off-set (within three years) against those aid payments, the outstanding balance shall be cancelled.

Sanctions / Cross-Compliance

Failure to respect cross-compliance and/or good agricultural and environmental condition can cause 0-100 % deduction of the area based subsidies (single payment, LFA, environmental and national subsidies) . There are different levels of sanctions depending how serious the offence is. When the offence happens first time, minor offence causes 3 % deduction and major offence 15 % deduction of subsidies, repeated offence causes respectively 9-45 % deduction and if the offence has happened the third time (third year) the minor offence causes 15 % deduction of subsidies and major offence will lead to full loss of subsidies.

2 The role of the courts in disputes on single payment entitlements

2.1 Competent courts

As mentioned above the granting decision concerning single payment is made by the local (municipal) rural industries authority. If the subsidy is paid as applied local authority must send the decision to the farmer a normal letter. If the granting decision differs from what the farmer has applied local authority must send the decision attached with a protocol as a registered letter. If the farm is run by a group of individuals or by heirs the one who received the registered letter should inform other parties.

³⁵ 100 % sanction concerns subsidies that are fully or partially financed by the EU. National subsidies have double sanction if the breach is 20-50 % and 100 % sanction only if the breach is over 50 % of the declared area.

Seldom, due to human errors farmer may get subsidies less than entitled or application may have been rejected groundlessly. If this has happened by mistake in the first place local authority should correct its mistake.

If the farmer finds the decision of the local authority unfair he/she may want to complain e.g. about the farm's on site control.

Local authority's decision contains instructions how the complaint should be done. The complaint should be delivered the first appeal administrative i.e. T&E-Centre within 30 days term.

2.2 Only a few court cases concerning farm subsidies

According to a short phone interview (July 2007) T&E-Centres have received so far only few complaints concerning single payment. Some cases seem to be involved with earlier CAP sanctions and those farmers who have been sanctioned earlier correspondingly complain about the entitlement granting decision. A few complaints concern granting entitlements from the national reserve. For the moment there are not yet any T&E-Centre single payment decisions.

The Rural Industries Appeal Board³⁶ (RIAB), which is the second appeal stage, has recently received only the first few complaints concerning single payment and, accordingly, there are no decisions yet.

The complaints concerning the decisions of the RIAB can be made to the third appeal stage i.e. to the Supreme Administrative Court (SAC). Appealing is possible (free) only when the RIAB decision concerns recovery of unduly paid subsidies or control (of subsidies). In all other rural industries cases appealing is possible only if the SAC accepts the request for leave to appeal. In year 2005 the SAC decided just 28 agricultural production control cases of which in 26 cases challenged decision was upheld and only one decision was amended. Majority of these cases concerned investment aids but not area based subsidies.

3 Other legal or institutional questions

3.1 Legal protection of property and Amendments that the Parliament made to the Law (557/2005)

The Constitution of Finland (Act 731/1999) gives strong legal protection for private property. The 15 § of the act states shortly and strictly: "Everyone's property is protected. The expropriation of property must always base on law". This main principle of constitution had influence to the final content of on the Law (557/2005) on Implementation of Single Payment.

When the government passed the Law Proposal³⁷ on Implementation of Single Payment to the Parliament the proposal was in line with the EU legislation³⁸ so

³⁶ The RIAB makes yearly roughly 350-400 decisions of which only less than 6 % concerns area based subsidies (CAP, LFA and ENV altogether).

³⁷ Government Bill 17/200.

³⁸ Including: (ETY) No 2019/93, (EY) No 1452/2001, (EY) No 1453/2001, (EY) No 1454/2001, (EY) No 1868/94, (EY) No 1251/1999, (EY) No 1254/1999, (EY) No 1673/2000, (ETY) No 2358/71 and (EY) No 1782/2003.

that entitlements were granted to farmers only - this proposal did not have any link between farming and land owning.

Law proposal was presented to the Parliament in the form of Government Bill. In the Parliament the handling of this bill began with a preliminary debate in plenary session. At this stage no decisions were made regarding the content of the bill. The bill was then sent to the Agricultural and Forestry Committee³⁹ to which - in this case also the Finance and the Constitution Law Committees should give their statements.

During the committee procedure 22 members of the Parliament made a law proposal⁴⁰ according to which

- in case of old land lease contract that has been made before the law will enter to force and

- if the contract does not include any agreement on transfer of entitlements

the lease contract can be annulled in due time by the land owner. The Agriculture and Forestry Committee rejected this proposal. Later on also the Parliament's plenary session confirmed this rejection.

The Constitutional Law Committee commented on the legal protection of property and pointed out in its statement that problematic situations may occur when (previously made i.e. before the law enters into force, up to 10 years long) lease contract ends and if this lease contract will not be continued (with the same tenant).

The Constitution Law Committee noted that legal protection of property is a general legal principle and referred to the primary EU legislation such as Article 295 of the Treaty establishing the European Community and the Article 17 of the Charter of fundamental rights of the European Union.⁴¹

The Committee also stated:

- it is obvious that if at the time of making the lease contract the land owner and the tenant would have known that there will be entitlements they would have included into the agreement some stipulations concerning the entitlements

- the position of the land lord must not be weakened compared to the situation before this law enters into force.

The Constitution Law Committee proposed amendment to the bill and hence, the Agriculture and Forestry Committee added two articles concerning the transfer of entitlements during the transition period⁴². The first one enacts that at the end of the lease period entitlements belong to the land owner:

20.3 §: The entitlement that has been granted to the farmer that possessed agricultural land on the basis of rental agreement which has been made before this law entered to force will be transferred to the land owner when the lease ends

- if the lease contact is not prolonged or

³⁹ Parliament has a total of 16 committees: 15 permanent special committees and the Grand Committee. The special committees prepare Government bills, legislative initiatives, Government reports and other matters for handling in plenary session. Committees also issue statements when requested to do so.

⁴⁰ I.e. Private Members Bill.

⁴¹ The Committee also referred to the cases C-100/88 Oyowe & Traore [1989] ECR 4285, point 16 and C-5/88 Wachauf [1989] ECR 2609, points 19 and 22.

⁴² Transition time: the time during which former (up to 10 years long) lease contracts that are made before the act enters into force will terminate.

- if there is no or if there will not be any other mutual agreement between the landowner and the tenant and
- if the land lord can not get entitlements from the national reserve.

The Committee added also another "clarification" (20.4 §):

After the lease has ended and there is or there will not be any other mutual agreement between the landowner and the tenant the land owner must in the case mentioned above (20.3 §) during the transition period pay the former tenant yearly payment the amount of which is the amount⁴³ of premiums.

After the committee handling, a amended bill returned to the plenary session, where it was approved unchanged.

3.2 Contradiction between National and Community Law

The amendments that the Parliament made to the original bill are in conflict with the Council Regulation (EC) No 1782/2003 according to which entitlements are linked to active farming but not to real property rights and land owning.

In the EU Access Treaty Finland accepted the juridical system of the EU and also the primacy of the Community Law in respect of national legislation - also including the Constitution of Finland. In case the contradiction between the national and Community Law the EU Court of Justice should prioritize Community Law.

If the case (amendments Parliament made) would be brought to the EU Court of Justice the court would probably find the articles 20.3 and 20.4 to be against the Community Law.

3.3 Practical problems

The articles 20.3 and 20.4 of the Law 557/2005 caused problematic situation for the administration while the transfer of entitlement must now happen from former lease holder to the next one indirectly through the land owner. This requires the willingness of all parties involved. It is obvious that conflict situations will occur.

The article 20.4 is especially problematic while it demands the land owner who was the former landlord in certain circumstances to pay compensation for the premiums. In the case where lease contract ends, land owner has no obligations to prolong the contract and is basically free to use the land as he/she pleases. However, the land owner now has now legal obligation to pay the former lease holder compensations that has never been the case before.

The above mentioned amendments that the Parliament made are in the first place against common sense. Secondly, administration should disapply any conflicting national provision, whether prior or subsequent to the Community provision (primacy of Community law over national law).

3.4 Solution: Repealing Problematic Subsections

In the near future the Government will give to the Parliament a new bill that repeals the articles 20.3 and 20.4. However, it is probable that the Parliament will

⁴³ The amount is based on the difference between regional even subsidy and the subsidy with premiums which is calculated (per hectare) for every individual farmer.

not approve this bill. If this happens, the Commission will probably take actions against Finland.

In case the Parliament approves the bill mentioned above it will also lead to a conflict while new lease contracts have been made on the basis of the the law in force.

It is obvious that what ever happens there will be both administrative problems and also private law processes between the farmers and land owners.