

C.E.D.R.



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Commission II

Legal forms for farm enterprises, taking into account traditional and industrial farming – Les formes légales de l'exploitation agricole, en tenant compte des entreprises traditionnelles et industrielles – Rechtsformen des landwirtschaftlichen Unternehmens, unter Berücksichtigung von traditionellen und industriellen Betrieben

National Reports – Rapports nationaux – Landesberichte
Summaries – Résumés – Zusammenfassungen

Argentine

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Agrarian question seems to be involved in more difficult situations related with productive transnacionalización, technological changes and agroindustrial transformations. Multinational corporations and hypermarkets increase their control about production and food sales, and that situation affects not only familiar farmers but SMEs and also agroindustrial system workers.

Since the last years it has been increasing the participation of transnational corporations as inputs suppliers and technology for agriculture, linked to biotechnological advances, like the remarkable diffusion of transgenic seeds, specially soybean cultivation, growth of exploited surface under different kind of contracts: lease, tenancy, accidental hire.

One of the most important characteristics of the actual agrarian model, related with technological change, it has been the impulse to economy linked with a solid process of land and capital concentration.

To make competitive agrarian production, it is use the increase of explotations as strategics to decrease fixed costs, for produced quintal, and balance low prices of products.

However, win scale doesn't implies, properties sale, because it is common the unificated explotación of arable land, under various forms of contract. And it's important in these conditions the articpation of contractors and fact socities like sowing pools.

Agro – export model redefines agrarian social structure from new economic agents and make deepens inequalities between producers, when emphazise dependence from those ones with less aptitude of negotiation.

At the same time the changes and the reduction of domestic markets not only for source materials also for food, creat complex situations that make sharp the traditional differentiation between producers through the display of different behaviours and productive, financial and commercial strategies, adoption of technology, kinds of introduction in agrifood changes and forms of assistance through public and private programs.

New technology generated process of capital concentration linked with the development of large units, at the same time that they mean barriers of entrance to SMEs whose vulnerability amplified because of the variations of internal and international prices, tightly linked with external openness, deregulation and privatization. Join to this, it is the increase of implanted surface with crops, centered in crop plants, oilseeds, specially soy beans, and the fall of another agriculture activities: cattle rising for one side, and regional crop, like sugarcane and cotton, for the other.

France

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En 2007, suivant les dernières statistiques disponibles, 28% des 507 000 exploitations agricoles françaises ont un statut de société et ce taux monte même à 41% pour les 326 000 exploitations professionnelles. Ces chiffres ont très fortement augmenté depuis 20 ans (en 1988, c'était 7% sur 947 600 exploitations et 10,5% sur les 612 200 exploitations professionnelles) et ils poursuivent leur progression à un rythme de près de 4% par an.

Actuellement, parmi les exploitations professionnelles, les sociétés occupent 57% de la surface agricole utilisée et 58% des unités de travail annuel. Elles sont donc un peu plus grandes que les exploitations individuelles et familiales, mais l'écart n'est pas considérable surtout si l'on pondère les dimensions avec le nombre d'exploitants associés.

En fait, la plupart de ces sociétés ne regroupent qu'un ou deux associés exploitants et la place des associés investisseurs reste limitée. Le modèle dominant demeure donc celui de l'exploitation individuelle ou familiale et bien souvent le statut de société n'a été adopté que pour aménager ce modèle (pour limiter les responsabilités patrimoniales, bénéficier d'avantages fiscaux ou sociaux ou, surtout, pour organiser une succession) et pas du tout pour passer à une dimension « industrielle ». Dans cette perspective on a d'ailleurs développé des formes spécifiques de sociétés (GFA, GAEC, EARL, SCEA) qui permettent de rester dans les cadres du droit civil et écartent les aspects capitalistes, tandis que les règles du statut du fermage ont limité le développement de sociétés sous forme commerciale (SARL, SA) qui ne peuvent pas recueillir les baux, ni même la jouissance des biens loués par les exploitants.

La diversification des activités rurales aurait pu être un facteur incitatif à l'expansion des sociétés commerciales, qui avaient par ailleurs bénéficié de modernisation voire de simplification de leurs structures, mais l'élargissement de la définition des activités agricoles a permis d'intégrer de nouvelles activités dans le cadre des exploitations individuelles ou des sociétés civiles actuelles.

Cette évolution pourrait être ralentie par les effets d'une attention nouvelle portée par les pouvoirs publics à l'entreprise individuelle en général, avec déjà des dispositions avantageuses sur le plan fiscal et social et des abattements d'impôts importants en cas de mutation à titre gratuit tandis que des projets visent à distinguer les patrimoines personnels et professionnels dans une optique de protection. Par ailleurs, la possibilité de créer un fonds agricole, reconnue par la loi du 5 janvier 2006, permet de séparer l'entreprise agricole de l'exploitant agricole individuel. La création de structures sociétaires deviendrait donc moins nécessaire sur ces plans. Cependant des facteurs sociologiques, tels que l'affaiblissement de la famille traditionnelle, ou économiques, avec l'évolution vers une agriculture plus qualitative, permettent de penser que ce mouvement sociétaire ne diminuera guère : des sociétés simples et souples seront des cadres indiqués pour regrouper des exploitants, anciens ou nouveaux, et des apporteurs de capitaux qui ne seront plus forcément apparentés ou impliqués dans des relations locales anciennes.

Finland

Timo TOLVI and Jukka MIRV

Finnish agriculture is based on family farms. The structure of agriculture is dominated by a large number of relatively small farms. The total arable area of Finland is about 2.3 million hectares and the average area per farm is about 34 hectares. One special characteristic of Finnish agriculture is that, besides farming, the farms also engage in forestry activities. The average forest area per farm is 48 hectares. The main livestock sector is milk production. The number of dairy farms in Finland is about 12 000 and the average herd size is 24 dairy cows. The average annual yield per cow is about 8 400 litres. Another special feature in Finnish agriculture is reindeer husbandry.

The forms of enterprises found in Finland are private operator, general partnership, limited partnership, cooperative, and limited liability company. In 2008 the number of farming enterprises was about 65 700, of which about 99% were owned by private operators. The proportional share of limited liability companies has grown slightly in recent years, along with the growth in the farm size.

In general there is no ready-to-use model for the form of enterprise to be selected but it should be examined, on a case-by-case basis, which is the most suitable and feasible form of enterprise in each particular situation. The factors that influence the choice of the form of enterprise include the number of founding partners, need for and access to capital when setting up the enterprise, distribution of responsibilities in the enterprise, flexibility of operations, continuity of the enterprise, distribution of profit and covering losses, and taxation.

In Finland the support payments from the EU are complemented by national aids. National aid may be granted to companies only if at least one partner is a farmer who is engaged in agriculture or horticulture and meets the age criterion. As to investment aid, the authority in the company must rest with the person who fulfils the preconditions for granting the aid. The number of companies is the highest in poultry husbandry and plant production, where they account for 23% and 12% of the enterprises, respectively.

The majority of Finnish farms are owned by private operators. A private operator is responsible for the debts of the farm by his or her own property. As to companies, the owners have no personal responsibility for the commitments of the company.

In the Finnish tax system there are no specific tax reliefs for farmers compared to the other taxpayers: in the different forms of enterprises the farmers pay taxes on the same grounds as other persons. Considerations relating to taxation may, however, influence the selection of the form of enterprise because this may have an impact on the amount of taxes to be paid.

Early retirement aid is intended to ensure the livelihood of ageing farmers who give up agricultural production permanently with aim to improve the structure of agriculture. This aid may not be granted to persons who practise agriculture in the form of a limited liability company even if they may, subject to certain conditions, be covered by the insurance under the Farmers' Pension Act.

The Netherlands

Tea MELLEMA-KRANENBURG

In this report stock is taken of the principal co-operative arrangements in the Dutch agricultural sector with the corresponding advantages and disadvantages. Furthermore some facilities concerning business succession are discussed.

Basic partnership and general partnership

First of all attention is given to the basic partnership and the general partnership.

In that connection the basic partnership is the basis of all legal arrangements of partnerships of persons. On the basis of a contract one or several persons co-operate to achieve a proprietary advantage, for the achievement of which object they undertake to contribute something to the community. A special form of the basic partnership is the general partnership. The big difference with the basic partnership is liability. In the basic partnership there is liability for equal proportionate parts, in the general partnership each partner is liable for the whole (joint and several liability).

A variant of the basic partnership and the general partnership is the limited partnership, in which the partners do contribute capital but do not perform acts of control. A bill concerning partnerships of persons is before parliament. The principal innovations in it are that a public partnership may acquire juristic personality and that the claims of a partner on the partnership consist of beneficial co-ownership. Transfer of the enterprise will be regulated on a contractual basis.

The private company with limited liability (B.V.)

The private company with limited liability is mainly used in large-scale agricultural businesses. The principal difference with the partnerships of persons is that the entrepreneur of the enterprise carried on in the form of a B.V. is not personally liable for the business debts that have been incurred by the company.

Transfer of the enterprise is made by transfer of the shares by the shareholders. Before long an Act will come into force in which the B.V. arrangement is made much more flexible. Especially the private nature of the B.V. will become much less prominent, which will have consequences for business succession.

The co-operative society

Furthermore co-operative societies are often found in the agricultural sector. They concern a special form of an association of which a person or business becomes a member. The agricultural co-operative societies perform certain business functions of the associated members/businesses. Examples of those are: purchasing and selling associations of cattle feed, co-operative auctions for vegetables and fruit, Co-operative Banks (Rabobank).

Starting-point of the statutory scheme is that the members are liable for a possible deficit. The articles may provide differently.

Business succession and inheritance law

Dutch inheritance law has facilities for the business successor to take over the business of the testator, which mean that he may be given some advantage over the other heirs and may pay out the take-over amount in instalments.

Business succession and tax matters

In the Dutch Inheritance Tax Act considerable facilities have been included to make business succession easier both during life and after death. If the conditions imposed are observed, gift or inheritance tax need only be paid on 10% of the value of the enterprise.

Norway

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Norwegian agricultural law is part of the Germanic tradition with strong elements of Roman law.

Norway is not a member of the European Union, but is connected through the EEA agreement of 02.05.1992, which was included in Norwegian legislation by act of 27.11.1992. According to chapter 2, agriculture is exempted. Nevertheless, the main principles of the Treaty of Rome apply.

Norway has a population of 4 533 000, is ca. 1752 km long, stretches from 57th to 71st degree of latitude and borders to Sweden, Finland and Russia. The coast is ca. 17 000 km long.

One fifth of the Norwegian land area, some 324 000 km², is owned by the public authorities.

There are few areas in Norway which are suitable for agriculture. For topographical reasons, agricultural areas in Norway are moreover, small, far-flung and in some places difficult to manage. Only some 3.2% of the total land area (with exception of Svalbard) is cultured land. This is very little compared to other countries.

The most important limiting factor is length of the growing period and the sum of heat during this period. Rain conditions, the Gulf Stream and to some degree favourable light are factors which may affect plant growth positively. Spring droughts have however, not been unusual in some important agricultural areas. The cool climate has a favourable effect on the occurrence of plant diseases and pests. The geographical placement entails that Norway lies on the outer edge of growth areas for several important crops, and is one of the few countries in which sugar crops are not grown. The climate also contributes to corn crops being far lower than in many other countries. In large parts of the country the cultivation of animal feeding stuffs, in the main grass, is by far and large the only possibility. Livestock farming based on the cultivation of grass is therefore of great importance in Norwegian agriculture. This gives an indication of the kind of natural constraints must be taken into account.

Norwegian agricultural policy has as its purpose to secure sufficient foodstuffs in the country, as well as providing the possibility for people to be able to live in the whole of the country. The self-sufficiency rate in 2005 was 56%. The State's monopoly on corn was repealed in 1995.

The challenges for Norwegian agriculture are to be found - beyond the natural limitations - in the small units and cost levels in relation to other countries. In order to achieve settlement throughout the whole country, reliable food production and not too expensive prices, regulations for various kinds have been introduced. Conditions have been placed to own farms, various kinds of regulations governing import of foodstuffs at certain times, toll duties etc.

Norwegian farms can be quite large in area, but the cultivation potential is fairly small. On average a Norwegian farm consists of ca. 18.6 hectares arable land. This means that traditional Norwegian agriculture is a combination of agriculture and forestry, as well as exploitation of far-lying fields, grazing, hunting and fishing. This also provides possibilities for sale and hiring out of building plots for leisure purposes and tourism.

The resources found in outlying rough-grazing areas are often organized in so-called common lands of various kinds. Commons are largely defined as a joint property between all the farms in a community where everyone enjoys special rights, or a publicly owned area where all properties in the surrounding communities have special rights. This facility is now undergoing a comprehensive modernization process.

There is only a small amount of specialisation in agriculture through factory production. But small-scale production is a growth area. A characteristic of Norwegian farmers is that they by and large base their activities on a broad spectre of products, and hardly specialise at all. There are large variations in various parts of the country.

Norwegian agriculture is largely dependent on subsidies. These are granted by means of the so-called "agricultural negotiations", and appurtenant legislation, see review item 2.7.

Pressure groups have major significance for Norwegian farmers. The most important are the Norwegian Farmers' Association, Norwegian Farmers' and Smallholder Association and the Norwegian Forest Owners' Association.

All hunting and inland fishing are landowner rights. Elk hunting especially provides considerable resources. Ca. 35 000 elk are shot each year. With an average weight of 130 kg of edible meat this provides a total of 4 455 000 kg. Everything is consumed in Norway.

Long-lasting hiring out of land plots for leisure purposes is widespread. Lessors are in the main farmers who thereby gain considerable annual income. The authorities wish to regulate the annual rent through legislation, as well as limit tenant's losses or undesirable transfers of assets to lessor upon expiry of the tenancy. There are regulations that the tenant is entitled to have the land plot released at a reduced price upon expiry of the tenancy. This is the source of innumerable disputes as well as political conflict. At present there are three cases before the Supreme Court concerning whether such releasing clauses are unconstitutional.

An important factor for Norwegian farmers and forest owners is the so-called allodial right, which gives the eldest child (regardless of sex) the right to take over the farm. The allodial privilege has been the source of many disputes before the courts.

Norway has sovereignty over some islands in Antarctica (Bouvet Island, Peter 1st Island and Queen Maud Land) and Jan Mayen and Svalbard (Spitsbergen) toward the Arctic. Here there is no agriculture apart from hunting which is assigned to the landowner.

Poland

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Individual cultivation is the predominant form of agricultural activity in Poland. Such state of matters results from significant disintegration of land, as more than 85,6% of farms don't exceed the area of 10 ha each. In the nearest future there are no perspectives of correction of Poland's areal structure, because the Act on the Shaping of Agricultural System only to a small extent diminishes the shortcomings of the system in this respect.

Two legal forms are dedicated for strictly agricultural activity: the agricultural production co-operative and the group of agricultural producers. The interest in the former continually drops: at the end of 2008 in the sector of agriculture, forestry and hunting 2829 were active which means a decrease by 236 in comparison with the former year; whereas a number of members of agricultural production co-operatives dropped from 23,2 thousand in 2000 r. to 13,9 thousand in 2007. The reasons for unwillingness to organize in cooperatives lies within historical experiences, on the one hand, and the risk of loss of the contributed land, on the other.

Current hopes for development of cooperatives in agriculture are placed in groups of agricultural producers. This form of agricultural activity was introduced into the Polish legal system in 2000, however its popularity seems relatively high as in 2008 the number of such groups doubled. Financial preferences are the impulse for creation of agricultural producers' groups – the are entitled to financial aid from the national budget. Impulsem do powstawania kolejnych grup są preferencje finansowe, gdyż grupy mogą liczyć na początkową pomoc z budżetu państwa. The effectiveness of using public funds is evident from the fact that agricultural producers' groups have benefitted from 90,6% of the total limit of funds within the Rural Development Plan 2004-2006.

The remaining legal forms, i.e. partnerships, companies and associations are applicable to all forms of economic activity, not only agricultural. Bearing in mind that from the legal point of view groups of agricultural producers operate as cooperatives, limited liability companies or associations, the sole organized form of cooperation designed for farmers is the agricultural production co-operative (being itself a kind of cooperative). This fact points at an urgent need to introduce modern legal solutions for agriculture which would enable farmers, especially small and medium ones, to participate in the market and, at the same time, simplify procedures and minimize formalities.

Roumania

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Pour pouvoir développer son agriculture et l'élever au niveau européen, la Roumanie doit encore affronter plusieurs difficultés et obstacles historiques. Nous n'évoquerons que quelques unes de celles-ci que nous considérons comme déterminantes.

Une première grande difficulté de l'agriculture roumaines est l'émiètement excessifs des terrains agricoles à la suite du démantèlement par la Loi 19/1991 des grandes entités constituées par les coopératives de production agricole.

Nous osons dire que ce processus de démantèlement a été une erreur. Sans doute la propriété privée devait être restaurée, mais un moratoire d'une durée raisonnable – 5 ans par exemple – aurait pu empêcher ces nouveaux propriétaires qui avaient récupéré leurs terres de les reprendre tout de suite et cela aurait maintenu les grandes entités agricoles. Ils auraient pu ainsi continuer à percevoir les bénéfices résultant d'une activité productive mieux organisée et auraient mieux affronté les difficultés de la transition. Chose essentielle, au plan national on aurait empêché la main d'oeuvre agricole qualifiée de se disperser; elle aurait pu être préservée et on aurait certainement continué à exploiter de manière plus organisée et plus efficiente les grandes surfaces existentes.

L'erreur politique commise avec la Loi 18/1991 n'a pu être réparée en dépit des réglementations ultérieures qui avaient comme dessein d'essayer d'agrandir les superficies agricoles en vue de constituer des exploitations plus fortes et plus rentables.

Comme nous l'avons constaté, l'achat et l'affermage des terres a été constamment encouragé afin d'agrandir les superficies agricoles cultivées. L'institution récente de la rente foncière viagère qui accorde des indemnité aux petits propriétaires qui vendent ou donnent à ferme leur bien terrien a poursuivi le même but.

Un deuxième obstacle que le pays doit affronter et que nous tenons à mentionner est l'apauvrissement extrême du monde rural. Cette situation existait déjà pendant la période communiste mais en raison de l'inertie traditionnelle de ce secteur économique et des erreurs politiques commises, elle perdure, alors qu'une meilleure organisation et des décisions bien réfléchies pourrait l'emender. Il s'agit des investissements qui mettraient en valeur les possibilités inexploitées du secteur, des projets faisables et enfin d'une stratégie agricole qui viserait l'essentiel.

En tout cas, nous ne pensons pas que le système associatif à lui seul puisse sortir l'agriculture roumaine de l'impasse où elle se trouve, devenir le moteur d'un redressement réel et assurer un développement prometteur. Il faudrait penser à une approche flexible à même d'assurer un cadre juridique plus souple, coordonner la production agricole et non agricole avec l'indispensable ferment commercial, combiner les diverses formes d'exploitation, innover et persévérer. Ce serait la gageure d'un développement agricole durable et d'une meilleure intégration dans l'Europe agricole.