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Commission I

National Report – Rapport national – Landesbericht

The Netherlands

**Legal incentives and legal obstacles to diversification for farmers –
Incitations et obstacles juridiques de la diversification de
l'agriculture – Rechtliche Fördermittel und Hindernisse für die
bäuerliche Diversifikation**

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Min. LNV, Ministry of Agriculture

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COMMISSION I

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National report for the Netherlands

Question 1

a) What is your national statutory definition of diversification

There is no national statutory definition of diversification. As such, diversification is a subject dealt with by local (community) or regional (provinces) authorities. In the Netherlands the major part of the policies and policy instruments on rural development, including those on diversification, are attributed to the 12 provinces. As a consequence, there is not a statutory definition at a national level. As far as can be determined, there are no specific definitions of diversification at a regional level either.

b) If there is no statutory definition, what is understood by the word 'diversification' in your country?

In general, the word 'diversification' is being used for farmers' initiatives to broaden the scope of their holding to non-agricultural activities. Examples of diversification are nursing, child care facilities, day tourism and stay tourism, sale from the farm, craft industry, and other activities such as energy production, information education & training, in short: all non-agricultural activities that might be fit in the rural and agricultural local economy.

These are measures covered by article 52 sub (a)(i) and (a)(iii) of Regulation (EC) No. 1698/2005 on support for rural development by the EAFRD. As there is no other legal definition in the Netherlands' national legal framework, apart from this Regulation, from a legal point of view, also the creation and development of micro-enterprises, as meant in article 52 sub (a)(ii) of this regulation, must be considered to be diversification activities.

Question 2

What are the legal rules governing diversification?

- a) Are they based on national statutes or common law or case law or contract?

The only rules on diversification as such are the rules on aid schemes for diversification as one of the objectives of the rural development policy. The Netherlands have one single rural development programme (RDP) 2007-2013 under Reg.1698/2005. The execution of this programme is integrated in the national policy on rural development, nature and landscape, in which the 12 provinces play a key role.

For a better understanding, I will explain the key elements of the national legislation on rural policy first.

The Dutch national rural policy is governed by the Rural Areas Development Act (*Wet inrichting landelijk gebied*, WILG). In the decentralised system of this parliamentary law, the State (ministries of Agriculture, Nature and Food Quality / Housing, Spatial Planning and Environment / Transport and Water) and the 12 provinces conclude agreements for periods of 7 years. In those agreements the policy goals for the programming period are set, as well as the financial means (the so called "*Investment budget for the rural areas*", ILG) that the State will provide to the provinces to realise the goals. Within these goals, set by State and provinces, the provinces administer the areaspecific policy. To this end they can make use of the ILG (provided by the State), their own resources and budgets available from other local or regional authorities such as municipalities or water boards. At the end of the 7-year agreement period the State evaluates if the provinces have reached the policy goals set in the agreement. If that is not the case this may result in a reduction of the ILG.

The national implementation of the European rural development policy, the 2nd pillar of the CAP, is integrated in this national framework. In fact, parts of the ILG, the State budget for rural policy, are given as the national cofinancing for the EU resources that the Netherlands receive from the EAFRD. The Dutch Rural Development Programme 2007-2013 (RDP2) has been taken into account in the agreements signed by the ministers involved and the provincial authorities on the ILG.

The Minister of Agriculture, Nature Management and Food Quality (LNV) is the Managing Authority of RDP2. She is responsible for drawing up the programme, and its implementation and management. She is also accountable to the European Commission. The Minister fulfils this responsibility in close consultation with the provincial authorities. The provinces administer areaspecific policy. This role is regulated by the Rural Areas Development Act (WILG). The Provincial Council or Executive grants the subsidies. The Province issues decisions for the implementation of projects which fall within area-specific policy. The Government Service for Land and Water Use (DLG) is the designated paying agency for RDP2, and tests decisions, subsidies etc. against European rules, pays and records payments and declares them to the funding bodies. DLG also carries out the physical checks. The National Regulation Agency (DR) acts as the 'delegated body'. The Minister of Agriculture, Nature Management and Food Quality has set up a Supervisory Committee for the implementation of RDP2. As well as the Ministry of Agriculture, Nature Management and Food Quality (LNV), the Ministry of Housing, Spatial Planning and the Environment (VROM) and the provinces are represented in the Supervisory Committee. Advisory members include the Union of Dutch Local Authorities (VNG), the Association of Water Boards, the economic and social partners, nature and environment organisations and agriculture organisations. The Supervisory Committee ensures that the Netherlands implements the RDP effectively and in accordance with EU rules. It does so by monitoring financial, output and results indicators. These are described in the RDP2 Programme Document. The Supervisory Committee may propose amendments to the programme. The Managing Office for the Rural Development Programme supports the Supervisory

Committee in its activities and provides the secretariat. The Management Office also supports the administrative authority in the execution of statutory duties, such as the preparation and submission of amendment proposals, issuing contracts and supervising the ex ante, mid term and ex post evaluations and supervisory activities using financial, output and results indicators. The Management Office is also developing a Handbook on Administrative Organisation to assist in the implementation of RDP measures.

For diversification activities, co-financed aid under the RDP is, as a consequence of the incorporation of RDP within the national legal framework for rural areaspecific policy, governed by as well

- the national rules of the WILG, with its system of policy agreements, State financing and the accompanying rules on reporting by and accountability of provinces towards the State;

- the rules of Reg. 1698/2005 on aid for rural development and Reg. 1290/2005 on the financing of the Common Agricultural Policy.

- b) How do these rules differ when they are applied to landownership or tenancy?

Not at all. Of course the issue of landownership or tenancy gives rise to some legal consequences (see the answers to questions 3b and 3c) but for the rules mentioned above the distinction is not relevant.

- c) Is there any conflict between EU law and state law.

No.

Question 3

In respect of diversification

- a) Who allows farmers to diversify?

As such, farmers need no consent of any private person or public authority to diversify their business activities. The decision to diversify is theirs and theirs alone. Of course, new activities might be subject to certain legal conditions. Activities that might cause risks for the environment or nature conservation, for example, can not take place without being examined in a licencing procedure. This however is a general issue that is not specific for activities started up in a diversification project.

- b) How far does freedom of contract feature in the negotiations between farmer and landowner?

and

- c) How far can a farmer diversify without permission of the landowner or other authority?

In general, the landowner has no say in the way the farmer exploits his holding. However, according to Dutch tenancy law and the relevant case law there are certain limits to the autonomy of the tenant farmer.

A. The tenancy section of the Dutch Civil code is only applicable on agricultural holdings, and the tenant farmer only can benefit from the tenancy rules on the condition that he must use the leased land or farm (=land and buildings) for agricultural purposes. This does not constitute an insurmountable obstacle for starting additional activities on the leased farm, but the tenant has to take into account that diversification may eventually lead to the conclusion that the tenancy legislation does not apply any more because the economic activities of his holding do not longer qualify as agriculture. A recent example in

the case law is a ruling of the Court in Arnhem of March 17, 2009, no. LJN BI1605. In this case the Court found that the exploitation of a “horse guest house” (=lodging and feeding of horses of third persons in the buildings of a farm as a paying service), apart from the agricultural activities on the holding, did not necessarily constitute a breach of the condition that the leased farm must be used for agricultural purposes, even not in the case that the horses would not be fed with hay or grass from the holding. Non-agricultural and agricultural activities may be undertaken, but the turning point seems to be the moment that the non-agricultural activities “take over”. This of course, is a case-by-case criterion that in my opinion certainly implies that a tenant farmer is taking some risk when he decides to start or extend diversification activities.

B. The tenant farmer must “behave as a good tenant” (article 7:347 CC), which does inter alia mean, according to case law, that he is obliged to use the leased farm personally. Additional activities on the leased farm, that are undertaken in the form of (another) legal person – even if the tenant is one of the stakeholders – may pose a problem at this point.

C. Diversification activities that lead to modifications of the nature or disposition of the leased object, are subject to the consent of the landowner, as such modifications are otherwise forbidden (article 7:348 CC).

D. A special case may be the diversification on a leased milk farm. Tenants that lease a farm with a milk quatum are according to case law obliged to maintain the milk quatum during the period of tenancy, so the quatum can be returned to the landowner at the end of the lease. The transfer, in total or partial, of the milk quatum, to a third party is in the case law almost always considered to be a breach of the obligation of the tenant to take care of the leased object “as a good tenant” that may lead to non-prolongation or even advanced winding-up of the tenancy contract.

As a consequence, dairy farmers on leased farms are to a certain extent less free to re-organise their agricultural activities when they decide to diversify their economic operations.

- d) Is there any need for a local authority involvement in respect of planning law? If the activity that the farmer wants to start in a diversification project does not fit in the current spatial planning, the farmer can apply for:
- a. a revision of the municipal land-use plan for his parcel, or
 - b. an exemption of the municipal land-use plan.

In general, the procedure for a formal revision of the land-use plan is more complex; in most of the cases the nature and the extent of diversification activities will not fundamentally alter the primary agricultural function of the parcel concerned, in which case it almost certainly will be easier and quicker to apply for an exemption.

Question 4

What are:

- a) the incentives for a farmer diversifying?

The main incentive will be the possibilities for alternative or additional income. The aid schemes for diversification may be helpful in making decisions to diversify.

Diversification subsidies may be granted for:

1. Investments in non-agricultural activities on farms with the aim of diversification, including investments aimed at the extension or professionalisation of diversification on agricultural holdings.
2. Projects enhancing the cooperation aimed at stimulating diversification. This may be cooperation of several agricultural holdings, or of an agricultural holding and micro-enterprises, care institutes, tourism or other market operators.
3. Introduction of new information technology in rural areas, as part of the diversification project or supporting such a project.
4. The development of production chains, promotion and marketing of non-agricultural products resulting from diversification activities.

No aid is granted for projects and activities that have no link with the rural environment, such as storage of materials, cars, caravans. For these activities the features of the rural area (silence, space, landscape etc.) as such have no added value at all. Aquicultural projects are excluded too.

- b) the disincentives for a farmer diversifying e.g. tax laws?

No information available.

- c) the obstacles for a farmer diversifying e.g. refusal of landowner to agree to diversification?

See question 3 b-d

“(…) High market concentration in the food industry in the Netherlands (see Box 1.4) could hinder the development of diversified or vertically integrated agriculture. Retailers have in some cases threatened to end contracts with farmers that wanted to sell their products directly to customers. This can be quite problematic for farmers in dairy products where large dairyco-operatives have regional monopolies and where competitors will only enter as soon as they have enough suppliers to cover their costs of getting milk with their trucks. “ (From: OECD Rural Policy reviews 2008: The Netherlands, p. 40-41)

Question 5

How is the role of diversification perceived in your country in the light of new considerations such as food shortages, renewable energy sources (bio-fuels, wind power, etc.) and so on?

How do you think the European Union should deal with these new circumstances?

According to the OECD rural policy review from 2008, diversification into non-agricultural activities of agriculture is still rather underdeveloped in the Netherlands. Although many Dutch farmers apply diversification or vertical integration strategies, the income shares coming from diversification and vertical integration in the Netherlands are relatively modest (2% and 3% respectively) when compared to many other OECD countries. These numbers reflect the Dutch tradition over the last decades of specialised agriculture rather than pluri-activity.

As a consequence, the total impact of diversification on the food producing capacity of the Dutch agricultural sector is negligible, while on the other hand the public discussion on themes as bio-fuels (possible substitution of ‘production for the mouth’ by ‘production for the engines’) and wind power (potential damaging of landscape and nature values by growing number of wind mill parks) are increasing. Personally, I do not expect a very spectacular growth of the number of diversification projects in the field of renewable energy etc. on the short term.