

**C.E.D.R.**



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**Commission I – Kommission I**

**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**

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

## Austria

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Diversification will – especially in states like Austria with relatively small structured agricultural and forestry holdings – become a question of economic survival of holdings and of income related risk management.

Obstacles and handicaps for diversification arise from personal reasons of the farmer (age, unbalanced or outdated education) or often economic reasons (few offers on the job market, which is in times of crisis increasingly under pressure owing to unusually high unemployment)

At the same time precisely these reasons represent and reflect incentives, as there are: young age with prospect of creative possibilities, good quality of and manifold education, which enables to enter not only the core area of agricultural activity. In this connection the Broadband Initiative by the EU is a very important tool.

Legally relevant aspects mainly arise from the question of creating incentives as well as national economic and tax-rules, but mainly in the area of aids.

Specially EU-Aid-norms prepare the ground in the area of rural development and head more and more to professional diversification, which means to activities outside of agriculture.

Having entered in this field once, there is the possibility, but also the danger, that agricultural activity can be and is given up totally; specially in times, in which sufficient income from agricultural activity can not – or only under an enormous sacrifice of life quality – be obtained.

This development is often underestimated and has to be watched carefully. Countermeasures have to be taken in time to avoid totally unwanted developments.

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Diversifizierung wird – insbesondere in Staaten mit relativ kleinstrukturierten land- und forstwirtschaftlichen Betrieben, wie es in Österreich der Fall ist – zu einer Frage des wirtschaftlichen Überlebens der Betriebe und insbesondere der Risikostreuung im Einkommensbereich.

Hindernisse für die Diversifizierung ergeben sich oftmals aus persönlichen Gründen der Bewirtschafter (Alter, einseitige Ausbildung, veraltete Ausbildung) oftmals aus ökonomischen (geringfügige Angebote auf dem Arbeitsmarkt, der in Zeiten der Krise mit ungewohnt hoher Arbeitslosigkeit zunehmend unter Druck steht).

Gleichzeitig spiegeln ebene jene Gründe aber auch die Anreize wider, nämlich junges Alter mit Aussicht auf Gestaltungsmöglichkeit, gute Qualität und breite Streuung der Ausbildung, die auch ein Eintreten in andere Tätigkeiten als der Kerntätigkeiten der Landwirtschaft erlaubt. Hierbei bildet auch die Breitbandinitiative der EU ein wichtiges Instrument.

Rechtlich relevante Aspekte ergeben sich vor allem aus der Frage der Anreizschaffung sowie aus den nationalen Wirtschafts- und Steuerregelungen, vorrangig jedoch im Beihilfenbereich.

Hier zeichnen vor allem EU-Beihilfenormen im Bereich der ländlichen Entwicklung entsprechende Wege vor und steuern zunehmend auch in die berufliche Diversifizierung zu außerlandwirtschaftlichen Tätigkeiten hin.

Einmal in dieses Feld eingetreten, besteht die Möglichkeit, aber auch die Gefahr, daß die landwirtschaftliche Tätigkeit zur Gänze aufgegeben werden kann und wird, insbesondere in Zeiten, in welchen aus der land- und forstwirtschaftlichen Tätigkeit ausreichendes Einkommen nicht oder nur unter großem Verzicht auf Lebensqualität erwirtschaftet werden kann.

Diese Entwicklung wird oftmals unterschätzt und muß jedenfalls im Auge behalten werden, um rechtzeitig völlig unerwünschten Entwicklungen gegensteuern zu können.

## **Belgium**

**Maîtres Franz VAN MALLEGHEM et Henry VAN MALLEGHEM**

Avocats à Frasnes

Le rapport sur l'incitation et les obstacles juridiques à la diversification de l'agriculteur ne permet pas aux rapporteurs de donner une vue complète des incitants et obstacles juridiques belges à la diversification de l'agriculteur.

Le rapporteur dispose d'une information complète en ce qui concerne la Région Wallonne.

En effet, une partie des compétences agricoles reste fédérale mais la plupart des compétences agricoles sont maintenant régionalisées et appartiennent aux Régions Flamande, Wallonne et de Bruxelles Capitale.

Les matières agricoles relèvent également des niveaux des pouvoirs européens dont les décisions sont immédiatement applicables dans tout l'Etat Belge.

Ceci étant précisé, le rapporteur s'est livré à une analyse du programme wallon au développement rural 2007-2013 consacré par l'arrêté du Gouvernement Wallon du 24.05.2007 ainsi que par l'analyse de l'arrêté du Gouvernement Wallon du 19.12.2008 applicable depuis le 9.01.2009.

L'examen attentif des dispositions légales permet aux rapporteurs belges de conclure qu'aucune solution n'est apportée aux difficultés agricoles par les incitants, c'est-à-dire essentiellement les aides en subvention intérêts, en prime de capital et en garantie.

L'agriculteur belge ne dispose d'aucune liste d'activités dites diversifiées et rentables et il ne doit se fier malheureusement qu'à son instinct pour sortir actuellement de l'ornière.

Créer une activité diversifiée signifie également nécessairement un nouvel endettement lourd dont la rentabilité n'est pas assurée et qui ne fera peut-être qu'ajouter aux problèmes.

L'orientation vers une activité diversifiée pose également difficulté au niveau fiscal ainsi qu'au niveau légal puisque la protection du fermier locataire n'est accordée qu'à condition que le fermier développe une activité agricole.

En conclusion, il apparaît aux rapporteurs que seule une refonte complète du marché agricole restant bien évidemment soutenue mais plus proche des prescrits de la loi de l'offre et de la demande devra être envisagée par les décideurs européens et nationaux, en associant toujours le producteur et l'industriel du secteur alimentaire.

## Finland

### **LL.D. Eero Henrik NORDBERG**

Finnish rural policy has aimed, even from the latter part of 1980s, to preserve a viable and active countryside. For this purpose it has been important to improve the preconditions for living, work and business in the rural areas. For the current programming period 2007-2013 of the EU's rural policy Finland has one national rural development strategy and two rural development programmes, one for Mainland Finland and one for the Province of Åland.

The objectives for Mainland Finland are to preserve a viable and active countryside, improve the environment, and ensure the sustainable use of renewable natural resources. This Programme includes the following measures under axis 3 "The quality of life in rural areas and diversification of the rural economy": diversification into non-agricultural activities; support for the creation and development of enterprises; encouragement of tourism activities; basic services for the economy and rural population; village renewal and development; conservation and upgrading of the rural heritage; and training and information. According to the programme will be supported investments, development and start-up of enterprises and various kinds of development projects.

The general rules of support for rural development are laid down in Council Regulation 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD). The Act on Support for rural development (1443/2006) covers the supports concerning the implementation of Finnish Rural Development Policy for especially in the framework of axis 3 and also axis 4 "Leader approach" in the above Regulation (EC). The Act applies to such support for rural development which is funded from the Community and corresponding national funds or entirely from national funds. So, the Act targets, among others, on supporting on/off farm diversification into non-agricultural activities, and supporting for creation and development of micro-enterprises which already practice such activities in rural areas.

Enterprise supports are granted as start-up, investment and development aids to agricultural enterprises (aid beneficiary being a member of the farm household) for extending the holdings activity outside agriculture and also, when already diversified, for further proceeding with the extension. Corresponding supports can be granted also for above mentioned micro-enterprises for starting up or expanding its activity. Additionally investment support and development support can be granted for improving its production and quality of the products and internationalisation of the activity. Development support can be given here also for acquisition of expert services and training in support of the operating conditions and competitiveness of the enterprise and developing cooperation between enterprises.

SME enterprises can only be given investment and development support for improving the productivity of entrepreneurial activity in primary processing and placing on the market (of an agricultural product), improving the quality of the products and internationalisation of the activity.

There is not need, though with the exception of some regulated trade, to a special permit or licence to be obtained from an authority for the rural diversification. Obligation to entry into trade register exists for corporations. Generally entrepreneurs, except in so called self-supporting trades, have to submit a notice to the authority. On the other hand, in case of practising entrepreneurship on leased land, diversification shall not be contrary to the land lease contract. Because rural areas are mostly outside detailed plans, there are normally no special difficulties

in getting building/action permit, with the exception of shorelines (in practise extending 100 to 200 meters from the strand site) where exist a basic prohibition of new building. The latter, however, does not concern building for agricultural and forestry purposes.

The on going climate change is expected to change in many ways agricultural activity in Finland, mostly positively, but partly negatively with consequent risks of erosion and the release and leaching of nutrients from soil to especially to waters. It will be necessary to direct support not only to the adoption of new technologies and cultivation methods in agriculture but also for rural diversification. Horticulture is expected to significantly benefit from the climate change. Warmer winters will ease rural areas in Finnish northern circumstances to compete in entrepreneurship in tourist industry both in summers but also in Middle and Northern Finland wintertime, and thus be beneficial also for farms diversifying to this sector.

## Hungary

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According to the Hungarian agricultural law, there are two typical approaches of the 'diversification'. The first approach is connected to the legislation of nature conversation as biodiversity (i.e. the number and variety of organisms found within a specified geographic region). According to the second, representatively economic approach, diversification means the expansion of the profile of a holding in order to achieve a better market position. This latter approach may be found in the Community system of rural development and, because of the compulsory feature of the concerned Community law, this also appeared in the Hungarian national law. I have to note that the requirements of the biodiversity are also important objectives and parts of the rural development norms.

According to the Hungarian national law, the activity of the rural development has become part of the agricultural activity. In regard to this, the different connotations of the agricultural activity have to be emphasized.

Agricultural activity. This definition can be of importance in numerous practical situations, e.g. as to the preference in tax law or environmental protection law. With regard to the tendencies of Western Europe, this definition can be described as a multilayer idea. The definition consists of four levels. The first level as the core of the concept includes the growing of crops and the keeping of animals. The second level is really close to the first level and means the processing and sale of agricultural products in the primary form. The classification of the next two levels as agricultural activity is not so clear and there are some differences in the legal orders of the Member States. The third level is the secondary activities in the frame of the agricultural holding; e.g. agrotourism in the rooms of a farm building. The fourth level means the secondary activities outside of the agricultural holding. In a concrete case, this activity can also be the part of the system of agricultural supports (e.g. rural development supports of the EC).

Due to the direct application of the EC law in Hungary, all the phases of the definition of agricultural activity are part of the Hungarian legal order (e.g. acts on arable lands, taxes, agricultural supports).

According to the third and fourth levels of this definition of agricultural activity, I may not state that in the Hungarian agricultural law, there is no essential difference between ‘rural diversification’ and ‘rural development’. (In spite of the lack of this relevant difference in the Hungarian law, fundamental distinction may be drawn between the two institutions in other EU countries.) But this does not mean that only agricultural provisions provide diversification of the rural areas and holdings in Hungary. In practice, other provisions (e.g. civil law, tax law, etc.) may be applied in these relations.

According to the Hungarian legislation concerning agriculture and rural development, economic diversification (i.e. rural diversification rules) includes two distinguishing levels. First, rural diversification means the changes among the different branches of agriculture (e.g. restructuring of plant production for producing non-food and non-feed products; or changing of the structure from the production of cereals to the horticulture). Second, diversification includes the situation when the agricultural activity concerning the first and second levels of the definition of agricultural activity is completed or replaced by non-agricultural activities (e.g. tourism).

## Italy

### Prof. Dr. Ferdinando ALBISINNI

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The Italian legal system has an old tradition of recognising and encouraging diversification in agriculture.

This favour has been expressed not through the adoption of a legal definition of “*diversification*” as such, but along two lines:

I. one linked subjectively to the *agricultural entrepreneur* and objectively to the *agricultural holding*, through the adoption of the peculiar definition of the “*connected activities*” (“*attività connesse*”);

II. the other linked to specific territories, through the adoption of tools of governance and development of underdeveloped areas.

The *agricultural entrepreneur* as such is exempt from the application of rules applicable to the *commercial entrepreneur*, in many decisive fields of law, among which:

- taxation
- social security contribution
- bankruptcy
- finance
- land planning.

It is therefore crucial to establish, in any specific situation, whether an entrepreneur and an activity may, or may not, be considered *agricultural*.

The modified text of art. 2135 Civil Code, as modified in 2001 and today in force, through the enlargement of *connected activities* category, largely opened to original forms of *diversification*.

The farmer is free to diversify, but he must respect and maintain the productive destination of land (see art. 1615 of the Civil Code).

If *diversification* does not impact on productive destination of land, the farmer needs no permission from the landlord. If *diversification* involves new structures, innovations or modifications and/or transformation of land and/or of buildings, the farmer may operate in this sense, but he must previously obtain the consent of the landowner. The previous consent of the landowner is requested, not only to guarantee that the natural destinations of land and buildings are respected, but also because at the end of the lease the landowner must indemnify the tenant with a sum correspondent to the increase in value. If no previous agreement is reached between landlord and farmer, the tenant may activate an administrative procedure with a competent local authority, to obtain an authorisation to the innovations.

The most relevant obstacles to *diversification* are not in the landowner refusal (which can be overcome with the recourse to the administrative procedure above mentioned), but in the unclear qualification of some new initiatives (as in the case of the *paradox of diversification*).

In Italy there is a largely positive attitude in favour of *diversification*, which has been confirmed by recent tax laws, according to which production and sale of bio-fuel and of electric and thermic energy obtained not only from vegetables, wood, and animal waste, but even from any source of renewable source, including sun and photo-voltaic, is considered *agricultural activity* and the resulting income is subject to no supplementary taxation, being considered included in the normal cadastral taxation of land.

CAP encouraged *diversification*, but the definitions of *agricultural activity* and of *eligible hectares* introduced by Regulation No. 1782/2003 and confirmed by Regulation No. 73/2009, risk to create obstacles both to effective *diversification* and to environment protection.

An updating of those definitions to render them coherent with the goals of the reformed Common Agricultural Policy appears therefore highly appropriate and useful.

## Poland

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The issue of diversification of farms (agricultural holdings) which consequently leads to the diversification of farmers (agricultural producers) is very complicated in the Polish legal system. The basic problem in this area is the lack of statutory definition in the state regulations. Due to the lack of this definition it is not possible to define clearly the purposes and directions of diversification. The indicated lack of statutory definition of diversification of agricultural holdings requires the search for the scope of this notion not only in a juridical approach but also in an economic one. On the whole, from the point of view of economic sciences diversification of farms means diversification in the structure of agricultural production as well as exploiting ground resources, capital and labour in farms for activities other than agricultural activity. Thus

diversification ventures also express entrepreneurial development, activation of inhabitants in rural areas, limiting unemployment and increasing incomes of inhabitants in rural areas. Diversification of agricultural holdings is in accordance with the purposes of the policy of multifunctional development of rural areas. It should also be added that the scale of production and incomes received from agricultural activity are determined by the condition of land resources in Polish farms, and above all, by fragmented land structure. Therefore there is no doubt that the Polish legislator should search for legal criteria for diversification which would also include the above mentioned economic parameters. For this purpose the Council Regulation of 8<sup>th</sup> December 2008 establishing community typology of farms should be used as a legal basis. In the Polish systemic and economic conditions, the emphasis should be placed on determining the intended size of the farm measured by size or income parity. The final purpose of such diversification should be the capacity to absorb the union support.

The main challenge for the Polish legislator is undoubtedly search for more effective solutions aiming at modernisation of area structure of agricultural holdings. Too fragmented farms, due to their economic weakness, do not facilitate the diversification of agricultural production or more effective use of land, capital or labour in these holdings.

In the Polish economic reality, necessity of supporting low output farms remains the main problem. This support should be based not only on the state funding but also union funding. This is a key issue for gradual change in land structure of farms. It seems essential to undertake complex activities aiming at the creation of full programme of changes in agriculture. 'Rural' policy of particular union states accepting legal instruments of diversification as a starting point should lead to lasting and balanced development of rural areas.

## **Romania**

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#### CONCLUSIONS :

##### Question 1 :

1. La politique rurale de l'Etat roumain a en vue la diversification de l'économie dans l'agriculture. Ainsi, dans le cadre du Program National de Développement, des réglementations concernant la diversification de l'économie rurale et la qualité de la vie de l'espace rurale ont été adoptées. Par exemple, l'Ordre no. 567/2008 du ministre de l'agriculture, modifié par l'Ordre no. 603 du 29 septembre 2008.

2. Une autre dimension législative est celle qui prévoit la cadre contractuel de l'activité agricole. En bref, en Roumanie, le bail à ferme est une variété du contact de bail en général (Titre VII du Code civil). Alors, nous avons des dispositions générales prévues par le Code civil – le contrat de bail est le contrat de bail à ferme et bail rural (Titre VII, chapitre 2 et chapitre 4 du Code civil). De même, le droit commun est complété par une législation spéciale relative au bail à ferme, c'est-à-dire la Loi no. 16/1994 modifiée en dernier temps en mars 2008.

D'autres dispositions touchant ou faisant référence au bail à terme sont prévues dans la législation foncière.



3. Concernant l'existence d'une définition juridique de la diversification, la réponse est négative. Le législateur roumain utilise le terme dans le syntagme « la diversification de l'activité économique » ou « la diversification des produits », ou « la diversification de l'économie rurale » sans formuler une définition.

4. En principe, les dispositions légales qui visent la diversification ne se différencient pas selon la propriété ou les rapports de fermage. Cependant, il ne faut pas oublier que la restitution des terrains aux propriétaires a été un processus de longue durée, jusqu'au présent. De même, l'Etat détient encore des terrains agricoles donnés en concession aux personnes physiques ou morales. La loi sur la propriété publique prévoit le régime juridique et de même prévoit que les biens qui appartiennent à l'Etat en propriété publique peuvent être donnés en concession, loués, en jouissance gratuite aux personnes morales qui n'ont pas but lucratif dans les conditions légales.

5. En principe, il n'existe pas des conflits entre le droit européen et le droit national, sauf le régime juridique de la propriété sur les terrains. Ainsi, jusqu'au présent, les étrangers ne peuvent pas acquérir des terrains. La Constitution roumaine prévoit qu'à partir du moment de l'adhésion à l'Union Européenne, les citoyens étrangers et les apatrides peuvent acquérir le droit de propriété privé sur les terrains seulement dans les conditions de l'adhésion. De même, la Loi no. 312/2005 sur l'acquisition du droit de propriété par les citoyens étrangers, les apatrides et les personnes morales étrangères prévoit que ces personnes peuvent acquérir des résidences secondaires, respectivement des sièges secondaires après dans un délai de 5 ans de l'adhésion à l'UE. La loi prévoit qu'après 7 ans de l'adhésion à l'UE, les mêmes personnes peuvent acquérir des terrains agricoles, forêts et terrains forestiers.

Question 3 :

a) La Diversification est autorisée par le Ministère de L'Agriculture, des Forêts et du Développement Rural.

b) La liberté contractuelle se manifeste entre les exploitants et les propriétaires de terrains dans les limites légales. La volonté des parties s'exprime très particulièrement dans les clauses concernant les redevances (les contrats de concession), le loyer (les contrats de location et de bail rural) et dans une certaine mesure, sur la durée des contrats.

c)

d) Les conseils locaux sont les autorités publiques locales qui exercent l'activité d'aménagement du territoire.

Question 4 :

a) La diversification de l'agriculture est une question intéressante et importante ayant des implications sur la qualité des produits, pour les changements des produits utilisant les carburants bio, l'énergie éolienne etc. et aussi, pour créer des nouvelles positions de travail.

b) Les obstacles à la diversification sont d'ordre matériel, financier, technique, administratif. Malgré le fait que l'UE a des programmes spécialement pour ce domaine, pas tous les fermiers ont accompli les conditions requises.

Question 5 :

En Roumanie, la diversification préoccupe l'Etat et est une source d'amélioration de la qualité des produits et de la vie en générale. Par la diversification, on peut obtenir des produits biologiques, des carburants bio, des nouvelles sources d'énergie alternative (l'énergie éolienne).

Notre pays, en tant qu'Etat de l'UE se situe dans le cadre de la politique agricole de l'UE et applique les dispositions existantes dans ce domaine.

## **Switzerland**

### **Dr. Eduard HOFER**

Ehemaliger Vizedirektor des Bundesamtes für Landwirtschaft

Die rechtlichen Anreize und Hindernisse für die Diversifikation in der Landwirtschaft finden sich in erster Linie im Raumplanungs- und im Landwirtschaftsrecht. Die Diversifikation ist als nichtlandwirtschaftliche Tätigkeit in Verbindung mit der Bewirtschaftung eines landwirtschaftlichen Betriebes definiert. In der Landwirtschaftszone können als Ausnahme unter bestimmten Bedingungen Bauten und Anlagen für nichtlandwirtschaftliche Nebenbetriebe erteilt werden.

Nach Artikel 104 der Schweizerischen Bundesverfassung sorgt der Bund dafür, dass die Landwirtschaft durch eine nachhaltige und auf den Markt ausgerichtete Produktion einen wesentlichen Beitrag leistet zur sicheren Versorgung der Bevölkerung, zur Erhaltung der natürlichen Lebensgrundlagen und Pflege der Kulturlandschaft sowie zur dezentralen Besiedlung des Landes. Im Hinblick auf die dezentrale Besiedlung und die Förderung des ländlichen Raums werden Investitionen in nichtlandwirtschaftliche Tätigkeiten mit Investitionshilfen unterstützt:

- Projekte zur regionalen Entwicklung und zur Förderung von regionalen Produkten, an denen die Landwirtschaft vorwiegend beteiligt ist.
- Bauten von gewerblichen Kleinbetrieben im Berggebiet zur Vermarktung und Verarbeitung landwirtschaftlicher Produkte
- Einzelbetriebliche Massnahmen zur Diversifizierung im landwirtschaftsnahen Bereich
- Gemeinschaftliche Bauten und Einrichtungen von Produzenten oder Produzentinnen für die Verarbeitung, Lagerung und Vermarktung regionaler landwirtschaftlicher Erzeugnisse, wie milchwirtschaftliche Anlagen, Gebäude zur Vermarktung von Nutz- und Schlachttieren, Trocknungsanlagen oder Kühl- und Lagerräume
- Anlagen zur Produktion von erneuerbarer Energie aus Biomasse

Auf rund 60 000 Landwirtschaftsbetriebe in der Schweiz entfielen über 44 000 Angaben für eine innerbetriebliche Diversifikation. Dabei handelt es sich zum weitaus grössten Teil um seit langem bestehende Betriebe. Die Möglichkeiten zur Förderung der Diversifizierung sind jüngeren Datums.

Für die Aufnahme einer nichtlandwirtschaftlichen Tätigkeit muss ein Landwirt grundsätzlich niemanden fragen. Sofern bauliche Veränderungen nötig sind, ist jedoch eine Baubewilligung erforderlich. Für alle Bauvorhaben ausserhalb der Bauzonen entscheidet die entsprechende kantonale Behörde, ob sie zonenkonform sind oder ob für sie eine Ausnahmegewilligung erteilt werden kann. Sofern ein Pächter Investitionen in Gebäude tätigen will, braucht er das Einverständnis des Verpächters. Die entsprechenden Bauten und Anlagen müssen bei Auflösung der Pacht an den Verpächter zurück fallen. Nach den Bestimmungen der Raumplanung dürfen sich die vom Pächter errichteten Bauten und Anlagen nicht bei Auflösung der Pacht verselbständigen, sonst würde dadurch ein selbständiger nichtlandwirtschaftlicher Betrieb in der Landwirtschaftszone entstehen. Pächter und Verpächter sind grundsätzlich frei in ihren Vereinbarungen über allfällige nichtlandwirtschaftliche Aktivitäten des Pächters, sofern

keine baulichen Veränderungen erforderlich sind. Bestimmungen des Pachtrechtes zum Schutz des Pächters, namentlich über den höchstzulässigen Pachtzins dürfen jedoch nicht umgangen werden.

Negative Anreize für die Diversifikation in der Landwirtschaft bestehen in der Schweiz im Steuerrecht kaum, wohl aber im Rahmen der Direktzahlungen infolge der Einkommens- und Vermögensgrenzen. Bei den Einschränkungen der Raumplanung und den Anforderungen an die Wettbewerbsneutralität bei der Förderung handelt sich eher um unentbehrliche Rahmenbedingungen für die Nutzung der Landwirtschaftszone und für die Förderung nichtlandwirtschaftlicher Tätigkeiten mit öffentlichen Mitteln als um Hindernisse.

Die Produktion erneuerbarer Energie kann in der Schweiz keine grosse Rolle spielen, weil dafür kaum Flächen zur Verfügung stehen. Mit Investitionskrediten gefördert wird die Verwertung von Abfällen oder der Wärmeerzeugung aus betriebseigenem Wald. Eine staatliche Förderung der Verwertung von Produkten, die auch der Ernährung dienen können, wird eher als problematisch erachtet.

Die Schweiz ist bekanntlich nicht Mitglied der EU weshalb sich auch keine rechtlichen Konflikte bezüglich der Regelungen für die Diversifikation in der Landwirtschaft ergeben können. Bei einer Übernahme der GAP, die allerdings vorderhand nicht vorgesehen ist, wären die Investitionshilfen einer jener Bereiche, die am wenigsten Anpassungen erfahren müssten. Die Regelungen sind jenen der EU schon heute in wichtigen Belangen ähnlich. Die Raumplanung ist auch in der EU nationales Recht, so dass diesbezüglich keine Konflikte entstehen könnten.

## United Kingdom

**Caroline Hutton**

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### **1. What is your national statutory definition of diversification?**

There is no national statutory definition of diversification in the United Kingdom. The legislature has hitherto been content to rely on the common English usage

### **2. If there is no statutory definition, what is understood by the word “diversification” in your country?**

The dictionary definition of the word “diversification” would always be the starting point in understanding use of the word in any statute, regulation or other legal context. The Shorter Oxford Dictionary definition is “*the action of enlarging or varying its range of products, field of operation etc. especially to reduce its dependence on a particular market etc.*”. The courts and others tend to take what has been called “the natural and ordinary meaning” of a term such as diversification and then consider that meaning in the particular context in which it has been used in order to determine whether it has been used in some particular or specialised sense. The general understanding in the agricultural context is a farmer seeking to undertake commercial, or, sometimes, non-profit making activities on or in relation to the farm other than those usually defined by the term “agriculture”, which is statutorily defined, whilst continuing to be engaged, at least to some extent, in farming

### **3. What are the legal rules governing diversification?**

On the assumption that what is referred to here are legal rules governing the extent to which a particular farmer can diversify his activities, there is no single set of legal rules controlling diversification. There is a complex web of legal rights and obligations some statutory and some common law

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

There are legislative rules (both primary and secondary) interpreted by case law and there are also common law and equitable principles and contractual regimes all or some of which, in any particular instance, may constrain or enable diversification. The legislative rules are mainly the current land use, planning and environmental legislative regimes. The common law relating to tort and real property rights is relevant. Obviously, restrictive covenants and the terms of any particular tenancy are material

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

The rights of freehold owners in possession of land and of tenants in possession of land are unlikely to differ in respect of diversification save to the extent that legislative rules distinguish for any reason between the two and/or by virtue of the law of landlord and tenant including the terms and conditions of the particular lease or tenancy agreement. A difference would be unusual in practice

**(c) Is there any conflict between EU law and state law?**

Not to the knowledge of the writers

**4. In respect of diversification:**

**(a) Who allows farmers to diversify?**

Principally the freehold owner of the land subject to planning legislation when it is the local planning authority (or, on appeal, the planning inspector appointed by the Secretary of State)

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

The starting point is always contractual as between landlord and tenant but in the context of the material statutory regimes

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

If the proposed diversification amounts to "development" for planning purposes then the local planning authority will be involved. If there is environmental impact then the consent of other public bodies may be statutorily required. Only if the farmer is a tenant or there are restrictive covenants limiting the proposed activity will another landowner be involved either as landlord or as neighbour

**(d) Is there any need for a local authority involvement in respect of planning law?**

Only if the diversification amounts to "development" for planning purposes

**5. What are:**

**(a) the incentives for a farmer diversifying?**

Commercial i.e. greater profitability and/or sustainability. Such profitability may come from public grant aid or subsidy or from tax advantages

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

Loss of capital tax reliefs, loss of security of tenure, liability for breach of contract, cost of statutory compliance, uncertainty

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

Planning rules, terms of tenancy agreement, restrictive covenants, restrictions on rights of way or water rights, and the need to raise capital finance

**6. 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?**

On the one hand it is seen as a positive move for example in respect of renewable energy sources and as providing employment within the rural community. On the other hand it takes farming land out of production and can be perceived as spoiling the countryside

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

Funding needs to focus on investment in infrastructure such as transport which can be harnessed to support local strategies for diversification. EU strategies need to focus on promoting innovation and sustainability; improving education and training; and encouraging research and development. Farmers need remuneration for environmental services and that could be linked to diversification. Farmers also need the opportunity to expand production of plant derived renewable energy sources. The EU should pursue balanced economic growth, technological innovation and improvement and rural job creation without jeopardising the future quality of life or the environment in any region.

## United States

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US agricultural operations face production risks from the vagaries of weather, disease, and pests and financial risks from changing economic conditions, including market prices and cost of production. Producers therefore adopt management strategies to reduce their risks. Among these strategies is enterprise diversification.

Though the term “diversification” is not defined by statute, it encompasses nontraditional agricultural products, activities, or land uses. Diversification may involve production that targets niche markets or satisfies a growing demand for organic products, land uses that mitigate environmental impact, and other activities that allow the farmer to earn income from nontraditional sources. Value-added processing and packaging of traditional products, raising of nontraditional crops or livestock, new methods of marketing, recreational uses, and agritourism are common ways to diversify. The complexities and costs associated with diversification have prompted federal and state governments to assist or encourage some activities.

Several characteristics of US agriculture influence diversification. US farms vary in size from rural residence farms to extremely large operations with gross sales over \$500,000. Most farm households depend on off-farm income, and many farms also generate ‘farm related’ income by using farm assets for diverse activities other than traditional crop and livestock production. Diversification often attracts small-scale producers.

Many US farmers rent part of the land they operate, and the tenancy relationship may affect their ability to diversify. State common law and statutes govern farm leases, but landowner and tenant enjoy freedom of contract; short-term leases, which can be terminated when either party

gives proper notice, are common. The terms of the farm lease will affect the tenant's ability to diversify, but the landowner's agreement is desirable for activities that involve major changes in land use and required by some federal government programs.

Farm diversification may trigger application of land use and other regulations, especially if the new activity (eg, direct marketing or agritourism) is not considered "agriculture." For example, zoning regulations, which often pose few obstacles to traditional crop and livestock production, may govern the location and operation of these new activities. Some activities (eg, hospitality or value-added processing) may trigger regulatory requirements or require special permits. Moreover, the farmer whose new activity is not considered agriculture may lose eligibility for special statutory benefits for agriculture – eg, small-farmer exemptions from state workers' compensation laws and from federal minimum wage requirements.

Legal incentives and obstacles for diversification vary, depending on the activity. Federal incentives encourage conservation of vulnerable lands and wetlands, as well as production of crops for bioenergy. Similarly, federal programs offer financial support for transition to organic production, but organic certification standards impose obligations on organic farmers. New marketing strategies allow farmers to become "price makers" instead of "price takers," but direct sales and processing often trigger legal requirements (eg, permits, food safety standards). Similarly, agritourism and recreational uses may involve activities that are subject to state or local regulation and that carry risk of liability. With the assistance of legal and financial incentives and in spite of additional legal obligations, diversification can help US farmers to manage financial risk and increase income, and many types of diversification will enrich rural communities and promote a sustainable agricultural heritage.