

**CEDR – European Congress for Rural Law – Poznań
21–23.09.2019 – Colloquium «The reform of the CAP»**

A low-angle photograph of a modern building with large, dark-framed windows and white architectural elements, set against a clear blue sky. The image is partially obscured by a red text box.

The CAP-reform seen from a Swiss Viewpoint

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1. Agriculture in the Swiss Constitution compared with agriculture in the TFEU (1)

Main objectives of agriculture in the Swiss Constitution (art. 104 and 104a BV)

Following art. 104 al. 1 BV the Confederation shall ensure that agriculture contributes substantially by way of a **sustainable and market-oriented production** to the **reliable provision of the population** with foodstuffs (lit. a), to the **conservation of national resources and the upkeep of the countryside** (lit. b) and to a **decentralized population settlement of the country** (lit. c).

Art. 104 al. 2 BV states that **in addition to the self-help** measures that can reasonably be expected in the agriculture sector, the **Confederation shall support farms that cultivate the land**. And following art. 104 al. 3 BV the Confederation shall organise measures in such a manner that the agricultural sector fulfils its **multi-functional duties**. It has in particular the following powers and duties: (...)

1. Agriculture in the Swiss Constitution compared with agriculture in the TFEU (2)

Main objectives of agriculture in Art. 39 TFEU

1. The **objectives** of the common agricultural policy shall be:
 - (a) **to increase agricultural productivity** by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) thus **to ensure a fair standard of living for the agricultural community**, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to **stabilise markets**;
 - (d) to **assure the availability of supplies**;
 - (e) to **ensure** that supplies reach **consumers** at **reasonable prices**.

1. Agriculture in the Swiss Constitution compared with agriculture in the TFEU (3)

Identical objectives

- to increase the agricultural productivity
- to ensure a fair standard of living for the agricultural community
- to stabilise markets
- to ensure availability of supplies
- to ensure reasonable prices for consumers (art. 104a BV)

Different objectives

- CH: Guideline: support only of **farms that cultivate the land** (no support for industrialised agriculture).
- CH: **Subsidiarity of state intervention** vs. **self-help**: the Confederation supports farms only in addition to their self-help.

2. Development of agriculture law in CH and in EU

See short description of development and comparison of development in [paper on website](#) of the XXX European Congress of Agricultura Law

3. New reform proposals in Switzerland

Agriculture policy after 2022 (AP 22+)

The agricultural policy after 2022 (AP 22+) is **under discussion**. The proposals of the Swiss government are highly controversial. The discussion and proposals include **mainly the following elements**:

- (1) **Better use of synergies between sustainability and market** in order to strengthen the market position of farmers, e.g. by furthering (milk) production and products with a higher value added.
- (2) **Repeal of state restrictions** and **fostering efficiency of production** of foodstuffs by using optimally the technological progress and the digitisation. Modernization of the supply security payments. Integration of new products such as insects as food and feed.
- (3) **Reduction of ecological damages** and of use of non-renewable resources.
- (4) **Reduction of use of yard fertilizer** in order to protect water resources.

4. What could be of interest for the reform of the CAP

a. Measures of self-help in the agricultural law (LwG) (1)

Art. 8 LwG prescribes that the **promotion of quality, marketing and adaptation of the production** to the requirements of the market **must be ensured by organisations of producers or the related branches** (al. 1). They may enact **standard contracts** (al. 1^{bis}). The **organisation of a branch** is defined as a cooperation of producers of specific products or groups of products with the transformers and the distributors (al. 2).

Organisations of producers of specific products or groups of products **may define price indications** on a national or regional level following an agreement by distributors and buyers (art. 8a al. 1 LwG). The price indications must be **differentiated following quality levels** (a. 2). The individual enterprise cannot be forced to respect the price indications (al. 3). **Price indications for consumer prices** are **forbidden** (al. 4).

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a. Measures of self-help in the agricultural law (LwG) (2)

An important provision is **art. 9 LwG** which gives the Swiss Government the competency to **underpin self-help measures** taken by said organisations if the functioning of such measures is in danger due to **outsiders** that are not ready to follow the measures.

There are nevertheless a series of **conditions** for a so-called **declaration of general application** (Allgemeinverbindlichkeit) by the Swiss Government such as **representativeness**, no presence in transforming and marketing of foodstuffs and finally **support by a large majority** of members of the organisation (al. 1).

The **Swiss Government may oblige non-members to pay contributions** to finance measures of self-help in the sense of art. 8 al. 1 if the organisation requests such contributions of its members (al. 2).

In order to **adapt the production and the offer to the requirements of the market** the **Swiss Government** may enact provisions exclusively **in case of extraordinary developments** which are **not due** to problems of **market structure** (al. 3). Al. 1 cannot include the direct marketing of products and al. 2 cannot include the obligation to pay contributions by outsiders (al.4).

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b. Measures of self-help in the self-help ordinance

The Swiss Government enacted provisions in the **self-help ordinance for the support of a series of self-help measures** by organisations which are relevant for measures with regard to **contributions of non-members to organisations of producers and branches** (art. 11, annexe 1). The most important measures are the following ones:

- (1) **Organisation of producers (Schweizer Bauernverband)**: Non-members have to pay contributions of 1 to 9 cents per animal depending of the animal species (beef, pig, sheep, goat) to the organisation of producers which is used for marketing communication for Swiss agriculture.
- (2) **Branch organisation cheese (Emmentaler Switzerland)**: Non-members must pay contributions of 70 cents/kg of produced “Emmental Switzerland”. These contributions must be used for sales promotion, public relations, fairs and exhibitions.
- (3) **Branch organisation wine (Schweizer Reben und Weine)**: non-members must, with some exceptions, pay contributions for each m² of vines-land. These contributions must be used for the yearly sales promotion campaign of 2018 and 2019 (may be renewed).

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c. Measures of self-help in milk market

(1) **Swissmilk**: Non-members have to pay a contribution of 0.725 cents/kg milk which must be used for the following measures: furthering the marketing of milk in Switzerland and abroad: market research; basic advertising; promotion of marketing; information on milk and its nutritional benefits; marketing for Swiss cheese.

(2) **branch organisation milk**:

– From 2003–2017 the provisions of the LwG with regard to milkbuy-contracts and the **segmentation** of the milk market **were binding** for milk producers, milk-distributors and milk-transformers that were **non-members**.

– Since 2018 there are **no more binding provisions** for outsiders. In the center of the private law regulation is the **segmentation of the milk in three segments**: The highest price is paid for **A milk (0.64 EUR)**. This segment contains milk products with the highest value added like **drinking milk**, cream and butter. The “middle” price is paid for **B milk (0.46 EUR)**. This segment contains milk products with a limited value added which are exposed to an increased competition, especially milk products for exportation. The lowest price is paid **for C milk (0.24 EUR)** representing the lowest value added, especially regulating products like milk powder for exportation. Producers may not be obliged to deliver C milk. **The fixed target prices (price indications) for the three segments may not be applied as minimum prices.**

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d. Measures in case of market unbalances (crisis situations)

Art. 13 LwG contains a provision which allows the Confederation to make interventions in markets of foodstuffs. Following this article, the Confederation may participate in costs for timely limited measures for market relief (Marktentlastung) in times of extraordinary developments, with the aim of preventing a price-crisis situation (Preiszusammenbruch) (al. 1). But it can't contribute to the reduction of overproduction due to structural reasons.

Until today, such contributions didn't have a major significance but were at least applied in the sectors of meat, eggs and grains.

One single case for which the Government established an ordinance was a financial compensation of the Confederation for Swiss producers of cucumbers and tomatoes who were victims of a sharp temporary decrease of sales and prices due to a false information with regard to a disease of cucumbers and tomatoes coming from Spain.

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e. Bilateral agreements between the EU and Switzerland

The Federal Office for Agriculture (BLW) writes in its explanatory report on AP22+ that the further development of the agricultural policy in the EU and in Switzerland go in the same direction: more flexibility, better targeted support and higher ambitions with regard to the protection of environment and climate, innovation and digitisation. The proposed revision of Swiss agricultural law will not substantially modify the bilateral relationship EU-Switzerland.

The new instruments in Switzerland will be implemented in accordance with the obligations of Switzerland laid down in the bilateral agreements, namely in the convention on agriculture of 1999 which brought since 2007 a total liberalisation of the cheese market between the EU and Switzerland (art. 3).

Though the bilateral convention on agriculture contains an evolutionary provision (art. 13) the Swiss Government does not intend further steps of liberalisation in the context of the AP22+. After all, the Government will improve the legal protection so that decisions taken in application of the bilateral convention can be challenged before a court following art. 166 LwG.