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## RESEARCH IN ECONOMICS AND RURAL SOCIOLOGY

### **The role of law in the implementation of sustainable agriculture practices**

*This study is the result of several collective and individual research works on the connections between law, agriculture and the environment. Real but seldom highlighted, the impact of legal rules on determining farming practices shows an instrumentalised law which has gradually opened up to take into account the diversity and complexity, the interests and stakes in the implementation of sustainable agriculture models.*

*We propose a number of factors for understanding the role of European and French law in the development of contemporary agriculture. Initially, the law was undoubtedly a tool that served the conventional technical and economic model. Then, when the context changed, its less obvious role was (and, above all, will be) to favour the implementation of sustainable farming practices.*

#### **The modern history of law and agriculture began after the Second World War**

Today's Europe started to build itself on the principles of the market economy and a political choice soon had to be made as regards agriculture: exclude it from the Community Market by letting existing national interventionist policies develop, or harmonize national intervention systems through Community control. This second path was adopted with the Common Agricultural Policy (CAP). Its objectives were to protect European Agriculture from the uncertainties of the World Market and to increase output. The intensification of agriculture is mainly expressed by a specific economic and technical model elaborated in the United-States between the two World Wars. This model, which for the sake of simplicity we shall describe as "conventional", is characterized by a high dependency on farming practices with industrial inputs. But these "chemical umbrellas" intended for the protection of agricultural production against diseases, pests and other climate-related or agronomical hazards, almost exclusively determined farming practices, as well as the choice of plant varieties and animal breeds. As a Community system, the CAP was transposed in each Member State. In

this way, the law played a determining role in this policy and in the implementation of the conventional farming model. In this productive model, the environment was considered as an external and limiting factor, as a constraint from which to free ourselves. But these European farming transformations met with a shared consensus, a sort of social contract. The evolution of production corresponded to changes in consumption modes and responded to the needs of the agrifood industries in terms of quantity, production regularity and product standardization.

The scene changed at the beginning of the 1980s. The CAP resulted in structural overproduction in some sectors, leading to reforms such as the implementation of milk quotas in 1984. Environmental concerns entered the scope of agriculture and that of the law at the beginning of the 1990s (resulting in the 91/676 "nitrates" directive, for example). The international context changed too, with the creation of the World Trade Organization (WTO) and the beginning of free trade of farm produce. Last, the social consensus of the previous years began to crumble under the pressure of an ecological conscience which, little by little, included farming activities. The globalisation of

ecological issues led to criticism of production and consumption modes themselves, also affecting food and agriculture.

### **Law at the service of conventional agriculture**

Conventional agriculture was used as a model for agricultural law as a whole, be it Community law with the CAP and its public supports, or National Law, namely rural law governing farming activities, the specific law on inputs and seeds, and the contracts between farmers and agrifood industries, governed by private law.

### **CAP and public supports**

Building the Common Market involved a protectionist policy guaranteeing farmers against market uncertainties, and the implementation of farm restructuring actions. A legal corpus was implemented including a section covering market organization, and, a little later, this was followed by a restructuring policy the purpose of which was to adapt production structures to agricultural markets. The big increase in agricultural productivity could not happen without changes to the organization of the farms themselves. A specific system of aid was brought in to allow the extension of farms, a reduction in labour, the mechanisation of practices, the arrival of young farmers and the retirement of others. At that time, not only were environmental considerations completely lacking from these measures but public intervention favoured production modes which disrupted ecosystems considerably. For example, public aid relating to market policy were conditional upon volumes of output and encouraged the adoption of practices leading to a significant increase in productivity to the detriment of water quality, biological diversity or even the agronomical value of land. The ecological cost of the aid linked to structure policy was also significant, since it led to the destruction of semi-natural spaces (hedges, copse, embankments, ditches) in order to extend plots. In France, the Rural Law accentuated these tendencies.

### **French rural law**

The establishment of the French Rural Law predated the CAP. With the aim of facilitating access by farming to the market economy, *never had a professional Law had such an immoderate ambition to regulate everything in an economic*

*sector* (Lorvellec, 1988). Within the Rural Law, the Farm Lease Act, created in 1946, occupied a particularly large place, since it governed almost all the rural leasing contracts and affected more than the two thirds of the country's utilised agricultural area. Its main objective was to guarantee "good farming" of the land. Yet at least until recent years, this notion, as a "legal standard", was always understood as farming in accordance with the model that was to be promoted, that is to say conventional farming, largely requiring chemical inputs in order to guarantee high productivity. For instance, French judges could pronounce the termination of rural leasing contracts on the grounds that the tenant used extensive production methods, such as organic agriculture (Cour de Cassation, 20 May 1985). If ecological concerns were foreign to the Farm Lease Act, the same observation could be made about the laws governing pesticides and seeds.

### **Regulations on pesticides and seeds**

The market and use of pesticides were subject to specific regulations implemented before the Second World War, the initial purpose of which was to protect the agricultural sector by ensuring the efficacy of the product released on the market. Public control was then extended to risks to public health and the environment. This explains why every product having phytosanitary properties was subjected to a preliminary market authorisation (MA) and why the use, but also recommendations about any non-authorised product, were forbidden. In other words, a phytosanitary product with low or zero risk still had to obtain a MA to be used even if it was not intended to be sold. It is therefore easy to understand how, in agriculture, this burdensome and expensive obligation slowed down the use of substitutes for the chemical protection of crops, in that only agro-industrial firms could afford a MA (see "*l'affaire*" du purin d'ortie (the nettle manure affair), Doussin 2006). For this reason, the new simplified procedure for "natural, harmless preparations" and the modifications brought by Community Law (see below) were a noteworthy opening of the law.

The seed market is also strictly governed in the EU and France. The principle is that all types of seeds are marketable, unless otherwise stated. However, we distinguish controlled species, the marketing of which is subject to inclusion in the Official Listing of Species and Varieties, from

non-controlled varieties, that is to say those not subject to such an obligation. But the inclusion procedure can be likened to a MA (Anvar, 2007) insofar as it concerns all the varieties of the majority of cultivated species. Yet the inclusion procedure meets productivist agriculture criteria and integrates no elements relating to environmental protection. So the assessment of a seed is about its “superiority” over products that are already on the market, in terms of agronomical and technical value, such as yield, resistance to diseases or drought (Hermitte and David, 2000). However, ecological aspects like agricultural biodiversity improvement are not criteria subject to any assessment. Here again, the state of the Law allows the sanction of dissident professionals tempted to sell non-authorized seeds.

The rules enacted by the Public Authorities were not the only ones to convey the economic and technical norms of conventional agriculture. Private law governing contracts between farmers and agri-food industrials played an equally effective though more discreet role.

### **Contracts in the agrifood industry**

After the Second World War, the technical upheaval in agriculture was inseparable from a major economic and social shift: agriculture became both a market for upstream industries and the supplier of downstream agrifood industries. The adoption of farming practices apt to meet industrial needs emerged as a condition for market access. The aim was to produce in large quantities, in an even way, and provide standardized products. Standardization led to the disappearance of underperforming plant and animal species, in other words those which did not meet the industrial production criteria. Moreover, until recent times, consumer demand was barely expressed in terms of gustatory quality and even less in terms of environmental quality. In this process, the law once again played a major role, through the “vertical” integration of farmers by agrifood industries, the model of which was imported from the United States, which had long been practicing it in the livestock sector (Rosier and Berlan, 1989).

The contract governed by the law (art. L 326-1 et seq. of the Rural Code) is the legal medium allowing the very precise regulation of production conditions by industrials (for example technical characteristics, conditions of

use of inputs). Given that the contract legally binds (art. 1134 of the Civil Code) the signatories and that, de facto, farmers are seldom in a position to negotiate clauses, we can understand how farmers bound by a contract of this kind unquestionably lose the freedom to choose production techniques exceeding simple compliance with environmental rules.

### **The opening of the Law to sustainable farming practices**

At present, the role of the law in the orientation of agricultural production methods is much less clear, in the same way as the objectives of national and European agricultural policies and often contradictory consumer expectations. It is not a matter today of promoting a model of sustainable agricultural production -which probably does not even exist- but rather of creating the conditions for the development of practices and innovations likely combine agricultural productivity and environmentally sustainable management intelligently. Three trends indicating this change may be underlined: the emergence of an environmental services market, the use of non-chemical methods of crop protection, and last, the role of property rights in the management of farmlands.

### **Agro-environmental services**

The idea that farmers could fulfil functions in the general interest was once expressed by the multi-functionality notion (Groupe Polanyi, 2008), most often reduced, however, to an environmental function. In concrete terms, this meant a system of direct and contractual aid in favour of environmentally friendly farming practices, which has progressively gathered pace since 1985 and now falls within the scope of the CAP second pillar, rural development (regulations 2078/92, 1257/99 and 1698/2005). While the budget assigned to these agro-environmental measures is still marginal in the CAP, this situation could change in its next reform and the farmers’ allowances or even remuneration as ecological service providers could rise. On the one hand, one could envisage the implementation of a more coherent aid system between the present aid in favour of rural development and single payments (SP) “decoupled” from production and conditional upon compliance with certain environmental protection rules (Doussan, 2007), as the European Commission (COM (2010) 672 final)

suggests. On the other hand, the emergence of a market of eco-systemic services should position farmers as potential providers. Several factors contribute to creating the conditions of such a market and changing the notion of eco-systemic services into a normative concept (Doussan, 2009). This is the case of the “reactivation” of the obligation provided by the “Grenelle II” Law of July 2010 to compensate for the damages caused to environment and the creation of a new system of environmental responsibility (art. L161-1 et seq. of the Environment Code). In the same way, we note an amendment introduced by EC regulation n°1698/2005, which anticipates that the beneficiaries of agri-environmental payments may be selected on the basis of calls for tenders, according to criteria including environmental and economic efficacy and thus introducing the possibility of a competitive logic of attribution of public funds. In this way, we may anticipate a modification in the direction and tools of public action, now positioned as an agent and a regulation entity of that market, which, furthermore, has authority to encompass agents other than farmers. This is the case of the *Caisse des Dépôts et Consignation* (CDC) subsidiary created in 2008, CDC Biodiversity, the purpose of which is to create environmental equity or “reserves of natural assets” to meet the demands of project managers who are obliged to compensate for damages caused to the environment (Trebulle, 2010; Les dossiers de la RIDE, 2010).

### **Non-chemical protection of crops**

At present, the law applied to phytopharmaceutical products is subject to changes introduced by the “pesticide package” and in particular, European directive 2009/128/EC. The purpose of this text, which must be transposed into French law by the end of 2011, is to establish a framework to achieve pesticide use compatible with sustainable development, by reducing the risks and effects of pesticides (...) and by encouraging the use of sustainable control of crop pests, and substitutive methods or techniques such as non-chemical alternatives. According to this directive, sustainable control is an interesting concept since it favours the increase in healthy crops disturbing agro-ecosystems as little as possible and encourages natural systems that combat crop pests (art. 3-6).

Although the use of non-chemical methods of crop protection featured in previous texts, we note that the definition adopted includes a more marked ecological dimension and, above all, that the States now have the obligation to implement these principles in the future national phytosanitary schemes, making certain that farmers will be provided with information and advice on sustainable control. In other words, the aim here is to give everyone the technical, economic and legal means to promote other methods of production which are much less dependent on chemical products and in this respect which meet the criteria of sustainable development.

### **The role of farm land Property Law**

The opening of the farm lease act to environmental concerns led to several reforms aiming either to submit to the owner the destruction of semi-natural elements by the tenant or, conversely, to protect the tenant (Doussan, 2008). In particular, since 1999, the implementation of environmental practices with the protection of the environment in mind can no longer be put forward by the owner as grounds for terminating a lease. Moreover, since 2006, tenant and owner may decide to conclude an environmental rural lease that is to say a rural lease including environmental protection clauses. This possibility is open to public legal entities (municipalities, for example) or to associations in the general interest or even to any landowner as long as his lands are located in some environmentally protected areas (art. L411-27 of the Rural Code). These practices may consist in the limitation or ban on inputs, crop diversification, the adoption of soil ploughing techniques, or crop management according to organic farming requirements.

The reform is interesting because it opens up the possibility for local authorities to implement a local agri-environmental policy. They seem to have adopted this new tool more and more frequently as it is a way of freeing themselves from the competition law principles governing public aid and which often ban legal entities from paying indemnities to farmers agreeing to ecologically manage farm lands (Caylet, 2009). From this point of view, private rural law offers an interesting path, an alternative to the CAP agri-environmental payments without their weaknesses: guarantee of a longer commitment, lack of administrative, excessively rigid

characteristics, and probably more effective checking methods.

This brief survey gives a glimpse of the evolution of the role of law in the relationships between the environment and agricultural practices. Initially dedicated to an unambiguous and, if not blind, then short-sighted public policy, it slowed down or even sanctioned any initiatives deviating from the technical-economic

model that was to be promoted. Once the context changed (diversified and more complex policy objectives, presence of other agents, more demanding ecological requirements, a “return” to market mechanisms), the law took on a role more in accordance with its normative function of acknowledgement and protection of the diversity of values that societies give to themselves.

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#### **For further information**

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