

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



**European Council for Agricultural Law  
Comité Européen de Droit Rural (C.E.D.R.)  
Europäisches Agrarrechtskomitee**

**XXV European Congress and Colloquium of Agricultural Law  
Cambridge – 23 to 26 September 2009**

**XXVe Congrès et colloque européens de droit rural  
Cambridge – 23 au 26 septembre 2009**

**XXV. Europäischer Agrarrechtskongress mit Kolloquium  
Cambridge – 23. bis 26. September 2009**

**Commission III**

**National Report – Rapport national – Landesbericht  
Spain**

Scientific and practical development of agricultural law in the EU,  
in countries and in the WTO – Développement scientifique et  
pratique du droit rural dans l'UE, dans les pays et dans l'OMC –  
Wissenschaftliche und praktische Entwicklung des Rechts des  
ländlichen Raums in der EU, in den Ländern und in der WTO

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**XXV. European Congress and Colloquium of Agricultural Law****Cambridge – 23 to 26 September 2009****Commission III****Report for Spain****Dr. Pablo Amat Llombart**

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**1. Main developments in Spanish agricultural law in recent years**

## 1.1. Agricultural economic and agricultural structure law

Within the legal sphere of agricultural structures, notable is Law 49/2003, of 26 November, on land leases, which was amended by Law 26/2005, of 30 November. "Land leases" are agreements under which one or various properties, or a part of a property is leased for agricultural, livestock farming, or forestry purposes in exchange for a price or rent. This law also regulates "holding leases": Under these agreements, the group of elements comprised by the agricultural holding, which is considered to be an organic unit, is leased.

Within the area of agricultural economic law, noteworthy are the following:

Royal Decree 1547/2004, of 25 June, on rabbit breeding operation management rules, which provides basic rules for the application of rabbit breeding, zoo-technical and health management measures. This decree regulates the minimum conditions governing location, register, zoo-technical infrastructure, health and equipment, and its aim is to allow for efficient and appropriate development of livestock farming in the rabbit breeding industry in Spain. The regulations on hygiene, animal health, identification and register, animal wellbeing and the environment must be complied with.

Royal Decree 1549/2004, of 25 June, on the access of the Spanish fleet to third country fishing grounds under agreements with the European Union. This decree regulates the activity engaged in by the Spanish fleet operating in third country waters under the different fisheries agreements entered into by the European Union and these countries. The obtainment of a fishing license is required in third countries, and this license, which is issued by the third country public authorities, enables vessels to fish in their fishing areas.

Royal Decree 2064/2004, of 15 October, regulating the first sale of fishery products after landing or unloading them on Spanish territory, including imports. This Royal Decree applies to live, fresh, refrigerated, frozen and deep-frozen fish, whether unprocessed or processed on board, and whether packaged or otherwise.

Royal Decree 1084/2005, of 16 September, on the management of poultry farming, which provides rules on the management of poultry farming for meat production. This decree regulates the minimum conditions governing the location, zoo-technical and hygiene-health infrastructure, handling and registration of these poultry holdings.

Within the framework of the legislative development of support granted under the Common Agricultural Policy (CAP):

Royal Decree 2128/2004, of 29 October, which *regulates the geographical information system for agriculture parcels* (GISAP), and provides the rules for the application of the GISAP in Spain. It regulates the use of GISAP as a management tool within the framework of the integrated administration and control system and the other support schemes relating to CAP areas.

Royal Decree 2352/2004, of 23 December, regarding the implementation of cross compliance as regards direct support within the PAC framework. This decree lays down the good agricultural and environmental condition farmers must respect to meet the cross compliance requirements for direct support under the CAP, in accordance with Council Regulation (EC) No. 73/2009, of 19 January. It also provides a system for applying controls, reductions and exclusion of payments in accordance with Council Regulation (EC) No. 796/2004.

Royal Decree 520/2006, of 28 April, regulating bodies that provide farm advisory services and the granting of aid for the creation, adaptation and use thereof. It lays down the conditions required to be met by farm advisory services and regulates the recognition of private entities providing such advisory services. It also provides a support scheme for the creation or adaptation of acknowledged private entities providing advisory services and for the farmers who use such services.

Royal Decree 1612/2008, of 3 October, on the implementation of direct payments to agriculture and livestock farming, whose purpose is to provide the basic legislation applicable to certain support schemes provided under Council Regulation (EC) No. 1782/2003 (now replaced by Council Regulation (EC) No. 73/2009):

- a) Single payment
- b) Coupled payments to producers of arable crops, and to livestock, sheep and goat farmers
- c) Specific payments to the producers of: durum wheat, protein crops, rice, nuts, energy crops, starch potatoes, seeds, cotton, olive groves, tobacco, citrus fruit tomatoes supplied for processing and sugar beets.
- d) Additional payments to producers in application of Article 69 of Council Regulation (EC) No. 1782/2003 in the cotton, tobacco, beet, sugar cane, cattle and dairy sectors.

It also regulates the use of set-aside land, the area of which is eligible for set-aside entitlements for the production of raw materials to obtain non-food products.

## 1.2. Environmental agricultural law

In recent years different regulations directly linking agricultural activity and environmental protection have been approved.

Royal Decree 1201/2002, of 20 November, on integrated agricultural production. "Integrated production" includes plant breeding agricultural systems maximizing the use of natural resources and production mechanisms, and assuring sustainable agriculture in the long-term. These agricultural systems introduce biological and chemical control systems and other techniques reconciling the demands of society, environmental protection, agricultural productivity, and the handling, packaging, processing and labeling of plant products. This Royal Decree regulates two fundamental aspects:

- a) Rules on production and general requirements that must be met by farmers using integrated production systems
- b) The use of guarantee marks enabling the consumer to differentiate these products

Law 9/2003, of 25 April. It lays down the legal system applicable to the confined use, voluntary release and marketing of genetically modified organisms or of products containing them. Its purpose is to prevent any human health or environmental risks which may arise, and to reduce the possible damage caused by such activities. This law was developed by Royal Decree 178/2004, of 30 January, which provides the general regulations relating to its application and enforcement.

Royal Decree 824/2005, of 8 July, on fertiliser products. Its main purposes are as follows:

- a) Regulate the aspects of Council Regulation (EC) No. 2003/2003 relating to fertilisers to be laid down and developed by the Member States.
- b) Define and categorise fertiliser products, other than "EC fertilisers", which may be used in farming and gardening.
- c) Guarantee that the nutritive values and other features of the fertiliser products adapt to the requirements of the Royal Decree.
- d) Prevent the health and environmental risks arising from the use of certain products.

Law 26/2007, of 23 October, on environmental liability. This law regulates the obligation of operators to prevent, avoid and repair environmental damage, in accordance with Article 45 of the Spanish Constitution and the "prevention" and "polluter pays" principles. It is applicable to any natural or legal person, whether public or private, that engages in economic or professional activity (including farmers), or controls such activity, or has certain economical power over their technical operation. It also regulates the financial guarantees that must be provided by operators to cover any environmental liability which might arise. This law was partially developed by Royal Decree 2090/2008, of 22 December.

### 1.3. Agricultural and food law: food safety and quality

Firstly, notable is Law 2/2000, of 7 January, on standard contracts for agricultural and food products. This is a contract used in the commercial trade of products in the agricultural and food system, which receives approval from the Ministry of Agriculture, Fisheries and Food (now replaced by the Ministry of the Environment and Rural and Marine Affairs). Any agricultural and

food product may be the object of this contract, but as a general rule, only one standard contract may be approved per product. The "Agricultural and Food System" comprises the whole of the agricultural and fishery sectors, and the processing and marketing of their products. The approved contract is considered to be a model, to which the operators of the agricultural and food sector may adapt their contracts (subject to private law).

In the sector of general product safety, applicable to foods are, inter alia, the following:

Royal Decree 1801/2003, of 26 December, on general product safety. Its purpose is to guarantee that the products placed on the market are safe. A "safe product" is any product which is either free of risk to the consumer or which only gives rise to minimal risks that are acceptable and compatible with the use of the product. The product must be used under normal or reasonably foreseeable conditions, respecting a high health and personal safety protection level. This regulation applies to all products for use by consumers.

Also generally applied is Royal Decree-Law 1/2007, of 16 November, approving the Consolidated General Law for the defence of consumers and users as well as other ancillary laws. Also included in this Royal Decree-Law is third party liability for defective goods or services.

Within the scope of legislation governing the certified quality of agricultural and foodstuffs, of significance are the following:

Royal Decree 998/2002, of 27 September, on domestic regulations for the application of EC regulations on certification of the specific characteristics of agricultural and foodstuffs. Particularly, it regulates the domestic procedure for requesting the registration of a product with specific characteristics. It also governs the minimum conditions which must be met by private control bodies in order to obtain the corresponding administrative authorisation. Additionally, it regulates the obligation to include the name of the corresponding independent control body on the product label. Moreover, it provides for the creation of an informational register of the independent control bodies and of producers using a registered name, for consultation by public authorities, operators and bodies.

Law 24/2003, of 10 July, concerning vineyards and wine. It governs the basic management of vineyards and wines, as well as the designation, presentation, promotion and advertising of wines. It also regulates the differentiated levels of origin and the quality of wine. Finally, in order to protect producers and consumers, it lays down a system for the protection of designations and legally reserved mentions against unlawful use.

Royal Decree 1069/2007, of 27 July. It regulates the procedure for submitting applications for entry on the Community register of designations of origin and of geographical indications for agricultural products and foodstuffs. It also governs requests for modifications in the specification for designations already registered in this register. Finally, it regulates the national procedure for objecting to these applications, prior to their submission to the European Commission.

#### 1.4. Rural land law and rural area planning law

Noteworthy are the following laws:

Forest Law 43/2003. Its purpose is to guarantee the conservation and protection of Spanish forests, and to promote their restoration, improvement, sustainability and rational use.

The principles inspiring Law 43/2003 include, inter alia, the following:

- a) Sustainable forest management.
- b) The achievement of forest multi-functionalism by balancing environmental, economic and social values.
- c) Forest planning within the framework of land use legislation.
- d) The fostering of forestry production and its related economic sectors.
- e) The creation of jobs and the development of the rural environment.
- f) The conservation and restoration of the biodiversity of forest ecosystems.
- g) The integration into Spanish forest policies of the objectives of international environmental protection measures, particularly in relation to desertification, climate change and biodiversity.

Law 45/2007, of 13 December, on sustainable development of rural areas.

The general objectives of the law are, inter alia, the following:

- a) Foster ongoing and diversified economic activity in rural areas, maintaining the agriculture, livestock, forestry and fishery sector.
- b) Achieve a high level of environmental quality in rural areas. Accordingly, the deterioration of the natural heritage, landscape and biodiversity, is prevented. Its recovery is also facilitated by means of the integrated management of the use of the territory for different activities, improved planning and management of natural resources and the reduction of pollution in rural areas.

The "Program for Sustainable Rural Development" is designed to be the main instrument for the planning of measures to be taken by the General State Administration in relation to rural areas.

Support for "territorial agriculture" is favoured. The maintenance and improvement of agricultural, livestock and forestry activity sufficient and compatible with the sustained development of rural areas, and in particular, priority rural areas or those classified as mountain agriculture areas, shall be promoted. Special attention is paid to agriculture professionals and particularly those who own a territorial holding.

Royal Decree-Law 2/2008, of 20 June, approving the consolidated land law. It defines and regulates the "status of rural land": land protected from being transferred into a development by territorial and urban planning. This shall include at least the land excluded from urban development by legislation on the protection of public property, nature or cultural heritage. It is also to include the land protected by territorial and urban planning law, due to the existence of certain values (ecological, agricultural, livestock, forest, landscape, etc.). The use of space situated on rural land will depend on its nature. This space is required to be used for agricultural, livestock, forestry, cynegetics or in any manner relating to the use of natural resources. The limits set under law and land and town planning shall be met. Finally, it regulates rural land economic assessment criteria. Pre-existing land, buildings, structures, facilities, plantations, and sown fields, as well as compensation paid in relation to land leases or other rights shall be included in the corresponding appraisal.

## 1.5. Agricultural tax law

There are several laws relating to the agricultural sector in the regulation of tax and the general budget.

Under Order 26 of November 2008, personal income tax shall be calculated by the flat-rate method in 2009. Additional Provision Four of this law provides exceptional measures to alleviate the effect of the price of operation inputs in agricultural and livestock activities in 2009.

Agricultural and livestock activities may apply the following exceptional measures:

a) Net taxable income may be reduced by the following amounts:

— 35 % of the acquisition cost of agricultural gas oil.

— 15 % of the acquisition cost of fertilisers or alternatively plastics used.

b) The net taxable income included under personal income tax brackets may be reduced by 2%.

Law 2/2008, of 23 December, on the General State Budgets for 2009 provides a special refund of the tax on hydrocarbons for farmers and livestock breeders (Additional provision no. 57). Two requirements must be met:

a) The gas oil must have been acquired in the period from 1 October 2007 to 31 December 2008.

b) The average price of gas oil in the period from 1 January 2004 to 31 December 2005 may not exceed the average price of gas reached from 1 October 2007 to 31 December 2008. The prices taken into account shall be net of valuable added tax (VAT).

## 1.6. Agricultural social law

Law 49/2003, of 26 November, on land leases, regulates two types of agreements giving rise to agricultural holdings of an associative nature. On the one hand, there are "sharecropping agreements", where the owner of property or an agricultural holding (lessor) grants the share farmer (lessee) the use and enjoyment of: a) the whole of the property or holding; b) certain operations of the property; c) operating items (livestock, machinery or working capital). The lease is temporary and freely agreed upon. The parties agree to divide the products into shares in proportion to their respective contributions. On the other hand, there is "associative sharecropping", where two or more people contribute or share the use and enjoyment of property, capital, work, and other production elements. The purpose is to form or expand an agricultural, livestock or forestry holding. The parties agree to divide the profits earned in proportion to their contributions.

Royal Decree 1972/2008, of 28 November, lays down the basic legislation applicable to the recognition of fruit and vegetable producer organizations (PO) and of associations of producer organisations. It enacts and implements Council Regulation (EC) No. 1182/2007 and Council Regulation (EC) No. 1580/2007. It regulates, inter alia, the requirements for the recognition of a PO, the minimum number of members, the value of marketable production, the structures and activities of the PO, the minimum period of adhesion to a PO, and the national register of organisations and groups of fruit and vegetable producers and of associations of producer organisations.

## 1.7. Other areas of agricultural law

There are several recent laws and regulations on the production and marketing of vegetable products:

Royal Decree 289/2003, of 7 March, regulates the production and marketing of forest reproductive material, forest species and their artificial hybrids. It shall not apply to forest reproductive material in the form of plants or plant parts to be used for purposes other than silviculture.

Royal Decree 1261/2005, de 21 October, enacting Law 3/2000, of 7 January, on the legal system for the protection of plant varieties. For the recognition and protection of the right to hold a new plant variety, a plant variety protection right shall be granted as a special intellectual property right.

Law 30/2006, of 26 July, on seeds and plants from nurseries and phylogenetic resources, which lays down the legal system for the production and marketing of nursery seeds and plants. It regulates conditions on the conservation and use of phylogenetic resources. Finally, it sets the procedure for the registration of the commercial varieties in the corresponding register.

In the plant health sector, of significance are the following laws:

Law 43/2002, of 20 November, on vegetable health. Its main objectives are as follows:

- a) Protect vegetables and vegetable products from damage caused by plagues.
- b) Protect the national territory and the European Union from the introduction of quarantine plagues for vegetables, vegetable products and other objects, and prevent the propagation of existing plagues.
- c) Protect animals, vegetables, and microorganisms that stop or limit the activity of organisms which are harmful to vegetables and vegetable products.
- d) Prevent the risks arising for the use of phytosanitary products on the health of humans, animals and the environment.
- e) Guarantee conditions of use, effectiveness and safety of phytosanitary defence means.

Royal Decree 58/2005, of 21 January, laying down the protection measures against the introduction of organisms which are harmful for vegetables or vegetable products, from other Member States or third countries.

## 2. National legislation of greatest practical relevance

A. Firstly, mention must be made of the law implementing and enacting the direct support scheme of the CAP provided in Council Regulation (EC) No. 1782/2003 (now replaced by Council Regulation No. 73/2009).

From the beginning of the application in Spain of the new system of direct support and single payments, a Royal Decree is approved each year providing the basic legislation within this scope. Royal Decree 1612/2008 is the latest approved decree. Its main practical relevance consists in providing farmers with the knowledge of the administrative proceedings to be followed to receive direct support. Specifically, it allows for the implementation of the requirements of the single payment scheme and of the allocation and use of entitlements, as well as the conditions for the granting of such rights. It also provides an in-depth description of other support schemes coupled to production and other specific support systems. Additionally, it lays down the requirements to be met to apply for aid (content, location, and application deadline). It includes provisions on the control and payment of aid. In this regard, notable is the participation and collaboration of State bodies (such as the Spanish Agricultural Guarantee Funds) and Autonomous Communities. Royal Decree 1612/2008 distributes control functions among the different public authorities. It is accompanied by 21 Appendixes on technical and administrative matters. These provide an in-depth explanation of certain of the requirements made by the law for the collection of direct support. Definitively, it is an "official basic guide" of the requirements and conditions to be met by farmers and livestock breeders in order to be able to access the direct support schemes of the CAP.

In terms of ancillary legislation, of significance is Royal Decree 2352/2004 on the implementation of cross compliance and Royal Decree 520/2006 relating to the provision of advisory services to agricultural holdings.

In relation to the cross compliance requirements for this support, Royal Decree 2352/2004 meets the requirements provided in Article 6 of Council Regulation (EC) No. 73/2009: each Member State must define the minimum requirements to be met to keep land in good agricultural and environmental condition. Additionally, it has two purposes. The first is to specifically detail the minimum conditions (agricultural and environmental) a producer must respect in its agricultural holding in order to receive aid. This enables the farmer to appropriately plan its production and land management system to adapt it to legal requirements. The second is to include a "legal notice" which aims to achieve maximum compliance with such conditions: any farmer not in compliance with the stipulated condition shall be penalised (reduction or exclusion of payments).

With respect to the farm advisory system, Royal Decree 520/2006 meets the provisions of Article 13 of Council Regulation (EC) No.1782/2003: to set up this service by 1 January 2007. The main practical effect consists in providing technical support to farmers required to apply new work methods and techniques as a result of the requirements of the CAP. The ultimate aim is for agricultural activity to respect the environment, public health, animal and vegetable health and the wellbeing of animals. Specifically, the advisory services encompass the diagnosis of the situation, and the proposal and performance of the necessary improvements. There are three main fields where advisory services shall be provided: a) Legal Management requirements; b) Good agricultural and environmental condition; c) Establishment of young farmers. However, this service may encompass other matters in order to offer comprehensive advice (assess the profit and viability of holdings, etc.). Other of the practical effects of this regulation are of an "institutional" nature, relating specifically to the requirements which must be met by entities which desire to provide farm advisory services (private nature, legal personality, obligations, recognition by public authorities, etc.). Finally, of practical significance is the aid provided for the creation of these advisory entities and to those requesting advisory services. The fact that there is certain public financing (grants) both for the creation of advisory entities and for the owners of

agricultural holdings requesting such service is an incentive for the extension and use of these specialised advisory services.

B. Within the scope of the second pillar of the CAP, i.e. rural development, noteworthy of the recent Spanish legislation is Law 45/2007 on the sustainable development of rural areas.

Historically, Spain did not have its own specific rural policy. The Regulations of the EU were directly applied. The approval of Law 45/2007 was necessary for the establishment of its own rural policy, fully adapted to the specific economic, social and environmental conditions of Spain. Additionally, it includes environmental sustainability and territorial planning criteria.

Its main practical efficiency lies in the programming and planning of sustainable rural development on a State and Autonomous Community level. This planning includes different measures and specific actions to be taken in certain rural areas, and above all those classified as "priority areas" (which need revitalization, included in the Natura 2000 networking programme, small sized and scarcely populated rural municipalities, etc.).

In direct relation to the agricultural sector, this Law supports "territorial agriculture". The main consequence of this new "agricultural model" is the prioritised and preferential allocation of PAC measures and support (direct and rural development support). When allocating this aid, Law 45/2007 favours a certain type of farmer who owns a certain type of agricultural holding, i.e. a "professional farmer" and a "territorial holding". The professional farmer is required to work a certain number of hours each year in the agricultural holding (Annual Work Unit) and to reach a certain volume of income from agricultural activities (25% of total income). For an agricultural holding to be classified as a "territorial holding", it is required to be located in a priority rural or mountain agriculture area and may not reach 40 Units of European Economic Dimension. The farmers and public authorities shall enter into a "rural area territorial contract". This contract shall stipulate that the owners of the agricultural holdings are committed to aiming towards and targeting the sustainable development of the rural area, as well as the specific aid to be received in exchange.

C. Within the scope of the improvement of agricultural structures and holdings, notable is Law 49/2003 on land leases.

The main practical consequence of this new lease legislation is the mobility and boosting of the land market. Facilitating access to the lease of land and agricultural holdings brings Spain closer to its objective of achieving holdings of a sufficient size, which are economically viable and are profitable. The minimum contract term (five years) and the owner's possibility of recovering ownership of its property upon termination may promote the arrangement of land leases. The term may be extended with the consent of both parties. This term is long enough to enable the farmer to attain certain stability on the land, which will lead to investments and improvements in the holding by the lessee. Additionally, from the standpoint of the economic investment required by the farmer for its first farm or to increase the size of its current agricultural holding, the cost of leasing is much lower than the cost relating to the purchase of rural property.

D. In the area of technology applied to the obtainment of new crop varieties, notable is Law 9/2003 relating to genetically modified organisms (transgenics). This law is of a horizontal type and is applicable to any organism or product whose genetic material has been unnaturally

modified. However, its practical application is of significance in the agricultural and food sector, where transgenic vegetable crops have been grown and marketed in Spain, the main producer of the European Union.

The practical relevance of this Law is double fold. On one hand, it is meant to protect human health and the environment against possible risks or possible damage caused by activities with genetically modified organisms. On the other hand, it enables producers to gain knowledge of the authorisation systems, competent authorities, and administrative proceedings to be followed, both for growing open field crops of a transgenic variety and for the marketing of the resulting crop or product.

E. Finally, reference should be made to the sector Law 24/2003 on vineyards and wine

Spain is the number three producer of wine in the world, and has the largest extension of vineyards on the planet. In recent years there has been excess wine production, despite the significant volume of exports. Therefore, one of the practical effects proposed by this law is the control of the productive potential of Spanish vineyards within the framework of European regulations. The authorisation of new plantations and the replanting of vineyards is to be controlled. The State and Autonomous Communities shall agree on the distribution of the acceptable plantation areas. It also regulates cases of the grubbing-up of vines. Additionally, one third of the Spanish wine production is aimed at wines of certified quality. Accordingly, the Law provides a system for the protection of the origin and quality of wines, as well as quality indications and references. Protection is granted to producers of wines of certified quality and for the benefit of the consumers of these wines.

### **3. Particularly successful or unsuccessful legislation**

— The original version of the Land Lease Law of 2003 could be considered positive since it facilitated the formation of agricultural holdings at a lower start-up cost and favoured the expansion of the farmers' territorial base. The law furthered the liberalized contract system, initiated with the reforms of 1995 (introduced by Law 19/1995, on the modernization of agricultural holdings), which led to very good results.

However, the 2003 LL was reformed in November 2005 and certain criticism can be voiced against this reform. Firstly, the haste with which the new Law was amended without waiting for it to have practical effects can be criticised. Furthermore, certain measures of the 2005 reform introduce limits on the free arrangement of the land lease, which does not further the promotion of this agreement. Compliance with these limits by the parties is compulsory and otherwise the agreement is declared null and void. The amended law involves more government intervention. This is noticeable in relation to the capacity to enter into a lease, taking into consideration the maximum area which may be leased, the minimum legal term of the lease and pre-emptive rights.

The reinstatement of the limits on the surface area of the leases is not in congruence with the aims of resizing, modernisation and viability of Spanish agricultural holdings. Truly needed are the largest companies and holdings possible, which are able to face the growing competition of global markets, within the Framework of the progressive disappearance of the protection of the EC farmer.

Also worthy of criticism is the reestablishment of the right of first refusal and the right of repurchase with respect to certain lessees. The intended right to access the property of the lessee is not inherent to the lease, which is of a possessive and temporary nature. Moreover, it may discourage and demobilize the market for leased land, in view of the caution shown by owners with respect to the farmers' rights, which limit their powers.

— The laws implementing new direct support from the CAP since 1 January 2006 and the single payment scheme can be considered successful. From the standpoint of legal technique and institutional organisation, the direct support scheme functions reasonably well. Laws which apply the essentials bases of the system have been approved: cross-compliance, advisory services, paying and controlling bodies (the Spanish Agricultural Guarantee Fund, on a national level and bodies of the Autonomous Communities), the procedure for the setting and payment of aid entitlement, etc.

— The regulation of biotechnology products were rooted in Spain over 15 years ago. Particularly, the 2003 Genetically Modified Organism Law continues to regulate all production phases, paying specific attention to personal safety and the protection of the environment, as well as the procedures for the authorisation of crops and marketing of genetically modified organisms. Spain is currently the EU country with the highest amount of genetically modified crops (over 70,000 hectares of maize) and this crop has increased in recent years. However, a negative aspect is the lack of specific regulations on the coexistence of genetically modified crops and conventional or ecological crops. Rules should be agreed upon relating to the crop systems, precautions to be taken to prevent the pollution of other plantations and the effects of third party liability for damages. In this regard, some draft regulations were considered but they never materialized.

#### **4. New or already existing trends based on the evolution of agricultural law**

With respect to already existing trends, noteworthy are the following:

— Support for professional agriculture and the professional farmer

The "Professional farmer" or "agricultural professional" requirement is traditional and constant in Spanish legislation as from the 1980 Land Lease Law. It was later developed in the Law on the modernisation of agricultural holdings in 1995, and it is currently defined in the 2007 Law on sustainable development of rural areas. This concept is linked to a certain volume of work dedicated to agricultural holdings (an annual work unit) and a volume of income (25 %) arising from agricultural activities. The quality of the professional farmer is currently required for priority or preferential access to aid for rural development, the modernisation of holdings, production rights or rights arising from a national reserve, etc.

— Rejuvenation of the agriculture sector: establishment of new and young farmers

In recent decades, Spain has suffered from the age of its rural and agricultural population. At the end of 2005, only 6 % of the owners of agricultural holdings were younger than 35 years old, whereas close to 60 % were 55 years old or older (Eurostat). Support for the establishment of young farmers is a constant in Spanish Agricultural law and is maintained in the latest regulations (Art. 16 Law 45/2007).

— Promotion and recognition of agricultural associations

Spanish agricultural law has traditionally attempted to promote the development of agricultural activity based on shared ownership of holdings (legal persons), together with individual ownership (natural persons). This trend remains unchanged today. Therefore, there is a need for special laws regulating the legal system applicable to associations engaging in agricultural activities. e.g. (SAT) (agricultural transformation companies –ATSs) (Royal Decree 1776/1981) or agricultural cooperatives and the Cooperativas de explotación comunitaria de la tierra (Common agricultural land holding cooperatives) (Law 27/1999 on cooperatives). The special laws foster their creation through tax benefits (Law 20/1990 on the tax regime of cooperatives and ATS), agricultural insurance finance support (Resolution of 15 December 2008), grants (Order of 22 January 2008, on grants fostering state-wide cooperative integration), aid for the operation of production organisations, etc. The formation of agricultural associations is sought through the creation of business structures of a larger size which facilitate inter-territorial cooperation and network economies to improve business dimension, efficiency and profitability. Finally, both in the 2003 Land Lease Law and the 2007 Law on the sustainable development of rural areas, the function of legal persons or agricultural associations in the performance of agricultural activities and rural development are recognised. Specifically, their agricultural professionalism is recognised.

— Protection of the environment and of natural resources through agricultural activity

This is a trend that has recently been strongly consolidated. Environmental sustainability parameters and requirements are continually being introduced in agriculture. New "territorial agriculture" is being promoted, where farmers receive aid to direct and provide incentives to their activity in benefit of the sustainable development of rural areas, and particularly mountain areas (Art. 16 Law 45/2007). Incentives are provided for "ecological agriculture" or the use of production systems which are compatible with environmental protection. Efficiency, savings, and the good use of hybrid resources in rural areas is fostered (Art. 25 Law 45/2007). The foreseen measures include, inter alia, the following: the effective and efficient use of water for irrigation, prioritizing of modernisation measures for water saving purposes, the use of regenerated water (re-usage, purification) for irrigation; the usage of water arising from the desalination of salt and seawater; economic aid for the removal of irrigation soil; reduction in irrigation in areas with a scarce supply of water and with environmental values associated with dry crops, etc. Finally the introduction of compulsory cross compliance for the collection of direct payments has had a decisive influence in this area: and in particular, on keeping land in good agricultural and environmental condition (Royal Decree 2352/2004).

— Use of contract administration techniques

This trend has been consolidated in recent years and consists in organizing the distribution of public support or specific benefits by means of contracts entered into by the government and the owners of agricultural holdings, which are potential beneficiaries of this support. Examples can be found in the agri-environmental aid sector (Royal Decree 4/2001; Royal Decree 708/2002), where the so-called "agri-environmental commitment" undertaken by the owners of agricultural holdings are regulated. Under this commitment they are obligated to fulfil certain agri-environmental measures as part of their operations for a minimum of five years. Additionally, in Law 45/2007 (Art. 16) the "territorial contract of the rural area" is regulated. The territorial contract is an instrument establishing a group of commitments to be undertaken by the public authorities and owners of agricultural holdings which direct and provide incentives to their activity in benefit of the sustainable development of the rural areas. Entering into such contracts

will be a requirement for benefiting from the prioritisation and preferential attention provided by this Law.

With respect to new trends, noteworthy are the following:

— Diversification of the economy of rural areas and agricultural activity

As from Law 45/2007, there is a commitment to a general policy for the promotion of economic diversification in rural areas, by means of new high added value activities. An attempt is being made to promote the consolidation of the agricultural and food, forestry, game and fish sector in rural areas. Food safety is also to be increased. Economic activity linked to industry, trade, tourism and other services will also be supported. Overall, new types of local activities are considered to be necessary. Specifically, the actions relating directly or indirectly to agriculture consist in the following: Support of vertical integration processes in the food chain; implementation of agricultural and food product identification measures in different rural areas; strengthening of production control and monitoring systems in the different sectors of the agri-industrial system; improvement of private food tracing instruments through the introduction of reference territorial sources; promotion of rural tourism through an appropriate management of offers and the improvement of tourism demand, paying special attention to sustainable tourism and agri-tourism linked to agricultural activity.

— Model of a "territorial" agriculture holding

The provision of support to territorial agricultural holdings is included within the general framework of the policy on the sustainable development of rural areas (Law 45/2007). The new policy promotes the maintenance and improvement of agricultural, livestock and forestry activity sufficient and compatible with the sustained development of rural area. Territorial agricultural holdings will preferentially receive public support given their location in priority rural areas (scarce population, geographic isolation, high level of farming activity, low level of income) or mountain agricultural areas (elevations of over one thousand metres, average slope of over 20 %, predominantly agricultural vocation, special circumstances limiting agricultural activity).

— Support for women in rural areas and recognition of their work in relation to agricultural activity

The starting point for this new trend is Article 30 of Organic Law 3/2007, of 22 March, for the effective equality of men and women. This Article regulates the equality of men and women in the agricultural sector and rural areas. Also, Article 8 of Law 45/2007 lays down the principle of equal treatment and opportunities for men and women in the rural area. According to Law 45/2007, positive action measures in favour of women in rural areas, which are aimed at overcoming and preventing situations of sexual discrimination, can be considered. Women are to be given priority in sustainable rural development programs. Within the framework of the promotion of territorial agriculture, if the beneficiary is the women, she shall receive the maximum support possible. Mainly within the scope of family-owned holdings, women share agricultural work with men, assuming a large part of this work and contribution both assets and work. However, such labour lacks sufficient legal recognition, economic value and social reflection since it does not extend beyond the scope of the family. In this area, one of the first legislative measures arose from Royal Decree 297/2009, of 6 March. The law promotes the shared ownership of prioritized agricultural holdings (Law 19/1995) among spouses or partners with a similar relationship registered in a certain public register. The aim is to extend social security benefits to women lacking such co-ownership. In principle, this measure will not affect the civil ownership of the holdings.

— Creation of advisory services for farmers and agricultural holdings

Royal Decree 520/2006 regulates the entities providing farm advisory services. This novelty is a result of the reform of the CAP in 2003 and the start-up of the single payment scheme on 1 January 2006 in Spain. The new obligation to meet the legal management requirements and good agricultural and environmental condition (cross compliance) in order to receive direct payments obligated the States to create and promote an advisory services system. In Spain, almost all the Autonomous Communities have approved laws on a regional level for the development of their advisory entity system, registration and support for formation (from 2006 to 2008).

— Promotion of agricultural energy crops. Promotion of renewable energies

The EU has adopted new priorities within the framework of Community strategic guidelines for rural development, approved by means of Decision 2006/144/EC (programming period 2007 to 2013). The new priorities include, inter alia, climate change and renewable energies. Consequently, Law 45/2007 (Art. 24) promotes measures to adapt rural area activities and uses for the purposes of climate change. It also fosters the implementation and development of renewable energies.

For the purpose of producing energy (biomass, biofuel), incentives are provided for the following: agricultural energy crops meeting sustainability criteria; energy production from agricultural, livestock and forestry waste in rural areas, biomass arising from operations for the prevention of fires and sustainable forest management plans; agricultural energy crops adapted to local circumstances and compatible with the conservation of biodiversity.

Additionally, the maintenance and increase in the benefits of vegetation covers as CO<sub>2</sub> sinks.

Also, in Spain the production and marketing of solar energy in rural areas, using farming land for the installation of photovoltaic power plants ("solar farms") is a sector on the rise.

It is possible to make a final and future assessment of the legislation trends discussed. With respect to the existing trends, I consider that they will continue to be in force and will be consolidated in the medium term, since the problems they are meant to resolve are currently of main concern. Issues such as the professionalization of agriculture, the aging of the sector, the promotion of agricultural associations or the protection of the environment still require legislative and economic support and impetus from the Government and legislature. As for new trends, and above all, those driven by Law 45/2007 on the sustainable development of rural areas, which directly or indirectly affect agriculture, I estimate that they will be developed considerably in upcoming years, both on a national level and on a regional or autonomous community level. One reason being the foreseeable entrance of increased financing from the EU for the support of rural development and the most underprivileged sectors of the population (rural women, young people) and the promotion of environmental measures .

## **5. Assessment of the overall role placed by international and European legislation in the development of agricultural law**

The international legislation of the past 15 years has given rise to significant changes and reforms in European Community and Spanish agricultural law. General principles governing the traditional common agricultural policy have been modified (e.g. protectionism of European agricultural production and agriculture prices). New principles of action have strongly emerged affecting all special agricultural legislation. Notable is the principle of protection of the

environment, nature, the landscape and natural resources. This principle has been directly or indirectly included in all legislation composing agricultural law (e.g. through cross compliance). A new pillar of the CAP, rural development, has been consolidated. Its increasing significance is a result of the last rounds of negotiations in the headquarters of the WTO, and of the concessions and commitments assumed by the EU in the sector of agricultural products (above all in the so called Agricultural Agreement, Annex to the Marrakech Treaty). Financial measures and aid which do not lead to distortions in international trade and in the setting of prices have been pursued, and also those which do not provide incentives for agricultural productivity. The reforms within the scope of financial support for European agriculture have arisen from these international agreements. The new system of direct support and the scheme of the single payment to agricultural holdings (Regulation 73/2009, of 19 January) rest even more heavily on principles such as decoupling or the disassociation of aid (not linked to production quantity parameters) or modulation (progressive reduction in direct payments to finance rural development programs with the amounts obtained).

## **6. Valuation of the overall role placed by international and European case-law in the development of agricultural law**

Focus is mainly on the valuation of the case-law of the Court of Justice of the European Communities (CJEC).

The CJEC is the judicial institution of the Community. Its main task is to examine the legality of Community measures and ensure the uniform interpretation and application of Community law. Through its case-law, the Court of Justice has identified an obligation on administrations and national courts to apply Community law in full within their sphere of competence and to protect the rights conferred on citizens by that law (direct application of Community law). For this purpose the principle of primacy is applied: any conflicting national provision, whether prior or subsequent to the Community provision, shall be disapplied. The CJEC has also recognised the principle of the liability of Member States for breach of Community law. This principle consolidated the protection of the rights conferred on individuals by Community provisions, and also contributes to more diligent application of Community provisions by the States. Infringements committed by Member States may give rise to obligations to pay compensation.

The case-law of the CJEC essentially influences the conformation and interpretation of agricultural law and is a relevant source of Community agricultural law. The CJEC has had the opportunity to specify the scope and meaning of the general principles of community law in relation to agricultural matters. Following are some examples.

Firstly, of significance is the case *Heemskerk y Schaap* (Sentence of 25 November 2008, C-455/06), regarding the duty of national authorities to respect the general principles of Community law. This specific case involves export refund arrangements and the welfare of bovine animals during transport. It enabled the CEJC to hand down a Sentence on the national law of *reformatio in peius*. The CEJC ruled that Community law does not require a national judge to apply, of its own motion, a provision of Community law where such application would lead it to deny the principle, enshrined in the relevant national law, of the prohibition of *reformatio in peius*. Such an obligation would violate the principles of respect for rights of defence, legal certainty and of the protection of legitimate expectations.

Within the scope of the free movement of goods, the CEJC established a precedent on the compatibility between Community law and national provision setting measures equivalent to quantitative restrictions. Since the Sentence on the *Cassis de Dijon* case, handed down in 1979, merchants of a Member State may freely import any product from other Community Member States. The product is only required to have been legally manufactured and marketed in that State and there can no serious grounds for objecting to its import into the Consumer State (e.g. relating to protection of health and the environment).

With respect to non-contractual liability, noteworthy is the Sentence of 9 September 2008 (*FIAMM and FIAMM Technologies/Council and Commission*; C-120/06 and C-121/06), regarding the problem of Community liability for a legislative measure... The Dispute Settlement Body of the WTO found the Community regime governing the import of bananas to be incompatible with WTO agreements. This body authorised the United States of America to levy an increased customs duty on certain imports from the Community. Six companies established in the European Union requested that the Commission and Council be sentenced to make good every harmful consequence of the adoption of the retaliatory measures by the US in relation to their exports to the United States. The CEJC ruled that the Community may only incur liability for a legislative measure which involves choices of economic policy if there has been a sufficiently serious breach of a superior rule of law protecting the individuals and conferring them rights.

In the area of protection of intellectual property rights of designations of origin of agricultural products and foodstuffs, notable is the Sentence of 26 February 2008 (Commission/Germany; C-132/05). The CEJC had to determine if the Member State had failed to fulfil its obligations by refusing to proceed against the use on its territory of the name "Parmesan" on the labelling of products which do not comply with the requirements of the specification for the protected designation of origin (PDO) "Parmigiano Reggiano" thereby favouring the appropriation of the reputation of the genuine Community-wide protected product. It concludes that a Member State is not bound to take on its own initiative the measures required to pursue, on its territory, damages to the PDO arising in other Member States. The control structures to ensure that criteria of the PDO is met are those of the Member State where the PDO comes from.

With respect to the CAP, the Sentence handed down on 7 September 2006 (Spain/Council C-310/04) is worthy of mention. Spain brought an action for annulment against the new support scheme for cotton provided in Council Regulation (EC) No 1782/2003. The CEJC admitted that there was a basis for determining that the principle of proportionality had been infringed. It ruled that the Council, the author of Regulation (EC) No. 864/2004, had not shown that in adopting the new cotton support scheme, it had actually exercised its discretion. This required taking into consideration all the relevant factors and circumstances of the case and assessing the profitability and viability of this crop. The CJEC finally annulled Article 1.20 of Council Regulation (EC) no. 864/2004.

## **7. Assessment of the general influence of Spanish legislature on the development of agricultural law**

Within this first decade of the XXI century (2000-2009), Spanish legislature has been characterised by notable activity within the scope of the regulation of agriculture and rural areas. In fact, over a dozen laws have been passed on a state level, which directly or indirectly affect the development of the agriculture sector and rural areas. The approved legislation is of a civil and administrative nature. The permanent reference mark of Spanish legislation is the CAP and

Community law, either directly applied or transposed. It was intended to boost the economic development of the rural areas, where agriculture has an essential function. It has sought to lay down laws leading to the modernisation and viability of Spanish farms. It has favoured the rejuvenation of agricultural professionals, owners of agricultural holdings and inhabitants of rural areas, placing special emphasis on the function of women farmers. It has added several environmental parameters affecting agricultural activity, and has attempted to make farmers aware of the need to protect the landscape, natural resources and the environment in general.

From an institutional standpoint, the territorial distribution of the legislative power in Spain and its influence on the development of agricultural law has to be taken into account. Spain is organised into Autonomous Communities (ACs) holding legislative power within their territory. The competences assumed by the ACs include, inter alia, agriculture, livestock and the environment. The ACs have been approving their own laws and regulations for several decades (coordinated with European and State legislation) adapted to their needs and peculiarities. Autonomic legislation has significantly driven Spanish agricultural law. Moreover, the ACs are responsible for carrying out and putting Community and State legislation into practice in their regional areas. By exercising its competencies, the ACs come closer to and gain a better understanding of the problems faced by agricultural companies and farmers, which may lead to legal solutions which are better adapted to the specific needs of the agricultural and rural sector of the region.

Additionally, the progressive assumption by the ACs of competencies and legislative powers in the agricultural sector has in turn led to a certain reduction in the central State's possibilities of taking action. Therefore, when laying down laws and regulations on agricultural matters, it often uses the exclusive competence of Article 149.1.13 of the Spanish constitution: "Bases and coordination of the general planning of economic activity".

## **8. Assessment of the general influence of Spanish case-law on the development of agricultural law**

In Spain case-law is not a source for the creation of law. Its function is typically to interpret and apply law, the customs or the general principles of law, where are the only recognised sources for the creation of legal provisions.

The case-law of the Spanish Supreme Court is included in different Sentences affecting certain areas of agricultural law. This case-law establishes criteria for interpreting the Civil Code or special agricultural legislation when resolving conflicts between individual subjects. It aids in gaining knowledge as to the specific scope of laws, and facilitates the understanding and extension of certain agricultural-related legal concepts. In general, it has collaborated in the understanding and application of agricultural legislation. On occasion, it provides legislative power with technical criteria and practical solutions to be applied in new legislation yet to be approved or in the reform of current laws.

For illustrative purpose, reference can be made to the issues most frequently dealt with in the case-law of the Supreme Court in recent years. It has resolved conflicts in the area of designations of origin or other protected geographical indications of agri-food products (wine, cava, turrón, etc.). Frequently, it has dealt with problems relating to land lease agreements, and in particular, the distinctions between different similar agreements (sharecropping, shared land lease); access to ownership by different means (succession, pre-emptive rights); matters

relating specifically to this legal regime (subrogation, property appraisal, necessary expenses and repairs, maintenance, useful improvements, extensions, subleases, expiration and termination of agreements, etc.). It also resolves disputes relating to pre-emptive rights between adjacent parcels of agricultural land. Another area where the Supreme Court has handed down a Sentence affects the distinction between the professional farmer (*agricultor profesional*) and the direct farmer (*cultivador directo*), in terms of conditions for being a lessee of rural property. It has also had the occasion to deal with laws on vineyard plantations and their transfer. In the field of property rights, it has resolved conflicts on right of way in favour of rural land located between other land and without access to a public road, and in relation to communities of property (communal forests). Some references to agricultural transformation companies can be found in relation to the registration of corporate resolutions. Finally, with respect to the implementation of Community agricultural legislation (CAP), there is a number of case-laws on the control of support from Community agricultural funds, the bodies paying these funds in Spain, and specifically, the allocation of the milk quota.

### **9. Current issue: legal provisions relating to the debate between the production of food and biofuels. Provisions of Spanish law guaranteeing sufficient production of food**

In August 2005, the Government approved the Renewable Energy Plan in Spain (2005-2010), which is a revised version of the Plan for the Promotion of Renewable Energies in Spain (2000-2010). The reasons for such a Plan are the increase in the consumption of energy, Spain's high dependence on foreign power (80 %) and the environmental objectives assumed on world-wide and European level. In relation to biofuels, the new Plan includes the general objective of EC Directive 2003/30, of 8 May, on the promotion of the use of biofuels, projected for 31 December 2010: reach sales of biofuel for transport of at least 5.75 % of the total amount of petrol and diesel fuel sold. Spain's specific aim is to reach 5.83 % by this deadline, and 7 % by the end of 2011. In this line, the Order of 9 October 2008 (enacted by the Circular of 26 February 2009) involves the promotion of the use of biofuels for transport. It sets a minimum sales amount that must be met by oil product operators and certified by means of biofuel certificates. Operators who exceed the minimum sales of biofuels receive economic compensation from the Government according to the number of certificates exceeding the compulsory minimum. Operators who do not reach the minimum are required to make compensatory payments to the National Energy Commission.

The development of biofuels in Spain (1999-2004) has been significant but insufficient to reach the objectives set for 2010. A commitment has been made to maintain the main incentive provided for production, consisting in full tax exemption from the hydrocarbon tax. Additionally, the Plan commits to taking advantage of all possibilities offered by the CAP, especially support for the production of energy crops. In this connection, Royal Decree 1612/2008 (Art. 38) provides aid of 45 euros per hectare and year of energy crops. However, this specific aid is soon to be eliminated. According to Council Regulation (EC) No. 73/2009, of 19 January, there are no longer sufficient grounds for granting specific aid to energy crops. The last year in which this aid is to be granted is 2009. Additionally, in the field of technological improvements, the varieties and species of vegetables that are best suited for production and which best adapt to the agri-economic features of Spain are to be selected.

From an institutional standpoint, noteworthy is Royal Decree 1130/2008, of 4 July, which develops the basis organic structure of the New Ministry of the Environment and Rural and Marine Affairs. Article 9 lays down the functions of the Directorate General of Sustainable

Development of Rural Areas. These include the “development of the competencies relating to the Plan for the promotion of renewable energies to boost the agricultural sector of biomass and biofuels...” This Ministry has approved certain standard contracts for agricultural products deriving from energy crops. For example, Order 27 of May 2008 approves the contract for the purchase and sale of colza in order to obtain biofuels (biodiesel).

Finally, in Spain there are no specific legal provisions on a state level aimed at controlling or assuring a minimum or sufficient production of foodstuffs. However, there are laws supporting the production of quality foods from vegetable and animal sources (e.g. Royal Decree 1615/2007, of 7 December) and laws under which grants are provided to the food industry.