

Community Law on rural development under the challenge of the priorities of European Union and International Law

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Abstract

This article analyzes rural development policy in the EU over the last decade, from the point of view of legal regulation. The current structure and system of rural development, as well as modifications and adjustments produced on it to meet new challenges and EU priorities for the future are studied. In particular, it deals with the analysis of the overall reform in place of the law on rural development support and the 2011 proposal for a new Regulation on the matter. The aim of the paper also deals with the various methods for the protection of the values represented by intangible cultural heritage and the interaction and the special relationship between the Convention and other international instruments, particularly its influence on the rules of the WTO and CAP as agricultural policy that is more integrated policy for all EU policies, whose importance is revealed, likewise, the percentage of the budget which accounts for the EU, which is 40%. The figure shows the importance of its goals, specifically, as the last document in Brussels, COM (2010) 672 final on the challenges of the CAP for 2014-2020 - in ensuring food security, compliance environmental commitments and rural development, this is achieved by legal instruments such as direct payments and market management, in any case, the ultimate objective is the competitiveness of the agricultural sector. These same values are present in the Convention for the Safeguarding of the Intangible Cultural Heritage, how could it be otherwise, since

agriculture is the source of local traditions and social identity, which is trying to promote and maintain the Convention, as a catalyst and control of the processes of globalization and social transformation, as the wealth is cultural diversity. In this way we analyze the various legal means afforded by the Convention and the list of intangible heritage, and therefore, their specific contributions to the protection of the environment or environmental policies, and their influence on rural development, with aim of highlighting its special compared to other international instruments and their complementarity.

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1. INTRODUCTORY APPROACH

The relevance of rural areas in the EU is beyond doubt. Much of the data, parameters and indicators of different nature bear this out.

However, there are also signs and signals that reflect the problems and challenges that arise to the future of rural areas and compromise their development in medium and long term¹.

From the point of view of the occupation or geographic area, rural areas account for 92% of the European Union territory. Just because of the huge land area it covers, the rural areas are worthy of a specific policy and legislation appropriate to their needs. In terms of the population living in rural areas, around 56% of the population among the 27 Member States live in rural area and 37% out of 56% live in areas “significantly rural”, while 19% live in regions “pre-dominantly rural”.

Although the rural population remains important, however, in certain States is concerned over the last decades a progressive abandonment of the countryside, rural villages, farms and forest, by the people who

¹ The problems and concerns of rural areas in Europe and the legal regulation of rural development has been studied for several decades. Before being approved the existing Regulation 1698/2005, ruled in Europe Regulation 1257/1999 on support for rural development. As a result of the CAP reform in 1999, the scheme of the Regulation 1257/1999 was subjected to various analysis published in Actas de las V Jornadas de Derecho agrario. El Derecho agrario y los nuevos horizontes del desarrollo rural, Fundación Caja Rioja, Logroño, 2001. About the future prospects of rural Law in Europe, see the interesting work of HUDAULT, J. “Balance y perspectivas futuras del Derecho rural”, in AMAT LLOMBART, P. (Ed.) Derecho agrario y alimentario español y de la Unión Europea, Tirant lo Blanch, Valencia, 2007, pp. 21-32.

migrate to the most urbanized and industrial areas in search of better living conditions, work and personal development, a “rural exodus” well known in the past, but unfortunately in full force in the XXI century.

Some causes, among others, may explain that certain peripheral or rural decline in some regions may be:

1. Lowest level of service sector development in rural areas compared to cities.
2. Fewer opportunities for training and access to decent jobs, particularly as it affects young people and women.
3. Lack of infrastructure of all kinds (educational, recreational, health, social, etc.)..
4. Aging of rural population and loss of young, dynamic and entrepreneurial population.

On the other hand, from the economic point of view of productivity and employment, there is no doubt that rural areas continue having a significant importance. In fact, the data indicate that such regions generate 45% of gross value added (GVA) and 53% of jobs in the EU.

Among the economic activities developed in rural areas, the agricultural and food sectors still stand out on all of them. Together constitute the 4.4% of Gross Domestic Product (GDP) and employs 15 million people (8.3% of total employment). The EU, considered the largest producer of food in the world, produce food and drinks that worth around 675.000 million euros per year.

Also noteworthy is the forestry sector (and related industries), with an estimated annual production of 350,000 million euros, an employment capacity of 3.4 million people. In short, agriculture and forestry represent 77% of rural land use in the EU.

However, negative data is discouraging. For example, in rural areas the average income per capita is two thirds less than the average income of other more urbanized and industrialized areas and the employment rate and activity of women and girls is lower.

There are also important differences between the data thrown by the different Member States in an EU of 27.

In the old States (assumed to be richer and more developed), agriculture accounts for only 2% of GDP; in the new Member States after enlargement accounts for 3%, while in Romania and Bulgaria is over 10%.

Regarding employment, the percentage for the agriculture sector in the new States triples to the old (12% versus 4%).

Finally, the intense relationship among the rural areas, the environment and the use, management and conservation of natural resources, is an essential element of present and future rural development.

Within this area the agricultural, livestock and forestry sector plays an important role, both by land use and the impacts (positive and negative) that they can generate. In fact, farming remains a determinant factor of the quality of the countryside and the environment, and the principle of “multifunctionality of agriculture”, properly understood, can help to improve the richness and diversity of rural landscape, to the sustainable management of scarce and degraded natural resources (water, soil, etc.) and ultimately, to the protection of Europe’s natural heritage.

It can be noticed that environmental values and ecological sustainability are permeating the practice of farming, but it is important to deep in their practical, everyday application.

2. COMMUNITY STRATEGIC GUIDELINES FOR RURAL DEVELOPMENT

2.1. Approval and modification

As it is well known, the basic rules that structure the current EU rural development policy are contained in the Regulation 1698/2005 of 20 September, related to the support for rural development by the EAFRD (European Agricultural Fund for Rural Development)

Rural development policy is configured with a strong “strategic approach” and it is gradually gaining greater importance after the recent reforms of the CAP.

This strategic approach means that the EU’s objectives, measures, support and funding of rural development should be aimed for achieving certain policy

priorities at EU level, provided for a given programming period.

In fact, the whole system is based on what are called “Community strategic guidelines” relating to rural development policy, which, according to the art. 9 R. 1698/2005 should be established from January 1st, 2007 to December 31, 2013, that is, the current programming period.

In order to comply with this projected regulation, such strategic guidelines were approved by Council Decision 2006/144 of 20 February 2006.

However, three years later, the Decision of 2006 was modified by Council Decision 2009/61 of 19 January 2009, so that what we can call strategic guidelines ‘originating’ was to add a “new” strategic direction to respond to the latest challenges and priorities required by the European Union.

This modification is possible under art. 10 R. 1698/2005 which provides a possible “evaluation” of the guidelines in order to take into account the “major changes acquired in Community priorities”, as it has happened.

2.2. Functionality of the Community strategic guidelines for rural development

In general the overall purpose of the guidelines is to reinforce the strategic content of rural development policy in line with the priorities of the EU and to promote, thereby, transparency.

But the functions that come to play such guidelines go further. The decision of February 20, 2006, remembers that the Community strategic guidelines will follow these statements:

1. Will constitute a link between the major priorities of the EU (European Councils of Lisbon and Göteborg) and translate them into rural development policy. In particular, it highlights the objectives of sustainable development and competitiveness strategy, growth and employment, implemented in rural areas and agriculture sector.

2. Will help to identify and to determine the areas where Community support for rural development creates the most value added at EU level.

In other words, they serve to define the relevant areas of intervention where action is necessary, to achieve the priorities of the Community. Specifically, the guidelines describe different key actions related to each priority to adopt, that is, as a guideline.

3. Will accompany the implementation of the new market-oriented CAP and the necessary reorganization to take place in both the old and new Member States. The regulation 1698/2005, in its first recital, warned that “rural development policy must” accompany and complement “the policies of market support and the income applied in the framework of the CAP...”.

4. Will help to ensure consistency with other EU policies, especially with economic and social cohesion and environmental policy.

5. Will facilitate and guide the planning of rural development in the States.

Indeed, both national strategic plans and government programs for rural development (which put into effect the themes of action and specific measures to support rural development) should be based on strategies and community priorities (while not forgetting its national or regional priorities, given the expected co-financing system, so it also requires a coordinated effort among them).

In short, the Community guidelines constitute the “common theme” of the whole policy of support to rural development in the EU.

2.3. Strategic Guidelines ‘originating’ of 2006

The first version of the Decision of 20 February 2006 articulated four main priorities for rural development for the period 2007 to 2013, which can be summarized as “competitiveness”, “environment”, “quality of life-diversification,” and “LEADER approach.”

These four basic guidelines coincide with the big four ‘themes’, which determine the support and rural development measures in the R. 1698/2005, as discussed below.

a) First of all, “improvement of the competitiveness of agricultural and forestry sectors” is being implemented.

It highlights the enormous potential possessed by the agriculture, forestry and agrifood sector and the need to encourage consolidate and streamline them. It is therefore committed to expanding the range of high quality and high added value, in response to the market demands of European and global consumption.

Priorities are based on investment in physical and human capital on the one hand, as well as promotion of the quality of agricultural production on the other.

For such objectives it is essential the transfer of knowledge, innovation and modernization of structures.

This first guideline can be described as the “most agrarian” of all, since it seeks to impact directly on the productive structures of agriculture and on the modernization of farms, while abandoning the mass production orientation, and seeking more market orientation and quality of production, meeting the demands of consumers, all in line with recent reforms of the first theme of the CAP and the policy of decoupling direct support.

b) Secondly, it is the “improvement of the environment and the countryside.”

The basic objective pursued by this guideline focuses on the protection and improvement of natural resources and landscapes in rural areas of the EU.

In this framework, three priority areas are identified: to protect biodiversity, preserve and develop the agricultural and forest systems of high environmental value as well as traditional agricultural landscapes, water management and combating climate change.

The second strategic guideline is defined by its clear focus on “environment”, insisting on exercising the traditional role of agriculture in shaping the landscape, reducing the negative impacts caused by the agricultural sector in nature, and strengthening the positive ones, as the protection of scarce and fragile natural resources.

c) Thirdly, it places the “improvement of the quality of life in rural areas and encouraging the diversification of the rural economy.”

The key priority here is clear: creation of employment opportunities and properly work conditions for the growth of rural areas.

The ultimate goal of this strategy is committed to reversing the trend currently observed in large rural areas: economic and social crisis, abandonment of the countryside and depopulation of rural areas.

This strategy is also committed to the establishment of living and working conditions that make life much more attractive in rural areas, especially for younger generations.

We can qualify this guideline as the most “social and territorial” one, as it promotes the balance of the territory, preventing degradation and progressive abandonment of rural areas, promoting social- economic and social-labour measures, in order to secure the current resident population in the country, while attracting more people and families to it.

d) In fourth and final place, it appears the “development of local capacity for employment creation and diversification.”

It is designed as an instrumental guideline, to be used for achieving the other three strategic guidelines (specially linked to the third quality of life and diversification), but this time from the standpoint of local and endogenous approach.

Indeed, it opens the possibility of combining the three objectives (competitiveness, environment and quality of life / diversification) in the context of a local community development strategy based on local needs and characteristics.

Especially it aims the horizontal priority of improving governance and mobilize the potential of endogenous development in rural areas.

Obviously, this last guideline is rated by its strong “local and instrumental approach.”

2.4. The “new” strategic guideline introduced in 2009 in order to meet the new challenges of the agriculture and rural areas

As we know, the article 10 of the R. 1698/2005 allows an evaluation of the Community strategic guidelines in the light of new and relevant priorities pursued by the EU, or in order to take account of major changes in these community priorities.

On such a normative basis, the evaluation of the CAP reforms conducted in 2003, has indicated that the climate change, renewable energies, water mana-

gement, biodiversity and dairy restructuring are new situations that European agriculture must face².

The Decision of 2006, which was modified in 2009, insists in qualifying these issues as “matters of crucial importance to be faced by rural areas, agriculture and forestry in Europe.” Thus, the objectives related to these priorities should be strengthened in rural development programs.

The new priorities that reorganise the community guidelines of the rural development policy, have been highlighted in several conclusions presented by the European Council.

Regarding climate change and renewable energy, in order to meet the political and legal commitments undertaken by the Community under the Kyoto Protocol, it is necessary to include the conclusions of the Presidency of the Council taken place on the 8 and 9 of March, 2007, that are committed to the reduction by at least 20% of emissions of greenhouse gases by 2020 compared to 1990, and also setting a 20% mandatory use of renewable energy sources by 2020, including a 10% for the portion of biofuels in petrol and diesel consumption for transport.

As part of this global priority, agriculture and forestry sectors can participate in a relevant way in the fight against climate change in two major areas:

a) Facilitating carbon capture and continuing to reduce greenhouse gases emissions.

b) Providing the raw material for bioenergy and biofuels from biomass, agricultural and forestry residues and energy crops.

Secondly, regarding the relative priority of water management policy, the Council conclusions of the 30th October of 2007 on ‘Water scarcity and drought’, revealed that those issues related to water management in the agriculture should be further addressed.

Other issue that should also be taken into account in this field is the full implementation of the current Water Framework Directive (Directive 2000/60/EC, of October 23, 2000).

² One can see clearly the trend of agricultural community law towards protecting the environment and natural resources. This trend is observed not only in the first pillar of the CAP, but also in the second pillar. In this regard see COSTATO, L. “Nuovo Diritto agrario comunitario: Diritto agrario o Diritto ambientale? (Deficit alimentare e informazioni)”, in MUÑIZ ESPADA, E. (Ed.), Estudios jurídicos de derecho agrario, MARM, Madrid, 2008, pp. 13-20.

We should not forget that agriculture and forestry sectors are the main consumers of water, so the introduction of sustainability benchmarks for the use of water, a scarce and precious resource, is determined as unavoidable.

Such sustainability should be applied according to the amount of water consumed by the agriculture sector (water saving measures for irrigation, modernization of irrigation systems, drip irrigation, infrastructure and review of water transmission pipelines, etc..) as to the water quality (regular monitoring of water pollution, combating water pollution by nitrates from agricultural sources, etc.).

The primary objective is to implement on the agriculture sector some more sustainable practices for water management to ensure sufficient quantity and quality of water in the future.

On third place, as it affects biodiversity, the Council conclusions of 18th December of 2006 entitled "Halting the loss of biodiversity," insisted that the protection of biodiversity remains being a major challenge, and that despite the important consecutive achievements, the goals in this area will need additional efforts.

In fact, the objective of halting the decline of biodiversity by 2010 has not been achieved.

We should not forget that much of the biodiversity of the EU depends on agriculture and forestry.

Finally, regarding the restructuring of the dairy sector, primarily it is recognized the contribution of the sector to the maintenance of rural areas, especially in disadvantaged regions.

This sector is affected mainly by the disappearance in 2015 of the milk quota scheme (Regulation 1234/2007 of 22 October 2007 on the Common Organisation of Agricultural Markets, single CMO), which requires milk producers to adapt to the new market conditions, and to this end, assistance and support measures are offered to them in order to tackle the challenge of restructuring the sector and ensure a 'soft landing' of it.

In conclusion, as shown, most of the new priorities required by the EU are linked to the global strategy to combat climate change, whether in the field of mitigation or adaptation to the climate change.

The new Community strategic guideline proposes, as a guideline, to undertake several key actions whose realization is faced by the Member States through their national strategic plans and their national rural development programs, as discussed in the next section.

3. RURAL DEVELOPMENT BENEFITS: THE FOUR AXIS OF REGULATION 1698/2005

3.1. Instruments that constitute the organizational structure for implementing rural development policy

From the organizational and structural point of view, the EU policy for rural development, in terms of common European policy, is based on the strategic community guidelines for rural development, as discussed in the previous section.

On these basis and a common approach, each Member State submitted its own national strategic plan framework which sets out the priorities that the EAFRD should pay attention to and the financial resources, and the priorities of that state.

This national strategic plan should ensure the coherence of EU support for rural development with the guidelines of the EU, while ensuring adequate coordination among different priorities: community, national and regional priorities.

The next level of performance is the preparation of rural development programs, which apply at state level, the national plan and execute the selected priorities. Rural development programs are structured around four main "axes" as defined in the R. 1698/2005³.

Finally, each "axis" features a number of specific measures, adequately described, whose benefits are requested under the EAFRD.

3.2. The "four community axis" of rural development

³ About this topic see VATTIER FUENZALIDA, C. "Los cuatro ejes del desarrollo rural", in AMAT LLOMBART, P. (Ed.) Derecho agrario y alimentario español y de la Unión Europea, Tirant lo Blanch, Valencia, 2007, pp. 107-116.

According to the article 2 of R. 1698/2005, an “axis” is defined as “one coherent group of measures with targeted objectives that directly result from their implementation and contribute to one or more of the objectives set out in Article 4”.

“Measure” is defined as “a serial of operations that contribute to the implementation of a theme.”

And finally the term “operation” refers to “a project, contract, agreement or other action, selected according to the criteria established for the rural development program and implemented by one or more beneficiaries.”

The four axis of Rural Development R. 1698/2005 point out the priorities and guidelines of the EU in the framework of its rural development policy. Those, in essence, are focused on three main areas: a) food economics, b) the environment, c) the rural economy and population.

a) Axis 1: competitiveness

The axis 1 is called “increasing the competitiveness of agriculture and forestry.”

The first axis focuses on the development of a strategy to strengthen and adapt the manpower (human capital), physical potential (physical capital) and quality of agricultural production.

As we can see, this axis reasserts much of the traditional structural measures that have accompanied the CAP in recent decades.

As regards the “human potential”, it is planned to introduce a series of measures relating to training and information, including dissemination of knowledge; the installation of young farmers (it means those under 40 years old) to early retirement of farmers and farm workers (those who are at least 55 years old and give up their farm to a younger one), the use of advisory services by farmers and foresters, and the setting up of management, relief and advisory services for farms, as well as advisory services for forestry.

Regarding the “physical potential”, it is necessary to implement measures for the modernization of farms (representing investments to improve their overall performance), to increase the economic value of forests (both public and private) and the added value of agricultural and forestry products, to the promotion of the creation of new products, processes and technologies in the agriculture, food and forestry sector,

to the improvement and development of agricultural and forestry infrastructure, as well as the reconstitution of the agricultural production potential damaged by natural disasters (fires, floods, pests, etc.) and the implementation of proper preventive measures.

Regarding to the “quality of production and agricultural products”, some measures are implemented to help farmers to meet the regulations based on Community law (concerning the environment, public health, animal health, work safety ...) to encourage the participation of the farmers in programs related to food quality (visibility of the product to the consumer, increase marketing opportunities ...) and support to the producer groups in the development of marketing activities and promotion of high quality products (consumer awareness about the presence and characteristics of such products).

b) Axis 2: Environment

The second axis is called “improving the environment and the countryside.” And is focused on building land management systems and methods for agriculture and forestry that respect environmental sustainability⁴.

It is shown by the implementation of land use methods that are compatible with the need to preserve the environment, natural landscape and protect and enhance natural resources⁵.

In short, this second axis aims to preserve traditional farming and forestry systems of high environmental value and cultural landscapes of european rural areas.

As part of the management of agricultural land, it includes measures to compensate the natural handicaps in mountain areas and other areas in difficulty (to maintain the continued use of the land in such areas); the “ Natura 2000 “ support (areas of recognized ecological and environmental value), or agri-environment support (environmental services from farmers to society; compatibility among agricultural production, improvement and protection of the envi-

⁴ On protection of the environment through rural development funds, under the Rural Development Programme 2007-2013, see COSIALLS UBACH, A.M. “La protección del medio ambiente a través de los fondos de desarrollo rural”, in Estudios de Derecho agrario, SÁNCHEZ HERNÁNDEZ (Coord.), Universidad de La Rioja, Logroño, 2010, pp. 75-90.

⁵ This issue is directly related to legal principles such as “polluter pays”. To study the practical application of this principle in agriculture in countries like USA, Canada and EU Member States see GROSSMAN, M.R. (Ed.), Agriculture and the polluter poays principle, BIICL, London, 2009.

ronment, landscape, natural resources, soil and genetic diversity), among others.

Meanwhile, in the context of 'management of forest lands, "the actions and support for first afforestation of agricultural land or farm (to expand forest resources, encourage biodiversity ...) system implementation agroforestry (combining extensive agriculture and timber production and forest products of superior quality), the potential recovery of the forest (fire and natural disasters...), or benefits intended for the forest environment, stand out among others.

c) Third axis: Quality of life and diversification

This axis is called "quality of life in rural areas and diversification of rural economy".

This third axis of rural development addresses the need to orient the changes affecting rural areas through measures that promote the diversification of agricultural activities, their orientation towards non-agricultural activities and the development of non-agricultural sectors, promoting employment, improving basic services, including local access to information technologies (ICT), etc.

It contributes to the local infrastructure development and human capital in rural areas in order to improve the growth conditions and employment creation in all sectors and the diversification of economic activities.

In short, it refers to the promotion of the investments that help to increase the attractiveness of rural areas and reverse the trend towards economic and social decline and depopulation of the countryside.

As it affects the "quality of life of rural areas", the measures will encourage the provision of basic services for the rural economy and population (including cultural and leisure activities, among others), the renewal and development of rural populations, and the preservation and enhancement of rural heritage.

And regarding the "diversification of rural economy", the measures and support offered are aimed to stimulate economic activities linked to agriculture (such as crafts, recreation and leisure sector, etc.). Especially by the creation of micro companies, and in particular the promotion of tourism activities (among which rural tourism stands out ...).

d) Fourth axis: Leader

Based on the experience of the Leader, the fourth and final Axis introduces possibilities for innovative governance, based on local rural development approaches that are originated from the basis. The fourth Axis connects mainly with the objective of improving the quality of life in rural areas and the diversification of the rural economy, without discarding its applicability to other thematic areas.

In this line of action, the implementation of local development strategies can reinforce the territorial coherence and synergy among the different measures that are aimed, in general terms, at the economy and rural population. Therefore, measures related to the rural economy in general terms, should be preferably implemented through local development strategies.

It aims for the Leader initiative, considering that it has reached a certain maturity level that enables rural areas to implement the Leader approach in the broader context of overall rural development planning.

It is therefore necessary to extend the basic principles of the Leader approach to the programs that include a specific axis and to define the local action groups and the measures that will take place through the given support.

3.3. Regulatory modifications of R. 1698/2005 to meet the new challenges and European priorities related to rural development

In the light of the new challenges, the priorities and strategic guidelines incorporated into the rural development policy after the evaluation of the CAP reforms, as well as the originating strategic guidelines established in 2006, it has been necessary to modify part of the R. 1698/2005.

This modification has been conducted by the Regulation 74/2009, of January 19, 2009 and Regulation 473/2009 of May 25, 2009, which introduced several changes in R. 1698/2005 to influence on the new priorities: climate change, renewable energies, water management, biodiversity, and the restructuring of the dairy sector, while considering "crucial new challenges for European agriculture", at which the development of broadband Internet in rural areas must be added.

It must be said that most of these alleged "new priorities" actually were already referred -to a greater or lesser extent-, in the originating Community strate-

gic guidelines and in Regulation 1698/2005. In fact, these rules are not lacking of direct allusions to the objectives of climate change, protecting biodiversity, the promotion of renewable energy, water protection, etc., Especially in the context of the second Axis about measures and benefits (on improving the environment and the countryside).

What has occurred now is the expressly mobilization of a greater commitment and funding from the EU to achieve these objectives and priorities.

The key strategic ingredient of the current legislative reforms, is focused on the review of state rural development planning for each Member State in order to include in their various state operations related to the new EU priorities.

In this sense, the new article 16 bis of R. 1698/2005 required the States to carry out the review of their programs before December 31, 2009, including “types of operations that contain the following priorities as described in the Community strategic guidelines and further specified in the national strategic plans :

- a) Climate change;
- b) renewable energy;
- c) water management;
- d) biodiversity;
- e) support measures to restructure of the dairy sector;
- f) innovation linked to the priorities mentioned in points a) to d);
- g) development of broadband Internet infrastructure in rural areas “.

In Annexes II and III of R. 1698/2005 (also modified) it is shown an outline list of such types of operations and their potential effects.

The revised rural development programs should be forwarded to the Commission by July 15, 2009, although the new additional funding for new priorities could be implemented from January 1, 2009 until the end of the regular programming period which is, December 31, 2013.

On another hand, in order to support the forced reorganization of farms (like dairy) that are affected by the reform of a Common Market Organisation (as oc-

curs on the dairy sector of CMO and the disappearance of the fees), it have been included, among others, aids to diversify their activity.

However, the perception of the new benefits are committed to specific conditions tailored to the restructuring process and to the extent that there is a considerable loss of payments related to the direct income benefits.

Thus, under the new Article 35.bis, the benefits to support farms that are being restructured, including the benefits intended for diversify their activities outside agriculture, will be granted only to producers whose direct payments are reduced from 2010 by more than 25% compared to 2009 in accordance with Regulation 1782/2003 and to those who submit a business plan.

In addition, it is a transitional benefit, as it will be paid as a decreasing flat-rate benefit, and only during the years 2011, 2012 and 2013.

3.4. Funding of the benefits to support rural development intended for the new Community strategic priorities

It is obvious and evident that if the financial perspectives regarding rural development for 2007-2013 were already closed, without a priori possibility of allocating additional money to the second pillar of the CAP, the “untimely” introduction of new Community priorities and the community mandate concerning the States to include them in their rural development programs as specific measures and activities, involved the need to articulate a set of extra funding system.

Along this line of action, the European Council on December 11 and 12, 2008, approved the so-called “European Economic Recovery Plan”, which foresees the introduction of priority actions that enable the economies of the States to adapt more quickly to the current challenges.

In practice, the amount of funding for the Recovery Plan rises to 200,000 million euros. Then, from that amount it was determined to give to the EAFRD and the Member States a total of EUR 1,020 million, to be placed in providing economic measures and materials directly related to the new strategic priorities for rural development, called “new challenges”.

In order to explain the new priorities, to the additional financial resources from the European Recovery Plan, will be added the resources from the compulsory modulation of Articles 9 and 10 of Regulation 73/2009 (direct payments and lump sum) and the amounts generated in accordance with Article 136 of the Regulation 73/2009. The realization of the expense is referred in the new paragraph of Article 69 of 5.bis R. 1698/2005.

4. RURAL DEVELOPMENT POLICY IN THE 2020 HORIZON

4.1. Future challenges and strategic objectives

Last November 18, 2010 the European Commission approved the final COM Communication (2010) 672, entitled “ Meeting the food, natural resources and territorial challenges of the future.”

The Commission is concerned about the long-term future of the CAP, about the European agriculture and rural areas, facing factors such as the crisis in agriculture and the new challenges, which leads to the necessary choice of the appropriate strategies for the future reform of the CAP.

The abovementioned final Communication COM (2010) 672, seems to accept the idea of maintaining a strong and structured CAP in the current two themes, being reoriented towards new strategic goals.

Regarding rural development, the main challenges outlined are:

1. Concerning the environment:

On one hand, rural areas and the activities developed there (agriculture, forestry ...) should be able to offer “public goods” to the society, specially from an environmental nature, that would be adequately paid.

Among such “public goods” we can name the landscape, the biodiversity of agricultural land, climate stability and a greater capacity to respond to natural disasters (floods, droughts, fires ...).

On the other hand, the agricultural sector should further contribute to reduce emissions of greenhouse gases, releasing their potential in the context of climate change mitigation and adaptation to its harmful consequences.

Finally, the challenge of the agricultural practices which have an excessive damaging pressure on the environment and that are causing the depletion of natural resources (soil, water ...) and habitats (biodiversity) must be faced with greater momentum.

2. Regarding the regional balance:

The challenge is to maintain viable and vibrant rural communities, where agriculture is an essential economic activity which generates local employment and is able to produce multiple benefits such as economic, social, environmental and territorial.

In turn, the diversification of the economic activities in the rural areas should be strengthened further, for example, those that affect the food industry, tourism, craft or trade.

In the same way, the challenges associated with the consolidation of youth and women in rural areas are outstanding, it means, their consolidation in a place where they can fairly live and work. There remains the challenge of fixing the rural population, increasing their dynamism, initiative and participation and, ultimately, the challenge of territorial and economic backbone of rural areas and promoting social cohesion.

Thus, the three main strategic objectives which rural development must contribute to are:

a) The competitiveness of agriculture through innovation, restructuring and better use of available resources.

b) The sustainable management of natural resources, protecting the environment, fighting climate change, protecting natural areas and maintaining the productive capacity of the earth.

c) The balanced territorial development of rural areas in the EU, strengthening the role and the capacities of rural population and improving their living, work, leisure and relationships conditions, among others.

4.2. Tools and instruments

In the context of a future CAP reform, the general principles, the challenges and strategic objectives must be translated into practical verifiable results, in

other words, the pure desideratum theory should be definitely spent into practice, which includes the facts and the benefits achieved.

To this end, the “The CAP for 2020” Communication establishes a series of mechanisms for practical implementation of the objectives.

As a general principle, it is sought to lead rural development to a more results-based process and to the effective progress achieved. Thus, the programs should include quantified objectives at EU level.

After that, the implementation of a wide range of tools for implementing rural development policy is defended. These include infrastructure investments, payments for environmental goods and services, support for measures to combat climate change, support for innovation and capacity building, support for the creation of local business, etc. .

On the other hand, it is committed to the establishment of ‘risk management’ instruments, which aims to combat market volatility that causes a high variability of the income received by farmers, and to face the risks associated with the production and the income.

In this regard, the creation of a new instrument of stabilization compatible with the WTO green box as well as the increase of the benefits received for the insurance instruments and the increase of the investment funds is proposed.

Finally, in the context of ensuring increased competitiveness of the agricultural sector, it is committed to improving the quality and promotion of the products.

4.3. Three political options for future reform

The Communication of “The CAP for 2020,” Commission presents three possible directions to follow when entering long-term changes in the CAP, which are necessary to meet the new challenges and strategic objectives.

The first option, which we can describe as “low intensity”, is committed to gradual changes and to make adaptations and improvements to the CAP, while ensuring the continuity and stability of the current CAP.

Regarding rural development, this first option is committed to maintaining the orientation of the CAP health checking (increase of funds in the areas of cli-

mate change, water, biodiversity, renewable energy and innovation).

The second option of “medium intensity” is committed to a reform with significant adjustments to improve the sustainability of the CAP and the balance among the different objectives, all through adding more specific measures.

This second approach seems more responsive to the economic, environmental and social future, and helps to strengthen the contribution of agriculture and rural areas to the goals of the smart, sustainable and integrated growth of the EU.

In this line of action, the economic benefits for rural development will focus on the environment, climate change, restructuring, innovation and the promotion of local initiatives.

Also, the tools to compensate for the substantial losses of income will be consolidated.

The third option of “greater intensity”, opts for a more ambitious reform of the CAP, more focused on achieving environmental objectives and on the fight against climate change.

This suggests the gradual abandonment of the income support and the majority of the market measures, along with a substantial increase of the financial resources for environmental issues or related to climate change in the framework of rural development policy.

In conclusion, in any case the future CAP should be more sustainable, more balanced, more focused, easier and more effective, in addition to the response to the needs and expectations of EU citizens.

5. THE LAST PROPOSAL FOR A REGULATION ON SUPPORT FOR RURAL DEVELOPMENT

5.1. Introduction. Legal and political principles of the future rural development

El 12 de octubre de 2011 fue publicada la Propuesta de Reglamento del Parlamento Europeo y del Consejo. On October 12, 2011 was published the proposal for a Regulation of the European Parliament and of the Council relativo a la ayuda al desarrollo rural a tra-

vés del Fondo Europeo Agrícola de Desarrollo Rural (FEADER) 1 . on support for rural development by European Agricultural Fund for Rural Development (EAFRD)⁶.

La propuesta de Reglamento surge del impulso e interés de las instituciones comunitarias por abordar, una vez más, la enésima reforma de la PAC en el actual contexto de grave crisis económica, de restricciones presupuestarias y de nuevos desafíos a afrontar por el sector agrario y el medio rural. The proposed regulation arises from the interest of the Community institutions to address, once again, another reform of the CAP in the current context of economic crisis, budgetary constraints and new challenges to be faced by the agricultural sector and rural environment⁷.

A lo largo y ancho de la propuesta de Reglamento se pueden observar los principios jurídicos y políticos generales que inspiran la reforma del segundo pilar de la PAC: el desarrollo rural. Throughout the length and width of the proposed Regulation can see the general political and legal principles underlying the reform of the second pillar of the CAP: rural development.

1. 1. La política de desarrollo rural, dentro del marco de la PAC, se consolida como una verdadera política común estratégica de la UE. Within the framework of the CAP, rural development policy is becoming a genuine common EU policy.

Atendiendo a la importancia de los desafíos futuros para la seguridad alimentaria, el medio ambiente y el equilibrio territorial, sigue siendo una política de relevancia estratégica para garantizar la respuesta más eficaz a los desafíos políticos y la utilización más eficiente de los recursos presupuestarios. Given the importance of future challenges to food security, environment and regional balance, remains a policy of strategic importance to ensure the most effective

⁶ COM (2011) 627 fine.

⁷ The preparatory work of the last reform of the CAP are underway. The first policy proposals are being approved, for example in the field of rural development. This preparatory phase has been studied by COSIALS UBACH, A.M. "Los retos de la política agrícola común más allá del 2013", in SÁNCHEZ HERNÁNDEZ, A. (Ed.), *Estudios de Derecho agrario*, Universidad de La Rioja, Logroño, 2011, pp. 75-97. The author analyzes the social and economic indicators of the CAP, the public debate occurred in 2010 and the work of the European Parliament. Concludes that the future CAP payments and support will be based on farming subsidies in exchange to maintenance of rural landscape, ecosystem and biodiversity. It is called "providing environmental service and public goods associated with farming." In this same field of study, see DE LA CUESTA SÁENZ, J.M. "Presente y futuro de la política agrícola común" and also VATTIER FUENZALIDA, C. "Presente y futuro del desarrollo rural", both in SÁNCHEZ HERNÁNDEZ, A. (Ed.), *Estudios de Derecho agrario*, Universidad de La Rioja, Logroño, 2011, pp. 99-104 and pp. 319-326 respectively.

response to political challenges and the most efficient use of budgetary resources.

2. Continue applying the principle of shared responsibility between the EU and the Member States.

3. Co-financing principle: EU - Member States.

4. 4. Rige el principio de subsidiariedad, propio clásico del Derecho comunitario. The principle of subsidiarity, a Community law own classic.

5. It reinforces the principle of solidarity between Member States.

Ello se aprecia con mayor claridad en el sistema de distribución de las ayudas, basado en criterios objetivos vinculados a los objetivos políticos, teniendo en cuenta la distribución actual: las regiones menos desarrolladas seguirán beneficiándose de porcentajes de cofinanciación superiores. This can be seen most clearly in the distribution system of support, based on objective criteria related to political objectives, taking into account the current distribution: the less developed regions continue to benefit from higher financing rates.

6. Should be applied with great intensity the principle of coordination.

Ello significa la coordinación con el primer pilar de la PAC y también con el resto de Fondos de la UE. This means coordination with the first pillar of the CAP and also with the rest of EU funds.

7. Principle of complementarity.

La políticas y las ayudas de desarrollo rural tienen un carácter complementario al resto de medidas de la PAC (primer pilar), si bien se percibe un incremento progresivo en su relevancia. The rural development policies and support are complementary to other measures of the CAP (first pillar), while a progressive increase in perceived relevance.

8. Voluntary principle in implementing the system.

Las medidas y ayudas de desarrollo rural son de carácter voluntario para los potenciales beneficiarios, a diferencia de las medidas anuales obligatorias y de aplicación general del primer pilar. The rural development measures and support are voluntary for the potential beneficiaries, as opposed to mandatory annual measures of general application of the first pillar.

Pero para los Estados (o regiones en su caso) es obligatorio aprobar a nivel interno los programas de desarrollo rural para su remisión y validación por la Comisión Europea. But for the States (or regions where applicable) is required to approve domestic rural development programs for submission and validation by the European Commission.

9. Principle of adaptability and flexibility.

Las medidas de desarrollo rural deben servir para que los Estados las adapten a sus propias especificidades, particularidades y necesidades nacionales y regionales. Rural development measures should serve to enable the States to suit their own specificities, particularities and national and regional needs. A tal fin, los programas de desarrollo rural son el cauce más adecuado. To this end, rural development programs are the most appropriate channel.

La flexibilidad se percibe también en la posibilidad de los Estados miembros de efectuar transferencias financieras del primer pilar al segundo pilar (hasta el 5 % de los pagos directos), a fin de reforzar su política de desarrollo rural. The flexibility is also reflected in the ability of Member States to make financial transfers first to the second pillar (up to 5% of direct payments) in order to strengthen its rural development policy.

5.2. Rural development mission

El artículo 3 del Reglamento de 2011 se refiere a la “Misión” que viene a desempeñar tanto la política de desarrollo rural como las medidas y ayudas de desarrollo rural. Article 3 of Regulation of 2011 refers to the “Mission” comes to play both rural development policy and rural development measures and support.

De su lectura se desprende más bien una «doble misión» a cumplir: From reading it appears more like a “double mission” to meet:

First mission. Promoting sustainable rural development throughout the Union⁸.

⁸ In Spain, this mission is reflected in the Law 45/2007 for the sustainable development of rural areas. This law shows the way to a specific rural policy in Spain, adapted to their own economic, social and environmental issues. It seeks to promote in rural areas a sustainable development and greater territorial cohesion. For further on the matter relating to sustainable rural development, especially after the publication of Law 45/2007 in Spain, should consult the complete and interesting book *El desarrollo sostenible en el ámbito rural*, Aranzadi, 2009, directed by Carlos VATTIER FUENZALIDA. Also written by the same autor, “Caracteres y límites del desarrollo rural sostenible”, en *Derecho agrario, agroalimentario y del desarrollo rural*, AMAT LLOMBART,

This mission was already foreseen in the existing Regulation 1698/2005 (art. 3) and with the same formulation.

Considero que el ámbito de actuación del concepto de sostenibilidad deberá abarcar su triple sentido comúnmente aceptado a nivel internacional, institucional y doctrinal, y así se percibe a la vista de los objetivos, prioridades y medidas que más adelante se proponen. I believe the scope of the concept of sustainability must include its three meanings commonly accepted by international institutions and papers, and thus sees the light of the objectives, priorities and measures are proposed below.

Segunda misión. Second mission. Contribuir a que el sector agrícola sea más equilibrado desde la óptica territorial y medioambiental, más respetuoso con el clima, más resistente a los cambios climáticos y más innovador. Helping the agricultural sector to be more balanced from territorial and environmental point of view⁹, to be more climate-friendly, more resistant to climate change and more innovative.

Esta misión resulta novedosa en cuanto a su presencia y formulación en la propuesta de 2011, estando ausente del actual Reglamento 1698/2005 en vigor. This mission is new in the proposed formulation in 2011, absent the current Regulation 1698/2005 in force. Se limita a anticipar las líneas maestras de los objetivos y prioridades globales de la UE en materia de desarrollo rural. It merely anticipate the lines of the objectives and overall priorities of the EU rural development. Pone énfasis en que tales objetivos deben planear sobre el sector agrícola como ámbito esencial de actuación. Emphasizes that these objectives should plan on the agricultural sector as a key area for action.

5.3. Objectives and priorities of rural development

P. (Ed.), Tirant lo Blanch, Valencia, 2011, pp. 163-177. See also Jesús GONZÁLEZ REGIDOR (Ed.), *Desarrollo rural sostenible: un nuevo desafío. Ley para el Desarrollo Sostenible del Medio Rural*, Mundi Prensa, Ministerio de Agricultura, Pesca y Alimentación, Madrid, 2008. Also ARROYO LLANES, L.M. “El desarrollo sostenible del medio rural: los contratos territoriales de explotación agraria”, *Nuevas Políticas Públicas. Anuario multidisciplinar para la modernización de las Administraciones Públicas*, nº. 4, 2008, pp. 213-231. And finally, CAZORLA GONZÁLEZ, M.J. “Protección de la tierra y de los agricultores activos como forma de potenciar el desarrollo rural”, in *Revista de Derecho Agrario y Alimentario*, nº, 58, 2011, pp. 24-26.

⁹ For a better understanding of the territorial point of view in the context of rural development and the functions assigned to agriculture see MUÑIZ ESPADA, E. “Desarrollo rural y cohesión territorial a través de las nuevas funciones de la agricultura”, in *Derecho agrario, agroalimentario y del desarrollo rural*, AMAT LLOMBART, P. (Ed.), Tirant lo Blanch, Valencia, 2011, pp. 179-190.

a) Introduction

El artículo 4 del Reglamento de 2011 es el encargado de enumerar los objetivos de la ayuda al desarrollo rural, mientras que el artículo 5 señala las prioridades de desarrollo rural de la Unión. Article 4 of Regulation of 2011 is responsible for listing the objectives of rural development support, while article 5 provides rural development priorities of the Union.

A su vez, los tres objetivos estratégicos generales ya largo plazo del desarrollo rural se traducen de manera más concreta en seis prioridades específicas. In turn, the three long-term strategic objectives for rural development are more specifically translated into six specific priorities.

Finalmente, se citan tres objetivos llamados «transversales», a cuya consecución concurrirán todas las prioridades específicas (art. 5 fine). Finally, we cite the three “cross-cutting” targets, whose attainment will attend all the specific priorities (art. 5 fine).

Se observa cómo la propuesta de Reglamento de 2011 presenta un marcado continuismo en la formulación de objetivos generales en relación a los que ya se incluían en el vigente Reglamento 1698/2005 (también tres), si bien se introducen algunas modificaciones y novedades como veremos. We observed that the proposed Regulation of 2011 shows a remarkable continuity in the formulation of general objectives in relation to those already included in the existing Regulation 1698/2005 (also three), but introduces some modifications and updates as we shall see.

It is possible also to relate the Objective 1 with priorities 1, 2 and 3; Objective 2 with priorities 4 and 5; and Objective 3 with the priority 6.

La gran diferencia y novedad de la propuesta de 2011 en relación con el vigente Reglamento estriba en que ahora ya no se agrupan las medidas y ayudas concretas de desarrollo rural en torno a diversos Ejes temáticos, sino que se fija un listado único algo más reducido de medidas específicas, muchas de ellas transversales, es decir, susceptibles de contribuir a la vez al logro de varias prioridades y objetivos de desarrollo rural, como veremos. The big difference and novelty of the proposal Regulation of 2011 in connection with the existing Regulation of 2005, is that now support measures for rural development are no longer grouped around several specific Axis, but only sets a slightly smaller list of specific measures, many of

them “cross-cutting”, that is likely to contribute both to achieving the priorities and objectives of rural development, as we shall see. En todo caso, es factible también vincular tales medidas a alguno de los objetivos y prioridades en particular. In any case, it is also possible to link such measures to one of the objectives and priorities in particular.

b) Objective 1. The competitiveness of agriculture

This first objective was already foreseen in the existing Regulation 1698/2005 (see art. 4.1.a). It was included in the Axis 1 of measures called “Enhancing the competitiveness of agriculture and forestry.”

Este objetivo es un clásico en la materia, presente desde el inicio de la tradicional política de reforma de estructuras agrarias de la CEE hasta la moderna política de desarrollo rural de la UE. This objective is a classic in the studied area, present since the beginning of the traditional policy of reform of agricultural structures in the EEC to the modern rural development policy in the EU.

El objetivo de lograr un sector agrario competitivo y viable es fundamental para alcanzar un desarrollo sostenible de las zonas rurales. The goal of achieving a competitive and viable agricultural sector is fundamental to achieving sustainable development of rural areas. El problema no está en el objetivo en sí, sino en los medios, medidas y recursos dispuestos a tal fin. The problem is not the goal itself, but in the means, measures and remedies provided for that purpose. Hay que tener presente que si tras varias décadas la UE sigue insistiendo en dicho objetivo es porque no se ha logrado alcanzar con la suficiencia necesaria. Keep in mind that if EU continues to insist that objective after several decades the, is because it has not achieved the required proficiency.

Este objetivo se pretende ahora reforzar por medio de tres prioridades básicas: This goal now is to strengthen through three basic priorities:

La primera prioridad consiste en la transferencia de conocimientos e innovaciones al sector agrícola, silvícola ya las zonas rurales. The first priority is to transfer knowledge and innovations to agriculture, forestry and rural areas. Ello se traduce ante todo en fomentar la investigación aplicada a la agricultura. This means above all to promote applied research in agriculture. También implica fomentar el aprendizaje y la formación profesional continua de los agricultores. It also means promoting learning and continuous training of farmers.

La segunda prioridad atiende a la competitividad de la agricultura y la viabilidad de las explotaciones. The second priority addresses the competitiveness of agriculture and farm viability.

Se trata de una prioridad ya existente en el ámbito objeto de estudio. This is an existing priority in the area under study.

Consiste en adoptar medidas de reestructuración de las explotaciones con problemas de rentabilidad, de falta de diversificación, de escaso acceso al mercado... También en medidas para facilitar el relevo generacional en el sector agrícola. It is necessary to take measures for the restructuring of farms with profitability problems, lack of diversification, poor access to market ... and also measures to facilitate generational change in the agricultural sector.

La tercera prioridad se centra en dos aspectos principales: la organización de la cadena de distribución de alimentos y la gestión de riesgos en el sector agrícola. The third priority focuses on two main aspects: the organization of the food chain and risk management in agriculture. Es una prioridad ciertamente innovadora respecto al Reglamento de 2005. This is a priority certainly innovative with respect to Regulation of 2005.

El Reglamento de 2011 propone incentivar las agrupaciones de productores y las organizaciones Interprofesionales, por un lado, y por otro lado, los sistemas de calidad, mercados locales y circuitos de distribución cortos. The proposed Regulation of 2011 in one hand encourage producer groups and Interprofessional organizations, and on the other hand, quality systems, local markets and short distribution channels.

Finalmente, por lo que afecta a las medidas de fomento de la gestión de los riesgos en las explotaciones agrícolas, ahora se trata de incentivar todavía más la suscripción voluntaria de seguros por los agricultores. Finally, as measures affecting the promotion of risk management in agriculture, is now further encourage the voluntary subscription insurance for farmers. También financiar mutualidades que compensen las pérdidas económicas de los agricultores. Also encourage mutual funds to compensate the economic losses for farmers. Y la creación de un instrumento de estabilización de rentas para aliviar la grave pérdida de rentas de los agricultores en determinadas circunstancias. And the creation of an income stabilization tool to alleviate the serious loss of income for farmers in certain circumstances. Todas estas medidas son

bienvenidas, siempre y cuando los recursos financieros las acompañen suficientemente. All these measures are welcome, if the financial resources associated with them are sufficiently provided.

c) Objetivo 2. c) Objective 2. La gestión sostenible de los recursos naturales y la acción por el clima. The sustainable management of natural resources and climate action

This goal was taken into account by the current Regulation 1698/2005 (see art. 4.1.b). In fact it was within the scope of Axis 2 measures entitled "Improving the environment and the countryside."

El objetivo ecológico o medioambiental (y ahora también climático) viene constituyendo una de las esencias caracterizadoras del desarrollo rural y de las prácticas agrarias de los últimos tiempos. The ecological or environmental (and now climate change) objective is one of the essences characterizing rural development and agricultural practices in recent times.

Este objetivo se concreta a través de dos prioridades del listado de 6 prioridades básicas de la Unión Europea: This is embodied by two priorities from the list of 6 key priorities of the European Union:

La prioridad número cuatro, pues se orienta a restaurar, preservar y mejorar los ecosistemas dependientes de la agricultura y la silvicultura. The priority number four, as it aims to restore, preserve and enhance ecosystems dependent on agriculture and forestry.

Cada vez se pone un mayor énfasis en señalar los vínculos naturales que relacionan al sector agrario-silvícola en su conjunto con la protección del medio ambiente, la tutela de los recursos naturales, de la biodiversidad animal y vegetal, de los paisajes, etc. Every time you put a greater emphasis on pointing out the natural links that relate to agriculture and forestry as a whole with the protection of the environment, protection of natural resources, plants and animal biodiversity, landscapes, etc.

Esta faceta ecológica del desarrollo rural entronca con la tendencia a valorar y financiar bienes y servicios ambientales de naturaleza pública, que los habitantes y trabajadores del medio rural están en condiciones de proveer en beneficio de la sociedad. The ecological aspect of rural development is connected with the tendency to evaluate and fund environmental goods and services of a public nature, that residents and rural workers are able to provide in the benefit of society.

Esta función social que desempeñan los agricultores les legitima todavía más para percibir las ayudas, beneficios y apoyos públicos a tal fin. This social role played by farmers further legitimizes them to receive the aid, benefits and public support for this purpose.

La prioridad número cinco, pues pretende promover la eficiencia de los recursos y alentar el paso a una “economía hipocarbónica” y capaz de adaptarse a los cambios climáticos en el sector agrícola, el de los alimentos y el silvícola. The priority number five, aims to promote resource efficiency and encourage the shift to a low carbon and climate resilient economy in agriculture, food and forestry sectors.

Esta prioridad puede considerarse en parte una novedad, al ser incluida entre las prioridades estratégicas de la UE. This priority can be seen in part a novelty, to be included among the strategic priorities of the EU. Es coherente con los compromisos globales sobre el cambio climático asumidos por la UE para el año 2020 (estrategias de mitigación y de adaptación al cambio climático). It is consistent with global commitments on climate change made by the EU for the year 2020 (mitigation and adaptation to climate change).

Esta prioridad se concreta, a su vez, en dos grandes campos de actuación: This priority is specified, in turn, into two main fields:

a) Uso eficiente de los recursos productivos en la agricultura, con especial énfasis en la gestión del agua, de la energía y en el uso de fuentes renovables. a) Efficient use of productive resources in agriculture, with special emphasis on water management, energy and using renewable sources.

b) Reducción de emisiones de CO₂ a la atmósfera derivadas de actividades agrarias y ganaderas, y fomento de la captura de carbono por parte del sector agrario y silvícola. b) Reduction nitrous oxide and methane emissions to the atmosphere from agricultural activities and livestock, and promotion of carbon sequestration in agriculture and forestry.

d) Objective 3. Balanced territorial development of rural areas

Este tercer objetivo se asimila al ya previsto en el Reglamento 1698/2005 (véase art. 4.1.c), que entonces pretendía la “mejora de la calidad de vida en las zonas rurales y el fomento de la diversificación de la

actividad económica”, y que con dicha denominación se trasladaba al Eje 3 de medidas. The third objective is assimilated to that laid down in Regulation 1698/2005 (see art. 4.1.c), which then sought to “enhancing the quality of life in rural areas and encouraging diversification of economic activity” and that under that name was transferred to the Axis 3 measures.

Ahora el objetivo tres se vincula con la prioridad número seis, dirigida a fomentar la inclusión social, la reducción de la pobreza y el desarrollo económico en las zonas rurales. Now the objective three is related to the priority number six, aimed at promoting social inclusion, poverty reduction and economic development in rural areas.

En particular, se apuesta por la diversificación de actividades, empresas y empleos en el medio rural, por la promoción del desarrollo local, y en especial, por el acceso a las TIC en las zonas rurales. In particular, the commitment to diversification of activities, businesses and jobs in rural areas by promoting local development, in particular, for access to information and communication technologies (ICT) in rural areas.

Se trata de un objetivo y una prioridad de marcado componente social, pues pone la atención en las condiciones de vida y de trabajo de las gentes del campo, que podríamos calificar en Europa de más pobres, marginales y subdesarrolladas en comparación con las que disfruta la población urbana. It is a priority and objective with a marked social component, because it puts the focus on living and working conditions of country people, those who one could qualify for Europe’s poorest, marginalized and underdeveloped in comparison with those enjoyed by the urban population.

e) Cross-cutting objectives

Al final del artículo 5 del nuevo Reglamento, se indica que “todas estas prioridades (es decir, las seis previamente comentadas) contribuirán a los objetivos transversales de innovación, medio ambiente, atenuación del cambio climático y adaptación a este”. At the end of Article 5 of the new regulation states that “all of the priorities shall contribute to the cross-cutting objectives of innovation, environment and climate change mitigation and adaptation.”

Es un claro ejemplo de la nueva filosofía de la propuesta de Reglamento de desarrollo rural de 2011: la plurifuncionalidad de las prioridades y medidas, dirigidas a alcanzar uno o varios de los objetivos estraté-

gicos de la Unión Europea para el desarrollo rural. It is a clear example of the new philosophy of the proposed Rural Development Regulation of 2011: based on multifunctional priorities and measures, aimed at achieving one or more of the strategic objectives of the European Union rural development.

Por ello se fijan los tres objetivos transversales (innovación, medio ambiente y cambio climático). For that the three cross-cutting objectives (innovation, environment and climate change) are established. Para lograrlos se ponen en marcha diversas prioridades y medidas específicas, sumando sinergias y aumentando su eficiencia práctica, con vistas a obtener resultados verificables. To achieve them are set in motion a number of priorities and specific measures, adding synergies and increasing efficiency practice, in order to obtain verifiable results.

5.4. Rural development measures

Las nuevas medidas de desarrollo rural dejan de estar agrupadas sistemáticamente bajo diversos Ejes temáticos como hasta ahora, y se ha reducido su número. The new rural development measures are no longer systematically grouped under various thematic Axes as before, and reduced their number.

Ahora el Reglamento se limita a efectuar una enumeración exhaustiva de las posibles medidas específicas a ser adoptadas y puestas en práctica (arts. 15 a 41). Now the Regulation of 2011 is limited to conduct an exhaustive list of individual measures to be adopted and implemented (Articles 15 to 41). En el Anexo V del Reglamento se incluye una lista indicativa de medidas relevantes para cada una de las citadas prioridades. Annex V of the Regulation contains an indicative list of measures relevant to each of the priorities studied. Por otra parte, se prevé una sección dedicada a la iniciativa LEADER a cargo de los grupos de acción local (arts. 42 a 45). On the other hand, provides a section dedicated to the LEADER initiative by local action groups (arts. 42 to 45). El análisis en detalle de tales medidas específicas y la iniciativa LEADER excede el objetivo del presente artículo. The detailed analysis of such specific measures and the LEADER initiative beyond the scope of this article.

En definitiva, las modificaciones que incluye el nuevo Reglamento de desarrollo rural de 2011, pretenden aportar mayor flexibilidad y simplificación al sistema, permitiendo que la programación de las medidas de desarrollo rural por parte de los Estados miembros

(con supervisión posterior de Bruselas) se oriente a la consecución de una o varias de las prioridades analizadas. In short, the changes including the new Rural Development Regulation of 2011, aim to provide greater flexibility and simplify the system, allowing the programming of rural development measures by Member States (with subsequent monitoring of Brussels) is oriented to the achievement of one or more of the priorities discussed. Estas prioridades son las que en el futuro servirán de punto de referencia para las medidas concretas a la hora de su aplicación. These priorities will in the future serve as points of reference for the individual measures at the time of application.

6. AIMS OF RURAL DEVELOPMENT THROUGH THE LEGAL SYSTEM OF THE UNESCO CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE

6.1. The CAP in a complex network of interrelations

As aforementioned, the evolution of the CAP is clearly due to the global strategy linked to the environment, biodiversity and fight against climate change, which acts as a prior resource for the strengthening of agriculture and rural development, to the point that environmental issues are central for financial priorities; CAP aids and subsidies are more and more linked to reaching the environmental goals, with a gradual abandonment of income supporting measures and of the majority of market measures. Conversely, the process could be also the opposite: the fight against climate change could simply be favoured by a strongly developed agriculture, which only can be reached with an appropriate legislation concerning agricultural structures, such as rural development being possible through an appropriate territorial balance which, likewise, depends on an appropriate legislative policy. This alone would bring the desired impact on the environment, that would unfold in a more profitable economic context.

Evolution is always associated to more sophisticated and ethereal values like the ones the Common Agricultural Policy is now tirelessly working on, which we refer to as third generation rights, and

which claim for a unique attention and are so well-appreciated by its virtue of serving also for political electioneering. What is clear is that they do not cooperate enough to the profitability of the sector, since, as previously stated, one wonders why being the objectives of the CAP increasingly ambitious, agricultural statistics show a gradual slowdown with an alarming reduction in agricultural assets. Just looking at France, one of the most agrarian countries, the second largest exporter of agricultural products where agriculture only represents 2% of the GDP compared to 5% in 1978. Moreover, from 1973 to 2003 it has been reduced by a 20% of the percentage of the agriculture working population. In turn, it has accelerated the ageing of the rural population, quite similar to the European average. Agricultural sector employs a quarter of the total rural workers; only a few decades ago agriculture was a priority, the main economic activity in rural municipalities. The agricultural income in 2009 has decreased a 5.5% over the previous year, with a decrease of 3.9% in the agriculture workload expressed in ALUs. Agriculture and food industries represent 6.6% of total national employment, which went down in 2009 by 5.2% below the whole Spanish economy.

Part of this problem is explained if we look at wrong policies adopted within the PAC, better known on a retrospective. Difficulties are also found in the agricultural sector; on the other hand, each Member State has its agricultural structural shortcomings. As for Spain, there is an added problem: the structure of the State, the agricultural responsibility division between the State and the autonomous communities that are responsible for the management and effective implementation of the agricultural policy, generating different regimes between Communities, separating legislation and uniformity. Besides, this is overlapped by the consequences of international agreements as expressed by Prof. Costato “the will of the States and European Union can only moderately condition the territory orientation and the same protection of the environment, since the rules of the Marrakech Agreement and the resulting state and community policies are directed towards the disincentive against rationality of crop and environmental protection, boosting farmers who grow in irrigated and non-irrigated lands to look at the opposite direction, all undergoing the uncontrolled and uncontrollable world market”. But we cannot forget further international instruments contribute, with their specific legal regime, to strengthening agriculture and rural development. For instance, the UNESCO Convention, signed in Paris on October 17th 2003 safeguards the Intangible Cultural

Heritage. The rest could be also named, but this is the one that better links with the requirements of the CAP. Certainly, its regime is not due coercive, however, it is not a minor instrument designed to complement the CAP policy.

In this sense, we need to analyze interaction between Unesco Convention for the Safeguarding of the Intangible Cultural Heritage and the Common Agricultural Policy through its different legal methods, to strengthen the agricultural sector and rural development.

The challenges of the CAP for 2014-2020 focus on food safety and sufficiency, compliance with environmental commitments and rural development. These goals are values that need to be promoted in the Convention for the Safeguarding of the Intangible Cultural Heritage, not being possible otherwise, as agriculture is the source of local traditions and social identity, values of the Convention that play as a catalyst and a monitor of the processes of globalization and social transformation. This Convention has its own peculiarities and its own legal means, with special impacts on the enhancement of agriculture, environmental policies and rural development, and it should be, at least, valued their complementarity. Thus, the CAP is included in a complex network of interrelationships.

6.2. The challenges of the CAP under the Unesco Convention for the Safeguarding of the Intangible Culture Heritage

A variety of instruments, with their specific characteristics and particular objectives, take place through a certain legal regime in the development of agriculture structure and in favor of territorial cohesion.

As seen in the Brussels document on the challenges of the CAP for the 2014-2020, its goals are set for food safety to meet the global demand for sufficient food, compliance with environmental commitments and rural development or regional balance, which is tried to achieve through different ways, that is, nowadays the options for reforming the CAP system range from direct payments to farmers with a fairer distribution between countries of the EU to the introduction of a variable remuneration based on various factors, including actions to protect the environment. Likewise, the reform of rural development programs could include an increase in funding for projects related to climate change, water, biodiversity, renewable energies and innovation; Another option is to focus action

on climate change and environment; in any case, the ultimate goal is the competitiveness of the agricultural sector.

In this document, agriculture active management of natural resources is a key element of the conservation policy for the rural landscape, to fighting against the loss of biodiversity, for the climate change mitigation and adaptation to these changes in accordance to the dynamism of the territory and the long-term re-organization of the economy. The document reverses the progressive ruralization trend registered in the past legislation acknowledging the importance of agriculture in rural communities, as it creates employment and is a multiple beneficial source within the economic, social, environmental and territorial areas, having therefore, very positive consequences on consumers. Likewise, its influence on indirect effects is also highlighted since any reduction of farming in Europe means losses in GDP and employment within related economic sectors. The CAP takes three big areas: sustainability, competitiveness and innovation which are largely focused on agriculture. The EU must now exploit its productivity potential as a contribution to the European strategy 2020.

Rural development and territorial cohesion policies that integrate the CAP, show its usefulness as well as reinforce the EU's agricultural sector. Both elements interact and are interdependent, although each particular development requires specific policies. Recent national legislation with a notable rural setting and with little reference to agriculture and its functions, produce the risk of underestimating agriculture. In contrast, it must be highlighted that clear agrarian objectives are a priority, since depopulation of rural areas is accelerating in the face of agricultural activity reduction, and it carries out very negative environmental, agri-food and social consequences. The following document "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions", November 22, 2010, on "The CAP in 2020", deals with this issue.

It can be said that, as another leading specialty, the CAP and Community Law are especially economy-focused because their purpose is to simply enhance the agricultural sector apart from their specific and also social and environmental stands, although their priorities are the competitiveness on the said market. Such economic character of the Common Agricultural Policy reflects the different methodologies used in agricultural community Law regarding the tradition

of continental legal systems, especially as evidenced by Prof. Hudault when he states that it comes from case law, what could be described as the empirical or practical method rather than being a doctrinal construction; in any case, it is closer to these systems than to Codified Law. Moreover, terminology such as the Treaty of Rome (the author states) is no longer the terminology of the Continental rights -taken from Civil Law-, and neither is legal terminology but economic, since Community Law is primarily concerned with the marketing of products.

These same goals are inherent to the Unesco Convention for the Safeguarding of the Intangible Cultural Heritage, but considered from a purely social point of view of maintenance and protection of natural, universal and traditional values. Although they will inevitably have an economic significance, it is not on the mentality of the Convention but it will be its indirect effect when the activity related for the good and protection is promoted through its inclusion in the Unesco list. Since it could not otherwise be known, "Intangible Cultural Heritage", is defined as social practices, rituals or expressions, knowledge about nature and traditional craftsmanship and refers to the activities and functions of agriculture. By taking some examples of the representative List of Intangible Cultural Heritage, one can realise this and so is evidenced by the inclusion of the Mediterranean diet, the French cuisine and traditional Mexican cuisine, which, on the other hand, adds rituals or customs that result in the respect of environment, landscape and biodiversity. This is the reason why it includes the annual winter fair and livestock market in Sint-Lievens-Houtem having mainly an agricultural value, the Krakeling and Tonnekensbrand in Geraardsbergen, the Naadam or Indonesian Angklung, the latter promotes the cultivation of bamboo, and the same environmental protection value should be noted as for the inclusion of falconry art or the Tribunal de las Aguas from Valencia. It could be said that 95% of the elements that are included in the representative List are related to the protection of ecosystems, with the limitation of deforestation, conservation of tree species and environmental friendliness. It would be also worth it for Spain to include on that list the activity of transhumance. The Convention also emerges as an appropriate tool to defend the existence of indigenous peoples and their heritage, which benefits all humanity and which once again has an effect on the protection of the environment.

Although the purpose of the Convention is the recognition of traditions and respect of community usages related to the nature or specific techniques, that is, the protection of values considered of general interest or the expression of a collective interest, the way that materializes its safeguarding has an important economic impact or a profit that falls on the same objectives that contribute to the Common Agricultural Policy. That is, both instruments join together for the same goals but using different methods and legal means; it affects the Common Agricultural Policy more direct and immediately and the Convention acts upon them not in an indirect way but in a generic; the Convention works as a complementary legal framework of the community agriculture policy, as a cooperative or helping instrument, although it is more political than legal. Thus, in previous texts and through the different stages that ended up in the signing of this Agreement the political dimension of cultural heritage has been highlighted -whose origins belong, among others, to Prof. Zagato (2008) and Prof. Herrero (2009) -.

To begin with, this heritage that has a particular consideration and has community and society implications, not at a local or national level, but globally, is rated as cultural heritage. So by means of the Convention on Protection and Promotion of the Diversity of Cultural Expressions 2005, and the Universal Declaration on Cultural Diversity adopted by UNESCO in 2001, cultural diversity improved its rank of "common heritage of mankind". That is, multiple international instruments overlap for the protection of culture. The protection of cultural property and their demonstrations is ensured by a set of international law rules, together with the existing systems of national law, and as part of the indivisible and interdependent human rights. Hence, they are shown "in a common core" because, as it has been pointed out -Abouddahab- "the preservation of the cultural heritage in all its dimensions also promotes the safeguarding of human rights". But "the recognition of the rights to culture and cultural identity does not allow the inclusion of any manifestation of intangible cultural heritage of peoples in the List, as some traditions violate other fundamental rights," as pointed out by Prof. B. Uberizzi. This means that anything can be called culture, even though we are now engaged in an abuse of the term. Any custom or tradition can be understood as a community culture; the difficulties are always found on the many expressions and meanings wishing to be integrated in the same naming whose difficulties are referred to by Amorim in the UNESCO Convention on the Protection and Promotion of the Diversi-

ty of Cultural Expressions, in October 21, 2005. As far as he is concerned, the 2003 Convention clearly sets that it will only take into account -last paragraph in art. 2.1- "the intangible cultural heritage that is compatible with existing international human rights instruments and with requirements of mutual respect among communities, groups and individuals, and of sustainable development."

On the other hand, the safeguarding of the intangible cultural heritage is a specific object of the 2003 Convention, corresponding to other international conventions the protection of its specific demonstrations, although intangible heritage may associate World Heritage properties with the World Heritage Convention. Hence, the general terms of the Convention and its collective interest, justify that the inclusion of a heritage on the representative List should not come exclusively from a certain State and that should not be done only with the consent of the supposedly interested country; it is a sensitive problem already present in the World Heritage Convention of November 23, 1972. The 2003 Convention in this regard only indicates that "in the framework of its activities to safeguard the intangible cultural heritage, each State shall endeavour to ensure the maximum possible participation of communities, groups and, where applicable, individuals that create, maintain and transmit their heritage and to involve them actively in its management" art. 15-. Prof. Scovazzi (2009) deals with the complex balance between territorial sovereignty of an State involved and the general interest of the international community, understanding from Convention on the intangible cultural heritage that "la référence à un territoire n'est pas répétée pour ce qui concerne les propositions d'inscription sur la Liste représentative du patrimoine culturel immatériel de l'humanité ou sur la Liste du patrimoine culturel immatériel nécessitant une sauvegarde urgente. Ces inscriptions sont décidées par le Comité intergouvernemental de sauvegarde du patrimoine culturel immatériel, créé par la Conv. Imm., sur proposition ou à la demande de « l'État partie concerné ». Cette formule permet l'interprétation – difficile, mais admissible – selon laquelle un État partie concerné à cause d'une série de raisons culturelles, pourrait aussi agir pour la sauvegarde d'un élément du patrimoine immatériel situé, en partie ou en totalité, en dehors de son territoire national. Si tel était le cas, la dimension sociale du patrimoine culturel immatériel aurait priorité sur sa dimension territoriale".

Likewise, if the expression States Parties appoints, as declares art. 14, the States obliged under this Convention and being in force within these States, then given the representation -the Convention does not deal with exceptionality- of the given heritage, its philosophy would have to exceed this geographical scope which is demarcated by the “States Parties” consideration, in order to broaden its influences to other countries with similar heritage.

6.3. Legal treatment in the Convention

The economic impact of the Unesco Convention on agriculture and rural development take place in the form of protection to the property declared as protected, as it is the preservation, promotion, enhancement, transmission and revitalization of that heritage; what the document does not make clear is whether revitalization is synonymous of recovery.

The safeguarding of this heritage through the Unesco Convention, challenges States to adopt measures aimed at promoting the role of intangible cultural heritage in society and integrating its safeguarding into planning programs; also to designate or establish one or more competent bodies for safeguarding intangible cultural heritage in its territory; to foster scientific, technical and artistic as well as research methodologies for the effective safeguarding of the intangible cultural heritage, in particular, the intangible cultural heritage that is in danger; to adopt the appropriate legal, technical, administrative and financial measures to: promote the creation or strengthening of institutions for training in management of intangible cultural heritage, as well as the transmission of such heritage through forums and spaces intended for its transmission and expression; to ensure access to intangible cultural heritage while respecting customary practices that access certain aspects of such heritage; and to create documentation institutions for the intangible cultural heritage, facilitating access to them -art. 13 of the Convention-

Among the measures that concern the State Parties is to “take the necessary measures to ensure the safeguarding of intangible cultural heritage present in its territory”, and among the safeguarding measures referred to in paragraph 3 of article 2, “identify and define the different elements of intangible cultural heritage present in its territory, with the participation of communities, groups and relevant non-governmental organizations”, art. 11. Also, “to ensure identification

with a view to safeguarding, each State Party shall draw up under his own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories will be updated regularly. In presenting the report to the Committee pursuant to article 29 each State Party shall provide relevant information on such inventories” - art. 12 -.

Each State Party shall endeavour as far as possible to ensure the recognition, respect and promotion of the intangible cultural heritage in society, particularly through: educational programs, awareness and information dissemination for the public, and especially for the youth; education and training programs in specific stakeholder communities; the capacity of building activities for the safeguarding of intangible cultural heritage, in particular management and scientific research; and non-formal means of transmitting knowledge, keeping the public informed of the threats of heritage and of activities undertaken pursuant to this Convention; promote education on the protection of natural spaces and places of memory whose existence is essential for the intangible cultural heritage being expressed -art. 14 thereof-

The lack of State Parties obligation is a major deficiency in that regulation, since the Convention is satisfied with the simply recommendation it makes, enabling each State Part to do everything possible or to try to implement the appropriate means. Likewise, the Convention respects the principle of sovereignty of States, albeit the functions and working methods of its Intergovernmental Committee represent some engaged powers (articles 7, 8 and 18 of the Convention). Although the legal regime of the Unesco Convention is not broadly structured over the imperative Law, State Parties will periodically submit reports to the Committee on the legislative, regulatory and other provisions taken to implement the Convention, such as “the state of elements of intangible cultural heritage present in its territory that have been reported to the Urgent Safeguarding List on request or in cases of extreme urgency, after having consulted. The State Party will engage communities, groups and, where applicable, individuals interested in the preparation of these reports (para. 160 of the Operational Guidelines for the implementation of the Convention for the Safeguarding of Intangible Cultural Heritage). The State party shall report the current state of the element, especially its social and cultural functions; an assessment of its viability and the current risks; the consequences of efforts to safeguard the element, in particular, the implementation of the plan to safeguard presented at the time of nomination; the participation of communities,

groups and individuals in safeguarding the element and its will to continue safeguarding it” (para. 162 of the Operational Guidelines for the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage) as well as the institutional context in which the safeguarding of the item reported on the List takes place. Therefore, the inclusion of a cultural element in any of the lists of the Convention takes the acceptance of a series of rights and obligations, even to some extent, by non-Parties to the Convention on whose territory there are items proclaimed, masterpieces that have been incorporated into the representative List of Intangible Cultural Heritage of Humanity. However, the committee does not have the power to sanction against State Parties that do not take the obligations under the Convention, although it is known that moral sanctions are effective means of persuasion. The Convention neither determines what degree of interference the States shall agree on as for the Committee to exercise its mandate.

From the legal traditional instruments point of view, it could be stated that the said regulation objectives are not good enough or they imply a very indirect and voluntary influence; it could be then talked about certain skepticism on the application of the Convention. All of this is unlike the strong community agricultural law that rules either through its regulations or the transposition of the directives. Difficulties can also be identified in the nature of the properties under this convention, or included in the representative List, most of which characterized by the intersectionality, as part of the various characteristics stated in art. 2.2 of the Convention. On the other hand, as already stated A. Sola because of the diversity of elements that can be included in the Convention it is difficult to give an adequate protection to suit the needs of every possibility.

What is satisfyingly appreciated by the Unesco Convention is its compatibility with other international instruments, in addition to their complementarity, as any disposition of this Convention shall be interpreted so that “affects the rights and obligations of State Parties under other international instruments concerning intellectual property rights or the use of biological and ecological resources of which they are part”, it is then envisaged as a subsidiary or alternative instrument. Similarly, it expressly offers cooperation with other international institutions (stated in art.19), which is expected in a comprehensive manner through the formulation of their objectives, their forms and requirements for the provision of such assistance.

The economic significance derived from the promotion of activities related to heritage especially with an agrarian or rural traditional stand, or the derived from the safeguarding of the intangible cultural heritage, generate an economic profit that is not directly present in the Convention since its purpose is the ethical imperative of cultural diversity, unlike the resources of the PAC, which serve for the enhancement of the agricultural sector. However, they take the same objectives since in the Common Agricultural Policy environmental measures have the same purpose of the Convention. On the other hand, in the Operational Guidelines of the Convention commercial activities related to intangible heritage are not obvious, because on the one hand, the implementation must recognize the meaning of protection or defence of the values of the Convention for their own appellations of origin, as it has a clear economic impact on them, as well as business activities arising from the movement of properties and services related to cultural heritage contribute to the heightened awareness of the importance of this heritage. In turn, these activities can be protected by the application of intellectual property rights, whose registration of an item in the Unesco list does not automatically imply the recognition of intellectual property rights over the registered item and the Convention does not resolve conflicts that may arise about it. The conditions are different and the legal regime for the protection of this heritage come through the Convention instead of other international bodies like the World Intellectual Property Organization (WIPO) or through the TRIPS rules on intellectual property in the multilateral trading system.

However, the Convention is not so far from these commercial consequences, because the way in which profitability is reached and the manner in which they develop certain activities cannot affect the viability of intangible cultural heritage, that is, the social and economic practices have to operate with same level of respect as the Convention is implementing. Therefore, unfair commercial use should be avoided, seeking an adequate balance between the interests of the commercial, government and cultural agents, without distortion of the meaning of the intangible cultural heritage and its purpose for the community, although it does not provide a concrete framework for effective sanctions in the case of breach.

Economic benefits for all the community are derived from the Convention, but specially for certain local or regional areas, which thanks to rural tourism they have an impact on rural areas, areas that promote certain products, which meet a new value for geo-

graphical indications or guarantees of origin, as well as benefiting specific performers of such services.

The inclusion of a product or the recognition of a technique present at the representative Lists is already an international promotion of that element. The following economic benefit comes straight because such recognition carries out the subsidies and international cooperation foreseen and stated at the Convention, as seen before. This leads, in turn, for the States to decide whether to develop a specific action and take an active role in relation to these properties. The level of involvement and investment will depend on the specific commitment of each State in relation to protective measures willing to adopt for that good or that recognized product.

The Convention is, therefore, another instrument to strengthen the local economy and a factor of social cohesion, stated under para. 116 of the Operational Guidelines for the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly of the State Parties Convention at its second meeting in Paris on June 16, 2008, amended to its third meeting in Paris on June 22, 2010.

The intrinsic purpose of the Convention is to safeguard the tradition or the interaction with nature, to keep alive the cultural heritage, preserving its value and function. It has a direct impact on respect for the territory, the diversity and the environment, and indirectly has an economic profit over all the elements it promotes.

6.4. The role of the Convention on observing the work of women in farming

This appeal to tradition is, therefore, especially related to agriculture and rural areas, and in this area the paper of women deserves to “be particularly vital,” as it has been pointed out by Prof. Ubertazzi-, a particularly vital role in the transmission of knowledge and safeguarding techniques. From this point of view, the Convention is a tool specially qualified to strengthen and promote the recognition of women’s work in the field of agriculture.

Equal opportunities for women in the agricultural world is not a problem, a trivial matter or an added statistic data, but a problem of greater consideration, because it affects the efficient development of agriculture, as if women does not stay in the farms the agricultural assets will decline, as this encourages the abandonment of the countryside and the exodus of

men to the city. To reverse this context, the legislation needs to provide the means for promoting access of women to agricultural business and to the deserved recognition for their work on the farm. This has been one of the most forgotten agrarian laws, and therein lies largely the failure of other measures of agricultural policy. It should be stressed that there can be a competitive agricultural sector if the population level is maintained properly and this depends on the maintenance of women in this area.

The basic problem of the women working in agriculture has been kept hidden, hidden because the work of women in agriculture, which has been and is essential for sustaining the family economy, is an effort that has not been recognized professional or socially or economically, and still is not recognized in the right measure or dimension, this is called the invisibility of farm women’s work, referring specifically to the traditional female labor contribution to the economy, but without being taken into account, this leads to an occupational segregation, which has, among other consequences, that the worst-paid agricultural jobs are being feminized, making them not willing to work as wage laborers in agriculture. This has produced the known demographic decline and an aging population that hardly

Creates the necessary assets to revitalize the economy of a territory; all this represents an important dysfunctional matter.

The social and economic conditions existing in the world of agriculture have led women in rural areas to leave rural areas in a greater extent than men, while remaining groups of older women. On the other hand, in the workforce there are fewer women than men and their activity rate is lower in all economic sectors. Statistical data show a loss of assets essential for the development of agriculture. Women represent the most important component for the recovery of agricultural assets.

In this terms, it is also fair to recognize the influence and contribution of the Convention to the recognition of women’s work in maintaining local traditions and expressions, in areas as specific as food quality or favoritism in the management of natural resources or in favor of social cohesion, thus affecting the achievement of the objectives for rural development.

Therefore, the Convention reinforces social identity through the work and the role of women in rural areas, apart from specific agrarian legislation for each state.

6.5. The compatibility of the Convention with the agreements within the WTO

To this influence of the Convention is added that its activity is more efficient from the point that addresses the dissemination of good practices and models developed in the framework of international cooperation. The tradition represents the main form of cultural heritage and involves a significant contribution to economic and social progress.

Therefore, it should be understood that active policies of one state intended for the protection of certain goods or products related to the agricultural sector as a result of their inclusion on the representative Lists, as the international safeguards, since the safeguard is scheduled nationally and internationally, could not be seen as contrary to international agreements under the WTO, contrary to any obstacles to free trade or grants, although there is no doubt that the Convention is an indirect way of getting benefits for these particular goods or products. It can not be contrary to the agreements of the WTO headquarters since what is valued, protected and promoted directly by the Unesco Convention is the cultural value or cultural specificity of goods bearing a significant expression especially for the community, universal interests of humanity, so do not even represent an exception to the application of the rules of international trade.

The paradox of the Convention is that the cultural expressions are no independent from the commercial value, but does not conflict with WTO rules, although some of the uses and protection of local or indigenous basic techniques have international importance.

This is this way since the Convention promotes the recognition of skills, competencies, traditional knowledge or expressions which are intended to facilitate its transmission to future generations that have special meaning for their interaction with nature, part of the idiosyncrasy or the history of a particular community, with a particular sense of identity that justifies the need for continuity and how the the entire community is satisfied . But, certainly, to safeguard certain traditions, a problem related to imports may encounter, considering if their application could be considered as a cultural protective measure, with the possibility of trade restrictions on imports of cultu-

ral goods and services, which have already referred certain political authorities differentiating protection and protectionism, which has led to the doctrine to consider the existence of conflicts between culture and commerce and to consider the hierarchy between them.

In view of all the reasons mentioned, the issue is not whether the Convention meets the expectations that it wants to meet, but the level of commitment of States to protect this heritage and its attendant responsibilities on it, although it also gets involved in identifying items such as intangible cultural heritage, to sub-state entities, since Art. 2 of the Convention refers to communities, groups and even individuals, because it takes into account the participatory nature that it is trying to establish the Convention and the importance that the text gives to the local action, as it is necessary that communities, groups or if individuals recognize them as part of their cultural heritage, that is, an important component in the recognition of this subjective heritage, hence, the Convention points out that it is recreated in a permanent way by the communities, depending on the area in which they live or their relationship with its history and nature.

The manifestations of intangible cultural heritage are perceived as well, with a different function and therefore, we can identify new types of goods worthy of this rating depending on the evolution of the social appraisals. Everything that contributes with the right sustainability works this way.

This same process is evident in the evolution of the CAP, as even with different methods, they concur to the protection of the same types of goods, and get reciprocal influence.

The Convention is introduced as a defender instrument of the most traditional and current values, as it promotes the value of maintaining biodiversity and protecting the environment, as through both instruments, in different ways, they get a special protection, which the United Nations program for the environment is concerned with a particular part of the Convention on Biological Diversity (CBD), the first global agreement focused on the conservation and sustainable use of biodiversity.

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