

# MUCH ADO ABOUT DECOUPLING: EVALUATING THE ENVIRONMENTAL IMPACT OF RECENT EUROPEAN UNION AGRICULTURAL REFORM

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## I. INTRODUCTION

Although the traditional European countryside aesthetic remains largely intact, an astute observer might:

[L]ook at these lonely houses, each in its own fields, filled for the most part with ignorant folk who know little of the law. Think of the deeds of hellish cruelty, the hidden wickedness which may go on, year in, year out, in such places and none the wiser.<sup>1</sup>

Current citizens of the European Union, however, are no longer unaware of the “hellish cruelty” inflicted upon the environment by the Common Agricultural Policy (“CAP”),<sup>2</sup> the uniform policy governing the agricultural economies of all European Union member states.<sup>3</sup> The CAP has led directly to overproduction by providing farmers with artificially inflated prices in order to stimulate production of desired commodities and give EU farmers an edge in the market.<sup>4</sup> This production-oriented mentality, coupled with the environmental impacts of modern agriculture, made environmental damage inevitable.<sup>5</sup> Over the last fifty years, the European Union has gradually come to terms with the environmental impacts of the CAP and has made some efforts at reform.<sup>6</sup> However, attempts to address the

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<sup>1</sup> ARTHUR CONAN DOYLE, *The Adventure of the Copper Beeches*, in 2 THE ANNOTATED SHERLOCK HOLMES 114, 122 (William S. Baring-Gould ed., Clarkson N. Potter, Inc. 1967) (1892).

<sup>2</sup> See UTA LANGE, WUPPERTAL INST. FOR CLIMATE, ENV'T, ENERGY GMBH, RECOMMENDATIONS FOR A COORDINATED IMPLEMENTATION OF THE EUROPEAN WATER PROTECTION LEGISLATION AND THE COMMON AGRICULTURAL POLICY 12–25 (2003), available at [http://www.ucd.ie/dipcon/docs/theme12/theme12\\_05.PDF](http://www.ucd.ie/dipcon/docs/theme12/theme12_05.PDF) (noting the damage caused by pesticides, fertilizer, and manure application as a result of a shift to a modern industrialized agricultural paradigm).

<sup>3</sup> JAMES D. GAISFORD & WILLIAM A. KERR, ECONOMIC ANALYSIS FOR INTERNATIONAL TRADE NEGOTIATIONS: THE WTO AND AGRICULTURAL TRADE 53–55 (2001).

<sup>4</sup> JOHN MCCORMICK, UNDERSTANDING THE EUROPEAN UNION 189 (3d ed. 2005).

<sup>5</sup> *Id.* at 190–91.

<sup>6</sup> See Dan Charles, *European Farmers Being Paid To Protect Nature* (National Public Radio Broadcast, July 12, 2005) (on file with the Harvard Environmental Law Review) (explaining past reform efforts and the United Kingdom’s attempt to obtain meaningful CAP reform).

environmental concerns associated with industrialized agriculture have met with only limited success.<sup>7</sup>

In June 2003, reforms heralded as “the beginning of a new era” for the CAP focused on reducing the harmful impacts of Europe’s agricultural policy.<sup>8</sup> The main instrument of the reforms was to decouple farm payments, that is, to break the link between agricultural production and government support.<sup>9</sup> This Note analyzes whether these reforms will be effective in protecting the environment, or if, alternatively, additional reform will be required. It will also illustrate that the value of the 2003 reforms is largely ideological. Rather than providing immediate environmental benefits, the reforms serve as a break from the production-centered agricultural policy. The current reforms, based on decoupling farm payments and imposing baseline environmental stewardship standards, are a necessary first step towards reorienting the CAP in order to account for a wider set of policy objectives. In doing so, the 2003 reforms may constitute a breakthrough and allow EU policymakers a base from which to design a future agricultural support program committed to environmental stewardship and rural development objectives.

Part II of this Note provides a brief history of the CAP, explains how the CAP functions, and examines the motivations behind recent reforms. Part III focuses on the overall effectiveness of the 2003 reforms. Part IV looks to the United Kingdom as an illustration of how the CAP reforms can be used to promote environmental stewardship objectives. Finally, Part V analyzes the true impacts and potential of these reforms.

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<sup>7</sup> See POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *FARMING & FOOD: A SUSTAINABLE FUTURE* 68 (2002), available at <http://archive.cabinetoffice.gov.uk/farming/pdf/PC%20Report2.pdf> (“The result [of inflated commodity prices] has been overproduction and a discounting of the environmental damage this causes.”).

<sup>8</sup> Franz Fischler, Member of the Eur. Comm’n Responsible for Agric., Rural Dev. and Fisheries, Final Press Conference After the Decision at the Council on Agriculture: The New, Reformed Agricultural Policy (June 26, 2003), available at <http://www.nakp.hu/download/fishler0624.pdf> (discussing the ramifications of the Luxembourg agreement on the future of the CAP); see also World Wildlife Foundation, *Agricultural Trade and Developing Countries*, [http://www.panda.org/about\\_wwf/where\\_we\\_work/europe/what\\_we\\_do/policy\\_and\\_events/epo/initiatives/agriculture/cap/problem/trade\\_3rd\\_world/index.cfm](http://www.panda.org/about_wwf/where_we_work/europe/what_we_do/policy_and_events/epo/initiatives/agriculture/cap/problem/trade_3rd_world/index.cfm) (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review) (discussing the importance of agricultural trade to developing nations and the effect of EU subsidies in distorting world commodity prices).

<sup>9</sup> See, e.g., Dep’t for Env’t, Food and Rural Affairs, CAP: Single Payment Scheme—Overview, <http://www.defra.gov.uk/farm/capreform/singlepay/overview/qa-gen.htm> (last visited Oct. 1, 2006) [hereinafter Single Payment Scheme] (on file with the Harvard Environmental Law Review).

## II. BACKGROUND OF THE CAP

A. *Formation of the CAP*

The CAP began in the early 1960s with the goal of “denationalizing” Europe to allow for member state specialization in economic sectors beyond agriculture.<sup>10</sup> This economic policy sought to allow member states to specialize in areas in which they had a comparative advantage and to eliminate the need for national agricultural self-sufficiency.<sup>11</sup> By creating a single policy and becoming a single economic unit, the original members also sought to strengthen their international bargaining position and increase rural income within the European Union.<sup>12</sup> Furthermore, European agricultural theory was influenced by “the memory of post-war food shortages.”<sup>13</sup> This conscious desire to ensure adequate food production also influenced the formation of the CAP.<sup>14</sup>

To achieve these goals, the CAP implemented support prices, artificially inflated prices for commodity products designed to increase overall agricultural production.<sup>15</sup> At the same time, CAP tariffs prevented agricultural producers in other nations from exploiting the high internal EU support prices.<sup>16</sup> Overall, this policy attempted “to maintain guaranteed prices through market manipulation and frontier protection.”<sup>17</sup> To finance these supports, the European Union began using tax revenue to shift urban wealth into the rural agricultural economy.<sup>18</sup> By 1970, CAP agricultural funding

<sup>10</sup> Treaty Establishing the European Economic Community, Mar. 25, 1957, art. 33 [hereinafter EC Treaty] (“[t]he objectives of the common agricultural policy shall be: (a) to increase agricultural productivity by ensuring the rational development of agriculture and the optimum utilization of the factors of production”); see, e.g., Margaret Grossman, *Farmers and the Environment Under the Common Agricultural Policy of the European Union: The Agro-Environmental Measure in the United Kingdom*, 28 U. TOL. L. REV. 663, 664 (1997) (discussing the beginning of CAP policy five years before the CAP’s formation under the 1957 Treaty of Rome).

<sup>11</sup> EC Treaty art. 39(1); see GAISFORD & KERR, *supra* note 3, at 22 (explaining the principle of comparative advantage in the international trade context whereby national specialization in the country’s more efficiently produced goods increases overall societal utility).

<sup>12</sup> EC Treaty art. 33(1), *supra* note 10.

<sup>13</sup> Eur. Comm’n, Common Agricultural Policy: Beginnings to the Present Day, <http://europa.eu/scadplus/leg/en/lvb/l04000.htm> (last visited Nov. 9, 2006) [hereinafter Beginnings] (on file with the Harvard Environmental Law Review).

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 68 (“The CAP has . . . rais[ed] commodity prices above those provided by world markets.”).

<sup>16</sup> GAISFORD & KERR, *supra* note 3, at 55 (“[C]ommon trade barriers had to be set high enough to support farms in the high-cost country for the particular commodity.”).

<sup>17</sup> EUR. UNION COMMITTEE, THE FUTURE FINANCING OF THE COMMON AGRICULTURAL POLICY, 2005–06, H.L. 7-I, at 14.

<sup>18</sup> International Fund for Agricultural Development—Rural Poverty Portal, Rural Poverty in Europe, <http://www.ruralpovertyportal.org/english/regions/europe/index.htm> (last visited Dec. 1, 2006) (on file with the Harvard Environmental Law Review) (“The EU earmarks a significant part of its common budget for development of the least advantaged rural

was more than eighty-five percent of the entire EU budget.<sup>19</sup> This overall percentage has since fallen, but even in 2005, a full forty-six percent of the total EU budget was allocated to the support of the agricultural sector.<sup>20</sup>

The CAP is currently financed by member state payments based on economic status rather than population.<sup>21</sup> As a result, some nations disproportionately profit under the CAP regime at the expense of other member states that are more prosperous or less agricultural. Attempts to reform CAP's financial structure have resulted in heated debate over what, if any, obligation more prosperous nations have toward overall EU economic development.<sup>22</sup> Under the current regime, industrialized nations such as the Netherlands and Germany are essentially paying for the modernization of other member states' economies.<sup>23</sup>

The transfer of wealth from modern economies toward rural member states within the EU has required the development of an entity capable of both collecting and distributing funds. To accomplish this, the European Union created the European Agricultural Guidance and Guarantee Fund ("EAGGF") to administer the CAP payment program.<sup>24</sup> The EAGGF's primary responsibility is distributing payments for the two major pillars, or programs, under the CAP.<sup>25</sup> The EAGGF's largest responsibility is making payments under the First Pillar for market support measures and direct producer subsidies.<sup>26</sup> The EAGGF is also responsible for the administration of the payments for rural development programs under CAP's Second Pillar.<sup>27</sup> CAP rural development programs are a relatively recent re-

areas within the Union.").

<sup>19</sup> McCORMICK, *supra* note 4, at 189–90.

<sup>20</sup> BBC News, *How the Money Is Spent, Cashflow*, <http://news.bbc.co.uk/1/shared/spl/hi/europe/04/money/html/introduction.stm> (last visited Nov. 2, 2006) (on file with the Harvard Environmental Law Review).

<sup>21</sup> BBC News, *How the Money Is Spent, Who Pays What?*, [http://news.bbc.co.uk/1/hared/spl/hi/europe/04/money/html/who\\_pays\\_what.stm](http://news.bbc.co.uk/1/hared/spl/hi/europe/04/money/html/who_pays_what.stm) (last visited Dec. 1, 2006) (on file with the Harvard Environmental Law Review); *see also* McCORMICK, *supra* note 4, at 122–23 (detailing the budgetary process and negotiations behind this agreement); *cf.* BBC News, *How the Money Is Spent*, [http://news.bbc.co.uk/1/shared/spl/hi/europe/04/money/html/uk\\_rebate.stm](http://news.bbc.co.uk/1/shared/spl/hi/europe/04/money/html/uk_rebate.stm) (last visited Dec. 1, 2006) (on file with the Harvard Environmental Law Review) (discussing the tensions that arise in determining national contributions in the context of the argument over the UK's budgetary rebate).

<sup>22</sup> *See* John Peet & Kitty Ussher, *The EU Budget: An Agenda for Reform?* 3–5 (Centre for Eur. Reform, Working Paper, Feb. 1999), available at <http://www.cer.org.uk/pdf/cerwp1.pdf> (detailing member state positions on budgetary reform and the difficulties in negotiating reforms).

<sup>23</sup> *See* BBC News, *Q&A: The UK Budget Rebate* (Dec. 23, 2005), <http://news.bbc.co.uk/1/hi/world/europe/4721307.stm> (on file with the Harvard Environmental Law Review).

<sup>24</sup> Council Regulation 1258/1999, 1999 O.J. 160 (EU). This regulation also provides a security mechanism to ensure that payments only go to authorized farmers. *Id.*

<sup>25</sup> *See generally* Memorandum from the Envtl. Agency to the Select Comm'n on the Eur. Union (Jan. 12, 2005), available at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldcom/007/7we05.htm> [hereinafter Select Comm'n on the Eur. Union].

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

form and constitute only a small percentage of overall spending.<sup>28</sup> As a result, most CAP funds are still committed to providing direct producer support.<sup>29</sup> Even without taking into account the recent addition of the Second Pillar payments, the CAP has continued to grow.<sup>30</sup> At the same time, however, farm population has declined and is now less than five percent of the total EU population, prompting rural concern over the continuing political viability of this subsidy program.<sup>31</sup> As a result, the present CAP structure is a topic of great debate among member states struggling to define the policy's future.

### *B. Governmental Operations Under the CAP*

To understand the overall operation of the CAP, it is necessary to understand the governmental bodies responsible for the administration of the program. The European Union currently consists of twenty-five member states, including the recent accession of ten eastern European nations in May 2004.<sup>32</sup> Diverse viewpoints and cultural perspectives lead to frequent disagreement among the member states. Despite their differences, however, all member states are represented within the EU system of governance.<sup>33</sup> In fact, maintaining the diversity of member state viewpoints was a primary factor in the development of the major European institutions, which attempt to allow all member states to shape the policy agenda.<sup>34</sup>

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<sup>28</sup> See Press Release, Franz Fischler, Member of the Eur. Comm'n Responsible for Agric., Rural Dev. and Fisheries, The Future of CAP and Rural Development (Apr. 13, 2004), available at <http://www.europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/04/177&format=HTML&aged=1&language=EN&guiLanguage=en>.

<sup>29</sup> See EUBusiness.com, EU Farm Subsidies Unfair, Need Overhaul: British Study, <http://www.eubusiness.com/archive/Agri/050819135924.fy08q1ln> (last visited Oct. 20, 2006) (on file with the Harvard Environmental Law Review) (examining which farmers actually receive CAP funds).

<sup>30</sup> ALAN GREER, AGRICULTURAL POLICY IN EUROPE 170–71 (2005).

<sup>31</sup> See, e.g., Select Comm'n on the Eur. Union, *supra* note 25 (discussing the overall European budget and addressing the increasing burden of CAP expenditure).

<sup>32</sup> See EUR. COMM'N, EUROBAROMETER: EUROPEANS AND THE COMMON AGRICULTURAL POLICY 20 (2004), available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_221\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_221_en.pdf) [hereinafter EUROBAROMETER] (showing variations in European Union member state opinions, in this case on the issue of the CAP's effectiveness in promoting respect for the environment—85% of Cypriots agreed, while only 34% of Danes believed this statement to be true).

<sup>33</sup> NANCY COCHRANE & RALPH SEELEY, ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., EU ENLARGEMENT: IMPLICATIONS FOR NEW MEMBER COUNTRIES AND WORLD TRADE 3 (2001), available at <http://www.ers.usda.gov/publications/WRS04/Apr04/WRS040501/WRS040501.pdf> (discussing the possible effects of EU expansion). *But see* EUR. COMM'N, EU AGRICULTURE AND ENLARGEMENT 3 (2002), available at [http://europa.eu.int/comm/agriculture/publi/fact/enlarge/2002\\_en.pdf](http://europa.eu.int/comm/agriculture/publi/fact/enlarge/2002_en.pdf) (showing that despite having representation the new member states do not yet have all the rights of established EU members, including access to the same degree of direct agricultural support).

<sup>34</sup> See McCORMICK, *supra* note 4, at 90 (discussing one example of this concern—the rotating presidency of the European Council—which “allows the leaders of the member states to convene meetings and launch initiatives on issues of national interest”).

Three of these bodies govern the CAP programs: the European Commission, the Council of the European Union, and the European Parliament.<sup>35</sup>

The most important governmental organization in the administration of the CAP is the European Commission. The Commission is vested with executive power to ensure that "Treaty provisions and legislative measures are implemented correctly."<sup>36</sup> The Commission allocates responsibility to the appropriate directorate-general (in this case the Directorate-General for Agriculture and Rural Development) for administration of the programmatic area.<sup>37</sup> The Commission also proposes potential reforms to the European Parliament and Council and implements any legislative enactments.<sup>38</sup> Lastly, the Commission "administers money appropriated for EC operations, including the EAGGF"—the actual funding of CAP.<sup>39</sup>

The Council of the European Union, consisting of rotating ministers from various member states, is the major legislative branch and as a result has great influence on agricultural policy.<sup>40</sup> Member state representation varies according to the topic addressed or the particular "council configuration"—those members assigned to a specific topic at a specific time.<sup>41</sup> In the agricultural context, the Agriculture and Fisheries Council is the relevant council configuration.<sup>42</sup> The Council is also responsible for legislative activity and for allocating funding between direct producer support (Pillar 1) and rural development (Pillar 2).<sup>43</sup>

Lastly, the European Parliament also influences the operation of the CAP. Parliament, the EU's directly elected branch, currently consists of 732 members.<sup>44</sup> Seats in the Parliament are allocated to each country based on population.<sup>45</sup> Traditionally, the Parliament's role has been primarily as an advisor, although it has had some control over the budgetary process.<sup>46</sup> Dur-

<sup>35</sup> See Eur. Union, Panorama of the European Union, [http://europa.eu/abc/panorama/how\\_organised/index\\_en.htm](http://europa.eu/abc/panorama/how_organised/index_en.htm) (last visited Oct. 13, 2006) (on file with the Harvard Environmental Law Review).

<sup>36</sup> Grossman, *supra* note 10, at 664–65.

<sup>37</sup> See Eur. Union, Basic Facts, [http://www.europa.eu.int/comm/atwork/basicfacts/index\\_en.htm#comm](http://www.europa.eu.int/comm/atwork/basicfacts/index_en.htm#comm) (last visited Nov. 4, 2006) (on file with the Harvard Environmental Law Review); see also McCORMICK, *supra* note 4, at 84–89 (outlining the powers and functions of the European Commission).

<sup>38</sup> McCORMICK, *supra* note 4, at 87–89.

<sup>39</sup> Margaret Rosso Grossman, *Agro-Environmental Measures in the Common Agricultural Policy*, 25 U. MEM. L. REV. 927, 931 (1995) (explaining purposes of European Commission).

<sup>40</sup> See, e.g., McCORMICK, *supra* note 4, at 89–93.

<sup>41</sup> The Council of the Eur. Union, Council Configurations, [http://ue.eu.int/cms3\\_fo/showPage.asp?id=427&lang=en&mode=g](http://ue.eu.int/cms3_fo/showPage.asp?id=427&lang=en&mode=g) (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review).

<sup>42</sup> The Council of the Eur. Union, Agriculture and Fisheries Council, [http://ue.eu.int/cms3\\_fo/showPage.asp?id=414&lang=en&mode=g](http://ue.eu.int/cms3_fo/showPage.asp?id=414&lang=en&mode=g) (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review).

<sup>43</sup> *Id.*

<sup>44</sup> See McCORMICK, *supra* note 4, at 94.

<sup>45</sup> *Id.* at 96–97.

<sup>46</sup> *Id.* at 94–97 (explaining the role the European Parliament plays in the legislative proc-

ing the period leading up to the 2003 reforms, the Parliament's power was largely in the form of political influence over policy decisions and budgetary negotiations, and as a result it played only a supporting role in shaping CAP policy at that time.<sup>47</sup> The Parliament's power recently expanded to include "co-decision" authority and broader legislative powers.<sup>48</sup> Thus, the Parliament shares some legislative power with the European Council, though its primary role remains as advisor to the other institutional bodies. The Parliament's authority in this area may increase in future reform efforts, however.

Each governmental unit meaningfully participates in the promulgation of the CAP.<sup>49</sup> To actually reform the CAP, all three must work to promote change and to avoid the political conflicts that might halt substantive reform efforts.<sup>50</sup> Even so, the interaction between these governmental bodies is but a single factor influencing reform efforts in the EU.

### *C. Market Forces Driving Reform Efforts*

Reforming the CAP structure has become an important policy objective for many EU citizens and member states, as the very nature of agricultural production in Europe has undergone massive structural change.<sup>51</sup> As a result, it is unclear whether the present policy is sustainable. Initially, the CAP achieved its goals of having successfully "encouraged . . . productivity, stabilized the markets, secured supplies and protected farmers from fluctuations in the world markets," but by the mid-1980s it was apparent that this success had social, financial, and environmental costs.<sup>52</sup> Environmental concerns have played a role in focusing attention on the CAP's shortcomings, but other considerations also influence and shape this debate. One prominent consideration is the recognition that direct support results in very little benefit to EU taxpayers. This has led many to

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ess, including the "negative" powers of Parliament to "delay or kill a proposal by sitting on it" and "to dismiss the Commission").

<sup>47</sup> See *id.* at 94 (declaring that Parliament "has long been a junior member in the EU decision-making system, mainly because (unlike conventional legislatures) it cannot introduce laws or raise revenues").

<sup>48</sup> Outcome of the Eur. Convention, The Union's Decision Making Procedures, [http://europa.eu/scadplus/european\\_convention/procedures\\_en.htm](http://europa.eu/scadplus/european_convention/procedures_en.htm) (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>49</sup> GREER, *supra* note 30, at 18–21 (detailing "the supranational dimension" of the CAP).

<sup>50</sup> Stephen Sackur, *Testing New Year Awaits EU*, BBC News, <http://news.bbc.co.uk/2/hi/europe/4119071.stm> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review) (outlining the form of most EU confrontations—large countries versus small).

<sup>51</sup> See, e.g., BRITISH GOV'T PANEL ON SUSTAINABLE DEV., THIRD REPORT (1997), available at <http://www.sd-commission.org.uk/panel-sd/panel13/8.htm> (discussing mechanization and the structural change of the agricultural model of European agriculture and the effects on biodiversity).

<sup>52</sup> See Beginnings, *supra* note 13 (detailing the forces behind the creation of the EU and the CAP program).

argue that the CAP should be reoriented to account for social objectives, a break from the production-centric views of the past.<sup>53</sup> Determining which objectives should receive preference will be the topic of the ongoing reform dialogue and will dictate the future of EU agricultural policy. Five non-environmental concerns play a strong role in fueling public support for reforming the modern CAP: increased consumer demands, declining rural population, international trade concerns, EU expansion into Eastern Europe, and posturing over the UK's "rebate."

### *1. Increased Consumer Demands*

The decision to guarantee high support prices for European agricultural products has not come without considerable cost. The CAP budget quickly became the European Union's largest expenditure.<sup>54</sup> Conversely, overproduction led the European Union to become a "large stockholder of wheat, barley, beef, butter, dry milk powder, and wine" as production outpaced consumer demand.<sup>55</sup> As a result of these subsidies and large surpluses, European consumers spend more on food than consumers in almost all other regions of the world.<sup>56</sup> European consumers, who bear the cost of the CAP, are beginning to recognize that they have a strong interest in receiving real value in exchange for this investment.<sup>57</sup>

European consumers have also demanded more protection and assurances that the agricultural systems employed and the products produced are safe.<sup>58</sup> The early BSE and foot-and-mouth disease scares in England led consumers to demand greater regulation of the agricultural sector and

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<sup>53</sup> John Madslie, *Farm Reforms Set to Serve EU Tax Payers*, BBC News, July 14, 2002, <http://news.bbc.co.uk/2/hi/business/2138616.stm> (last visited Dec. 2, 2006) (on file with the Harvard Environmental Law Review) (explaining the proposed "reorientation" of the CAP).

<sup>54</sup> See, e.g., MCCORMICK, *supra* note 4, at 121–25 (analyzing the overall EU budget and expenditures by economic sector).

<sup>55</sup> DAVID KELCH & MARY ANNE NORMILE, ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., *CAP REFORM OF 2003–04* (2004), available at <http://www.ers.usda.gov/publications/WRS0407/wrs0407.pdf>.

<sup>56</sup> Press Release, Consumers' Ass'n, *Scrap the CAP! Consumers' Association Says Abolish the Common Agricultural Policy, as Research Shows UK Food Prices Are Artificially High* (Nov. 12, 2001), available at <http://www.which.net/media/pr/dec01/general/capscrap.html> (showing that U.K. consumers pay nearly double what New Zealand consumers pay for the same "basket" of products).

<sup>57</sup> Margaret Beckett, U.K. Sec'y of State, Dep't for Env't, Food and Rural Affairs, Address at the National Consumer Council Conference, *Making Connections: Consumer Perspectives on Farming and Food* (June 19, 2002), available at <http://www.defra.gov.uk/corporate/ministers/speeches/mb190602.htm> ("I judge that they [consumers] are becoming increasingly resistant to paying twice—both as taxpayers and consumers—in the way the present structure of the CAP demands."); see also CONSUMERS' ASSOCIATION, *SETTING ASIDE THE CAP—THE FUTURE FOR FOOD PRODUCTION* (2001), available at [http://www1-gui.server.which.net/campaigns/food/agriculture/0112cap\\_br.doc.pdf](http://www1-gui.server.which.net/campaigns/food/agriculture/0112cap_br.doc.pdf) (outlining consumer concerns over food security).

<sup>58</sup> See Consumers' Association, *supra* note 57.

increased consumer input throughout the food production process.<sup>59</sup> Additionally, consumers have shown a strong interest in mandating food labeling and traceability throughout the production cycle.<sup>60</sup> These demands have fueled discussions on CAP reform, and forced proposed reforms to take the consumer into account.<sup>61</sup>

## 2. Declining Rural Population

Europe has seen a marked decline in rural population, as well as a corresponding decline in the farm sector.<sup>62</sup> The Europe of 2005 is much different from that of 1957, the year the CAP was implemented. Even in 1970, the agricultural sector accounted for six percent of Europe's gross domestic product, while today the figure stands at less than two percent.<sup>63</sup> Many policymakers and taxpayers now question the wisdom of subsidizing this sector when its economic impact is decreasing rapidly.<sup>64</sup>

Europe's agricultural leaders also worry about the small percentage of the EU population who actually benefit from the CAP.<sup>65</sup> Policymakers, noting that the current structure provides little support for small farming operations (the very operations most in need of support), have begun to

<sup>59</sup> David Byrne, Eur. Comm'r for Health and Consumer Prot., Address at 9th East-West Agricultural Forum: New Challenges Ahead to Ensure Food Safety: Enlargement and Upgrading Food Controls (Jan. 11, 2002), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/02/4&format=HTML&aged=0&language=EN&guiLanguage=en> (discussing increased concern about food safety in the European Union).

<sup>60</sup> See EUR. PARL. & COUNCIL REGULATION 178/2002, 2002 O.J. (L 31/1) (EC) (demonstrating legislative concern for heightened food safety and traceability after the late 1990s BSE scare).

<sup>61</sup> GREER, *supra* note 30, at 102 ("Wobbly cows, pyres of burning animals . . . became potent representations of the crises of BSE and FMD in the UK and wider afield" and influenced reform.).

<sup>62</sup> See Eur. Council, *The Costs of the Common Agricultural Policy* (Working Paper Doc. 10649, 2005), available at <http://assembly.coe.int/Documents/WorkingDocs/Doc05/EDOC10649.htm> (discussing rural depopulation); see also GREER, *supra* note 30, at 91 (explaining that cultural factors make rural depopulation anathematic in some regions—"a field that goes out of cultivation is a bit of France that dies").

<sup>63</sup> See, e.g., Pierre Antoine Barthelemy & Claude Vidal, A Dynamic European Agricultural and Agri-Foodstuffs Sector, [http://ec.europa.eu/agriculture/envir/report/en/ens\\_en/report\\_en.htm](http://ec.europa.eu/agriculture/envir/report/en/ens_en/report_en.htm) (last visited Dec. 1, 2006) (on file with the Harvard Environmental Law Review).

<sup>64</sup> See EUROBAROMETER, *supra* note 32, at 15–17 (illustrating European consumer support for lowering subsidy levels and focusing remaining payments on "development of the overall rural economy").

<sup>65</sup> See, e.g., CATHOLIC AGENCY FOR OVERSEAS DEV., THE ROUGH GUIDE TO THE CAP 4, available at <http://www.cafod.org.uk/var/storage/original/application/phpufUY2E.pdf> (explaining the problems justifying the current level of CAP expenditure on a small segment of the total population); ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., THE EUROPEAN UNION'S COMMON AGRICULTURAL POLICY: PRESSURES FOR CHANGE 9 (1999), available at <http://www.ers.usda.gov/publications/wrs992/wrs992.pdf> ("CAP benefits have become progressively more concentrated on a smaller percentage of farmers . . . reducing public support for the CAP as a source of assistance to needy farmers"); see EUROBAROMETER, *supra* note 32, at 15–17.

examine whether it would be more effective to address rural depopulation by expanding rural development programs.<sup>66</sup> Policymakers want to prevent further “rural drain” and to fund efforts to repopulate abandoned areas.<sup>67</sup> Rural communities are often the cultural center of a member state and the contribution of these communities to overall cultural identity cannot be underestimated.<sup>68</sup> Traditions, even languages, will be lost if rural depopulation continues at current rates.<sup>69</sup> The exodus of young adults from the countryside has led to the abandonment of whole villages and regions.<sup>70</sup> In some areas, land is reverting back to its primeval state as a result of this depopulation, jeopardizing the archetypal conception of Europe as a patchwork of small villages.<sup>71</sup> To combat this population loss, some rural villages in Europe are aggressively encouraging immigration from other regions of the world.<sup>72</sup> Other policymakers argue that “actors in rural areas need to apply new strategies, based on mobilization and the interconnection of different fields,” and that they must utilize “[a]griculture, environment, water, energy, local handicrafts, agro-tourism and tourism, organic agriculture, local products, direct on-farm sales, heritage and patrimony” to revitalize rural economies and prevent population loss.<sup>73</sup> Such a viewpoint largely fueled a recent draft opinion of the Commission for Sustainable Development which “call[ed] on the Commission to devise appropriate policies to support rural areas in their efforts to combine growth and sustainability and to harness potential that will enable them to create their own development systems . . . .”<sup>74</sup> As a result, rural concerns are strongly influencing the CAP reform debate.

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<sup>66</sup> See, e.g., Eur. Council, *supra* note 62.

<sup>67</sup> See *id.* at 6 (discussing the dangers and costs of rural depopulation).

<sup>68</sup> *Id.* (“Our rural areas are often the places where the soul of the nation lies in its richest form.”).

<sup>69</sup> *Id.* (“Istvan Szechenyi the celebrated Hungarian litterateur said the answer to the question of where the nation lives is that the nation lives in her language.”). The CAP has made efforts to prevent the loss of European languages through the European Charter for Regional and Minority languages. “Any reform of CAP must recognise this [language diversity] as a positive aspect and seek to include it in any future policy.” *Id.* This source clearly illustrates “the correlation between minority languages and rural areas.” *Id.* Several notable examples of languages threatened by rural depopulation include Friesian (spoken in the Netherlands and some regions of Germany), Breton (northwest France), and Welsh. *Id.*

<sup>70</sup> See generally Stefan Theil, *Into the Woods*, NEWSWEEK INT’L EDITION, July 4, 2006, available at <http://www.msnbc.msn.com/id/8359066/site/newsweek> (discussing the abandonment of rural villages).

<sup>71</sup> *Id.* Wolves have returned to some areas of Germany one hundred years after “a burgeoning, land-hungry population” drove them out.

<sup>72</sup> Michael Voss, *Rural Spain Welcomes Immigrants*, BBC.com, <http://news.bbc.co.uk/2/hi/europe/3002928.stm> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review). The village of Aguaviva, Spain, for example, has recruited immigrants from South America and Eastern Europe to stem the problems of population loss and an aging population. *Id.*

<sup>73</sup> EUR. COMM’N ON AGRIC., THE ROLE OF AGRICULTURE AND RURAL DEVELOPMENT IN REVITALIZING ABANDONED/DEPOPULATED AREAS 7–8 (2006), available at [http://www.fao.org/world/regional/reu/Repository/ECA/ECA\\_34/ECA\\_34\\_06\\_2\\_FINAL\\_en.doc](http://www.fao.org/world/regional/reu/Repository/ECA/ECA_34/ECA_34_06_2_FINAL_en.doc).

<sup>74</sup> COMM’N FOR SUSTAINABLE DEV., EU COMM. OF THE REGIONS, DRAFT OPINION, THE

### 3. *International Trade Concerns*

Arguably the single most significant factor fueling CAP reform is the mandate of the World Trade Organization (WTO).<sup>75</sup> The overall goal of the WTO is to “improve the welfare of the peoples of the member countries” through multilateral agreements and to create a market free from tariffs and subsidies.<sup>76</sup> To accomplish this end, “[s]ignatories to this trade agreement[ ] . . . have agreed to reduce internal agricultural subsidies that are production and trade distorting.”<sup>77</sup> Within the WTO framework, the United States and the European Union have hotly debated the elimination of agricultural subsidies, and ultimately have negotiated to eliminate some support in this sector.<sup>78</sup> In an effort to strengthen its relative bargaining position, the EU has made a concentrated effort to tailor its agricultural programs to the WTO agreements.<sup>79</sup>

The WTO currently places agricultural protections into three distinct categories or “boxes” and has limited the amount of payments available in each category by setting “annual spending limits” on subsidies “that WTO members deemed, at the time, to have the greatest potential for stimulating too much production and thereby distorting world agricultural trade.”<sup>80</sup> These categories, “[i]n WTO terminology . . . are identified by “boxes” which are given the colours of traffic lights: green (permitted), amber (slow down—i.e., be reduced), red (forbidden).”<sup>81</sup> The amber box contains most agricultural subsidies and farm payments that directly influence production. Support in this category is, under current WTO rules, subject to reduction over time.<sup>82</sup> “[f]or the EU, market-price support has been the main component of amber-box domestic support.”<sup>83</sup> Currently, the EU is attempt-

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ROLE OF MUNICIPALITIES IN THE DEVELOPMENT OF EUROPE'S REGIONS 12 (2006), available at [http://www.cor.europa.eu/cms/pages/documents/deve/en/Avis/A\\_CDR259-2006\\_REV1\\_PAC\\_en%20SANTA.pdf](http://www.cor.europa.eu/cms/pages/documents/deve/en/Avis/A_CDR259-2006_REV1_PAC_en%20SANTA.pdf). This source also indicates a few additional rural development suggestions—renewable energy, and the “creation and development of micro-enterprises that use or make traditional products.”

<sup>75</sup> ECON. RESEARCH SERV., *supra* note 65, at 11 (detailing how a primary purpose behind the reform was to improve bargaining position at WTO negotiations).

<sup>76</sup> See WTO, <http://www.wto.org> (follow “What is the WTO?” hyperlink; then follow “The WTO in Brief”) (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>77</sup> WILLIAM J. EVEN, *Green Payments: The Next Generation of U.S. Farm Programs?*, 10 *DRAKE J. AGRIC. L.* 173, 174–75 (2005).

<sup>78</sup> See, e.g., GAISFORD & KERR, *supra* note 3, at 17–20 (detailing the contentious issues the WTO is attempting to address).

<sup>79</sup> See ECON. RESEARCH SERV., *supra* note 65, at 11.

<sup>80</sup> EVEN, *supra* note 77, at 175; see also GAISFORD & KERR, *supra* note 3, at 16–17 (laying out the basic classifications of support mechanisms under the WTO).

<sup>81</sup> WTO, Agriculture Negotiations Backgrounder on Domestic Support: Amber, Blue, and Green Boxes, [http://www.wto.org/english/tratop\\_e/agric\\_e/agboxes\\_e.htm](http://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm) [hereinafter Negotiations Backgrounder] (last visited Oct. 9, 2006) (on file with the Harvard Environmental Law Review).

<sup>82</sup> EVEN, *supra* note 77, at 175.

<sup>83</sup> MICHAEL N. CARDWELL, MARGARET R. GROSSMAN & CHRISTOPHER P. RODGERS,

ing to move payments out of this category in order to avoid the required reductions under the 1994 Uruguay Round Agreement on Agriculture.<sup>84</sup> After this latest round of reforms, amber box supports are now only allowed in “de minimis” amounts. The blue box support is an exception to the amber box restrictions, and allows nations to provide producers with a limited amount of payments which still influence production.<sup>85</sup> This exception is designed to protect sectors that would otherwise be eliminated under a free market system and includes area compensatory payments (or payments given throughout an area for lost farm income).<sup>86</sup> Many policymakers, however, consider the blue box a “temporary measure that distorts trade [that] has outlived its usefulness” and future negotiations will likely focus on reducing this support.<sup>87</sup> The last category, the green box, consists of those payments that do not distort trade and are usually focused on research, rural development, or environmental objectives.<sup>88</sup> Designing measures to fall within this category is a principal policy goal as “‘Green Box’ subsidies are . . . allowed without limits, provided they comply with relevant criteria.”<sup>89</sup> Because traditional CAP direct payments are classified as either amber or blue box, reformers are constantly looking for new ways to subsidize farmers at the present funding level, and if possible to shift supports into the green box classification.<sup>90</sup> One mechanism is through decoupled payments: payments which “[i]n theory [are] independent of factors that affect farmers’ production decisions—marginal returns and marginal costs—so that production and marketing decisions are guided by market prices, rather than by support.”<sup>91</sup> Decoupled payments tied to environmental or rural objectives may qualify under the green box, although these payments probably do not totally eliminate trade distortion. The green box gains even more importance in the context of the current WTO negotiations—the Doha Round.<sup>92</sup> The Doha Round, intent on reducing blue box and amber box payments, effectively means “*that any future expansion in farm subsidies must occur with programs that meet the Green Box criteria.*”<sup>93</sup>

The continued ability of the WTO to promote agricultural reform is an open question as progress on the current Doha Round has stalled and a fundamental disagreement on agricultural subsidies is a primary cause of

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AGRICULTURE AND INTERNATIONAL TRADE: LAW, POLICY AND THE WTO 36 (2003).

<sup>84</sup> Negotiations Backgrounder, *supra* note 81.

<sup>85</sup> *Id.*; see ECON. RESEARCH SERV., *supra* note 65, at 37 (explaining the blue box exception under the WTO framework).

<sup>86</sup> CARDWELL, GROSSMAN & RODGERS, *supra* note 83, at 40–41.

<sup>87</sup> Negotiations Backgrounder, *supra* note 81.

<sup>88</sup> See, e.g., GAISFORD & KERR, *supra* note 3, at 16–17.

<sup>89</sup> Negotiations Backgrounder, *supra* note 81.

<sup>90</sup> GAISFORD & KERR, *supra* note 3, at 108 (“[T]he easiest way for [nations] to avoid having to reduce their subsidies would be to have the green box opened up.”).

<sup>91</sup> CARDWELL, GROSSMAN, & RODGERS, *supra* note 83, at 38.

<sup>92</sup> EVEN, *supra* note 77, at 179.

<sup>93</sup> *Id.*

this standoff.<sup>94</sup> At Doha, the United States “want[ed] to slash tariffs arguing . . . that the best way to help poor countries is through more open markets.”<sup>95</sup> Emerging nations also “want fewer farm subsidies and lower tariffs in rich countries, but are loth to reduce their own barriers much.”<sup>96</sup> However, the EU has argued that the U.S. is “demanding unrealistically large tariff cuts from others and . . . offering too little farm-subsidy reform of its own.”<sup>97</sup> At the current moment, it appears that this conflict will likely not be resolved as “[v]irtually everyone in Washington agrees that no Doha deal was better than a weak deal.”<sup>98</sup> If the Doha Round fails, the consequences could be stark as far as the continued viability of the WTO in promoting positive reform—especially in the agricultural context.<sup>99</sup> Already bilateral and regional trading agreements have eroded some of the WTO’s authority, and “[i]f the momentum in trade negotiations moves away from the WTO, the consequences for the organisation itself could be grave . . . . Everyone would lose from this but, once again, the biggest losers would be the poor countries.”<sup>100</sup> As a result, international pressure to meet trade agreements is one of the most significant elements pushing CAP toward providing decoupled farm payments and creating rural development programs.

#### 4. CAP Expansion

In 2004, the CAP expanded from fifteen to twenty-five member states; many of the new Eastern European members<sup>101</sup> are highly dependent on agricultural production and current EU members were forced to quickly adjust the CAP programs before full accession was granted.<sup>102</sup> The Euro-

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<sup>94</sup> *In the Twilight of Doha*, *ECONOMIST*, Jul. 29, 2006, at 63 (explaining that the Doha Round has collapsed and the fundamental differences on agricultural policy are a principle cause).

<sup>95</sup> *Id.* But see *The WTO Under Fire*, *ECONOMIST*, Sept. 20, 2003, at 28 (“America’s bold [Doha] promises were belied by its actions. Last year’s outrageous increase in American farming subsidies, and the cave-in at Cancun by American negotiators to their domestic cotton growers, made far more of an impression on poor countries than Washington’s high minded words about freer farm trade—and rightly so.”). Such actions may explain why developing nations were not as willing to support the American position at the Doha Round.

<sup>96</sup> *In the Twilight of Doha*, *supra* note 94, at 63.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 64.

<sup>99</sup> *The WTO Under Fire*, *supra* note 95, at 28 (explaining the Doha Round and the consequences from a potential collapse).

<sup>100</sup> *Id.*

<sup>101</sup> See MCCORMICK, *supra* note 4, at 77 (“[T]he EU undertook its most significant enlargement when ten eastern European and Mediterranean states joined: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, and Slovakia.”).

<sup>102</sup> See EUR. ENV’T AGENCY, AGRICULTURE AND THE ENVIRONMENT IN THE EU ACCESSION COUNTRIES 11 (2004), available at [http://reports.eea.europa.eu/environmental\\_issue\\_report\\_2004\\_37/en/IssueNo37-Agriculture\\_for\\_web\\_all.pdf](http://reports.eea.europa.eu/environmental_issue_report_2004_37/en/IssueNo37-Agriculture_for_web_all.pdf) (discussing accession states’ dependence on agriculture).

pean Council “took political decisions governing EU enlargement at the Copenhagen Summit in December 2002” and as a result, “[t]he overall level of agricultural support per hectare is considerably lower than in present EU countries.”<sup>103</sup> However, EU member states were concerned about accession for more than just pecuniary reasons, as “[a]rable production intensity is likely to go up, leading to higher yields per hectare and increased use of fertilizers and pesticides.”<sup>104</sup> EU member states wanted to put in place baseline environmental standards before the accession states become full members of the EU, as “the accession countries contain sizable areas of little disturbed semi-natural habitat and high value farming systems.”<sup>105</sup> The desire of these member states to preserve the present CAP financial structure and to avoid bankrupting the program has played an important role in driving reform.<sup>106</sup>

### 5. *The United Kingdom’s Budget Rebate*

Another factor driving the reform debate is the United Kingdom’s budget rebate. When the United Kingdom entered the European Union, their projected net contribution to the EU budget heavily outweighed their expected receipts from the CAP subsidies.<sup>107</sup> As a result, the other member states agreed to give a “rebate” as an incentive to join.<sup>108</sup> This rebate is assessed to each member state and is equal to 66% of the United Kingdom’s contribution to the EU budget.<sup>109</sup> In recent years, the United Kingdom rebate has soared to over 5 billion euros.<sup>110</sup> France and Italy, large recipients of EU subsidies, pay about half of the U.K.’s budget rebate annually.<sup>111</sup> This has caused much resentment among the EU member states: France (for their large proportional share of this payment); new member states (who, although poorer than the United Kingdom are assessed a share of the rebate); and Germany (who now pays the largest share of the overall EU budget).<sup>112</sup> These objections came to a head at the June 2005 EU budget negotiations at Brussels when many member states demanded elimination of this rebate.<sup>113</sup> In December 2005, the United Kingdom did agree to give up 20%

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<sup>103</sup> *Id.* at 35.

<sup>104</sup> *Id.* at 40.

<sup>105</sup> *Id.* at 13.

<sup>106</sup> GREER, *supra* note 30, at 111–13 (explaining the role of the EU expansion in actually bringing parties to the bargaining table, in light of fears that the CAP would be bankrupted by such an endeavor).

<sup>107</sup> BBC News, Q+A, *supra* note 23.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See BBC News, Q+A, *supra* note 23.

<sup>113</sup> BBC News, UK Rebate ‘Unjustified’—Chirac, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4374505.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4374505.stm) (last visited Dec. 2, 2006) (on file with the Harvard Environmental Law Review) (explaining member state objections to the UK rebate in advance of June budget

of this rebate in an effort to shoulder more responsibility for the economic development of Eastern and Central Europe.<sup>114</sup> British policymakers had hoped to use the rebate as a bargaining chip for future agricultural reforms as the United Kingdom has mentioned a policy goal of re-nationalizing some CAP spending. In other words, individual member states would be given greater responsibility for financing their spending on agriculture.<sup>115</sup> Unfortunately, it seems that the urgency of striking a deal to allow Central and Eastern European states to plan for the infusion of funds prevented this goal from being achieved and many argue that the end result of this compromise is that ultimately “Blair . . . failed in his objectives to limit the budget’s size, to ensure ‘fundamental reform’ of the Common Agricultural Policy and to keep the British rebate unless reform occurs.”<sup>116</sup> Although the debate over the budget rebate did not directly affect the June 2003 reform and thus far has not been able to bring about meaningful reform, it is worth mentioning because of its potential effect on CAP’s future purposes and orientation.

#### *D. Environmental Concerns*

The industrialization of farming has led to the increased use of petrochemicals, the overproduction of input-intensive commodities, and several other harmful practices, all of which have had a powerful impact on the European environment.<sup>117</sup> The industrialization of agriculture may have profound impacts on the countryside, since in many instances the natural landscape has been developed by centuries of benign land use.<sup>118</sup> Nowhere is this impact more pronounced than in England. Under the modern agricultural paradigm “[s]mall fields that had previously housed livestock were no longer economic and so it became common practice for the size of these fields to be increased by grubbing out hedges,” changing the very character of the land.<sup>119</sup> These impacts can also vary depending upon the region—as intensification in one area can be countered by land abandonment or cessation of traditional farming methods in another.<sup>120</sup> Aban-

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negotiations with particular focus given to the French position).

<sup>114</sup> BBC News, Blair Defends Europe Budget Deal, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4541412.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4541412.stm) (last visited Dec. 2, 2006) (on file with the Harvard Environmental Law Review).

<sup>115</sup> BBC News, Q+A, *supra* note 23.

<sup>116</sup> BBC News, Blair Defends Europe Budget Deal, *supra* note 114.

<sup>117</sup> See STICHING NATUUR EN MILLEU ET AL., OPTIONS FOR THE 2003 REFORM OF THE CAP 7 (2003), available at <http://www.panda.org/downloads/europe/cap2003reform.pdf> [hereinafter OPTIONS FOR THE 2003 REFORM] (detailing the effects of the last thirty years of industrialization and specialization on the European environment).

<sup>118</sup> See Jane Holder, *Law and Landscape: The Legal Construction and Protection of Hedgerows*, 62 MOD. L. REV. 100, 104 (1999) (explaining how agricultural practices have impacted the British landscape).

<sup>119</sup> *Id.* at 106.

<sup>120</sup> See EUR. ENV’T AGENCY, *supra* note 102, at 27 (“Out of 571 [International Impor-

donment of farming practices can have as profound an impact as intensification in many areas.<sup>121</sup> Thus, both the intensification of agricultural production and the decline in traditional farming methods have had adverse impacts on the environment, and the realization of this fact is a driving factor in the reform movement.<sup>122</sup>

### 1. Intensification of Agricultural Production

Historically, the intensification of agricultural production in Europe stems from the desire of farmers to increase production in response to the artificial market signals created by support payments.<sup>123</sup> Inflated prices give farmers incentive to cultivate even the most marginal farmland—lands that are often environmentally sensitive and lands that will not produce unless intensively cultivated, and heavily fertilized.<sup>124</sup> Additionally, society must pay for this environmental damage “through increased water bills (paying for the costs of removing pesticides, nutrients and pathogens).”<sup>125</sup> These expenses can be considerable; the United Kingdom estimates that filtering the pollution in water caused by pesticide use alone costs English consumers £211 million (around U.S. \$370 million) annually.<sup>126</sup> Other impacts from expanded production include increased susceptibility to flooding<sup>127</sup> and extreme soil erosion.<sup>128</sup> Consumer awareness

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tant Bird Areas] . . . , 157 are affected by abandonment, and 180 by intensification.”).

<sup>121</sup> *Id.* at 28 (“In general, abandonment of extensive farmland has mostly negative effects” or can add in “mostly negative effects from a biodiversity perspective.”).

<sup>122</sup> See EUR. COMM’N, EUROBAROMETER: EUROPEANS AND THE COMMON AGRICULTURAL POLICY 14 (2005), available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_221\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_221_en.pdf) (explaining that EU citizens, when asked what goals CAP should advance, placed “promot[ing] the respect of the environment” in the top three).

<sup>123</sup> JOINT NATURE CONSERVATION COMMITTEE, DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS, ENVIRONMENTAL EFFECTS OF THE COMMON AGRICULTURAL POLICY AND POSSIBLE MITIGATION MEASURES 3 (2002), available at <http://www.defra.gov.uk/farm/capreform/pdf/envimpacts.pdf>; see also POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 68 (explaining the impact of “CAP widening that gap through raising commodity prices above those provided by world markets”).

<sup>124</sup> See *The Costs of the Common Agricultural Policy*, EUR. PARL. DOC. 10649 (2005) (formally recognizing of the negative effects of the CAP).

<sup>125</sup> POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 68. “[A] lot of the environmental damage in the countryside over the last 50 years has to be laid at the door of modern farming techniques.” *Id.* at 69.

<sup>126</sup> HM TREASURY, DEP’T FOR ENV’T, FOOD, AND RURAL AFFAIRS, A VISION FOR THE COMMON AGRICULTURAL POLICY 30 (2005), available at [http://www.hm-treasury.gov.uk/media/E76/04/A\\_Vision\\_for\\_the\\_CAP.pdf](http://www.hm-treasury.gov.uk/media/E76/04/A_Vision_for_the_CAP.pdf).

<sup>127</sup> POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 68 (“Land use changes have contributed to increased danger of extreme flood events, affecting thousands of homes.”).

<sup>128</sup> BBC News, *Soil Quality Threat to EU Farming*, <http://news.bbc.co.uk/2/hi/science/nature/4508503.stm> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review) (“More than 16 percent of EU land is affected by soil degradation and . . . [c]hanging land management practices are widely blamed for declining soil quality across Europe.”).

of these external costs related to agricultural industrialization is certainly helping to drive reform.

## 2. *Abandonment of Traditional Farming Methods*

The shift away from traditional methods of farming has also caused serious environmental damage.<sup>129</sup> The unique value of European agricultural lands as a cultural and natural reservoir largely stems from the high value that such sustainable farming practices provide. In short, the European landscape is largely dependent on these practices for its continued survival. For example, “the English landscape was largely created by farming . . .” over several centuries of benign land use, and now the shift in farming practices is having profound impact.<sup>130</sup> However, some member states “late” to adopt industrialized agriculture have not fully abandoned the traditional agricultural paradigm (of small farm holdings and a focus on traditional crops rather than subsidized commodity production), which will hopefully remain the case.<sup>131</sup>

In addition, actual land abandonment (as a result of regional inability to compete with modern agricultural practices) has had a profound effect on the environmental health of a region and “[i]s of particular concern in the Baltic States and central European countries.”<sup>132</sup> Land use “is a key factor in the maintenance of valued cultural landscapes and biodiversity-rich grasslands all over Europe.”<sup>133</sup> Land abandonment can lead to “the loss of rich cultural features such as traditional stone walls, the replacement of small-scale landscape mosaics with closed forested landscapes or even forest plantations.”<sup>134</sup> The decline of agricultural grazing or mowing results in the gradual overgrowing and elimination of species-rich semi-natural grassland habitats by encroaching bush and forest species.<sup>135</sup> In Slovakia, for instance, “[g]rassland specialists agree that a number of rare biotopes . . . are seriously threatened by abandonment in Slovakia.”<sup>136</sup> Awareness of all these environmental factors has certainly fueled demand for a more environmentally conscious CAP.<sup>137</sup>

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<sup>129</sup> *See id.*

<sup>130</sup> *Id.* at 67.

<sup>131</sup> *See* GREER, *supra* note 30, at 89–90 (In Greece, there is a “tension between modernization leading to intensification and greater use of inputs, and the maintenance of more traditional forms of extensive agriculture.”).

<sup>132</sup> *See* EUR. ENV’T AGENCY, *supra* note 102, at 28.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 30.

<sup>137</sup> *See* Eur. Council, *supra* note 62 (showing that the costs of the common agricultural policy have been considered and are having a major influence on future CAP negotiations).

### E. Previous Reform Attempts

Attempts at CAP reform are not a recent phenomenon.<sup>138</sup> The pressure of public opinion has led to several past reform attempts.<sup>139</sup> The 1992 MacSharry reforms and the later Agenda 2000 measures were early attempts to address the environmental impacts of European agricultural policy.<sup>140</sup>

#### 1. The MacSharry Reforms

The MacSharry reforms of 1992 were a necessary first step to the eventual “decoupling” of agricultural payments.<sup>141</sup> These reforms were also geared towards converting “product” support mechanisms into “direct” support payments to farmers, partially breaking a tie to production in the farm payment area.<sup>142</sup> The reforms also envisioned an increased focus on rural development and agri-environmental measures—signifying a new direction for CAP.<sup>143</sup> The primary goals of this shift were to support farmers who “use farming practices which reduce the polluting effects of agriculture . . . [and] maintain farmland or woodland which has been set aside . . . for a long period for environmental protection purposes.”<sup>144</sup> Farmers were thus required to “set-aside” a percentage of farmland, and initial efforts were made to align European commodity prices with world prices.<sup>145</sup> However, despite the limited benefits provided by the set-aside requirement (as this program could not practically be extended to protect all working lands) and despite efforts to lower CAP’s cost, agricultural support re-

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<sup>138</sup> See generally Beginnings, *supra* note 13 (explaining the history of past reform efforts).

<sup>139</sup> See GREER, *supra* note 30, at 78 (explaining the role of public opinion in shaping CAP policies, such as Agenda 2000).

<sup>140</sup> See Beginnings, *supra* note 13.

<sup>141</sup> Clayton W. Ogg & G. Corndis van Kooten, *Severing the Link Between Farm Program Payments and Farm Production: Motivation, International Efforts, and Lessons*, CHOICES, 4th Qtr. 2004, at 47, available at <http://www.choicesmagazine.org/2004-4/grabbag/2004-4-11.htm> (“[T]he 1992/93 MacSharry reforms were the first attempt to decouple agricultural payments from production.”); but cf. Grossman, *supra* note 10, at 667. Policymakers have “re-lected a concern about agriculture and environment” prior to the MacSharry reforms. *Id.* From 1973 to 1992, several Environmental Action Programs—“wide-ranging policy statements with significant influence on EC environmental measures”—were enacted. *Id.*

<sup>142</sup> CARDWELL, GROSSMAN & RODGERS, *supra* note 83, at 279 (explaining the conversion toward direct farm payments and efforts to align EU farm payments with the overall world price).

<sup>143</sup> AGRA CEAS CONSULTING, FINAL REPORT FOR EUR. COMM’N, SYNTHESIS OF RURAL DEVELOPMENT MID-TERM EVALUATION LOT 1, 8 (2005), available at <http://ec.europa.eu/agriculture/eval/reports/rdmidterm/lot1/fulltext.pdf>.

<sup>144</sup> *Id.* (explaining the incorporation of the MacSharry reform into Council Regulation (EEC) No. 2078/192 (1992)).

<sup>145</sup> See Beginnings, *supra* note 13; see, e.g., CARDWELL, GROSSMAN & RODGERS, *supra* note 83, at 279–80; see Grossman, *supra* note 10, at 671 (“[I]n the cereals sector, the MacSharry reform initiated a significant price reduction over a three-year period.”).

mained high and environmental protection remained minimal, showing the necessity of additional reforms.<sup>146</sup>

## 2. *The Agenda 2000 Reforms*

Agenda 2000 was intended as a “blueprint for the future of European Union policy, in view of the expected enlargement” and was a major attempt at CAP reform.<sup>147</sup> Agenda 2000 advocated a “multifunctional” approach to agricultural policy that considered factors other than farm support when allocating funding to the rural sector.<sup>148</sup> To implement this approach, the Second Pillar (rural development) was added to CAP.<sup>149</sup> Farmers receiving direct support payments were required to use responsible agricultural practices. This reform left much work undone, however, as overall agricultural policy was still driven largely by a production-centric mindset—providing support to farmers on a partially decoupled basis, and little funding was actually channeled toward CAP’s Second Pillar.<sup>150</sup> The real impacts of Agenda 2000 and the earlier MacSharry reforms were in laying a foundation for later reform.<sup>151</sup>

### III. THE JUNE 2003 CAP REFORM

In June 2003, EU farm ministers finally agreed to a fundamental shift in agricultural policy.<sup>152</sup> Decoupling agricultural support from any relationship to production activity, by far the most publicized measure, was intended to change the very focus of European agricultural policy.<sup>153</sup> This reform had the potential to encourage a more sustainable form of agriculture by “realigning production with demand, providing consumers with a better choice, [and] giving farmers the flexibility to diversify into different rural

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<sup>146</sup> See also Beginnings, *supra* note 13 (explaining that while the MacSharry reforms were generally successful, “developments . . . forced further adaptation”).

<sup>147</sup> See *id.*

<sup>148</sup> Franz Fischler, A New CAP for a New Century—Speech Given at 19th European Agricultural Outlook Conference (Mar. 9–10, 2000), available at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/00/75&format=HTML&aged=0&language=EN&guiLanguage=en> (“With Agenda 2000 the EU has shown its willingness to reform the CAP. Multifunctionality is the word we have found in Europe to describe the fundamental link between sustainable agriculture, food safety, territorial balance, maintaining the landscape and the environment and what is particularly important for developing countries, food security.”).

<sup>149</sup> See discussion *infra* Part III.B; see also Beginnings, *supra* note 13.

<sup>150</sup> See, e.g., KELCH & NORMILE, *supra* note 55, at 2 (discussing the benefits and shortcomings of the Agenda 2000 reform).

<sup>151</sup> See generally *infra* Part III; see GREER, *supra* note 30, at 142 (laying out the central reforms of the Agenda 2000 and the final reform agreement reached in June 2003).

<sup>152</sup> See, e.g., Press Release, Eur. Comm’n, EU Fundamentally Reforms Its Farm Policy to Accomplish Sustainable Farming in Europe (June 26, 2003), available at <http://europa.eu/rapid/searchAction.do> (search “complete database” for reference “IP/03/898”).

<sup>153</sup> See *id.*

activities . . . .”<sup>154</sup> However, strong debate and disagreement among member states over the future direction of CAP policy has prevented the enactment of more sweeping reform and has led to compromise in this area.<sup>155</sup>

The June 2003 reforms address the consumer burden problem, as well as the production distorting and environmental effects of the CAP, in two ways: (1) by conditioning future farm payments on meeting baseline environmental stewardship requirements (cross-compliance), and (2) by providing funding for more broad-based rural development objectives.<sup>156</sup>

### A. Decoupling Farm Payments

#### 1. Payments Tied to Historic Payments or Flat Rate

When policymakers moved away from the traditional price support structure, it became necessary to create a new basis for providing agricultural payments to farmers. Current proposals suggest basing future farm payments on: (1) the historic level of payments received per farm, (2) a purely flat rate per hectare, or (3) a hybrid of these two methods.<sup>157</sup> This shift will allow farmers to base production decisions on market demand rather than on distorted market signals.<sup>158</sup> Crops raised more efficiently in non-EU nations (e.g., sugar) can be shifted to those nations best able to produce them.<sup>159</sup> Policymakers also hope that this shift will allow farmers in the EU member states to focus on “[c]onservation agriculture (CA), precision farming, and organic production . . . [which are] examples of farming whose added value is recognized.”<sup>160</sup>

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<sup>154</sup> Franz Fischler, Member of the Eur. Comm’n Responsible for Agric., Rural Dev. and Fisheries, *Towards a More Sustainable Agriculture Policy 3* (Feb. 26, 2004), available at <http://www.ecaf.org/Fischler.pdf>.

<sup>155</sup> GREER, *supra* note 30, at 142 (noting that “bargaining and compromise considerably watered down the initial proposals”).

<sup>156</sup> See Eur. Comm’n, *Single Farm Payment*, <http://europa.eu/scadplus/leg/en/lvb/111089.htm> (last visited Nov. 4, 2006) (on file with the Harvard Environmental Law Review) (profiling the major changes of the 2003 CAP reforms).

<sup>157</sup> See PETER HALMAI & ANDREA ELEKES, *DECLINING “COMMON” AGRICULTURAL POLICY?: CAP REFORM OF 2003 AND ITS NATIONAL IMPLEMENTATION IN THE MEMBER STATES 3–4* (2005), available at [http://www.eaae2005.dk/POSTER\\_PAPERS/SS16\\_960\\_Elekes.pdf](http://www.eaae2005.dk/POSTER_PAPERS/SS16_960_Elekes.pdf).

<sup>158</sup> EUR. COMM’N, *THE COMMON AGRICULTURAL POLICY EXPLAINED 7* (2004), available at [http://ec.europa.eu/agriculture/publi/capexplained/cap\\_en.pdf](http://ec.europa.eu/agriculture/publi/capexplained/cap_en.pdf) (describing the positive impacts stemming from breaking the production tie).

<sup>159</sup> Cf. HM TREASURY, *supra* note 126, at 3 (expressing cautious optimism, but concerned that this shift in production could cause environmental damage to developing nations).

<sup>160</sup> Fischler, *supra* note 154, at 3.

*a. A Necessary Compromise*

Decoupling alone will not ensure the desired environmental results,<sup>161</sup> particularly as stiff opposition from many member states has diluted its impact and forced its architects to “water down” their envisioned reforms.<sup>162</sup> This opposition was likely, in part, fueled by the wide variations between member states’ dependence on agricultural production.<sup>163</sup> The current CAP structure is essentially designed to benefit the more agricultural member states at the expense of the industrialized nations. Thus, in the reform debate two distinct positions have emerged:<sup>164</sup> France, Ireland, and other net beneficiaries have argued strongly against decoupling and other changes to the present CAP structure.<sup>165</sup> The United Kingdom, on the other hand, advocated full and immediate decoupling.<sup>166</sup> To pass the decoupling measure, member states in favor of sweeping reform made a necessary concession:<sup>167</sup> decoupling will occur but the member states will have great latitude in actually implementing the reform.<sup>168</sup> This will lead to wide variation between member state agricultural support programs and limit the overall effectiveness of the reforms.

*b. Implementation Options*

Member states have three primary options as to how to calculate farm payments: (1) dividing the average historic payments received per farm by the farms’ hectares (historic payments); (2) dividing total historic payments by the region’s total area (regional flat rate); or (3) choosing a hy-

<sup>161</sup> See *id.* (“What reform has not done, however, is go beyond providing the clear institutional framework for sustainable farming.”).

<sup>162</sup> GREER, *supra* note 30, at 150–51 (detailing the French political maneuvers in preventing full decoupling).

<sup>163</sup> C. Vidal, G. Aiden & K. Hay, *Agriculture as a Key Issue for Rural Development in the European Union*, at 139, <http://unece.org/stats/documents/ces/ac.61/2001/wp.2.e.pdf> (explaining the large variation in the importance of agriculture to member countries).

<sup>164</sup> Clive Potter, *Competing Narratives for the Future of European Agriculture: The Agri-Environmental Consequences of Neoliberalization in the Context of the Doha Round*, 172 *GEOGRAPHICAL J.* 190, 191 (2006) (“[T]here are also important differences in the extent to which the individual member states subscribe [to reform efforts] . . . the remarkably persistent agricultural fundamentalism of the French contrasting markedly with the more neoliberal and ‘decoupled’ strategy espoused by the British, for instance.”); see also Sheila Barter, *Fischler’s Farm Revolution?*, BBC News, (June 26, 2002), <http://news.bbc.co.uk/1/hi/world/europe/2066237.stm> (last visited Dec. 1, 2006) (on file with the Harvard Environmental Law Review).

<sup>165</sup> See GREER, *supra* note 30, at 162–63 (“For France and Ireland . . . the core priority is to limit change.”); see also *id.* at 150.

<sup>166</sup> *Id.* at 112, 148–49.

<sup>167</sup> See *id.* at 144–47. Many member states were able to negotiate for less severe decoupling in vulnerable sectors. Ireland, for example, was able to provide continued protection to the Irish dairy sector, negating somewhat the purpose behind the CAP reform. *Id.* at 146.

<sup>168</sup> See also KELCH & NORMILE, *supra* note 55, at 5–7.

brid of these two methods.<sup>169</sup> Member states have also been allowed to delay implementation until 2007.<sup>170</sup> Delaying implementation and permitting the implementation decision to occur at the member state level allows national policy priorities to predominate over more transnational concerns, such as environmental protection, and to limit reform effectiveness.<sup>171</sup>

In implementing decoupling, member states' decisions are influenced most strongly by the estimated economic impacts of the different options.<sup>172</sup> To a lesser extent, cultural considerations<sup>173</sup> and efficiency concerns (e.g., ease of payment distribution) have also shaped these decisions.<sup>174</sup> For an example of how implementation has varied between member nations, it is useful to compare the British and French response to the 2003 reforms. The "industrialized" United Kingdom quickly made the decision to decouple at the earliest opportunity in 2005.<sup>175</sup> The United Kingdom also chose to provide future farm payments on a hybrid of the historic and regional flat rate payment options.<sup>176</sup> In contrast, "agricultural" France delayed decoupling until 2006, and actually preserved full levels of production support in a few sectors.<sup>177</sup> France chose to base payments entirely on the levels of historic payments received, thus preserving at least a limited production tie.<sup>178</sup>

<sup>169</sup> *Id.* at 6. This article also mentions another calculation method: varying payments based upon whether the agricultural land is in arable crop production or primarily used for grazing purposes.

<sup>170</sup> *See, e.g.*, GREER, *supra* note 30, at 177.

<sup>171</sup> *See* Eve Fouilleux, *CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency*, 27 W. EUROPEAN POL. 235, 251–52 (2004) ("In particular, strong pressure by some member states (especially France and Spain) to avoid the decoupling scheme proposed by the Commission resulted in a complex CAP payments scheme. This envisages only partial decoupling, to be implemented on an optional basis by the member states."). *Id.* at 251.

<sup>172</sup> *See, e.g.*, GREER, *supra* note 30, at 177–78 (discussing the factors Ireland considered when making implementation decisions).

<sup>173</sup> *See, e.g., id.* (explaining that although Ireland was strongly opposed to the decoupling effort, after conducting research, this member state elected to go with full decoupling).

<sup>174</sup> *Cf. id.* at 177–78 (describing how Ireland decided between implementing full or partial decoupling). Although farmers opposed full decoupling in principle, ultimately it was "generally welcomed . . . because it reduced uncertainty about the future, enabled them to plan ahead, and promised a significant reduction in the level of bureaucracy." *Id.* at 178.

<sup>175</sup> *Id.* at 178–79.

<sup>176</sup> *See* HALMAI & ELEKES, *supra* note 157, at 4.

<sup>177</sup> Michael Cardwell, *Current Developments: European Law–Agriculture*, 55 INT'L & COMP. L. Q. 467, 470 (2006) (noting that "only five [member states] have opted to delay implementation (Finland, France, Greece, the Netherlands, and Spain); and none beyond 1 January 2006"); *see also* GREER, *supra* note 30, at 150–51.

<sup>178</sup> *See* Cardwell, *supra* note 177, at 469.

### *c. Impact from Decoupling*

The movement toward decoupled payments is generally viewed as a positive change.<sup>179</sup> However, most analysts predict the reform will not have a large impact on actual production decisions.<sup>180</sup> The reforms are not an effort to achieve immediate environmental impact but center on obtaining other benefits, such as a more favorable bargaining position at future WTO negotiations.<sup>181</sup> The present reforms are central in the battle over what factors should influence agricultural policy.<sup>182</sup> The real fight over decoupling is quite simply whether EU agricultural policy should remain production-oriented and focused on supporting farm income, or instead should promote more sweeping societal goals—such as freer trade or environmental stewardship.<sup>183</sup> If the latter view is eventually adopted, the true benefit of the June 2003 reforms is as an initial break from the “production-centric” view, which has predominated the CAP’s thinking since its inception, and as an additional signal that the CAP is beginning to account for these wider policy objectives.

### *2. Payments Conditioned on Compliance with Environmental Standards*

To effect environmental impact, the European Union is now conditioning the receipt of the direct farm support payments upon maintaining land in Good Agricultural and Environmental Condition (GAEC) and following other Statutory Management Requirements (SMRs).<sup>184</sup> By requiring environmental stewardship as a precondition of receiving support pay-

<sup>179</sup> *Id.* at 81 (“[T]he shift from production subsidies to direct payments is viewed as a very good or fairly good thing by the public.”). *But see* PR Newswire, One Year On Farmers Return Hung Verdict on Impacts of CAP Reform (Dec. 10, 2005), <http://www.prnewswire.co.uk/cgi/news/release?id=160139> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review) (explaining that farmers “remain divided on whether [CAP reform] improves their prospects or not”). *See generally* DAVID KELCH & MARY ANNE NORMILE, ECON. RESEARCH SERV., U.S. DEP’T OF AGRIC., AMBER WAVES, EUROPEAN UNION ADOPTS SIGNIFICANT FARM REFORM, Sept. 2004, at 27, available at [http://www.ers.usda.gov/Amberwaves/September04/pdf/feature\\_eusept2004.pdf](http://www.ers.usda.gov/Amberwaves/September04/pdf/feature_eusept2004.pdf) (“[S]ome coupled support may be retained to prevent land abandonment in marginally productive areas.”).

<sup>180</sup> KELCH & NORMILE, *supra* note 179, at 23; *but cf.* ORG. FOR ECON. CO-OPERATION AND DEV., ANALYSIS OF THE 2003 CAP REFORM 23–24 (2004), available at <http://www.oecd.org/dataoecd/62/42/32039793.pdf> (showing that maximum decoupling will have very small effects on the production of wheat, coarse grains, and oilseeds, but higher effects on rice and dairy products).

<sup>181</sup> OPTIONS FOR THE 2003 REFORM, *supra* note 117, at 4.

<sup>182</sup> *See, e.g.*, Potter, *supra* note 164, at 5–6 (“The decoupled model suggests a rather more contrived situation in which a formalized and objectified nature would come to be sustained through methods and procedures grounded in scientific knowledge and bureaucratic procedure rather than the working practices and management skills of the farming families who live there . . . . This is anathema to the French, with their continuing insistence that it is agricultural production which defines rurality.”).

<sup>183</sup> *See id.*

<sup>184</sup> *See* Council Regulation 1782/2003, tit. 2, ch. 1, art. 4–5 2003 O.J. (L 270) 1, 8 (EU).

ments, the CAP has shifted its focus away from a production-based approach in theory. It is necessary, however, to evaluate what these standards actually require as far as farmer compliance is concerned.

*a. Good Agricultural and Environmental Condition*

The GAEC standards serve as a baseline requirement for the stewardship of agricultural land.<sup>185</sup> GAEC standards are determined by the respective member states and are tailored to the particular geographic features of the region involved.<sup>186</sup> This decision is most efficiently made at the member state level—a single standard for the entire European continent would be unworkable. Minimum requirements ensure that basic objectives are met in the following areas: decreasing soil erosion, preserving organic material, preserving soil structure, and ensuring a minimum level of maintenance.<sup>187</sup> The GAEC standards impose a basic duty of stewardship, but at the same time compensate farmers for meeting this societal obligation.

In establishing GAEC, the EU has recognized a role for factors other than market support in agriculture policy.<sup>188</sup> Whether firm environmental benefits will materialize is another question. Considerable responsibility remains with the member states for implementing, monitoring, and enforcing actual GAEC compliance.<sup>189</sup> At the very least, this requirement will serve as a platform for future change, giving policymakers the opportunity to strengthen base standards and provide for greater environmental benefit.<sup>190</sup>

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<sup>185</sup> Council Regulation 1782/2003, annex IV, 2003 O.J. (L 270) 1, 58 (EU) (providing minimum GAEC conditions).

<sup>186</sup> See DEP'T FOR ENV'T, FOOD AND RURAL AFFAIRS, FINAL REGULATORY IMPACT ASSESSMENT OF OPTIONS FOR THE IMPLEMENTATION OF CROSS COMPLIANCE—GOOD AGRICULTURAL AND ENVIRONMENTAL CONDITION 7 (2004), available at <http://www.defra.gov.uk/corporate/regulation/2004/cross-compliance.pdf> [hereinafter CROSS COMPLIANCE] (explaining the role member states play in establishing the GAEC standards).

<sup>187</sup> Council Regulation 1782/2003, annex IV, 2003 O.J. (L 270) 1, 58 (EU). Annex IV provides the base requirements under the June 2003 agreement, but express action must be taken by the member state to determine how to implement this standard. In a relatively small member state, one set of standards might be appropriate, but in other larger member states with many geographical regions, a regional approach will be a more practical method of applying the GAEC requirements.

<sup>188</sup> GREER, *supra* note 30, at 205–07.

<sup>189</sup> See KELCH & NORMILE, *supra* note 179, at 29 (“The path of reform selected by each member state could have consequences for production, efficiency, land prices, and other factors with the potential to affect trade.”).

<sup>190</sup> See CROSS COMPLIANCE, *supra* note 186, at 6.

*b. Statutory Management Requirements*

Farmers must also comply with SMRs in order to receive farm payments.<sup>191</sup> These requirements provide an immediate and more targeted environmental impact because they address broad environmental issues, identification and registration of livestock, issues of public, animal, and plant health, and overall animal welfare.<sup>192</sup> At this point, SMRs primarily serve as a restatement of European laws currently applying to farmers, and additional reform will be necessary to strengthen the requests.<sup>193</sup>

*c. Impact of Conditioning Payments*

The GAEC and SMR requirements will provide some environmental benefit by enforcing a baseline duty of environmental stewardship.<sup>194</sup> However, the penalties for non-compliance may not be steep enough to change behavior, and inadequate monitoring might also serve to render the reforms ineffectual.<sup>195</sup> Additionally, as responsibility for establishing the legal standards falls upon the member states, gains will vary widely depending on member state policy objectives and priorities.<sup>196</sup> The true impact of these reforms will depend on the implementation, monitoring, and enforcement efforts of the individual member states. Conditioning direct support payments upon compliance with base environmental stewardship requirements will likely be unable to provide extensive environmental benefits across the entire European continent.

*B. A Shift Toward Rural Development?*

As direct payments have been or will likely be unable to provide meaningful environmental progress, reformers have increasingly advocated for increased rural development funding. The June 2003 reforms shifted some funds from the First Pillar (direct support) to Second Pillar rural development programs.<sup>197</sup> Rural development programs hope “to ensure agriculture’s role in protecting the rural environment [and] in producing safe and high quality food and . . . to place agriculture in its broader rural

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<sup>191</sup> *Id.*

<sup>192</sup> Council Regulation 1782/2003, annex III, 2003 O.J. (L 270) 1, 56–57 (EU).

<sup>193</sup> Dept. for Food, Env. And Rural Affairs, Discussion Document on Proposed Cross Compliance Statutory Management Requirements Applicable in England from 1 January 2007, at 1, 3 (2006), <http://www.defra.gov.uk/farm/capreform/singlepay/crosscomply/pdf/DiscussionDocument2006.pdf> (explaining that SMRs are already “existing law”).

<sup>194</sup> See CROSS COMPLIANCE, *supra* note 186, at 5–6.

<sup>195</sup> See Eur. Comm’n, *supra* note 156 (explaining that if a negligent farmer fails to comply, payments may be reduced by between 5% and 15%, but if the non-compliance is deliberate at least 20%, and in some cases total exclusion from payments, will result).

<sup>196</sup> GREER, *supra* note 30, at 207–10.

<sup>197</sup> See Eur. Comm’n, *supra* note 156.

context.”<sup>198</sup> Four “axes” channel this funding into specific areas: promoting specific environmental objectives in the countryside, improving the competitiveness of farming and forestry, improving overall quality of life in rural areas, and establishing the Leader Program to foster “bottom up” local development.<sup>199</sup> Together, the programs allow member states to address environmental concerns unreachable through support payments.<sup>200</sup> It is clear that rural development may serve to establish a viable agri-environmental policy, but two issues limit the expansion of this program: funding and implementation at the member state level.

### 1. Traditional Methods of Funding

Rural development programs focusing on rural objectives beyond the farming sector are not new under the CAP, but have been historically underfunded.<sup>201</sup> The recent reform indicates that rural development has finally become a priority for European policymakers.<sup>202</sup> However, some member states “are lukewarm about the transformation of the CAP into a common rural policy,” as the shift will alter the current distribution of resources away from the traditional beneficiaries of the support payments.<sup>203</sup>

Once the EU decided to shift funding to rural development, it then had to decide how to fund this program. Much of the debate over rural development expenditure centers on the financing of such programs rather than on their purpose.<sup>204</sup> Funding for rural development ultimately comes from four sources: the EU allocation, member state “matching funds,” other state aid, and the mandatory “modulation” of direct payments to producers.<sup>205</sup> Funding to specific member states varies according to a negotiated agreement and cannot in total exceed a certain percentage of the total CAP budget.<sup>206</sup> Allocations to member states are based on the financial ability of the state to provide matching funds and the environmental needs of member states.<sup>207</sup> The EU also has to determine what percentage of funds to require as a match from each member state.<sup>208</sup> In most member states, 60%

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<sup>198</sup> EUR. COMM'N, FACT SHEET: RURAL DEVELOPMENT IN THE EUROPEAN UNION 3 (2003), available at [http://www.euromontana.org/Doc/RuralDevelopmentInEU\\_EC.pdf](http://www.euromontana.org/Doc/RuralDevelopmentInEU_EC.pdf) [hereinafter RURAL DEVELOPMENT].

<sup>199</sup> HM TREASURY, *supra* note 126, at 59.

<sup>200</sup> See RURAL DEVELOPMENT, *supra* note 198, at 3.

<sup>201</sup> See discussion *supra* Part II.E.2 (discussing Agenda 2000 and rural development).

<sup>202</sup> See RURAL DEVELOPMENT, *supra* note 198, at 3.

<sup>203</sup> *Id.* at 124 (“France has been one of the central forces that has obstructed radical change in agricultural policy, especially in the world trade and environmental contexts.”).

<sup>204</sup> See GREER, *supra* note 30, at 170–71.

<sup>205</sup> See *id.* at 171–72 (explaining the mechanisms used by the United Kingdom to fund rural development).

<sup>206</sup> See RURAL DEVELOPMENT, *supra* note 198, at 8 (explaining the role of the March 1999 Berlin Summit in allocating rural development funds across the member states).

<sup>207</sup> See *id.*

<sup>208</sup> See GREER, *supra* note 30, at 171.

of funding comes directly from the CAP, while the member state provides the remaining 40% in matching funds.<sup>209</sup> The third method, “direct” funding, comes from state allocations for additional rural development programming, and falls outside the CAP payment structure and this analysis.<sup>210</sup>

## 2. Mandatory Modulation

The fourth and final method is mandatory modulation of support payments. The June 2003 CAP reforms added mandatory modulation as an additional mechanism of funding rural development objectives.<sup>211</sup> Mandatory modulation diverts a percentage of payments for production toward rural development.<sup>212</sup> Modulation will eventually divert 5% of the payments to farms that receive over €5000 of direct funding into rural development projects as a means of setting a ceiling on subsidies.<sup>213</sup> Eighty percent of these “modulated” funds will go to the member state where the modulation occurred.<sup>214</sup> The remaining 20% will be distributed to other member states based on three objective criteria: agricultural area, agricultural employment, and GDP in per capita purchasing power.<sup>215</sup> Both British and French policymakers have agreed upon the overall concept of modulation of payments, but for very different reasons.<sup>216</sup> British policymakers see modulation as aligning well with their long-term vision of “gradual[ly] phasing out of compensatory payments over time.”<sup>217</sup> The French position has been driven more by necessity, both to avoid a “renationalization” of agricultural programs and to realign these transfer payments to accommodate “multifunctionality,” ensuring the continued political viability of the French agricultural position.<sup>218</sup>

Regardless of the jurisdiction, modulation will allow member states to deal with many previously unaddressed environmental and rural development issues by providing much needed funding to rural development, CAP’s second pillar.<sup>219</sup> However, current implementation of rural development programs largely serve only the discretionary goals of individual

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<sup>209</sup> *Id.*

<sup>210</sup> *See id.* at 171–72.

<sup>211</sup> *See, e.g.,* HM TREASURY, *supra* note 126, at 59.

<sup>212</sup> *See* RURAL DEVELOPMENT, *supra* note 198, at 12.

<sup>213</sup> *See id.*; *see also* Press Release, Eur. Comm’n, *supra* note 152, at 5–6.

<sup>214</sup> *See* Press Release, Eur. Comm’n, *supra* note 152.

<sup>215</sup> RURAL DEVELOPMENT, *supra* note 198, at 12.

<sup>216</sup> Philip Lowe, Henry Butler, & Neil Ward, *Setting the Next Agenda?: British and French Approaches to the Second Pillar of the Common Agricultural Policy* 18–19 (Centre for Rural Economy, Univ. of Newcastle Upon Tyne, Working Paper No. 53, 2001), available at <http://www.ncl.ac.uk/cre/publish/pdfs/wp53a.pdf>.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> *See* Press Release, Eur. Comm’n, Modulation and Financial Discipline 3 (2004), available at [http://ec.europa.eu/agriculture/capreform/infosheets/modul\\_en.pdf](http://ec.europa.eu/agriculture/capreform/infosheets/modul_en.pdf) (“Member states may use all the instruments available funded by the ‘guarantee’ section of the agriculture budget.”).

member states at this point.<sup>220</sup> As a result, a member state could focus on priorities other than environmental health, minimizing modulation's impact.<sup>221</sup> Rural development's impact is also weakened by funding limitations.<sup>222</sup> The total 2006 CAP expense was over €41.66 billion, of which only approximately 10% was devoted to rural development programs.<sup>223</sup> Despite these drawbacks, modulation brings needed strength to rural development, and is helping this program receive the funds necessary to carry out its intended objectives.<sup>224</sup>

### 3. Financial Discipline

One additional reform, financial discipline, is worthy of mention.<sup>225</sup> Financial discipline is designed to place fixed ceilings on overall CAP spending, although this provision does not apply to payments under the rural development heading.<sup>226</sup> The design of this measure may have positive environmental benefits and actually increase the amount of funding available to rural development programming.<sup>227</sup> One analyst has noted that the application of financial discipline means "that the scale of pillar 1 under the market regimes is likely to decrease . . . . Thus the balance will generally change between the two pillars, slowly increasing the relative importance of pillar 2 funding for European agriculture . . . ." <sup>228</sup> In addition, a bounded CAP may be more acceptable to European consumers, which could serve to make CAP more politically sustainable and allow the CAP spending to continue at current levels or even to expand.

### 4. Implementation of Rural Development at the Member State Level

The shift of funds toward CAP's Second Pillar may provide the most clear environmental impact at the member state level and is a clear example of the ongoing reorientation of the CAP away from the support of production agriculture. To a large degree, however, rural development pro-

<sup>220</sup> See GREER, *supra* note 30, at 180 (explaining the wide variations possible in rural development programs between member states).

<sup>221</sup> See, e.g., HM TREASURY, *supra* note 126, at 46–48 (addressing concerns about food security).

<sup>222</sup> See EUR. COMM'N, CAP REFORM: RURAL DEVELOPMENT 5 (2000), available at <http://ec.europa.eu/agriculture/publi/fact/rurdev/en.pdf> (showing the discrepancy in funding between the First and Second Pillars of the CAP).

<sup>223</sup> *Id.*

<sup>224</sup> See generally Fischler, *supra* note 28.

<sup>225</sup> See, e.g., Press Release, Eur. Comm'n, *supra* note 152.

<sup>226</sup> See *id.*; Eur. Comm'n, Modulation and Financial Discipline, [http://ec.europa.eu/agriculture/capreform/infosheets/modul\\_en.pdf](http://ec.europa.eu/agriculture/capreform/infosheets/modul_en.pdf) (last visited Nov. 4, 2006) (on file with the Harvard Environmental Law Review).

<sup>227</sup> JANET DWYER, RURAL DEVELOPMENT UNDER THE CAP: SIGNIFICANCE, LIKELY IMPACTS AND MODELLING ISSUES 4 (2005), available at <http://www.enarpri.org/Publications/SPNo14.pdf>.

<sup>228</sup> *Id.*

grams are not designed at an EU-wide level, but are tailored to meet member state specific objectives.<sup>229</sup> The current EU rural development platform does provide twenty-two “measures that can be implemented [by the member state’s] rural development programs,” although the only program that is currently compulsory is the agri-environmental measure (payments for practices beyond baseline stewardship).<sup>230</sup> The measures are designed to promote:

The improvement of structures in agricultural holding . . . , the encouragement of non-food production, sustainable forest development, diversification of activities . . . , maintenance of viable social fabric . . . , the development of economic activities and the maintenance and creation of employment . . . , the improvement of living and working conditions, the maintenance and promotion of low-input farming systems, the preservation of a high nature value . . . , [and] the removal of inequalities.<sup>231</sup>

Of the overall rural development budget in the EU, “[a]gri-environmental measures cover 45% of the expenditure, followed by LFA support (21%), encouragement of adaptation of rural areas (10%), forestry measures (9%), investment in agricultural holding—including set up of young farmers and training—(6%), early retirement scheme (5%), [and] processing and marketing of agricultural products (3%).”<sup>232</sup> It is clear then that much of the funding to CAP’s Second Pillar is dedicated to obtaining benefits at the member state level beyond mere farm support.

Member state implementation of these measures has varied as “some Member States (Germany, Italy, Spain and France) propose more or less the full menu and some Member States only very few of them (Portugal, Greece, and Ireland), [although] most of the Member States have selected at least 2/3 of the measures.”<sup>233</sup> As can be expected, member state objectives vary considerably depending on the physical characteristics of the land and farming sector of the state but programs can be tailored to these individualized needs. In Portugal, “[l]ess favored areas (LFAs) account for approximately 80.5% of the total area,” and policies have been tailored to account for the needs of Portugal’s farms and rural environment.<sup>234</sup>

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<sup>229</sup> DIRECTORATE-GENERAL FOR AGRIC. AND RURAL DEV., EUR. COMM’N, RURAL DEVELOPMENT IN THE EUROPEAN UNION 10 (2006), available at [http://ec.europa.eu/agriculture/agrista/rurdev2006/RD\\_Report\\_2006.pdf](http://ec.europa.eu/agriculture/agrista/rurdev2006/RD_Report_2006.pdf) (explaining implementation of rural development at the member state level).

<sup>230</sup> *Id.*

<sup>231</sup> Council Regulation 1257/1999, art. 2, 1999 O.J. (L 160) 84–85 (EC).

<sup>232</sup> EU DIRECTORATE-GENERAL FOR AGRIC. AND RURAL DEV., *supra* note 229, at 12–13.

<sup>233</sup> *Id.* at 10.

<sup>234</sup> EUR. COMM’N, COUNTRY PROFILE—PORTUGAL (Sept. 2003), available at [http://www.ec.europa.eu/agriculture/rur/countries/pt/file2003\\_en.pdf](http://www.ec.europa.eu/agriculture/rur/countries/pt/file2003_en.pdf).

Similarly, Denmark has used some rural development funding to attempt to find young farmers, as “[p]art-time farming is common . . . , and new employment opportunities are vital in improving the viability of rural communities.”<sup>235</sup> As a result, rural development offers a powerful alternative to the direct support payments under CAP’s First Pillar. Providing additional and meaningful funding to the individual member states to account for rural development objectives (including environmental health) would provide more direct benefit than the current decoupling of support payments. Shifting to a rural development paradigm would in this sense truly constitute a revolutionary break from past agricultural policies, a direction in which the recent decoupling efforts may be pushing policymakers.

#### IV. IMPLEMENTATION IN THE UNITED KINGDOM

Much of the impact from the 2003 CAP reforms clearly depends on member state implementation decisions.<sup>236</sup> By analyzing the implementation decisions of a member state focused on environmental issues, the United Kingdom, it is possible to get a better picture of the reform’s potential. To understand implementation in the United Kingdom, one must look at the nature of English agricultural policy, as well as the implementation of decoupling and rural development programs and the decisions made by agricultural policymakers.

##### A. *Agricultural Policy in the United Kingdom*

Agricultural policy in the United Kingdom is shaped by several regional institutions responsible for setting this agenda: “in Scotland, Wales, and Northern Ireland [this] is the responsibility of the separate administrations for these territories, each of which have their own strategic plans and priorities for the development of agriculture within their jurisdictions which have been developed in consultation with their respective stakeholder interests.”<sup>237</sup> This “devolution” of agricultural policy recognizes that the United Kingdom consists of distinct geographical areas with regional needs.<sup>238</sup> This analysis will focus only on England and the actions of its agricultural agency, the Department for Environment Food and Rural Affairs (DEFRA).

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<sup>235</sup> EUR. COMM’N, COUNTRY PROFILE—DENMARK (Sept. 2003), available at [http://www.ec.europa.eu/agriculture/rur/countries/da/file2003\\_en.pdf](http://www.ec.europa.eu/agriculture/rur/countries/da/file2003_en.pdf).

<sup>236</sup> See discussion *supra* Part III.B.

<sup>237</sup> Communication from the United Kingdom to the European Commission, <http://www.defra.gov.uk/farm/capreform/legislation/pdf/not02.pdf> (last visited Oct. 17, 2006) (on file with the Harvard Environmental Law Review).

<sup>238</sup> Dep’t for Env’t, Food and Rural Affairs, CAP: Single Payment Scheme—Overview, <http://www.defra.gov.uk/farm/capreform/singlepay/overview/qa-devolution.htm> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review).

## B. Implementation of the Decoupling Reform

### 1. Payments Directly to Producers

#### a. Regional Implementation Within England

In determining how to implement the June 2003 reforms, England decided, as a vocal advocate of the reforms, that it was important to decouple English farm payments at the earliest possible date of early 2005.<sup>239</sup> In England, decoupled payments will vary by region.<sup>240</sup> Accordingly, England has been divided into three distinct regions: moorland<sup>241</sup> within Severely Disadvantaged Areas,<sup>242</sup> upland within Severely Disadvantaged Areas,<sup>243</sup> and other agricultural ground.<sup>244</sup> In dividing England into regions, policymakers recognized that not all farmland has the same production potential, and evenly allocating agricultural payments could cause undesirable shifts in land value and management practices.<sup>245</sup> Additionally, “unproductive” land in Severely Disadvantaged Areas is environmentally sensitive and compensation in these areas is more properly tied to environmental stewardship objectives than to the level of historic production.<sup>246</sup>

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<sup>239</sup> Single Payment Scheme, *supra* note 9 (discussing implementation of the Single Payment Scheme in the United Kingdom).

<sup>240</sup> *See id.*

<sup>241</sup> *See, e.g.*, Dep’t for the Env’t, Food and Rural Affairs, Uplands Land Classification, <http://www.defra.gov.uk/rural/uplands/land-classification.htm> (last visited Oct. 17, 2006) (on file with the Harvard Environmental Law Review). Moorland is defined “in terms of the vegetation present, which must be predominantly semi-natural upland vegetation, or predominantly of rock outcrops and semi-natural vegetation, used primarily for rough grazing.” *Id.*

<sup>242</sup> *See id.* Agricultural land in England may be classified as a Less Favored Area—generally moorland, hills, or mountains having limited production value. These Less Favored Areas are divided into two groupings of Severely Disadvantaged Areas and Disadvantaged Areas, with only severely disadvantaged areas meriting separate treatment under the reforms. The difference between these sub-groupings is a matter of degree and is based upon a finding that the land is suitable for livestock but not crop production. This land is often environmentally sensitive and in creating this classification, England can channel additional funds to these lands to protect the resources of “unproductive regions” without distorting land values. *Id.*

<sup>243</sup> *See, e.g.*, Dep’t for Env’t, Food and Rural Affairs, Single Payment Scheme, <http://www.defra.gov.uk/farm/capreform/singlepay/overview/qa-regions.htm> (last visited Oct. 17, 2006) (on file with the Harvard Environmental Law Review). The rationale for varying payments between moorland and non-moorland in a Severely Disadvantaged Area is an effort to “reflect adequately the land types and land use in England.” *Id.* Additionally, this source indicates the pressure brought by farm interest groups in England in support of this method of allocation.

<sup>244</sup> *See id.*

<sup>245</sup> *Id.* (explaining how farm payments affect land values and how radically altering production levels in some regions can lead to undesirable environmental effects).

<sup>246</sup> *See id.* (explaining other methods of support available to “hill” farmers).

*b. Calculating the Farm Payment*

English policymakers had to determine how to calculate support payments. DEFRA elected to allocate funds based on a “dynamic hybrid moving toward a flat rate payment” calculation method.<sup>247</sup> This method combines a flat payment based on regional historic production levels and payment based on farm-specific historic production levels.<sup>248</sup> The flat rate component is calculated by dividing the total amount of available funding by the amount of eligible hectares; every hectare in a region will receive the same flat payment.<sup>249</sup> The farm-specific payments, however, are tied to the funding the hectare received during the 2000-02 base period, and will vary between farms.<sup>250</sup> The actual payment will then be determined by allocating to every hectare the flat rate payment, and then allocating remaining funds or farm-specific payments based upon the level of historic payments received by the respective farms.<sup>251</sup> This is a “dynamic” hybrid because, beginning in 2012, the payments will be allocated entirely by the flat rate, eliminating any role for past production in this calculation.<sup>252</sup> While in 2005 the flat rate payment constituted just 10% of the total payment (the other 90% is still allocated based on historic production level), this percentage will continue to increase until historic production is phased out completely.<sup>253</sup> This calculation is influenced by a budgetary allocation for the National Reserve program,<sup>254</sup> and the modulation of payments to large farms (those receiving over €5000 in payments) toward rural development.<sup>255</sup>

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<sup>247</sup> EUR. COMM’N, IMPLEMENTATION OF THE CAP REFORM IN THE MEMBER STATES (2005), available at [http://ec.europa.eu/agriculture/markets/sfp/ms\\_en.pdf](http://ec.europa.eu/agriculture/markets/sfp/ms_en.pdf).

<sup>248</sup> DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS & RURAL PAYMENTS AGENCY, SINGLE PAYMENT SCHEME: HANDBOOK AND GUIDANCE FOR ENGLAND 2005, 32 (2005), available at [http://www.afa.org.uk/mats/CAP/Guides/SPSGuidance\(version1.0\).pdf](http://www.afa.org.uk/mats/CAP/Guides/SPSGuidance(version1.0).pdf) [hereinafter SINGLE PAYMENT SCHEME HANDBOOK] (explaining how Single Payment Scheme payments are calculated).

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 33.

<sup>251</sup> *Id.* at 32.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* at 32.

<sup>254</sup> Dep’t for Env’t, Food and Rural Affairs, CAP: Single Payment Scheme—National Reserve, <http://www.defra.gov.uk/farm/capreform/singlepay/natreserve/index.htm#bground> (last visited Oct. 1, 2006) (on file with the Harvard Environmental Law Review). The National Reserve Program is a mandatory reduction in the total amount of direct payments to negate sector specific effects from the transition from the old scheme. This program is focused on eliminating the effects of specific investments in sectors where past investment was encouraged, but the benefits expected to accrue have been lost. The dairy industry, among the areas hardest hit by the transition away from past support methods, is a main target of these funds.

<sup>255</sup> SINGLE PAYMENT SCHEME HANDBOOK, *supra* note 248, at 34.

*c. Impact from Decoupling in England*

The decoupling effort is expected to have a positive impact on the English agricultural economy, and farm income may rise over five percent.<sup>256</sup> When the benefit to the environment is factored into the equation, decoupling is expected to save the English taxpayer over £400–500 million.<sup>257</sup> In breaking the link between subsidies and production, farmers will be freed to respond directly to consumer demand.<sup>258</sup> One possible concern, however, is that England, in allowing other member states to more slowly introduce reform, may have granted these other states a short-term competitive advantage.<sup>259</sup> This is one reason that England has argued for full and immediate decoupling across all member states.<sup>260</sup> Whatever the economic impact of the reform, some limited environmental objectives have already been met. In eliminating excess production, environmental harm will be avoided and English agricultural policy will be better equipped to address environmental concerns.<sup>261</sup>

*2. Payments Tied to Environmental Cross Compliance*

To collect farm payments in the United Kingdom, “farmers will be asked to demonstrate that they are keeping their land in good agricultural and environmental condition and complying with a number of specified legal requirements relating to the environment, public and plant health and animal health and welfare.”<sup>262</sup> The net effect of these requirements is that England can aggressively seek targeted environmental benefits.<sup>263</sup> In England, there are three sets of requirements imposed upon farmers: to keep land in GAEC, to comply with SMRs, and to maintain a specified amount (90% of the pre-2003 level) of permanent pasture.<sup>264</sup> The permanent pasture requirement has not been enforced to date, but GAEC and SMR requirements are currently being monitored and enforced by agricultural

<sup>256</sup> Single Payment Scheme, *supra* note 9.

<sup>257</sup> *Id.*

<sup>258</sup> POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 73 (“These subsidies and the market price supports which are still encouraging overproduction must go.”).

<sup>259</sup> *See, e.g.*, Single Payment Scheme, *supra* note 9.

<sup>260</sup> *See id.*

<sup>261</sup> *See, e.g.*, POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 73.

<sup>262</sup> SINGLE PAYMENT SCHEME HANDBOOK, *supra* note 248, at 11.

<sup>263</sup> *See* POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 73–74 (“Perverse effects [from overproduction] should be minimised by requiring farmers to meet minimum environmental standards to qualify for payment, known in the jargon as ‘cross compliance.’”).

<sup>264</sup> *See* DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS & RURAL PAYMENTS AGENCY, SINGLE PAYMENT SCHEME: CROSS COMPLIANCE HANDBOOK FOR ENGLAND 7 (2006), available at <http://www.defra.gov.uk/farm/capreform/pubs/pdf/XCHandbook2006.pdf> [hereinafter CROSS COMPLIANCE HANDBOOK].

authorities.<sup>265</sup> Failing to meet these requirements can result in payments being reduced or lost entirely.<sup>266</sup>

*a. Good Agricultural and Environmental Condition*

As discussed in Part III, much of the responsibility for implementing specific GAEC standards rests upon the member state.<sup>267</sup> Three types of GAEC requirements will be discussed: protection of soil and water resources, protection of Areas of Special Scientific Interest and Scheduled Monuments, and the protection of English hedgerows.

Soil and water conservation requirements are the most extensive protections currently imposed by DEFRA.<sup>268</sup> A farmer must complete a Soil Protection Review (“SPR”) to determine the soil’s initial condition, and then follow mandated steps to protect the resource.<sup>269</sup> Other requirements set limits on field burning, the reduction of stubble cover, machinery operations in waterlogged fields, and the expansion of operations into uncultivated parcels of land.<sup>270</sup> These requirements integrate public environmental concerns with the decision-making processes of individual farmers.

The second category of GAEC standards, Areas of Special Scientific Interest, consists of areas that “are nationally important for their habitat, plant and animal species, geology and landform.”<sup>271</sup> These areas cannot be altered without governmental permission, and if damage occurs, a restoration order can be issued and farm payments terminated.<sup>272</sup> Scheduled

<sup>265</sup> See *id.* at 10 (explaining that permanent pasture levels have not changed under the 2003 reforms and no requirements imposing a duty upon English farmers have been mandated).

<sup>266</sup> See *id.* at 11. This source discusses the importance of monitoring and using inspections to ensure that farmers are meeting legal obligations. *Id.* at 11, 61–62.

<sup>267</sup> See discussion *supra* Part III.A.

<sup>268</sup> See, e.g., CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 16–19.

<sup>269</sup> See DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS & RURAL PAYMENTS AGENCY, SINGLE PAYMENT SCHEME: CROSS COMPLIANCE GUIDANCE FOR SOIL MANAGEMENT 6 (2006), available at <http://www.defra.gov.uk/farm/capreform/pubs/pdf/XCSoilGuidance2006.pdf> (explaining that prior to September 1, 2006, a farmer must conduct a Soil Condition Review to assess the soil conditions on agricultural lands); see generally DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS & RURAL PAYMENTS AGENCY, SINGLE PAYMENT SCHEME: CROSS COMPLIANCE SOIL PROTECTION REVIEW (2006), available at <http://www.defra.gov.uk/farm/capreform/pubs/pdf/XCProtectReview2006.pdf> (providing the template of steps required to meet the GAEC requirements in the soil management area).

<sup>270</sup> See CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 17.

<sup>271</sup> DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS & RURAL PAYMENTS AGENCY, SINGLE PAYMENT SCHEME: CROSS COMPLIANCE GUIDANCE FOR THE MANAGEMENT OF HABITATS AND LANDSCAPE FEATURES 15 (2005), available at <http://www.defra.gov.uk/farm/capreform/pubs/pdf/habitathb2005.pdf> [hereinafter HABITATS AND LANDSCAPE FEATURES]. The English government hopes to bring 95% of these sites into favorable environmental condition by 2010, thus preserving resources as far as biodiversity and the environment are concerned. See *id.*

<sup>272</sup> See CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 9, 22 (explaining that failure to comply with GAEC standards can lead to a loss of farm payments and detailing the requirements related to Scheduled Monuments).

Monuments, also protected, are areas of historic importance.<sup>273</sup> Disturbing areas of historic value is prohibited, and farm payments are conditioned on compliance with this prohibition.<sup>274</sup> This requirement also imposes a duty on the farmer to identify potential monuments on their lands.<sup>275</sup> These twin requirements illustrate the United Kingdom's commitment to furthering more than just production objectives through agricultural policy mechanisms.

Another GAEC requirement regulates the removal and maintenance of hedgerows, which are rows of trees and shrubs historically used as fences in the English countryside.<sup>276</sup> This requirement shows that a member state has flexibility to address specific regional concerns. Hedgerows, while not important in many geographic regions, have cultural and aesthetic value engrained in the British character,<sup>277</sup> and play an important role in providing animal habitat and supporting biodiversity.<sup>278</sup> In recent years, hedgerows have all but disappeared because of changing agricultural practices and neglect.<sup>279</sup> England has imposed strict requirements on the removal and care of hedgerows, which shows how GAEC can further target national objectives in the individual member state context.<sup>280</sup>

The array of GAEC requirements can have real environmental impact, if a member state actually has an intention of pursuing environmental objectives.<sup>281</sup> England's implementation shows how the GAEC requirements have the flexibility to address specific areas of environmental and social concern and how the requirements can also provide a strong tool for environmental reform.

<sup>273</sup> See HABITATS AND LANDSCAPE FEATURES, *supra* note 271, at 17.

<sup>274</sup> See CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 21.

<sup>275</sup> HABITATS AND LANDSCAPE FEATURES, *supra* note 271, at 17.

<sup>276</sup> See generally *id.* at 33–39.

<sup>277</sup> Holder, *supra* note 118, at 103. (“The hedgerow is commonly portrayed as a quintessential, natural, feature of the English landscape in literature, poetry, paintings, and maps even though there is nothing distinctly English or indeed British about hedgerows.”).

<sup>278</sup> Sussex Biodiversity Partnership, Hedgerows, <http://www.biodiversitysussex.org/PDF%20files/Hedgerow%20HAP%20summary.pdf> (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review) (explaining the ancient origins of hedgerows, which date back to medieval times, as well as the cultural value of hedgerows in defining the landscape of this region).

<sup>279</sup> See Holder, *supra* note 118, at 104–105 (“[C]hanges in the rural landscape may be explained primarily as a result of social and economic forces, and particularly advances in agriculture.”). *Id.* at 104.

<sup>280</sup> See Dep't for Env't, Food and Rural Affairs, Hedgerows, <http://www.defra.gov.uk/farm/environment/landscape/hedgerows.htm> (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>281</sup> See, e.g., CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 16–31 (listing the Good Agricultural and Environmental Conditions in the United Kingdom); see also Eur. Comm'n, Agriculture and the Environment: Introduction, [http://ec.europa.eu/agriculture/envir/index\\_en.htm](http://ec.europa.eu/agriculture/envir/index_en.htm) (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review) (“[C]onditions will be defined by Member States, and should include standards related to soil protection, . . . and maintenance of habitats and landscapes.”).

*b. Statutory Management Requirements*

In theory, the SMR conditions allow policymakers to address additional social issues.<sup>282</sup> At this point, however, the SMRs are largely a restatement of the EU's current laws applicable to farmers and impose few additional requirements. The real benefit from the SMRs is as an additional enforcement mechanism—cutting off non-complying farmers from access to support payments.<sup>283</sup> SMRs currently address three primary areas: public health issues, animal welfare issues, and, most relevantly, environmental objectives.<sup>284</sup>

SMRs reach several environmental objectives that GAEC standards cannot. These areas include the management of wild bird populations, groundwater pollution, use of sewage sludge for fertilizer, nitrogen fertilizer use, and the protection of crucial wildlife habitat.<sup>285</sup> SMRs also require that producers contact organizations before making some decisions that affect natural resources, prohibit the use of some farming methods entirely, and require producers to keep detailed records of chemical and fertilizer usage.<sup>286</sup> The value of the SMRs is that the requirements go beyond those tied only to the care of the land and reach actual farming practices.

Ultimately, England is able to condition farm payments upon compliance with the twin duties of stewardship imposed by the GAEC and SMR requirements.<sup>287</sup> Flexibility in implementing these requirements allows English policymakers to address specific agricultural practices and to reach targeted objectives.<sup>288</sup> In the future, England may be able to expand these baseline requirements to achieve additional environmental objectives and to ensure the sustainability and health of England's agricultural sector although it is unclear whether reliance on the first pillar (cross-compliance) or the second pillar (rural development projects) will be the proper mechanism in this area.<sup>289</sup>

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<sup>282</sup> See CHARLES E. HANRAHAN & JEFFREY ZINN, CONG. RESEARCH SERV., GREEN PAYMENTS IN U.S. AND EUROPEAN UNION AGRICULTURAL POLICY 1, 9–10 (2005), available at <http://www.nationalaglawcenter.org/assets/crs/RL32624.pdf> (illustrating the range of SMR requirements dealing with “water pollution, nitrates, pesticides, and habitats and wild birds”); see generally CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 32–49 (listing SMR conditions).

<sup>283</sup> See HANRAHAN & ZINN, *supra* note 282, at 9 (explaining that environmental directives were incorporated into the CAP structure in 2005 and “EU farmers must comply [with these provisions] in order to be eligible for direct support under the recently reformed CAP”).

<sup>284</sup> CROSS COMPLIANCE HANDBOOK, *supra* note 264, at 32–49.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> POLICY COMM'N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 82 (explaining the impact of providing payments for positive management techniques).

<sup>288</sup> See discussion *supra* Part III.B.2.

<sup>289</sup> See, e.g., INST. FOR EUR. ENVTL. POLICY, BACKGROUND PAPER FOR ‘POLICY FORUM ON CROSS-COMPLIANCE IN THE CAP’ 21–23 (2004), available at <http://www.ieep.org.uk/publications/pdfs/crosscompliance/seminar6background%20paper.pdf> (discussing future op-

### C. Implementation of Rural Development

Although member states have flexibility in implementing decoupling, even greater flexibility is possible in implementing rural development programs.<sup>290</sup> The United Kingdom has taken advantage of this flexibility to provide for extensive rural development programs focused on agri-environmental measures.<sup>291</sup> In analyzing English rural development programs, two major issues arise: the financing of rural development and the actual implementation of these programs.

#### 1. Financing English Rural Development Programs

Rural development and its funding are major priorities for English agricultural planners.<sup>292</sup> Funding comes from four sources: the EU allocation, state matching funds, discretionary state funds, and the new modulation process.<sup>293</sup> Together, these devices over the next seven year EU funding cycle will provide £2658.1 million for rural development programs in England.<sup>294</sup> Furthermore, England has elected to accelerate the pace of modulation; in 2006, ten percent of the payments to farmers collecting over €5000 (compared with four percent in the rest of the EU) will be diverted to rural development programs.<sup>295</sup> The UK treasury matches the amount raised through modulation to provide additional financial support through 2006.<sup>296</sup> In all, this provides an additional £757.53 million for rural development purposes over the seven year funding cycle, and gives England the additional financial resources necessary to implement the English Rural Development Program discussed below.<sup>297</sup>

#### 2. Implementation of the English Rural Development Program

The EU has established a basic framework of general rural development objectives, but determining programmatic objectives is the responsibility

tions for the cross-compliance standards).

<sup>290</sup> GREER, *supra* note 30, at 173 (explaining that this flexible “system exists precisely because countries need and want to introduce specific national measures in response to domestic issues and problems”).

<sup>291</sup> *See id.* at 159 (“[C]ountries can construct their rural development plans to embody their core priorities. This is reflected in resource allocation. Over half of total expenditure in the English RDP goes to the agri-environmental program[s].”).

<sup>292</sup> *See id.*

<sup>293</sup> *See* discussion *supra* Part III (for a more extensive explanation of these devices).

<sup>294</sup> GREER, *supra* note 30, at 171.

<sup>295</sup> Dep’t for Env’t, Food and Rural Affairs, CAP: Single Payment Scheme-Agri-Environment, <http://www.defra.gov.uk/farm/capreform/singlepay/modulation> [hereinafter CAP: Single Payment Scheme]. (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>296</sup> *Id.*

<sup>297</sup> *See* GREER, *supra* note 30, at 171.

of the member state.<sup>298</sup> England has focused on two specific objectives: “creation of a productive and sustainable rural economy,” and the “conservation and enhancement of the rural environment.”<sup>299</sup> Of these twin objectives, conservation and enhancement of the rural environment provides direct environmental benefit and is the subject of this analysis.<sup>300</sup> To achieve its objective, England has decided to direct funding to “enable support for retention and enrichment of the *wider countryside* and its features, especially where there is little statutory safeguard, and the achievement of sustainable practices.”<sup>301</sup>

England has also implemented several programs hoping to more efficiently foster an environmental ethic.<sup>302</sup> The main program for obtaining these goals is the Environmental Stewardship program (although some sensitive areas still receive funding through previous programs).<sup>303</sup> The Environmental Stewardship program has combined and expanded several programs with the idea that a single program is more efficient (i.e., it has less administrative cost and is less burdensome to farmers).<sup>304</sup>

The Environmental Stewardship program “provides funding to farmers and other land managers in England who deliver effective environmental management on their land.”<sup>305</sup> This program is very similar to GAEC and SMR conditions but provides additional funds for obtaining environmental objectives reaching beyond the baseline requirements.<sup>306</sup> The Environmental Stewardship program is divided into three levels: Entry Level Stewardship, Organic Entry Level Stewardship, and Higher Level Stewardship.<sup>307</sup>

Entry Level Stewardship is available to all farmers, provided that statutory requirements are met.<sup>308</sup> For most English farm ground, a farmer must “score” thirty points under a points system to qualify under the program.<sup>309</sup>

<sup>298</sup> *Id.* at 173 (discussing the various ways that member states have implemented rural development programs).

<sup>299</sup> *See, e.g.*, Dep’t for Env’t, Food and Rural Affairs, Strategy for the England Rural Development Programme, <http://www.defra.gov.uk/erdp/docs/national/section6/strategy.htm> (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>300</sup> *See id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *See, e.g.*, Dep’t for Env’t, Food and Rural Affairs, Welcome to the England Rural Development Programme, <http://www.defra.gov.uk/erdp/default.htm> (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review) (showing program consolidation).

<sup>304</sup> *See, e.g.*, POLICY COMM’N ON THE FUTURE OF FARMING AND FOOD, *supra* note 7, at 78.

<sup>305</sup> RURAL DEV. SERV., DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS, ENVIRONMENTAL STEWARDSHIP: LOOK AFTER YOUR LAND AND BE REWARDED 2 (2004), available at <http://www.defra.gov.uk/erdp/pdfs/es/es-promotional-booklet.pdf> [hereinafter LOOK AFTER YOUR LAND].

<sup>306</sup> *Id.*

<sup>307</sup> *Id.* at 3.

<sup>308</sup> *See id.* (detailing the statutory requirements behind the Entry Level Stewardship program).

<sup>309</sup> *See, e.g.*, RURAL DEV. SERV., DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS, ENTRY LEVEL STEWARDSHIP HANDBOOK 15 (2004), available at <http://www.defra.gov.uk/erdp/pdfs/>

Points are awarded for a number of activities such as “leaving . . . drainage ditches or hedgerows untrimmed (so birds can nest there) or leaving wheat or corn stubble on fields over winter (it’s good habitat for small animals and ground-nesting birds).”<sup>310</sup> Farmers also admit that it will not be difficult to meet these obligations, and as one farmer confessed, “It’s money for nothing, really . . . . And if it helps the environment, all well and good.”<sup>311</sup> Entry Level Stewardship rewards producers already utilizing environmentally friendly practices and solidifies the transfer of resources between urban and rural populations to promote common interests.<sup>312</sup>

The second program, Organic Entry Level Stewardship, “is a ‘whole farm’ scheme similar to [Entry Level Stewardship], open to farmers who manage *all* or *part* of their land organically.”<sup>313</sup> Organic Entry Level Stewardship also works on a point system, but requires sixty points to receive payment.<sup>314</sup> Thirty points are earned by placing land in organic production alone, making the required management essentially the same.<sup>315</sup> This program also encourages producers to begin producing organically and provides funds to facilitate this shift.<sup>316</sup> The program helps environmentally friendly practices and shifts English farm ground into a more sustainable form of production.<sup>317</sup>

The last program, Higher Level Stewardship, is not open to all producers and “aims to deliver significant environmental benefits in high priority situations and areas.”<sup>318</sup> This program “is discretionary and concentrates on the more complex types of management, where land managers need advice and support and where agreements need to be tailored to local circumstances.”<sup>319</sup> This program is focused on the amount of management attention needed and is not based on a points system, but rather on the achievement of targeted goals or “indicators of success.”<sup>320</sup> It aims to allow DEFRA the flexibility to target those areas that can provide the most direct environmental benefits to the English taxpayer.<sup>321</sup>

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es/els-handbook.pdf [hereinafter ENTRY LEVEL STEWARDSHIP].

<sup>310</sup> Charles, *supra* note 6.

<sup>311</sup> *Id.*

<sup>312</sup> See, e.g., ENTRY LEVEL STEWARDSHIP, *supra* note 309, at 5–7 (explaining the purpose of Entry Level Stewardship and the fact that “[b]ecause Environmental Stewardship involves expenditure of public money, there is public interest in how the money is spent”).

<sup>313</sup> RURAL DEV. SERV., DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS, ORGANIC ENTRY LEVEL STEWARDSHIP PROGRAM 7 (2004), available at <http://www.defra.gov.uk/erdp/pdfs/es/oels-handbook.pdf> [hereinafter ORGANIC ENTRY LEVEL STEWARDSHIP].

<sup>314</sup> LOOK AFTER YOUR LAND, *supra* note 305, at 5.

<sup>315</sup> See *id.*

<sup>316</sup> ORGANIC ENTRY LEVEL STEWARDSHIP, *supra* note 313, at 8.

<sup>317</sup> LOOK AFTER YOUR LAND, *supra* note 305, at 3.

<sup>318</sup> See, e.g., RURAL DEV. SERV., DEP’T FOR ENV’T, FOOD AND RURAL AFFAIRS, HIGHER LEVEL STEWARDSHIP HANDBOOK 5 (2004), available at <http://www.defra.gov.uk/erdp/pdfs/es/hls-handbook.pdf> [hereinafter HIGHER LEVEL STEWARDSHIP].

<sup>319</sup> *Id.* at 5.

<sup>320</sup> *Id.* at 38.

<sup>321</sup> See, e.g., LOOK AFTER YOUR LAND, *supra* note 305, at 3 (“Higher Level Steward-

### D. Overall Impact of English Reforms

Implementation in England serves as the paradigmatic example of the CAP reform's potential environmental impacts.<sup>322</sup> The June 2003 reforms have allowed England to shift away from production-oriented farm supports to a decoupled system which takes into account societal values, rural welfare, and environmental concerns when making policy decisions.<sup>323</sup> England has been able to use the GAEC and SMR conditions to further basic stewardship objectives. Most importantly, England has been able to aggressively modulate direct farm payments and advance rural development objectives.<sup>324</sup> It remains unclear precisely what benefits farmers receive in return for complying with these requirements or what the benefits are for the English taxpayer.

To encourage farmer compliance with these programs, considerable economic incentives are provided. English farmers currently receive payments in two forms: the direct farm payment and payments for compliance with rural development programs.<sup>325</sup> The direct farm payment varies by region and involves a complex calculation of flat and historic production payments received.<sup>326</sup> Under these calculations, payments to owners of moorland in a Severely Disadvantaged Area will probably be between £20 and £40 per hectare; on other lands within a Severely Disadvantaged Area, the payment will probably be between £110 and £130 per hectare; and payments to owners of land in other regions will be around £210 to £230 per hectare.<sup>327</sup> Additionally, farmers will likely also receive funding from rural development programs.<sup>328</sup> A farmer enrolled in the Entry Level Stewardship program will receive £30 per hectare and a farmer in the Organic Entry Level Stewardship program will receive £60 per hectare. Those enrolled in the Higher Level Stewardship program will receive even

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ship (HLS) . . . aims to deliver significant environmental benefits in high priority situations and areas.”).

<sup>322</sup> See discussion *supra* Part IV (discussing implementation of the 2003 reforms in the United Kingdom).

<sup>323</sup> See discussion *supra* Part IV.B.1.c (explaining the impacts from the decoupling of farm payments in England).

<sup>324</sup> See CAP: Single Payment Scheme, *supra* note 295 (explaining modulation procedures in the United Kingdom).

<sup>325</sup> See Single Payment Scheme, *supra* note 9 (explaining the single payment scheme or the direct payment portion of the allocation); HIGHER LEVEL STEWARDSHIP, *supra* note 318, at 7 (showing the different levels of payment farmers receive under the U.K. farm payment system).

<sup>326</sup> See discussion *supra* Part IV.B.1.b (explaining the calculation of farm payment amounts).

<sup>327</sup> DEP'T FOR ENV'T, FOOD, AND RURAL AFFAIRS, CAP SINGLE PAYMENT SCHEME: BASIS FOR ALLOCATION OF ENTITLEMENT 5, <http://www.defra.gov.uk/farm/capreform/background/pdf/webnoterev16.pdf> (last visited Nov. 14, 2006) (on file with the Harvard Environmental Law Review).

<sup>328</sup> See, e.g., LOOK AFTER YOUR LAND, *supra* note 305, at 2 (“Environmental Stewardship is a new agri-environmental scheme which provides funding to farmers and other land managers in England who deliver effective environmental management on their land.”).

higher payments.<sup>329</sup> This funding is a substantial monetary inducement and rewards farmers for their additional role as environmental stewards.

The impact of the English agricultural reform on the taxpayer is also positive. Studies have shown that wild bird populations, a good indicator of overall environmental health, are starting to rebound.<sup>330</sup> Additionally, as the English countryside is now largely accessible to the general public for hiking and recreation, large numbers of citizens will enjoy this improvement in environmental health.<sup>331</sup> In the future, if England continues to expand modulation to devote more resources to rural development and stewardship objectives, and to address the structural problems within the agricultural industry, the stated goal of “enabl[ing] support for retention and enrichment of *wider countryside* and its features” is achievable.<sup>332</sup>

## V. CONCLUSION

The June 2003 reforms to the Common Agricultural Policy are an affirmative effort to address CAP’s past evils.<sup>333</sup> European consumers are aware of the damage inflicted by previous policies and are demanding that CAP do more than support production agriculture.<sup>334</sup> The power of the European farm lobby has diminished and a variety of groups have brought a wider area of interests into the agricultural debate.<sup>335</sup> In this sense, the reform is not an effort to drive public opinion, but is in reality driven by public demands.<sup>336</sup>

In the short run, the June 2003 reforms have done little to eliminate several of the major problems plaguing European agriculture.<sup>337</sup> Localized

<sup>329</sup> See *id.* at 4–7.

<sup>330</sup> Press Release, Dep’t for Env’t, Food and Rural Affairs, Wild Bird Populations Encouraging: Elliot Morley (Oct. 21, 2004), available at <http://www.defra.gov.uk/news/2004/041021b.htm> (“[T]hese figures show some encouraging signs that our policies for biodiversity are resulting in positive outcomes for birds.”).

<sup>331</sup> Press Release, Countryside Agency, Historic Right of Access Introduced across England (Jan. 3, 2006), available at [http://www.countryside.gov.uk/LAR/access\\_completed.asp](http://www.countryside.gov.uk/LAR/access_completed.asp) (claiming that over 900,000 hectares have recently been opened up for public recreational use).

<sup>332</sup> Dep’t for Env’t, Food and Rural Affairs, Strategy for England Rural Development Programme, <http://www.defra.gov.uk/erdp/docs/national/section6/strategy.htm> (last visited Oct. 16, 2006) (on file with the Harvard Environmental Law Review).

<sup>333</sup> See discussion *supra* Part II.A (detailing past evils of the CAP).

<sup>334</sup> See discussion *supra* Part II.C (explaining the forces driving CAP reform).

<sup>335</sup> See GREER, *supra* note 30, at 206–07 (“[The] [i]ncreased salience of environmental issues has brought a wider array of individuals into the policy context . . . [and a] requirement of the CAP rural development plans is that governments undertake extensive consultation with a wide range of economic and social interests.”).

<sup>336</sup> See, e.g., *supra* Part II.C.

<sup>337</sup> See INST. FOR EUR. ENV’T POLICY, IMPACT OF ENVIRONMENTAL AGREEMENTS ON THE COMMON AGRICULTURAL POLICY (2004), available at <http://www.ieep.org.uk/publications/pdfs/meacap/leaflet.pdf> (“While some specific policies concerned with biodiversity have already been introduced into the CAP, for example agri-environmental measures, relatively little attention has been paid to climate change issues.”).

benefits have materialized from targeted objectives, such as England's goal of increasing the wild bird population in England.<sup>338</sup> Member states focused on environmental issues have been able to achieve some substantial gains as English policymaking demonstrates.<sup>339</sup> Other member states, struggling to maintain prior policies and to ensure that traditional advantages from the CAP apparatus are not lost, may see little change.<sup>340</sup> It is clear that additional reform—including tougher baseline conditions, indirect payment, and a shift toward rural development—may be necessary to fully establish a viable agri-environmental policy on an EU-wide basis.

When analysis is detached from political debate, the decision to decouple and condition the receipt of farm payments upon achieving environmental stewardship goals is not a revolutionary breakthrough in agricultural policy.<sup>341</sup> Modulating funds from large farms to fund rural development objectives is also not a radical change.<sup>342</sup> Even the immediate environmental impact of reform will likely be minimal in most member states.<sup>343</sup>

How can a reform with so little direct benefit be a revolutionary breakthrough in agricultural policy? The real value of the June 2003 reform is that the EU has finally acknowledged the ill effects of past policy, and has started to take into account societal factors when formulating policy.<sup>344</sup> In this sense, the June 2003 reform is a revolutionary break from the past and its prior agricultural support ideology. Where the former paradigm was focused on the production of massive quantities of food, the focus of EU policymakers is shifting to something entirely different—the protection of the environment and the support of rural communities. While the true environmental impact may still be relatively small in most areas of the EU, the June 2003 reforms have provided, for the first time, a base for a future agricultural support program predicated on the idea of environmental stewardship that is truly committed to the conservation of working lands. A system focused on a broader set of rural development objectives may prove to be the result of this paradigmatic shift.

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<sup>338</sup> See, e.g., Press Release, Dep't for Env't, Food and Rural Affairs, *supra* note 330.

<sup>339</sup> See discussion *supra* Part IV.D; see also GREER, *supra* note 30, at 124 ("France has been one of the central forces that has obstructed radical change in agricultural policy, especially in the world trade and environmental contexts").

<sup>340</sup> GREER, *supra* note 30, at 159–61 (explaining that 40% of funds in Ireland go to rural development as agricultural measures and only 15% in Greece—illustrating that many member states are using the flexibility of rural development programs to maintain support of production agriculture).

<sup>341</sup> See discussion *supra* Part III.A.1.c.

<sup>342</sup> See discussion *supra* Part III.B.2.

<sup>343</sup> See discussion *supra* Part IV.D (explaining environmental impact in the United Kingdom).

<sup>344</sup> See EUR. COMM'N, *supra* note 158, at 7 (explaining, in contrast to past policies, how "today's CAP is demand driven. It takes consumers' and taxpayers' concerns full into account.").