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DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT  
**The Director-General**

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**Ref.: CHAP (2015) 0089**

Dear Mr Boucaret,

Thank you for your letter of 6 December 2014 to Commissioner Hogan and registered under number CHAP (2015)0089.

In your letter, you ask for information on illegally cultivated areas on rural roads. You consider that some illegally cultivated roads are declared cultivated plots in France.

First of all, it should be underlined that the normal way to solve individual ad hoc problems regarding possession of agricultural land should be through national courts. Issues relating to land ownership or leasing fall under national competence. Please note also that there are no EU provisions relating to illegally cultivated areas on rural roads.

In the light of your comments, it should perhaps be useful to also note that in the event of a dispute arising on the meaning of a provision of EU Law it is, under the European Treaties, ultimately for the Court of Justice of the European Union to provide a definitive interpretation. In addition, you should take into account that a general reply can create confusion as the facts at stake and all the elements of the case are by definition not taken into account. It should be recalled that Member States are responsible for the correct implementation of EU rules in their territory and only the national authorities are in possession of the complete and necessary information on each of these cases. Our services' opinion cannot therefore be taken as a definitive interpretation on each of the cases at hand.

Subject to these reserves, I would like to clarify the EU legal framework mentioned in your letter.

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The EU legislation on direct payments<sup>1</sup> sets out the characteristics an 'eligible hectare' should have. In relation to your concrete example, it would be useful to point out that ineligible features such as man-made constructions (for instance buildings, roads, permanent paths part of a transport network etc.) have to be excluded from the reference parcel and, therefore, be considered ineligible area as far as direct payments are concerned.

In addition, the EU legislation on direct payments also mentions that eligible hectares shall be "at the farmer's disposal"<sup>2</sup> without making any specification relating to the nature of the legal relationship on the basis of which the area concerned is used by the farmer. In Case C-61/09 "Landkreis Bad Dürkheim"<sup>3</sup>, the Court concluded that the EU legislation on direct payments does not specify the nature of the legal relationship on the basis of which the area concerned is used by the farmer. It cannot be inferred from those provisions that the parcels in question must be at the farmer's disposal pursuant to a lease or other similar transaction. The Court said that the admissible contractual relationship cannot be limited to a "lease or similar transaction" because under the principle of freedom of contract, the parties are free to arrange the legal relationship on which use of the area in question is based.

In light of this, the paying Agency is not obliged by the EU legislation, when examining the aid application, to check whether or not there is a valid legal entitlement, ownership or contract, on the basis of which the possession is exercised. However, Member States should address doubtful cases where there are indications that the disposal of the land is unlawful. If this examination is conducted, on the basis of the national legislation, the national authorities cannot insist on a very specific legal relationship. In addition, their approach should be proportionate.

These cases should be assessed by the competent national authorities on a case-by-case basis and depending on this assessment these authorities should take the appropriate measures. Please note that you should distinguish between the issues relating to the granting of EU agricultural aid and those relating to the right of ownership and lease contracts. The latter issues fall under national competence and should be dealt with by the national competent authorities.

As regards the payment of the aid, it might be useful to recall that since the start of the arrangements governing the functioning of the Common Agricultural Policy (CAP), the Member States have been responsible for executing the rules of the CAP including payments to beneficiaries. As a consequence of their responsibility to protect the financial interests of the EU budget, it is for the Member States to take all the measures

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<sup>1</sup> Article 32(2) of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, J.O. L 347 du 20/12/2013, p. 608-670

<sup>2</sup> Article 33 of Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009, J.O. L 347 du 20/12/2013, p. 608-670

<sup>3</sup> Judgment of 14 October 2010, Landkreis Bad Dürkheim (C-61/09, ECR 2010 p. I-9763), ECLI:EU:C:2010:606

necessary to satisfy themselves that subsidies are granted correctly and to prevent and deal with irregularities<sup>4</sup>. As a result of this, disputes relating to the administrative handling of an individual case fall under the consideration of national authorities. Refusal to pay the aid following the examination of the legal title is decided on a case-by-case basis depending on the facts at stake which should be assessed by the national competent authorities.

As regards the granting of aid, it should be clarified that a farmer has to have agricultural land at his/her disposal and to exercise an agricultural activity, as defined by EU legislation, on such a land in order to receive direct payments. The farmer also has to respect the conditions established by EU legislation. It is important to distinguish this aspect from the issue of the alleged illegal occupation of land which should be assessed and dealt with by the national judge.

I hope this information replies to your question. Please note that your file is closed on the date of this letter. My services remain at your disposal for any further information on the Common Agricultural Policy.

Yours sincerely,



Pour le Directeur Général empêché  
**Rudolf MOEGELE**  
Directeur Général Adjoint

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<sup>4</sup> Article 58 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008, OJ L 347, 20.12.2013, p. 549–607).