(EC) No 2529/2001, as amended by Council Regulation (EC) No 319/2006 of 20 February 2006, must be interpreted as meaning that where, in the Member State in question, different per-unit values were fixed for hectares under pasture and for any other hectare eligible for aid under Article 61 of that regulation, a farmer who, on the reference date specified in that article, was under agri-environmental commitments pursuant to Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, forming part of seamlessly ongoing agri-environmental commitments which had the objective of converting arable lands into permanent pastureland, is entitled to request that the entitlements referred to in the first subparagraph of Article 59(3) of Regulation No 1782/2003, as amended by Regulation No 319/2006, be calculated on the basis of the per-unit values fixed for eligible hectares other than hectares under pasture;

2. Article 40(5) of Regulation No 1782/2003, as amended by Regulation No 319/2006, read in conjunction with Article 61 of that regulation, as amended, must be interpreted as meaning that only where there is a causal link between the change of use of an area from arable land to permanent pastureland and participation in an agri-environmental measure may the fact that that area was being used as permanent pastureland, on the reference date specified in Article 61 of that regulation, as amended, be disregarded for the purposes of calculating payment entitlements;

3. Article 40(5) of Regulation No 1782/2003, as amended by Regulation No 319/2006, read in conjunction with Article 61 of that regulation, as amended, must be interpreted as meaning that its application is not contingent on the farmer who makes the single payment application also being the person who introduced the change of use of the area in question.

7. Annotations

Comment on case C-240/09 Lesoochranárske zoskupenie VLK: Access to justice in environmental matters: new perspectives (see page 402)

by Ludwig Krämer

This judgment will re-open the discussions on access to the courts in environmental matters. The present situation, in the European Union, may—in a
simplified way and without differentiating between the 27 EU Member States—be described as follows: the enforcement of environmental legislation is put almost entirely into the hands of the administration. Individual citizens and environmental organisations have limited access to the courts. Numerous barriers, such as the length and cost of procedures, the necessity to prove a sufficient interest or even the impairment of a right, the burden of proof, the absence of possibilities to ask for injunctive relief etc, further reduce the possibility for citizens to ensure the application of environmental law. Private polluters can only rarely be pursued, and the possibility of action against public administrations is more than exceptional.

The Court’s judgment concerns the understanding of Article 9(3) of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters. This Convention was approved by the EU in 2005. Article 9(3) reads: “..each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment”.

A Slovak environmental organisation wanted to oppose a decision by the Slovak administrative authorities which granted a derogation to the protection status of areas for the brown bear. As it had no standing under Slovak law, it argued that Article 9(3) of the Aarhus Convention was of direct effect and allowed it to bring the case to the Slovak court. The Slovak court asked the ECJ for a preliminary ruling.

The EU Court of Justice first had to discuss the problem, whether it was competent to answer that question. The Court answered in the affirmative, contradicting in this the opinion of Advocate General Sharpston in the same case. Mrs. Sharpston had been of the opinion that the EU had not yet legislated on access to justice in environmental matters; therefore, Member States were alone competent to decide, whether Article 9(3) could be relied upon before their national courts (direct effect).

In contrast to that, the ECJ held that the case concerned the protection of the brown bear which was regulated by EU Directive 92/43. The issue came thus under EU law, since “it relates to a field covered in large measure by it” (paragraph 40). Furthermore, the EU had partly legislated in this area, by adopting Regulation 1367/2006 which concerned the application of the Aarhus Convention by EU institutions and bodies. As Article 9(3) could apply both to situations falling within the scope of national law and falling within the scope of EU law “it is clearly in the interest of the latter that, in order to