

Recreational Access to Agricultural Land: The European Experience

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I. INTRODUCTION

In many European countries, public access to the countryside for recreational and sport uses has become an important issue, especially since the Second World War. The purpose of this Article is to describe European law on the right of public access to the countryside and the means employed by legislatures and administrative agencies to enlarge the right of access in order to meet the increasing demand of the urban population for recreational opportunities.

This Article deals only with public access to privately owned farmland, including forests belonging to farms and watercourses and lakes in agricultural regions. Public access to public lands, to large forest estates, and to the sea and beaches will not be discussed, and only the most important rules will be mentioned.

II. THE COUNTRIES

Of course, discussing the law of every European country is beyond the scope of this Article; therefore it is limited to the law in England and Wales, France, and three Scandinavian countries, Denmark, Norway, and Sweden. In this way, three legal "families" of Europe are represented in the Article: Common Law, Civil Law, and Scandinavian Law.

To understand the different approaches taken by these countries, it is first necessary to appreciate a few of the differences between the countries themselves. One extreme is Denmark with sixty-five percent of the whole country reserved for farming with intensely cultivated fields (mostly cereals and cash crops) and with comparatively few forests and uncultivated areas left for recreation and sport. Another extreme is Norway and Sweden where only three percent and ten percent of the total area is used for farming. The rest of the country consists mostly of forests and mountainous areas, many of which are publicly owned.

In between are England and Wales, where seventy-five percent of the countryside is farmland. However, unlike Denmark, two-thirds of the farming area is hilly with rough grazing where the presence of the

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public might cause less harm. Additionally, more uncultivated areas exist in England and Wales.

France is characterized by great differences in climate, geography, and farming. This Article primarily addresses the situation in the Mediterranean region of Languedoc-Roussillon. This area consists of mountains (les Cevennes) with a very feeble farm production and plains with a subtropical climate and both large and small vineyards producing forty percent of all French wine and quantities of fruits and vegetables. Near the coast, there is a fast growing tourist industry and an expanding urban area (Montpellier) which increase the demand for public access to the countryside for recreational purposes.

III. THE LAW ON PUBLIC ACCESS TO PRIVATELY OWNED FARMLAND

In all four countries, the basis of land law is private ownership, but property rights are more or less restricted in order to secure public access to the countryside.

A. Denmark

Let us turn to the first of the two extremes mentioned above: In Denmark,¹ the farmer is generally master of his own land. Access to his land requires his permission regardless of whether the land is fenced or has crops. The public may use private roads on his land, but the owner can bar them with a gate, forbid passage with a signpost, or even plow them.

These rules, laid down in a 1953 statute,² have roots back in the eighteenth and nineteenth centuries when the old feudal system and village communities were abolished by a land reform which also included the transfer of ownership from the large landed estates to the tenants. A new class of independent farmers became owners of their land and wished to farm the land in peace and use new methods of cultivation — undisturbed by neighbors and strangers.

However, the Danish Nature Conservation Act³ created exceptions to the rules mentioned above. For example, in the daytime hours, people may walk across the farmer's uncultivated land if it is not fenced. They may also use the roads of his forests (above five hectares), but may not

1. The law on public access to the countryside in Denmark is discussed in: W.E. VON EYBEN: *DANSK MILJORET*, I-V (GAD, 1977-78); W.E. VON EYBEN: *MILJORETTENS GRUNDBOG* (AKADEMISK FORLAG, 1986); KARNOVS *LOVSAMLING*, II OG III, 1989; HELGE WULFF: *LANDBORET* (DSR, 1979); and HELGE WULFF: *SKOVLOVEN* (LANDBRUGSMINISTERIET, 1970).

2. Lov om mark og vejfred, lovbekendtgørelse nr. 818 af 11.12. 1987.

3. Lov om naturfredning, lovbekendtgørelse nr. 530 af 10.10. 1987.

roam about in the forest, nor ride a bicycle or a horse, nor drive a car in the forest or on the roads of the forest.

According to the Watercourse Act,⁴ lakes and waterstreams with more than one riparian owner are also open for sailing and canoeing, but motorboats are not permitted. The right to fish and hunt on watercourses and lakes belongs to the riparian owners.

B. Norway and Sweden⁵

Let us go to the other extreme: Norway and Sweden. These countries, which in contrast to Denmark are sparsely populated, always have had a customary law — *allemannsretten* — according to which the public has a right of access to privately owned land. In Norway, this customary law has been given a more explicit formulation in a statute: The Open Air Recreation Act of 1957.⁶ This statute distinguishes between cultivated and uncultivated land.

Anyone may walk on cultivated land between October 15 and April 30, provided the ground is frozen or covered with snow. Of course, there are exceptions with respect to farmyards, gardens, and similar areas. The farmer also may prohibit any passage that might cause significant damage. Camping, picnicing, sunbathing, and staying overnight is not permitted without the owner's consent.

On uncultivated private land, the public has a right to walk year-round, but riding a horse or a bicycle and sledding are permitted only on roads and in mountains. Camping and picnicing are allowed but only for periods not longer than two days.

A landowner always can forbid the use and parking of motor vehicles on his private roads. The public has no right to fish or hunt in waterstreams and lakes. In addition, sailing is allowed only on navigable waters.

In Sweden, the "*allemannsrett*" is still customary law, but it is also the background to dispositions in various statutes, including the Criminal

4. Lov n.r. 302 af 9.6. 1982 om vandløb.

5. This Article relies on the following literature on Norwegian law: FRILUFTSLOVEN, HVA LOVEN TILLATER OG FORBYR, UTGITT AV STATENS FRILUFTSRAD, MILJOVERNDEPARTEMENTET; THOR FALKANGER: EIERRADIGHET OG SAMFUNNSKONTROLL (Universitetsforlaget, 3. udgave, 1985); and St. MELD. NR. 40 (1986)-87), OM FRILUFTSLIV, TILRADING FRA MILJOVERNDEPARTEMENTET AV 3. APRIL 1987, GODKJEND AV STORTINGET. The Article relies on the following literature on Swedish law: ALLEMANNSRATTEN, STATENS NATURVARDVERK, MEDDELANDE 3/1979; BERTEL BENGTSOON: ALLEMANNSRATT OCH MARKAGARSKYDD, (2. uppl., Stockholm, 1966); BERTEL BENGTSOON: SPECIELL FASTIGHETSRAATT (Justus Forlag, Uppsala, 1979); INGVAR CHRISTOFFERSEN OG ERIK SAMUELSON: ALLEMANNSRAT - NATURVETT, (LTs forlag - LTk); and various papers and pamphlets from the Swedish Nature Conservancy Agency.

6. Lov af 28. juni 1957 om friluftslivet (med senere endringer).

and Nature Conservation legislation.⁷ Swedish law is similar to Norwegian law, but usually is presented in this way: You may walk, ride, or cycle on all private land with two very important exceptions: You have no access to the area near inhabited buildings, and you must not disturb the peace or in any way interfere with the farmer's right to use his land for farming or for any other kind of production or cause any pecuniary loss or inconvenience to the farmer. Consequently, the public has no right of access to cultivated land unless it is frozen or covered with snow. Camping and picnicing is allowed only for short periods depending on how much it interferes with the farmers' right to peace and a clean area. The owner always can forbid the use of motor vehicles on private roads.

The public has no right to hunt or fish on the farmer's property. There is a public right to sail and bathe in rivers, waterstreams, and lakes.

C. *England and Wales*

In England and Wales,⁸ the law is different from Norwegian and Swedish law. Common law does not recognize a general public right to use private land for recreation.

Throughout history, however, England and Wales have possessed a network of roads and paths to which the public has a right of way recognized by common law. Various statutes contain rules on the maintenance, modification, and closure of such roads that extend 190,000 kilometers.⁹

In England and Wales, three kinds of highways are recognized: footpaths, bridleways, and byways open for all traffic.¹⁰ A footpath is a highway over which the public has a right of way on foot only. A bridleway is a highway on which the public has a right of way on foot and on horseback. Riding of bicycles is allowed on bridleways, but cyclists must give way to pedestrians and persons on horseback. A byway open for all traffic is a right of way for vehicular and all other kinds of traffic, but is used mainly for the purposes for which footpaths and bridleways are used.

7. BERTEL BENGTTSSON, *ALLEMANNSRAT OCH MARKAGARSKYDD* (2. upp. Stockholm, 1966).

8. This Article is based on the following literature on English law: *ACCESS TO THE COUNTRYSIDE FOR RECREATION AND SPORT, REPORT TO THE COUNTRYSIDE COMMISSION AND THE SPORTS COUNCIL BY THE CENTRE FOR LEISURE RESEARCH* (1986) [hereinafter *ACCESS STUDY*]; *CLERK AND LINDSELL ON TORTS*, Common Law Library No. 3 (Sweet and Maxwell, London, 1989); J. FLEMING, *AN INTRODUCTION TO THE LAW ON TORTS* (1985); Papers and Booklets edited by the Countryside Commission (CCP No. 186, 227, 234, 235, 259, 265, 266, 273) and publications on the new Rights of Way Act of 1990.

9. *ACCESS STUDY*, *supra* note 9, at 82.

10. Wildlife and Countryside Act (1981).

Some highways were created in past centuries by the local population. Some are expressly dedicated by the landowner or established by local authorities for reasons other than recreational uses. Some are prescriptive rights — that is, they have come into existence according to the rules of common law because they have been used frequently and openly by the general public as a right for more than twenty years without the landowners' interruption or objection.¹¹

Highways are maintained¹² by the highway authorities or by the local authorities; however, a landowner can never, by dedication, compel the authorities to maintain a road. Most highways are recorded in so-called "definitive maps and statements" held by the local councils.¹³ If a right of way is shown on a definitive map, it is conclusive proof of its existence in law. If a road is not shown on the map, it still may be a public right of way.

Highways alone are not sufficient to meet the needs of campers and picnickers. These persons need access to larger areas, not just the right to walk along a road. Some heaths and moorlands are traditionally open to the public. In all other areas, access requires the farmer's permission. Many farmers allow the public to enter their lands so long as no harm will occur.¹⁴

The banks and beds of rivers, waterstreams, and lakes usually are owned by private riparian owners who by common law control the use of the water and whose permission is required for sailing, canoeing, and other water activities. Common law, however, also recognizes a public right of access based on "immemorial use," usually at least forty years. Some waters, which by statutes are classified "navigable," are open to the public for recreation and sport.¹⁵

*D. France*¹⁶

Under French law, access to property normally requires the owner's permission. According to French authors, this is a consequence of Code

11. Wildlife and Countryside Act 1981; ACCESS STUDY, *supra* note 8, at 72-73.

12. Highway Act (1980).

13. Wildlife and Countryside Act (1981).

14. ACCESS STUDY, *supra* note 8, at 73.

15. ACCESS STUDY, *supra* note 8, at 95, A. TELLING & R. SMITH, THE PUBLIC RIGHT OF NAVIGATION, A REPORT TO THE SPORTS COUNCIL AND WATER AMENITY COMMISSION (1985).

16. This Article is based on the following literature on French law: M. BOUTELET, UN REGIME JURIDIQUE POUR LES CHEMINS DE RANDONNEE PEDESTRE (Revue juridique de l'environnement 1984.291); Code de l'environnement, redige par Jean Lamargue (3d ed. Dalloz 1990); J.-L. GAZZANIGA, ET J.P. OURLIAC, LE DROIT DE L'EAU (Litec 1979, Supp. 1987); J.-Y. PLOUVIN, LA PROTECTION DES VOIES DE CHEMINEMENT OU LE DROIT A LA

Civil Articles 544 and 547.¹⁷ According to Article 544, a property owner can "dispose of his property in the most absolute manner," and Article 547 gives a landowner the right to "clore" (enclose) his land with a fence or hedge.

Private roads running across a farmer's land generally are closed to the public. There are some roads and paths (*chemins et sentiers d'exploitation*) that adjacent farmers are given the right to use. These roads belong to the owners of the adjacent land, but they are maintained by all users according to their interest in the road. The users may bar the public from using the road.

Of course, this does not mean that the public is prohibited from visiting the countryside. People may use the public roads (*voies publiques*). A number of "country roads" (*chemins ruraux*),¹⁸ originally created for agricultural purposes or to serve as a means of communication between farms, are frequently found in the French countryside. These roads are open to the public without the landowner's consent. The country roads are owned by the municipality which can sell them, often to the owners of the adjacent land. These adjacent owners sometimes acquire the roads by prescription.

As a general rule, the beds and banks of watercourses and lakes belong to the riparian landowners,¹⁹ who also have the exclusive right to use the water for irrigation, drainage, hunting, fishing, and sailing. The riparian owners also can forbid public access and use of the watercourse or lake.²⁰

A landowner can transfer his fishing rights to a local authorized fishermen's club. In that case, the club acquires a right of passage along the shore of the watercourse on the condition that it covers any damage to crops caused by the traffic.²¹ The general public normally has no special right of access along watercourses and lakes.

Some watercourses and lakes are classified as what might be called "navigable waters" (*'cours d'eau et lacs domaniaux'*).²² The public has the right to use them for sailing, fishing, and, to some extent, walking along the shores.

PROMENADE, *Gazette de Palais* 1977.1.281; Starck, Boris: *Droit Civil, Obligations*, 1. Responsabilite delictuelle (par Henri Rolland et Laurent Boyer, 3. 3d. Litec 1985); A. WEILL, *TERRE. AND P. SIMLER, DROIT CIVIL, LES BIENS* (3d ed. Dalloz 1985).

17.

18. Code Rural Art 59-71.

19. Code Rural Art. 89.

20. Code Civil Art 644; Code Rural Art 98-3, 105, 365, 422.

21. Code Rural 423, 424, loi no. 84-512 du 29. juin 1984.

22. Code du Domaine public fluvial et de la navigation interieure.

IV. THE RESPONSIBILITY OF FARMERS

A. Penalties

A farmer who violates the public's right of access, may commit a criminal offense. Under Norwegian and Swedish law, a farmer risks a fine if he violates the "Allemannsrett" by fencing an area open to the public.²³

B. Removal of Obstructions

If the farmer obstructs the passage of a road to which the public has a right of access, people may ignore the obstruction if possible. They may also remove the obstruction if it can be done without harm to the property. Otherwise, the only remedy is complaining to the proper administrative agencies which can take the steps necessary to get the obstacle removed.

Obstruction of a highway seems to be a problem in England and Wales where the plowing and cropping of smaller highways often occurs. Twenty-six percent of the length of all footpaths in England and Wales are said to be out of use due to plowing or obstructions of various kinds. However, the law permits the farmer to plow a footpath or bridleway if it is in accordance with good husbandry to do so together with the surrounding field.²⁴ Generally, the path must be restored within fourteen days although sometimes as little as twenty-four hours is given for restoration.²⁵

C. Liability

If a member of the public is injured from his passage on private farmland, the farmer may be liable.

1. *Scandinavia*.—Under Scandinavian law, the landowner may be liable according to the so called "rule of culpa." The rule of culpa is a "judge-made law" according to which a person must pay damages if he intentionally or negligently causes a pecuniary loss to another (provided the negligent party has violated an interest that the law intends to protect).

The question is, of course, what the law understands by "reasonable care." There are very few court decisions in this area, but the landowner has a special duty to protect people that he has permitted to enter his land, such as hunters and fishermen.

23. See, e.g., § 40 in the Norwegian lov af 28. juni 1957 om friluftslivet.

24. Right of Access Act (1990).

25. Highway Act (1980), modified by Right of Way Act (1990).

The farmer also has some duties to trespassers. If he actually knows that people have entered his land, he must warn them if he realizes that they are likely to be injured from animals, hunting, or felling of trees. If he knows that trespassers often use part of his land, such as for a short cut from a bus station to their homes, he must take care that they are not harmed from the felling of trees, excavation, and so forth.

As mentioned above, the Danish Nature Conservation Act gives the public a statutory right to walk across uncultivated areas and to use forest roads on foot.²⁶ According to this statute, people enter the land at their own risk. Nevertheless, even if the act is silent on this point, it is safe to assume that the landowner must warn the public against special dangers. If the landowner makes special arrangements for the public, such as for a toboggan run or a jogging path, he also has a special duty to take care that they do not present any risk to people who use them.

2. *England and Wales.*—Originally, common law in England and Wales distinguished between invitees, licensees, and trespassers. American law adopted these distinctions. The common law rule in England and Wales has been supplanted by the Occupiers Liability Acts 1957 and 1984.²⁷

The courts found it difficult to place people into one of the three categories. So the 1957 Act puts invitees and licensees in one category called visitors. This group includes anyone the occupier has given an invitation or permission to use his land. The statute does not cover public or private rights of way. Travelers must take the road as they find it.

The occupier owes a visitor the duty to take such care as is necessary to see that the visitor is reasonably safe in using the premises for the purpose for which he is invited or permitted to be on the land.

The 1957 Act does not include the third category found in the common law: the trespassers. According to the common law rule, the landowner generally was not liable for damages suffered by trespassers. That rule was found to be too harsh. The common law rule was supplanted by the Occupiers Liability Act 1984.²⁸ According to this statute, the occupier may be liable to pay damages to trespassers who suffer injury on his premises by reason of any danger "due to the state of premises or to things done or omitted to be done to them."²⁹

For the occupier to be liable, the statute requires that he must be aware of the danger or have reasonable grounds to believe that it exists.

26. See *supra* note 3 and accompanying text.

27. Occupiers Liability Acts (1957 & 1984).

28. Occupiers Liability Act (1984).

29. *Id.*

He must also know or have reasonable grounds to believe that the trespasser is in the vicinity of the danger. Finally, the risk must be one for which the occupier may reasonably be expected to offer the trespasser some sort of protection. The author of this Article has been unable to obtain information on court decisions regarding to the Occupiers' Liability Acts 1957 and 1984; however, they seem very close to the culpa rule of Scandinavian law.

3. *France*.—Under French law, there is no special legislation on the owner's liability. According to Code Civil Article 1382 and 1383, a person is liable for damages if he causes a loss to somebody by "faute," either intentionally or negligently. According to Article 1384, an owner must pay damages for losses inflicted by "things," including real property, in his care. This is a rule of strict liability. A landowner probably would be liable according to Article 1384 if someone on his land is hit by a falling tree or hurt by an electric installation which through no fault of his own is out of order. If the damage is done by domestic animals, such as a roaming bull, the owner is responsible according to a rule of strict liability in Article 1385.

These rules apply also to the landowner's liability for injury suffered from persons on his premises. However, with respect to trespassers, damages might be reduced because a trespasser may be said, to a certain extent, to have created his own injury.

V. THE LIABILITY OF THE PUBLIC

Evidently, members of the public have some duties to the farmer whose land is entered. Those duties might be stated in a very detailed manner in statutes, ministerial orders, bylaws of nature reserves, or contracts between a farmer and hunters, fishermen, or others whom he has permitted to enter his land.

If members of the public breach these duties, they are liable for damages — in England and Wales usually according to the law of torts, in Scandinavia according to the law of culpa, and in France according to Code Civil Article 1382 and Article 1383. In all countries there is a legislation on strict liability for damages caused by dogs.

Violation of the public's duties to the landowner might also be a criminal offense. Arson, poaching, wanton destruction of property and stealing crops, fruits, lumber, and the like are crimes anywhere.

Picking flowers for personal use and picking berries or mushrooms for consumption on the spot or for noncommercial purposes is usually not an offence unless the owner forbids it. Still, this has caused conflicts between landowners and visitors in all countries, for instance in Languedoc-Roussillon and other parts of France where people often collect mushrooms, chestnuts, and snails thereby depriving the landowners of an income.

Trespass to land is a criminal offense under Scandinavian Law, but not under English Law where it is only a tort that entitles the occupier to damages. The landowner may obtain an injunction against trespassing from the court. He may even eject the trespasser using such force as is reasonably necessary.

VI. MEANS OF PROVIDING ACCESS FOR THE PUBLIC

In Europe, as in the United States, the problems of public access to the countryside are becoming more and more acute. The demand for public access started in the last century. In England, this demand can be traced to the early 1820s.³⁰ At first, only a few people were interested. However, when industrialization began and the population moved from the countryside to the towns, more people felt the need to escape from the dullness and squalor of cities and factories, and to spend their spare time in the countryside.

In the twentieth century, working people received higher salaries and longer holidays, and the interest in sports increased. The number of recreationists grew, as did the conflicts between the sports enthusiasts and the farmers and landowners. This was the case even in Norway and Sweden. Landowners feared, sometimes with good cause, the effects of increasing public access to their land.

The problem of recreation in the countryside might have been considered a private matter between recreationists and landowners. However, recreationists created powerful organizations to protect their interests and to act as political pressure groups. Governments in all five countries made it public policy to encourage and promote recreation and sport and to provide access to the countryside for every member of the community, not only for special user groups or high income groups who can afford to pay for access. That also has been the view of the Council of Europe and the Scandinavian Council.³¹

Which mechanisms have been employed to accomplish their goal? Consider the responses of England, Wales, Denmark and France.

A. *Compulsory Measures*

Generally, compulsory measures are rarely used in England, Wales, and France, while they are more common in Denmark.

1. *Statutory Rights of Access*.—According to the Danish Constitution of 1953, the taking of property for public use entitles the owner

30. ACCESS STUDY, *supra* note 8, at 9.

31. Council of Europe, European Sport for All Charter, Resolution (76)41, Sept., Council of Europe 1976 and Friluftsliv i Norden, Nordisk Ministerrads sekretariat i Oslo, 1982.

to full compensation. However, when a whole category of land, such as beaches or forests, is submitted by a statute to certain restrictions, it is usually not considered a "taking" under Scandinavian law. The landowner has no constitutional right to compensation for the loss caused by the statute.

Many countries have used this type of mechanism. In Denmark, statutes on nature conservation opened the beaches for public access in 1935, 1937, and 1969. Similarly, in 1969 uncultivated areas and roads in forests above five hectares were opened to the public.

When the Danish Nature Conservation Act was passed in 1969, some landowners sued the government for compensation according to the provisions of the Constitution. However, the courts upheld the statute as a general regulation of property rights not protected by the Constitution.³²

The opening of the forests, however, which to a large extent are situated on private farms, was done without the necessary negotiations with the owners. For some time, relations between the owners and the authorities were strained.

In 1989, the government proposed a new statute to open roads and paths on farmland for the public. A farmer will only have the right to close a road if he thinks that access will cause a nuisance, and a local authority can order him to open the road again if there is not a sufficient reason to close it. This time the bill has been negotiated with the landowners. The farmers' unions seem inclined to accept the bill while recreationists perhaps feel that the bill is too weak.³³

2. *Rights of Access Created by the Decision of an Administrative Agency.*—Administrative agencies may be empowered to submit a particular area to an easement, thereby giving the public a right of way over the land. The agencies may even have the power to order a farmer to cede a piece of his land to public authorities for the creation of a camping site or a parking lot.

In England and Wales, statutes empower local planning authorities to issue access orders to ensure public access to private land for open-air recreation when an agreement with the owners is impractical or inadequate.³⁴ Their decision is subject to the secretary of state's approval. As a general rule, access orders cannot include cultivated land. Access orders seldom have been used due to the reluctance of local authorities to resort to compulsory powers to protect recreational uses.³⁵

32. UGESKRIFT FOR RETSVAESEN (DANISH L. REV.) 1972 p. 189, 1972 p. 192 and 1972 p. 603 (1971 p. 666).

33. Forslag til lov om naturbeskyttelse (Folketingstidende 1990/91 Tillaeg A.

34. National Parks and Access to the Countryside Act (1949), Countryside Act (1968).

35. ACCESS STUDY, *supra* note 8, at 76, 109.

In Denmark, local nature conservation boards have the power to create public rights of way over private land and even to acquire land against the will of the landowner for recreational purposes. Under Danish law that is a "taking" which gives the landowners the right to full compensation.³⁶ This mechanism is often used because agreements with farmers may be difficult to obtain, and a whole network of footpaths might be useless if just one farmer refuses to allow a path on his land.

According to a new statute of 1989, the Danish Government, and county and municipal councils are empowered to acquire land by eminent domain when it is necessary to improve the local population's opportunities for recreation and sport.³⁷

In France, the authorities have the power to create public rights of way by means of eminent domain, but this rarely happens.³⁸ The county also has the power to acquire land by eminent domain for recreational purposes according to the Urban Planning Act.³⁹ Compensation is paid with the help of the "green tax," which is discussed below.

B. Voluntary Arrangements

The best way to increase public access to the countryside is to obtain the consent of the farmers and landowners. In all of the five countries discussed, recreational and sporting organizations purchase or lease land for scouts' cabins, golf courses, and camping sites, or they purchase or lease shooting and fishing rights. In Denmark, according to the Nature Conservation Act of 1969 and the Nature Management Act 1989, public authorities may purchase land in the open market to create public parks and picnic and recreational areas. However, the success of this instrument depends on the budget of the authorities. Experience has shown that the budget is often reduced in times of crisis.

In England and Wales, the statutes empower local authorities to enter access agreements — legal agreements with farmers and other landowners — in order to secure public recreational access to their land. The access agreements have been used to some extent, but they do not include cultivated farmland.

The local authorities also have the power to enter management agreements with farmers.⁴⁰ The management agreements contain restrictions on the methods of cultivation of the land and its use for agricultural purposes. These agreements, above all, serve nature conservation, but they may also ensure public access to the area in question.

36. Nature Conservation Acts (1917, 1937 and 1969).

37. Lov nr. 339 af 24.5.1989 om naturforvaltning.

38. Loi no. 85-30 du 9, janvier 1985 art 53, 54.

39. Code de l'urbanisme. L 142-2, L 142-5.

40. The Wildlife and Countryside Act (1981).

In France, the counties are empowered to enter into contracts with private landowners about opening private roads to the public. Contracts with farmers typically are extended for one year only. Considering the short duration of the contracts, the farmers of Languedoc-Roussillon do not seem to mind renewing them year after year.

The county may also pay a landowner to create an easement giving the public a permanent right to use a road over his land. The landowner is paid from the "green tax."

Each county has produced a county map (plan departemental) showing all roads and paths in the county that are open to the public. The map shows the ordinary public roads (voies publiques), county roads (chemins ruraux), and private roads and paths open for public access according to a contract between the owner and the county council.⁴¹

The French Urban Planning Act empowers the county to levy a special tax called the green tax (la taxe des espaces naturels sensibles) on building activities in order to obtain money for nature conservation and recreation. With this money, the county can buy land for recreational purposes in special zones. The county may use a right of preemption, but usually it acquires the land in the free market. In Languedoc-Roussillon, the green tax is used in a great number of municipalities.

C. *Financial Incentives*⁴²

England has attempted exemption from taxation under the provisions of the Finance Acts 1975 and 1976.⁴³ However, the exemption has only applied to national heritage land of the highest quality, not ordinary farmland.

In France, income from agricultural activities is taxed at a lower rate than income from other commercial activities. Up to a certain point, a farmer's income derived from operating or creating a camping site or a country inn is considered agricultural activity income and not commercial income.

In France, the county also pays subsidies to farmers who wish to create a camping site or a country inn. As a rule, the county pays twenty-five percent of the expenses within a certain maximum, depending on whether the farm is situated in a wine growing region, in the mountains, or in zones classified as "less favoured areas."

In Languedoc-Roussillon, groups of farmers can obtain aids for the same purposes from special programs that the European Communities

41. Loi no. 83-663 due 22. juillet 1983 art. 56, circ. 30. aout 1988 (J.O. 10. dec.).

42. The information on French Law in this section is received during an interview in the county council of Herault, Languedoc-Roussillon.

43. ACCESS STUDY, *supra* note 8, at 77.

have created to help farmers in Southern Europe (Programmes Integres Mediterraneens). Usually, thirty percent of the expenses are covered up to a maximum of thirty-five thousand francs.

When the roads in the forests of Denmark were opened to the public in 1969, the Ministry for the Environment and the Danish Forestry Union entered an agreement according to which the government would insure against damage from fire, theft, and destruction of property caused by visitors. The agreement covers damage to plants and trees, buildings, machines, and instruments used for forest management. This arrangement has cost the taxpayers very little, and it has done much to restore good relations between the landowners and public authorities.

D. Limitations of the Farmer's Liability

Farmers, especially farmers near urban areas, are often worried about their liability for injury to visitors on their land. In America, several states have tried to solve this problem through recreational use statutes according to which owners who open their land to the general public for recreational purposes without charge are not liable for injuries the users suffer due to the condition of the premises.⁴⁴ In England, landowners have a right to exclude liability except when the landowner's business is to provide recreation and sport for the public.⁴⁵ Similar legislation does not exist in Denmark or in France.

E. Education of Visitors

Many landowners are reluctant to open their land for public access because of the ignorance of visitors who, without realizing it, might cause significant damage by trampling down crops, lighting fires in dry plantations, and "dog-worrying" of sheep. However, governments, local authorities, and organizations are aware that increasing public access should be accompanied by an understanding of the farmers' problems. Schools, organizations, local councils, and government agencies (including the English Countryside Commission) try to educate the urban population and teach the public how to behave in the countryside.

VII. FINAL REMARKS

In Europe, the demand from the urban population for recreational access to the countryside has increased dramatically, especially since the

44. Becker, *Legal Liability Associated with Profitable Resource-Based Recreation on Private Land Legal Issues*, National Center for Agricultural Law Research and Information, School of Law, University of Arkansas, Fayetteville.

45. Occupiers Liability Act (1984).

last World War. Quite naturally, there is a widespread suspicion among landowners and farmers concerning the whole issue of increasing public access to their premises. However, private organizations and sport clubs often attempt to buy or lease land or purchase hunting and fishing rights.

More importantly it has become government policy to try to meet the demand for access to the open country and to make sure that all groups have the opportunity to use the countryside for recreation and sport. Governments use a whole range of instruments to carry out this policy. Voluntary solutions such as the purchase of land in the open market and access agreements combined with financial incentives are usually preferred. Sometimes it is considered necessary to use compulsory measures, including eminent domain. This is especially true in Denmark where there are very few recreational areas.

In all countries, administrative agencies and private organizations try to teach visitors about the problems of the rural population. Experience from Norway and Sweden shows that public access to the countryside need not influence farm production or disturb the peace of the countryside.

