ADDENDUM TO DELIVERABLE 3

Final Report:
Data and information on agricultural land market regulations across EU MS

COUNTRY REPORTS

"Agricultural land market regulations in the EU Member States”

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ADDENDUM TO DELIVERABLE 3

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THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR AUSTRIA

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Agricultural land market regulations in Austria around 2020

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1. Introduction

According to the last agricultural census in 2016 (Eurostat 2020, BMLRT 2020), the average farm in Austria manages 19.8 hectares (ha) of utilized agricultural area (UAA) (plus 17.9 ha wooded land). Compared to the other 27 Member States (MS), this is above the EU average, with 13 MS having larger average farms and 14 MS having smaller average farms. Compared to the EU-15 MS, only Spain, Portugal, Italy and Greece have smaller average farms sizes. About 48% of farms in Austria have less than 10 ha UAA and only about 2% have more than 100 ha UAA. As a consequence, there is a high share (>55%) of part-time farms. Moreover, 96% of all farms are family farms (with > 50% of regular labour from family members) and about 82% of the sector’s workforce are farm-family members. Hence, Austrian agriculture can be described as being dominated by small to medium-sized, family-farms with a large share operating part-time. It has a smaller structure than most of the EU-15 MS, except Southern countries, but is larger structured than most of the newer MS (except Czech Republic, Estonia and Latvia).

Similar to all other MS, total UAA has steadily declined, on average by about 1.2% per anno between 1995 (the year Austria joined the EU) and 2016. Austria’s UAA is made up of arable land (50.3%) and permanent grassland (47.1%), to almost equal shares. Given the topographical characteristics of the country, with the Alps in the West and the South, foothills and hilly areas in the North and flat areas in the East and Southeast, availability of land and natural production conditions (e.g. soil quality, rainfall, steepness, temperature) are very heterogeneous. For example, the share of arable land in total UAA is 78% in Lower Austria and 87% in Burgenland, but only between 3% and 4% in Tyrol, Vorarlberg and Salzburg. More than 63% of all farms are operating in areas classified as disadvantaged, most of them (50% of all farms) are classified as ‘mountain farms’ operating in alpine regions or hilly areas with steep fields. The largest group of farms, beside forestry farms (31%), are forage farms (36%) (including milk and cattle farms), followed by cash crop farms (13%) and mixed farms (7%). Almost 20% of UAA is farmed organically.

As in many other EU countries agricultural land sales markets are relatively thin. Fankhauser et al. (2016) report, based on data from IMMOunited Gmbh,¹ that on average 6,500 sales transactions, transferring 7,200 ha of agricultural land, were conducted per year between 2010 and 2012. This means that only 0.25% of total UAA are transferred each year. This number is very similar to the 0.20% and 0.60% reported by Salhofer and Feichtinger (2020) for neighbouring Bavaria and Germany, respectively. Low percentages of sales transaction,

¹ IMMOunited Gmbh is a provider of cadaster data.
below 1% of total UAA, are also reported by Ciaian et al. (2016) for France, Greece, Spain and Sweden.

Fankhauser et al. (2016) also report average sales prices for arable land for all of Austria between 33,250 €/ha in 2006 and 39,034 €/ha in 2014. Interestingly, sales prices for permanent grassland are not much lower and vary between 30,164 €/ha in 2006 and 32,334 €/ha in 2014. However, there are large regional differences. In 2014, the average price for arable land was by far highest in mountainous Tyrol with 114,751 €/ha and lowest in the flat region of Burgenland with 15,261 €/ha. Permanent grassland prices are comparably dispersed, with highest values in mountainous regions of Salzburg (77,398 €/ha), followed by Tyrol (68,770 €/ha) and Vorarlberg (59,463 €/ha) and lowest in lower areas of Lower Austria (14,360 €/ha) and Upper Austria (21,144 €/ha). If we compare these numbers to sales prices of agricultural land given for other 22 MS in Eurostat (2018), it becomes obvious that Austria is a high-price country, comparable to Italy and only outpaced by the Netherlands.

Given a decreasing amount of UAA available, growing farm size and thin land sales markets, agricultural land renting has gained importance over the past decades. According to Holzer et al. (2013) the amount of rented land has almost tripled between 1960 and 2010. Most farms (69.6%) rented at least some land and 6% of farmers were full tenants renting all their land in 2012. Since Austria joined the EU the rental share increased from 22% in 1995 to 35% in 2014 (Fankhauser et al. 2016, Feichtinger et al. 2014). However, rental shares and their dynamic vary considerably between regions. The rental share was for example 25% in Tyrol and 62% in Burgenland in 2010. Between 1995 and 2010 the rental share increased by 19% in Vorarlberg, but only by 10% in Salzburg (Fankhauser et al. 2016). The share of rented land varies also between arable land (43.8%) and permanent grassland (32.7%) (Statistik Austria 2010, BMLFUW, 2013). If we compare the rental share in Austria of 28% in 2007 with numbers given by Ciaian et al. (2011) for eleven ‘Old’ MS and nine ‘New’ MS in the same year, six countries have lower rental shares and twelve have higher rental share (and Italy has the same).

Fankhauser et al. (2016) and Feichtinger et al. (2014) use data from FADN farms to calculate rental prices. Between 2000 and 2014 rental prices for arable land increased from 242 €/ha to 358 €/ha, i.e. by 48% in total or 2.8% per anno. During the same period permanent grassland prices increased in a very similar manner from 132 €/ha to 196 €/ha, i.e. by 49% in total and 2.9% per anno. In a questionnaire survey with 344 arable farms from the FADN sample in 2018, Leonhardt et al. (2019) recently found a median rental price for arable land of 300 €/ha. According to Eurostat (2018), Austria had the third highest rental prices of the twenty MS for which data was available in 2016. However, average rental prices for arable land and permanent grassland vary considerably between regions (Fankhauser et al. 2016). In 2014, rental prices for arable land were almost 500 €/ha in Styria, Salzburg and Tyrol, but below 200 €/ha in Vorarlberg and 226 €/ha in Burgenland. Rental prices for permanent grassland were highest in Salzburg (350 €/ha), followed by Tyrol (272 €/ha), and lowest in Lower Austria (124 €/ha), Upper Austria (125 €/ha) and Burgenland (128 €/ha).
The regional distribution of sales and rental prices, with relatively high prices in federal states in alpine regions and lower prices in regions with favourable agricultural conditions, suggest, that agricultural rental and sales prices are not primarily driven by land productivity, but rather by other demand and supply factors, e.g. scarcity of land, urban pressure and landscape amenities.

2. Key land regulations affecting land markets

Very general, sales and renting land in Austria are subject to the general freedom of contract, as any other contract. The Austrian civil code provides some general rules on, e.g. legal periods of notice of dismissal or provisions for the case that the landlord/tenant sells/transfers/inherits the land. However, fundamental contract terms like prices and durations (in the case of rental contracts) can be established freely by both parties. A rental contract does not need to be written in order to be enforceable, but may also be oral or result by implications. On the contrary, the transfer of ownership needs a written contract, also as prerequisite to be registered in the cadaster.

The transaction of agricultural land is regulated at the federal state level by the respective real estate transaction laws (“Grundverkehrsgesetzte”). These nine distinct laws share a common structure and have significant similarities, but also differ in some details. Here we try to present the common features, but also point at some of the differences.

All real estate transaction laws have three distinct regulatory areas with different objectives (Holzer 2018):

a) Transaction of agricultural and forestry real estates

Objectives: maintenance, strengthening or creation of a productive farming community; and preventing undesirable changes in the agrarian ownership structure. This can be interpreted as favouring small and medium-sized family farms over large-scale investor-owned farm businesses and especially over non-farmers.

b) Transactions of real estates with buildings or intended for development:

Objectives: prevention of speculative hoarding of building land.

c) Acquisition of real estates by foreigners

Objectives: avoidance of specific problems arising from the acquisition of land by foreigners (foreign infiltration, excessive increase in land prices, scarcity of land reserves, urban sprawl). The term foreigner does not apply to natural persons and legal entities of EU MS.

In regard to agricultural land sales markets regulatory areas a) and c) are important. The real estate transaction law of the federal state of Vienna does not include regulations in regard to

2 Note that land register and cadaster are the same in Austria
agricultural land. All other eight federal states do have their own regulations, which are common in structure and essence, but differ in details.

The main provision of all these distinct regulations on agricultural real estate transactions is that in general transfers (including sales, exchanges and beneficences) of agricultural land require approval by a specific regional authority, the land transfer commission (called “Grundverkehrskommission” in most states). However, there are some exceptions from this general rule (not all exceptions exist in all states). Transactions don’t have to be approved if (Holzer 2018):

a) the whole farm is handed over to a successor;

b) transactions between spouses or close relatives;

c) transactions between co-owners;

d) acquisition of rights in the public interest (e.g. for purposes of public transport or disposal facilities);

e) legal transactions in the course of an agricultural proceeding (e.g. land consolidations, flood prevention);

f) transaction of land below a certain size (trivial limit) (between 0.03 ha and 0.3 ha, depending on the State);

g) location of the property in a predominantly built-up area with a non-agricultural character (e.g. within cities).

The transfer of land can be refused for specific reasons explicitly given in the laws (and loosely translated here) (Holzer et al. 2018):

- to a non-farmer, if a local farmer is interested in buying the land (C, LA, S, ST, T, UA, V); \(^3\) Once a non-farmer wants to buy a piece of land, this has to be announced publicly. Within a specified period of time (usually four weeks or one month) local farmers can make an offer. This can be interpreted as a pre-emptive right of farmers against non-farmers. A farmer is defined as someone already managing a farm (on its own or together with family members or employees) or someone who wants to manage a farm (newcomer) and can prove an appropriate training. In some states, the former requires that at least 25% of total income is from farming. Also legal entities can be farmers.

- if mainly considered as a speculative capital investment (B, C, S, ST, UA);

- if the price is ‘unreasonable high compared to the value of the property’ or if ‘the price considerably exceeds the customary price’ (B, LA, S, ST, T, UA, V); only T defines this as 30% above the customary price.

- if it is against the goal to strengthen or create a productive farming community (LA);

\(^3\) B = Burgenland, C = Carinthia, LA = Lower Austria, S = Salzburg, ST = Styria, T = Tyrol, UA = Upper Austria, V = Vorarlberg
– if proper agricultural and forestry management cannot be guaranteed (C, LA, S, ST, T, UA, V);
– if the sale implies a devaluation of the remaining property (S);
– if the sale promotes the formation or expansion of large estates or private hunting areas, while there are small and medium-sized farmers interested to buy the land (B, C, S, V, UA);
– if the sale leads to a disruption of a favourable land ownership structure (e.g. too small and scattered plots or if it reverses conducted land consolidations) (B, C, S, ST, T, V, UA);
– if the sale leads to the development of a disadvantageous agricultural and forestry structure (K, S);
– if the sale leads to the emergence of uneconomically small properties (T);
– if it is an evasive transaction;
– … and some other reasons related to wood land.

While these real estate transaction laws do not make any difference between domestic natural persons, domestic legal entities, EU natural persons and EU legal entities, they do discriminate against other foreign natural persons and legal entities. For foreigners, no exceptions for the approval procedure exist. In addition to the reasons discussed, why approval can be denied, transfer is only authorized (in most states, except Carinthia) if the transfer is

a) of economic, social or cultural interest;
– a cultural interest exists, for example, if the applicant is of cultural use for the municipality or the state (e.g. a conductor).
– a social interest exists, for example, if the object of acquisition is intended to satisfy a personal need for housing of the applicant.
– there is a particular economic interest if the acquisition object is to be used for the settlement or expansion of a business or if an existing business is to be preserved through the acquisition.

b) political interests are not affected: before the approval is granted, the authorities check whether the purchase of the property does not violate state policy interests. In order to assess the question, an opinion is obtained from the State Police Directorate and, on a case-by-case basis, from the military command. One reason for the denial of the approval of the legal transaction would be to found a company that actually serves to launder black money.

Renting agricultural land in Austria is regulated by the federal law on agricultural land renting (“Landpachtgesetz”). It sets some minimum standards that aim at protecting tenants
in the case of conflicts between the contractual parties. Most notably, this legislation sets reference durations for renting (Holzer et al. 2013):

- 15 years for horticulture, viniculture and fruit culture farms;
- 10 years for all other farms and horticulture, viniculture and fruit culture plots;
- 5 years for all other plots

Moreover, it specifies that rental rates should be ‘adequate’. Whether a reference duration or an adequate rental rate are enforced (only upon motion by one party) is decided by the district court on a by-case basis and by a weighing of interests of both parties. Regulations set by the law on agricultural land renting cannot be renounced in rental contracts.

In addition, land rental transactions require approval by the same respective land transfer commissions, which approve land sales transactions. However, all states have some provisions that only certain rental transactions actually require approval (Holzer, 2018), e.g.:

- for areas above a certain size (e.g., > 2 ha in C and LA, > 5 ha in B);
- for long-term renting (e.g., >20 years or unlimited duration and area >2 ha in ST);
- for renting entire farms or land with farm buildings (e.g. C, V);
- if the prospective tenant is a non-farmer (e.g. S, T if area > 3ha).

One state, Upper Austria, does not require approval by the land transfer commission for any agricultural land renting. Renting between spouses and close relatives does not require approval in any state. Approval is to be denied in the same cases as for land sales transactions.

Just as to the land sales market, the same rules apply to EU citizens (and legal) entities, but stricter rules for renting to non-EU citizens (and legal entities): approval is already required for smaller plots and shorter rental periods than for (EU) citizens; approval to be given only if an economic, social or cultural interest exists.

In general, the terms of renting are thus decided upon by landlord and tenant, and there is little direct interference of legal provisions with the general freedom of contract. The law on agricultural land renting provides some minimum protection for tenants, but there appear to be few cases where this law is enacted (Holzer et al. 2013, Handl 2010). Nevertheless, it may have indirect effects on the rental market, as it sets guiding principles for private contracts simply by establishing the possibility of enforcing minimum standards in the case of conflict.

One could summarize the findings in regard to the key land market regulations in the following way. In general, the existing laws and agricultural land sales and rental markets are relatively liberal. The objectives are clearly to sustain agricultural land for small and medium-scaled, family farms. There is no discrimination towards domestic legal entities and EU natural persons and legal entities, but towards non-EU foreigners. There is a pre-emptive right of famers against non-farmers.
3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

Overall, the functioning and development of markets for agricultural land can vary considerably between regions in Austria. In marginal areas, 'underuse' and abandoning of agricultural land is an issue. It may happen that e.g., rental rates are zero or special arrangements between landowners and tenants exist to prevent complete abandonment of plots (such as a tenant renting a particular parcel for a low price, but conditional on cutting the grass on another (marginal) plot to keep it in farming). In other areas, competition for land is high, driving up prices. This is for example true for some touristic areas in alpine regions. Regulations and institutions that may further influence land prices in this respect are inheritance laws and traditions, spatial planning and the land designation procedures, the Common Agricultural Policy (CAP) and nitrogen emission related measures.

The predominant way of ownership transfer for agricultural land in Austria is by no means the land sales market, but farm succession and inheritance within the family. While no exact numbers exist, this is supported by empirical work on this issue. For example, Stiegelbauer and Weiss (2000) used farm census data for Upper Austrian farms. Based on a sample of more than 42,000 farms for the years 1985 and 1990, they found that in 87.3% of the cases the farm manager remained the same, while in 12.7% the farm was either handed over to someone else or the farm exited the sector. From these 12.7% of the farms, 49.4% were handed down within the family, 14.9% to someone else, and 35.7% exited. Quendler et al. (2015) conduct a survey regarding farm succession with farm managers 55 years or older. 1,065 (71%) out of 1,501 respondents stated that they already know who will take over the farm, while 29% did not know what will happen with the farm after they retire. From the 1,065 farm managers who already know the successor, only 20 stated that it is someone outside the family. Finally, Süss-Reyes et al. (2016) conducted a survey among about 1,000 farmers in Lower Austria. They found that 44.6% (50.3%) of farmers older that 50 (55) years have already identified a successor, 10% (14.9%) already know that the farm will shut down, and the rest does not know. From those who already have identified a successor, only about 3% will transfer it to a nonfamily member. Since there is also evidence that larger farms are more likely to be transferred within the family (Glauben et al. 2009; Reyes-Süss et al. 2016), it is safe to assume that an even higher share of the agricultural area is transferred by succession and inheritance within the family. If a farm has no successor, this does not mean that the land will increase supply on the agricultural land sales market. Rather, it is usually kept within the family and rented out. This explains the low percentage (0.25%) of total UAA transferred on the sales market every year. Therefore, while the agricultural land transaction law tries to prevent the transfer of land to non-farmers, more and more land is owned by former farmers or by beneficiaries of former farmers.

Inheritance customs and traditions vary across Austria. The federal states of Tyrol and Carinthia have regulations and laws in place that support undivided land inheritance since
the 16th century and 1900, respectively (Winkler, 1991). Other mountainous regions traditionally also adhered to impartible inheritance, rendering it widespread in Salzburg, Upper Austria, and the more mountainous parts of Lower Austria and Styria (Inman, 1947). In contrast, different forms of partible inheritance were common in the western part of the Alps (Vorarlberg and also some western parts of Tyrol), the flatlands in the easternmost part of Burgenland and Lower Austria, and the fertile broad valleys in eastern Styria (Lambert, 1963).

The current legislation on agricultural farm inheritance came into effect in 1958 (Vorarlberg: 1990) and encourages undivided inheritance. However, the traditions described above are still echoed in actual customs, since farms are usually handed over via a ‘farm transfer contract’ and not via inheritance (Bäck, 2005, p. 543). Therefore, today’s land ownership structures still differ between regions that had different systems or inheritance: Data from the Integrated Account and Control System (IACS) for 2012 shows that Burgenland and Vorarlberg (partial inheritance) have the highest shares of rented land (64 and 63% of UAA, respectively), while Salzburg, Upper Austria and Tyrol (undivided inheritance) have the lowest shares (25%, 30% and 30% of UAA).

Zoning and land development may decrease the land available for farming and influence land prices. In Austria, the general rules for land use planning are regulated in laws at the level of the federal states, but the actual zoning and execution of these laws are predominantly performed at the municipality level. A pending problem is the high amount of land that is consumed for built-up area per year. On average land consumption was 16.1 ha per day between 2012 and 2015 (ÖROK 2017). Though, there is a decreasing trend in the last years it was still 11.8 ha per day in 2018 (BNT, 2019) – despite a goal of a maximum of 2 ha per year set already in 2002 (Holzer 2018). A related problem is that a large share (26%) of land that is designated as building area is actually not built-up (ÖROK 2017). This land may be held unused for speculative reasons, and forces municipalities that want to increase housing space to re-zone new land for development, often at the fringes of existing towns – exacerbating urban sprawl, land use, and development costs. In response, municipalities have begun to tie re-zoning and land sales for development to the duty to actually erect buildings within a given time and some regional planning laws have been adjusted in the same manner (e.g., B; BMLFUW 2015).

One reason for the high consumption of land and the related issues just described is that land zoning is a competence of municipalities and thus managed in a very decentralized, local manner (ÖROK 2017). Federal states have oversight in terms of standard- and goal-setting, regional planning, as well as (dis)approval of re-zoning plans, but standards and goals tend to be broad and unspecific (BMLFUW 2015). Several actors have thus suggested tightening the influence of supra-local planning and incorporating more explicit restrictions on the re-zoning of agricultural land into regional planning laws (BMLFUW 2015, ÖROK 2017). The current situation where town majors play a large role, as well as mistakes made in the past have in some cases invited speculation with agricultural land at town fringes and to sometimes intransparent land zoning decisions.
As a consequence of partible inheritance as well as for other historical reasons, there are regions in Austria where plot sizes and structures are small and scattered, leading to inefficiencies. In response, authorities have fostered land consolidation projects through creating a legal basis, setting up responsible authorities at the district level, and providing financial assistance. Respective regulations are in place since the 1880s; currently, the implementation laws are at the level of the federal states. Within such projects, all parties agree on a new ownership and land use structure that is more agriculturally beneficial, and where everyone involved is at least as ‘well off’ in terms of land size and soil quality than before. Overall, more than 40% of Austria’s UAA have been subject to land consolidation projects (Seher and Mansberger 2014), but there still appears to be demand in this respect. For example, the authorities on Lower Austria conducted between 88 and 161 consolidation projects per year between 2012 and 2017, with a total yearly amount of 19,000 ha (LRN 2019). An average of around 30 projects were finalized each year. In Upper Austria, this number is considerably lower, with 29 projects being finalized between 2014 and 2016 (Land Oberösterreich 2017). Recently, land consolidation projects have been criticized for being a mere service to farmers, similar to a subsidy, since they mainly provide private benefits (Seher and Mansberger 2014). Stakeholders have therefore suggested to foster and support private agreements between farmers (e.g., swapping of fields, mutual renting agreements) instead of following the often lengthy and costly regulatory procedures, unless the project contains elements of public interest (infrastructure creation, flood management, etc.) (Seher and Mansberger 2014, Priplata-Hackl 2020).

Land sales and rental prices are also influenced by agricultural subsidies. Parts of these payments may not increase farmers’ income, but are capitalized into rental and sales prices, and therefore, are realized by landlords or sellers of land. This is especially true, if there is a strong demand for a limited supply of land, and if the landlord (seller) has knowledge of the amount of payments a farmer can receive for the rented land (in the present and the future). To what extent these payments are capitalized into land values is an empirical question and depends on many different determinants. It can vary considerably between MS (Michalek et al. 2014) and even between regions in a country (Salhofer and Feichtinger, 2020).

For Austria, no empirical investigations into this topic exists. However, the subsidies per hectare are considerable in Austria. In 2019 the total amount of subsidies to Austrian agriculture was € 2,147 million. There are three different payments which are particularly important in regard to land prices: first pillar direct payments, agri-environmental payments and less favoured area payments. First pillar direct payments are close to 290 €/ha. However, mountain pastures and meadows receive only one fifth of this amount. Austria has also one of the most extensive agri-environmental schemes of all EU MS. About 90% of total UAA participate in at least one action of this scheme. The average payment per hectare is about € 150. Another important second pillar payment are less favoured area payments. Based on a scoring system developed for Austrian farms by Tamme et al. (2002), farms in less favoured areas are grouped into five categories according to differences in natural production conditions (0 = no, 1 = minor, 2 = medium, 3 = severe, and 4 = extreme disadvantages). Almost 50% of total UAA are subject to such payments. Depending on the severity of the disadvantage and the
state (because some states pay top-ups in addition to standard payments) payments per hectare can even be more than 500 €/ha. In Tyrol, for example, 11.6 % of total UAA are in category 4 receiving on average 496 €/ha and 10.3 % are in category 3 receiving on average 356 € / ha (own calculations, all based on BMLRT (2020)).

Last but not least, the ordinance on the nitrate action programme (implementing the EU’s Nitrates Directive) requires livestock farmers to farm enough land to bring out their manure without over-applying N (i.e., not exceeding certain thresholds of kg N per ha, depending on the crop), unless they can provide a manure supply agreement with, e.g., biogas plants. This may increase demand for land in livestock-intense regions.

4. Implementation and enforcement issues of land regulations

As outlined above, according to the real estate transaction law, land transfers have to be approved by a regional land transfer commission. Since the decisions of these land transfer commissions are not consolidated and made public, it remains unclear to what extent these commissions impede a liberal transfer of land. The only state publishing some information is Tyrol in a yearly report (Land Tirol 2019, 2020). In 2018 (2019) the six land transfer commissions of Tyrol approved 642 (678) agricultural land transactions. However, in the same period there were 818 (890) exceptions based on the reasons described above (e.g. farm succession, transfers in the public interest, …). In addition, there were another 339 (366) exceptions not covered by the reasons given above, but e.g. land transferred to expand commercial and industrial sites or land sold to building cooperatives. In the same year only 16 (14) transactions were disapproved. In 19 (25) cases the pre-emptive right of farmers toward non-farmers was applied. In 59 (65) cases EU citizens were involved in agricultural land transactions. Given the scarcity of land, documented by the high sales and rental prices (see above), it can be assumed that Tyrol is a state where the land transaction law is probably executed more stringent than in most other states. According to Fankhauser et al. (2016), based on a survey sent to the land transfer commissions, the most common reasons for refusal are a deterioration in agricultural structure or that the buyer is not willing or able to guarantee a proper agricultural and forestry management. To a lesser extent applications are rejected due to an excessive purchase price.

Two related provisions of most property transaction laws that have an impact on land sales and rental markets have been the issue of debate in recent years, and have led to adjustments in some states. First, before the mid-2000s, most property transaction laws stipulated that a transaction of agricultural land could only be approved if the new owner would farm the land him/herself, rather than to renting it out to a farmer. However, in a case brought to the European Court of Justice (CJEU), where a family foundation from Lichtenstein wanted to buy land in Vorarlberg and was refused, the court considered this to be incompatible with the freedom of movement of capital, and pointed out that it reduces the amount of land that is available for renting, which, in turn, discriminates against farmers who cannot afford to
buy land.\textsuperscript{4} As a result, most states adjusted their property transaction laws accordingly, and only require that the new owner guarantees 'proper management' of the agricultural land by farming it him/herself or by renting the land to a tenant. Second, this decision has implications for the legitimacy of the described 'pre-emption' right of farmers against non-farmers, if the latter can ensure proper farming of the land by a tenant. Following an infringement procedure by the European Commission in 2010\textsuperscript{5}, some states have introduced (rather restrictive) exceptions to this pre-emptive right procedure, while others have not. Therefore, the original version of the pre-emptive right, which still exist in some states, can be considered unlawful (Holzer et al. 2013, Holzer 2018). Notwithstanding this problems, the general approach and goals of the Austrian real estate transaction laws (i.e., requiring approval by a commission for every transaction) have been found to be in line with EU legislation and are thus not seriously debated.\textsuperscript{6}

It should also be noted that a substantial share of land that is rented is rented within families and otherwise well-known people, for various reasons. Leonhardt et al. (2019) found in a survey of 300 crop farmers that respondents rented over 20\% of land from family and another 75\% of land from people they knew personally. There may be several reasons for renting from/to family: landowners sometimes own land due to, e.g., inheritance, but do not farm themselves and prefer to rent this land to farming family members. There are, however, also reasons of taxation and social security that may lead to pro forma renting between spouses or other family members. This land is then, while officially and per legal definition part of the rental market, not actually available on the open rental market. The finding that over 18\% of rented land was under oral contracts in the study by Leonhardt et al. (2019) supports this.

To summarize, the small percentage of rejected land transactions in Tyrol suggests that land transfer commissions to not massively restrict a relatively liberal land market. Though challenged by a decision of the ECJ, the pre-emptive right of farmers against non-farmers is practised in some regions, but the actual scale remains unclear. There are differences between states (regions) how strict this rule is applied. To attain a basic agricultural education is not very difficult and time-consuming (a course with 200 hours). Moreover, the pre-emptive right only applies, if the farmer is willing to offer the same price as the nonfarmer. Since a high share of agricultural land is rented from relatives and friends, the rental market might not be as liquid as suggested by the high rental share.

5. Other land-related measures not discussed elsewhere


\textsuperscript{5} In regard to the infringement procedure see CJEU, European Commission v Republic of Austria, Case C-516/10.

Another practice that is relevant for the functioning and organization of the land rental market is the support given to farmers by the Chamber of Agriculture. Extension personnel provides advice on rental contracts and several regional chambers provide model contracts for farmers freely available online. In a survey among crop farmers we found that one third of respondents’ rented land was under rental contracts signed with such support. This most likely increases the legitimacy – and thus enforceability – of contracts.

6. Reference list of legal regulations

**Austrian Civil Code**, on rental contracts: §1090 - § 1121 Allgemeines bürgerliches Gesetzbuch für die gesammten deutschen Erbländer der Oesterreichischen Monarchie (ABGB), JGS Nr. 946/1811 IdF I 16/2020. Current version in German (no English version available):
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010330

**Real Estate transaction laws** of the federal states:

**Burgenland**:

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000615

**Kärnten** (Carinthia):

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=20000167

**Niederösterreich** (Lower Austria):

https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrNO&Gesetzesnummer=20001061

**Oberösterreich** (Upper Austria):
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000413

Salzburg:
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000152

Steiermark (Styria):
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrStmk&Gesetzesnummer=20000924

Tirol (Tyrol):
https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000005

Vorarlberg:
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Other References:


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR BELGIUM

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Agricultural land market regulations in Belgium around 2020

Liesbet Vranken

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1. Introduction

The number of farms in Belgium declined with 28% between 2005 and 2016 (i.e., from 51 540 in 2005 to 36 890 in 2016), while the average utilized area per farm increased from circa 27 ha in 2005 to circa 37 ha in 2016 (or with 37%) (Eurostat, 2020). The majority of agricultural land (83%) is cultivated by natural persons with an average size of 36 ha. The remaining land is cultivated by legal entities who have a slightly larger farm size of 40 ha.

An important challenge for the sector is access to land (Lara, 2018). High population density and urbanisation increase demand for ‘open space’ or unbuilt land. Scale increase and the declining number of farms make that many farm buildings and surrounding farm yards become free for other destinations, i.e. non agrarian uses. A trend of ‘horsification’ and ‘gardenification’ of agricultural land has been observed, particularly in metropolitan areas (Bomans et al., 2010). Demand arises from the agricultural sector but there is also from recreation and nature development. These pressures result in increasing prices for agricultural land which makes it hard for young farmers or farmers interested to increase its scale to access land through sales. At the same time, landlords seem to feel less inclined to rent out their farm land. The tenancy regulations in Belgium are very strict and strongly protecting tenants. As such landlords become less interested to rent out land to farmers (Swinnen et al., 2016) which also makes it hard for young as well as farmers willing to
expand to access land through rental. Despite the lesser interest of landowners, still 63% of utilized area is rented.

2. Key land regulations affecting land markets

There are limited regulations related to the sales of land. Most regulations are related to land rental and are mainly protecting the tenant. Since 2014, the tenancy legislation became the responsibility of the regions, instead of the federal state. This has led to some debates and proposal to introduce changes to the tenancy regulations. In Wallonia, some changes have been introduced and entered into force since 13/01/2020. In Flanders, some topics are being discussed but did not enter into force. Even with the introduced and proposed changes, the tenant will still be highly protected by the tenancy regulations.

The tenancy regulation stipulates provisions regarding rental. The tenancy regulations apply to the rental of immovable property which, from the moment the tenant takes possession of it (at the beginning or during the lease period), is mainly used by this tenant in his agricultural business. "Agricultural business" means the commercial exploitation of immovable property with a view to the production of agricultural products mainly intended for sale. However, this does not mean farming must be a main occupation. Someone who works a plot of land and harvests the products for personal use is not covered by the lease law. “Business” indicates an economic operation, implies a “regular” activity and the presence of a minimum of suitable operating equipment. It excludes a number of other specific uses, such as e.g. the lease for industrial fattening independent of a farm and cultivation contracts. “Cultivation contract” means the contract under which an operator of land and pastures, after having carried out the preparation and fertilization works, assigns the enjoyment thereof for a specific agricultural crop to a third party against payment. The culture contract assumes a use of less than 1 year.

Tenancy contracts have a minimum duration of 9 years. In the absence of a valid termination, the rental is automatically extended for consecutive periods of 9 years each, even if the first period of use has lasted longer than 9 years. For decades, this implied that, if no proper notice was given to terminate the contract, the rental continues for periods of 9 years. An important change is that since 2020 in Wallonia, only three extensions are possible after the initial lease period. After the third extension, the rental agreement will thus end. However, if the tenant is left on the land after the third extension, this will result in a tacit extension and the rental agreement will continue from year to year. During that period of tacit renewal, no (privileged) lease transfer can take place. A new instrument has been introduced as well, namely the en-of-career lease. This lease is used to bridge the period between the end of a regular lease (read: after the third renewal) and the retirement age of the tenant being
reached. At the end of this agreement, the lessor will automatically dispose of the free enjoyment of the lease property without the lessor being able to object to it.

In addition, there is also the career lease: the landlord grants the tenant a fixed rental agreement until the latter has reached the age of 65, with a legal minimum of 27 years. The tenant must therefore be younger than 38 years at the time of entering into the career lease. However, this lease ends unconditionally upon reaching this age, no lease renewal is possible. During this career lease, sub-lease and lease transfer are allowed. Unilateral cancellation during this period is not possible. This formula gives the tenant the security of a full professional career and offers the lessor certain advantages in terms of rent and income taxes. Only the property tax is due, while the income from this lease is not taxable.

Landlords can only terminate a rental contract under specific conditions. For example, if the owner or a close relative wants to cultivate the land him/herself, the contract can be terminated with a two year. The tenant can end to contract at any time with a notice period of minimum one year.

The rental price is agreed between landlord and tenant, but a maximum rental price is set. This maximum price is based on the cadastral income and tenancy coefficient which varies according to the agro-ecological region. The cadastral income is based on the annual net rental income that one would obtain in 1975 for the real estate if it would be rented out. The cadastral income is indexed on a yearly basis. The tenancy coefficient is published in the Belgian Official Law Gazette. These coefficients are determined by the lease price committee. They can be different for land and buildings.

If agricultural land is sold, the tenant has pre-emptive rights. Tenancy contracts are inheritable upon the death of the tenant of the landlord: the new acquirer of the land inherits the rental contract, but also the heir of the tenant inherits the rental contract.

In certain areas, a land bank (which is a governmental body) has pre-emotive rights. The overall aim is to implement a policy of general interest. The pre-emptive right can be exerted to realize the aim of a land development project or a project, plan or program within the framework of the land development decree, or for a land consolidation or nature development project, or to acquire land that is entirely or partially located in delineated flood areas and riparian zones.
3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

As indicated in the introduction the demand for ‘open space’ or ‘open land’ is high in Belgium and particularly in the peri-urban regions in Flanders. There is increasing demand from recreation, nature development, but also from agriculture. Farms demand more land for example because high investments demand an increase in scale to remain profitable or because they are in need for more land, e.g. to dispose of manure.

4. Implementation and enforcement issues of land regulations

The lease price is an essential element for the existence of lease. If there is free use, then there is no lease and the agreement is not subject to strict legal provisions of the tenancy regulation. The lease price can be expressed in a sum of money, but also by reference to a quantity of agricultural products or to the price of agricultural products. The amount and payment of the rent can be proven by any legal means, including witnesses and suspicions. The lessee can also pay the lease price by registered postal check, or by bank transfer or deposit. This counts as proof of payment, should the lessor dispute the payment. It is the landlord who must prove that no lease price has been paid. Even small payments can be considered as a rental payments. This has sometimes lead to disputes where the landlord allowed a farmer to use the land, but under the assumption that the provisions of the tenancy regulations did not apply. This has often led to lengthy legal procedures.

There have been proposals to make written agreements obligatory to reduce disputes. This entered into force in Wallonia, but not (yet) in Flanders.

5. References


6. Reference list of legal regulations


The consolidated legislation can be found in the above and is available from the project archive. The changes in force, published up to and including 08-11-2019, have been incorporated in the document.
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR BULGARIA

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Agricultural land market regulations in Bulgaria around 2020

Marian Rizov

1. Introduction

Soon after the change in political system in Bulgaria, in the early 1990s, the country undertook a comprehensive land reform comprising agricultural sector restructuring and land privatization, including land restitution of physical plots in real boundaries. These processes, combined with the dissolution of the cooperative and state farms have led to a polarized farm structure, comprising numerous small (often) subsistence farms, which co-exist with large commercial agro-companies. The consecutive legislation concerning land trade and use in Bulgaria is quite unrestrictive in comparison to the other EU Member States. There are minimal restrictions on acquiring agricultural land posed to Bulgarian citizens and the relevant rules and regulations have been being extended to all EU citizens over time. The land market in the country has developed rapidly, especially since the accession of Bulgaria to the EU, in 2007, with a large increase in the land price and rent which have become incompatible with the price levels of other economic factors in the country and thus present a strain on the county’s agricultural sector development. Consequently, in recent years, the degree of land use concentration in Bulgaria has been increasing, and currently, it is very high. This tendency has extended to the land ownership as well. In the same time, the legal regime governing the agricultural land relations has been transforming towards becoming fully comparable with the EU laws. This means that in terms of agricultural land ownership and use farmers must have equal and equitable access. Therefore, there has been a continuous process of modifying and upgrading the Bulgarian land legislation. Currently, as of 2020, there are ongoing public consultations on a new Agricultural Land Ownership, Use and Protection Act.

2. Overview of the agricultural land use

The period since Bulgaria’s accession to the EU is characterized by dynamic structural changes in Bulgarian farm structure in which the land market (sales and, especially, rental) has played an important role. Table 1 shows that there is a steady trend of reduction in farm numbers, by nearly 60% over the period 2007-2016 - from 493,133 to 201,014. The reduction processes are most dynamic in farms with size (agricultural land used, ALU) up to 2 ha where the decrease is 65% over the period. To a lesser extent, a decrease is also observed for farms with a size of 2-10 ha - by 40% over the same period. These decreases are accompanied by a trend of an increase in the number of larger farms. The number of farms with size over 50 ha increased by over 50%, and the increase of farms with sizes of...
10-50 ha is even higher - by 68%. There is some evidence that the outlined downward trend in the number of farms, mainly at the expense of small farms, has continued, albeit at a bit slower pace.

Table 1. Dynamics in the number and size of farms

<table>
<thead>
<tr>
<th>Type of farm</th>
<th>2007</th>
<th>2010</th>
<th>2013</th>
<th>2016</th>
<th>Change 2016-2007, %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of farms, thousand</td>
<td>493.1</td>
<td>370.2</td>
<td>254.1</td>
<td>201.0</td>
<td>-60</td>
</tr>
<tr>
<td>0 - &lt; 2 ha</td>
<td>417.4</td>
<td>308.1</td>
<td>193.1</td>
<td>146.5</td>
<td>-65</td>
</tr>
<tr>
<td>2 - &lt; 10 ha</td>
<td>49.3</td>
<td>41.1</td>
<td>38.7</td>
<td>29.7</td>
<td>-40</td>
</tr>
<tr>
<td>10 - &lt; 50 ha</td>
<td>9.1</td>
<td>12.8</td>
<td>13.4</td>
<td>15.3</td>
<td>68</td>
</tr>
<tr>
<td>≥ 50 ha</td>
<td>6.2</td>
<td>8.2</td>
<td>8.9</td>
<td>9.5</td>
<td>53</td>
</tr>
<tr>
<td>Agricultural land used, thousand ha</td>
<td>3,050.7</td>
<td>3,617.0</td>
<td>3,794.9</td>
<td>3,795.5</td>
<td>24</td>
</tr>
<tr>
<td>0 - &lt; 2 ha</td>
<td>191.1</td>
<td>144.2</td>
<td>100.9</td>
<td>69.5</td>
<td>-64</td>
</tr>
<tr>
<td>2 - &lt; 10 ha</td>
<td>182.1</td>
<td>163.1</td>
<td>156.2</td>
<td>129.1</td>
<td>-30</td>
</tr>
<tr>
<td>10 - &lt; 50 ha</td>
<td>179.9</td>
<td>278.6</td>
<td>299.6</td>
<td>362.5</td>
<td>102</td>
</tr>
<tr>
<td>≥ 50 ha</td>
<td>2,497.7</td>
<td>3,031.0</td>
<td>3,238.2</td>
<td>3,234.4</td>
<td>29</td>
</tr>
</tbody>
</table>

Source: Ministry of Agriculture, Food and Forestry (MAFF), Agrostatistics Department.

Data in Table 1 also show a steady upward trend in the total amount of ALU on farms, from 3,050.7 thousand ha in 2007 to 3,795.5 thousand ha in 2016; thus, for the period 2007-2016 ALU on farms increased by 24%. The increase in total ALU is a result of increased demand for land, accumulation of less fertile land, and the presence of incentives to expand farms in order to receive more subsidies (European and national).

Table 2. Number of farms by economic size (in euros standard production), 2010-2016

<table>
<thead>
<tr>
<th>Economic size, euro</th>
<th>2010</th>
<th>2013</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;2000</td>
<td>255 105</td>
<td>140 228</td>
<td>104 898</td>
</tr>
<tr>
<td>≥2000 &lt;4000</td>
<td>59 473</td>
<td>51 384</td>
<td>34 956</td>
</tr>
<tr>
<td>≥4000 &lt;8 000</td>
<td>26 286</td>
<td>27 547</td>
<td>22 955</td>
</tr>
<tr>
<td>≥8000 &lt;15 000</td>
<td>12 509</td>
<td>13 849</td>
<td>13 746</td>
</tr>
<tr>
<td>≥15000 &lt;25000</td>
<td>6 043</td>
<td>7 056</td>
<td>8 248</td>
</tr>
<tr>
<td>≥25000 &lt;50000</td>
<td>4 733</td>
<td>6 020</td>
<td>6 675</td>
</tr>
</tbody>
</table>
Table 2 shows that the largest number of farms is of size up to 2,000 euros standard production (SP). These are small, subsistence farms with limited opportunities for technical improvement, market access, and public support. The most dynamic changes in the direction of decrease is in this group of farms, whose number for the period analyzed decreased about 2 times and in 2016 was 104,898. The next group of farms with an economic size of 2,000-4,000 euros SP represents semi-market farms, which also have relatively low potential and opportunities for development. The reduction of farms in this group is by 41%. A positive trend is observed in the groups of farms over 8,000 euros SP where there is a steady tendency of increase in their numbers.

As a result of the ongoing processes of reduction of farms and growth of ALU, the average farm size have significantly increased from 6.2 ha in 2007 to 10.1 ha in 2010 to 15.5 ha in 2013 and reached 20.6 ha in 2016. This trend suggests that the ongoing structural changes lead to the consolidation of agricultural land (use) in the country. The consolidation of agricultural holdings is associated with a pronounced trend of reduction in the number of farms of size up to 1 ha as shown in Table 3. For the period analyzed, their number is halved and their share in the national farm structure of 70.5% in 2010 decreased below 60% in 2016. Importantly, the role of the land market in this consolidation process is significant.

Table 3. Agricultural farms with ALU size up to 1 ha

<table>
<thead>
<tr>
<th>Number of farms</th>
<th>2010</th>
<th>2013</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share of small farms (&lt; 1ha) relative to all farms,%</td>
<td>70.5</td>
<td>60.2</td>
<td>59.3</td>
</tr>
</tbody>
</table>

Source: MAFF, Agrostatistics Department

The ongoing processes of rebalancing of the farm structure lead to changes in the organizational and economic structure of agriculture. Figure 1 shows that the share of farms with ALU up to 2 ha decreased in the structure, from 86.6% in 2007 to almost 73% in 2016, although they maintained their dominant share. In the other groups of farms there are trends of increasing their share. For the analyzed period the most significant is the increase in the share of farms of size 10-50 ha, from 1.9% in 2007 to 7.6% in 2016.

Figure 1. Structure of agricultural farms by size of ALU
The farm restructuring also leads to a change in the structure of ALU by groups of farms according to their size. The significant decrease in the number of farms of up to 2 ha is also related to a decrease in their share in ALU from 6.3% in 2007 to 1.8% in 2016. For the period analyzed a decrease is also reported in the share of ALU of farms with size 2-10 ha, while in farms with size over 10 ha there is an increase in their ALU share. In the structure of the total ALU, the farms with size 10-50 ha increased their share from 5.9% to 9.6% for the analyzed period. The highest share in the structure of ALU is occupied by holdings with over 50 ha with an increasing trend, from 81.8% to 85.2% over the period of analysis.

Table 4 shows, for the period 2007-2016, a significant difference in average size by a group of farms which is maintained for the entire period analyzed. There is an insignificant change in the average size of farms with size up to 10 ha; increase of the average size of the farms with size 10-50 ha; reduction of the average size of farms with size over 50 ha. At the end of the period analyzed, the average size of smallest farm category is 0.5 ha, while the average size of the largest size category is immeasurably larger - 340.5 ha.

Table 4. Dynamics in the average size by farm groups

<table>
<thead>
<tr>
<th>Size of agricultural farms</th>
<th>Average size of farms in the group, ha</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2007</td>
</tr>
<tr>
<td>0 - &lt;2 ha</td>
<td>0.5</td>
</tr>
<tr>
<td>2 - &lt;10 ha</td>
<td>3.7</td>
</tr>
<tr>
<td>10 - &lt;50 ha</td>
<td>19.8</td>
</tr>
<tr>
<td>≥50 ha</td>
<td>402.8</td>
</tr>
<tr>
<td>Average size</td>
<td>6.2</td>
</tr>
</tbody>
</table>

Source: MAFF, Agrostatistics Department
Overall, the data show that despite the observed positive trends in the farm restructuring process, the strongly dualistic organizational and economic structure in Bulgarian agriculture is preserved and a significant layer of medium-sized agricultural holdings is still missing. On the one hand, there are very small and small farms with size up to 2 ha, which in 2016 represented nearly 73% of all farms, but managed only 1.8% of ALU in the country. On the other hand, there are the very large farms, which in 2016 represented less than 5% of the farms and managed over 85% of the total ALU in the country.

Although the structure of farms has changed significantly over the years, the relative share of leased agricultural land remains very high and with a minimal deviation from 90% of the ALU over the years as evident in Table 5. This fact is of a particular interest, given that the largest number of farms with up to 2,000 euros of standard production (SP) which are family, subsistence farms, in fact cultivate only their own land. In the next group of farms with an economic size of 2,000-4,000 euros SP which are semi-market farms, land is leased mainly between relatives. In the case of medium-sized farms with more than 8,000 euros SP, the ratio of rented land to own land increases, while in the case of the largest farms the cultivated land is predominantly leased.

Table 5. Rented agricultural land by farms for years (2009-2017)

<table>
<thead>
<tr>
<th>Category</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farms represented (number)</td>
<td>115490</td>
</tr>
<tr>
<td>Agricultural land utilised (ha)</td>
<td>32.36</td>
</tr>
<tr>
<td>of which rented (ha)</td>
<td>29.14</td>
</tr>
<tr>
<td>% of rented land</td>
<td>90</td>
</tr>
</tbody>
</table>

* Farms with SP of more than 4,000 euros are included

Source: MAFF, Agrostatistics Department

3. Key land regulations affecting the land market

3.1 Agricultural Land Ownership and Use Act

After the historical changes in the state system of the country since 1989, the VII Grand National Assembly adopted the Agricultural Land Ownership and Use Act (ALOUA: SG, Issue 17 of 01.03.1991), the main purpose of which is to settle the public relations associated with the restitution of agricultural land, as well as land use. In this regard, given that the rules
set out in the ALOUA determine the terms and conditions for restoration of property rights over agricultural land, the law is quite special compared to the general laws regulating property rights (e.g., the Property Act, Municipal Property Act, State Property Act, Inheritance Act, etc.). In order to prescribe in more and practical detail the procedures for application of the legal provisions, the accompanying Regulations for the Application of the ALOUA (RAALOUA) has been developed and adopted (SG, Issue 34 of 30.04.1991). The provisions of the ALOUA and the corresponding sections in the RAALOUA define the subject of the law, the scope and purpose of agricultural land, the entities that may own them, as well as the rights and obligations of the persons with restored right of ownership. In 2007 and subsequently in 2014, new provisions were created relating to the acquisition and possession of agricultural land by foreigners or foreign legal entities, including by citizens of the Member States of the European Union, including legal entities.

The general provisions in the law are laid out in Chapter One - “General Provisions” (from Art. 1 to Art. 5) of the ALOUA and accordingly are further developed in Chapter One - “General Provisions” of the RAALOUA (from Art. 1 to Art. 7). However, the procedures regarding the application of the new provisions concerning the rights of acquisition and ownership of agricultural land by foreign citizens (Art. 3, Para. 7 and Art. 3c of the ALOUA) have not been sufficiently developed at the time of introduction of the law.

The provisions outlined in the above-cited chapters of the ALOUA and the RAALOUA determine the subject of the law - these are the public relations related to the ownership and use of agricultural land. They define the term "agricultural land" in view of its purpose, stating that agricultural land is that land which is intended for agricultural production. This is the main distinguishing feature of the legal definition, to which are added four characteristics for location and construction, formulated negatively - not to be located in urban areas; not to be included in the forest fund; not to be built with buildings of public and industrial construction, as well as not to represent territories of the mining industry and the networks of the engineering infrastructure. This definition reflects the changes that have occurred in the country over a long historical period (1945 - 1991) as a result of industrial and urban development, in which agricultural areas have changed their purpose and been included in other types of territories - urbanized, transport, forestry, etc. This situation is fundamental with regards to the restoration of ownership of agricultural land, and for this purpose there is a need to regulate the procedures for compensation of former owners for property on which ownership cannot be restored. The law further define the entities that may own the right of ownership over agricultural land (citizens, legal entities, the state and municipalities), the rights and obligations of the persons with restored land ownership, as well as the entities for which it is prohibited to own such property (political parties and organizations, movements and coalitions for political purposes, as well as foreign countries).

The law lays out basic rules for the use of the restored agricultural land - the right to freely choose the way of using the land, according to its purpose, but with an obligation to protect the land from damage, to protect historical monuments, technical infrastructure facilities, etc., located in the properties concerned, and that construction on and/or expropriation of
agricultural land to be carried out in accordance with the norms of the current relevant legislation (the Ownership Act, Spatial Development Act, Preservation of Agricultural Land Act).

Exemptions related to the management, administration and disposal of the restored agricultural land have been introduced in the law. These are exemption from state, notary and local taxes and fees when concluding lease agreements with a term longer than 1 year, voluntary divisions and disposition transactions, for a period of 5 years from the restoration of the right of ownership (amended and supplemented, promulgated in SG No. 98/1997). The first versions of the law provided for the payment of a tax on land that had not been used for 3 years, but in practice such a tax has not been applied.

3.2 Acquisition and possession of agricultural land by foreign persons or legal entities

Chapter "General Provisions" of the ALOUA also lays out provisions (Art. 3a to Art. 3c) concerning the possibility of acquiring and owning agricultural land by foreigners or foreign legal entities, including by citizens of the Member States of the European Union, and by legal entities of these countries.

With regard to the regime for the acquisition of agricultural land by foreign persons or legal entities, as well as by citizens of the Member States of the European Union and by legal entities of these countries, it should be noted that the same was introduced in the ALOUA by the Law on Amendments and Supplements of the Law on Property (SG, Issue 24 of 2007), in accordance with the changes in the constitutional regime of the land, introduced by the provision of Art. 22, Para. 1 of the Constitution of the Republic of Bulgaria, with the Law for Amendment and Supplements of the Constitution of the Republic of Bulgaria (SG, Issue 18 of 2005, in force from 01.01.2007), as well as in connection with the conditions of the Treaty of Accession of the Republic of Bulgaria to the European Union. The legislative changes in several laws (e.g., ALOUA, as well as the Law on Forests, Law on Protected Areas, and Law on Restoration of Ownership of Forests and Forest Land) are part of a set of legislative measures aimed at eliminating existing restrictions on the acquisition of land ownership by foreigners, which are in the context of fulfilling the commitments of the Republic of Bulgaria in the process of European integration, in order to ensure conditions for free movement of people and capital within the meaning of the Treaties establishing the European Union.

In connection with the above changes, new provisions have been created in the ALOUA, regulating the possibility of acquiring ownership of agricultural land by foreign persons or legal entities (under the terms of the ratified international treaty and inheritance by law), as well as by citizens of the Member States of the European Union and of the countries - parties to the Agreement on the European Economic Area, including legal entities from these countries, after the expiration of the term, determined in the Treaty of Accession of the Republic of Bulgaria to the European Union (01.01.2014). There is a special procedure for the citizens of the EU member states, self-employed farmers, who wish to settle and
permanently reside in the country (with the respective registration under the Bulgarian legislation), to be able to acquire ownership of agricultural lands from the day of entering in force of the accession treaty.

With regard to cases of acquisition of property by inheritance, it is stipulated that if the foreigners who inherit but do not meet the conditions provided for in the Accession Treaty or other ratified international treaty, they are obliged to transfer their ownership to entitled persons within three years of its restoration, and in case of non-observance of the term, the state may purchase the agricultural lands at prices determined by an ordinance of the Council of Ministers, which, however, has not been issued yet.

Notwithstanding the regulated regime referred to above, in connection with the Law on Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Tax Regime which entered into force on 1 January 2014 (SG, Issue 1 of 2014), amendments and supplements to the ALOUA (SG, Issue 38 of 2014) were made. The new provisions introduce a restrictive regime upon the acquisition of the right of ownership of agricultural land for all natural or legal persons, including Bulgarian citizens (Art. 3c), as well as a prohibitive regime for acquisition and ownership of agricultural land by foreign (non-European) companies, explicitly stated in the law (Art. 3, Para. 7).

As of October 1, 2015, the provision of Art. 40a of the Administrative Penal Provisions of the ALOUA, which provides for property sanctions for the agricultural companies under Art. 3, Para. 7 of the ALOUA, which do not have the right of ownership over agricultural lands, in the amount of BGN 1000 per hectare of agricultural land owned, and in case of repeated violation, established within 3 months - the amount of the sanction will be tripled. The power to apply this provision is assigned to the regional governor at the location of the property, but due to the lack of settled conditions and order, there is no information that this provision has been applied yet. Sanctions are thus applied for bridging the regulations of Art. 3, Para 7, which stipulates that agricultural land cannot be owned by shareholders of companies which are registered in jurisdictions with special tax regime (aka tax heavens), shareholders of companies who are foreign citizens not covered (exempt) in Art. 4 and Art. 5 of the same law, and some other shareholding companies with special status. Basically, the sanctions are applied in cases when land is owned in bridge of the legal rules outlined in ALOUA.

In addition to the restrictive regime referred to above, introduced by the provision of Art.3 Para. 7 of the ALOUA, in the created new Art. 3c, a restrictive regime is also introduced for the acquisition of ownership of agricultural land for all natural or legal persons, including Bulgarians, who have not resided or established in Bulgaria for at least 5 years. For legal entities registered under Bulgarian law for less than 5 years, it is provided that they may acquire ownership of agricultural land when the partners in the company, members of the association or the founders of the joint stock company meet the residence requirements, or have been established in the Republic of Bulgaria for more than 5 years.

In connection with the above-cited texts in the ALOUA, at present the European Commission has initiated against Bulgaria a procedure for violation № 2015/2018 regarding
contradiction of the provisions of the Bulgarian ALOUA with Art. 49 and Art. 63 of the Treaty on the Functioning of the European Union (TFEU). The European Commission accepts that the provisions of the ALOUA introduced by the Republic of Bulgaria violates the above-cited provisions of the TFEU, according to which restrictions on the freedom of establishment of citizens of a Member State in the territory of another Member State and restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited. This prohibition shall also apply to restrictions on the establishment of commercial representations, branches or subsidiaries by nationals of each Member State established in the territory of another Member State. Similar procedures have been opened against other member states with similar motives (Hungary, Slovakia, Lithuania, and Latvia).

In order to take steps for elimination of the problems that have arisen, the European Commission has issued an "Interpretative Decision of the Commission on the acquisition of agricultural land and EU law", Index 2017/C 350/05, Prom. in the Official Journal of the EU of 18.10.2017 which examines and analyzes the national restrictions imposed in individual Member States, compared with Community law and based on the analysis, the European Commission has drawn conclusions on the regulation and acquisition of land.

Following on all the above, in Bulgaria a new law has been drafted to provide for the repeal of Art. 3c which is in the process of public discussion. Regarding the right of foreigners to buy agricultural land in Bulgaria, the new proposal seems to make a limited progress. Under the new relevant provisions are included also companies that are registered in territories with preferential tax treatment - the so-called offshore zones. Nevertheless, the topic should not be speculated on, as EU citizens are not considered foreigners. They have the right to free movement and investment in any EU country. In fact, buying land and starting an agricultural business according to the current law is accessible to the EU citizens. This is also allowed to Bulgarian citizens everywhere in the EU. Citizens of third countries will need to have a ratified agreement by the Bulgarian National Assembly for the purchase of land in Bulgaria. They will not be able to buy land if there are no respective agreements at national level. Due to the ongoing negotiations on the new CAP round the progression of the new draft of the ALOUA is frozen as the new CAP provisions must be reflected in the new law.

4. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

Transactions concerning the purchase and sale of agricultural land are governed by the ALOUA and must be confessed to a notary public in writing at a cost representing a percentage of the transaction value. According to the Obligations and Contracts Act (OCA), and following the usual practice in Bulgaria, the costs of the transaction are shared between the parties. Alongside the notary fee, there is a registration fee and local taxes to be paid as part of the transaction costs. Users of agricultural land, after the co-owners, have a preferential right to buy the property from the owner before it is sold to a third party. These
practices are motivated by one of the principles underlying Bulgarian land reform, according to which agricultural land should be provided to those persons who cultivate it. According to ALOUA, the state shall encourage the implementing of exchanges between neighboring properties with the objective of their consolidation.

The lease and rental contracts are regulated by the Agricultural Lease Act (ALA) and the Obligations and Contracts Act (OCA) respectively. The lease can be concluded only by the owner of the agricultural property, while the rental agreement can be concluded by a non-owner. Currently, the lease contract can be concluded also by a co-owner of agricultural land, whose ownership is more than 50% of the ideal parts of co-owned property or with a co-owner authorized by other co-owners who together own more than 50% of the ideal parts of the co-owned property. Furthermore, the lease contract is concluded in writing with notarized signatures of the parties. Upon termination of the lease, the procedure is the same - the termination must be entered in the notary books. There are no such requirements for the rental agreement for agricultural properties; it can be concluded even orally. In order to facilitate the proof of the agreements reached, most often the rental contracts are concluded in writing without being certified by a notary; at the request of the parties, rental contracts can also be notarized.

In view of the above, the lease contract is more favorable to landowners who are unsure of the tenants’ intentions or who want a commitment for a longer time period. In addition, with the lease contract a map of the property is included which ensures clarity in identifying the agricultural land involved. This minimizes the possibility of disputes over the extent of the property. With the short rental contracts, however, often fraud has been encountered. Their manipulation is easy, as it is difficult to trace and verify the signatures (if they existed as all) of individuals. Therefore, the owners of agricultural land can easily be deceived.

Public land, comprising State and Municipal Land Funds, is an important tool for interventions in the agriculture land market in Bulgaria. The transactions with state and municipal land are carried out through formal, competitive procedures. The state and municipal land is primarily used to compensate former (natural person) owners and to facilitate expansion of small farms and farms of young farmers.

**4.1. State and municipal ownership of agricultural land**

The ALOUA speaks of state and municipal land funds. The former purpose of these funds is to accumulate agricultural land, which can then be provided to the poor and landless. At present, the state land fund (SLF) represents the amount of agricultural land that is owned by the state. The management and disposal of the land from the SLF is described in part of the provisions of Chapter Three “Land of the State, Municipalities and Legal Entities” of the ALOUA, where the state ownership of this land is represented and managed by the Minister of Agriculture, Food and Forests with regard to their use and disposal. The procedures for application of the legal provisions are described in Chapters II, III, IV a, and X-XIII of the Law on Public Procurement.
The provisions of Art. 24, Para. 1 of the ALOUA and Art. 47, Para. 1 of the RAALOUA stipulate that the state retains its ownership over the agricultural land, which it owned until the entry into force of the ALOUA, with exception of the land, the ownership of which is subject to restoration. It is stated that the rights of the owner of the land from SLF are exercised by the Minister of Agriculture, Food and Forestry. Specifically, the Minister or their representative rents or leases land, establishes limited real rights over land, sells and exchanges with agricultural land of natural and legal persons by monetary equivalent, determined according to the ordinance of Art. 36, Para. 2 of the ALOUA. In the provision of Art.47, Para. 1 of the RAALOUA is defined the land, which is included in the SLF - this is the agricultural land - state property, including land, which is built up or represent adjacent areas to farm buildings.

The total amount of agricultural land equals 3,6 million hectares in 2012. In that year, the state and municipal agricultural land in the country covered nearly 1.5 million hectares. Separately, there is also public ownership of the forest land fund, where the main owner is the state and the municipalities hold a smaller percentage. The municipalities were owning 1.2 million hectares. Circa 0.3 million hectares was already owned by the municipality before the land reform. The remaining nearly 0.9 million hectares are part of the so-called residual fund (which includes unsubmitted or unproven restitution claims as well as former municipal land that has been restituted to the municipalities during the land reform), which in 2010 became a property of the municipalities. The municipality can rent the land for fixed periods of time. With a decision of the municipal councils, they can also sell land from the fund. The land from the residual fund (Art. 19 of the ALOUA) continues to be transferred into the ownership of the municipalities, according to the current provisions. By 2015, the size of the public agricultural area was: state – 257,123 ha and municipal – 935,020 ha. This land is essential for the conduct of the state and local policy concerning agricultural land use and production.

The rules for the management of agricultural land by SLF and the municipal land fund (MLF) are defined in Chapter Three - “Land of the State, Municipalities and Legal Entities” of the ALOUA (Art. 24a), and the procedures that determine the terms and conditions for the lease of these lands for use or lease are described in Chapter Three - "Land of the State, Municipalities and Legal Entities" of the RAALOUA (Art. 47b - 47sh). According to the provisions of Art. 24, Para. 1 of the ALOUA and respectively - of Art. 47, Para. 1 of the RAALOUA, the Minister of Agriculture, Food and Forestry, as exercising the rights of the owner of the land from the SLF, shall let the agricultural lands from this fund for rent or lease.

With the creation of Art. 24a, Para. 1 of the ALOUA (SG, Issue 99 of 2002) the legislator has postulated that the vacant agricultural land from the SLF and MLF shall be leased through tender or competition, under conditions and order determined in the RAALOUA. Based on the results of the tender or competition, a lease or rental agreement shall be concluded. The term of the lease agreement may not be longer than 10 business years, and - not shorter than 5 business years, in accordance with the Agricultural Lease Act.
For the lands from the SLF in 2016 there was an increase in the leased agricultural land. As a result of tenders held in the country, the agricultural land leased by SLF to individuals and legal entities amounted to 103,457 ha, of which 86,116 ha for annual field crops, 4,518 ha for perennial crops, 12,823 ha for use of pastures and meadows. The dynamics of the use of the SLF land shows that the organization of providing the properties for use by rent and lease corresponds to the increased interest among the users, respectively - the use is growing in all areas of the country. So far, the total amount of agricultural land provided by SLF to organizations - scientific, research and production and educational institutions, the Ministry of Transport, prisons, seed farms and the Ministry of Regional Development and Public Works, is at 18,152 ha.

In recent years, there has been a tendency of reduction in the total amount of unused agricultural land from the SLF. The area of vacant SLF land in 2016 amounted to 80,536 ha and compared to 2011 it decreased by about 32,000 ha. In many cases of vacancy, the properties are not compactly located, they are far from permanent roads and settlements, due to which there is no economic interest in their use. Most of the vacant agricultural land has a way of permanent use as pastures and meadows. In the mountainous and semi-mountainous areas, the unused fields, pastures and meadows - property of SLF, are self-afforested which makes them undesirable for rent and unsuitable for agricultural activity.

4.2. Land leasing

The contract most often concluded in respect of agricultural land use is the lease contract. According to the data for 2015 of the Registry Agency, the total number of lease contracts represented 45 times the amount of the total number of contracts for sale of agricultural land. The large number of leasing contracts has leaded to a large number of litigations regarding their conclusion, registration, execution, and termination.

According to Chapter Six “Discontinuation of the contract” of the Agricultural Lease Act the leasing contract shall be discontinued in the following cases:

- upon expiration of the term for which it has been concluded;
- in case of non-fulfillment of the agreed conditions, for example, delay of the payment by more than 3 months;
  - by mutual consent of the parties, expressed in writing with notarization of the signatures of the parties;
  - with unilateral notice sent in due course and in compliance with the terms and conditions of the Agricultural Lease Act;
- upon the death or placing under interdiction of the lessee or respectively with the termination of the legal entity-lessee, insofar as the contract does not provide otherwise.
The conditions for interruption of (short-term) rental agreements are outlined in Special Part IV “Lease of property” of the Obligations and Contracts Act.

There are some very useful changes proposed in the new ALOUA related to the introduction of new, clearer rules concerning the conclusion of rental and lease agreements. The proposed, improved regulations are very timely because in the past many contracts had been concluded for very long terms, by non-owners or by co-owners with very small shares which harmed the interests of other owners. These terms will be limited up to 10 years for arable lands and up to 30 years for permanent crops respectively. It is also planned to equate old contracts with those that have already been concluded with similarly long terms.

5. Implementation and enforcement issues of land regulations

5.1. Consolidation of agricultural land by the order of Art. 37c and 37f of the ALOUA

The procedure for creating large plots of agricultural land was introduced ten years after the beginning of the restitution of agricultural land in 2002. A new Chapter Five "Use of Agricultural Land" was created in the ALOUA (SG, issue 99 of 2002), which was further detailed in the regulations for its application – a new Chapter Seven “Use of Agricultural Land” in the RAALOUA (SG, issue 31 of 2003). The Art. 37c and 37f of the ALOUA were introduced 5 years later (SG, issue 13 of 2007) and the conditions and order for preparation and approval of the consolidation plans were outlined in the regulations for application of the law in a new Chapter Nine “Consolidation of Agricultural Land by Agreement of the Owners” in RAALOUA (SG, issue 45 of 2008).

The introduction of legal regulation for consolidated use of agricultural land is necessary due to the fragmentation of land ownership as a result of the applied restitution regime and the subsequent divisions between the heirs of the restituted owners. The policy adopted by the legislator for the consolidated use of agricultural land is expressed in the creation of land for use by consolidation of the properties used by owners and tenants or tenants in the land, without affecting the ownership. The current regulation provides for the consolidation of property to be carried out only on a completely voluntary basis of all participants. Given the structure of ownership - small size, dispersion and co-ownership, reaching agreement by all stakeholders is often impossible, as many heirs do not rely on the land as an economic factor in their lives, do not live in villages or even in the country. Therefore, for the period 2010 – 2014, only 9 consolidation plans have been completed. These were initiated by large owners of agricultural land, mainly legal entities. It is noteworthy that most large owners are companies falling under the restrictive regime for ownership of agricultural land under the provisions in Art. 3c of the ALOUA.

The consolidation of fragmented land holdings enables the farmers (owners and users of agricultural land) to cultivate their farms more efficiently, with less labor and financial resources. In addition, the illegal use of properties that are not managed by their owners is prevented. According to the market logic and as a result of the application of the Common
Agricultural Policy (CAP) framework, the aspiration to consolidate the land use through acquisition of property and under various types of contract is another very important channel.

### 5.2. Some operational changes in the proposed new ALOUA

The new proposal seeks to restore the balance between landowners and land users. Prior to the proposal it has been often speculated that agricultural laws are made in favor of farmers. A careful reading of the proposal shows that there could be many possibilities, both for improving rental agreements in terms of provisions for renegotiation or termination in the case of unscrupulous users who do not pay their rents or meet their other obligations. Thus, the new law seeks to restore the balance of property rights so that the landowner rights are equated to the land user rights.

An important new aspect in the proposal concerns young farmers who will be able to receive land from the state land fund (SLF) to create new farms or to expand their existing farms. This is a completely new measure not considered in the current and previous laws. This measure aims to make a smooth structural transition, as age structure in Bulgarian agriculture is not favorable, with the average age of farmers over 55 years. Such new measure is needed to attract young people who want to work in agriculture. In addition, the topic of the excessive concentration of agricultural land in a limited number of users is on the agenda; such actions are classified as "land grabbing", which amongst other effects, cause reduced access to land by young farmers. Under the new law, the young farmers will be able to expand their farms with up to 20 hectares. The new proposal aims to stimulate the creation of medium sized farms. Provisions are made for the creation by young farmers of permanent plantations, farms for grain production, animal husbandry, breeding of animals with corresponding provisions for the respective types of land use. Specific procedures for inspection of the newly created farms in order to prevent speculative actions are also proposed.

Another provision in the proposal concerns the problems with old farmyard buildings. These were typically owned by the former cooperatives; after the dissolution of the cooperative the buildings remain in formal collective ownership but often nobody claims them because the legal situation is too complex and/or the condition of the buildings is very poor. Specifically, where there are abandoned farm buildings, which the owners do not register within two years and claim ownership rights on these buildings, the Ministry of Agriculture, Food and Forestry will be able to dispose of such buildings and associated land. That is, to put them up for auction so that enterprising individuals who want to make investments in the area can acquire them. This is a useful regulation, which for many years farmers and NGOs have pleaded for.

Generally, the proposal introduces reliefs in the administrative procedures for changing the purpose of the land use. Many the documents will be provided in digital form, while some certifications steps will not be required. The 3-year term from the entry into force for the change of purpose, which was related to the choice to issue a building permit, has been
dropped. The spirit of the proposed new law is to treat agricultural/farming activities as the most important in agricultural land use. It is stipulated that agricultural land can be returned to the agricultural land fund as appropriate. That is, procedures have been proposed for the conservation and restoration back to the agricultural land fund of lands currently under a non-agricultural use.

6. Other land-related measures not discussed elsewhere: Investment in agricultural land

Since the accession of Bulgaria to the European Union there has been expansion of land investment companies. In principle, any Bulgarian physical person or legal entity, without any restrictions, can participate in the land market of the country. In Bulgaria, domestic legal entities are registered in accordance with the Commercial Act and the Act of the Commercial Register or the Register of Non-profit Legal Entities. The subject of their activity could be anything that is not prohibited by law. The most popular legal entities active on the land market in Bulgaria are the limited liability companies: single member limited liability company (SMLLC, abbreviated in Bulgarian: EOOD) and limited liability company (LLC, abbreviated in Bulgarian: OOD). The only difference between SMLLC and LLC is in the number of partners. SMLLC, as a matter of fact, is a sole proprietorship with limited liability which has just one partner (sole owner of the capital). For the LLC the founders must be at least two, and there is no requirement to have equal capital investments.

Due to the growing investment interest in the land market, joint stock companies with a special investment purpose (known as real estate investment, REIT) also participate. A REIT is a joint stock company that, under the terms and conditions of the Act of Special Investment Purpose Companies, invests the funds raised through the issuance of securities in agricultural land or receivables (securitization of land and receivables). The law requires the agricultural land acquired by the company to be located in the territory of Bulgaria.

Prior to the acquisition of agricultural land and receivables, the REIT assigns the process of their valuation to one or more experts with qualifications and experience in the field according to the requirements of the law. The prices at which the REIT acquires agricultural land or receivables cannot be significantly higher and the prices at which it sells them - significantly lower than the expert valuation, except in special circumstances. In this case, the persons who manage and represent the company must explain their actions in the next periodic report. Agricultural land or receivables owned by REITs are valued at the end of each financial year or in the event of a change of more than 5% in the agricultural land price index or in the inflation index determined by the National Statistical Institute. Valuations are presented in the financial statements of the REITs in accordance with the requirements of the accounting legislation. Investments in REITs are perceived as low risk and furthermore, the emergence of REITs allows people with little financial means to enter the land market as in this type of companies it can be invested a small amount of money, as low as BGL 1,000.
One of the main advantages of REITs is the avoidance of double taxation - REITs do not pay profit tax, and shareholders pay only 5% tax on dividends received. According to the law on REITs, the company distributes as a dividend not less than 90% of the profit for the financial year, i.e., providing annual income (in the presence of profit). Other advantages are professional management - REITs are managed by a team of specialists with experience in asset management, knowledge of the agricultural production markets and the land market. Furthermore, the share prices of REITs are relatively stable and the investment in shares allows for the realization of non-taxable income because in Bulgaria capital gains are not taxed. Thus, the investment in the REITs is profitable in two ways:

- capital gain from a change in the share prices, and
- dividend with the advantage that REITs are obliged to distribute 90% of their profits.

In general majority of the companies active in Bulgarian agricultural land market are relatively small limited liability companies and only about 5% - quite large, special investment purpose companies, REITs (Source: private communication with the Bulgarian Association of Agricultural Landowners).

7. Reference list of legal regulations

All listed references are available as pdf files in Bulgarian and were submitted with this report. They are available from the project archive.

Laws:

ЗАКОН ЗА СОБСТВЕНОСТТА И ПОЛЗВАНЕТО НА ЗЕМЕДЕЛСКИТЕ ЗЕМИ
ЗАКОН ЗА АРЕНДАТА В ЗЕМЕДЕЛИЕТО
ЗАКОН ЗА ВЪЗСТАНОВЯВАНЕ НА СОБСТВЕНОСТТА ВЪРХУ ГОРИТЕ И ЗЕМИТЕ ОТ ГОРСКИЯ ФОНД
ЗАКОН ЗА ДАЊЦИТЕ ВЪРХУ ДОХОДИТЕ НА ФИЗИЧЕСКИТЕ ЛИЦА
ЗАКОН ЗА ДРУЖЕСТВАТА СЪС СПЕЦИАЛНА ИНВЕСТИЦИОННА ЦЕЛ
ЗАКОН ЗА ЗАДЪЛЖЕНИЯТА И ДОГОВОРИТЕ
ЗАКОН ЗА КАДАСТЪРА И ИМОТНИЯ РЕГИСТЪР
ЗАКОН ЗА КОРПОРАТИВНОТО ПОДОХОДНО ОБЛАГАНЕ
ЗАКОН ЗА МЕСТНИТЕ ДАЊЦИ И ТАКСИ
ЗАКОН ЗА НОТАРИУСИТЕ И НОТАРИАЛНАТА ДЕЙНОСТ
ЗАКОН ЗА ОПАЗВАНЕ НА ЗЕМЕДЕЛСКИТЕ ЗЕМИ
ЗАКОН ЗА СОБСТВЕНОСТТА
ЗАКОН ЗА ТЪРГОВСКИЯ РЕГИСТЪР И РЕГИСТЪРА НА ЮРИДИЧЕСКИТЕ ЛИЦА С НЕСТОПАНСКА ЦЕЛ

ТЪРГОВСКИ ЗАКОН

ЗАКОН ЗА УСТРОЙСТВО НА ТЕРИТОРИЯТА

Regulations:

ПРАВИЛНИК ЗА ПРИЛАГАНЕ НА ЗАКОНА ЗА СОБСТВЕНОСТТА И ПОЛЗВАНЕТО НА ЗЕМЕДЕЛСКИТЕ ЗЕМИ

НАРЕДБА ЗА РЕДА ЗА ОПРЕДЕЛЯНЕ НА ЦЕНИ НА ЗЕМЕДЕЛСКИТЕ ЗЕМИ

ПРАВИЛНИК ЗА ПРИЛАГАНЕ НА ЗАКОНА ЗА НАСЪРЧАВАНЕ НА ИНВЕСТИЦИИТЕ

ПРАВИЛНИК ЗА ПРИЛАГАНЕ НА ЗАКОНА ЗА ОПАЗВАНЕ НА ЗЕМЕДЕЛСКИТЕ ЗЕМИ

ТАРИФА ЗА НОТАРИАЛНИТЕ ТАКСИ КЪМ ЗАКОНА ЗА НОТАРИУСИТЕ И НОТАРИАЛНАТА ДЕЙНОСТ

ТАРИФА ЗА ТАКСИТЕ, СЪБИРАНИ ОТ ОРГАНИТЕ ПО ПОЗЕМЛЕНА СОБСТВЕНОСТ

ЦЕНИ НА ЗЕМЕДЕЛСКАТА ЗЕМЯ И АРЕНДАТА В СЕЛСКОТО СТОПАНСТВО В РЕПУБЛИКА БЪЛГАРИЯ ПРЕЗ 2019 ГОДИНА

List of supporting materials (see the share point)

Agrostatistics: АГРОСТАТИСТИЧЕСКИ СПРАВОЧНИК 2000-2017
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR CROATIA

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Agricultural land market regulations in Croatia around 2020

Ornella Mikuš

1. Introduction

According to the database of Croatian Bureau of Statistics (CBS) and Ministry of Agriculture (MA) there are a total of 134,459 farms which use 1,562,171 hectares of agricultural land. The structure of ownership is highly polarized with few very large farms on the one hand and many small ones on the other. On average, due to FSS in 2016 one farmer uses 11.6 ha of agricultural land in their production, breed 5.6 livestock units and realize a standard output of 15,134 euros. The largest number of Croatian farmers - 93,430 of them, who account for 69.5% of the total number of farmers - use in average less than 5 ha of agricultural land. These “small” farmers use 178,670 ha of agricultural land in their production, accounting for 11.4% of the total area of agricultural land used. On average, one “small” farmer uses 1.9 ha of agricultural land in their production, breeds 2.4 livestock units and realizes the standard output of 5,224 euros (CBS, 2017 and MA, 2019).

Large farmers use more than 100 ha of agricultural land in their production. There are 1,620 of them, they account for 1.2% of the total number of farmers and use a total of 676,416 ha of agricultural land (which accounts for 43.2% of the total area of agricultural land used). Out of the total utilised agricultural area, arable land prevails with 894,672 hectares. Second largest agricultural areas are permanent grasslands which occupy 597,279 hectares, while permanent crops occupy 72,372 and kitchen gardens 72,372 hectares (MA, 2019).

The history of development, inheritance and land reforms in the socialist and transitional period has led to certain particularly unfavourable conditions reflected in farm size and land fragmentation. Since the Second World War private ownership of family farms had been limited by various agrarian reforms, by taxing policies for small family farms, attempts to collectivize and subsequently purchase land from private owners in order to increase the number and size of social farms.

Land policy in Croatia mostly refers to regulations of state-owned agricultural land disposal. Other private-owned land transactions are subject to general regulations governing real estate disposal. It means that private owners can still freely sell and lease their agricultural land to other Croatian natural and legal persons, without the implementation of pre-emptive rights.

After gaining independence, former ‘socially owned’ land has been declared as ‘state-owned’. The procedure of giving state land tenure fell under the competence of the local government since 2002 until 2008 when the Agency for Agricultural Land was established to accelerate the process of land disposal affairs and take over from the local municipalities. Unfortunately, the Agency did not meet the expectations of accelerating the process: in two
years only 5.5% of the total land area that farmers applied for was allocated (contracted). In 2018 jurisdiction over agricultural land allocation was returned to the local government in order to achieve a more efficient, faster and economically viable implementation of agricultural land disposal.

Rather frequent changes of rules and decisions on how “state-owned” land should be allocated threatens the existence of large areas of uncultivated state-owned agricultural land. Moreover, it has not improved the land consolidation process nor the competitiveness of the agricultural sector.

2. Key land regulations affecting land markets

During the pre-accession period, Croatia underwent the transition from a planned to a market economy, in order to create a new agricultural structure based on private ownership and market-oriented economy. Land policy problems are the biggest obstacle in the functioning of both the policy and the whole agricultural sector according to the desired modern market standards. The equal inheritance right system has left and continues to leave consequences in terms of highly fragmented land. Inefficient, lengthy, non-transparent and inappropriate allocation of state-owned land is the key obstacle to necessary structural reforms of the land market and agricultural products market.

Even today there are unsolved ownership relationships, denationalization of “state-owned” land is not finished, and land purchase mechanisms are still too complex because of the unbalanced situation in the land registry. Since 1828 Croatia belongs to the dual Austro-Hungarian tradition of a property registration system encompassing both cadastral records and land book records. The cadastre contains the data on land parcels and buildings permanently present on the land or beneath its surface, as well as type of land use. Land registration is an official record of the data on legal real property status of merit for legal transactions. However, those two records are not concordant in data on property and type of use for both state-owned and private agricultural land. During the socialist era, records were poorly maintained and updated, and today they still don’t reflect the real situation. Lack of coordination is one of the main obstacles to the development of the agricultural land market. That situation deepens the problem of the disposal and selling of state-owned agricultural land as well as creation of legal safety of real estate ownership.

Another angle to approach the uncertainty of disposal of state-owned land in Croatia is through the numerous changes happening since the umbrella Law of agricultural land (OG 34/1991) has been passed when Croatia gained independence (last to this day is in OG 98/2019). There have been 18 more or less significant changes to the first Law from 1991 and at this very moment draft proposal for a new land law is in the process of preparation.

According to the current Law (OG 20/118), state-owned agricultural land can be leased, offered for temporary use, exchanged with other land or sold. Lease contracts are concluded for areas of maximum 100 hectares for a duration of 25 years and can be extended for another
25 years. As an exception, land foreseen for return to persons whose property was taken during communist times and land planned for other purposes can be leased for a period of up to five years. The funds collected from lease, sale, temporary use and direct allocation of state-owned agricultural land are divided between the state budget (25%), regional government (10%) and local government (65%).

Local self-government units have to prepare programmes for the disposal of state-owned agricultural land under their jurisdiction according to Ordinance on the documentation required for the adoption of the Program for the disposal of agricultural land owned by the Republic of Croatia (OG 27/08). Programmes are subject to approval from the regional government and the Ministry of Agriculture. Such programmes have to contain information on the total area of state-owned agricultural land in the territory of the local government; data on state-owned land already leased, including the type of agricultural production performed on that land; areas of state-owned land foreseen for sale, lease, fish ponds, grazing and for return of property taken during the communist times. According to the newest Law, Agency for Agricultural Land lost its jurisdiction to dispose of public land for a similar reason why local self-government units did in 2008 when allocation from local authorities was transferred to the central authority. Arguments in both cases stated that the new responsible body would improve the process of land allocation by reducing the time of administrative procedures, resulting in a more efficient use of land in agriculture and a reduced rural depopulation trend.

The right of priority in state land allocation is given to legal or private persons in the following order: 1) small family farms in the livestock sector not owning enough agricultural land (in the case of lease), 2) farmers which already use the land in accordance with previously concluded contracts (in the case of sale), 3) young farmers, 4) other family farms, 5) private or legal persons which have their residence or headquarters in the relevant local area 6) cooperatives and other private companies registered to perform agricultural activities, 7) other private or legal persons already engaged in agriculture or planning to engage in agriculture. If two or more participants in the tender fulfil the same allocation criteria, further priorities ensue: standard output of an agricultural product of the farm (SO7) between 8,000 and 100,000 euros, type of production, number of family members, educational background in agriculture, length of time since it was enlisted in the Register of Farmers.

The new Law also provided a solution for agricultural land owned by persons who cannot be reached, or their place of residence is unknown. The Ministry of Agriculture can lease such land for a duration of up to ten years to natural or legal persons who want to use it for agricultural production. The rent collected according to the lease contract belongs to the original owner of the land and is kept on an account opened for this purpose. If the owner does not request the amount of the rent within 10 years from the conclusion of the lease contract, the collected amount will be divided between the state budget (25%), regional government budget (10%) and the budget of the local government (65%) where the land is

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7 Average monetary value of agricultural output at farm-gate price, in euro per hectare or per head of livestock.
located. That is how the state intends to revive neglected plots. The idea of putting neglected agricultural land into operation has existed for a long time, but the plan to do so by taxing uncultivated land was overthrown by the Constitutional Court in 2007. These taxes are contrary to the constitutional principles of fairness and equality of the tax system, because they are not paid by all property owners but only by those who do not use them.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

It is unclear how much state-owned agricultural land is available in the country because there is no unambiguous data on the size. During the last debate regarding the proposal for a new Law on agricultural land it was noted that in Croatia, at that moment, the total area of agricultural land was 2,695,037 hectares, of which 890,214 hectares or 33 percent was state-owned, while 1,804,823 hectares or 67 percent were privately owned. These data are the result of an analysis conducted by the Agricultural Land Agency in the period from 2013 to 2018. However, exact data on available state agricultural land will be known after all of the local administrative units submit their disposal programs to the Ministry of Agriculture. In their Programs, local municipalities had to define the total state-owned agricultural land in their areas, determine the land which needs to be returned, sold, or leased but also other land (for example, for building cemeteries, roads, etc.). Although the plan for the majority of the land is to be sold (42%), unresolved property and legal issues resulting from double land records, which are run separately and uncoordinatedly, prevent the sales. Until a geodetic survey is performed and until the land property and legal issues are resolved, which is a long-term and expensive process, the land set for sales is temporarily leased (Svržnjak et Franić, 2014).

The previous Law transferred great powers and obligations to the Agricultural Land Agency, and this had positive effects in terms of state land records, digitalization, and setting up some uniform procedures and forms. However, the main goal has not been achieved: for a small farmer to get access to agricultural land. Tenders were announced slowly, and neglected agricultural land remains uncultivated. Thus, the application of the law in practice has shown that there are a number of obstacles that slow down the process of disposing of state-owned agricultural land. Also, family farms received significantly less available land, unlike various companies, although the aim of this law was that the family farm strengthen its natural role in food production and preservation of rural areas.

According to the newest Law, when submitting the application, the total number of livestock and the total area of agricultural land available to the bidder and all related companies are considered. No large entrepreneur, not even a business concern, can apply through several family farms in multiple locations as was previously the case. The law explicitly says – all the details of affiliated companies will be added up, which initially prevented abuses from the recent past, when some applicants transferred livestock to newly established companies that did not have even a hectare of land and leased the land. When it comes to the sales to
family farms/companies with residence or registration in the Republic of Croatia, municipalities or cities in the program determine that the areas allocated for sale can be a maximum of 25% of the total area of agricultural land owned by the state, and areas (cemeteries, etc.) which can be used for another non-agricultural purpose may amount to a maximum of 5% at a time. State-owned agricultural land may be sold on the basis of a public tender, except for ponds, common pastures, consolidated areas of agricultural land, agricultural land bordering construction areas and especially valuable arable (P1) and valuable arable (P2) agricultural land.

The new law has increased the areas that farmers can buy from 1 to up to 10 hectares in continental counties and in municipalities and cities in Istria without access to the sea. A maximum of 50 hectares of agricultural land can be bought in the Continental region and up to 5 hectares in the Adriatic region. In the Adriatic region, the limit of plots remains up to 1 ha, and the aim of this measure is to encourage the consolidation of areas. Whoever buys that land has to cultivate it for ten years, and if they ever decide to sell it, they have to offer it back to the state. The rule of domicile is also emphasized: the land is distributed to farmers from the local areas, thus encouraging them to stay in those areas.

In order to avoid exploitation of the rules, the law stipulates that state land cannot be disposed of without a program proposal made publicly available to the local population for 15 days: objections may be lodged against which municipal and city councils must respond within 30 days. The decision on the selection of the most favourable lease offer is not made by an individual, municipality or city mayor, but by the municipal or city council, provided that it has previously received a positive opinion of the county and the consent of the Ministry of Agriculture. The State Attorney's Office of the Republic of Croatia has the final word in deciding whether a lease or sale agreement can be signed.

The most controversial for farmers is Article 36 of the Law, which equates family farms with small businesses and micro-enterprises, which are up to 50 employees and up to ten million euros in revenue. They range from several hundred to several thousand livestock units (LU), and with the new law the criterion is 1 ha – 1 LU. Wherever they apply, with such criteria these small companies could occupy good part of available space in tenders under the new law.

Once again there is a public discussion considering amendments to the Law from 2018 as the process of disposal of agricultural land is far from fulfilling the expectations. Moreover, not a single square meter of state-owned agricultural land has been made available to agricultural producers.

In the case of membership subsidies for agri-environment, measures have been growing exponentially since 2012 under the EU membership rights and the CAP legal framework. Since direct payments are partly based on the number of hectares per farm, increase in subsidies consequently increased the value of agricultural land. Increasing land prices especially aggravate venturing into agriculture for potential new farmers, young farmers and
farmers who do not have enough production resources, and make it difficult for existing farms to grow by renting or buying land.

The price of agricultural land varies depending on the type of agricultural land, region of Croatia, micro-location, soil quality, plot size and a number of other factors. The latest data available from the Central Bureau of Statistics for 2019 are taken from the real estate turnover records of the Tax Administration, providing the average price of agricultural land depending on the type of land (Eurostat and CBS, 2019). According to the collected data, the average price of purchased arable land in Croatia in 2019 amounted to 3,399 euros per hectare, 1,871 euros per hectare for meadows and 1,830 euros per hectare for pastures. In comparison to 2015 the price of arable land increased by 673 euros per hectare, or 25%.

Table 1: Prices of arable land euro per hectare (2015-2019); Croatia

<table>
<thead>
<tr>
<th>Area</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
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<tr>
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<td>3,005</td>
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<td>4,951</td>
<td>5,629</td>
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</tr>
<tr>
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<td>2,917</td>
<td>3,178</td>
<td>3,327</td>
</tr>
</tbody>
</table>


Table 2: Prices of permanent pastures euro per hectare (2015-2018); Croatia

<table>
<thead>
<tr>
<th>Area</th>
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<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
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<td>1,651</td>
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<tr>
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<td>1,146</td>
<td>1,282</td>
<td>1,377</td>
</tr>
</tbody>
</table>

Source: Eurostat

Table 3: Agricultural land renting prices euro per hectare (2015-2018); Croatia

<table>
<thead>
<tr>
<th>Area</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Croatia</td>
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<td>74</td>
<td>69</td>
<td>70</td>
</tr>
<tr>
<td>Jadranska Hrvatska</td>
<td>59</td>
<td>63</td>
<td>66</td>
<td>67</td>
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<tr>
<td>Kontinentalna Hrvatska</td>
<td>75</td>
<td>76</td>
<td>70</td>
<td>71</td>
</tr>
</tbody>
</table>

Source: Eurostat
The prices of purchased land in the Adriatic part of Croatia (Jadranska Hrvatska region) are significantly higher than the average prices for the Croatia, while the prices in the Continental part of Croatia (Kontinentalna Hrvatska region) are lower than the average prices for the Croatia. The price of agricultural land by counties in the continental part of Croatia is mostly in favour of Varaždin and Međimurje counties, while the lowest prices are in Lika, Karlovac and Sisak-Moslavina counties. In the Adriatic part of Croatia, agricultural land in the Zadar hinterland and in the Neretva Valley is most valued. Table 1 and 2 provide data on purchased prices for arable land and permanent pastures.

The price of agricultural land in other EU countries is extremely high compared to the price of agricultural land in Croatia. Croatia is at the very bottom of the EU countries in terms of the market value of arable land. According to available data from Eurostat database for 2018 a lower price per hectare of arable land can only be obtained in Estonia (Figure 1).

Figure 1: Comparison of prices of purchased agricultural land (arable land) in Member States of the EU in 2018 (euro per hectare)

Source: Eurostat: Land prices and rents

Lease prices are also among the lowest in EU (Figure 2). The average annual price of arable land rental in Croatia in 2018 amounted to 105 euros per hectare, of meadows to 63 euros and of pastures to 43 euros. The average price of arable land rental in Adriatic Croatia amounted to 83 euros per hectare, of meadows to 67 euros and of pastures to 51 euros, while in Continental Croatia the price of arable land rental amounted to 109 euros per hectare, of
meadows to 63 euros and of pastures to 41 euro. Table 3 provide data on average land renting prices according to Eurostat.

Figure 2: Comparison land renting prices in Member States of the EU in 2018 (euro per hectare)

Source: Eurostat: Land prices and rents

In order to give a short assessment of the enforcement and application of land legislation in terms of state-owned land practices in Croatia, one could start from the fact that the Law on agricultural land has been changed frequently in the last thirty years since Croatia has an independent land legislation. In the past three years, only 20% of total local municipalities announced tenders for lease which makes 50% (460,000 hectares) of state-owned land still on hold.

There are numerous obstacles that slow down the process of disposing of state-owned agricultural land: lack of political will to cooperate with the field and related policies (taxes, inheritance), long process of returning nationalized property, obsolete data in the land cadastre, lack of control by the state inspection. Thus, even today there is no knowledge on how local self-government units manage state-owned agricultural land, how the funds obtained through lease and concession are used, nor do any meaningful consequences affect those users who do not fulfil their obligations under the contract.

In public, there are advocates of the sale of state-owned agricultural land as state does not have the capability to decide who would be a better landlord. Additionally, so far, the state has caused conflicts at three levels: 1) crop producers vs. cattle breeders, 2) small scale vs. large scale farmers, 3) central vs. local decision-making process. Additionally, direct support causes speculative actions as more hectares means more money for the landowner or lessee.

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4. Implementation and enforcement issues of land regulations

The inefficiency of the current Law in practice is due to the changes taken place in the past, the disorderly situation in the field, diminishing use of agricultural land, as well as the reduction of the area and fertility of these limited and difficultly renewable resources.

Conflicts that affect the effective use of agricultural land are also connected to the compromised intention of agripolicy makers to consolidate agricultural land. In Croatia, small and fragmented agricultural land holdings do not provide satisfactory conditions for a successful and profitable agricultural production, which is why the Consolidation of Agricultural Land Act was adopted in (OG 51/15). In November 2015, a Preparatory Study for the preparation of land consolidation programs was developed. The aim of the Study was to draft a proposal of a ranking list of priority areas for the implementation of land consolidation, using international experience while respecting the specificities of Croatia. The Agricultural Land Agency has initiated agricultural land consolidation in five pilot locations. The purpose of pilot projects was to observe how the implementation of the Act will work in practice, provide solutions to on-site problems, define the costs of the land consolidation procedure, as well as provide a basis for the adoption of by-laws. Since the Agricultural Land Agency ceased to operate after the newest Law on Agricultural Land in 2018, the Land Consolidation Act needs to be aligned with new circumstances (MA, 2019).

The idea of consolidation is also not in accordance with current Law on Inheritance (OG 48/2003), which stipulates that properties including agricultural land should be equally divided to all descendants. That causes further fragmentation of land and emphasizes the problem when implementing larger and more profitable projects. Taxes for agricultural land
should be paid during land purchase as 3% of the market price, but the problem is that taxes should also be paid when two owners exchange plots for the purpose of land consolidation. It makes the voluntary process of land arondation unattractive and it is contradictory to the goal of achieving economies of scale.

State-owned agricultural land is allocated after the publication of a tender notice. The tenders contain information about the intended types of agricultural production for the leased areas and measures for mitigation of potentially negative ecologic impacts. An exception to the tender procedure is the conclusion of a contract with previous users of the agricultural land for temporary use upon their request for a duration of up to two years (direct allocation). Privately owned agricultural land can be exchanged for state-owned land of approximately the same value for the purpose of land consolidation. State-owned land can also be approved for use without a tender procedure to scientific, educational and other public institutions in need of agricultural land. Privatization of state-owned agricultural land, besides sales activities, is also done through the return of taken property. However, the process is usually long, either because necessary documentation is lacking or the land is currently part of a consolidated production. The institution of “state-owned land”, according to most of the stakeholders in the field represents a great obstacle to the development of national agriculture.

Some local municipalities have different restrictions and applications of the law, some have restrictions on 10 ha, others on 1000 ha and some do not have restrictions at all. In other words, there are no uniform criteria in determining the land maximum. From a total of 547 municipalities, 431 submitted the Program for approval to the Ministry (78.8%). Consent was given to 253 municipalities (58.7%) for the total of 215,000 hectares. Still, they cannot be given for use because amendments to the Law on Agricultural Land are currently being made.

Participants in the public tender for lease may be private or legal persons who have settled all obligations regarding the use of state-owned agricultural land, i.e. all obligations concerning the fee for economic use of water and all public benefits, and against whom no legal proceedings are being conducted for the transfer of agricultural land possession. Agricultural land in the area of a certain municipality and city is disposed of on the basis of the State Land Disposal Program. The documentation required is prescribed in Ordinance on the documentation required for the adoption of the Program for the disposal of agricultural land owned by the Republic of Croatia (OG 27/2018). The program is sent for approval to the County where the municipality is situated and to the Ministry of Agriculture. After obtaining consent from the County and Ministry, municipal and city councils may announce a tender for the lease of state land in their area (for a period of 25 years) with the possibility of extending the deadline after 25 years for the same period. The bidder should offer the Economic Program which contains: data on the bidder, description of the farm, type of agricultural production they intend to engage in on the leased land, land location, data on
planned investments, data on new employment and data on areas within the scope of built or planned public irrigation systems. The most favorable bidder is one that offers the best Program. The details are given in *Ordinance on the Economic Program for the Use of Agricultural Land Owned by the Republic of Croatia* (OG 90/2018).

The Croatian Agency for Agriculture and Food determines the level of damage of agricultural land, monitors all changes in physical, chemical and biological characteristics of the agricultural land and keeps an information system containing the relevant data (OG 47/2019). Farmers have the obligation to keep a record on the use of fertilisers and pesticides and to monitor the fertility of the agricultural land which must be tested at least once every four years. The costs of the analysis are covered by farmers themselves. Any damage of the agricultural land must be compensated by natural or legal persons which caused the damage (WBG, 2019).

Interestingly there are detailed regulations on the maintenance and protection of state-owned agricultural land but penalties are rarely prescribed for uncultivated land or land that is not maintained in good agricultural condition either for private owned land or for state-owned land which is not under some form of contract (OG 22/19, OG 23/19, OG 71/2019). For the state-owned land under contract for lease, the Law prescribes the following: good condition should be achieved by preventing the growth of weeds and by implementing measures that will not lead to the loss of land value. The Law makes a distinction between particularly valuable agricultural land (P1) and valuable agricultural land (P2). P1 represents the highest quality areas of agricultural land intended for agricultural production, which in shape, position and size enable the most efficient application of agricultural technology. P2 is defined as land suitable for agricultural production due to its natural characteristics, shape, position and size.

Agricultural land must also be protected from damage leading to reduction or loss of its potential for agricultural production. Damage of agricultural land includes degradation of physical, chemical and biological characteristics, pollution by harmful substances and organisms, erosion, coverage by waste or other soil and repurpose in use such as construction of urban areas or industrial or energy facilities, roads or exploitation of minerals.

Agricultural inspectors supervise the implementation of the provisions of this Act and the Economic Program, in particular: whether the agricultural land is cultivated or used without its value being diminished, whether the land is maintained suitable for agricultural production, whether it is protected from pollution, whether fire protection measures are ensured, whether permanent crops are maintained and perennial crops erected for protection against erosion, whether provisions on changing the purpose of agricultural land are implemented, whether the presence of pollution is low enough to maintain the land suitable for agricultural production; they inspect the use of state-owned agricultural land, control the unauthorized entry into possession of state-owned agricultural land, and perform other actions necessary for the implementation of inspections. However, information from the
field can be different as rented state-owned land can also be seen as plot where the above-mentioned criteria are not met, which would mean that the system of monitoring and control failed.

Historically, until October 2018, rental prices per hectare were determined by the contracting parties. That meant that the same municipality could have different rental prices for different state-owned plots. That often meant that the rent contract favoured certain groups of private companies. In October 2018, the first step towards change was introducing the Regulation on the method of calculating the initial rent of agricultural land owned by the Republic of Croatia and the fee for the use of water for the purpose of performing aquaculture activities (OG 89/2018). After that, in July 2019, the Ordinance on the manner of revaluation of rent or compensation for the use of agricultural land owned by the Republic of Croatia was adopted (OG 65/2019). The existing contracts also had to be changed in the context of correction of rental prices which could become lower or higher for a lessee which meant also lower or higher revenues to the budget of a certain local municipality.

Aforementioned regulations determine the price of state-owned agricultural land on the basis of the formula:

\[ RZ = Z \times \frac{PGI}{100} \]

Where the abbreviations denote:

- \( RZ \) - rent or fee
- \( Z \) - rent or compensation of the previous year
- \( PGI \) - average annual consumer price index (total) \( \geq 103.0 \)

5. Other land-related measures not discussed elsewhere

EU granted a seven-year transition period in which farmlands on the Croatian territory could not have been purchased by a foreign legal or natural person. If a foreign person establishes a company registered in the Republic of Croatia, the established company has the same rights and obligations as other legal persons established in the Republic of Croatia by Croatian nationals, and has the right to purchase privately owned and state-owned agricultural land, regardless of whether the founder of the company is from a Member State of the European Union or a third country (MA, 2019).

The transition period ran from 2013, when Croatia joined the EU, until July 2020, but the accession agreement envisaged the possibility of extending this period for another three years under special circumstances. Ministry of Agriculture recently filed a request for an additional three-year extension of the transitional period until 1 July 2023. As mentioned before, land prices for arable land amounts 3,397 euros per hectare, which is amongst lowest prices of agricultural land of all EU member states. Croatia’s farmland market is still not stable enough and ready for a full liberalisation. There is a high risk that prices could increase considerably in the event of its opening to foreigners. Seeing as the purchasing power of the
Croatian farmer is significantly lower compared to the old Member States it would make it more difficult for Croatian farmers to buy farmland and slow down the necessary restructuring of the agricultural sector. Other reasons were related to the need to protect the socio-economic aspects of agriculture after joining the internal market of the European Union and transitioning to the Common Agricultural Policy.

6. Reference list of legal regulations

Legislation from Official Gazette is available at:
https://narodne-novine.nn.hr/

Zakon o poljoprivrednom zemljištu OG 34/1991
https://narodne-novine.nn.hr/clanci/sluzbeni/1991_07_34_945.html

Zakon o poljoprivrednom zemljištu OG 20/2018
https://narodne-novine.nn.hr/clanci/sluzbeni/2018_03_20_402.html

Zakon o komasaciji poljoprivrednog zemljišta (OG 51/15)
https://narodne-novine.nn.hr/clanci/sluzbeni/2015_05_51_994.html

Pravilnik o dokumentaciji potrebnoj za donošenje Programa raspolaganja poljoprivrednim zemljištem u vlasništvu Republike Hrvatske OG 27/2018
https://narodne-novine.nn.hr/clanci/sluzbeni/2018_03_27_555.html

Uredba o načinu izračuna početne zakupnine poljoprivrednog zemljišta u vlasništvu Republike Hrvatske OG 89/2018
https://narodne-novine.nn.hr/clanci/sluzbeni/2018_10_89_1747.html

Pravilnik o Gospodarskom programu korištenja poljoprivrednog zemljišta u vlasništvu Republike Hrvatske OG 90/2018
https://narodne-novine.nn.hr/clanci/sluzbeni/2018_10_90_1757.html

Pravilnik o provođenju javnog natječaja za prodaju poljoprivrednog zemljišta u vlasništvu Republike Hrvatske OG 92/2018
https://narodne-novine.nn.hr/clanci/sluzbeni/2018_10_92_1800.html

Pravilnik o agrotehničkim mjerama OG 22/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_03_22_452.html

Pravilnik o mjerilima za utvrđivanje osobito vrijednog obradivog (P1) i vrijednog obradivog (P2) poljoprivrednog zemljišta OG 23/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_03_23_470.html
Pravilnik o načinu vođenja evidencije o promjeni namjene poljoprivrednog zemljišta OG 22/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_03_22_453.html
Pravilnik o načinu revalorizacije zakupnine odnosno naknade za korištenje poljoprivrednog zemljišta u vlasništvu Republike OG 65/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_07_65_1280.html
Pravilnik o metodologiji za praćenje stanja poljoprivrednog zemljišta OG 47/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_05_47_918.html
Pravilnik o zaštiti poljoprivrednog zemljišta od onečišćenja OG 71/19
https://narodne-novine.nn.hr/clanci/sluzbeni/full/2019_07_71_1507.html
Zakon o nasljeđivanju (OG 48/2003)
https://narodne-novine.nn.hr/clanci/sluzbeni/2003_03_48_604.html
Zakon o izmjenama Zakona o poljoprivrednom zemljištu (OG 98/2019)
https://narodne-novine.nn.hr/clanci/sluzbeni/2019_10_98_1954.html

Other references:

2. Eurostat Database: Land prices and rents. Available at: https://ec.europa.eu/eurostat/data/database
4. Ministry of Agriculture – MA (2019): Request the extension of the transitional period during which the Republic of Croatia will maintain the existing restrictions on the acquisition of ownership over agricultural land for an additional three years, i.e. until 1 July 2023. Available at: https://poljoprivreda.gov.hr/UserDocsImages/dokumenti/novosti/Request%20November%202019.pdf

**Other supporting web sites:**

Abolition of the Agricultural Land Agency: https://www.agrobiz.hr/agrovijesti/ukida-se-agencija-za-zemljiste-i-dodijela-zemlje-vraca-na-opcine-i-gradove-8169


**List of supporting materials**

This could include documents with detailed statistical information on land prices, frequency of sales and rentals, or documents illustrating the political and/or juridical debates regarding certain regulations. Some are available from the project archive.
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR CZECHIA

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Agricultural land market regulations in Czechia around 2020

Tomas Ratinger and Ladislav Jelinek

1. Introduction

There is 4205 thousand hectares of agricultural land, i.e. 53.3% of total territory area of the Czech Republic in 2018 (MoA, 2019). Of it 85%, i.e. 3578 thousand hectares, constitutes utilised agricultural area (UAA) registered in LPIS. About 70% of either category belong to arable land. More details are in Table 1.

Table 1: Agricultural land registered in cadastres and in land parcel information system (LPIS)

<table>
<thead>
<tr>
<th>Registered in cadastres</th>
<th>UAA in LPIS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land</td>
<td>4 205 288</td>
</tr>
<tr>
<td>Arable land</td>
<td>2 958 603</td>
</tr>
<tr>
<td>Grasslands (permanent)</td>
<td>1 006 552</td>
</tr>
<tr>
<td>Perennial crops</td>
<td>240 133*)</td>
</tr>
</tbody>
</table>

*) including 16 6526 ha of gardens

**) including 5 737 ha of afforested agricultural land and 370 ha of fish ponds

Source: MoA (2019)

Table 2 Agricultural land ownership structure in 2017

<table>
<thead>
<tr>
<th>area ('000 ha)</th>
<th># owners ('000)</th>
<th>avg. size (ha/owner)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical persons</td>
<td>3143</td>
<td>3198</td>
</tr>
<tr>
<td>Legal entities</td>
<td>850</td>
<td>52</td>
</tr>
<tr>
<td>Municipalities</td>
<td>64</td>
<td></td>
</tr>
<tr>
<td>State</td>
<td>148</td>
<td></td>
</tr>
<tr>
<td>Of which State land, rented to farmers</td>
<td>105</td>
<td>53.5</td>
</tr>
</tbody>
</table>


In 2017, there were 3 250 000 private owners of agricultural land, of the 3 198 000 physical persons possessing on average just a bit less than 1 hectare (half of them, 1.6 million owners
own less than \(\frac{1}{4}\) ha) while 52,000 legal entities owned on average 16 hectares. About 212,000 hectares were owned by public institutions and the state. The average land possession per owner has been steadily increasing. For further details look at Table 2.

Typical characteristic of Czech land usage structure is high share of land rented. Though it has continuously decreased the figure amounts to 74% of UAA.

*Figure 1 Development of area and number of plots of agricultural land per owner*

Source: ÚZEI (2019) based on data from Czech Mapping and Cadaster Office

About 2 million hectares of UAA (56%) is located in areas with natural constraints (ANC) and 392 thousand hectares of UAA in conservation areas (11%) (MoA, 2019, see Table 3). While land in ANC generates income (CAP payments) because its use is not under special regulations, conservations might bring with it important land use limits, and thus lower interest in buying or renting, even if the limits are compensated.

*Table 3 Distribution of land by conditions (thousand hectares)*

<table>
<thead>
<tr>
<th></th>
<th>Area with Natural Constraints</th>
<th>Area in Conservation Areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grasslands (permanent and arable)</td>
<td>921</td>
<td></td>
</tr>
<tr>
<td>Arable land</td>
<td>1089</td>
<td></td>
</tr>
<tr>
<td><strong>Total UAA</strong></td>
<td><strong>2010</strong></td>
<td></td>
</tr>
<tr>
<td>Permanent grasslands</td>
<td>198.5</td>
<td></td>
</tr>
<tr>
<td>Arable land + perennial crops</td>
<td>193.5</td>
<td></td>
</tr>
<tr>
<td><strong>Total UAA</strong></td>
<td><strong>392</strong></td>
<td></td>
</tr>
</tbody>
</table>
About 2% of the total agricultural land is sold/purchased each year (Table 4). The figures do not include sales of publicly owned land, that has recently squeezed. Although the extent of transactions was more or less constant over 2013-2018, prices increased substantially – actually doubled (see also Figure 1). It can be an effect of the ultimate liberalisation of the land market given by the new Civil Code (Act 89/2012, Coll.). After that land investors launched a campaign addressing a vast number of small land owners with the offer of buying their land. Definitely, the volume of land transactions increased between 2013 and 2016 by 21 % and prices by 57%.

Table 4 The development of private land sales/purchases

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The share of transactions on the Agricultural land (%)</td>
<td>2.11</td>
<td>2.3</td>
<td>2.39</td>
<td>2.44</td>
<td>2.27</td>
<td>1.96</td>
<td>0.77</td>
</tr>
<tr>
<td>Area of transactions (‘000 ha)</td>
<td>84.8</td>
<td>97.0</td>
<td>100.6</td>
<td>102.9</td>
<td>95.3</td>
<td>82.3</td>
<td>32.3</td>
</tr>
<tr>
<td>Average price (€/ha)</td>
<td>4139</td>
<td>4546</td>
<td>4850</td>
<td>6533</td>
<td>7535</td>
<td>8644</td>
<td>8969</td>
</tr>
</tbody>
</table>

Source: MoA (2019); *) only the first half of 2019

The increase of land prices was followed by the increase of land rents (Figure 2). The close correlation between land prices and land rents is illustrated in Figure 3. It can be learned...
from the presented regression that 1 percent of the land price increase is projected in land rent increase. Key factors that stimulated land prices are particularly: direct payments on per ha basis incl. ANC payments, improvement of farm economic situation, competition for land supported by speculative transactions. Also urban development projects push significantly the prices in surrounding areas around places where infrastructure projects arise.

*Figure 3 the development of land rents (€/ha)*

Note: Direct payments = SAPS in 2014, SAPS + Greening in the other years

*Figure 4 The relationship between land prices and land rents*

2. Key land regulations affecting land markets

The Civil code (Act 89/2012 Coll.) is governing land transactions (sales, renting) as any other property transactions. The Civil code has liberalised the land market. It does not limit ownership and tenancy in terms of size of the property, legal status of the owners or their nationality (country residence or citizenship of the owners).

Act 503/2012 Coll. On the State Land Office is governing the land consolidation programme and the management, restitution and privatisation of state land. The law also states conditions for the sale of state land and for renting state land. However, the privatisation of the state land has been more or less finished. There might still be some land to be sold, but there has not been announced any tender for it since 2019. Remaining state land has been particularly kept as a reserve for public purposes, mainly realized in land consolidation programmes.

Act 139/2002 Coll. The Law on Land Consolidation and Land Offices, and on the revision of the Act 229/1991 Coll, on the regulation of ownership of land and other agricultural assets. More on the land consolidation programme is in the next section. It is important to stress that land consolidation either simple or complex builds on voluntary participation of land owners in the process and on consensual approval of the land consolidation plan/project.

Act 334/1992 Coll. on the Protection of Agricultural Land states rules on the use and care of the land and soil. In particularly it states rules under which agricultural land can be converted in other uses i.e. for construction, permanent afforestation or other uses. Often loose interpretation of this law has led to significant loss of agricultural land around large cities; the loss of agricultural land amounted 1500 hectares (0,04% of UAA) in 2018. The law states also that agricultural land should be maintained fertile and soil degradation should be prevented. However, enforcement of this part of the law is weak.

Act 229/1991 Coll, on the Regulation of Ownership of Land and Other Agricultural Assets, and its later revisions govern land restitution. Vast majority of agricultural land have been returned to the original owners (i.e. to those who it claimed before 9.8.1996), the process of restitution has almost been completed yet. The unfinished restitution concerns only substitutions of land parcels and financial compensation when the land property could not be returned in the original location. By 31.12. 2018 it was just 425 hectares. In 2013, church restitution has initiated and the state transferred nearly 26 ths. ha (0,7% of the total agricultural area) into churches’ ownership.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

Below we summarize the regulations, customs, and practices taking place in surrounding environments of land markets’ functioning.
3.1 **State land (agricultural)**

- Supervised by the State Land Office (State Land Fund until it merged in State Land Office in 2013)

- 584 thousand hectares (97%) out of 600 thousand hectares of agricultural land have been privatized since 1999.

3.1.1 **Church land restitution (transfer from the state (represented by the State Land Office))**

- Act 428/2012, Coll. about Church property restitution

- Since 2013, totally 25 557 ha of land has been returned by the churches

3.1.2 **Sales of state land**

- The rules are given by the Law nr. 503/2012 about State land fund, article 12 – sales to farmers. They include:

  a. Public offer

  b. Price is settled in the offer: land appraised administratively

  c. Eligible applicants: agricultural entrepreneurs (natural or legal persons) i) having farmed for at least 3 years and having operated at least 10 ha in the cadastre or in neighbouring ones, ii) owing at least 10 hectares in the cadastre or in neighbouring ones and having farmed 10 hectares for at least 3 years elsewhere in the Czech Republic.

  d. Pre-emptive right for farmers that rented land designed for privatization for at least 3 years, however the farmer is eligible to acquire under this rule no more than 70 % of such area.

- No state land was offered in 2019 (currently there is no land offer on the website of State land fund)

- Most of the sales of state land was done under the Law No. 95/1999 which was replaced by the Act. 503/2012.

- Sales of land owned by municipalities and regions (NUTS3 level, i.e. “Kraj”) are not specifically regulated by a special law.

- Overall, privatization and restitution have more or less finished. As such there hardly any issues regarding unknown or not-identified owners, or with unproven restitution claims. The unfinished restitution concerns only substitutions of land parcels and financial compensation when the land property could not be returned in the original location. By 31-12-2018 it was just 425 hectares.
3.2 Land Consolidation

Land ownership is highly fragmented in the Czech Republic. In 2017, there were 3 250 000 private owners of agricultural land. 3 198 000 natural persons are possessing on average just a bit less than 1 hectare. Half of them, thus circa 1.6 million owners, own less than ¼ ha. 52 000 legal entities own agricultural land. They own on average 16 hectares. The high fragmentation of land ownership results in transactions cost when exchanging land. As such there is a desire to stimulate land consolidation. Land consolidation either simple or complex builds on voluntary participation of land owners in the process and on consensual approval of the land consolidation plan/project.

3.2.1 Legal background

Land consolidation followed the restitution of land property rights in the effort to adjust the location of land to the changes in ownership use structures (distribution) and to provide important land use infrastructure. It is regulated by the Act 139/2002 Coll. and the Act 503/2012 Coll. Land consolidation is administered by the State Land Office (Státní pozemkový úřad). Land consolidation is financed by the public funds (national and EU funds), annually around 2 billion CZK (€ 80 millions).

The process started already in 1992, since that land consolidation either simple or complex has been carried out around on 35 % of the land fund; in terms of cadastres, 5 251 units out of total 13 076 have been consolidated. About 12% of agricultural land is currently being under the process.

3.2.2 Objectives

Land consolidation has two main objectives:

i) To enable owners to use effectively their property rights (access their property, operate consolidated plots)

ii) To introduce important technical measures to protect soils, to improve water regime and to enhance landscape functions in general.

If only the objective i) is followed we talk about a Simple consolidation process; if the both objectives are followed then it is called a Complex land consolidation process.

3.2.3 Procedure

To make property rights effective requires bringing together (through exchange) separate pieces of land in a consolidated block of operational size, redrawing maps, marking the new consolidated blocks in the terrain, and building countryside roads to access them.

The environmental and public infrastructure (erosion barriers, polders, ponds, wildlife paths and other ecological stabilisation elements, countryside roads, etc.) are preferably built on the public land, thus it also requires exchanging plots.

The exchange of plots is the most difficult and painful process. It last months and years in many cases.
Cadastre is a basic organisational unit for land consolidation. The process can be initiated either by a group of owners or by the municipal council. To initiate the consolidation process in a given cadastre, at least 50% of land owners need to favour it (agree with it). The land consolidation project (including all (ex)changes of property rights and plans for the public and environmental infrastructure) must be approved by all owners and the respective municipal council.

The land consolidation modes can be further characterise as follows

- **The Simple** one addresses only a certain part of a cadastral territory or resolves only (re)allocations of plots (reparcelling).

- **The Complex one**, usually addresses a whole cadastral territory or even several cadastres; and beside reparcelling/land reallocation it includes introductions of important environmental and access enabling infrastructures.

Speed of the land consolidation process is given by the budget allocations, the capacities of the regional offices of the State Land Offices as well as the capacity of territorial and landscape planners (both, local governments and private consultancies).

Often some barriers appear, which hamper the individual land consolidation projects and thus prolong the whole land consolidation process: owners unwilling to participate in the process, insufficient reserve of publicly owned land for land exchanges, lack of agreement on the final redrawing, etc. That is no surprise, the implementation of the land consolidation project of a cadastral unit can last for years.

### 3.2.4 Effects

There is no study that proves empirically the causality between land consolidation and land market functioning. However, there is a commonly accepted view that land consolidation has significantly contributed to overcome the land market frictions (together with state land privatisation). First of all, land owners have experienced value of their property during the negotiation of plot exchanges and have grasped their rights. Second, consolidated plots have better shapes and are bigger which makes them more attractive for potential buyers. Plots should also be better accessible once the consolidation is finished.

Following the land consolidation process, the rental contracts are often renegotiated and likely with increased land rents.

There are particular benefits of land consolidation for municipalities since the finished land consolidation process enables them to design better their territorial (development) plan. Thus municipalities often carried out land consolidation before large infrastructure projects start. In other words, the intention to put forward essential infrastructural projects triggers the land consolidation process.

Land use is less fragmented as land use is consolidated through land rental. A high share of agricultural land is rented. This share has decreased over the last years, but still equalled 74% in 2020.
3.2.5 The challenges of the land consolidation process:

The challenges of the land consolidation process include:

- High cost
- Too long process (duration on average 3-5 years)
- Reluctance of the land actors,
- Occasional opposition against the consolidation process (land owners or tenants)
- Insufficient land reserve in the cadastre available for building necessary (optimal) public infrastructure (roads and environmental technical infrastructure)

3.3 Pre-emptive rights

The current Czech legislation gives pre-emptive rights only very limitedly. Family relatives and co-owners get the pre-emptive rights only for six months following the owner’s acquisition of the land (due to inheritance).

If the tenancy of the state land has lasted for at least 36 months, then the tenant has got preferential right to buy (privatize) that land.

The pre-emptive rights can be settled on a voluntary basis in mutual agreement between owner and tenant.

3.4 Administrative price

The Ministry of Agriculture states administrative price of agricultural land for each cadastre in the Czech Republic in its Regulation 298/2014 and its later amendments. This administrative price is a base for calculating land tax and stating price of the publicly owned land.

Administrative price relates to the potential return on land from agricultural production respecting soil quality and climatic conditions. Since there are more than one soil quality categories in the given cadastre the price is calculated as an average of prices of land categories weighted by the share of each category in the cadastre.

The administrative price is regularly valorised either by the simple price index adjustment or through reassessment of the agro-ecological parameters of the soil and land characteristics.
3.5 Land purchases supported by state

Farmers may apply for subsidised land purchase that compensates for some part of the loan interest rate. The amount of the subsidised land transacted land varies year by year; it is somewhere between 3% to 10% of all land purchases in the country.

4. Implementation and enforcement issues of land regulations

Overall the land market in the Czech Republic is largely liberal. Natural and legal persons, regardless of their nationality can freely buy and sell their land properties. Taxation of land ownership and transactions is rather moderate. Due to these liberal conditions, demand for land purchases has clearly exceeded its supply in recent years. Also land tenancy conditions are predominantly set by the contractual parties with minor (only administrative) state interference. The outstanding issue is access to land plots and ownership fragmentation which largely depend on the progress of land consolidation. Thus land consolidation is the main issue preoccupying agricultural policy and land authorities. Another urging issue associated with land tenancy is soil and biodiversity protection. The current law states that agricultural land should be maintained fertile and soil degradation should be prevented. However, the actual enforcement of the regulations is insufficient. There are clear indications that the recent CAP measures like GAECs, greening or the country’s maximum arable field size not exceeding 30 ha have contributed to an improvement of the situation. On the other hand, area payments provided by the CAP have to large extent been capitalised into land sale and rent price.

Agricultural land and soil protection

As mentioned earlier (in Section 3) the Act 334/1992 Coll. states rules on the protection of agricultural land fund and soils. Among others, it states rules under which agricultural land can be converted in other uses i.e. for construction, permanent afforestation or other uses. To change the use, the owner has to apply for permission one of the following authorities:

i) The respective municipal authority with extended competence for areas of less than 1 hectare

ii) The respective regional government for areas between 1 and 10 hectares

iii) The Ministry of Environment for areas above 10 hectares.

Land conversion subject to fee that is relates to soil quality; the rate of the fee is given by the Act 334/1992 Coll. The amendment of this act in 2016 increased the fee in order to discouraged the conversion particularly in the highest soil quality categories.

Rather loose implementation this law has led to annual loss of 1500 hectares mainly for industrial parks and shopping centres around medium size towns and large cities (MoA, 2019).
Lack of enforcement tools is behind the low impact of the legislation on soil protection and maintaining soil fertility. Actually, CAP instruments as GAEC and Greening are the only instruments encouraging farmers to improve the situation.

5. Other land-related measures not discussed elsewhere

Here we present some comments related to questions addressed in the experts’ questionnaire:

A body to approve agricultural land ownership by a domestic natural person (Q12):

In fact, the Cadastral Office approves all property acquisition through the procedure that result in the registration of the (new) owner in cadastral register. That procedure concerns all transactions independently of the type of owner or type of property. The procedure should assure that all parties which might have property right stake or claim have a chance to raise their objection to the transaction. The procedure (approval) is rather administrative to assure that the given land transaction is properly registered and marked in the map.

Existence of restrictions (moratorium) on the sales of public land (Q76):

There is no official moratorium on sales of public land. But in fact, no offer / tender has been announced for two years. The (unofficial) position of the State land office is to keep the remaining state land as a reserve for the Land consolidation programme.

Any specific reasons for people to prefer engaging in oral land rental contracts (Q144):

The vast majority of contracts are written agreements. It seems that the oral agreement is only a legal option with little practical use. Generally, it is recommended to prefer written contracts to avoid later disputes.

Any specific reasons for people to register land rental contracts in the cadaster (Q146):

Registration of rental contracts in the cadastre (cadastral office) is rather rare. The main benefit of registering a contract in the cadastre rests in the evidence of the tenancy when the property is to be sold (or generally, the proprietor has changed).

Possibility for the legal contract enforcement if a party breaches the land rental contract terms (Q149):

The confusion might arise at which court to submit the case (where the land is located or where the submitting party resides). However, the lawyers should be aware.

Other restrictions of land rental and options for bypassing them (Q150 – 152):

As mentioned, if land is situated in the middle of a large land block it might be a problem rent the plot. It would require negotiating an exchange. Such exchanges happen, usually farmers and farming companies are flexible in this respect.
6. Reference list of legal regulations

Act 229/1991 col, on the regulation of ownership of land and other agricultural assets. (Zákona č. 229/1991 Sb., o úpravě vlastnických vztahů k půdě a jinému zemědělskému majetku, ve znění pozdějších předpisů)


Act 95/1999 on the conditions of the transfer of agricultural and forest land from the state ownership to other entities. (Zákon č. 95/1999 Sb., o podmínkách převodu zemědělských a lesních pozemků z vlastnictví státu na jiné osoby ve znění pozdějších předpisů) – replaced by Act 503/2012 Coll.


Act 503/2012 Coll. on the State Land Office and on the revision of some associated laws. (Zákon č. 503/2012 Sb. o Státním pozemkovém úřadu a o změně některých souvisejících zákonů)

Act 428/2012 Coll. on Property Settlement with Churches and Religious Communities. (Zákon č. 428/2012 Sb. Zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi a o změně některých zákonů (zákon o majetkovém vyrovnání s církvemi a náboženskými společnostmi)

Regulation 298/2014 Coll. Of the Ministry of Agriculture on the list of cadastres with assigned average basic prices of agricultural land. (Vyhláška č. 298/2014 Sb., o stanovení seznamu katastrálních území s přiřazenými průměrnými základními cenami zemědělských pozemků, ve znění pozdějších předpisů)

List of supporting materials

The materials available from the project archive include:

LOA CR (2020) Web of the Land Owners Association of the Czech Republic:

THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES”

COUNTRY REPORT FOR DENMARK

Henning Otte Hansen
University of Copenhagen, Department of Food and Resource Economics (IFRO), Denmark
Agricultural land market regulations in Denmark around 2020

Henning Otte Hansen

1. Introduction
The drivers behind agricultural land regulation in Denmark can to a large extent be illustrated by examining structural developments. The agricultural land regulation is both a result of structural development and a tool for managing structural development. On the one hand, agricultural policy and land regulation are tools to ensure the structural development that society wants. On the other hand, agricultural policy and land regulation are also consequences of a structural development and of changes in the outside world. For example, structural developments in the form of larger, more specialized and more capital-intensive holdings are putting pressure on land regulation. A description of the structural development and an identification of the main trends thus contribute to describing the agricultural land regulations.

In the following sections, significant trends in the structural development of Danish agriculture are identified, described and explained on the basis of statistical data.

Figure 1. Number of farms, Denmark 1960-2019
Figure 2. Number of herds, Denmark 1960-2019

Source: Own presentation based on Statistics Denmark (2020+, several issues)
In the first half of the 20th century, the number of farms in Denmark was relatively constant. On the one hand, there was a "natural" structural development based on technology, economies of scale, etc. towards fewer and larger holdings. On the other hand, agricultural policy and structural policy led to the creation of more small farms. On average, therefore, there was an almost constant number of holdings. From around 1960, the number began to decline, and in recent decades there has been an almost constant reduction in the number of farms of approx. 2,500-3,000 per year, cf. figure 1 and 2.

The size of the farms is central to a description of the structural development, as forms of ownership - and the need for new forms of ownership - are very dependent on the size and size development. However, the average size can cover a significant spread. As can be seen from figure 4, full-time farms differ significantly from the average figures in terms of both size and development.

It is also characteristic that in recent decades full-time holdings have grown much faster than agricultural holdings on average. While full-time farms generally seek to optimize production and structure to achieve the highest possible economic return, many part-time farms will be much less exposed to the same economic pressures, partly because off-farm income is a major source of income. The significant spread in the size distribution makes it inaccurate just to look at average figures.

In recent years the specialization in agriculture - and in many other industries - has been increasing. In this context, specialization means specialization on the individual farms, whereby the production becomes more diversified. With increasing specialization, both

Source: Own presentation based on Statistics Denmark (2020+, several issues)
economies of scale and economic risk increase, and this will contribute to an increased need for capital and thus also alternative forms of ownership in agriculture.

The increasing specialization is partly due to the technological development, which continuously improves the economies of scale. At the same time, the increasing requirements for specific knowledge will make it necessary to focus on fewer and possibly only a single branch of production.

The development towards increasing specialization is visible in other ways and is clearly seen in Denmark. In the 1960s, 75 percent of all farms had a diversified production, defined as farms with both pigs and cows. This share has since fallen to 3 per cent, cf. figure 5.

**Figure 5. Farms having both pig and cows and pigs, per cent of all farms**

**Figure 6. Integrated farms (both sows & slaughter pigs)**

In parallel with increasing size and specialization, the agricultural industry is also becoming more concentrated in several ways. The concentration takes place in such a way that the largest holdings become even larger. The concentration can be illustrated by calculating how large a share of the total production that the 20 per cent largest agricultural holdings have. If these largest holdings get an increasing share, it is an indication of increasing concentration.

When looking at concentration in Danish agriculture - regardless of form of operation, size, form of ownership, etc. - there is a clear trend towards the largest farms having an increasing share of total turnover. The 20 per cent largest farms thus account for approx. 70 per cent of total turnover, and 70 per cent of the total area, and the shares have been constantly increasing over the last decades, cf. figures 7 and 8.
The form of ownership is an essential element in the structural conditions of agriculture. At the same time, in recent decades, the form of ownership has taken on new dimensions in land regulation.

Self-ownership and family ownership are often the dominant form of ownership in agriculture. There are several historical, economic and agricultural policy reasons for this. Often a law restricts or prevents company ownership, remote ownership, state ownership,
etc. In Denmark, self-ownership and family ownership are by far the dominant form of ownership, and protection of self-ownership has been - and still is - mentioned in the Agricultural Act as a goal.

In the early 1970s, 98 percent of the agricultural properties were owned by one person and 97 per cent of the turnover in agriculture came from these farms, cf. figure 9. The shares have subsequently fallen to resp. 87 and 73 per cent in recent years. The figure illustrates that company-owned farms are relatively large, and therefore these farms mean a lot to the total turnover of agriculture.

Farm owned by a company or by a family is not necessarily contradictory: in many cases, a farm is owned by a company, but the family or family members are the real owners.

In recent decades, despite the protection of self-ownership in the Agricultural Act, there have been significant changes in the forms of ownership in Danish agriculture.

It is thus characteristic that both agriculture owned by companies and leasing have gained increasing importance, while farms owned by one person - which, however, is still the dominant form of ownership - has had an almost continuous declining importance.

**Figure 10. Farms in tenancy and area in tenancy - per cent of total**

**Figure 11. Tenancy: Area of full-time farms: Tenancy and freehold. 1975-2018**

Source: Own presentation based on Statistics Denmark (2020+, several issues)

As can be seen from figure 10, tenancy has become much more important in recent decades. Figure 10 shows the importance of tenancy in agriculture in Denmark, as measured by total area and total number of holdings. Tenancy covers half of all holdings and 40 per cent of all agricultural land. There has been a clear upward trend during the period.

Figure 11 shows the development in the area of full-time holdings divided into freehold and tenancy, respectively. A full-time farm has an average of approx. 190 hectares, of which the tenancy amounts to just over 70 hectares. Tenancy has increased throughout the period -
from 15 per cent in the 1970s to now approx. 37. Here, also, there has been an increasing trend throughout the period. To illustrate the development - and not to predict the future development – tenancy will amount 50 per cent of the area of full-time agriculture in 2035, if the trend over the past 10 years continues.

The consequence is also that a large and increasing share of the Danish agricultural land is not managed and owned by the same persons.

The increasing scale of the tenancy in agriculture has contributed significantly to the structural development and utilization of more economic scale, without farmers having to buy more farmland.

2. Key land regulations affecting land markets

Regulations of agricultural land in Denmark is predominantly formulated in the Agricultural Act, which covers all types of agriculture and covers the whole country. The Agricultural Act defines rules on the acquisition of agricultural property, tenancy, definition of an agricultural holding etc. However, the regulations have changed in line with policy objectives and agricultural developments

During the past three to four decades, the Agricultural Act has been significantly liberalized. Restrictions on acquisitions, mergers, financing, ownership, and size in agriculture have been reduced. With the structural development in the farming industry, driven by economies of scale and with increasing international competition, it has been necessary to ensure the farming industry more economically favourable framework conditions free of political attempts to govern structural development. Thus, the importance of the Agricultural Act for structural development has been reduced, and control and regulations have been liberalized.

For many years, the Agricultural Act has provided the legal framework for the structural development of agriculture as wanted by society. The regulatory framework had two dimensions. On the one hand, the purpose of regulation was to support the competitive farms and ensure access to the necessary resources such as capital, labour, extension services, etc. Special support schemes offered favourable loans and supported advisory services to farmers. Increasing productivity has also been an important objective of the Agricultural Act. Through research, development, and knowledge dissemination, the government has sought to strengthen the competitiveness of the primary farm industry and the food processing industry. Agricultural land should be reserved for agricultural purposes, and there were requirements set for the education of farmers.

On the other hand, there was a desire to influence and control the structural development to meet a number of political preferences for agricultural development. For a long period until the 1970s, governments wanted to support smallholder farmers. The Act also set upper limits for how large the farms could grow through acquisitions. These limits on size have continually increased in line with structural developments and in order to enable the utilization of the benefits from economies of scale. An important and longstanding
motivation behind the restriction on farm size was to protect the dominant family farming model in Denmark in which the farmers own the farms. Over time, investor ownership of farmland has, therefore, been either prohibited or very limited. From the late 1980s, the Act included a requirement for maintaining a harmonious relationship between livestock and agricultural land as a measure to limit nitrogen leaching from the application of animal manure on the fields following the Nitrate Directive requirements.

Changes to the Agricultural Act have repeatedly been adopted on the basis of reports and studies on agricultural development. During the 1970s, the Agricultural Act was further regulated and tightened in a number of areas in order to ensure (politically) appropriate structural development. An important goal was to give preference to the purchase of agricultural properties for people who had farming as their primary occupation. At the same time, it was also an objective to ensure that young people with an agricultural education were given a reasonable opportunity to establish themselves as farmers. Thus, a requirement on education to allow purchase of an agricultural property was introduced. Furthermore, a requirement that farming was the main occupation of the landowner and a requirement for residence on the farm were introduced. As an indirect effect, these restrictions slowed down price increases on agricultural properties, easing young people’s chances of establishing themselves as farmers.

At the end of the 1980s, a committee prepared a report on the structure, financing, and ownership of agriculture. The government’s objective was that Danish agriculture should be able to manage without public support and that efficient farms within the framework of the EU’s Common Agricultural Policy should be able to provide earnings and working conditions that were comparable with other industries while also allowing for increasing equity on the individual farm on EU policies, this volume). Based on this, the task of the committee was to present proposals for measures that would contribute to making agriculture economically sustainable over a period of time.

The findings of the committee formed the basis for a reform of the Agricultural Act resulting in considerable liberalization of the Act with the aim of ensuring the existence and expansion of profitable businesses. The main purpose was to ensure that the farming industry was able to adapt to the current business conditions. The regulatory changes made it easier to obtain exemptions from restrictions on farm co-operation and on mergers, and rules on the acquisition of farms were liberalized.

The next major revision of the Act came as a result of the so-called Growth Plan for the Food Industry (Vækstplan for Fødevarer). This business growth plan included several elements, but the recurrent initiatives mentioned related to competitiveness, sustainability, and growth. Thus, it was a relatively offensive approach where increased production and exports were implicitly or explicitly objectives. Improving access to capital was also a tool for achieving the desired outcomes.

There was a common understanding that access to new types of finance and new forms of ownership were necessary in order to utilize the potential of the industry. With the structural
development continuing, the anticipated cessation of dairy quotas, which was a supply management tool to limit milk production within the EU, the continued need to exploit new economies of scale, and improved access to capital would be crucial. Furthermore, previous notions of agriculture as an exceptional industry requiring special conditions diminished in importance, and the independent status of the Ministry of Agriculture and Food ended as it was merged with the Ministry of the Environment. Finally, market regulation in the EU’s Common Agricultural Policy had been reduced as a result of a succession of reforms transforming substantial parts of the price support to decoupled direct support. Agriculture was, therefore, increasingly expected to be able to compete on equal footing with other industries on the same conditions and without significant positive or negative support schemes.

In the latest revision of the Agricultural Act from 2016, four objectives are stated:

- To ensure proper use of agricultural properties, taking into account agricultural production, nature, the environment, and landscape values.
- To ensure the sustainable development of the agricultural industry and improve its competitiveness.
- To facilitate settlement and development in rural areas.
- To maintain the family-owned farms as the overall ownership and operating form as well as to ensure the necessary production base for the agricultural industries.

With this Agricultural Act, significant deregulation and liberalization have taken place. There is no longer an upper limit on how much land a farmer can own, no education requirement, and no longer the requirement for the owner to run the property themselves. Moreover, the requirement that the owner must live on the property has been dismantled.

Access for companies to own agricultural property has been improved. Investors – Danish or foreign – can form a company that can acquire an agricultural property. It is required that the person who fulfils the conditions for personal acquisition of the agricultural property must have a controlling influence in the company.

The liberalization of the Agricultural Act was particularly driven by a growing demand for capital. With ever-increasing farms, the family-owned farm model was challenged in several ways, and new forms of ownership – including company ownership in particular – appeared on the agenda and increasingly became an opportunity for farmers. As more and more economies of scale are exploited, and with a persistent structural pressure, restrictions on the size of farms have also been eased.
3. **Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning**

As the Agricultural Act has been significantly liberalized, external investors have gained access to purchase agricultural law and this expanded access and increased demand has undoubtedly had an impact on the market, demand for land, and on land prices.

The market for agricultural land is particularly affected by three factors: the profitability of agriculture, the regulation of the market for agricultural holdings and the general economic conditions in society.

Figure 12 shows that during decades the prices of agricultural holdings (land, buildings etc.) have varied considerably. The relatively unstable and unpredictable price development of agricultural properties is of great importance for investors' interest in investing in agriculture. Therefore, the effect of land regulation on land prices will vary over time.

It should be noted that the price increase on agricultural holdings around 2007-08 partly followed the general price development of houses, partly was exacerbated by the food crisis in almost the same period, which led to significant price increases on most agricultural products. The business cycle both in the agricultural sector and in society in general therefore played a role.

**Figure 12. Prices of agricultural holdings and inflation in Denmark. Index 1964 = 100**

![Graph showing prices of farms and inflation]

Source: Own presentation based on Statistics Denmark (2020+, several issues)

On the other hand, it is not possible empirically to identify the impact of land regulation on land prices. While access for companies to own agricultural property has been improved in
the 2010s, prices of agricultural properties have remained virtually unchanged. This can be due to several factors:

- Regulation has been liberalized over a number of years, so a possible effect has been gradual
- As many factors other than land regulation affect land prices, it is possible to identify the individual factors.
- The changed regulation has prevented a further fall in prices
- Liberalization and the changed regulation have had a very limited attractiveness and have not significantly attracted new types of owners.

The liberalization of land regulation in particular was expected to attract new types of owners, including pension funds and other institutional investors were expected. With the gradual liberalizations of the Agricultural Act, access for companies and institutional investors to own agricultural properties in Danish agriculture has been improved. The liberalization has also been followed by several new projects and concrete initiatives - although the success has been limited:

One example is Dansk Landbrugskapital ("Danish Agricultural Capital"), which in 2015 was presented by the government.

Dansk Landbrugskapital can provide subordinated loans, and the interest rate is set individually, and is in the range of 8-10 per cent. The ambition was a total lending of 2 billion DKK, but the result was 1 billion DKK.

As of May 2020, only 200 million DKK out of a billion was lent to 36 farmers (Hovmøller, 2020), which is much less than expected.

AP Pension is another player in the market for capital for agriculture. In 2014, AP Pension established a new fund, Dansk Farmland K/S, with up to DKK 600 million DKK to acquire agricultural holdings. The business model is that AP Pension owns the agricultural holding (land and buildings), which is rented out to the farmer. After 5 years of activity, Dansk Farmland itself assesses that neither revenue nor return is as expected (Olsson, 2019; Fritzner, 2019).

The investment company Ödger A/S has also tried to establish a business model where Ödger A/S acquires land, buildings and herds, while the farmer leases and is responsible for the financing of machinery, equipment and other things. Ödger A/S will identify attractive agricultural holdings for acquisition, appoint tenants for the farms and at the same time be sparring partner and supervisor for the tenants, but without replacing the agricultural professional advisory service.

The initiators behind the project contacted 25 pension funds, but none were interested in investing in Ödger (Olsen, 2019).

A number of possible explanations can be given for the negative experiences so far:
• Historically, the agricultural segment has been characterized by the principle of self-ownership. The external investors must therefore analyze and develop a new business area. Similarly, farmers must find external capital attractive, and here strong preferences for self-ownership have been a barrier.

• The return on investments in agriculture has far from been able to match the return on investments in other assets such as shares. Taking into account risk, liquidity, etc. it was not attractive to invest in agriculture during the period. This may be due to short-term conditions as alternative investments had large returns during the period. This is also due to longer-term conditions and the fact that agriculture is not able to provide a competitive return in the long term.

• For many professional investors, the agricultural segment is unknown. The agricultural industry differs commercially from other industries, and investors do not have the sufficient competence to be able to assess the attractiveness of agricultural projects. This means that an extra return is required for agricultural investments.

• Investments in separate individual farms will often be illiquid. Therefore, investors will demand a liquidity premium, which makes it less attractive for farmers to demand this type of capital.

• Often the agricultural industry has a negative commercial image: Poor earnings, bankruptcies, huge economic support, high debt, low growth, small units, high average age of farmers, etc. This picture will often make investors less interested in investing in agriculture.

• Investments in agriculture do not significantly diversify or balance investors' portfolios - although market conditions in agriculture and industry are often significantly different.

The conclusion is that deregulation has not really attracted institutional investors and that several possible reasons exist. Thus, the consequences of land market regulation are also relatively moderate.

The demand for agricultural assets from institutional investors and other investors is limited by the fact that it is in principle not legal to buy agricultural land without residential buildings.

The Agricultural Act requires that an agricultural property has a suitable residential building. This means that the residential building must be of such a size and condition that it can be used for year-round living for a family.

The residential buildings must be kept properly level. Authorities may require that a non-maintained building be removed or renovated. If the residential building is ordered to be removed, a new one must be rebuilt.
The requirement for a residential building only applies to the first purchased agricultural property, as one may not acquire an agricultural property without buildings without being the owner of an agricultural property with a residential building.

The agricultural properties that are subsequently acquired do not need to have a residential building, as it can be merged with an existing property.

The rising prices of agricultural properties combined with the structural development have been a challenge for the new or newly established farmers. The development has also been a driving force in the liberalization of the Agricultural Act. Credit institutions have been reluctant to fund young future farmers' purchases of farms. As figure 13 shows, the economic size and bank debt of full-time farms have increased significantly.

**Figure 13. Financial development of full-time farms in Denmark 1990-2018**

The figures show a significant development in the last 10-15 years. Both the assets and bank debt have increased significantly, and with uncertain production and market conditions, financing opportunities are reduced. Credit institutions will often prefer that a farm is merged with another farm rather than sold to a new young farmer. Alternatively, another external investor may contribute with additional capital.

Some few other trends or changes will influence land use and land regulation:

- In 1989, the Parliament decided that Denmark's area of forest must be doubled during a tree generation. Within 80-100 years, forests must cover 20-24 per cent of the total area
The government and a number of organizations have agreed to remove climate-damaging lowland soil from normal farming.

Funds, including the Den Danske Naturfond (Danish Nature Foundation), have acquired agriculture and agricultural land to restore nature.

Distribution of agricultural land among individual farms on voluntary basis is optimized (supported by the Danish Agricultural Agency).

Although the liberalization of Agricultural Act has not had the expected effect on attracting institutional investors, there have been examples. The examples are typically related to external investors, institutional investors or wealthy individuals who buy agriculture and lease it out to farmers.

4. Implementation and enforcement issues of land regulations

Following the liberalization and modernization of the Agricultural Act in 2010s, the Danish Agricultural Agency is in practice the only authority within administration, control and supervision of Danish agricultural land regulation. The set of rules is relatively clearly defined in the Agricultural Act, and special rules and exceptions are limited.

Until 2013 regional agricultural commissions were important. The local element was useful in the many cases of purchase of agriculture or agricultural land, where inspection of the conditions or pricing of land in the local area was required.

Also in the wake of the sharp liberalization of the Agricultural Act since 2010, the need for detailed regulation, local assessments, etc. significantly reduced, and far more cases can be handled administratively. A large number of restrictive rules for the acquisition of agriculture were reduced or abolished, considerably reducing the role and importance of the agricultural commissions.

As a result, the Ministry of Food in 2013 decided to abolish the seven local agricultural commissions.

Enforcement and application of the legislation is considered to be well-functioning. The set of rules is relatively transparent and simple to administer, and access to exceptions and interpretations is limited.

The integration of corporate and personal data into public data systems also makes it relatively easy to link and assess the information needed to ensure enforcement. Further, the strong organization and integration of farmers helps to monitor enforcement. It will be difficult for farmers not to comply with the main rules, as other farmers who suffer from this non-compliance can relatively easily uncover incorrect conditions.

The legal system is also considered to be effective, which on the one hand has a preventive effect and, on the other hand, also overturns illegal acts in this area.
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6. List of supporting materials

See the project archive
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR ESTONIA

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Agricultural land market regulations in Estonia around 2020

Raul Omel

1. Introduction

Estonia is a country with small domestic market with only 1.3 million inhabitants, known particularly by openness, liberal trade and investment laws. Estonia has witnessed fast economic growth in the period after regaining independence in 1991. Rapid economic growth has caused significant structural changes. Estonian goods and services have become more competitive both in domestic and international market. The integration of Estonian economy into World economy and the unification with European Union in 2004 and financial crisis in 2008 and more recently the situation caused by pandemic have been important drivers behind the dynamics of Estonian economy. Starting from 1990s, the growth in Estonian economy has been considerable. Prior to financial crisis in 2008 the growth of GDP was very high making Estonia one of the fastest growing economies in Europe. The global financial crisis caused a sharp contraction of output in 2008 and 2009. Due to procyclical fiscal policy and credit boom in the construction sector the downturn of Estonian economy was one of the largest (OECD Economic Surveys of Estonia 2011, 2012, 2015).

Growth in manufacturing and services sector has generated excess demand for factors of production. Due to the substitutability of the factors of production between different sectors in economy, there has been of upward pressure of factor prices for agricultural sector. The share of agriculture in the gross domestic product and foreign trade has been declining, but agricultural production has still an important role as a provider of jobs and income in rural areas.

Changes in the structure of economy have shaped both rural economy and rural life. One can witness decreased importance of agriculture both in employment and value added. Both the decrease in employment and the decrease in the share of agriculture in total employment has been faster than for value added. In Estonia, the value added of agriculture, forestry and fishing constituted 4.7% of the total value added in 1995 and 2.9% in 2019 (Table 1).

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<tr>
<td>Agriculture, forestry and fishing</td>
<td>4.7</td>
<td>4.3</td>
<td>3.7</td>
<td>3.6</td>
<td>3.3</td>
<td>2.9</td>
</tr>
<tr>
<td>Crop and animal production, hunting and related service activities</td>
<td>3.3</td>
<td>2.8</td>
<td>2.1</td>
<td>1.8</td>
<td>1.5</td>
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Source: Statistics of Estonia, Datasets: RAA0045, RAA0046
Despite the continuous decrease in their number the Estonian agriculture is characterised by large share of small farms. Most recent available data on farm sizes for whole population is from 2016. Farms with economic size of less than 4,000 euros constitute 54% of the total number of farms in 2016 (Table 2), but they yield less than 2% of total standard output of agricultural holdings all together.

Table 2. Number of farms in Estonia by size, 2007-2016

EUR 1k = EUR 1 000

<table>
<thead>
<tr>
<th>Year</th>
<th>EUR 0-&lt;2k</th>
<th>EUR 2k-&lt;4k</th>
<th>EUR 4k-&lt;8k</th>
<th>EUR 8k-&lt;15k</th>
<th>EUR 15k-&lt;25k</th>
<th>EUR 25k-&lt;50k</th>
<th>EUR 50k-&lt;100k</th>
<th>EUR 100k-&lt;250k</th>
<th>EUR 250k-&lt;500k</th>
<th>EUR 500k or more</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2007</td>
<td>10 175</td>
<td>4 633</td>
<td>3 472</td>
<td>1 857</td>
<td>951</td>
<td>947</td>
<td>582</td>
<td>381</td>
<td>153</td>
<td>187</td>
<td>23 336</td>
</tr>
<tr>
<td>2010</td>
<td>8 597</td>
<td>2 942</td>
<td>2 754</td>
<td>1 754</td>
<td>1 016</td>
<td>937</td>
<td>720</td>
<td>498</td>
<td>170</td>
<td>225</td>
<td>19 613</td>
</tr>
<tr>
<td>2013</td>
<td>9 137</td>
<td>2 466</td>
<td>2 189</td>
<td>1 648</td>
<td>1 016</td>
<td>976</td>
<td>756</td>
<td>571</td>
<td>186</td>
<td>241</td>
<td>19 186</td>
</tr>
<tr>
<td>2016</td>
<td>6 818</td>
<td>2 269</td>
<td>1 931</td>
<td>1 513</td>
<td>1 033</td>
<td>1 004</td>
<td>804</td>
<td>742</td>
<td>302</td>
<td>281</td>
<td>16 696</td>
</tr>
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</table>

Source: Statistics of Estonia, Dataset: PMS418

Estonian farming has a dual nature which has similarities to many other Central and Eastern European countries. The share of output of large farms has grown. Even though the number of small holdings is very large, the production concentrates in larger holdings.

According to Statistics Estonia (SE https://www.stat.ee/et/uudised/2020/07/16/eestis-kasutatakse-ligi-miljonit-hektarit-pollumajandusmaad), almost a million hectares of agricultural land are used in Estonia. In 2020, the usable area of agricultural land is 990 528 hectares, which is more than 2,000 hectares more compared to 2019 (Figure 1). Of this area, 981 300 hectares are used by larger agricultural units and are mostly also registered with the Agricultural Registers and Information Board (ARIB). The remaining just over 9,000 acres come from home gardens.

In 2020, cereals are grown on 370,000 hectares, which is almost 2% more than last year. The area under legumes shows an increasing trend. Legumes are grown on 49,500 hectares, which is 15% more compared to previous year. The total area of rape and turnip rape has slightly decreased compared to last year, being 71,000 hectares. The area under potatoes is 5,300 hectares, which is almost the same as last year.

Land use data will be specified by the agricultural census. The preliminary land use statistics of Statistics Estonia are based on Agricultural Registers and Information Board land use data. This dataset is usually based on the crop production survey, but this year the data will be based on agricultural census.
According to Rasva and Jürgenson (2020), who used data from the Estonian Agricultural Registers and Information Board (ARIB) from 2011 and 2016, agricultural land use area per producer has increased and most of the agricultural land is used by agricultural producers in size groups 400–< 1,000 ha and > 1,000 ha. This means that a small number of agricultural producers are using a large area of agricultural land. For example, in 2016, the largest agricultural producer was using 27% of agricultural land located in Türi municipality. The outcome of this study showed a trend of farm size growth in Estonia; and that there is a need to find out if this model of agricultural production guarantees us food and a future of sustainability.

Table 3. Estonian FADN data on land use and rent paid

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<tbody>
<tr>
<td>SE025 Total UAA (ha)</td>
<td>113</td>
<td>113</td>
<td>115</td>
<td>118</td>
<td>117</td>
<td>116</td>
<td>116</td>
<td>116</td>
<td>121</td>
<td>120</td>
<td>123</td>
<td>126</td>
<td>128</td>
<td>130</td>
</tr>
<tr>
<td>SE030 Rented U.A.A. (ha)</td>
<td>68</td>
<td>67</td>
<td>65</td>
<td>70</td>
<td>73</td>
<td>72</td>
<td>72</td>
<td>69</td>
<td>76</td>
<td>75</td>
<td>79</td>
<td>83</td>
<td>83</td>
<td>84</td>
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<tr>
<td>Share of rented land %</td>
<td>60</td>
<td>60</td>
<td>57</td>
<td>59</td>
<td>63</td>
<td>62</td>
<td>62</td>
<td>60</td>
<td>62</td>
<td>63</td>
<td>64</td>
<td>66</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>Rent paid (€/ha)</td>
<td>19</td>
<td>24</td>
<td>30</td>
<td>36</td>
<td>42</td>
<td>47</td>
<td>51</td>
<td>57</td>
<td>64</td>
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</table>

Source: FADN Estonian database (http://fadn.agri.ee/standardtulemused/)

Data on land usage and prices are obtainable from FADN database, Land Board (http://www.maaamet.ee/kinnisvara/htraru/) and Statistics Estonia (Table 3). Based on
public interviews with agricultural producers and representatives of real estate companies one can conclude that data obtained from FADN database underestimates real price of land and rental prices. According to public interviews with agricultural producers, there has been very high pressure on land prices and rents since the beginning of 1990s. According to Estonian FADN data the share of rented land in total utilized agricultural area has increased from 60% in 2006 to 65% in 2019 (Table 3). Average rent per hectare was 64 euros in 2019 (Table 3).

There was a considerable rise in the prices of agricultural land prior to the accession to the European Union in 2004. Based on the data of Land Board and Statistics Estonia, the average price of utilised agricultural land has witnessed steady increase. Average price of hectare increased by over a thousand euros in 2011 and has since more than tripled by 2019 (Table 4).

### Table 4. Price (per hectare) of utilized agricultural land, Euro

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</thead>
<tbody>
<tr>
<td>Agricultural land total</td>
<td>619</td>
<td>998</td>
<td>1 071</td>
<td>1 319</td>
<td>1 787</td>
<td>2 302</td>
<td>2 432</td>
<td>2 602</td>
<td>2 722</td>
<td>2 974</td>
<td>3 308</td>
</tr>
<tr>
<td>Arable land</td>
<td>..</td>
<td>987</td>
<td>1 062</td>
<td>1 265</td>
<td>1 865</td>
<td>2 426</td>
<td>2 567</td>
<td>2 735</td>
<td>2 890</td>
<td>3 174</td>
<td>3 461</td>
</tr>
<tr>
<td>Permanent grassland</td>
<td>..</td>
<td>1 068</td>
<td>1 131</td>
<td>1 660</td>
<td>1 616</td>
<td>2 006</td>
<td>2 013</td>
<td>2 181</td>
<td>2 179</td>
<td>2 398</td>
<td>2 856</td>
</tr>
</tbody>
</table>

Source: Statistics of Estonia, Dataset: PM59

The increase in rental cost of utilised agricultural land has also increased considerably. However, the growth of rental prices has remained slower compared to sales prices. Based on the data of Land Board and Statistics Estonia, the average rental cost of utilised agricultural land in 2019 is similar compared to FADN estimate with 64 euros per hectare (Table 5). But there is a small difference in the estimates of rental costs from previous years. FADN’s estimate is slightly lower than Statistics Estonia’s.

### Table 5. Rental cost (per hectare) of utilized agricultural land, euro

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</tr>
</thead>
<tbody>
<tr>
<td>Agricultural land total</td>
<td>21</td>
<td>25</td>
<td>26</td>
<td>35</td>
<td>40</td>
<td>48</td>
<td>52</td>
<td>52</td>
<td>58</td>
<td>60</td>
<td>64</td>
</tr>
<tr>
<td>Arable land</td>
<td>..</td>
<td>..</td>
<td>..</td>
<td>..</td>
<td>43</td>
<td>50</td>
<td>55</td>
<td>54</td>
<td>60</td>
<td>62</td>
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<tr>
<td>Permanent grassland</td>
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<td>38</td>
<td>38</td>
<td>40</td>
<td>47</td>
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<td>..</td>
</tr>
</tbody>
</table>

Source: Statistics of Estonia, Dataset: PM59

There are regional differences in land rental prices. It is not uncommon for the rental price to be asked as an argument that a friend has been paid a high price at the other end of Estonia. Landlords usually ask for the maximum price and some farmers seem to be willing to pay it. According to regional data by Statistics Estonia, however, in no region are rental prices
significantly higher than the Estonian average, and everywhere land is rented at both lower than average and higher than average price.

2. Land regulations affecting land markets and implementation and enforcement issues of land regulations

The requirements for the intended use of agricultural and forest land are regulated by the Land Cadastre Act, Forest Act and Planning Act.

The Land Cadastre Act (Land Cadastre Act, RT I, 06.05.2020, 19) provides the bases for maintenance of the land cadastre, the objective of maintenance of the cadastre, the procedure for registration of cadastral units, the composition of cadastral data and the procedure for the processing thereof, and the procedure for the financing of the cadastre (Land Cadastre Act §1(1)). In addition to the Land Cadastre Act, the use of forests is additionally regulated by Forest Act (Forest Act, RT I, 10.07.2020, 75).

According to Land Cadastre Act profit yielding land is land used for the production of agricultural products or silviculture and land with agricultural or silvicultural potential (Land Cadastre Act, §181(9)). Land areas which are not used for the production of agricultural produce or the tending of forest, but which have agricultural or silvicultural potential, are also considered to be profit yielding land (Land Cadastre Act, §182(1)).

The intended use of a cadastral unit is determined by the local government on the bases provided for in § 18 of the Land Cadastre Act. The local government determine or changes the purpose on the basis of the application of the owner of the land. According to the Land Cadastre Act, the use of land must be in accordance with its intended purpose. However, the improper use of a land unit is not explicitly prohibited.

Aim and scope of regulation of the Planning Act (Planning Act, RT I, 19.03.2019, 104) is to create, through spatial planning, by promoting environmentally sound and economically, culturally and socially sustainable development, the preconditions that are necessary for democratic, long-term and balanced spatial development that takes into account the needs and interests of all members of the Estonian society to occur, for democratic, long-term and balanced land use pattern that takes into account the needs and interests of all members of the Estonian society to form and for high-quality living and built environment to develop. (Planning Act, §1(1))

A landowner who wishes to change intended use or to divide land must contact the local government to find out whether it is possible to initiate a detailed plan or change the purpose of the land. Typically, local governments have prepared a general plan that indicates which areas are suitable for various purposes. Changing the intended use of land is usually possible through a detailed plan.

The conditions of use for the purposeful use of agricultural and forestry land are defined by county and general plans. According to the Planning Act, the task of the national plan, county
plan and general plan is, among other things, to define valuable agricultural lands, as well as to determine general (protection) and use conditions for their preservation.

There is also a risk of corruption related to intended land use change. To the extent that decisions are made at the local government level, this leads to various forms of corruption. However, the number of corruption cases is not high and only a very few cases go to court. Nevertheless, it can be pointed out that about 40% of all criminal cases initiated by the Central Criminal Police Corruption Crime Bureau and sent to the Prosecutor’s Office involve local governments or their subdivisions. According to Corruption Perceptions Index by Transparency International from 2019, Estonia is among less corrupted countries in the world, achieving rank 18 among 180 countries (Transparency International).

In addition to aforementioned legislation land market is also affected by European Union Common Agricultural Policy and protection of the natural environment. From the point of view of EU legislation there is a cross-compliance rule in action about the standards for good agricultural and environmental condition of land that should be established by a regulation of the minister responsible for the field.

At the local government level, a landscape, valuable arable land, valuable natural biotic community, individual landscape object, park, green area or an individual object of a green area which has not placed under protection as an individual protected natural object and is not located within a protected area may be a protected object (Nature Conservation Act, §4(7)).

The controller of the cadastre is the Land Board and the processor of the cadastre is the Information Technology Centre of the Ministry of the Environment.

The performance of the duties of state in forestry is coordinated by the Ministry of the Environment. Other involved implementing agencies are Environmental Board and State Forest Management Centre The state forest administered by the Ministry of the Environment, the Ministry of Defence and the Ministry of Economic Affairs and Communications is managed and the management thereof is financed by the State Forest Management Centre The state forest administered by the Ministry of Defence is managed on the basis of an agreement concluded with an agency designated by the minister responsible for the field.

The authorities that organize planning work are, according to their competence, the Ministry of Finance, other relevant government agencies or local authorities. Other involved implementing agencies are Environmental Board, Estonian National Heritage Board and Estonian Rescue Board.

2.1 Restrictions in the legislation regulating land acquisition

There are very few restrictions in the legislation regulating land acquisition in Estonia. The restrictions in acquisition of immovables is regulated by Restrictions on Acquisition of Immovables Act (RT I, 04.07.2017, 64). This Act provides the restrictions on the acquisition
of immovables used as profit yielding land arising from public interest and the restrictions on the acquisition of immovables arising from national security reasons. For the purposes of this Act, public interest is, in particular, development of the management for specific purposes and sustainable management of immovables used as profit yielding land which contain agricultural and forest land (Restrictions on Acquisition of Immovables Act, §1(1)).

2.2 Restriction on the amount, quality or intended use of the land

There are no restriction on the amount, quality or intended use of the land that can be owned by either a domestic natural person or from another country which is a contracting party to the EEA Agreement or a member state of the OECD. According to Restrictions on Acquisition of Immovables Act (§4(1)) a citizen of Estonia or another country which is a contracting party to the EEA Agreement or a member state of the Organisation for Economic Cooperation and Development has the right to acquire an immovable which contains agricultural or forest land without restrictions.

However, there are restrictions on the acquisition of land by persons from third countries in certain border areas. An exception to the acquisition restriction is permitted with the permission of the Government of the Republic for reasons of national importance.

According to Restrictions on Acquisition of Immovables Act (§10(1)-(2)) restrictions arise from national defence reasons. Any natural person who is not a citizen of a contracting party to the EEA Agreement or any legal person whose seat is not in a contracting party to the EEA Agreement is prohibited from acquiring immovables in the following areas or, in the event of changes in the size or name of such areas, within their boundaries as at 31 December 1999:

a. the sea islands, except Saaremaa, Hiiumaa, Muhu and Vormsi;
b. in the county of Ida-Virumaa: the cities of Narva, Narva-Jõesuu and Sillamäe and the rural municipalities of Alajõe, Iisaku, Illuka, Toila and Vaivara;
c. in the county of Tartumaa: the rural municipalities of Meeksi and Piirissaare;
d. in the county of Põlvamaa: the rural municipalities of Mikitamäe, Orava, Räpina and Värskka;
e. in the county of Võrumaa: the rural municipalities of Meremäe, Misso and Vastseliina.

2.3 Restrictions on acquisition for natural versus legal persons

A distinction is made between restrictions on acquisition for natural and legal persons. A legal person established in a Contracting State shall have the right to acquire, without restriction, an immovable property comprising less than ten hectares of agricultural land, forest land or agricultural and forest land. According to Restrictions on Acquisition of
D3 of 935680.X15: Addendum to Final Report

Immovables Act (§4(2)) a legal person the seat of which is in a Contracting State has the right to acquire an immovable which contains less than ten hectares of agricultural land, forest land or agricultural and forest land in total without restrictions.

2.4 Additional requirements for areas larger than ten hectares

If the area of the land to be acquired is larger than ten hectares, additional requirements apply. According to Restrictions on Acquisition of Immovables Act (§4(3)-(5)) a legal person of a Contracting State has the right to acquire an immovable which contains ten hectares or more of agricultural land if the legal person has been engaged, for three years immediately preceding the year of making the transaction of acquisition of the immovable, in production of agricultural products. A legal person of a Contracting State has the right to acquire an immovable which contains ten hectares or more of forest land if the legal person has been engaged, for three years immediately preceding the year of making the transaction of acquisition of the immovable, in forest management or production of agricultural products. A legal person of a Contracting State has the right to acquire an immovable which contains less than ten hectares of agricultural land and less than ten hectares of forest land, but ten hectares or more of agricultural and forest land in total, if the legal person has been engaged, for three years immediately preceding the year of making the transaction of acquisition of the immovable, in production of agricultural products or forest management.

If a legal person of a Contracting State does not meet the previously listed requirements, then the legal person may acquire an immovable which contains ten hectares or more of agricultural land, forest land or agricultural and forest land in total only with the authorisation of the council of the local government of the location of the immovable to be acquired (Restrictions on Acquisition of Immovables Act (§4(6)).

2.5 Additional restrictions applied to third country nationals

Additional restrictions apply to third country nationals. The acquisition of an immovable containing agricultural and forest land should be approved by the local council.

According to Restrictions on Acquisition of Immovables Act (§5(1)) states that a citizen of a third country has the right to acquire an immovable which contains agricultural or forest land only with the authorisation of the council if the citizen has resided in Estonia permanently for a period of at least six months immediately before applying for the authorisation or if the citizen has been engaged in Estonia, for one year immediately preceding the year of applying for the authorisation, as a sole proprietor in: 1) production of agricultural products if the immovable to be acquired contains agricultural land, or 2) forest management or production of agricultural products if the immovable to be acquired contains forest land or both agricultural and forest land.

A legal person of a third country has the right to acquire an immovable which contains agricultural land only with the authorisation of the council if the legal person has been
engaged in Estonia, for one year immediately preceding the year of applying for the authorisation, in production of agricultural products and if a branch of the legal person is entered in the Estonian commercial register According to Restrictions on Acquisition of Immovables Act (§5(3)).

A legal person of a third country has the right to acquire an immovable which contains forest land only with the authorisation of the council if the legal person has been engaged in Estonia, for one year immediately preceding the year of applying for the authorisation, in forest management or production of agricultural products and if a branch of the legal person is entered in the Estonian commercial register According to Restrictions on Acquisition of Immovables Act (§5(4)).

A legal person of a third country has the right to acquire an immovable which contains both agricultural and forest land only with the authorisation of the council if the legal person has been engaged in Estonia, for one year immediately preceding the year of applying for the authorisation, in production of agricultural products or forest management and if a branch of the legal person is entered in the Estonian commercial register According to Restrictions on Acquisition of Immovables Act (§5(5)).

Despite the restrictions imposed, it is still possible to buy land even if the conditions are not met. A typical situation in such a case would be the use of a local representative of the beneficial owner. However, such cases have not been publicly addressed in matters related to the acquisition of agricultural land.

In 2019 in connection with the amendments to the „Rural and Agricultural Market Organization Act and Related Amendments to Other Acts 735 SE“, an analysis of agricultural land protection measures and restrictions on the acquisition of agricultural and forest land established in the contracting states of the European Union was also performed. The study was commissioned by the Ministry of Rural Affairs and carried out by Sorainen law firm (https://www.agri.ee/sites/default/files/content/uuringud/uuring-2019-pollumajandusmaa-kaitse.pdf). Although the study focused on the experience of other countries, the main conclusions about Estonia were also presented.

As a result of conducted analysis, it was concluded that the requirements for the intended use of the agricultural and forest land are mostly determined by county-wide spatial plans and/or comprehensive plans. In Estonia, the purpose for the national spatial plan, county-wide spatial plan and comprehensive plan is, among others, to determine the valuable agricultural land as well as establishing general (protective) conditions and terms of service for the preservation of such lands. (Sorainen)

3. Additional regulations that affect the price of land and land market

In addition to the regulations related to the acquisition of land, trade in land, the price of land is also affected by, for example, tax laws and laws regulating contractual relations.
Land Tax Act (RT I, 23.12.2020, 10) states that land tax is a tax based on the taxable value of land and the taxable value of land is determined and the procedure for contestation thereof is established pursuant to the Land Valuation Act. Therefore the amount of tax depends on the previously conducted valuation of land.

According to Land Tax Act (§5) and (§11) the rate of land tax shall be 0.1-2.5 per cent of the taxable value of land annually, except in the case provided for in subsection 11(4) of this Act. The tax rate shall be established by the municipal council not later than by 31 January of the taxation year. The amended tax rate shall apply as of the beginning of the taxation year. The rate of land tax for areas under cultivation and for natural grasslands shall be 0.1 to 2.0 per cent of the taxable value of the land annually.

Thus, the amount of land tax depends on the value of the land. Regular land valuation has not been carried out in Estonia for 18 years, which means that the results of the last valuation of land carried out in 2001 are far behind the current market value of land. Land tax receipts have remained at the same level since 2012 and amounted to almost 60 million euros per year. The new assessment has been constantly postponed for various reasons. So far, the evaluation has been carried out three times in Estonia: in 1993, 1996 and 2001, ie the interval was three to five years. As land valuation is a politically sensitive issue, regular land valuation has been postponed for a long time. New valuation may affect the price of land in the future. It is currently agreed that the new evaluation process is scheduled for 2022 and will cover approximately 750,000 plots. The results of the valuation will be used as the basis for taxation in 2024 at the earliest.

Based on publicly available interviews conducted with farmers, it can be concluded that the price of land has now reached a level where the income earned from the land in a reasonable time is not enough to purchase new land for lot of farmers. According to data in table 4 one can see that average price of land in 2019 was 3 308 euros, but some plots are sold already with price above 7000 euros. Certainly one of the factors that also raises the price of land is the profitability of competing land uses. Thus, a large number of solar energy producers have added to the agricultural landscape, and real estate development in areas close to the city. As Estonian legislation does not impose any particular restrictions on the acquisition of land and its intended use, the result is increasing competitive pressure on prices of various land use options.

There are some additional cost associated with land sales. These costs include notary costs and state fee for entry in the land register. Land trading in Estonia is mostly not associated with the shadow economy. Typically the purpose would be avoidance of tax liability. However, there is no strong evidence for this and as this is not a typical situation, it is difficult to assess the role of the informal economy in these transactions.

Sales of public land is regulated by State Assets Act (RT I, 10.12.2020, 32). Both the sale and the use of state land are generally carried out by auction. Those land units that are not necessary for the state are mostly sold at auction. Restrictions apply according to Restrictions on Acquisition of Immovables Act.
To the extent that land can be sold or rented, rental prices should also reflect land prices. In Estonia, land rental prices have also been growing steadily, reaching an average of 64 euros in 2019.

The lease of agricultural land is regulated by Law of Obligations Act (RT I, 04.01.2021, 19). If there is a tenant on the land, tenant also has an obligation to take care of that land (Law of Obligations Act §345). In addition to natural and legal persons, the state also becomes lessors. In this case, you must participate in the auction. Land Board leases state land at a public written auction. Larger land suitable for agricultural use and arable land that may be necessary for public purposes or for the performance of state functions will be leased. Auction notices will be published at least two weeks before the auction in the publication „Ametlikud Teadaanded“ at www.ametlikuteadanded.ee. Information on the concluded lease agreements is published in the state real estate register.

4. Reference list of legal regulations

Land Cadastre Act, RT I, 06.05.2020, 19

Forest Act, RT I, 10.07.2020, 75

Planning Act, RT I, 19.03.2019, 104

Nature Conservation Act (RT I, 10.07.2020, 57)

Restrictions on Acquisition of Immovables Act (RT I, 04.07.2017, 64)

Land Tax Act (RT I, 23.12.2020, 10)

Law of Obligations Act (RT I, 04.01.2021, 19)

State Assets Act (RT I, 10.12.2020, 32)

Other references:

Statistics Estonia www.stat.ee
FADN Estonian database http://fadn.agri.ee/standardtulemused
Estonian Land Board http://www.maaamet.ee/kinnisvara/htraru


Sorainen. “Analüüs Euroopa Liidu lepinguriikides kehtestatud põllumajandusmaa kaitsemeetmetest ja põllumajandus- ja metsamaa omandamise kitsendustest”

Transparency International, to Corruption Perceptions Index 2019
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR FINLAND

Olli Niskanen
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Agricultural land market regulations in Finland around 2020

Olli Niskanen

1. Introduction

The share of agricultural land is only about 8% of the land area of Finland. Forests account the most, 77%, build land 4.4% and other land 10%. Finland is said to be the northernmost agricultural country in the world. Total utilized agricultural area is 2.3 mill hectares, of which 1.4 mill ha (56%) is located north from 62nd parallel. The rest are in Southern parts of Finland, close to coast of Finnish bay and the Baltic sea. Less favorable area (LFA) payments are paid throughout the country. Short summers and low temperatures limit the number of crops grown, but northern latitudes provide long summer days and cold winters, which are harsh for pests as well. In fact, fewer pesticides are used in Finland than in many of the southernmost countries.

Finnish agriculture is largely based on family farms (86%), 9% were farming syndicates (for example owned by siblings), while farms owned by heirs and limited liability farms represented 2% each. The average age of farmers was 53 years. Approximately 8 per cent of all farmers on privately owned farms are under the age of 35, and 30 per cent are over the age of 60. The share of farmers above 60 years have increased after year 2015. Before that, farmers above 65 years were not eligible to some agricultural supports.

Structural change in agriculture has been steady for the last decades, resulting discussion of the livelihood of rural areas. Finland joined European Union (EU) in 1995, after which the number of crop farms no longer continued to decline at the same pace as livestock farms. At the beginning of the
2000s, the share of livestock farms fell to less than half of all Finnish farms and today share is a quarter. Livestock farm growth together with productivity growth has however roughly maintained production levels.

In 2019, total farm number were 46 800. The number of farms dropped by approximately 800 on the year 2018. The average utilized agricultural area of the farms was 49 hectares. The average field area was the highest in Southwest Finland (60 hectares) and the lowest in Southern Savonia (32 hectares). Nearly 70 % of farms have crop production as their primary production line (56% of utilized agricultural area, UAA), and 26 per cent of farms are classified as livestock farms (37% of UAA). The rest of Finnish farms are mixed farms with no clear primary production line (7% of UAA) (Luke, 2020).

Average farm cultivates an average of 17 different plots of land. The average size of field plots in Finland was 2.37 hectares (Hiironen 2012). The largest plots of land, averaging more than three hectares in size, are cultivated in Southern Finland. The largest uniform arable land areas are in Western Finland. The overall effects of agriculture on ecosystems are limited, since agriculture occupies low amount of area, but in individual areas, the effects can be significant. The main agri-environmental concerns are related to nutrient emissions to waters in southwestern Finland and carbon emissions of peatland cultivation, located mostly in middle parts of Finland.

The amount of leased land in Finland was approximately 777,000 ha, or about one third of the utilized agricultural area. The share of leased land increased between years 1990-2000 from 15% to 30% but has been steady since. 60% of farms cultivate some leased land. On livestock farms, field rental is more common than average. More than 80 percent of livestock farms cultivated some rented area. Livestock farms need environmental permission in order to be able to expand their production. The permit ensures that the farm has access to enough land for manure spreading. Highest rental prices are paid by granivore farms (Luke 2020).

The agricultural land ownership is relatively fragmentated. This is partly because of natural constrains, such lakes and rivers, and partly because most of soils in Finland are not favourable for agriculture. Scattering of the land relates also to historical changes. In the early days of independence, the Government issued the Decree on the Redemption of Leased Areas (1918), which granted tenant farmers the right to buy the land that they had previously rented. Other significant settlement laws were enacted in 1924 and later, during the Second World War in order to provide resettlement and living opportunities for Finnish citizens evacuated from areas lost in the conflicts. Raising attention has been given to start projects to reduce the land fragmentation, as it is recognized to reduce farm efficiency (Niskanen, 2020).

2. **Key land regulations affecting land markets**

Agricultural land transactions are regulated with the same legislation than all other property transactions. The most important legislation is “Property ownership act” (Maakaari
12.4.1995/540), which regulates all real property ownership changes (except housing company shares). The sale of any property must be done in writing. A 4% tax of the transaction value must be paid by the buyer.

Finland has no land- or property tax for agricultural land (or forests) and only taxing related to owning agricultural land is related to land transactions. Buildings and the plots where buildings are located however pay property tax to the municipality concerned. The general property tax rate in 2018 must be at least 0.93 and may not exceed 2.00 percent of the tax value of the property.

The spirit of regulations is relatively liberal, there are no restrictions related to who can buy or be owner of agricultural land. Foreigners and legal persons have equal rights to purchase land, except that an entity domiciled outside the territory of a Member State of the European Union or of a State belonging to the European Economic Area or a national of a Member State other than a Member State of the European Union or of a State of the European Economic Area, need to apply permission of transaction 2 months before the transaction. This law came in force in beginning of year 2020.

The restrictions in the legislation are practical, such that in any transaction the municipality has pre-emptive right, which is rarely used. Pre-emption rights can be used to acquire land for community construction, recreation and protection purposes. The state has preemptive right to purchase areas right next to state borders, military areas or other special areas, but these exceptions are indeed very exceptional and not related to agricultural land markets. The registration authority conveys the information to municipality (or state) that certain transaction process is happening. The municipality has three months to react, after which the transaction is definitively confirmed.

The sale of the land property must be done in writing. The seller and the buyer or their agent must sign the deed of sale. The trade needs to be signed in the presence of all signatories and confirmed by a person with a degree to confirm trades. Usually such person is someone with legal education. The National Land Survey of Finland (Maanmittauslaitos) acts as the registration authority. The authority maintains records of enforced trades and possible mortgages related to properties.

Land rentals, including plots for buildings etc. are regulated with “Land rental act” (Maanvuokralaki 29.4.1966/258). Agricultural land which does not have the buildings necessary for farming may be leased for a maximum period of 20 years for the main purpose of farming (§71). The rental contract must be done in writing and signed by the parties, except if the lease is for no more than two years, it may be agreed orally. The written contract must state when the contract period begins and when it ends. If not, the duration is the same as in the oral agreement, i.e. 2 years. The written contract must include all the terms of the lease. A term that is not written in the contract is void. The rent price must be agreed and written; however, it may be € 0. The termination terms in the contract are fully binding. A typical termination condition is a change of ownership that does not bind the new owner to
the lease. If the termination condition has not been recorded, the change of land ownership will not affect the lease, but the rent must be paid into the account of the new owner.

3. **Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning**

In the recent years, there has been raising attention to improve functionality of the land markets. Since land market regulation is already liberal, possible improvements are related to starting consolidation projects, where farmland of a certain area or region is redistributed and consolidated between participating farms, aiming to decrease distances and increasing parcel sizes. The projects are completely voluntary for the owners of land. The projects’ success has varied, some have produced very successful trades where farmers have been able to increase the size of their farming plots. State supports the projects by tax relief of transaction taxes and by supporting the planning of the trades.

Public entities own very little agricultural land in Finland. Agricultural land owned by municipalities, congregations and other entities are usually rented to local private farmers.

Most of agricultural land transactions are made in generational shifts, but the number of farm successors is in decline. Generational shift transactions are made as any other property transactions, but they are valid for certain tax relieves. Property transfer tax (4%) of the transaction is 100% relieved in cases, where successor is close relative, such the buyer is the child or sister, brother, half-sister or half-brother of the donor. In this case, the transaction price must equal or higher of half from the fair price of the farm, which refers to average land prices of the region and rateable values of farm buildings and machinery included in the transaction. If the transaction price is less than half from the fair price, the buyer must pay gift tax from the below value. The tax reliefs may be lost if the farm is sold within five years of the transfer of the farm. Generational shifts inside families are commonly agreed with siblings, but in principle the transactions are made only between renouncer and the successor. It is somewhat common that the renouncers give other siblings than the farm successor some inheritance advantage.

Other agricultural land transactions include land sold as additional land to enlarging farms. For the past 10 years (2010-2019), 6500 of such transactions including only agricultural land are made, with average of 8 hectares per transaction. Prices vary between regions and are generally higher in western parts than eastern parts of the country. Prices tend to be higher in regions, where livestock production is more intensive, which is related to regulation of environmental permits and the regulation related to manure use.

Land prices have been growing slowly but steadily for the past 20 years. Currently, arable land represents largest share from the total assets committed to agriculture with approximately 40% share. As the price growth has been moderate, it offers the main collateral for farm investment loans. However, there are regional differences in the realization of collateral values, since some areas have so little agriculture existing, that in
case of a bankruptcy, the number of potential continuing entrepreneurs are very limited. Funds, which seek to invest to alternative properties have had increased interest in buying forestry land in Finland, but those investors’ interest in buying agricultural land has so far been very low due to low profitability of the investments.

Figure 1. Balance Sheet of Finnish agriculture. Economydoctor. Total Calculation of Agriculture (luke.fi/economydoctor).

![Balance Sheet of Finnish agriculture](image)


The enforcement and the application of the legislation in practice

Natural persons and legal entities are free to buy or rent whatever they wish in terms of farm and forest land. Since legislation is relatively liberal, it is well followed in practice and there are no “unwritten practices” in land trade and rental contracts. Generational shifts are supported with tax relieves, which are binding for the successor and lost if land is further sold within 5 years. The biggest friction points are related to the rigidity of the arable land markets and the aging of farmers and landowners, which limits the availability of arable land to developing and expanding farms.

4. Implementation and enforcement issues of land regulations

Regulation base of land issues in Finland is liberal and indisputable. Enforcement of legislation and regulation are made in normal parliamentary process.

Rules of good management of agricultural land relate to common agricultural policy and subsidies that are paid within agricultural land. The rules refer to “good community practice” to cultivate fields and is monitored in the context of normal agricultural support control process.
5. Reference list of legal regulations

Finnish legislation is available online in Finnish and Swedish (official languages of Finland).

- “Code of Real Estate”: Maakaari 12.4.1995/540
  English translation including updates up to 1998 is available (attached)

- “Land rental act”: Maanvuokralaki 29.4.1966/258
  https://www.finlex.fi/fi/laki/ajantasa/1966/19660258 (available only in Finnish and Swedish)

- “Pre-emptive rights”: Etuostolaki 5.8.1977/608

- “Enheritage act”: Perintökaari 5.2.1965/40
  https://www.finlex.fi/fi/laki/ajantasa/1965/19650040


- ”Act on the permit of certain real estate acquisitions”: Laki eräiden kiinteistöseudunkiojen luvanvaraisuudesta:
  https://www.finlex.fi/fi/laki/alkup/2019/20190470

6. List of supporting materials

Agricultural rent prices are documented with agricultural statistics surveys, that take place every few year. https://stat.luke.fi/en/agricultural-land-rents (in English)

Agricultural land prices are based to transactions that include only agricultural land and are larger that 2 hectares. Statistical service is available online:

https://khr.maanmittauslaitos.fi/tilastopalvelu/rest/API/kiinteistokauppojen-tilastopalvelu.html?lang=en# (in English)

The managing authority The National Land Survey of Finland (Maanmittauslaitos) maintains information about properties and housing company shares in its registers and takes care of the registration of ownership and mortgages. Other tasks of the agency include spatial data research and application.National Land Survey of Finland (NLS) (Maanmittauslaitos in Finnish) https://www.maanmittauslaitos.fi/en

Finnish Food Authority maintains the information systems used in rural business administration and is paying agency of agricultural subsidies. Food Authority operates under the Ministry of Agriculture and Forestry as well as other public authorities. Finnish Food Authority (Ruokavirasto) https://www.ruokavirasto.fi/en/
References cited in the county report:


https://www.maanmittauslaitos.fi/sites/maanmittauslaitos.fi/files/old/Peltoalueiden%2520tilusrakenne%2520ja%2520parantamismahdollisuudet.pdf


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR FRANCE

Laure Latruffe
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Agricultural land market regulations in France around 2020
(Mainland France, excluding overseas regions)

Laure Latruffe – November 1st, 2020

1. Introduction

In France (mainland France excluding overseas regions), the utilised agricultural area (UAA) accounts for 54% of the national area. In 2016 there were 437,400 farms with a farm UAA of 63 ha on average. The main production specialisation for the farms was field crop (61,500 farms), vineyards (48,700 farms), dairy farms (40,200 farms). Only 20% of the UAA was owned, the rest was rented. Among the 80% of land that was rented, 19% were UAA operated by farm partnerships or companies which was rented from the farm partners.8

Only little agricultural land is exchanged in France. One reference9 gives a few figures for illustration. For example in 2010 only 0.7% of the UAA has been sold, consisting of about 48,000 transactions; this is a decrease compared to 1995 with 0.9% of the UAA and 68,000 transactions. On explanation is the that size of land exchanged is slightly higher: 3.7 ha on average per transaction in 2010 compared to 2.9 ha in 1995.

Arable/pasture land prices are relatively low in France. This is explained mainly by: (i) the fact that land transactions are monitored by SAFER (stopping a transaction in case the price is too high; see below), and (ii) the fact that rental prices cannot exceed an upper limit set by the government (see below) thus preventing landowners to generate large revenue from the land. This is exacerbated by the fact that it is not easy to convert agricultural land into building land (see below) but this is probably not specific to France.

As a matter of illustration, below is the average price of arable or pasture land in France in 2018 (non-built land):10

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8 Source: French Statistical Office (INSEE) based on 2016-Farm structural survey


10 Source: Safer-SSP-Terres d’Europe-Scafr-INRA, Le prix des terres en 2018. See the extract in the pdf file ‘2-France_land prices_arable pasture.pdf’ in the project archive. This document shows the evolution at the national and regional level of prices for arable land and pastures (‘Evolution nationale et régionale du prix des terres et prés’). The bottom row is the average for mainland France (excluding overseas regions). The prices are calculated as averages of prices of sale transactions that occurred during the specific year, for plots of 0.70 hectares or above.
- for land where there is no tenant (‘terre libre’): 5,990 Euros per ha
- for land that is currently tenanted (‘terre louée’): 4,740 Euros per ha.

As regard vineyard prices, most are much higher. This is explained by the fact that revenue from wine growing is high. There is a large heterogeneity of land prices across vineyards due to the numerous namings (‘appellation’). For example, in 2018 in south-western main wine area Bordeaux-Aquitaine:11
- in NUTS3 (‘département’) region Dordogne, for wines with protected origin label (AOP-‘appellation d’origine protégée’): 10,100 Euros per hectare
- in NUTS3 (‘département’) region Gironde, for wines with protected origin label (AOP-‘appellation d’origine protégée’): 113,900 Euros per hectare.

2. Key land regulations affecting land markets

The main regulations affecting agricultural land markets in France relate to rental prices and contracts. The other regulations relate to sales.

2.1 Regulations regarding rental prices and contracts

In France the terms of the rental contracts are defined by law through the regulation called ‘Statut du fermage et du métayage’ in the French Rural Code (‘Code Rural et de la Pêche maritime’).12 The original law of 1955 is continuously being modified. The French Agricultural Guidance Law (‘Loi d’Orientation Agricole’ or LOA) also introduces some relevant regulations for the rental contracts, in particular the latter one from 2006.

In a general way, the aim of the regulations is to protect the interests of the tenant farmer compared to the non-farmer owner.

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11 Source: Safer-SSP-Terres d’Europe-Scaf-Inra, Le prix des terres en 2018. See the extract in the pdf file ‘3-France_land prices_vineyards.pdf’ in the project archive. This document shows the evolution at the national and regional level of prices for all wine namings (‘PRIX DES VIGNES PAR APPPELATION’). Rows in dark purple show the averages for the main wine areas (‘Bassins viticoles’); rows in light purple show the averages for the NUTS3 regions ‘départements’ under protected origin label (‘Moyenne départementale AOP’) or outside protected origin label (‘Moyenne départementale hors AOP’); white rows show the averages per naming (‘appellation’). The prices are given in thousand Euros for plots of any size. They are not prices of sale transactions since transactions are rare, but they are prices from expert appraisal.

12 Detailed description of rental contracts and prices from the French Rural code (‘Code Rural et de la Pêche maritime’) can be found in the file: ‘4-rental contracts in Rural Code France.pdf’, available from the project archive.
2.1.1 Rental prices

The level of rental prices is regulated. Rental prices must fall within a range, with the minimum and maximum prices set each year by the State. Each year the bracket prices are updated with a price index (‘indice des fermages’) which is based for 60% on the evolution of farm income per hectare in France in the past five years, and for 40% for the evolution of prices in general the year before. The updating index is a national index since 2010 and the law for modernising agriculture (‘Loi de Modernisation de l’Agriculture’). Before that, the update was done with NUTS3 regional indices. The national index which is now used is decided by the Ministry of Agriculture. It is with base 100 in 2009. For example in 2020 it is 105.33, that is to say +0.55% compared to 2019.\textsuperscript{13}

The national index is then used to update the previous year’s minimum and maximum rental prices. This is done at the NUTS3 level, and is decided by the State representative (‘préfet’). The minimum and maximum rental prices differ depending on the quality of land (several official categories, depending on the NUTS3), and the type of land (arable or pasture land; vineyards; land with farm building). The landowner then decides on a rental price within the price bracket of the area where the land is located.

As an example, below is an extract from the price bracket set by the State representative in NUTS3 Gironde for the year 2020.\textsuperscript{14}

\begin{table}
\centering
\begin{tabular}{|c|c|c|}
\hline
\textbf{CATÉGORIE} & \textbf{MINIMUM} & \textbf{MAXIMUM} \\
& \textbf{EUROS} & \textbf{EUROS} \\
\hline
1\textsuperscript{ère} catégorie & 132.98 & 235.72 \\
2\textsuperscript{ème} catégorie & 61.65 & 132.98 \\
3\textsuperscript{ème} catégorie & 27.17 & 61.65 \\
\hline
\end{tabular}
\caption{Loyer annuel des terres arables ou prairies en monnaie à l’hectare}
\end{table}

\begin{table}
\centering
\begin{tabular}{|c|c|c|}
\hline
\textbf{CATÉGORIE} & \textbf{MINIMUM} & \textbf{MAXIMUM} \\
& \textbf{EUROS} & \textbf{EUROS} \\
\hline
1\textsuperscript{ère} catégorie & 523.68 & 698.28 \\
2\textsuperscript{ème} catégorie & 349.15 & 523.68 \\
3\textsuperscript{ème} catégorie & 129.18 & 349.15 \\
\hline
\end{tabular}
\caption{Loyer annuel des terres portant des cultures maraîchères et/ou horticoles pour l’ensemble du département en monnaie à l’hectare}
\end{table}

\textit{Explanation of the figures from the above tables}: annual rentals in Euros per ha, for three categories of land (first category being the highest quality), minimum and maximum prices authorised. I: arable or pasture land. II: fruits and veggies or horticulture land.

\textsuperscript{13} See the document ‘5-national_index_rentals_France_2020.pdf’, (the official act), included in the project archive.

\textsuperscript{14} See the document ‘6-rental price brackets_NUTS3 Gironde_2020.pdf’, available from the project archive.
2.1.2 Rental contracts

A major characteristic of rental contracts is their duration. The lease is for 9 years, or 18 years or 25 years. The 9-year rental contracts are called ‘Baux ruraux’ (rural leases) and are the standard contracts. The 18-year rental contracts are called ‘Baux de long terme’ (long-term leases). There are tax incentives to conclude 18-year rental contracts: tenants are exempted from the purchase registration tax. Longer leases can be concluded, for 25 years minimum, ending when the farmer tenant retires, and the rental contracts are called ‘Baux de carrière’ (career leases). Annual leasing is only possible when a successor is supposed to take over a farm (annual leasing must then not be renewed more than 5 times) or when SAFER rents out land. Rental contracts that are not written are necessarily for 9 years.

Rental contracts cannot be terminated by landowners by the end of the lease, except to sell the land. In this case, the current tenant has pre-emptive rights to purchase the land. At the end of the lease, rental contracts are automatically renewed for the same duration, or the landowners have the possibility to withdraw their land only if they (or their heirs) will farm the land over the next 9 years at least. In this case landowners must inform the tenant at latest 18 months by the end of the rental contract.

Rental contracts are inheritable after the current tenant’s retirement or decease, that is to say that the farm successor is automatically the new tenant. Landowners are free to choose another farmer tenant only in the case when the exiting tenant has no successor.

All these restrictions imply that the land sales prices for land that has a tenant (rented land) are lower than land sales prices for non-rented land.

To ease the restriction about inheritance, rental contracts ‘Bail cessible’ (transferable lease) can be established. In this case, the exiting tenant can him/herself choose the new tenant (e.g. neighbour). The existence of transferable rental contracts is relatively new, since they have been defined in the last French Agricultural Guidance Law (‘Loi d’Orientation Agricole’ or LOA) in place since January 2006. It is possible to transform the rental contract into a ‘Bail cessible’ during the duration of the rental contract, but in this case the landowner can require a rental price increase, by 50% at most. Such transferable contracts can be only for 18 years (and not 9 years), and do not entail automatic renewal. However, these contracts are rare in practice.

The 2006 LOA introduces another new type of rental contract, called ‘Bail environnemental’ (environmental lease), which can be concluded only at the start of a new contract or when an existing contract is renewed (an ongoing contract cannot be transformed, contrary to the ‘Bail cessible’). With this contract, the farmer tenant commits to apply environmentally friendly practices on the rented land (to be agreed on by the tenant and the landowners) and in exchange, the rental price required by the landowner can be set below the minimum regulated price. This type of rental contract has however so far been scarce.
2.2 Regulations regarding sales

On the sale side, the regulations do not apply to the prices, but to the transactions. The latter are regulated by the SAFERs (‘Sociétés d’Aménagement Foncier et d’Etablissement Rural’) and the CDOA (‘Commission Départementale d’Orientation de l’Agriculture’).

Created in 1960, SAFERs (generally one per NUTS3 level, plus a general authority located in Paris), are private bodies but have public service missions (they are registered under the non-profit private law), and are controlled by the State. Their main role is to regulate the transfer of agricultural land, in view of avoiding speculation, favouring the settlement of farmers, in particular young farmers, supporting land consolidation, and favouring environmental protection. They act at the NUTS3 level, with a local committee consisting of farmers’ unions and agricultural professional organisations. Each land sale intention, whether agricultural or non-agricultural land, registered by a notary or a lawyer is notified by them to the municipality board as well as to the local (NUTS3) SAFER. The latter has two months to reject the notified intended transaction. There is no formal approval from the SAFER: if the SAFER does not oppose within 2 months, then the transaction intention is considered approved and can legally be signed. Rejections from SAFER happen when for example the sale implies the dismantling of a farm or when the price is non-representative of market prices (too high compared to the prices in the region and type of land). The SAFER then negotiates with the seller and the buyer to reach a mutual agreement (new buyer, or modified), which happens in most cases. In case this is not possible, the SAFER has a pre-emptive right and can purchase the land at the modified price. The land owned by the SAFER is then sold to a new buyer or rented out until it is sold. Several transactions can however not be regulated by the SAFERs although they should, due to the fact that their intentions are not notified to the SAFERs. In addition, the SAFERs sometimes do not have sufficient funds to purchase pre-empted land.

SAFERs cannot intervene on the sale of land between an owner and the tenant in place (who has pre-emptive rights on the land rented), on the condition that the tenant buyer has been operating the land for at least 3 years, and that he/she commits to operate it for at least the next 9 years.

Since 2019 there is no more minimum limit on the land that can be pre-empted by SAFER.\(^{15}\) Since the law for the future of agriculture (‘Loi d’Avenir de l’Agriculture’) of 2014, the SAFERs can now pre-empt sales of shares, when land is sold through a company. However, this is possible only when the totality of the shares is sold in one transaction.

The CDOA, introduced by the agricultural act of 1995, is a NUTS3-level committee in charge of the control of farm structures, consisting of farmers, government representatives, farmers’ unions, agricultural professional organisations, local authorities, environmentalists,

\(^{15}\) A detailed description and role of SAFER in the French Rural code (‘Code Rural et de la Pêche maritime’) can found in teh file: ‘7-SAFER in Rural Code France.pdf’, available from the project archive.
consumers and experts nominated by the NUTS3 State representative (‘préfet’). Each person willing to settle as a farmer needs to get a farming authorisation, which is delivered by the CDOA.16 The CDOA cannot refuse a land transaction, it can only refuse to give a farming authorisation. It has a consultative role to the NUTS3 State representative (‘préfet’) who officially takes the decision to authorise farming.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

3.1 Property tax

In France landowners must pay a real estate tax on the property that they own (‘taxe foncière’) on every January 1st. The tax includes several tax rates, which go to different public beneficiaries. For built land, there are tax rates for the NUTS3 regional body, for the municipality where the land is located, and for some public enterprises. For non-built land, there is only the municipality tax rate. Agricultural non-built land benefits from a 20% decrease in the municipality tax rate. In addition, for agricultural non-built land there is a tax rate for the Chambers of Agriculture and for the agricultural insurance funds.

The total tax rate is applied to the estimated value of the property which depends on its characteristics and on an index of cadastral value set in 1970 (the ‘valeur locative cadastrale’).17

Built land with farm buildings (stables, sheds, etc. but not farm home, see below) is fully exempt from the ‘taxe foncière’. As regard tax exemptions for non-built agricultural land, such land located in Corsica is exempt from the real estate tax, as well as young farmers receiving the young farmers settlement subsidy (‘Dotation Jeune Agriculteur’ – DJA, for farmers settling under 40 year old). This is applicable in the case where the young farmer is the owner of the land, and in the case where the young farmer is the tenant; in the latter case, the landowner must decrease the rentals to account for the tax exemption. In addition, some land is exempt from the municipality tax rate: land located in Natura 2000 zones is exempt...

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16 A detailed description and role of CDOA in the French Rural code (Code Rural et de la Pêche maritime) is available from the file: ‘8-DOA in Rural Code France.pdf’. The file is part of the project archive.

during 5 years, and land under certified organic farming is exempt during the 5 first years of certification.  

Note that there is also in France a home tax, ‘taxe d’habitation’, paid for each home inhabited on January 1\textsuperscript{st} each year. A landowner of a built land where he/she lives must then pay both the ‘taxe foncière’ and the ‘taxe d’habitation’. A tenant must only pay the ‘taxe d’habitation’. The latter also has several tax rates (municipality, and public enterprises). In the case of farms, this concerns only the farmer home and not the other farm buildings.

The law (Rural Code) stipulates that the real estate tax (‘taxe foncière’) for agricultural land must be shared between the landowner and the tenant in the case there is a tenant. The landowner receives the tax notice, and then asks part of the tax to the tenant. How the tax is distributed between the landowner and the tenant is up to them both. If the distribution is not written explicitly in the written rental contract, then the default distribution is fixed by law: 20\% of the total tax and 50\% of the tax for Agricultural Chambers is to be reimbursed by the tenant.

3.2 Inheritance laws

According to French inheritance laws, there are mandatory heirs. Estates are transferred to the spouse (one quarter of the estate), and to family heirs (three quarters of the estate) in a priority order of family links: (1) children and their descendants; (2) parents, brothers and sisters and their descendants; (3) ascendants other than parents; (4) other relatives (aunts, uncles, cousins). The family heirs with the closest link inherit first, and they receive an equal share of the estate. People can make a will to designate beneficiaries (non-mandatory heirs, or mandatory heirs in order to increase their estate part). However, there is a limit in the transfer to non-mandatory heirs since mandatory heirs (children, or spouse in case there are no children) must receive between 50\% (if there is one child) and 75\% (in case of three or more children) of the estate. One consequence of this forced heirship is that land may become more and more fragmented over the generations.\textsuperscript{19}

3.3 Retirement law

Upon retirement, exiting farmers are allowed to keep part of the land that they operate for their own needs. This is called ‘\textit{parcelle de subsistance}’ (subsistence plot) and cannot be more than a specific size. This maximum size is defined at the NUTS3 level, and depends on the farms’ size and types of production in the region. It is generally between 1 and 5


\textsuperscript{19} Website of French government service-public.fr on heirs: Document ‘11-heirs.pdf’ in the project archive.
hectares. Crops with high value added such as off land crops cannot be produced on this ‘parcelle de subsistance’. This law allowing retired farmer to continue operate a few hectares, implies that less land is available to new entrants.

3.3 Land planning and zoning

Land planning regulations may affect land market. The way they do this, is summarized below in an extract taken from the previous 2008 Agricultural Land Market Study led by prof. Johann Swinnen, as not much has changed in this area since 2008. New information is included as well further down based on excerpts from the Report on France in the Land Market Study by Latruffe L. et al., 2008.20

‘Land in France is categorized according to its use by development planning provisions, and therefore, land devoted to agriculture is officially notified as agricultural land. Converting agricultural land into another use (housing, industries, recreational areas, etc) is subjected to approval by the State or its local administration. Before 1983 the Ministry of Agriculture was the sole decision-maker for the whole country. After this date, the decentralization process gave this power to municipalities. These establish the so-called “Plans Locaux d’Urbanisme” (PLUs, previously known as “Plans d’Occupation des Sols” POS) for a given period (less than 10 years), that is to say they map their area and decide for each plot what will be its main use during the PLU’s period. A PLU shares the municipality land into several zones according to their use: the urban zones, the zones to be urbanised, the agricultural zones, the natural and forest zones. A PLU protects agricultural land from conversion into development. In theory, it is very difficult for landowners to change the use of their land if such change does not comply with the municipality’s map. Building permission is given to projects which are in accordance to the PLU; or, when a municipality has no PLU, projects can be refused if they are threatening agricultural activities or land consolidation. However, despite these provisions, PLUs can be, and are often, modified, which threatens the existence of agricultural land. Small municipalities in particular are interested in industrial development (for example in order to get more financial resources) and in housing development (inhabitants being voters for the local representatives). Such pressure on the agricultural land is particularly felt in tourist regions or around urban poles. Moreover, not only municipalities might show laxness when giving building permissions, but they themselves have urban pre-emptive rights (“Droits de Pré-emption Urbains”). This means that they can confiscate any land in their area, against compensation, in order to build roads, railways, recreational activities etc. Agricultural land is more and more concerned by this right. In addition to PLUs, since 1999 municipalities can classify agricultural areas in protected zones (ZAP, “Zones d’Agriculture Protégée”),

if there is a specific interest of these areas in terms of regional production. In this case, a change in use is possible only after the “département’s” (NUTS3) public authority and Chamber of Agriculture have given permission. However, ZAP are relatively rare.’

In 2010 the law for modernising agriculture (‘Loi de Modernisation de l’Agriculture’) introduced a new commission, at the NUTS3 level, the ‘Commission départementale de consommation de l’espace agricole’, to overlook the PLUs and guide the State representatives.

‘Regarding environmental restrictions, they exist in France in the frame of the European network Natura 2000. This network aims at conserving biodiversity and comprises two directives, one regarding the preservation of natural habitats, and one regarding the preservation of wild fauna and flora. These were transposed in the French law in 2001.21

In 2015 68% of French utilised agricultural area is under Nitrates Directive, classified as ‘zones vulnérables’, compared to 50% in 2001. 22

Some NUTS regions are fully classified while others are not, see the map below.23

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The nitrate directive is believed to have a negative effect on land price, since it limits what owners or operators can do with the land. In addition, in the areas under the directive, there is an upper limit on the amount of nitrogen, therefore forcing livestock farmers to spread their manure on more land. This has been shown in two deliverables from the Factor_Markets project: D52\(^{24}\) and D51\(^{25}\).

With econometric regressions on data from individual transactions for the period 1994-2010 in the French NUTS2 region Brittany, results are as follows (extract): ‘The environmental zoning regulation considered (namely the nitrate surplus area zoning) increases the price of land. The effect of this zoning regulation is stronger for farmer buyers than other buyers, due to the increased competition for land in order to spread manure.’

With econometric regressions on data from individual transactions for the period 1994-2011 in the French NUTS2 region Brittany, results are as follows (extract): ‘In NUTS2 Brittany, there is evidence of the capitalisation of subsidies only in nitrate surplus zones.’

4. Implementation and enforcement issues of land regulations

4.1 SAFER control

As explained above, it is difficult for SAFERs to monitor all transactions, because some transaction intentions are not notified to SAFERs. When an intention has not been notified and the SAFERs learn that a transaction has occurred, it has 6 months to go to court and ask for cancellation of the sale or for becoming the new owner.\(^{26}\) However, in practice SAFERs rarely do this because they lack human and financial resources.

In addition, when the sale of land is carried out as shares in a company, it is not always possible for SAFERs to stop the transaction and pre-empt. SAFERs have the right to pre-empt only if the totality of the shares is sold at once. If only part of the shares are sold, SAFERs have no right to intervene.

This specificity results in an increasing concerns about land grabbing by foreigners in particular from China. For example in 2016 a Chinese company has purchased 1,700 hectares


\(^{26}\) See the document ‘16-guide_notification_SAFER_2019.pdf’ by SAFERs in the project archive, explaining how to notify transaction intentions to SAFERs.
of land in NUTS3 region Indre. Land prices for such transactions are generally higher than the normal market price. However, SAFERs could not intervene because the seller changed its legal status into company and sold below 100% of the shares (SAFERs can intervene only when the totality of the shares are sold in one transaction). A law proposal has been made in 2016 in order to extend the pre-emptive right of SAFER to the cases where only part of the shares are sold, however this law has been rejected by the Constitutional Council in 2017 on the reason that such law would limit right of ownership and freedom of entrepreneurship.

4.2 Key money

One important aspect that needs to be mentioned here is the informal and illegal practice of ‘pas-de-porte’ (key money). This is unofficial money which is given in addition to the official price. This practice is common in Northern France, where land is mainly rented and where sugar beet quotas exist. In the cases where the rental contract is not inheritable, a new tenant is required to give a ‘pas-de-porte’ to the former tenant in order to be able to obtain the rental contract. In NUTS2 region Nord-Pas-de-Calais the ‘pas-de-porte’ is believed to be more than 10,000 Euros per ha\(^27\) or between 12,000 and 17,000 Euros per ha\(^28\).

Legally such practice is authorised only in the case of transferable rental contracts ‘bail cessible’, otherwise it is punished by law (up to 2 years in prison and 30,000 Euros penalty). However, these transferable contracts are rare.

Discussions amongst stakeholders are ongoing on whether to legalise and control such practice, since it constrains the settling down of young farmers, especially those succeeding on a farm outside their family (‘hors cadre familial’).

5. Other land-related measures not discussed elsewhere

5.1 Priority order in purchase

When a piece of agricultural land is up for sale, there is priority in pre-emptive rights. Firstly, the tenant in place has the first pre-emptive right, under the condition that he/she has been operating the land for at least 3 years, and that he/she commits to operate it for the next 9 years at least. Then, the State is second in the pre-emptive rights, to urbanise land for

\(^{27}\) Baton M. 2017. Réglementer le pas-de-porte pour faciliter l’installation. La France Agricole. 01/03/17. Document : ‘17-pas-de-porte-LaFrAgr.pdf’ in the project archive.

example, and finally pre-emptive rights can be implemented by SAFERs in order to control transactions.

When there is an agricultural land for sale, there is also a priority order for buyers (outside the pre-emptive rights): (1) the tenant on the land; (2) neighbouring young farmer; (3) other neighbouring farmer.

### 5.2 Non-EU foreigners

There a specific case for non-EU foreigners in the Rural Code. There is no restriction to them as regard land purchase. However, they are not authorised to be tenants. In addition, they need a specific authorisation to farm land, which is delivered by the State representative at NUTS3 level.

### 5.3 Capital gain tax

Land sold is subject to tax on capital gain (‘\textit{taxe sur la plus-value}’). The capital gain tax is 19% of the profit (profit = difference between purchase price and sale price) + 2-6% if the profit is more than 50,000 Euros. The following full exemptions apply:

- any property purchased more than 30 years ago (partial exemption if land purchased between 6 and 30 years ago);
- any property with a value below 15,000 Euros per owner (e.g. 30,000 Euros for 2 co-owners);
- agricultural land with a value below 300,000 Euros, and the seller has been farmer during at least 5 years;
- agricultural land in the case where the farmer selling the land is fully retiring and the seller has been farmer during at least 5 years.

Since 2010 and the law for modernising agriculture (‘\textit{Loi de Modernisation de l’Agriculture}’), there is new capital gain tax for agricultural land that becomes building land following a change in the PLU (see above section on Land planning and zoning) and that is sold as such. This tax is to be paid only on the first time the land is sold as building land. The budget from this tax is given to a fund supporting the settlement of young farmers and their purchase of land upon settling. The tax rate is a percentage of the difference between the sale price and the price when the land was purchased; if there is no official document indicating the initial price when the land was purchased (in case it has been inherited over generations, for example), then the difference is between the sale price and an estimated market value at the date where the land was obtained by the seller. A sale of agricultural-to-building land below 15,000 Euros is exempted from this specific capital gain tax, as well as when the ratio between the sale price and the initial purchased/obtained price is less than 10.
When the ratio is between 10 and 30, the tax rate is 5%. When the ratio is above 30, the tax rate is 10%.

5.4 Registration tax and notary fees upon purchase

Buyers of land must pay a registration tax called ‘droits de mutation’ and encompassing two elements: ‘droits d’enregistrement’ and ‘taxe de publicité foncière’. Altogether these two elements are 3.80% of the sales price for NUTS3 regions Indre, Isère and Morbihan, and 4.50% for the other NUTS3 regions; to this tax rate must be added the municipality tax rate of 1.20% (0% in some municipalities) and the national tax rate of 0.11%. In total the registration tax rate is 5.81%.

In case of an agricultural land, the registration tax rate is reduced below 0.715% if the farmer seller is not subject to VAT or in case the buyer commits to re-sell the land before 5 years.

Notary fees are set as a rate of the price but according to ranges of value. The table below is an extract showing the rates per range of value, in the recent law act of 28 February 2020.29 Left column: ranges; right column: tax rate on this range. In total it makes about 8% of the full price.

<table>
<thead>
<tr>
<th>Tranches d'assiette</th>
<th>Taux applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>De 0 à 6 500 €</td>
<td>1,935 %</td>
</tr>
<tr>
<td>De 6 500 € à 17 000 €</td>
<td>1,064 %</td>
</tr>
<tr>
<td>De 17 000 € à 30 000 €</td>
<td>0,726 %</td>
</tr>
<tr>
<td>Plus de 30 000 €</td>
<td>0,532 %</td>
</tr>
</tbody>
</table>

6. Reference list of legal regulations

Code Rural et de la Pêche Maritime

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29 See the document ‘19-notary_fees_France.pdf’ in the project archive.
https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071367?etatTexte=VIGUEUR

(Rural Code) – Since 1955 and continuously updated since then

Loi d’Orientation Agricole
https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000508777/2020-10-31/

(Agricultural Guidance Law) – Latest act in 2006

Loi de Modernisation de l’Agriculture
https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000022521587/

(law for modernising agriculture) – In 2010

Loi d’Avenir pour l’Agriculture
https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000029573022/

(law for the future of agriculture) – In 2014

7. List of supporting materials (available from the project archive)


PUBLIC Detailed description of rental contracts and prices in the French Rural code (Code Rural et de la Pêche maritime): ‘4-rental contracts in Rural Code France.pdf’

Rental price bracket set by the State representative in NUTS3 Gironde for the year 2020. ‘6-rental price brackets_NUTS3 Gironde_2020.pdf’

Detailed description and role of SAFER in the French Rural code (Code Rural et de la Pêche maritime): ‘7-SAFER in Rural Code France.pdf’

Detailed description and role of CDOA in the French Rural code (Code Rural et de la Pêche maritime): ‘8-CDOA in Rural Code France.pdf’


Inheritance law on website of French government service-public.fr: ‘11-heirs.pdf’


Reference 1 on key money ‘17-pas-de-porte-LaFrAgr.pdf’: Baton M. 2017. Réglementer le pas-de-porte pour faciliter l’installation. La France Agricole. 01/03/17.


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR GERMANY

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Agricultural land market regulations in Germany around 2020

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1. Introduction

Germany, one of the largest countries in the European Union is generally densely populated, though population density varies substantially across regions. Around 50% of its territory (16.7 mill. ha) is used for agricultural production.30 Thereof, 71 % is arable land, 28 % is grassland and some 1 % is used for fruits, wine and other perennial crops. With industrialization and technological progress, the number of people that are working in the agricultural sector has declined rapidly in the last decades. Today, around 1 mill. persons work on 270,000 farms. Also, the amount of agricultural land decreases steadily by some 20,000 ha per year which causes pressure on the agricultural land market.

Germany has had a regionally diverse history which is today reflected in a very heterogeneous agricultural structure. This is most noticeable in the East-West divide that still persists. West German agriculture is historically family-based and has an average farm size of around 49 hectares. Farm sizes differ however substantially between and within regions. For example, in Bavaria, the largest German state, some 62 percent of the farms are to be considered as part-time or hobby farms. These farms have an average size of less than 10 ha. On the other hand, in the state of Schleswig-Holstein in the north, some 65 % of the land is farmed by farms with an acreage of more than 100 ha. In the western part of Germany, the share of rented land is 56%.

In the eastern part of Germany, there are even much larger farm sizes with an average of around 244 hectares. Farms are more often registered as legal entities like cooperatives or limited liabilities. Legal entities farm some 50 % of the land. Many of them have a size of more than 1,000 ha, some are even larger than 5,000 ha. Some of the larger farms, particularly limited liabilities are part of larger holding structures with up to some 20,000 ha in total or are subsidiaries of cooperatives. Non-legal entities in the eastern part farm also some 50 % and are mostly either family farms or partnerships. A substantial part of them farm more than 200 ha and these have a substantial share of the land used. The share of rented land in the eastern part is also larger than in the west with 69%.

The production structure of German agriculture is also regionally very diverse. There are areas with specialized arable production (particularly in the eastern part), areas where livestock production is dominant (pork and poultry in the north-west, dairy in the north and

30 The statistical numbers originate from the Statistische Bundesamt (www.destatis.de). Other useful sources are the annually published Situationsbericht of the German farmers’ union Deutscher Bauernverband (www.situationsbericht.de), the agricultural reports of the Federal Ministry of Food and Agriculture or the Bavarian State Ministry of Food, Agriculture and Forestry, and the FADN reports (https://www.bmel-statistik.de/landwirtschaft/testbetriebsnetz/testbetriebsnetz-landwirtschaft-buchfuehrungsergebnisse/).
south) and there are other regions with specialized production like fruits and wine. Because of the variety in the regions, the German land market characteristics are also manifold.

Figure 1: Regional average sales prices of agriculturally used land in € per ha in 2018

Source: Statistisches Bundesamt 2020

Since about 2006, land market prices on the sales and rental market have increased at a fast rate. The average sales price for agricultural land has increased from less than 9,000 €/ha in 2006 to more than 25,000 €/ha in 2018. In relative terms, land prices increased particularly fast in the regions of former East-Germany where the sales prices increased between 2009 and 2019 from 5943 €/ha to 15,720 €/ha. In absolute terms, land prices are far higher in the west. In the former West Germany, average land prices increased from 17,960 €/ha to 37,846 €/ha. In some regions, such as Upper and Lower Bavaria in the south of the state of Bavaria land prices are currently even much higher and cost on average more than 100,000 €/ha. Key drivers in this development can be seen on the one hand in a relatively high profitability
during the period 2007 to 2013, high performing larger farms and particularly steadily declining interest rates. Currently, mortgage loans with fixed interests for 10 years can be received at less than 0.5 %, i.e. real interests of mortgage loans are likely to be negative.

A second important driver can be seen in land development resulting from infrastructure development and urbanization. The approximately 20,000 ha which are annually lost for the agricultural sector causes substantial pressure on agricultural land markets, particularly in, e.g. certain regions in Bavaria and North-Rhine Westphalia. This becomes particularly important because the sales market for agricultural land is rather thin. During the past 15 years, annually some 82,000 to 122,000 ha were sold. This is, less than 0.75 % of the agricultural land. In recent years, the level was as low as some 0.5 %. Most of the land has been sold in the eastern part of Germany – thereof a substantial part through the BVVG (Bodenverwertungs- und Verwaltungsgesellschaft) which is responsible for the privatization of state land inherited from the former GDR. In the western part of Germany, the share of traded land is even lower. In Bavaria, the state with the highest agricultural land prices, only some 0.24 % of the land has been traded in 2018. This leads to the effect that the average annual loss in agricultural land is higher than the amount of agricultural land which is traded for further use. Due to tax legislation, farmers selling land for development purposes at high prices have strong incentives to reinvest their returns in agricultural land.

Land rental prices increased similarly to sales prices though at a slower speed and with regional differences. The speed is lower most likely due to long-lasting contracts which have usually no adjustment clauses and the less relevant effect of declining interest rates. Between 2007 and 2016, land rental prices for new contracts increased in the former West Germany from 279 €/ha to 493 €/ha and in the eastern part from 129 €/ha to 242 €/ha (DBV Situationsbericht 2019).

As a result of this development, many farms are concerned that they will no longer be competitive on the land market and that they will lose their ability to survive in the long term. This affects smaller as well as larger farms. Moreover, there is a debate on investors with a non-agricultural background which either buy land or buy shares of legal entities and which are even establishing holding structures. The latter phenomenon is particularly relevant in the eastern part of Germany, where some legal entities struggle with managing the process of generational renewal of management and shareholders due to the high value of the farm (often more than 10 mill. €) and some others with recently increased financial stress due to a sequence of droughts and low profitability in livestock production (e.g., Tietz 2017). The high value of the farms is insofar a problem that new managers cannot afford buying substantial share. Moreover, many farms with the legal form of a cooperative face the problem that leaving members would only be compensated according the nominal value defined at the time when the cooperative was founded, usually through the restructuring of former collective farms. Since the cooperatives hardly paid dividends, the nominal value does not reflect the current value. This creates an incentive to sell the cooperative to an investor and to share the revenue. These increasing external investments have led to discussions among stakeholders, such as farmers, NGOs, the media and in politics.
Particularly the question has been raised whether the land market works effectively as an allocation device and if it can serve societal needs or if there is a need for political intervention to reduce potential negative implications.

A further specific issue of the land rental and sales market in the former Eastern Germany results from the fact that according to the cadastre land plots and ownership titles are much smaller than agricultural field sizes. Most of the land is farmed on fields with a size of more than 20 ha. Average plot sizes are about 2 ha. Also, many owners own less than 5 ha. This results most likely in market power of larger farms which farm the fields because many land owners can rent out their plots only to the current user. Other farms interested in renting the plot would not be able to use the plot in an economic way or would need to organise an exchange of land with the current user.

2. Key land regulations affecting land markets

2.1 Sales market regulations

The most important regulations for agricultural land sales in Germany are the Grundstückverkehrsgesetz (Law on land traffic, GrdstVG)) and the Reichssiedlungsgesetz (Reich Settlement law). Both of them have been passed in the previous century (1919 and 1962). While the Grundstückverkehrsgesetz regulates the transfer of land, the Reichssiedlungsgesetz regulates public organisations (Landgesellschaften) which may act as land banks supporting local structural development. Some of the more general laws like the Bürgerliches Gesetzbuch (BGB), the German civil code, define general rules of contracts.

After a federalism reform in 2007, the 16 German states (Bundesländer) have the authority to pass their own laws for land market regulations. These must however be in conformity with the BGB and the Grundgesetz (constitution), respectively. Currently, the federal states apply the Grundstückverkehrsgesetz with rather marginal modifications such as defining different minimum sizes of agricultural plots for which land regulation applies. So far there is only one German state, Baden-Württemberg, that passed a new law with some more strict regulations (ASVG 2009).

With regard to their regulatory effect, the current regulation of land sales has to be considered as rather liberal and in certain regards as vague. The Grundstückverkehrsgesetz for example states that every land purchase needs to be registered and approved by local authorities (usually district level committees or offices). The approval of a purchase can only be denied (GrdstVG §9), if

- the purchase would lead to an “unhealthy distribution of land”,
- the transaction leads to an uneconomical fragmentation of plots, or
- there is a misbalance between the price and the value of the land.
These reasons for a denial are rather vague. An unhealthy distribution is defined by stating that the transaction contradicts measures to improve the agricultural structure. An interpretation what this means has been developed by the German constitutional court, the Bundesverfassungsgericht in 1967 (BVerfG, 12.01.1967, 1 BvR 169/63). Accordingly, denials of land sales need a sound reason such as that the transaction indeed contradict measures to improve the agricultural structures. The Bundesverfassungsgericht argued that an in the end this means that land is bought by a non-farmer while a farmer who is in need for land would be willing to step into the contract and use a pre-emption right. However, the interested farmer has to prove that he/she is a need for land, e.g. because the farm has a rather high share of rented land or has previously lost land. Otherwise, non-farmers have the same rights to buy land and it would even be unconstitutional to prohibit the purchase of land for non-farmers which want to invest in buying agricultural land.

In recent years, annually some 1,000 to 1,500 ha have been affected by an interest in pre-emption rights representing some 1% to 1.5% of the annually traded agricultural land (BLG 2020). One reason for this rather low amount my relate to the fact that farmers cannot use a pre-emption right directly but only through a public organisation (Landgesellschaft) in the sense of the Reichssiedlungsgesetz. I.e., the regional land settlement organisation has to buy and register the land which means that it has to pay land sales and registering costs. Afterwards, the farmer interested in the pre-emption right can buy the land from the land settlement organisation at its full cost which means that the interested farmers would have to buy the land at a price which is some 5% higher than the original price.

Denials because of uneconomical fragmentations have not been an issue in recent years (BLG 2020). More important are denials due to a misbalance of price and value. According to court decisions, purchases can be denied if the sales price is more than 50% above the value of comparable plots – irrespective of being bought ba a farmer or non-farmer. In the state Baden-Wuerttemberg, the upper ceiling is 20% above the value.

Apart from the rather vague reasons for denials of approvals, certain transactions do not need an approval (GrdstVG § 4). These includes case in which federal or state-level actors are involved, if a religious community31 is buying the land, if the transaction is needed for a land consolidation program or if the land is located in an area covered by a land development plan. Moreover, in certain cases the transaction must always be approved but cannot be denied (GrdstVG §8). These cases include, for instance, transactions of whole farms – even if farming is just a side activity, if land is exchanged between farms, or if farms need the land for the replacement of land lost before.

It is also important to note that apart from the above mentioned differentiations between farmers and non-farmers, state and religious communities, the Grundstücksverkehrsgesetz does not differentiate buyers regarding nationality (even irrespective of whether EU or not),

31 In Germany, the protestant churches on the state and municipality level are estimated to own in total more than 300,000 ha of agricultural land. The catholic churches are supposed to own in total some 200,000 ha. https://fowid.de/sites/default/files/download/grundeigentum_der_ev._und_kath._kirche_193719862001.pdf
location of living, whether the buyer is a natural person or legal entity, or which amount of land the buyer already owns. Ownership is also not regulated at all.

Moreover, it is important to note that the Grundstücksverkehrsgesetz does not restrictions regarding the sale of whole farms. This seems to be logic in the sense that a buyer of a whole farm becomes with the transaction a farmer. In principle, the buyer could afterwards liquidate the farm – at least as long it was not the intention when buying the farm. Such a case occurred in 2015 when the German agroholding KTG agrar sold a subsidiary to the Munich Re with a land bank of more than 2,000 ha. Because it is supposed that the Munich Re did not intend to continue farming, the local agency responsible for the approval offered after public and political debates a pre-emption right to local farmers and found for some 500 ha farmers interested in buying the land. Munich Re did not agree with the decision and appealed. A final court decision is not known. An additionally important point of discussion is that sales of whole farms do not cause a land sales tax if the buyer buys less than 95 % of the shares. This issue is currently also highly debated because farmers just interested in buying land are excluded from the access to the land.

2.2 Land rental regulations

The land rental market in Germany is regulated by the Bürgerliches Gesetzbuch (BGB), and by a specific agricultural law, the Landpachtverkehrsgesetz (LPachtVG). The BGB mainly describes rights and duties of the contract parties, as well as requirements for the land rental contracts in general. It does however not include measures that can be regarded as land market regulations in the narrower sense.

The Landpachtverkehrsgesetz contains regulations on land rental registration and possible denials. It states that a land rental contact has to be registered at the responsible regional authorities, usually an office on the district level (§2 LPachtVG). Under §4, the law defines conditions under which the land rental contact can be rejected. These conditions are very similar to the ones for sales, namely:

- When the land rental leads to an unhealthy distribution, particularly to an unhealthy accumulation of land,
- When the land rental leads to an uneconomical fragmentation of land,
- When the rental price is in an unreasonable relation to the income that could be achieved with a proper sustainable cultivation of the land.

There are however two things that have to be pointed out here. First, the formulations about reasons for rejections are similarly to those for the sales market rather vague. In particular, there is no definition of what is an “unhealthy accumulation” as long as the land is used for farming. Second, even if there is the requirement for a registration of the contracts, there are no sanctions in case the contract parties do not register. According to estimations, only some

32 https://www.sueddeutsche.de/wirtschaft/landwirtschaft-munich-re-soll-land-abgeben-1.3738892
25% of all land rental contracts are registered, which makes this law largely ineffective (BMEL 2019).

Furthermore, the law names exceptions for certain transactions that do not need an approval of the rental contract in any case. These exceptions apply for contracts that have been concluded as part of an official procedure by the authorities, and for contracting parties who are closely family related to each other (§3 (1) LPachtVG). The federal states are additionally able to define size limits, under which an approval is not required (§3 (2) LPachtVG).

As far as pricing is concerned, the German land rental market is largely liberal. The laws on land rentals do not set a minimum price. A maximum price is vaguely formulated in §4 LPachtVG but has no effect as the registration is not legally enforced through sanctions. However, the Agrarstrukturverbesserungsgesetz (ASVG) of the state of Baden-Wuerttemberg argues that rental contracts can be disapproved if the agreed price is more than 20% above the revenue-adjusted regional price for comparable land (ASVG §13 (2)). However, even in Baden-Württemberg, a disapproval is considered inappropriate if it causes an unreasonable hardship for one of the one of the contract partners.

Contract durations can freely be negotiated among the contracting parties. It is possible to agree on limited contract durations as well as unlimited durations. Unlimited contracts still provide the possibility of cancellation by one of the parties (§594a, §594b BGB), whereas agreements of lifelong durations, exclude the option of cancellation. Non-written contracts become permanent it repeatedly prolonged.

2.3 Debates and proposals for new land regulations

In the last few years there have been a number of legislative initiatives on the federal level following the dynamic land price developments. The proposed measures are intended to regulate land markets more tightly.

In 2015, the working group “Bodenmarktpolitik” of the German agricultural ministries on the federal and state level (Bund-Länder-Arbeitsgruppe “Bodenmarktpolitik” 2015) formulated a report which included a number of reform options, such as on improvements of transparency, particularly a better statistics of rental prices, measures to enforce the registering rental contracts, introducing the ability to reject sales contracts due to a high ownership concentration, a need to approve share-deals, i.e. transaction of whole farms, abolish double taxation of pre-emption, reduction of land development, support for the establishment of new farms by young farmers.

In 2015, the Ministry of Agriculture and Environment Saxony-Anhalt drafted a law that defines maximum amounts at which farms cannot buy or rent additional land. Moreover, share-deals of farms would need an approval. After a change in the government of Saxony Anhalt in 2016, the proposal did not progress. In 2017, the government of Lower Saxony proposed a “Law to Safeguard the Peasant Agricultural Structure” (NASG), which is
intended to support the rural and family-run agricultural structure of the state. However, after a change in the government in Lower Saxony in 2017, the draft was cancelled. Currently, there are also initiatives for land market reforms in Brandenburg and Thuringia. The central components of all initiatives are size and price limitations and the regulation of sales of whole farms and shares thereof.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

The German land market is embedded in an institutional framework that is formed by numerous laws, which will be described here in their main features.

3.1 Grundgesetz

The German constitution defines in particular human rights. These include e.g. the right on free development of the individual personality, which implies the right to establish a business, the right on equity, the right to inherit, or protection against expropriation. These human rights limit the opportunity to regulate land markets. For instance, the Bundesverfassungsgericht (the German constitutional court decided in 1967 that a purchase of agricultural land by a non-farmer cannot just be prohibited because the non-farmer wants to invest into agricultural land. Rather, the regulation needs specific and justified reason such as that important agricultural goals are at risk.

3.2 Bürgerliches Gesetzbuch (BGB)

The German civil code defining the legal framework for all contracts.

3.3 Land sales tax (Grunderwerbsteuergesetz GrEStG)

The taxation of land sales is regulated by the Grunderwerbsteuergesetz (GrEStG). With a few exceptions, the law applies to all land purchases. The exceptions are for example when the buyer is a close family member of the seller, like spouse or children, or if the value of the land does not exceed €2,500 (§3 GrEStG). The law was first introduced in 1983 in West-Germany, where the tax was uniformly 3.5 %. The magnitude can however independently be changed by the states. Many states made use of that option and increased the land sales tax. Among the different states it is today between 3.5 % and 6.5 % of the sales price. The law frequently receives criticism because it contains a loophole. Transactions where shares up to 94.9 % of a legal entity that owns the land are bought (§1 (3) GrEStG) are not covered. Critics note that this loophole is often used by non-agricultural investors to save taxes on land purchases. A change in the law is currently being discussed (Top agrar 2020).
3.4 Land tax (Grundsteuer)

Owners of land plots have to pay land taxes each year. The determination of the tax requires several steps. In a first step, the value of the land has to be determined. That value is called “Einheitswert” and is set by the local tax office (Finanzamt). That value is multiplied by the “Steuermesszahl”, which is 0.55‰ for agricultural land. (§14 Grundsteuergesetz). The result is the Grundsteuermessbetrag (tax base) which is subsequently multiplied by the Hebesatz (§25). The Hebesatz can be set by each municipality (Gemeinde). They are referred to as “Vomhundertsätze”, so they are to be understood as percentages. For example, if the Hebesatz is 350%, the tax base is multiplied by 3.5

3.5 Bodenverwaltungs- und Verwertungsgesellschaft BVVG

With the German reunification in 1990, a large amount of state land of the former GDR had to be managed/ privatized. Since 1992, the Bodenverwertungs- und -verwaltungs GmbH (BVVG), as a state-run company, has the function to manage, rent out and sell state owned agricultural and forest land. Since 1992, they have privatised around 876,900 ha (BVVG 2020). Today, some 110,000 ha are still controlled by the BVVG and should be privatized by 2030 (BVVG 2019, BVVG 2020). The land sales through the BVVG are usually processed through first-price sealed-bid auctions that are publicly available on their website. Initially, none of the offers were restricted to specific buyers. The BVVG however often gets criticized because their average sales prices exceed those of the average market sales prices. As a possible reason for that, the critics cite the bidding behaviour of large legal entities and non-agricultural investors. Therefor the BVVG is accused of penalizing small family farms. Studies like Odening and Hüttel (2018) found that legal persons and natural persons both have a similar bidding behaviour in BVVG auctions and have an equal chance to make a successful bid. Nevertheless, the negative image of the agency still persists in the public today. As a reaction to that, in recent years the BVVG has restricted some auctions to certain buyer groups such as organic farmers or young farmers (BVVG 2020).

3.6 Inheritance laws

The inheritance regulation exists on several levels. On the one hand it right to inherit is guaranteed by the Grundgesetz, i.e. the German constitution. It is more specifically regulated in the Bürgerliche Gesetzbuch BGB (§§ 1922–2385).

Specific rules are defined for the agricultural sector through the Grundstücksverkehrsgesetz and the Höfeordnung, which define rules for the inheritance of whole farms – though these are rather optional. The main idea is to protect the farm respectively the successor against the withdrawal of equity capital. A certain problem is however that it is to the disadvantage of other heirs which receive a rather low compensation compared to the value. Particularly in regions with very high land prices it creates strong incentives to continue a farm – even as a part-time farm and without perspective for profitability. This may have contributed to
the phenomenon that particularly in Bavaria some 62% of the farms are part-time and hobby farms which benefit from the inheritance rules.

3.7 The agricultural pension system

Family farm members are in general participating in a specific agricultural retirement scheme (Landwirtschaftliche Alterssicherung SVLFG). This retirement scheme exists outside the general German pension system and is subsidised by the federal government to compensate for the agriculture-specific age structure. The pension level is however low so that retired farmers depend on income from renting out the farm or the land or on other sources of income. In general, farmers can however only retire and receive the pension if they hand over the farm. This requirement has however been abolished in 2018 due to existing hardship rules.

3.8 Land consolidation (Flurbereinigung)

Because of historically small land plots or because historically land plots were split up due to regional inheritance rules, land distribution is fragmented in many areas of Germany, particularly in the south. This has obvious negative implications for farming such as high transportation and operational costs. Therefore, land consolidation has been practiced in Germany. It is regulated by the Flurbereinigungsgesetz (FlurbG) since 1953. Overall goals are:

- the reorganization of rural property
- the improvement of production and working conditions in agriculture
- as well as the promotion of rural culture and development

Land consolidation is further used to provide land for infrastructure projects as well as natural conservation projects.

3.9 EU Common Agricultural Policy

Direct payments affect land market. On the national level, Germany did not implement a capping or degression of direct payments. Instead, payments for first hectares were introduced. Together with the young farmer payments, these payments benefit particularly regions dominated by small farms, such as Bavaria where a very large share of the land benefits from these extra payments and is likely to be at least partly translated into higher rental prices (Balmann and Sahrbacher 2014).
3.10 EU Law
In 2017 the European Commission provided an interpretative communication regarding national legislation for the acquisition of land (European Commission 2017). Accordingly, land market regulations need to consider general principles of the EU.

3.11 Renewable Energy Law
Until 2013, farmers and non-farmers investing in biogas plants were promised fixed minimum payments for 20 years. For feeding this plants, mainly maize silage was used which led to high land rents in regions which are particularly suitable for the production of maize silage (e.g. Appel et al. 2016, Hennig, and Latacz-Lohmann, 2017). In addition, in many areas wind energy parks were established and created high rents for the locations of the wind power plants. Furthermore, there is an increasing interest for solar power fields.

3.12 Livestock intensity and manure restrictions
In regions with intense livestock production such as the north-west of Germany, many farms produce more manure than applicable on their fields. To fulfill the environmental requirements, farms can either increase their acreage, contract with neighbour farms or export to other regions. Since the last two options are costly, there is a strong interest in renting of buying land. Those farms who have no manure problem benefit from getting paid for accepting manure. Beyond the manure problem there is also a benefit as costs for fertilization are low in these regions. Additional pressure results from the fact that across the border to the Netherlands the manure problem is partly even higher and farmers from the Netherlands try to export manure to Germany. In recent years as a result of the EU Nitrate Directive, the manure problem became even more severe in these regions because of a more restrictive fertilizer legislation. Currently, land rental prices in these regions are often higher than 1,000 €/ha and sales prices are often close to 100,000 €/ha.

3.13 Legal differentiation of agricultural versus commercial farms
The German agricultural sector has certain privileges such as a simplified measure to calculate VAT which is in general subsidizing farms. Farms which have a very high livestock density per ha are considered however as non-agricultural and excluded from these benefits by being classified as commercial businesses which have to apply the standard VAT system. This affects farms specialized on poultry and pork. Farms can prevent losing the advantage by splitting up the farm in several agricultural and commercial entities or by increasing their agricultural area to an appropriate measure which causes scarcity on the land market.
3.14 Taxation of land sales profits

Farms which sell land for development purposes of infrastructure investments such as roads receive relatively high prices for the land. These benefits are taxed as income, often with a tax margin of more than 40%. The tax burden can be reduced or postponed if the seller reinvests the returns such as through buying other land within a period of three years. This creates strong pressure in regions which are strongly affected by land development or infrastructural measures such as in the southern part of Bavaria or North-Rhine Westphalia.

4. Implementation and enforcement issues of land regulations

Some important enforcement issues are already addressed in section 2. Important to note is that rules which define whether an agricultural land purchase or rental cannot be approved are rather vague. This has certain advantages as agricultural structures and conditions are very heterogeneous across regions and changing over time. On the other hand, this leaves room for interpretations. This deficit has widely been resolved by court decisions such as through the German constitutional court Bundesverfassungsgericht, the federal court Bundesgerichtshof or the highest courts on the state level. They defined for instance that the Grundstücksverkehrsgesetz is constitutional if it is justified to protect agricultural structures, that a price is inappropriate if it is higher than 1.5 times the market value, and that a purchase of non-farmers can be rejected if a farmer in need for land is willing to buy the land at the same price.

In general, the enforcement rules and policies are defined on the state level and approvals of transactions on the district level (in the state of Baden-Württemberg also on the municipality level). On the district level, specific approval committees or approval offices exist. In general, the local agencies and committees consist of experts and can rely on previous court decisions. If the actors are not satisfied with the decision, they can request a court decision.33 A specific problem in these cases is however that court decisions in Germany need often a very long time, often years. As a result, it is estimated that only some 25% of the rental contracts are registered (BMEL 2019).

Moreover, it is important to note that farms can circumvent the approval of land rentals just by ignoring the duty to register because there is no sanction. As a result, it is estimated that only some 25% of the rental contracts are registered (BMEL 2019).

A specific burden for using pre-emptive rights results from the fact that the interested farmer cannot step in directly but only if a state agency which buys first and resells the land which means that two times a land sales tax and registration fees of some 5 to 6% of the sales price have to be paid.

With the exception of lacking sanctions for non-registration of rental contracts and certain bureaucratic and tax burdens, enforcement of land regulation is widely given in Germany.

33 Information on approval procedures can for instance be found for Bavaria under the link: https://www.gesetze-bayern.de/Content/Document/BayVV_7814_L_319/
Nevertheless, there are complaints, such as by the Federal Ministry of Food and Agriculture, which argues that deficits in the regulatory framework exist, such as that share deals of whole farms are not covered by the Grundstückverkehrsgesetz (GrdstVG) and the Landpachtverkehrsgesetz (LPachtVG), local regulation offices are not properly checking for existing farms which might be interested in exercising a pre-emptive right or for reasons to reject a sales contract (BMEL 2019). Empirical evidence for such concerns is however weak and rather based on hearsay that on validated facts. Germany has only limited legally binding regulations for the sales of public land. However, there are EU regulations which prohibit subsidized sales of public land. Moreover, there are agreements which define procedures of land privatization between ministries and public land agencies responsible for the land.

5. Other land-related measures not discussed elsewhere

An interesting recent phenomenon are sale-and-lease-back deals. Farms needing finance (due to planned investments of because of financial problems due to yield and price fluctuations) sell their land to private investors and agree with them on a long-term rental contract (Curtiss and Forstner 2020). In recent years, also some official land agencies and banks provide such opportunities, partly including an option to buy the land back at a pre-defined price.

Regarding the debates on land market regulation it may be interesting to note that there is not much advocacy for the functions of land markets and also the function of trading whole farms. Farms benefit a lot from increasing land sales prices because they own a lot of land and it eases to get loans from banks which is valuable given recent price and yield volatilities. Merger and acquisition of whole farms which are in financial trouble or which have difficulties to establish a new management are important to secure jobs in agricultural regions. This issue is particularly important given that in the former Eastern Germany the largest farms due to their engagement in labour intensive production, such as livestock, fruits and vegetables, are more important employers than the family farms which are predominantly engaged in cash crops.

6. Reference list of legal regulations

Below the most important regulations are listed. Their contents is included in the appendix to this report available from the project archive.

**Grundstückverkehrsgesetz (GrdstVG):**
Appendix: Pages 17 - 20

**Landpachtverkehrsgesetz (LPachtVG):**
Appendix: Page 21
Reichssiedlungsgesetz (RSiedlG)
Appendix: Page 22

Grundgesetz für die Bundesrepublik Deutschland:
Appendix: Pages 23 - 30
Link: https://www.gesetze-im-internet.de/gg/art_105.html [2020-10-22]

Bürgerliches Gesetzbuch (BGB):
Appendix: Pages 31 - 32
Link: https://www.gesetze-im-internet.de/bgb/index.html#BJNR001950896BJNE234302377 [2020-10-22]

Grunderwerbsteuergesetz (GrEStG):
Appendix: Page 33

Grundsteuergesetz (GrStG):
Appendix: Page 34

Agrarstrukturverbesserungsgesetz (ASVG):
Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur in Baden-Württemberg (Agrarstrukturverbesserungsgesetz - ASVG).
Appendix: Pages 35 - 37

7. List of supporting materials (available from the project archive)

Land sales
An up-to-date report on the most recent development of the land sales market can be found in the recently published report of the Bundesverband der gemeinnützigen Landgesellschaften (BLG) “Landwirtschaftliche Grundstückspreise und Bodenmarkt 2019”: https://www.blg-berlin.de/blgfiles/uploads/Landwirtschaftlicher-Bodenmarkt-D-2019.pdf

This report is based on published data from the Statistische Bundesamt in its annual series Fachserie 3, Reihe 2.4, „Kaufwerte für landwirtschaftliche Grundstücke 2019“ which can be found under the link:
Previous annual reports of this series can be found under the link:  
https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00000035

In addition, very extensive and detailed analyses of agricultural land prices can be found in the reports of the of the regional appraisal committees. These reports include information of regional average prices for standardised plots including information on value effects depending on location, quality, plot size, date etc. Such a detailed reports on the current land market is provided, e.g., by the Gutachtierausschuss Saxony Anhalt in its Grundstücksmarktbericht at a cost of 30 € provided through the link:  
https://www.lvermgeo.sachsen-anhalt.de/de/grundstuecksmarktbericht/grundstuecksmarktbericht.html

**Land rentals**

Far less covered are analyses of the German land rental market. A particular problem is that farms is that farmers or landowners are often not registering their rental contracts. Thus, the most reliable sources are on the one hand the EU Farm Structure Survey (FSS) which was last published for 2016 and the annual FADN data and the resulting report.

The German statistical office Statistisches Bundesamt publishes results of the FSS as an MS Excel file under the link:  
https://www.destatis.de/DE/Themen/Branchen-Unternehmen/Landwirtschaft-Forstwirtschaft-Fischerei/Landwirtschaftliche-Betriebe/Publikationen/Downloads-Landwirtschaftliche-Betriebe/eigentums-pachtverhaeltnisse-2030216169005.html

FADN results are annually published by the German Ministry for Food and Agriculture providing PDF files and MS Excel files with farm accountancy data for different groups of farms including information on rental shares, average rental prices etc. under the link:  

Some state level governments or agencies provide reports based on the results of the registration of rental contracts such as:

- Saxony Anhalt  
  https://mule.sachsen-anhalt.de/landwirtschaft/pachtpreise/
- Saxony  
  https://www.landwirtschaft.sachsen.de/pachtpreise-fuer-landwirtschaftliche-flaechen-37306.html

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**Land regulation**

Reports on interventions of the land regulation agencies are published by the Bundesverband der gemeinnützigen Landgesellschaften BLG such as for 2019 under the link: https://www.blg-berlin.de/blgfiles/uploads/Taetigkeits-und-Leistungsuebersicht-LG-2019.pdf

**Land market and regulation debates**

There is a broad range of publications and activities addressing debates on land markets and land market regulation. The relevance may be illustrated by research activities such as through the establishment of the DFG Research Unit FORLAND which is doing basic research on “Agricultural Land Markets - Efficiency and Regulation” https://www.forland.hu-berlin.de/en/institut-en/departments/daoe/forland

This research unit exists since 2017 and currently enters its second phase until 2023/2024. Involved are partners from Humboldt-Universität zu Berlin, University of Bonn, University of Göttingen, IAMO, and Boku Vienna. Study regions are particularly Germany and Austria. The website contains information on subprojects, publications, working papers and policy briefs.

Members of the FORLAND consortium engaged in additional research activities such as on the functioning and role of land market auctions AUKLAND: https://service.ble.de/ptdb/index2.php?detail_id=4333700&site_key=141&stichw=auktionen&zeilenzahl_zahler=2#newContent

Other work related to an analysis of land concentration:


A number of studies addressing the issue of non-agricultural investments into agricultural holdings and share-deals has been published by the Thünen Institute. Examples are:

- Landownership concentration
  https://www.thuenen.de/index.php?id=9385&L=1
- Transregional investors
  https://www.thuenen.de/index.php?id=8888&L=1
  https://www.thuenen.de/index.php?id=7221&L=1
- Causes and impacts of developments on agricultural land markets

Political activities include the report of the working group on land market policy of the federal and state governments:

A draft proposal for a land market regulation in the state of Lower Saxony from 2017 but withdrawn after a new government was established can be found under: https://www.landtag-niedersachsen.de/Drucksachen/Drucksachen_17_10000/8001-8500/17-8003.pdf

References:


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR HUNGARY

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Agricultural land market regulations in Hungary around 2020

Imre Fertő and Szilárd Podruzsik

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5. Enforcement and Application

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1. Introduction

1.1 Agricultural land ownership

There are no official statistics on agricultural landownership. According to the estimations of National Agricultural Chambers, there were 4.67 million hectares of arable land in private ownership in 2016, of which about 150,000 hectares were owned by legal entities (agricultural companies).

All private land was under cultivation. The size of leased land accounted for 52 percent of the agricultural area. In 2017, 127,000 hectares of arable land were placed on the land market. Of the more than 4.5 million hectares of land owned by private individuals, 3.2 million are cultivated by individual farms and 1.3 million by agricultural companies - apparently under land lease agreements. About half of the 5.3 million hectares of agricultural land are leased, and 2.5 million hectares are in undivided common property (co-ownership).

Due to lack of official data, we can use national FADN data to calculate the average size of owned and rented land. Our estimations show that in 2017, the average size of self-owned land was 40 hectares, while the leased area was 116 hectares. These numbers were 47 and 36 hectares for individual farms and 10 and 467 hectares for agricultural companies.

1.2 Agricultural land use

The Hungarian Central Statistical Office pursuant to Regulations (EC) Nos 1166/2008, 1165/2008, 138/2004 and 543/2009 of the European Parliament and of the Council - with an ideal date of 1 June 2016 - conducted a farm structure census called Agrarian, 2016. The purpose of the census was to have structural data on agriculture collected according to a comparable methodology at EU level. During the census, the target population consisted of economic organizations and households engaged in agricultural activity. The latest survey of 2020 is under process. [1]

More than three-quarters of the approximately 6 million hectares of agricultural land surveyed in June 2016 are arable land, which is largely in the use of individual farms. They cultivate 58% of agricultural land and 56% of arable land. Agricultural companies cultivate 42% of agricultural and 44% of arable land. In addition to cultivating an average of 251 hectares of arable land, the role of economic organizations was significant in forestry and reed management, as well as in the use of fishponds. [1]

There are significant differences in the structure of agricultural land use between the two farm groups. While only 3.7% of agricultural enterprises and 59% of individual farms cultivate less than 1 hectare, holdings above 1000 hectares are typically cultivated only by organizations. [1]
Figure 1: Distribution of the number of agricultural enterprises by size category of utilized agricultural area

Source: KSH, 2016 p11

Figure 2: Distribution of utilized agricultural area of agricultural enterprises by size category

Source: KSH, 2016 p11
Partly for legal and regulatory reasons (maximum holding, registered land use), the number of agricultural enterprises using more than 1200 hectares has decreased significantly. In 3 years, the number of farmers in this size category is almost halved (Figure 1). Despite fragmentation, more than 80% of the land used by agricultural enterprises is still cultivated by farms of more than 300 hectares (Figure 2).

After the entry into force of land traffic regulations, more than 120,000 hectares of the land used in the higher size categories has been transferred to the management of companies operating on holdings between 300 and 1,200 hectares. [1]

There is a concentration in the land use of individual farms. In 2016, more than half of the total agricultural area under their management was used by 7.1% of farms (about 25,000 farms) on farms between 20 and 200 hectares. In terms of the number of farmers, this means almost 160 thousand people, however, the land used in this size category is reduced by only about 37 thousand hectares. [1]

The long-term decline in the number of farms typically affected land users under 1 hectare (Figure 3), with 43% fewer farms in this size category than in 2010. In terms of the number of farmers, this means almost 160 thousand people, however, the land used in the size category was reduced by only about 37 thousand hectares. This is only 1.3% of the total agricultural area used by individual farms. [1] The share of farms with 1-300 hectares increased from 4% to 41% between 2010 and 2016.

Some farmers have indeed stopped production, but the number of people cultivating a larger area has increased. In addition, individual farms cultivate 10% more land than 3 years earlier. [1]

Figure 3: Distribution of the number of individual farms by size category of utilized agricultural area

Source: KSH, 2016 p12
The average utilized agricultural area increased by 65% in 6 years, as a result of which an individual farmer cultivated an average of almost 7.6 hectares in 2016. [1] As a result of the changes, the average agricultural area of agricultural enterprises is only 248 hectares in 2016, which is a significant decrease compared to the average farm size of 310 hectares 3 years ago and 326 hectares 6 years ago. (Figure 5) [1]

Source: KSH, 2016 p12

Figure 4: Distribution of utilized agricultural area of individual farms by size category

Source: KSH, 2016 p13

Figure 5: Average agricultural area of each farm group (hectares)

Source: KSH, 2016 p13
1.3. Cultivation Branches

1.3.1. Crop production

Cereals are typically sown by organizations on 20-200 and 500-1000 hectares, respectively, while individual farmers sow on 5-50 and mostly on their own consumption in 0.2-2 hectares. The area of cereals sown by the organizations has decreased significantly, by almost 147 thousand hectares less than 6 years earlier. Changes in eating habits and demand (oversupply of production, declining demand for bioethanol) production-linked agricultural subsidies have changed several crop groups. In 2016, for example, spelled and durum wheat, winter barley, rapeseed, sunflower and soy are sown in higher proportions instead of maize. The impact of SAPS direct payments and greening is still being felt, both in the set-aside area and in the growing area of fodder. The sowing structure shows significant differences both by size category and regionally. [1]

1.3.2. Viticulture

Viticulture is mostly practiced by individual farmers, who cultivate more than three-quarters of the area, on average on small farms of around 0.8 hectares, with significant regional differences. The role of the organizations is focused on larger lands of more than 30 hectares. [1]

1.3.3. Fruit growing

Nationally, farmers use 1.7% of their agricultural area as orchards, with significant regional differences. The location of the orchard area is concentrated. In the cultivation sector, an increase of about 2,500 hectares has been observed nationwide since 2013. The number of economic organizations using orchards increased by 22% compared to 2010, in contrast, the area belonging to this branch of cultivation was used by about 32 thousand or a third fewer individual farms. There are also significant regional differences in terms of average plantation size. [1]

1.3.4. Grasslands

On a national average, 15% of agricultural land is grassland, most of which is used by individual farms. While they farmed nearly 97,000 hectares by a quarter larger than 6 years earlier, the area used by the organizations has decreased. In parallel, as more and more economic organizations use grassland (their number increased by 16% between 2010 and 2016), their average utilized area decreased by 30% (from 117 hectares to 82 hectares). In
addition, large areas of grasslands are nature conservation areas, where the support of traditional animal husbandry is given priority. [1]

1.4. Agricultural Land Prices

In 2018, after an increase of 22% and then 5.6% in the previous two years, the price of agriculture and forestry is on average 11% higher than a year ago. In 2018, the price of arable land increased by 10%, the average price of one hectare of arable land was HUF 1.5 million. (Figure 6). Prices also increased in the other cultivation branches, with grassland 16%, orchard 15%, vineyard 14% and forest 9.9% higher in 2018 than in 2017. (KSH,2019) [2]

Figure 6: Average prices of arable land by land use categories

Source: KSH, 2019 p1

1.5. Sale of Arable Land

According to the publication of the Central Statistical Office (2019), the area of arable land sold is 72,000 hectares in 2018, which is almost the same as the previous year's sales and the third of the turnover two years earlier. In 2018, almost the same amount of arable land is marketed as in the previous year. A total of 72 thousand hectares (1.0% of the utilized agricultural and forestry areas) is sold which is almost the same as the previous year's sales and a third of the extraordinary arable land turnover two years earlier (in 2016). As a result of higher prices, the turnover value generated in 2018 is 9.8% higher than a year earlier. 72% of the total area sold is arable land, 14% forest land, 10% grassland, while the remaining 4% is sold as vineyards and orchards. [2]
1.6. Land Rents

According to the data of the Agricultural Structure Census 2016, 42% of the used agricultural and forestry areas are cultivated as rental property. Among each cultivation branch, the proportion of leased areas is the highest in the case of arable land (55%). 42% of the grasslands and 21% of the vineyards and orchards are used by tenants. (KSH, 2016) [2]

In 2018, the annual rent of the land belonging to the arable cultivation branch - after an increase of 5.8% in the previous year - exceeded the average of 2017 by 6.5%, so the average annual rent of one hectare of arable land was HUF 55,7 thousands nationwide (Figure 7). Rent for orchards increased by 9.7%, grassland by 4.9% and vines by 2.6%, while forest rents decreased by 1.9% compared to 2017. (KSH, 2019) [2]

Figure 7: Evolution average land rent prices by land use categories

![Figure 7: Evolution average land rent prices by land use categories](source: KSH, 2019 p1)

2. Key Land Regulations Affecting Land Markets

Presented in the summary opinion of the case law analyst group on the practice of litigation related to the Land Traffic Act summarized the evolution of the act (Kúria, 2019) as follows.

In Hungary, the acquisition of agricultural land by foreigners has been subject to restrictions for decades.

Pursuant to Act I of 1987 (Section 38 (1) thereof), in force until 27 July 1994 foreign legal and natural persons could acquire the ownership of agricultural land through sale, exchange or gift only with the prior permission of the Hungarian Government. Government Decree 171/1991 (XII.27.) on the acquisition of real estate by foreigners completely excluded the acquisition of ownership of agricultural land by natural persons who did not have Hungarian citizenship. LV of 1994 on a Arable Land Act (hereinafter: Tft) further extended the
restriction, and extended the land acquisition ban to both Hungarian and foreign legal entities.[3]

At the time of Hungary's accession to the European Union (1 May 2004), this restriction had not been lifted. According to the Act of Accession, Hungary has been granted a postponement to maintain restrictions on the acquisition of agricultural land. The derogation originally lasted for 7 years from the date of accession - but after 7 years, the Commission extended the grace period for the acquisition of agricultural land until 30 April 2014. However, the derogation did not apply to citizens of EU Member States who wished to establish themselves in Hungary as self-employed farmers. In parallel with the accession, Hungary therefore had to allow those EU citizens who have lived in Hungary and been engaged in agricultural activity there for at least 3 years to acquire agricultural land under the same conditions as nationals of the Member States. (Tft. Section 7 (2)) [3]

Hungary is not the only Member State to have complied with EU legal standards by the end of the derogation period by introducing austerity measures in the field of cross-border agricultural land acquisitions, to which the European Commission has responded by initiating infringement proceedings against several Member States. [3]

According to the government's justification, the Land Act was enacted in order to restrict the possibility for foreign companies to purchase significant agricultural land in Hungary. The reason for this legislation because the land purchase moratorium expired in April 2014, so - in theory – it was needed to open the Hungarian land market to legal and private individuals from other EU countries. The reason behind the restriction was that Hungarian land is significantly cheaper than land in Western Europe, but its value has been rising since the 2000s. Hungarian arable land is therefore a lucrative investment in regional comparison and is subject to investment speculation. From the date, all EU and Hungarian citizens can buy land - one hectare, but no more - however legal entities cannot acquire arable land. [3]

Only registered farmers can acquire more than one hectare. A farmer is a Hungarian or EU citizen who has an agricultural or forestry qualification as defined in the implementing regulation of the law, or has been engaged in agricultural and forestry activities in Hungary for at least three years in five consecutive years, or owning at least 25% of a registered agricultural producer organization. The ban on land acquisition by citizens of non-EU states is maintained. [3]

Land can be purchased by exchange if the new owner already has land in the given settlement, or lives there, or his residence or the center of his agricultural holding is at least 20 kilometers from the administrative boundary of the locality where the land is situated. Land can only be donated to a close relative, a well-established church, a municipality, and the state. [3]

Under the law, farmers can acquire 300 hectares of land and their maximum holding can be up to 1,200 hectares. Livestock farm operators and seed growers, on the other hand, can use 1,800 hectares of land. [3]
When selling agricultural land, the right of pre-emption belongs to the state in the first place. This is followed by the farmer who has been using the land for at least three years, who is either a neighbor or a resident, or whose residence or center has been in the given settlement for at least three years at a distance of no more than 20 kilometers from the settlement boundary. [3]

Land can actually only be bought by farmers who live locally, approved by a land committee of farmers, and then approved by the government agency which takes into consideration the recommendations of the Land Committee Board of Farmers. Accordingly, the new Land Act provides for the establishment of local land committees. Their approval will be required for the sale and purchase of arable land. The number of the members participating in the Boards may vary between a minimum of three and a maximum of nine local farmers. The entry into force of the contract requires the approval of the Agricultural Administration. [3]

The new regulation also rules out pocket contracts. Land purchase contracts can only be enforced on embossed, registered and numbered forms. According to the intention of the legislator, this can be used to filter out pocket contracts.

The criminal law regulation of pocket contracts entered into force on 1 July 2013. Until that date, the parties concerned were free to disclose the agreements reached without legal consequences, but thereafter they face up to 1 to 5 years' imprisonment. [3]

3. The Main Elements of The Regulation

3.1 Land Traffic Act

According to the definition of the Land Traffic Act, all plots of land, regardless of their location (inner area, outer area, enclosed garden), are considered agricultural and forestry land. which is included in the land register in the cultivation branch of arable land, vineyards, orchard, garden, meadow, pasture (lawn), reeds, forest and wooded area. Furthermore, an area excluded from cultivation that is registered as a forest in the National Forest Stock Repository according to its legal nature. The provisions of the Land Traffic Act must be applied to both the inner and outer territories of settlements. [4]

3.2 Land Acquisition

Although, as a general rule of the Land Traffic Act, ownership of agricultural and forestry land can be acquired by both natural and legal persons in accordance with European Union regulations, it can only be done in a manner and to the extent that it is strictly limited. The ability possibility to acquire land is therefore limited, in some cases practically ruled out.

The Land Traffic Act distinguishes between three groups of natural persons: (1) domestic natural person, (2) national of an EU Member State and citizens of states (Iceland, Norway,
Liechtenstein, Switzerland) linked to the EU single market by a separate international treaty,
(3) Non-nationals are considered to be foreign natural persons. [3]

Legal entities and cooperatives cannot acquire ownership of agricultural and forestry land by –except homestead -since the entry into force of the previous Land Act on 27 July 1994. This rule is also maintained by the new Land Traffic Act. However, a company which lawfully acquired agricultural land before 27 July 1994 may retain ownership of its land. Today about 140 thousand hectares of land are owned by companies. [4]

General acquisition ban applies to agricultural and forestry land to all foreign legal entities and unincorporated companies (companies without legal entities). Hungarian legal persons are also subject to an acquisition ban, except in some special cases:

- The Hungarian State may acquire land ownership without the quantitative restriction in order to enforce the land policy guidelines specified in the National Land Fund Act, as well as in order to achieve public employment or other public interest objectives.

- The local government according to the location of the land may acquire the ownership of land for the implementation of a social land program, public employment or settlement development.

- An ecclesiastical legal person may acquire ownership of land only on the basis of a maintenance, annuity, care, gift contract and a last will, but not on other grounds (eg sale and purchase).

- Exceptionally, in order to mitigate or eliminate a loss from a financial service, a mortgage credit institution may acquire ownership of land in a credit real estate exchange transaction and in liquidation or enforcement proceedings initiated against its debtor. The properties thus acquired must be sold at public auction within one year. If this cannot be achieved, the ownership of the land will be transferred to the state and managed by the National Land Fund. [4]

One of the subjects of the contract concluded for the transfer of ownership of agricultural and forestry land is the transferor, and in the case of sale and purchase, the selling party the seller can be anyone who owns agricultural and forestry land and wants to sell it. [4]

From 1 March 2014, the ownership of agricultural and forestry land can be acquired primarily by farmers. A farmer is a national natural person registered in the land registry department of a district office or a national of a Member State who fulfils one of the following three conditions:

- (S)he has a Degree in agriculture or forestry

- (S)he has been continuously engaged in agricultural and forestry activities in Hungary in her/his own name and at his own risk for at least 3 years, in five consecutive years prior to the submission of the application (s)he has had a certified turnover for at least three years.
• In the absence of a specialist qualification, a farmer is a member of a joint venture owned by a Hungarian agricultural producer organization for at least 3 years and with at least 25% of ownership, who carries out agricultural or forestry activities as a personal contributor within the framework of this company. The applicant must enclose a written declaration duly issued by the senior official of the farmer organization with the existence of these conditions. [4]

3.3. Quantitative Restrictions on Land Acquisition

If the buyer of the land is a farmer the maximum amount of agricultural land in the usage (owned + rented or used in any other ways) of a single person is 1200 ha. When the farmer is involved in seed production or in animal husbandry then the max amount is 1800 ha provided that the size of the animal stock is proportionate to the land size.

For a domestic natural person who is not a farmer and under certain conditions, nationals of the Member States the Land Traffic Act sets a limit of one hectare. The acquisition limit of one hectare is therefore in fact the maximum holding that also applies to land use, the area of some non-owner land should also be included. The one-hectare limit is not to be interpreted separately for each parcel but as a sum. The one-hectare limit also includes the area of the subdivision (yard, farm building, residential building) taken out of cultivation registered under the same topographical number as the arable land. However, in two cases it shall not apply:

(1) In the case of acquisition the right to use land of up to 1 hectare owned by the local government, designated for recreational purposes, for its own and its family members. (2) (S)he acquired (bought, exchanged, or given it as a gift) ownership of the land from a close relative who is a farmer. In this case, 300 ha acquisition limit applies.

3.4 Rules for The Purchase of State-owned Land

The conditions for the purchase of state-owned land plots belonging to the National Land Fund (NFA) are set out in Act LXXXVII of 2010 on the National Land Fund. 262/2010 on the detailed rules for the utilization of land plots belonging to the National Land Fund. (XI.17.). The aim is to develop viable agricultural holdings to a competitive size so that the larger farm size created can be based primarily on owner-occupied land rather than on leased land.

The sale of state land of less than 3 hectares takes place within the framework of a simplified procedure based on a written offer. When selling such plots of land, the NFA publishes its announcement of the plots of land for sale widely (e.g., in county and local newspapers, on websites, through the NAK). The NFA determines the market value of the plots of land offered for sale on the basis of a simplified valuation, on the basis of which it establishes and publishes the amount of the expected minimum purchase price. Candidate buyers who
comply with the requirements of the Land Traffic Act within the time limit set in advance in the announcement may submit a written offer for these plots of land.

Plots of land larger than 3 hectares are sold by auction. During the auction, a plot of land may be sold at a price at least 10% higher than the value determined by the NFA in HUF / AK, taking into account both county and local average prices. The non-forest part of the land indicated in the notice, which also includes a sub-forest, may be auctioned. The division of the land in this case will take place at the request of the NFA after a successful auction, however, the costs of the procedure will be borne by the winning auctioneer. The contract of sale can only be concluded after the division.

The auction announcement shall be made at the NFA's headquarters, website and county offices in the location of the land, as well as at the office of the government office in the county town where the auction is located, at the local government. It must also be displayed at the venue and published in county and local press. In the case of a joint municipal office, the auction notice must also be published at the joint municipal office.

The date of the announcement of the auction is the date of publication of the auction notice on the NFA website, which must be at least thirty days before the date of the auction.

4. Changes in Land Rules, 2020

The most important goals of the amendment are to strengthen the role of local farmers, to improve their competitiveness through a healthy, stable farm structure, to curb abuses and to keep arable land in Hungarian hands. [5]


The provisions, which will enter into force on 1 January 2021, are intended to implement a number of changes resulting from the practical application of the law, in addition to the closure of the proportional land acquisition procedures that have not been closed for more than 20 years. [6]

The legislation eliminates land plots with unsettled legal status by completing a land release process that has lasted for more than two decades. As a result of the process, with the appropriate monetary compensation of the relevant shareholdings, the state acquires ownership, with a few exceptions, over properties that are the subject of a cooperative land use right and have not yet been privately owned. With the regulation contained in the law, the entire share-land allocation process can be concluded within a short time. This will be a reassuring solution to a long process, especially for conservation and protected natural areas. [6]
4.1 Definition of a Resident Neighbour

The resident neighbour status has importance in pre-emption and pre-lease rights. In Act CXXII of 2013 on the Turnover of Agricultural and Forestry Land (hereinafter: the Land Traffic Act), the concept of a resident neighbour is changed, as a result of which the circle that qualifies for belonging to this category is narrowed. [6]

According to this, a locally resident neighbour is (1) a person who lives locally and the land he owns or uses is adjacent to the land that is the subject of the sale, exchange or lease agreement, or (2) who has lived in a municipality for at least 3 years that is adjacent to the municipality in which the land which is the subject of the sale, exchange or lease is situated, and the land which it owns or uses in the municipality in which it resides is adjacent to the land which is the subject of the sale, exchange or lease. [6]

An important change is that those entitled to purchase land can also apply as land residents for land in the neighboring settlements. [6]

4.2 Land Acquisition Restrictions

The Land Traffic Act. Section 17 fully defined the scope of land acquisition cases when the land acquisition limit could be exceeded. A new rule has now been added here, according to which the land acquisition limit can be exceeded in the case of an exchange for the purpose of amalgamation. Thus, the maximum holding existing on May 1, 2014 can be exceeded in the following cases

- by the size of the land purchased from the amount of compensation received due to the expropriation of land
- in the case of termination of joint ownership on land, with an area of land corresponding to the ownership share of the co-owner
- by dissolving the joint property of the spouses on the land with the size of the land to be owned by the former spouses
- the size of the land resulting from the transfer of ownership of the land for exchange

[6]

Up to now the Act has not imposed any obligation to make a declaration to Section 14 (2) of the Land Traffic Act. [6]

However, as a result of the amendment, the acquirer must state in the contract for the transfer of ownership that (s)he has not been involved in a legal circumvention transaction within 5 years prior to the acquisition. The possibility of attaching the declaration in separate documents with regard to the right of acquisition or land use will be eliminated, and the procedure will be simplified. [6]

The amendment stipulates that if the local land committee does not give its opinion within 45 days of receiving the request from the agricultural administration, the agricultural
administration decides on the approval of the sales contract without the decision of the local land committee. [6]

4.3 Amendments to Land Contracts and Their Approval

The transfer of ownership of the land or the recording of other legal transactions concerning the ownership of the land, as well as the legal declarations necessary for their registration in the land register, may only take place on a paper-based document which has security features specified in a separate decree. [6]

4.4. Declaration of Acquisition of Property

The acquirer must state in the contract for the transfer of ownership that he or she has not been found to have entered into a legal transaction to circumvent the acquisition restrictions within 5 years prior to the acquisition. The inclusion of the declaration in the contract eliminates the possibility of attaching it to separate documents, which also simplifies the procedure. [6]

The cases of refusal to approve the lease agreement have been expanded by the fact that the legal basis of the pre-lease right cannot be determined from the declaration made by the lessee in the lease agreement, or by which law the pre-lease right is based, or the pre-lease right is not based on rank. [6]

4.5 Local Land Committee

If the local land committee does not deliver its opinion within 45 days of receiving the request from the agricultural administrative body, the agricultural administrative body shall decide on the approval of the sales contract without the decision of the local land committee.

4.6 Pre-emption and pre-lease rights

During the acquisition of land, the law gives preference to the exercise of the pre-emption right for family farmers, young farmers and beginner farmers. This position has importance if farmers have the same ranking in the pre-emption right.

The posting of the contract on the local government bulletin board only has an additional, informative role according to the law, and it must be made public on the government portal hirdetmeny.magyarorszag.hu. From 1 July 2020, the 60-day deadline for posting means mandatory electronic publication on the government portal and not the time of publication on the municipal bulletin board.
If the buyer specifies a pre-emption position or the tenant pre-lease position in the sale or lease contract and the entitlement has to be proven by a document (e.g. ecological certificate, operation of a livestock farm), it must be attached to the notary. You also need the certificates.

The law also states that if the agricultural administration is under contract both the buyer and the purchaser in the same rank decision, the contract must be approved by the buyer under the contract of sale. [5]

The law also excludes the pre-emption right of the land user share owner in the case of the acquisition of land through the exercise of a right to purchase, as in this case the user must have held the purchase right continuously for at least 10 years the total area of the plot concerned. [5]

In the previous application of the law, it was a problem that the co-owner had the right of pre-emption in the post-state rank only if the seller wanted to sell the land to an outside third party and the co-owner wanted to acquire the property as a pre-emption right. The new regulation clarifies the situation by removing an outside third party from the regulation and also applying a tightening, which requires 3 years of ownership to prevent abuse. [5]

4.7 Purchase Option

In the event of an abuse of land acquisition, from the buyer’s wrongful purchase rightly listed persons can buy the land. According to the Land Traffic Act if, as a result of the abuse, a fine is imposed, despite which the obliged does not restore the legal status after 6 months, the agricultural administrative body, with the exception of land classified as forest, shall take measures to make the land available for forced use. The amendment clarifies that the starting date of the 6-month period is the date on which the decision imposing the fine against the obliged becomes final. [6]

4.8 Contract Types

An important novelty is that as a result of the amendment, the right of ownership of land under a maintenance contract and annuity can only be transferred to a closely related, established church or its internal ecclesiastical legal entity, local government, and the state, with the proviso that the state can only establish annuity. Experience gained in the application of the law has shown that a large number of individuals who do not otherwise have a relationship of trust enter into a life annuity and maintenance contract to circumvent the pre-emption right and circumvent the land traffic rules, which justified restricting this type of contract on the part of the contractor.

Acquisition of land ownership through a fiduciary contract is ruled out, as it would be difficult to reconcile with the special requirements of land use.
The establishment of a right of usufruct or a right of use (hereinafter: rights of use) by contract or last will shall be null and void, unless it establishes such a right in favor of a close relative. The approval of the agricultural administrative body is not required for the validity of the contract or last will establishing the right of usufruct. The contract for the establishment of a usufruct right is a legal transaction without official approval, so in the real estate registration procedure the real estate authority must examine whether the contract does not violate the acquisition restriction or prohibition. [6]

4.9 Further Amendments Concerning Public Land

State-owned land can be sold up to a size of 10 hectares under a simplified procedure, even without a public tender. The same rule will be applied from 1 July 2020 to the sale of state-owned shares in undivided common land corresponding to an area of no more than 10 hectares.

State-owned forests with an economic primary purpose can be sold up to a size limit of 5 hectares.

Areas belonging to the National Land Fund that have become redundant for national defense purposes will become easier to utilize in the future if their tenant bears the costs of completely clearing the areas and placing them in the cultivation branch.

In the future, 3-year commission contracts can be concluded for the lands belonging to the National Land Fund, if in the last 3 years it was only possible to utilize them through a commission contract.

4.10 Right of Use and Usufruct

A Tft. Section 7 (1) categorically prohibited the acquisition of ownership of agricultural land by foreign individuals and legal entities. A Tft. Its amendment, which entered into force on 1 January 2002, already precluded the establishment of a usufruct right.

The rules amending the Tft., Which entered into force on 1 January 2013, also provided that the right of usufruct established by contract between close relatives would cease on 1 January 2033 by the force of law.

Fétv., which entered into force on 15 December 2013, pursuant to Section 108 (1) of which a usufruct right expiring or established for an indefinite period after 30 April 2014 is also a right of use (which is not related to close relatives) It will be terminated on May 1, 2014 by the force of law. In parallel, Inyvt was included. § 94 that in the absence of proof of a close relative relationship, the Land Registry shall cancel the registered usufruct right ex officio.
4.11 Acquisition of Land Through Sale and Purchase

Since May 2014, the sale and purchase of agricultural and forestry land has been a rather complex, multi-stakeholder, relatively time-consuming process (lasting at least 6 months), with the conclusion of a contract being only the first step. It is not enough just to identify the way of acquiring ownership of the land, because even within the sale and purchase we have to differentiate between who the owner wants to sell his/her land to. If the transaction takes place between close relatives neither announcement nor official approval is required, otherwise both are essential. [4]

5. Enforcement and Application

Based on the experience of the past short period since its inaction the Land Act fares well in achieving its set objectives. In line with the CAP these main objectives are to fairly distribute agricultural land, to curb speculative pressures, to retain rural population, to favour agricultural practices that support landscape conservation and to create viable farms ensuring a stable supply of affordable food. When these goals put into practice they necessarily get into conflict with one another and in some case with fundamental economic freedoms, e.g. a ban on land acquisition by legal persons runs counter to the principle of free movement of capital, but the absence of a ban would lead and did lead in the past to a convoluted and uncontrollable land use system. As another example the former possibility of unrestricted usufruct have also resulted in similar mass abuses by circumventing land acquisition bans, and is therefore ruled out by the new land act (with the exception of close relatives - which is subject to criticism as well) even if it may be contrary to the right of free settlement and to the principal of free movement of capital. As a result of such conflicting values the Land Act is under scrutiny by the European Commission and in connection with it there are currently a number of infringement cases pending before the Court of Justice of the European Union (CJEU). [19], [20] The Land Act alone is of course not suitable for achieving long-term goals such as e.g. retaining the rural population, but clearly provides a better regulatory environment than the pre-2010 one that left the country prey for free robbery and colonization.

References


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[9] 2011. évi CXCVI. törvény a nemzeti vagyonról

[10] 1990 évi C. törvény a helyi adókról


[12] 191/2014. (VII. 31.) Korm. rendelet Korm. rendelet a mező- és erdőgazdasági hasznosítású földek végrehajtásával, felszámolási vagy önközményzati adósságrendezési eljárás keretében árverés útján történő értékesítésének szabályairól


[16] 38/2014. (II. 24.) Korm. rendelet a földművesekről, a mezőgazdasági termelőszervezetekről, valamint a mezőgazdasági üzemközpontokról vezetett nyilvántartás részletes szabályairól

[17] 504/2013. (XII. 29.) Korm. rendelet a mezőgazdasági vagy erdészeti szakirányú képzettségekről

[18] 251/2014. (X. 2.) Korm. rendelet a külföldiek mező- és erdőgazdasági hasznosítású földnek nem minősülő ingatlanokat érintő tulajdonszerzéséről

[20] Case C-235/17 - Commission v Hungary (Usufruct Over Agricultural Land)

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34 National legislation permitting such rights to be acquired in the future only by close family members of the owner of the land and cancelling, without providing for compensation, the rights previously acquired by legal persons or by natural persons who cannot demonstrate a close family tie with the owner of the land.
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR IRELAND

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Agricultural land market regulations in the Republic of Ireland around 2020

Shailesh Shrestha and Jason Loughrey

1. Introduction

Ireland has around 4.9 million ha of agricultural land which is 65% of total land of the country. Ireland’s livestock production is predominantly grass based production and occupies around 4.5 million ha of total agricultural land with an additional 0.4 million ha of commonage and rough grazing. The arable production covers around 0.35 million ha of agricultural land. There are around 137,500 farm holdings among which the specialist beef farms have the largest share of the agricultural area covering approximately 46 per cent of total agricultural land. Specialist dairy farming is growing in recent years in terms of land use and accounts for approximately 21 per cent of the agricultural area. Most of the farms are small sized farms with an average of 48 ha with around 40% of farms with less than 20 ha of farmland. There is a regional difference in farm size with farms in the north and west smaller in size than farms in the east and south regions of the country. Dairy farms are mainly concentrated in the south and east regions, beef and sheep farms in the north and arable farms in the mid-east regions of the country.

The Irish land market is very small with only around 13,500 ha of agricultural land sold in 2019. The average parcel size of land sold in 2019 was 7 ha (CSO, 2019). These official estimates exclude transactions with buildings, but the total volume of agricultural land sold is significantly below 1 per cent of the total agricultural land. A majority of land movement is through inheritance rather than sales outside a family. There are a number of alternative sources of information on land sales prices which collects and projects Irish land prices. These include the Central Statistics Office Land statistics, the Irish Farmers Journal annual reports and the SCSI Teagasc Land Market Review and Outlook. Land sales prices are relatively high in Ireland and increased steadily around 1990s and 2000s following the strong economic growth and property boom the country experienced in that period. The land price declined substantially for three years during the economic recession in 2007 to 2009. It however, showed some recovery since 2010, and has settled to a more consistent price in recent years. The average price for agricultural land is €21,792 per hectare without a residential holding and € 23,805 per hectare with a residential holding in 2019 (SSCI, 2020). There is a high variability in price in different regions of the country with farms in the southern and eastern regions paying higher prices for land compared to farms in the northern regions. Arable land tends to command significantly higher sales prices relative to permanent grassland. Among livestock farms, agricultural land prices tend to be significantly higher in regions where dairy farming is prominent relative to those areas dependent on beef and sheep production.
The market is larger for land leasing activity with around 700,000 ha of land being leased out in 2010 (CoA, 2010). It accounts for almost 19 per cent of total agricultural land (excluding commonage). Around 30% of farms rented in some land in 2010 with an average area of around 19 ha of leased land. The land leasing activities are more common among arable farms (30 per cent) and dairy farms (23 per cent) than among beef and sheep farms (less than 15 per cent for both farm types). The Irish land lease price was not affected by the economic crisis as was the sales price affected. There is a steady rise in the land lease price (in a nominal term) by around 70 per cent in 2019 compared to 2000 lease price. The land lease price varies widely between farms in different regions, with farms in the southern regions paying the highest land lease price, €511 per hectare on average in 2019 compared to an average lease price of €452 per hectare in the eastern regions and an average lease price of €434 per hectare in the northern regions. In Ireland, there is a mix of short and long-term land rental agreements. Historically, the short-term land rental agreements known as ‘conacre’ system, tended to dominate the Irish land rental market. There is a big push for longer term rental contracts by the Irish government more recently by implementing tax incentives. These incentives sought to encourage landowners towards letting out more land on a long-term basis and appear to be successful according to the SCSI/Teagasc land market reports.

2. Key land regulations affecting land markets

Ireland has a traditional model of land market. Irish landowners generally have a stronger attachment to their land which is influenced by cultural and emotional values rather than commercial values of the land. Land mobility follows predominantly from one generation to the next and there is a very small transfer of land between un-related farmers. In the late 19th century, a majority of the agricultural land was owned by few large landowners. The Irish Land Commission established under the Land Act in 1881 implemented nationwide land structural reforms to improve tenants’ rights and increase tenant ownership of land. The Commission aimed at increasing tenant ownership of the land and increasing productivity. The 1881 Act succeeded in improving tenants’ rights. However, the tenant ownership did not increase significantly until the 1885 Purchase of Land Act and subsequent legislation including the 1891 Purchase of Land Act. The Wyndham Act of 1903 had a major impact in terms of increasing the level of owner-occupied land. Many of the landowners preferred to operate under a ‘conacre’ system which was to rent out land for one production cycle of 11 months. The system was preferred by the landowners because of their fear of losing land to the Land Commission if they rented out land for a longer period or tenants having a legal right to the rented land. The 11-month period of renting under the conacre system fitted for the purpose of the landowners in mitigating such fear. This allowed them to ensure the land used by active farmers who did not have a longer-term commitment to the land. The tenant would pay in cash and use the land for one production cycle. The tenant can seek for further yearly extensions if the landowner is happy with the arrangements. There is no legal binding to let the land for the same tenant. The system was developed to provide better protection to
landowners as the tenants were not granted any legal rights over the land under this system (Conway, 1986). This system is still commonly in practice in these days in Ireland.

The ‘conacre’ system has some implications on agricultural production and efficiency. As this system does not provide security to a tenant, the tenant cannot make long term plans to increase production efficiency. The need of longer tenancy was realised by the Irish Government since 1978 to improve efficient use of agricultural land. More recently, the Government, started few initiatives to encourage higher land transaction as well as longer land tenancy such as providing longer term land rent tax initiatives to the landowners. The Government had envisaged expansion of efficient farms under the Food Harvest 2020 strategy (which is succeeded more recently by Food Wise 2025) which promoted green growth and sustainable production. The abolition of milk quota restrictions in 2015 further required opportunities for efficient farmers to expand milk production abolition. Policy reforms on tax incentives introduced in 2015 were aimed at encouraging agricultural land transactions and long-term rental agreements. These incentives are considered as a major step taken by the Irish Government to support the long-term vision of the government.

The process of land transaction is very simple in Ireland. The land transaction activities are required to be registered at the Dept of Revenues and Property Services Regulatory Authority (PSRA). There are capital gain and stamp duty taxes for buyers and sellers involved in a land transaction. After the implementation of tax reforms, these taxes were exempted or reduced if the buyers and sellers met certain conditions. The conditions were driven by the Irish government’s desire not just to preserve cultural ties with land (i.e., to keep the land within family) but also to keep it under active farming system and improve efficiency of agricultural land. Both the buyers and sellers need to register their interest and transaction details with the local Revenue and PSRA offices. The taxes and conditions set for tax exemptions are different for buyers and sellers which are described as follows.

Buyers:

There is a Stamp duty of 6% (+ VAT) once the transaction goes through. There are no restrictions on buyer’s nationality, land price and area of land in a transaction. There, however, are some reliefs under following conditions for a stamp duty exemption.

i. Consanguinity relief: If the land is transferring between relatives, a buyer will pay only 1% of the stamp duty.

ii. Farm consolidation relief: If the buyer has a farm restructuring certificate (an indication to expand buyer’s own farming activities), the stamp duty is exempted to only 1%.

Sellers:

The sellers must pay Capital Gain tax (33% of sale price) on completing a sale transaction. There are reliefs on this tax if a seller fulfils following conditions.
i. Farm consolidation relief: If the land is sold to a farmer or an owner of an existing farming system who can provide proofs of buying the land to expand farming business, the tax is relieved to 1%.

ii. Retirement relief: This relief is meant for landowners who are selling the farmland and retiring from farming. There are different conditions for a seller within age group 55 – 65 years and > 66 years. The relief also differs if a buyer is a next generation family member or not.

If the buyer is a next generation family member which includes own child, grandchild, niece and nephew who have worked on a farm for at least 5 years or a foster child (>5 years relationship), the seller gets a 100% relief from the tax. The value of the land to be exempted is restricted to €3 million.

If the buyer is a non-family member, a seller (55-65 years) gets full tax relief up to €750,000 of the sale price and a seller (>66 years) gets a full relief to up to €500,000 of the sale price.

iii. Entrepreneur relief: The tax is restricted to 10% if the seller can show a gain on disposing business assets. The is limited to less than 1 million of the gains.

iv. Capital Acquisition tax: This tax exemption is aimed to facilitate land transfer to next generation. If the buyer is an own child of the seller and selling land up to €335,000 has tax exempted under following two conditions. The standard 33% of tax is implemented to the price above €335,000. If in any case, the following conditions are not met for at least 6 years after the purchase, the tax exemption is clawed back.

- Agricultural relief: There is a 100% tax relief for 90% of the sale under €335,000. The conditions needed to be fulfilled are focused towards maintaining farming on land. These include, the buyer needs to have a formal agricultural qualification, needs to dedicate 50% of working hours on farm and show that agricultural property must be valued more than 80% of total property owned. The buyer also needs to farm at least for 6 years on the land after the transaction. The buyer, however, is still eligible for the tax exemption if he/she rents out the land to a person who fulfils all these conditions.

- Business relief: The land can be used for non-agricultural purposes, but the buyer needs to show making profit from the non-agricultural use of the land for at least 6 years from the date of buying the land.

Rental:

i. A tenant is required to pay a stamp duty of 1% of the rental value annually if the land rented in for less than 5 years. If it is for more than 5 years, the stamp duty is exempted.
ii. A tenant is eligible for Lease Income Tax exemption following similar conditions under Capital Gain Tax. However, there are some conditions where this exemption is overruled which are as follows.

- No exchange: A tenant and landowner cannot exchange land to one another both ways and claim Lease Income Tax exemption for both transactions.
- Connected person rule: A tenant cannot have family connection with the landowner (a niece or a nephew is not deemed connected to uncle or aunt for this rule).

iii. A landowner is eligible to Lease Income Tax exemption when leasing to more than 5 years. The amount of income to which tax exemption can be applied is graded against the length of the contract. The longer the contract, the higher value of income that is exempted from income tax as shown below.

<table>
<thead>
<tr>
<th>Term of rental</th>
<th>Max Tax Free income (€/year)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5-7 years</td>
<td>18,000</td>
</tr>
<tr>
<td>7-10 years</td>
<td>22,000</td>
</tr>
<tr>
<td>10-15 years</td>
<td>30,000</td>
</tr>
<tr>
<td>&gt;14 years</td>
<td>40,000</td>
</tr>
</tbody>
</table>

Source: Teagasc, 2019

iv. A landowner may qualify for the above tax exemptions from the Lease Income Tax if he/she is leasing land to a limited company.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

The agricultural land market in Ireland appears to have fewer regulations in comparison to many other EU member states. However, regulations have been introduced in relation to persons engaged in activity, which may influence the rezoning of land and the agricultural land market. For instance, the Regulation of Lobbying Act 2015 places regulations on persons engaged in lobbying local authorities about the zoning of land including agricultural lands. This 2015 Act deals with any relevant communication about the development or zoning of land as considered under the Planning and Development Act 2000. Under the Planning and Development Act 2000, local authorities are required to set out local development plans every six years. These development plans must include proposals regarding the zoning of residential and agricultural land. Under the 2015 Act, there is a requirement for persons engaged in lobbying to register as a lobbyist with the Standards in Public Office Commission. Among other things, lobbyists must submit details to the...
Commission regarding the type and extent of the lobbying activities carried on. In addition, there are regulations to limit the extent of the so-called ‘one-off housing’. Gkartzios and Scott (2009) conclude that ‘a largely laissez-faire attitude to managing housing in rural areas has been replaced by a reformulation of rural planning policy’. Under Section 39 (2) of the Planning and Development Act 2000, a planning authority may decide to only grant planning permission for a dwelling under the condition that the persons using the dwelling qualify as being members of ‘a particular class’ i.e. members of the landowning applicant’s immediate family or their heirs. Furthermore, the dwelling must remain occupied for a period of seven years after the granting of planning permission unless consent is granted by the planning authority. These rules limit the extent of the one-off housing in rural Ireland. These laws are likely to reduce the demand for agricultural land for speculative or non-agricultural purposes.

With the introduction of the Irish Government initiatives such as tax exemptions on longer term renting, there is a steady shift towards long-term leasing. There is still a strong traditional practice of renting out land under the ‘conacre’ system within Irish agriculture. A large share of 60 to 65 per cent of rented agricultural land is still rented out on a conacre basis. However, under current trends, the share of rented area in formal long-term land rental agreements are believed to exceed 50 per cent in the next few years.

The Irish credit market is likely to favour dairy farms and particularly those dairy farms with significant liquid and non-liquid assets. In terms of environmental policy, the Nitrates directive places upper limits on the degree of livestock intensity. This is likely to have an increasing effect on the demand for land in areas with high livestock intensity, which is evident in many of the counties in the South of Ireland. The spatial distribution of livestock intensity is mapped in recent research (Tratalos et al 2020).

Relative to other EU member states, the agricultural land tends to be highly fragmented in Ireland (Saint-Cyr et al 2016; Bradfield et al 2020). This reduces the attractiveness of acquiring some small plots of land. It is likely that the high fragmentation of land holdings, particularly in the west of Ireland, is responsible for reducing the demand for agricultural land. In some instances, the accessibility of farmland can also be an issue with poor road infrastructure having a negative influence on demand.

4. Implementation and enforcement issues of land regulations

Historically, land was reformed from a landowner-tenancy based to an owner occupier system though the Land act in the late 19th century and early 20th century. In the late 19th century, land was reformed from a landowner-tenancy based system to an owner occupier system. The 1870 Land act provided tenants with greater security. The Land Law (Ireland) Act of 1881 established the Irish Land Commission further increasing tenants’ rights and allowed for the provision of Government loans for tenants wishing to purchase their holdings. The owner-occupier model increased substantially as a result of subsequent legislation including the 1891 Purchase of Land (Ireland) Act and the Wyndham Act of 1903. In the aftermath of independence, the 1923 Land Act permitted remaining tenants to
purchase their holdings. The rental share therefore remained very low for the remainder of the 20th century and remains quite low today. Much of the land transactions were regulated through Irish Land Commission until its abolition in 1984.

In modern times, land transactions in Ireland do not have to go through strict regulations, neither on persons or entities involved or area of land in any land transactions. The cultural association of land and ownership is very strong in Ireland hence land market is very small. Most of the land transfers are either moving land from one generation to another or through the rental market. In the majority of cases, there is no legal binding agreement associated with conacre. When the 11-month contract is over, the contract can be extended for another 11 months unless the landowner or tenant opts out of the contract.

The land rental market has become more formal in recent years. The 2011 Property Services Regulatory Act stipulates that rental agreements should be registered with the Property Services Regulatory Authority in circumstances where an auctioneer is engaged in the transaction. This may include conacre agreements but most conacre agreements do not involve an auctioneer and therefore lie outside those regulations.

The Revenue Commissioners strictly implement the legislation in relation to the tax incentives for long-term land leasing. The Revenue Commissioners have ensured that the tax incentives are not exploited as a tax-avoidance mechanism. In general, it appears that long-term leases are registered with the PSRA, where the lease qualifies for tax exemptions. The 2011 Act stipulates that conacre agreements should be registered with the PSRA in circumstances where an auctioneer is engaged. There is no comprehensive evidence available to indicate that the level of registration is similarly high for conacre agreements. However, the level of registration is unlikely to be similarly high for conacre agreements given that no tax incentives apply.

According to the Property Registration Authority of Ireland (PRAI), 93% of the total land mass of Ireland and almost 90% of the legal titles in Ireland are registered in the Land Registry. This includes both agricultural and non-agricultural land and indicates a high level of compliance with regulations around land ownership registration (PRAI 2020).

The Department of Public Expenditure and Reform have reviewed the Regulation of Lobbying Act of 2015 (DEPR 2020). This review indicated that almost 2,000 organisations and individuals have registered their lobbying activity with the Standards in Public Office Commission (SIPO). Overall, there is widespread opinion that the new lobbying legislation is successful although various organisations (including the SIPO) have sought recommendations for some further reforms. The review involved a consultation process with organisations submitting their recommendations for amendments. The Review did not recommend any amendments to the 2015 Act on the basis that there was no ‘compelling business case for change’.

The EU rules regarding good management of agricultural land are mainly well adhered. In some mountainous areas however, there are genuine concerns about land abandonment and possible neglect (O’Rourke et al 2012; O’Rourke 2019). In terms of environmental
regulations, research has found that approximately 2,000 farms breach the nitrates directive on an annual basis (Lunn et al 2020). This is less than 2 per cent of farms in the country. It is possible that the difficulties in acquiring new holdings is a factor in the decision of some farmers to hold a number of livestock exceeding the limits set out in the Nitrates Directive. In support of this conclusion, Lunn et al. find that smaller farms participating in Nitrates (in terms of land size) are substantially more likely to breach the nitrates directive.

5. Other land-related measures not discussed elsewhere

The Central Statistics Office (CSO) statistics suggest that the activity in the land sales market is declining in the southern and eastern regions of Ireland but remaining constant in the northern regions where farming tends to be more extensive. Indeed, the most recent CSO statistics report that the share of land sold in the south-east NUTS3 regions was as low as 0.13 per cent of total area in 2018. This represents a significant decline on the levels reported in 2014 and 2015. The sales activity appears to be significantly higher in the northern regions where dairy farming is less prevalent.

One caveat is that the CSO statistics exclude transactions involving buildings. It is possible that the sales transactions in the southern and eastern regions have more buildings included. This could relate to the importance of milking facilities and indoor housing on dairy farms. More research is required to understand these patterns of land sales activity. However, it is widely understood that the land rental market has become significantly more active in the southern and eastern regions. Therefore, land mobility is probably increasing in overall terms in most parts of the country.

While the proportion of land sold in any given year tends to be relatively low, there is information indicating that the proportion of land offered for sale is significantly higher. The Irish Farmers Journal annual report indicates that approximately 0.7 per cent of the agricultural area is offered for sale in a given year. There is insufficient research to help us understand the difference between the amount of land offered for sale and the amount transacted. The attachment to land is very strong in Ireland and many owners will therefore place a particularly high reservation price on their willingness to sell.

The increasing formalisation of the agricultural land rental market means that land rental transactions have an increasing range of non-price related terms and conditions attached. Formal rental agreements may include a break clause, a rent review and agreement in relation to the treatment of repairs and the inclusion of a notice period. These factors are likely to influence the price of land rental agreements.

6. Reference list of legal regulations

i. Indicative list of Agri-Tax measures is available at:
ii. Land registration and registration fees are available at:

https://www.prai.ie/fees/

**Land registration**

11/5/2020 Land Registry Services - Property Registration Authority

https://www.prai.ie/land-registry-services/?print=print 1/7 Land Registry Services 1. Land Registration in Ireland 2. Compulsory Registration 3. Land Registry Services 4. Glossary of Terms 1. Land Registration in Ireland By international comparison, Ireland has a very extensive and well developed system of land registration. Since the foundation of the Land Registry in 1892, there has been a gradual, ongoing and continuous programme of movement away from the older and limited system of recording deeds (in the Registry of Deeds), to the more modern, flexible and comprehensive ‘title registration’ system provided through the Land Registry. 93% of the total land mass of the State and almost 90% of the legal titles in Ireland are now registered in the Land Registry. As the map below illustrates, almost all legal titles in several counties are now registered. Much of the progress in recent years has been facilitated by the successful roll-out of a major programme of state of the art Information Technology, the most notable of which have been: Integrated Title Registration Information System – ITRIS – (1999-2002) Digital Mapping Project (2005-2010) and Conversion of the entire register and associated indices from paper into a fully digitised format (2006-2009) As a result of these projects there are now 2.14 million titles, representing almost 2.8 million individual parcels of land, registered in the Irish Land Registry and an extensive programme is underway to advance the registration of the remaining titles. In fact, compulsory registration now applies to all counties. 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 2/7 2. Compulsory Registration Registration in the Land Registry is compulsory in the following cases: 1. Land bought under the Land Purchase Acts 2. Land acquired after 1st January 1967 by a statutory authority 3. Certain transactions* in relation to property located in the counties and cities listed in the table below: Compulsory Registration Counties Affected Effective date Carlow Meath and Laois 1st January 1970 Longford Westmeath and Roscommon 1st April 2006 Clare, Kilkenny, Louth, Sligo, Wexford and Wicklow 1st October 2008 Cavan, Donegal, Galway, Kerry, Kildare, Leitrim, Limerick, Mayo, Monaghan, North Tipperary, Offaly, South Tipperary and Waterford 1st January 2010 Cork and Dublin 1st June 2011 Cities affected Effective date Galway, Limerick and Waterford [as defined in Section 10 of the Local Government Act 2001] 1st January 2010 Cork and Dublin 1st June 2011 *in the case of freehold land – conveyance on sale *in the case of leasehold land – grant or assignment on sale 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 3/7 3. Land Registry Services 1. The Register The Irish Land Register is one of the most advanced land registers in Europe. The Register is fully computerised and all registered land parcels are digitised. The Register consists of textual and spatial information (folios and maps). The registered land in each county is divided into folios, one for each individual ownership or title. Each folio is numbered sequentially within the county division. Folios Click to see a Sample Folio The Register is conclusive evidence of title to property and any right, privilege, appurtenance or burden appearing thereon. The title shown on the folio is guaranteed by the State which is bound to indemnify any person who suffers loss through a mistake made by the Land
Registry. Maps (Title Plans) Click to see a Sample Title Plan The Land Registry operates a non-conclusive boundary system which means that the map does not indicate whether a boundary includes a hedge or wall or ditch etc. However, the physical features along which the boundaries run must be accurately identified. The core business of the Land Registry involves examining applications for registration. We also supply evidence of title and a range of associated services. The fees for Land Registry services are set out in the “Land Registration (Fees) Order, 2012 (S.I. No. 380 of 2012)” 2. Applications for registration Applications are prepared on behalf of the customer by qualified legal practitioners and submitted to the PRA for registration. In making decisions on applications, staff apply a wide range of legislation, take account of court decisions and adhere to principles of natural and constitutional justice. The legal impact of the documents and related maps lodged are then recorded on the folios and title plans of the Register. The type of application lodged ranges from applications for first registration, transfers of part of a folio, charges (mortgages), burdens (e.g. right of way) etc. The Land Registry Practice Directions and Legal Office Notices on this site provide guidance on the principles and procedures followed in making decisions on applications. However, this does not constitute legal advice and it is always recommended that you consult a qualified legal practitioner. Note that the Land Registry/Property Registration Authority is not an advisory body and cannot give advice on individual cases. 3. Applications for the purchase of the freehold under the Ground Rents Purchase Scheme This is a scheme under which owners of leasehold property can purchase their ground rent and enlarge their interest into a freehold. 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 4/7 The Ground Rents Purchase Scheme explanatory leaflet, Application Forms and other relevant information are published on this site under Ground Rent Services. 4. Certified Copy Folio/Title Plan The folios and maps of the Register constitute a public record and any person may apply to inspect or obtain a copy folio/title plan, on payment of the appropriate fee. If you know the relevant folio number you can apply for a copy on landdirect.ie or by downloading and completing the Application Form for Copy Folio/Title Plan showing appurtenant rights of way and/or other “special features”, if any, relating to the lands and title deeds, on payment of the appropriate fee. The completed application form along with appropriate identification and a cheque/postal order for the relevant fee (€40 per Instrument) should be lodged to: Customer Service Unit Property Registration Authority Chancery Street Dublin 7 If you don’t know the relevant folio number you can apply for a mapping search or names index search to be carried out. 5. Certified Copy Instruments When an application for registration (a “Dealing”) is completed, the legal effect of the documents lodged is registered on the folio. A purchaser for value can rely on the folio as evidence of title without having to read the title deeds. The title documents are subsequently filed in the Land Registry in a file known as an “Instrument”. There are some circumstances in which an inspection of an Instrument may be applied for. However, not everyone is entitled to inspect an Instrument. The Instrument can only be inspected by the registered owner of the property, his/her personal representative and any person authorised by such persons, by an order of the court or under Rule 159 of the Land Registration Rules 2012. Before completing an Application Form for Copy Instrument* under Rule 159 please read the guidelines attached to the form. You must specify why you consider yourself to be entitled to inspect and/or obtain a copy of the Instrument (or part of an Instrument). Any person who is entitled to inspect an Instrument may obtain a copy of the Instrument, on payment of the appropriate fee. The completed application form along with appropriate identification and a cheque/postal order for the relevant fee (€40 per Instrument) should be lodged to: Customer Service Unit Property Registration Authority Chancery Street Dublin 7
* See Legal Office Notice 5/2010 – Personal Applications for Copy Instruments must be accompanied by a Personal Applicant’s Identification Form. Please note: Instruments are stored off-site and will not be available on the day of request. 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 6/7 6. Search facilities Online search Many of our services are available through our online service – landdirect.ie. To avail of the full range of services you must open a Business Account with a minimum pre-payment of €125 made payable to the Property Registration Authority. If you are not a Business Account Holder, you can search the Land Registry map online, free of charge. You may also view folios and order certified copy folios with maps on payment of the prescribed fee. You may still avail of our services by post or by calling to one of our public offices between 10.30 a.m. to 4.30 p.m. Monday to Friday (excluding Public Holidays). The locations of our offices are published on this site under Contact Us. Map search Carrying out a mapping search will reveal if the property is registered in the Land Registry and will identify the relevant folio number. To apply for an official mapping search (fee €40): Outline the relevant plot in red on an Ordnance Survey Ireland map and send with your completed application in Form 89 with a cheque/postal order for the relevant fee to; Customer Service Unit Property Registration Authority Chancery Street Dublin 7 or Attend at our public office and point out the relevant plot on the maps provided. Once the folio number has been identified you may then apply for a certified Copy Folio or Copy Folio/Title Plan. Search by registered owner To apply for a name search (fee €5): You must know the name and address of the current registered owner. (Otherwise you must apply for a mapping search as above.) Send your completed application in Form 88 together with a cheque/postal order for the relevant fee to: Customer Service Unit Property Registration Authority Chancery Street Dublin 7 If the result of a search indicates that the property is not registered in the Land Registry it may have been dealt with in the Registry of Deeds. Please see the Registry of Deeds section on this site for information on the records maintained there and how to search them. 4. Glossary of Terms 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 6/7 Burden – An entry in respect of a right or liability to which the property is subject e.g. a right of way across the property or an annuity or charge payable out of the land. On new folios, i.e. those in 3 parts, they are entered on Part III. Certified Copy Folio – A copy of the land registry folio, certified by the PRA, which may be accepted as evidence of registration. Certified Copy Folio & Title Plan – A copy of the land registry folio, together with the land registry map of the property contained in that folio, certified by the PRA. This certified copy may be accepted as evidence of registration. Charge – A burden which renders the land liable as security for payment of a sum of money. Dealing – An application for registration in the Land Registry is known as a land registry dealing. Each dealing has a unique reference number. Discharge – A document used to apply for removal of a charge or burden from a folio. First Registration – The process by which property is first registered with the Land Registry, the title having been approved by the PRA. Prior to first registration the land is deemed to be “Unregistered Title” or has “Registry of Deeds Title”. Folio – Property registered in the Land Registry is registered in a document called a Land Registry Folio. Each folio has its own distinct number with the details of the registered property. Some older folios and all new folios are in 3 parts, comprising of Part I – Description of the Property, Part II – Ownership, Part III – Burdens. Form 17 – A covering form lodged with each application that sets out the registration sought, the documents lodged, the Solicitor’s name and address and fees. Freehold – When the tenure (title) of property has the capacity to last forever as distinct from leasehold which is for a fixed term
of years. On new folios the letter F after the number designates freehold. Instrument – When an application for registration is completed, the registration documents are bound for filing in Land Registry Instruments. Each instrument bears the application number given when the application was first lodged. Joint Tenants – Owners who are registered at the same entry are joint tenants – when joint owner dies, the property passes to the other joint tenant(s) and does not form part of the deceased joint owner’s estate. Land Certificate – A Land Certificate is a photostat copy of the folio accompanied by a certificate that the ownership of the lands is as within stated. Note: No longer issued or re-issued since 1/1/2007 and not required for registration purposes. Lease – A grant by a lessor to a lessee of possession of property for a fixed period of time subject to payment of a rent. Currently only leases for more than 21 years can be registered in the Land Registry. Leasehold – The interest created by a lease. Leasehold folios have an L after the folio number. Currently only leases for more than 21 years can be registered Ownership – Shown on Part II of the folio. It gives the name and address of the owner(s) and the date of registration as owner. The address must be within the state for the service of any notices on the owner. Plan Number – Each registered property will have one or more plan number which enables the identification of the property on the Land Registry map. The plan number appears as part of the property description at Part I of the folio and also appears on the plot(s) or plan(s) shown on the map for that folio. Priority – The order in which dealings are registered or burdens entered on a folio. For registered land, normally priority is governed by date of lodgement. Release – A document used to apply for removal of a charge or burden from a folio. Tenant in Common – A person who owns property with others where the owners have undivided possession but where there is no right of survivorship i.e. upon the death of a tenant in common their share in the property forms 11/5/2020 Land Registry Services - Property Registration Authority https://www.prai.ie/land-registry-services/?print=print 7/7 part of their estate and does not pass automatically to the other tenants in common. Each tenant in common is registered with a separate entry and the entry states the share held by that tenant in common. Transfer – The deed by which registered property is passed from one person to another. A deed of transfer must conform to the prescribed forms set out in the Land Registration Rules 2012. Transmission – The means by which a property normally passes from a deceased registered owner (via personal representative) to a person entitled to be registered – using prescribed Land Registration Rules Forms. Vesting Certificate – When a tenant or lessee buys out the ground rent of their property under the purchase scheme operated by the Land Registry, a vesting certificate issues from the Ground Rents section of the PRA. This certificate is proof that the person named in the certificate has acquired all superior interests and now holds the freehold.


The land rent relevant section (#664) of the act is as follows.

**TAXES CONSOLIDATION ACT, 1997**

664.—(1) (a) In this section— ‘‘farm land’’ means land in the State wholly or mainly occupied for the purposes of husbandry and includes a building (other than a building or part of a building used as a dwelling) situated on the land and used for the purposes of farming that land; ‘‘lease’’, ‘‘lessee’’, ‘‘lessor’’ and ‘‘rent’’ have the same meanings respectively as in Chapter 8 of Part 4; 907 Relief for certain income from leasing of farm land. [ITA67
“qualifying lease” means a lease of farm land which is— (i) in writing or evidenced in writing, (ii) for a definite term of 5 years or more, and (iii) made on an arm’s length basis between a qualifying lessor or qualifying lessors and a lessee or lessees who is, or each of whom is, a qualifying lessee in relation to the qualifying lessor or the qualifying lessors; “qualifying lessee”, in relation to a qualifying lessor or qualifying lessors, means an individual— (i) who is not connected with the qualifying lessor or with any of the qualifying lessors, and (ii) who uses any farm land leased by him or her from the qualifying lessor or the qualifying lessors for the purposes of a trade of farming carried on by him or her solely or in partnership; “qualifying lessor” means an individual who— (i) is aged 55 years or over or is permanently incapacitated by reason of mental or physical infirmity from carrying on a trade of farming, and (ii) has not after the 30th day of January, 1985, leased the farm land which is the subject of the qualifying lease from a person or persons, who is or are, or one of whom is, connected with him or her, on terms which are not such as might have been expected to be included in a lease if the negotiations for the lease had been at arm’s length; “the specified amount”, in relation to any surplus or surpluses (within the meaning of section 97(1)) arising in respect of the rent or the rents from any farm land let under a qualifying lease or qualifying leases, means, subject to paragraph (b), the lesser of— (i) the amount of that surplus or the aggregate amount of those surpluses, (ii) as respects a qualifying lease or qualifying leases made— (I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, £2,000, (II) in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, £2,800, (III) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991, £2,000, (IV) in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996— (A) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and (B) £3,000, in any other case, or (V) on or after the 23rd day of January, 1996— (A) £6,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and (B) £4,000, in any other case, and (iii) where the rent or rents was or were not receivable in respect of a full year’s letting or lettings, such amount as bears to the amount determined in accordance with clause (I), (II), (III), (IV) or (V), as may be appropriate, of subparagraph (ii) the same proportion as the amount of the rent or the aggregate amount of the rents bears to the amount of the rent or the aggregate amount of the rents which would be receivable for a full year’s letting or lettings. (b) Where the income of a qualifying lessor consists of or includes rent or rents— (i) from a qualifying lease or qualifying leases made in the period beginning on the 20th day of January, 1987, and ending on the 31st day of December, 1987, and from a qualifying lease made— (I) in the period beginning on the 6th day of April, 1985, and ending on the 19th day of January, 1987, or (II) in the period beginning on the 1st day of January, 1988, and ending on the 29th day of January, 1991, the specified amount shall not exceed £2,800; (ii) from a qualifying lease or qualifying leases made in the period beginning on the 30th day of January, 1991, and ending on the 22nd day of January, 1996, and from a qualifying lease made before the 30th day of January, 1991, the specified amount shall not exceed— (I) £4,000, in a case where the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and (II) £3,000, in any other case; 909 [No. 39.] Taxes Consolidation Act, 1997. [1997.] Pt.23 S.664 910 (iii) from a qualifying lease or qualifying leases made on or after the 23rd day of January, 1996, and from a qualifying lease
made at any other time, the specified amount shall not exceed— (I) £6,000, in a case where
the qualifying lease or qualifying leases is or are for a definite term of 7 years or more, and
(II) £4,000, in any other case.
(2) Where for any year of assessment— (a) the total income of a qualifying lessor consists
of or includes any profits or gains chargeable to tax under Case V of Schedule D, and (b)
any surplus or surpluses (within the meaning of section 97(1)) arising in respect of the rent
or rents from any farm land let under a qualifying lease or qualifying leases has been or have
been taken into account in computing the amount of those profits or gains, the qualifying
lessor shall in determining that total income be entitled to a deduction of the lesser of— (i)
the specified amount in relation to the surplus or surpluses, and (ii) the amount of the profits
or gains. (3) The amount of any deduction due under subsection (2) shall— (a) where by
virtue of section 1017 a woman’s income is deemed to be her husband’s income, be
determined separately as regards the part of his income which is his by virtue of that section
and the part which is his apart from that section, or (b) where by virtue of section 1017 a
man’s income is deemed to be his wife’s income, be determined separately as regards the
part of her income which is hers by virtue of that section and the part which is hers apart
from that section, and where section 1023 applies any deduction allowed by virtue of
subsection (2) shall be allocated to the person and to his or her spouse as if they were not
married. (4) (a) For the purposes of subsection (2), where a single qualifying lease relates to
both farm land and other property, goods or services, only such amount, if any, of the surplus
arising in respect of the rent payable under the lease as is determined by the inspector and
after such apportionments of rent, expenses and other deductions as are necessary, according
to the best of the inspector’s knowledge and judgment, to be properly attributable to the lease
of the farm land shall be treated as a surplus arising in respect of a rent from farm land let
under a qualifying lease. (b) Any amount which by virtue of paragraph (a) is determined by
the inspector may be amended by the Appeal [1997.] Taxes Consolidation Act, 1997. [No.
39.] Commissioners or by the Circuit Court on the hearing or Pt.23 S.664 the rehearing of
an appeal against that determination. (5) For the purposes of determining the amount of any
relief to be granted under this section, the inspector may by notice in writing require the
lessor to furnish such information as the inspector considers necessary. (6) (a) Subsections
(1) and (2) of section 459 and section 460 shall apply to a deduction under this section as
they apply to any allowance, deduction, relief or reduction under the provisions specified in
the Table to section 458. (b) Subsections (3) and (4) of section 459 and paragraph 8 of
Schedule 28 shall, with any necessary modifications, apply in relation to a deduction under
this section.

iv. Planning and Development Act, 2000 (a copy is included in the project archive)

v. Property Services (Regulation) Act 2011, (a copy is included in the project archive)

vi. Land Registration (Fees) Order 2012 (a copy is included in the project archive)

vii. Land Law (Ireland) Act, 1881 (a copy is included in the project archive)

viii. Irish Land Act, 1903, (a copy is included in the project archive)
ix. Land Law (Commission) Act, 1923 (a copy is included in the project archive)

7. List of supporting materials (available from the project archive)


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR ITALY

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Agricultural land market regulations in Italy around 2020

Paolo Scokokai

1. Introduction

1.1 Farm structure in Italy

The farm structure in Italy is still very fragmented as compared to other European Union (EU) member states. Considering the data in Figure 1, Italy is one of the few EU-15 member states (together with Greece and Portugal) in which the average size of family farms (9.5 ha) is below the EU average (10.8 ha).

*Figure 1: Average size of family farms in the EU (2016)*

*Source: Eurostat (Farm Structure Survey, 2016)*
The current farm structure in Italy is the result of a long historical process that goes back to the agrarian reforms that took place in the ’50s. Such reforms were targeted to a redistribution of agricultural land to small farmers, and, as a result, the process ended with an extreme fragmentation of land property and farming activities. This process still influences the current farm structure, with obvious difficulties in reaching an adequate scale of agricultural production in many farms.

Table 1 summarises the current Italian farm structure by size class, using the last edition of the Farm Structure Survey (2016). The total number of farms is still extremely high (more than 1.1 million), despite the strong declining trend (-22% with respect to 2013), and the average farm size is only 11 ha. The large majority of farms (almost 74%) is smaller than 10 ha, but despite their small size, these farms count for a sizable share (around 22%) of the total Utilised Agricultural Area (UAA). Of course, the role of large farms (above 10 ha) is much more relevant, since they represent 26% of the total, but cultivate almost 78% of total land. The 60,000 farms falling in the largest size class (above 50 ha) represent only 5.3% of the total, but cultivate around 42% of total land. The number of farms in the three last classes is increasing, especially among the farms above 50 ha (+6.9%), where the average size is extremely high (almost 90 ha), at least for the Italian standards.

Table 1 - Number of farms and Utilized Agricultural Area (UAA) by size class in Italy

<table>
<thead>
<tr>
<th>Size Class</th>
<th>2016</th>
<th>2013</th>
<th>% change 2016/2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of farms</td>
<td>UAA (ha)</td>
<td>Average farm size (ha per farm)</td>
</tr>
<tr>
<td>&lt;1 ha</td>
<td>107,444</td>
<td>108,564</td>
<td>1.0</td>
</tr>
<tr>
<td>1-1.99 ha</td>
<td>239,232</td>
<td>384,092</td>
<td>1.6</td>
</tr>
<tr>
<td>2-4.99 ha</td>
<td>311,175</td>
<td>1,020,344</td>
<td>3.3</td>
</tr>
<tr>
<td>5-9.99 ha</td>
<td>187,184</td>
<td>1,269,806</td>
<td>6.8</td>
</tr>
<tr>
<td>10-19.99 ha</td>
<td>136,187</td>
<td>1,666,079</td>
<td>12.2</td>
</tr>
<tr>
<td>20-49.99 ha</td>
<td>104,138</td>
<td>2,773,974</td>
<td>26.6</td>
</tr>
<tr>
<td>&gt;=50 ha</td>
<td>60,338</td>
<td>5,375,304</td>
<td>89.1</td>
</tr>
<tr>
<td>Total</td>
<td>1,145,705</td>
<td>12,598,161</td>
<td>11.0</td>
</tr>
</tbody>
</table>


35 The 2020 Agricultural Census in Italy has been delayed for the Covid-19 pandemic and will start in January 2021.
Table 2 - Number of farms and Utilized Agricultural Area (UAA) by specialisation in Italy (2016)

<table>
<thead>
<tr>
<th>Specialisation</th>
<th>Number of farms</th>
<th>UAA (ha)</th>
<th>Average farm size (ha per farm)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Farms specialised in arable crops</td>
<td>344,468</td>
<td>4,791,348</td>
<td>13.9</td>
</tr>
<tr>
<td>Farms specialised in horticulture</td>
<td>21,489</td>
<td>143,350</td>
<td>6.7</td>
</tr>
<tr>
<td>and flowers</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farms specialised in permanent</td>
<td>538,032</td>
<td>2,403,962</td>
<td>4.5</td>
</tr>
<tr>
<td>crops</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Farms specialised in herbivores</td>
<td>102,005</td>
<td>3,509,164</td>
<td>34.4</td>
</tr>
<tr>
<td>Farms specialised in granivores</td>
<td>8,076</td>
<td>201,877</td>
<td>25.0</td>
</tr>
<tr>
<td>Mixed crop farms</td>
<td>92,115</td>
<td>855,809</td>
<td>9.3</td>
</tr>
<tr>
<td>Mixed livestock farms</td>
<td>3,643</td>
<td>88,903</td>
<td>24.4</td>
</tr>
<tr>
<td>Mixed crop-livestock farms</td>
<td>24,638</td>
<td>563,380</td>
<td>22.9</td>
</tr>
</tbody>
</table>

Source: ISTAT, Farm Structure Survey (2016).

Of course, farm size statistics can be misleading, since it is well known that some highly specialised farms may fall in the smaller size classes, such as some specialised horticultural and flower farms (especially those using greenhouses) or some specialised livestock farms (pigs and poultry farms with little or no land). However, the distribution of Italian farms by specialisation (Table 2) suggests that, as in virtually all EU member states, the large majority of farms are specialised in arable crops or in permanent crops, for which the average farm size is extremely small (13.9 ha and 4.5 ha respectively). Livestock farms (both those specialised in herbivores and those in granivores) have a larger average farm size (34 and 25 ha, respectively).

This farm structure has of course important implications for land regulation: all laws approved starting from the mid ‘60s have had the general objective of increasing the average farm size, both consolidating the land property by farmers and liberalising land rental contracts. Despite these stated objectives, the results of their application have not been very satisfactory, since the consolidation process of Italian farms is developing very slowly.

### 1.2 Owned land versus rented land

Table 3 reports the statistics concerning the share of rented land in the Italian farm system, together with the structural features of farms managed entirely by the landowner, entirely by a tenant or those in which the farmer owns part of the land and rents the rest. These statistics clarifies how land rental has become a crucial element for the consolidation of farm structure in Italy.
Table 3 - Number of farms and Utilized Agricultural Area (UAA) by type of land holding in Italy

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Total rented land (ha)</td>
<td>5,763,557</td>
<td>4,900,321</td>
<td>3,057,960</td>
<td>17.6</td>
<td>88.5</td>
</tr>
<tr>
<td>Share Rented UAA/Total UAA (%)</td>
<td>45.7</td>
<td>38.1</td>
<td>23.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Only owned land</td>
<td>712,795</td>
<td>1,187,667</td>
<td>2,057,667</td>
<td>-40.0</td>
<td>-65.4</td>
</tr>
<tr>
<td>Only rented land</td>
<td>150,375</td>
<td>144,209</td>
<td>93,574</td>
<td>4.3</td>
<td>60.7</td>
</tr>
<tr>
<td>Both owned and rented land</td>
<td>280,789</td>
<td>287,352</td>
<td>242,856</td>
<td>-2.3</td>
<td>15.6</td>
</tr>
<tr>
<td>Total</td>
<td>1,145,705</td>
<td>1,620,884</td>
<td>2,396,274</td>
<td>-29.3</td>
<td>-52.2</td>
</tr>
<tr>
<td>Only owned land</td>
<td>4,662,311</td>
<td>5,828,534</td>
<td>8,288,288</td>
<td>-20.0</td>
<td>-43.7</td>
</tr>
<tr>
<td>Only rented land</td>
<td>2,311,254</td>
<td>2,011,493</td>
<td>1,025,942</td>
<td>14.9</td>
<td>125.3</td>
</tr>
<tr>
<td>Both owned and rented land</td>
<td>5,624,605</td>
<td>5,016,021</td>
<td>3,867,629</td>
<td>12.1</td>
<td>45.4</td>
</tr>
<tr>
<td>Total</td>
<td>12,598,170</td>
<td>12,856,048</td>
<td>13,181,859</td>
<td>-2.0</td>
<td>-4.4</td>
</tr>
<tr>
<td>Only owned land</td>
<td>6.5</td>
<td>4.9</td>
<td>4.0</td>
<td>33.3</td>
<td>62.4</td>
</tr>
<tr>
<td>Only rented land</td>
<td>15.4</td>
<td>13.9</td>
<td>11.0</td>
<td>10.2</td>
<td>40.2</td>
</tr>
<tr>
<td>Both owned and rented land</td>
<td>20.0</td>
<td>17.5</td>
<td>15.9</td>
<td>14.8</td>
<td>25.8</td>
</tr>
<tr>
<td>Total</td>
<td>11.0</td>
<td>7.9</td>
<td>5.5</td>
<td>38.6</td>
<td>99.9</td>
</tr>
</tbody>
</table>


The share of rented land is sharply increasing, since it was only 23% in 2000 and in 2016 it has become more than 45%. This strong increase is mainly related to the largest farms. In fact, while the average farm size of farms in which the farmer owns all the land is only 6.5 ha, farms in which land is entirely rented are 15.4 ha on average, while “mixed” own land/rented land farms reach 20 ha on average. Thus, land rental seems to be one of the key consolidation tools, especially for the largest farms.

1.3 Land values and land transactions

The long term trend of land values in Italy is presented in Figure 2. After a sharp increase in the period 1990-2007, the big financial crisis determined a stabilisation of land values and, after reaching a peak in 2011, the market experienced a small decline in values (-2.2% between 2011 and 2016), with a slight recovery in the last two years for which data are available (+0.2% in 2018).
Figure 2: Long term trend of land values in Italy (euro/ha)

The strong increase in land values in the ‘90s and in the first years of the new century is the results of several concurring phenomena. First, the demand for agricultural land has been strong as a result of the competition between alternative uses of land (i.e. rural vs. urban). At the same time, agricultural land remuneration has increased, both for the general increase in agricultural productivity, but also for the implementation of policies that have linked various type of subsidies to land, especially those related to the first pillar of the Common Agricultural Policy (CAP). Finally, the sharp and permanent increase in land values has generated an increase in the speculative demand for land, which has somehow reinforced the general increasing trend.

The more recent stabilisation in land values, that is linked to the general crisis of the real estate market following the big financial crisis of 2008-09, has led many landowners to keep land ownership (probably predicting a further increase in land values in the medium term), with a strong preference for renting out land. This remarkable increase in the supply of rented land is one of the reasons that have led to the sharp increase in the share of rented land we observed in recent years.

However, land values in Italy are also characterised by strong territorial differences (Table 4). Land values are much higher in the most productive areas of the North, especially in the valleys, but also in the hills, in which land remuneration increases thanks to the high value added of products produced in those areas. This is the case of flowers produced in the coastal hills of the North-West and of several Protected Denomination of Origin (PDO) and Protected Geographical Indication (PGI) products produced in the inner hills and inner mountains of the North-East. On the contrary, land values decrease dramatically in the Centre and South, especially in mountain areas (CREA, 2019a and 2009c).
Although the general trend in agricultural productivity is certainly the main driver of these territorial differences, policies play also a key role. In fact, in the North, and especially in the Po valley, the most productive agricultural area in Italy, agricultural is mainly specialised in arable crops and livestock products, for which, historically, the level of CAP payments has been much higher. These payments have been typically capitalised in land values, which were already intrinsically higher because of the higher productivity levels. On the contrary, the South of Italy is typically specialised in fruits and vegetables and in some traditional permanent crop products (i.e. wine and olive oil), for which, historically, the level of CAP payments has been much lower.

At the same time, the food quality certification guaranteed by the EU PDO/PGI label is behind the high land remuneration in the hills and mountains of the North, since these products are highly consumed in Italy and are known and exported all around the world (i.e. high quality cheeses like Parmigiano Reggiano and Grana Padano, Parma ham, Prosecco wine,…).

Figure 3 reports the recent trend in land transactions in Italy. This trend is clearly linked to the trend in prices discussed above. In fact, the stabilisation of prices which followed the big 2007 financial crises led to a strong reduction in land transactions, since landowners tend to keep land property and, if there is a demand for agricultural land, they typically prefer to rent out land. Thus, from 2007 to 2014 we observed a 42% reduction in transactions. The recovery we observed from 2014 to 2018 (+18%) is probably led by the very favourable conditions of the credit market, since after 2014 the cost of mortgages has dropped to the lowest ever level, thanks to the general overall reduction of interest rates (Povellato and Longhitano, 2017).

Table 4 - Land values in Italy in 2018 (euro/ha)

<table>
<thead>
<tr>
<th>Altitude zones</th>
<th>North-west</th>
<th>North-east</th>
<th>Centre</th>
<th>South</th>
<th>Islands</th>
<th>Total</th>
<th>% change 2018/17</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inner mountains</td>
<td>5,800</td>
<td>38,300</td>
<td>9,200</td>
<td>6,500</td>
<td>5,800</td>
<td><strong>13,600</strong></td>
<td>0.5</td>
</tr>
<tr>
<td>Coastal mountains</td>
<td>17,600</td>
<td>-</td>
<td>24,200</td>
<td>9,800</td>
<td>7,200</td>
<td><strong>8,900</strong></td>
<td>0.2</td>
</tr>
<tr>
<td>Inner hills</td>
<td>25,300</td>
<td>44,900</td>
<td>14,900</td>
<td>12,200</td>
<td>7,600</td>
<td><strong>15,800</strong></td>
<td>0.3</td>
</tr>
<tr>
<td>Coastal hills</td>
<td>99,400</td>
<td>31,100</td>
<td>16,800</td>
<td>17,000</td>
<td>8,900</td>
<td><strong>14,800</strong></td>
<td>0.1</td>
</tr>
<tr>
<td>Valleys</td>
<td>33,300</td>
<td>44,300</td>
<td>22,500</td>
<td>17,900</td>
<td>14,400</td>
<td><strong>31,600</strong></td>
<td>0.1</td>
</tr>
<tr>
<td>Total</td>
<td><strong>26,300</strong></td>
<td><strong>42,900</strong></td>
<td><strong>14,900</strong></td>
<td><strong>13,000</strong></td>
<td><strong>8,600</strong></td>
<td><strong>20,400</strong></td>
<td><strong>0.2</strong></td>
</tr>
</tbody>
</table>

% change 2018/17: 0.5, 0.2, 0.3, 0.1, 0.1, 0.2

Source: CREA. Land values databank
1.4 Land rental prices

As for the land values discussed in the previous section, land rental prices are characterised by very strong territorial differences, which are linked to the same drivers discussed above (general agricultural productivity, level of CAP payments, food quality policies). However, the main differences are related to the type of crops cultivated in a given area.

Table 5 - Land rental prices in the Veneto region in Italy (euro/ha)

<table>
<thead>
<tr>
<th>Crops</th>
<th>Min</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arable crops - valley</td>
<td>250</td>
<td>1,000</td>
</tr>
<tr>
<td>Arable crops - mountains</td>
<td>85</td>
<td>300</td>
</tr>
<tr>
<td>Forage crops - valley (no irrigation)</td>
<td>200</td>
<td>300</td>
</tr>
<tr>
<td>Forage crops - valley (irrigation)</td>
<td>550</td>
<td>850</td>
</tr>
<tr>
<td>Forage crops - mountains</td>
<td>40</td>
<td>170</td>
</tr>
<tr>
<td>Horticultural crops</td>
<td>500</td>
<td>1,100</td>
</tr>
<tr>
<td>Tomatoes</td>
<td>800</td>
<td>1,200</td>
</tr>
<tr>
<td>Tobacco</td>
<td>1,100</td>
<td>1,450</td>
</tr>
<tr>
<td>Fruit</td>
<td>900</td>
<td>1,500</td>
</tr>
<tr>
<td>Vineyards - hills</td>
<td>600</td>
<td>1,100</td>
</tr>
<tr>
<td>Vineyards PDO - valley</td>
<td>950</td>
<td>2,400</td>
</tr>
<tr>
<td>Vineyards PDO - valley (Prosecco)</td>
<td>1,700</td>
<td>3,000</td>
</tr>
<tr>
<td>Vineyards PDO - hills (Prosecco)</td>
<td>2,500</td>
<td>7,000</td>
</tr>
</tbody>
</table>

Source: CREA. Land values databank
Table 5 reports, as an example, land rental prices in one sample region of Italy (Veneto), in which we observe strong differences across land uses. The lowest rental prices are observed for forage crops in the mountains, but in the valley, where several high quality PDO cheeses are produced, the same rental price may be from five to ten times higher. The rental price for arable crops is extremely variable but, especially in the valley, it can be quite high. In this respect, in areas specialised in livestock production, the rental market for forage and arable crops is strongly driven by the manure disposal regulations. In the areas classified as “vulnerable areas” under the EU Nitrate Directive, demand for rented land by livestock producers may increase dramatically, thus driving up the rental price (CREA, 2019b).

Of course, the rental prices are much higher for specialised crops such as tobacco, tomatoes and horticultural crops, but they reach the highest levels for permanent crops. In this respect, the Veneto situation is a good example in which we can observe how strong the impact of PDO certification can be. In fact, while the rental price for standard vineyard plantations is in the same order of magnitude of fruit plantations, the price for PDO vineyards may double. Moreover, if the plantations refer to a worldwide known wine such as Prosecco, whose market is constantly expanding since the last 15 years, the rental prices may be up to seven times the standard rates.

Unfortunately, the available statistics do not provide any data on the average length of the contracts. However, once the Italian regulation has totally liberalised this aspect, we observe a clear decreasing trend in the length of the contracts, which leaves more flexibility to both the landowner and the tenant.

2. Key land regulations affecting land markets

2.1 Fundamental land regulations laws

The three fundamental laws regulating the land market are inspired by two main policy principles:

a) promote the consolidation of the Italian farm structure, which is still extremely fragmented;

b) liberalise the land market, especially the land rental market, which, historically, has been strictly regulated in Italy.

The first fundamental law regulating the land market is Law n. 590 of 26 May 1965. The title of the law is “Measures for developing land ownership by farmers”. The key point of this first law was the establishment of pre-emptive rights for tenant and sharecroppers, in case of sales of the land they were cultivating. At the same time, the law established subsidized loans for tenants and sharecroppers wishing to buy their land.

This law was fundamentally reformed by Law n. 817 of 14 August 1971, which established the new regulation of pre-emptive rights. After some more recent integrations and
modifications, pre-emptive rights in case of land sales go to the following subjects (in priority order):

a) the co-owner;
b) the tenant (whose contract is active from at least 2 years);
c) the neighbouring farmers, as long as they can be classified as “family-based farmers” or “professional farmers” under the Italian Law

Pre-emptive rights have been recently extended to agricultural legal entities, as long as at least 50% of the members can be classified as “family-based farmers” or “professional farmers”. However, pre-emptive rights do not apply in case of expropriation, sales through public auctions, failure/bankruptcy procedures and sales of building areas.

The third fundamental law regulating the land market is Law n. 203 of 3 May 1982, which has been recently integrated and modified several times. The key point of this law, whose title is “Regulation of agrarian contracts”, is the transformation of all the old types of agrarian contracts (i.e. sharecropping and similar) in a standard tenancy contract. In addition, this law liberalised rental contracts. Historically, the length of land rental contracts was established by law (15 years as reference length) and the rental price was computed using some automatic calculations established by law. Now, both the length and the rental price are totally free. The only requirement is that, in signing this type of “liberalised” rental contracts, tenants and landowners must be supported by their organisations (i.e. farmers’ unions and landowners’ organisations).

These three fundamental laws (and their further integrations and modifications) have had a strong impact in the functioning of land markets in Italy. The liberalisation of rental contracts has made the rental market extremely flexible, such that, as discussed in the previous section, land rental has become the key tool for increasing farm size, especially for the largest farms.

At the same time, the establishment of pre-emptive rights, especially those of neighbouring farmers, was not very effective in promoting consolidation of the Italian farm structure, which remains extremely fragmented. The reason for this partial failure stays probably in the difficulties in using these pre-emptive rights for enlarging the farm, since, for example, inheritance rule may drive the process in the opposite direction.

2.2 Fiscal incentives

Given the difficulties in promoting consolidation in the Italian farm structure, in the last few years several laws have tried to stimulate this process through several fiscal incentives. The following provisions have been introduced after 2009, and some of them only very recently (2016):

a) landowners that are “family-based farmers” under the Italian Law are temporary exempted by any income tax or real estate tax on the use of land;
b) tenants that are “family-based farmers” under the Italian Law are temporary exempted by any income tax on the use of land;

c) in case of land purchase, buyers that are “family-based farmers” or “professional farmers under the Italian Law pay a registration tax which is equal to 1% of the sales price (while the standard tax rate for non-farmers is 15%).

All these fiscal incentives are temporary, in the sense that they have to be confirmed every year with the approval of the national budget law. However, they have been confirmed already for several years and we expect to observe their impact in the medium term.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

3.1 Subsidized loans

One of the most important provisions of Law n. 590 of 26 May 1965 was the establishment of subsidized loans for tenants and sharecroppers wishing to buy their land. Over time, this opportunity has been extended to family-based farmers and professional farmers wishing to enlarge their farm. Despite several changes that were introduced in the procedure for accessing these loans, this tool is still available in Italy. Since 1999, ISMEA, the ministerial institute for the development of the agri-food sector, is in charge of managing these procedures. However, in the last few years, access to these subsidized loans has been limited to young new entrant farmers (under 40 years of age). Loans are typically long-term loans (30 years) and beneficiaries obtain a subsidy for reducing the cost of interests. However, access to these loans implies that the beneficiary becomes officially landowner only when he/she pays the last mortgage payment.

3.2 Inheritance regulation

As in virtually all countries, the inheritance regulation has a strong impact on the land market and in general on farm structure. The main problem is that, when several coheirs are involved in the inheritance procedure, the final outcome may be that farmland is divided among the coheirs, thus generating an anti-economic result in terms of farm management and a further fragmentation of the farm structure.

In this respect, the Italian legislation has tried to address this problem with the concept of “indivisible good”. The idea is that, if the inheritance involves a good that would lose value from its division among the coheirs, the good should not be divided. Most farms clearly fall in this definition, since in order to be efficiently managed they typically need to maintain their unity. In these cases, the outcome of the inheritance procedure can be:

a) the co-ownership of the coheirs;
b) the allocation of the entire farm to one of the coheirs, with monetary compensations for the others;

c) if the coheirs do not agree on one of the previous solutions, the civil judge may decide for the sale of the farm through a public auction, with the revenue of the sale going to the coheirs.

Unfortunately, the above outcomes are not always guaranteed. In particular, when the coheirs do not agree on solutions a) or b), the decision of the auction sale is discretionary and up to the civil judge. Thus, in some cases, the procedure ends up with a division of the land ownership among the coheirs. In addition, when an agreement among the heirs is not possible, the civil lawsuit may last many years, with obvious negative consequences on the management of the farm.

3.3 The role of agricultural, food and environmental policies

As discussed in the introduction, land prices in Italy can be influenced by several agricultural, food and environmental policies. The most important policies affecting land prices are the following:

a) First pillar CAP payments are linked to land and this has an impact on both land values and rental prices. The degree of capitalisation of CAP subsidies in land prices has been strongly debated in the literature (Guastella et al, 2018). In the Italian case, since the number of available entitlements is much lower than the total UAA, we expect a lower degree of capitalisation, since there is abundance of land to which these entitlements can be attached (Ciaian et al, 2014). The available data (see the introduction) seem to confirm that CAP subsidies have been capitalised mainly in land rental prices, since landowners tend to extract the maximum possible rent from their contract.

b) Food quality labelling, such as organic production, but also PDO and PGI certification, have a strong impact on land values and rental prices. The data presented in the introduction clearly shows that land values/rental prices are much higher in the area where some PDO livestock products are produced (i.e. ham and cheese) and are extremely high for vineyard areas where PDO wines are produced.

c) Nutrient management policies, and especially the Nitrate Directive and the consequent manure disposal policies, have a strong impact on land rental prices. In fact, especially in “vulnerable” areas characterised by intensive livestock production (dairy and beef cows, pigs and poultry) and where the animal stock density is very high, there is a very strong demand of land for manure disposal and the number of contracts motivated by this reason is strongly increasing.
3.4 The role of other policies

Other public policies play an important role in the land market and in the development of farm structure.

The first policy affecting land markets is the regulation of expropriation. When an expropriation for public use of land takes place, both the landowner and the tenant (if the land is under a rental contract) have the right to receive a compensation. This compensation is computed using some automatic formulas, in which a reference land value (RLV) is used. In principle, RLVs are supposed to represent the capitalisation of potential future earnings that can be obtained by a specific type of agricultural land. These RLVs are published yearly and are proposed by a Commission of local experts for each province. They are also extremely detailed, since, inside each province, they distinguish by altitude (i.e. valley vs. hills vs. mountains) and by type of crop. This very large and detailed dataset of land values becomes a natural reference for land transactions. In fact, in absence of more precise estimates of the value of a specific land plot, it is quite frequent to refer to the local RLVs or, as a minimum, to refer to their percentage change in order to analyse the land price trend over time.

The second policy affecting land markets is land zoning and spatial planning by regions and by local municipalities. It is quite obvious that the value of periurban agricultural areas is very much related to their potential transformation in building areas, either for residential or for industrial use. In this situation, the landowner that has speculative purposes tends to wait the decision of the local authorities on this potential transformation before selling its land. In the meantime, he/she may prefer renting out this land. When that specific plot of land is eventually transformed in building area, no pre-emptive rights on land sales can be claimed neither by the tenant nor by the neighbouring farmers, but the tenant has the right to receive a (rather high) compensation.

4. Implementation and enforcement issues of land regulations

4.1 Good management of agricultural land

Good management of agricultural land is one of the “cross-compliance” conditions for obtaining the CAP first pillar payments. Second pillar payments, obtained through the regional Rural Development Programmes (RDPs), also require this as a precondition. Thus, all farmers obtaining these subsidies (either as landowners or as tenants) typically comply with this general requirement, since controls are quite frequent. In addition, management of agricultural land is always a requirement explicitly written in land rental contracts.

In Italy, the share of farmers obtaining some form of subsidies is very high: also the very small landowners, that are very often part-time farmers, typically apply for the first pillar

36 The level of detail is similar to the one in Table 5.
subsides. However, especially in mountain areas, there is a small share of landowners that does not apply for the subsidies and for which it is virtually impossible to impose any practice of good management of agricultural land. In these (likely rare) cases, agricultural land may be abandoned, with a general worsening of land conditions (i.e. increased erosion, increased risk of floods, rewild, …).

4.2 Pre-emptive rights

Pre-emptive rights are by far one of the most important rights guaranteed by the Italian legislation (see section 2). However, landowners may try to avoid the formation of these rights, in order to be free when they decide to sell their land. For this reason, it is quite frequent that, in the rental contract, the landowner asks the tenant to commit to the release of agricultural land after the end of the contract, which is interpreted by judges as a waive of pre-emptive rights.

Concerning the pre-emptive rights by the neighbouring farmers, since the priority goes to the tenant, but he/she obtains such pre-emptive rights only after a minimum of two years of contract, landowners selling their land before the end of the two years can freely sell their land, because neither the tenant nor the neighbours can claim their pre-emptive rights. Moreover, landowners often engage in lawsuit in order to show that there is a physical barrier between their farm and the neighbouring farm (i.e. a road, a channel or similar), such that the neighbours cannot claim their right.

4.3 Summary on the enforcement of the regulation

In general, the approach of the Italian legislation to land market regulation is rather liberal. This is the results of a process that took place along several decades, with the objective of reducing land fragmentation, both consolidating the land property by farmers and liberalising land rental contracts. In general, there are no major constraints concerning land transactions (both land sales and land rentals), except for pre-emptive rights, which are the cornerstone of the most important laws regulating land markets. In general, all major provisions are effectively enforced and the attempts of circumventing the laws are rather limited, although some practices of avoiding the formation of pre-emptive rights are present (see section 4.2). Nonetheless, the enforcement of the legislation encountered several difficulties in reaching their long-term objective of favouring a consolidation of the farm structure, which is still extremely fragmented. For this reason, in recent years several fiscal incentives have been introduced (see section 2.2), and we should observe their impact in the medium term.

5. Other land-related measures not discussed elsewhere

None
6. Reference list of legal regulations

Italian Law N. 590 of 26 May 1965 (and further integrations and modifications)
http://www.edizionieuropee.it/LAW/HTML/10/zn2_03_012.html

Italian Law N. 817 of 14 August 1971 (and further integrations and modifications)
http://www.edizionieuropee.it/LAW/HTML/11/zn2_08_043.html#_ftn1

Italian Law N. 203 of 3 May 1982 (and further integrations and modifications)
http://www.edizionieuropee.it/LAW/HTML/9/zn28_02_033.html

(Pdf texts are available from the project archive)

7. List of supporting materials


(Pdf texts are available from the project archive)
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR LATVIA

Jerzy Michalek
Independent Senior Consultant, Germany; previously University of Kiel, Institute of Agricultural Economics, Germany, and EC
Agricultural Land Market Regulations in Latvia around 2020

Jerzy Michalek

1. Introduction

In 2016, Latvia (LV) had 82.4 thousand agricultural holdings with an average size of 35.9 hectares. The total area of utilised agricultural land in 2017 was 1932.2 thousand hectares and agriculture, forestry and fisheries contributed 3.7% to GDP (OECD, 2019)\[37]\[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/CA/APM/WP(2018)30/FINAL&docLanguage=En\]

In Latvia, a majority (67%) of UAA has belonged to large farms since 2016. This is an increase from 43% in 2005. The general trend showed that UAA belonging to small and medium farms is decreasing both in UAA percentage and in actual ha. Overall, UAA increased during the period by about 13%. (see: Figure 5A)

![Figure A5. Composition of utilised agricultural area (UAA) 2005–2016 in Latvia. Total numbers show the total UAA in hectares. Categories are represented in percentages of the total UAA as of each year.](source)

Source: Ambros P. and Granvik M., (2020)

2. Agricultural land and ownership structure in Latvia over the period 2012-2017

Agricultural land ownership structure in Latvia has undergone major changes between 2012 and 2017 (see: Table 1). Although the total area of agricultural land owned by legal entities and natural persons has slightly decreased over this period (from 2,108 to 2,106 thousand

ha), the total number of agricultural properties has increased from 486,000 in 2012 to approx. 502,000 in 2017. In 2017, the average agricultural land area owned by a single entity was 8.71 hectares (natural persons owned areas well below this average, whereas legal entities owned on average around 60 hectares of agricultural land). Most natural persons owned up to two agricultural properties, whereas legal entities owned about eight properties on average.

While the total number of agricultural land owners dropped in period 2012-2017 by 0.4%, the area of agricultural land owned by legal persons increased. In 2017, a relatively small number of legal entities (3% of total owners) owned almost a quarter of all available agricultural land (Figure 1).

Especially in Kurzeme Region and the Eastern part of Latvia large areas of agricultural land were owned by legal entities.

On average only 60% of land used for grain production is in farmers’ ownership, the rest is being leased from private land owners who might be small farmers in the neighbourhood or in many cases persons who are not related to agriculture at all (SUFISA, 2018).

Table 2 shows the structure of agricultural land transactions in years 2012-2016 by categories of buyers and sellers. In the group of buyers, the dominance of legal persons in the agricultural land market is unquestionable (almost 70% of all land purchase transactions). While the share of citizens of Latvia in total purchase transactions involving agricultural land diminished only slightly (from 31.3% in 2012 to 30.2% in 2016), it increased
significantly for legal persons with *domestic capital* (from 53% to 60%) at expense of legal persons with *foreign capital* who’s share dropped from 16% to 10%. Clearly, the biggest group of land sellers were citizens of Latvia (natural persons) – their share in total agricultural land sales transactions grew from 72% in 2012 to 74% in 2016. However, in some instances there are single land properties changing hands on several occasions. For instance, two agricultural land properties have been sold 10 and 11 times respectively during the time period in question.

In terms of agricultural land ownership the proportion of foreign citizens remains low. It applies both to the area of agricultural land (approx. 1%), and the number of transactions (5-7%).

### 3. Agricultural land prices in Latvia in years 2012-2019

<table>
<thead>
<tr>
<th>Buyers and sellers by categories</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchased agricultural land as percentage of total transactions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Natural persons</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Citizens of Latvia</td>
<td>31.35</td>
<td>32.12</td>
<td>30.21</td>
<td>31.62</td>
<td>30.18</td>
</tr>
<tr>
<td>Foreign citizens</td>
<td>0.16</td>
<td>0.20</td>
<td>0.61</td>
<td>0.80</td>
<td>0.30</td>
</tr>
<tr>
<td>Non-citizens of Latvia</td>
<td>0.19</td>
<td>0.07</td>
<td>0.04</td>
<td>0.03</td>
<td>0.02</td>
</tr>
<tr>
<td>Legal persons</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Domestic capital</td>
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<tr>
<td>Citizens of Latvia</td>
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</table>

Source: Valtenbergs, et. al. 2018
Average prices for agricultural land in Latvia grew in recent years very fast. Between years 2012-2019 they increased from 1585 EUR/ha to 3259 EUR/ha, i.e. by 105%. In some regions, i.e. Vidzeme Region the average land prices grew by almost 2.5 fold (i.e. in average 30% per year or 14% cumulative). The highest land prices are currently registered in Zemgale Region approx. 4900 EUR/ha and the lowest in Latgale region, i.e. approx. 1600 EUR/ha.

The prices for arable land suitable for crop cultivation have doubled in the last five years, reflecting the general rise of productivity and income in the wheat sector. In 2016, the price for a hectare of arable land in the most fertile region of Zemgale was on average 6,000 EUR/ha. Farmers and banks report land deals for up to 10,000 EUR/ha. In agro-technically less favourable regions the prices were lower (2,000–4,000 EUR/ha). The land prices in Latvia are higher than in the neighbouring Estonia and Lithuania.

Table 3. Purchase price of agricultural land in statistical regions of Latvia (EUR per ha)

<table>
<thead>
<tr>
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<td>1 584.91</td>
<td>1 998.12</td>
<td>2 322.75</td>
<td>2 500.63</td>
<td>2 771.25</td>
<td>2 830.90</td>
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<td>Pierīga region</td>
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<td>2 434.95</td>
<td>3 098.50</td>
<td>2 916.61</td>
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<td>4 428.51</td>
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<td>1 089.99</td>
<td>1 202.66</td>
<td>1 566.23</td>
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</tbody>
</table>


In years 2012-2019 development of agricultural land rental prices was similar, yet their growth was not as strong as for agricultural land purchase prices (see: Table 4). As both types of prices were affected by a rising competition among various type of farmers, as well as EU subsidies, the difference in their growth rates indicates that except of productivity
effects (incl. rising profitability of the bio-gas sector) also other factors stimulated land purchase prices, e.g. envisaged speculative land sales with profits in future.

Table 4. Rental price of agricultural land in statistical regions in Latvia (EUR per ha)

<table>
<thead>
<tr>
<th></th>
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<td>Pieriņa region</td>
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<td>Vidzeme region</td>
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<td>29.48</td>
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<td>37.60</td>
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<td>Kurzeme region</td>
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<td>48.20</td>
<td>56.85</td>
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<td>65.40</td>
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<td>Zemgale region</td>
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<td>80.19</td>
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<td>Latgale region</td>
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<td>26.13</td>
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<td>35.55</td>
<td>41.59</td>
<td>42.97</td>
<td>43.10</td>
</tr>
</tbody>
</table>


4. Key land regulations affecting land market

On 23 March 2017, amendments to the Law on Land Privatisation in Rural Areas were adopted and entered into force on 1 July 2017.

4.1 The requirements that have been excluded from the law

On the basis of objections from the European Commission that requirements of the Law on Land Privatisation in Rural Areas do not comply with the freedom of movement of capital and freedom of establishment stipulated by the Treaty establishing the European Union, the Amendments excluded the requirement that in order for an individual or legal person to acquire agricultural land this person should have received single area payments during the last three years. The requirement that the revenue of a natural or legal person from the agricultural production within the last three successive years should form at least one third of their total revenue from economic activity was also excluded. Moreover, the Amendments excluded the requirement that an individual or at least one owner or permanent employee of

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the legal person must have obtained education in agriculture or equivalent field by spending in training no less than 160 hours.

4.2 The new requirements for acquisition of agricultural land

Simultaneously with the exclusion of the above requirements new requirements have been implemented for individuals and companies to be able to acquire agricultural land. Namely, from 1 July 2017 agricultural land can be acquired only by such citizens of the European Union, member states of the European Economic Area, as well as Swiss Confederation who have received a document proving the knowledge of Latvian language at least according to level B2. Identical conditions apply also to the shareholder or shareholders of legal persons who jointly represent more than a half of the company’s voting capital and who have the right to represent the company.

Highlights of the new Latvian “Law on Land Privatisation in Rural Areas”: 39

- Only citizens/legal entities of EU, European Economic Zone, Swiss Confederation or from countries, with whom Latvia has concluded international agreements on investment protection can acquire land. If citizens/legal entities outside the above countries already own land, they must sell within 2 years, unless they can declare further use of agricultural land and get an approval by the local municipality
- Companies that own any land in rural areas must inform the municipal council of any shareholder changes
- Higher Latvian language proficiency requirements for foreign individuals, who are purchasing farmland in Latvia
- Restrictions for citizens/legal entities alone to own no more than 2,000 hectares or 4,000 hectares if owning with another holding company or group of companies
- Large scale owners must provide written confirmation that they will begin to use the land for farming purposes within one year after it is purchased

In general, physical and legal persons who are citizens of non-EU countries (third-country nationals) may not directly purchase certain types of agricultural, forest, and undeveloped land. Such persons may acquire ownership interest in such land through a company registered in the Register of Enterprises of the Republic of Latvia, provided that more than 50 percent of the company is owned by: (a) Latvian citizens and/or Latvian governmental entities; and/or (b) physical or legal persons from countries with which Latvia signed and ratified an international agreement on the promotion and protection of investments on or before December 31, 1996; or for agreements concluded after this date, so long as such agreements provide for reciprocal rights to land acquisition. For example, the United States and Latvia have such an agreement (a bilateral investment treaty in force since 1996). In addition, foreign investors can lease land without restriction for up to 99 years. Other

restrictions apply (to both Latvian citizens and foreigners) regarding the acquisition of land in Latvia’s border areas, Baltic Sea and Gulf of Riga dune areas, and other protected areas.

The law, however, prohibits foreigners who are not permanently residing in Latvia from purchasing agricultural land. It additionally requires that any person who wishes to purchase agricultural land must possess knowledge of the Latvian language at a level sufficient to present their plan for the future agricultural use of the land in Latvian”.40

A commercial company is not authorized to acquire agricultural land in Latvia for the purpose of carrying on its agricultural activity until its representative and its members prove their residence in Latvia and the required knowledge of Latvian. Furthermore, if a legal person who wants to acquire agricultural land in Latvia is controlled or represented by nationals of other Member States, there is an obligation on those persons to register as residents in Latvia and to demonstrate they knowledge of Latvian (at least level B2).

However, specific language conditions do not apply to Latvian nationals (legal and economic consequences of such regulation are described in Chapter IX)41

Foreign nationals from third countries are subject to restrictions on the acquisition of land in State border zones, specially protected areas and agricultural or forest land.42

Some further restrictions are set out in Article 29 of the Law on Land Privatisation in Rural Areas. Third-country nationals are also not allowed to acquire land in the border zone of Latvia, land in nature reserves and other protected nature areas; land in the protected zones of coastal dunes of the Baltic Sea and the Gulf of Riga; land in the protected zones of public reservoirs and water sources; land in the mineral deposits of national significance.43

4.3 Municipal control mechanism introduced

The municipal commission will have power to inspect performance of written confirmation of land usage for agriculture. From now on commission of each local government that monitors legitimacy of transactions with agricultural land performed in the respective municipality is able to invite an individual or a shareholder of a legal person (e.g. those who acquire agricultural land) to present in official language their plans for further use of agricultural land. This applies to individuals or the sole shareholder of a legal entity or shareholders of a legal entity together representing more than half of a legal entity’s share capital with voting rights, if the shareholders are individuals, or beneficial owners. These

43 See: https://latvia-immigration.com/2019/02/19/quick-introduction-to-latvia-investors-residence-scheme/
individuals will have to be able not only to present further use of the land, but also reply in official language to the questions asked by the commission.

The local government shall issue a statement regarding consent/refusal to acquire agricultural land in the ownership of a person. A statement shall be submitted to the Land Register Division.

It is important to emphasise that in order to maintain the ownership rights to the land property, even after acquisition of ownership rights to the land property the legal person will have to ensure that it complies with all the requirements set by the law for acquisition of agricultural land. It means that it is no longer possible to change the shareholders of the capital company only for the moment when the acquisition of agricultural land is carried out. According to the adopted Amendments, within 10 working days the authorised representative of the company shall inform in writing the council of the respective municipality regarding the changes to the shareholder registry of the capital company. If after the changes to the shareholders registry, the capital company no longer complies with the requirements of the law, within a month it must receive a new consent from the council of the respective municipality in order for it to retain the land property. If the council of the municipality does not grant the mentioned consent, the capital company is obliged to sell the land property within the period of two years.

The law stresses the authority of municipalities to supervise compliance with the law. Although the law requires companies to inform the regional council about changes to the composition of company shareholders, the supervision mechanism is clearly not entirely full-fledged because of situations where the respective company fails to inform the regional council about changes and the council has no mechanism for supervising changes in the commercial register. Additionally, such changes are not available publicly in relation to public limited companies.

4.4 Other issues regarding sale, acquisition and lease of agricultural land

From now on, if the owner of the land sells the agricultural land owned by him, the pre-emption rights shall apply not only to joint owners of the land, if applicable, but also to a lessee who has registered the lease agreement of the land at the local government at least a year prior to the conclusion of the purchase agreement or has the pre-emptive right to the land registered in the Land Register. There is also procedure made on how pre-emptive rights shall be used in case if there are multiple tenants. The pre-emption rights of agricultural land are held also by the manager of Latvian Land Fund. This solution was implemented in order to facilitate acquisition of agricultural land by local farmers.

In particular, the law resolves situations when a lease agreement for agricultural land has been registered at the Land Register instead of with the municipality. That is, if a landowner sells agricultural land, the lessee and the manager of the Latvian Land Fund have the right of first refusal, on the following basis:
- the right of first refusal <if someone wants to buy it before it is offered to anybody else> can be enforced by persons who comply with statutory requirements for those acquiring agricultural land, and who registered a land lease agreement with the municipality at least one year before the transaction or those who lease the land to be sold and the right of first refusal is registered at the Land Register;

- if the land is leased to several persons who satisfy the above conditions, they agree on a procedure for exercising the right of first refusal. If no agreement is reached, the right of first refusal vests in the person with the right under contract and registered at the Land Register;

- if there is no suitable agricultural land lessee, or if the lessees cannot reach agreement, or if a lessee whose right of first refusal is registered at the Land Register does not enforce the right, then the right of first refusal is transferred to the manager of the Latvian Land Fund;

- if the agricultural land to be sold is a joint property, then the right of first refusal is enjoyed by the joint owners; if a joint owner waives purchase of the property, the above conditions are applied to exercise of the right of first refusal.

5. Municipality can transfer agricultural land for lease with redemption rights

As of 1 January 2018, municipal agricultural land without buildings on it can be transferred for lease with redemption <repurchase> rights for a term of up to 12 years with an annual land rent at the rate of 4.5% of the land’s cadastral value. If the lessee enforces redemption rights, the rent is included in the redemption payment. The redemption price must be fixed on the day of entering into the land lease contract with redemption rights, while redemption rights can be exercised in the fourth year at the earliest. Only individuals are entitled to redemption rights; in addition, they must not have owned agricultural land previously and must confirm that within a year after entering into their lease contract they will start using the land for agricultural operations. The Cabinet of Ministers will set the documents to be submitted, lease contract conditions, and the procedure for conclusion and termination.

6. Restrictions on the size of transferred land

In order to prevent a situation when large areas of agricultural lands are owned by one or several closely related persons, the Amendments provide a restriction that related persons may acquire no more than 4,000 hectares of agricultural land, but an individual may acquire no more than 2,000 hectares. Based on development priorities, local governments are allowed to set further restrictions.
In order to eliminate possible fictitious purchase–sale transactions, according to amendments, not registered land deals concluded before 31 October 2014 will be entered in the Land Register only upon authorisation from the relevant municipal committee.

7. Supplements to exceptions to transactions with agricultural land

In addition to existing exceptions, restrictions do not apply to land transactions in an area whose functional zone in municipal territorial planning or local planning is envisaged for construction. The above restrictions on purchase of agricultural land and rights of first refusal will not apply to those acquiring agricultural land who own or legally possess agricultural land of less than 10 ha (individuals) and 5 ha (legal entities), supplemented by a note that this condition applies only if the land area is exceeded by less than the minimum area of a land unit as set by the municipality.

The complete list of exceptions in transactions of agricultural land is provided below. The requirements of the Law on Land Privatisation in Rural Areas (Sections) do not apply to:

1) Acquirers of agricultural land, the area of agricultural land in the ownership or legal possession of which at the time of concluding a transaction and after transaction:
   a. does not exceed ten hectares in total for natural persons and
   b. does not exceed five hectares in total for legal persons, or more
   c. if the excess of the land area is less than the minimum area of a unit of land to be newly created determined by the local government;
2) Agricultural land to be acquired as a result of insolvency proceedings;
3) Agricultural land to be acquired as a result of inheritance;
4) The agricultural land necessary for ensuring the State or local government functions, as well as the agricultural land, which is acquired into ownership by State capital companies for implementation of the functions delegated by law;
5) The agricultural land, which is acquired into ownership by a person in accordance with the Law on Alienating the Property of Public Persons and the Law on Alienation of the Immovable Property Necessary for the Public Needs, if the dominant category of use of land for the immovable property to be alienated is agricultural land;
6) Transactions with agricultural land between spouses, relatives of first and second degree;
7) The agricultural land, which is alienated in land consolidation proceedings in accordance with the laws and regulations governing land management;
8) Transactions with land in the territory the functional zone of which determined in the spatial plan or local plan of local government is the building territory;
9) Transactions between religious organisations
8. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

8.1 The procedure for selling state land

The amount of state land in possession of Land Fund of Latvia is only marginal (see below). However, important pre-emption rights to the Latvian Land Fund (3rd place, after co-owners and current tenants) imply that the Latvian State can indirectly control who will be potential land buyer and which land is being sold on the market.

The objective of the Land Fund of Latvia is to promote the agricultural land's protection, availability and preservation, as well as efficient and sustainable use thereof at a national level. ALTUM is the administrator (operator) of the Land Fund of Latvia. The agricultural land owned by the Land Fund of Latvia is offered for rent (for a period not less than 5 years) to entrepreneurs operating in the field of agriculture in order to preserve and improve the value of the land. The Land Fund aims to increase cooperation with farmers, but at the same time by not competing with the private market. Land Fund of Latvia has been active since July, 2015 and buys property that meets certain criteria. In 2017 it began offering leaseback services. In the same year the ALTUM Land Fund’s portfolio held 760 properties, spanning 15,600 hectares, 95% of which was leased to farmers for developing or starting operations.

At the 31 December 2018, the balance sheet of the Land Fund administered by the ALTUM Group listed 429 properties with a total land area of 7,818 ha worth EUR 21.71 million, including investment properties rented to the farmers with a total land area of 5,633 ha worth EUR 14.79 million. As of 30 June 2020 ALTUM Land Fund’s portfolio reached 52 million EUR, with the total number of transactions equaling 665.

8.2 The role of credit market in acquiring land

Latvian agriculture is characterized by a large number of small farms. According to some Latvian studies the main barriers to farms development with the highest level of importance are related to the availability of funding for agricultural development, both – operational and long-term. The low level of productivity is the main reason why the provision of financial resources of small farms in Latvia and their availability for development is limited. A high level of self-sufficiency and small market-orientated economic activity, typical to this farm group, is the reason, why the offer of credit services, provided by the credit institutions to small and medium-sized farm groups, is limited and quite expensive. Small farms in Latvia have accessibility to the EU and state support in the form of production subsidies, investment support as well as to the introduced in 2015 the State land crediting programme aiming to help local farmers, in particular small and medium ones, to buy land. Although the existing support measures have had a positive impact on the structural changes in Latvian agriculture; these measures have not been sufficient to solve problems of the market capability of small farms and significantly contribute to their economic growth.
8.3 Inheritance regulations affecting land market functioning

Latvia's inheritance laws affect everyone who owns property in Latvia. Foreign nationals are not treated differently, and are subject to the same laws as the citizens of Latvia.

An inheritance contract, as an alternative to a will, requires one party to grant the rights to his/her future inheritance in full or in part to another party or to a third person. Several parties can grant such rights to each other. An inheritance contract must be certified according to notarial procedures. If the contract concerns immovable property (e.g. land), then it must be registered in the Land Register. If the subject matter of an inheritance contract is immovable property and the contract is entered in the Land Register while the estate-leaver is alive, then he/she may not sell, mortgage or encumber it with property rights without the consent of the contractual heir.

9. Implementation and enforcement issues of land regulations

Some elements of the current land market regulations related to municipal control mechanisms of land transactions may negatively affect the land market functioning, due to:

- more time-consuming transfer of land ownership
- higher administrative burden
- more municipal resources required for control of agricultural land market

Furthermore, the fact that the Latvian Land Fund has pre-emptive rights on almost all agricultural or forestry land sold may cause uncertainties concerning planned land transactions.

Also land disputes present a challenge in acquiring agricultural land. Regional courts of the first instance are in charge of a case involving a standard land dispute between two local businesses over tenure rights. However, it takes on average 1-2 years to obtain a decision from the first-instance court for such a case (without appeal). The length of court proceedings may vary due to the case load of the respective courts. Court proceedings tend to take longer in complex cases in Latvia. The general trend with regard to the length of court proceedings is about three years in all three instances for civil disputes and similarly for administrative disputes.

Additional uncertainties arose with respect to legal conditions a foreign investor has to fulfill in order to purchase agricultural land. Since a legislative reform in 2017, foreign investors who intend to acquire agricultural land in Latvia must demonstrate an advanced knowledge of the Latvian language at level B2. This applies both for a single investor who wants to acquire land, as well as for the sole or majority shareholder of a company. Without proof of the required language skills, the land cannot be acquired.
However, according to the Latvian Land Privatization Law, which is in force, this regulation *only applies to EU foreigners but not to Latvian citizens*. In view of this “direct discrimination on grounds of nationality”, the Court of Justice of the European Union in a decision dated 11 June 2020 *established that the current Latvian regulation violates European law*, in particular freedom of establishment for services providers.\(^{44}\)

Initially, this decision of ECJ is relevant only for the specific legal dispute. However, the Latvian legislator will be probably forced to adjust the land privatization law so that it complies with European law. Otherwise, there is a threat of further infringement proceedings by the Commission against Latvia or similar disputes to the one already decided.

As long as no reform on above issue has still been carried out, legal advisors recommend that in current approval procedures for the purchase of agricultural land, the investors should specifically draw the attention of those involved from public authorities to the new ruling. This is necessary in order to enforce any claims for damages later on.\(^{45}\)

### 10. Other land-related measures not discussed elsewhere

As reported in some studies\(^{46}\), 21% of Latvian farmers recorded difficult access to land (almost double of the EU average of 11%). Availability of fertile and accessible land has been a challenge in Latvia, and land prices have been increasing. Furthermore, access to finance for investment has been reported as problematic for 10% of farms. The supply of finance to agriculture is constrained by high concentration, resulting in limited choice among banks and other lenders, by the absence of fixed interest rate loans, which forces farmers to bear the interest rate risk, and by inadequate supply of long-term loans, causing problems to finance the construction of buildings and the purchase of land. In view of these shortcomings, a new financial product has recently been offered by a state-owned finance institution (ALTUM) the so-called *reverse leasing of agricultural land* (i.e. land purchase with the entitlement to rent and buy-back by the previous owner). Under this arrangement a farmer sells the agricultural land he owns to ALTUM, continues to rent and use the land for agricultural purposes, with the rights to re-purchase it back within five years. This product serves as a financing of last resort if other financing is not available to a farmer.

### 11. Reference list of legal regulations

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1. **Law on Land Privatization in Rural Areas (effective from 1 July 2017), Chapter VI: TRANSACTIONS INVOLVING LAND PROPERTIES**


   A copy of the legislation in English is included in Attachment 1 (see the project archive).

2. **LAW OF THE REPUBLIC OF LATVIA: THE CIVIL LAW**


   *A copy of the legislation (Tenancy of rural farms) (Civil Code, Chapter 14, Lease and rental contract, Sub-chapter II, Section IV) - in English is included in Attachment 2 (see the project archive)*

12. **List of supporting materials**

   **Information on agricultural land prices in Latvia** (available from the project archive)
   - Purchase Prices - Source: Latvian Statistical Office  
   - Rental Prices - Source: Latvian Statistical Office  
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR LITHUANIA

Jerzy Michalek
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Agricultural Land Market Regulations in Lithuania around 2020

Jerzy Michalek

1. Introduction

1.1 Farm structure

According to the 2016 Farm Structure Survey data, during years 2010-2016 the number of agricultural farms with more than 1 ha dropped from 199.9 thousand to 150.3 thousand, i.e. by 24.8%. This change is characterized by two significant tendencies: i) increase of farms’ size, and ii) retreat of working-age farmers from agricultural activities. The average size of farms grew from 13.8 ha to 19.5 ha of utilised agricultural area (UAA). The most rapid growth was observed in the group of large farms managing more than 100 ha of UAA. Over the period of 2010–2016, the number of farms in this group increased by 38%, even though the average farm size decreased from 285.6 ha to 264.6 ha UAA. The number of small farms has shrunk most of all. The number of farms with an area of 1 to 1.9 ha decreased by 30.9% and with an area from 2 to 9.9 ha by 31.5% (Fig. 1.3).

![Fig. 1.3. The change in the number of farms by group of area in 2016 compared to 2010, %](source)

Sources: Data by the 2010 Agricultural Census and by the 2016 Farm Structure Survey.

Distribution of agricultural holdings by size groups in years 2013-2017 is shown in Table 1.9. In 2017, farms with area less than 5 ha constituted around 47% of total farms. However, in comparison with 2013, their number dropped by 15.1 thousand, i.e. by 19.7%. Also the number of farms with area 5.1–10 ha continued to decrease in each year (in comparison with 2013 their number dropped by 16.7%). Together, farms with area less than 10 ha accounted in 2017 for approx. 68% of total farms (in 2013 their share was 73%).

While in the period 2013-2017 the number of farms in the size group from 10.1 to 20 ha dropped only slightly, i.e. by 4.7%, the number of agricultural holdings in size groups 20.1 - 50 ha, 50.1–100 ha and 100.1–500 ha increased (1.7%, 5.7% and 16.3%, respectively). In the group of farms larger than 500 ha almost no changes occurred (their share in total number of farms remains fairly small, i.e. 0.3 - 0.4%). Farms with area higher than 20 ha accounted in 2017 for less than 18% of total farms.

A distribution of holdings by land area in 2019 is shown in Figure 2 (further down).

As of 1 July 2018, there were 57.1 thousand ha of abandoned agricultural land, which is about 1.7 percent of the total agricultural land area. For comparison, as of 1 July 2017, there were 63.2 thousand ha of abandoned agricultural land, which is about 1.9 percent of the total agricultural land area (source: National Land Service under the Ministry of Agriculture, 2019).
Source: LITHUANIAN AGRICULTURE FACTS & FIGURES Semiannual statistical report, 2020
Agricultural land distribution by ownership
2020 01 01

Source: LITHUANIAN AGRICULTURE FACTS & FIGURES Semiannual statistical report, 2020

Úkia žemės ukio paskirties žemė pagal valdymo teisę
Farms’ land area by ownership
2020 01 01

Source: LITHUANIAN AGRICULTURE FACTS & FIGURES Semiannual statistical report, 2020
According to the National Land Service (NLS) 999684 ha state-owned land is managed by the NLS by trust (more than 15% of the territory of the country)\(^{47}\).

In 2016 approx. 4%, and in 2020 approx. 7% of total agricultural land was leased by the state to the private sector\(^ {48}\).

The restoration of the rights of ownership of citizens to land, forest and water bodies in rural areas is largely completed (99.94 percent of the land area claimed was restored). Currently the National Land Service is actively working on the restoration of ownership rights for 2.3 thousand hectares of land, forest or water bodies. Since the beginning of the land reform in 1991, by 1 April 2019, the National Land Service (NLS) received 787.9 thousand of citizens' requests to restore property rights in rural areas. By 1 April 2019, decisions to restore ownership to 4.018 million hectares of land, forest and water bodies to 783 thousand citizens were taken (i.e. 99.4% was completed)\(^ {49}\).

1.2 Agricultural land prices

In comparison with year 2000 (an average land price was equal to approx. 294 EUR/ha) the level of agricultural land prices in Lithuania increased in 2018 by almost 12 times. In the first quarter of 2018, the price of one hectare of agricultural land (with an exception of gardens and gardeners’ associations) was an average 3.1 thousand EUR (see Figure 2 below).

\(^{47}\) [link to source]

\(^{48}\) Biciuviene, 2016; LITHUANIAN AGRICULTURE FACTS & FIGURES Semiannual statistical report, 2020 [link to source]

\(^{49}\) See: National Land Service [link to source]
Only just after the economic downturn in 2009, agriculture land prices fell (by nearly 25%) but then started to recover rapidly. Over the years of 2011–2017 agricultural land prices increased on average with 15.7% annual growth rate. During the aforementioned period, the growth rate of agriculture land prices not only significantly exceeded the inflation rate in the country but also was higher than of other assets, e.g. housing, stock exchange or debt securities, etc.

According to the most recent studies from year 2020, prices for agricultural land depending on location, land productivity and size, in Lithuania range currently from €1,000-€1,500 per hectare for poor quality and smaller-sized land plots in less desirable locations to €6,000-€8,000 per hectare for highest productivity mid and large-sized land plots. Clearly, one of many reasons of such dramatic growth of agriculture land prices was the financial support to agriculture activities provided by the EU and the national authorities. Row estimates suggest that in Lithuania during the period from 2004 to 2017, the support for the agriculture activities amounted to 10 billion EUR.

A general economic growth, growth in agricultural productivity and increase of financial support contributed to the growth of agriculture land prices in Lithuania. Moreover, investors used agricultural land as a hedging instrument against unfavourable changes in the prices of other classes of assets. Given that the increase in agricultural land prices in Lithuania has been several times faster than other key asset classes in recent years, such a growth could be the result of both higher demand for land from agricultural subjects but also might have been influenced by speculative activities of other investors.

2. Key land regulations affecting land markets

In Lithuania all land, except exclusive ownership of the State (forests of national significance; historical, archaeological and cultural objects of national significance, internal waters of national significance, continental shelf of the territorial sea, etc.) may be sold/purchased or rented/leased, save for some exceptions and following other requirements of laws.

Land ownership must be registered with the Register of Real Estate of the Republic of Lithuania. Registration of leases is not mandatory, but is usually beneficial to the parties since lease agreements may only be enforced against third persons if they are registered within the Register of Real Estate of Lithuania.

Following the provisions of the Article 47 Part 3 of the Constitution of Republic of Lithuania, foreign subjects may acquire land in Lithuania in accordance with the Constitutional Law on a Membership of Lithuania in European Union. However, it should be noted that according to the said Law, only the subjects that conform to the European and Transatlantic criteria may acquire land in Lithuania. Subjects that conform to the said

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criteria include: legal entities established in European Union Member States, European Free Trade Association (EFTA), NATO member states, or free economic zones (e.g. EEA) \(^{51}\). It is considered that citizens and permanent residents of the above-mentioned states and permanent residents of Republic of Lithuania (even if they are not citizens of Republic of Lithuania) conform to the European and Transatlantic criteria.

In Lithuania until 2014, the restrictions were imposed on foreigners regarding the acquisition of the land of agricultural purposes in Lithuania. Such restrictions have attracted the attention of the European Union institutions, as they were contrary to fundamental principles of the European Union – restrict the investments in the land of agricultural purpose, and thus violated the free movement of capital. In 2014, the amendments to the Law on the Acquisition of Agricultural Land were adopted, laying down somewhat softer restrictions. However, the European Union did not consider such changes to be sufficient, and claims were made against Lithuania for non-compliance with the requirements. \(^{52}\) In 2017, further amendments to the law were adopted, and many restrictions on the acquisition of the land for agricultural purposes by foreigners were removed.

Currently, only up to 10 hectares of the land for agricultural purposes can be acquired in Lithuania without restrictions. If persons or companies acquire a larger area of agricultural land, they must ensure that it is used for agricultural activities for a minimum period of 5 years from the acquisition of this land, whereas minimum annual activity per hectare of land is determined by the Minister of Agriculture of the Republic of Lithuania. Person or legal entity, who does not comply with this obligation, can be held liable.

Another restriction on the purchase of agricultural products is related to the amount of acquired land and applies jointly to the citizens of the Lithuania and foreigners. A natural/legal person or related persons can acquire in so much land in the territory of Lithuania that the total area of their agricultural land acquired from the State would not exceed 300 hectares and the total area of agricultural land belonging to them (acquired from the State and other persons) does not exceed 500 hectares (except of livestock farming purposes). Related parties are considered the spouses, parents (adoptive parents) and their minor children (adoptees), as well as legal persons who control 25% of the shares of the other legal entity that acquired the state land, or a natural person who controls 25% of shares

\(^{51}\) Paragraph 1 of Article 47(3) of the Constitutional Law on the Implementation of Article 47 of the Constitution provides that the criteria for European and Transatlantic integration chosen by Lithuania shall be met by foreign legal persons, as well as other foreign organizations established in states which are not members of political, military, economic or other unions or commonwealth established based on the former union of soviet socialist republics. Source: http://www.nzt.lt/go.php/eng/Uk-entities-will-continue-to-acquire-land-in-lithuania-under-certain-conditions/2

\(^{52}\) For details see: Commission’s Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05). Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018(01)&from=EN
of the legal person who acquired the state land. According to various surveys, the biggest farmland owners own currently up to 24000 ha of agricultural land\textsuperscript{53}.

In Lithuania, state-owned agricultural land parcels are leased to natural persons and legal entities of the Republic of Lithuania and foreign countries or other foreign organizations for a maximum period of 25 years. Leasing of state-owned agricultural land parcel is an alternative to foreign nationals or legal entities that do not comply with the requirements specified in the Law on the Acquisition of Agricultural Land. Auction procedure is usually required for State land leases (i.e. state land is leased by auction to the person offering the highest rental price), except in some cases, for example, where the land plot is necessary for concession or public-private-partnership projects and other reasons. The tenant is obligated to register the State land lease agreement with the Register of Real Estate of Lithuania within three months after conclusion of the agreement.

Municipality land may be leased in accordance to the procedure set down by the Council of the particular Municipality. Users of Municipality land are obligated to pay a land lease payment. The annual payment is set by the particular municipality within the range specified by the Government Resolution: from 0.1% to 4.0% of the taxable value of the land.

State land and Municipality land in Lithuania may be purchased following the requirements of auction procedures, subject to some exceptions established by laws. 999984 thousand ha state owned land was managed in 2019 by the NLS by trust (more than 15% of the territory of the country). Concerning users of the state land, 14258 land lease agreements and 7736 land purchase-sales contracts were concluded in 2019\textsuperscript{54}.

Natural persons and legal entities, who want to buy agricultural land in Lithuania must obtain consent from the National Land Service that the owned agricultural land does not exceed the maximum amounts permitted by law. Such a requirement is also applicable in respect of the acquisition of the shares in the company that owns agricultural land, where the buyer intends to acquire more than 25% of the company’s shares. Natural persons and legal entities that intend to buy agricultural land, where the total area of agricultural land would be more than 10 ha, are obliged to ensure the use of this land for agricultural purposes only, for no less

\textsuperscript{53} Ramūnas Karbauskis, a member of the Lithuanian parliament and the leader of the ruling Farmers and Greens Union, is the biggest land owner in the country The delfi.lt news website has reported. Karbauskis owns 22,000-24,000 hectares of lands via his Agrokoncernas business group and as a farmer, the authors of the survey say. Other big land owners include the businessman Darius Zubas and Fixed Yield Invest Fund. Zubas owns 7,400 hectares of land via Linas Agro Group, and the Lithuanian investment fund Fixed Yield Ivest Fund owns 6,400 hectares of land. Austria's Agroforst GmbH is the owner of 5,000 hectares and comes in fourth, followed by businessman Kęstutis Juščius with 4,300 hectares. (BNS 2019.10.14) https://www.lrt.lt/en/news-in-english/19/1106443/ruling-party-leader-the-biggest-land-owner-in-lithuania

than five years\textsuperscript{55}. The State retains its right to repurchase an agricultural land parcel not used according to its principal designation at the same price at which it was acquired from the State also in the event of transfer of this land parcel to third parties.

Land Tax: Owners of private land (except forestry and afforested agricultural land), located in the territory of Lithuania, are subject to the Land Tax. Owners include individuals or legal entities, as well as collective investment undertakings which are not treated as legal entities. The annual tax rate is set by the particular municipality within the range specified by laws: from 0.1\% to 4.0\% of the taxable value of the land. The tax is imposed on the basis of the average market value of the land, indicated by the Register of Real Estate of Lithuania or according to the individual valuation of the property, when the individually set value differs from the average market value by more than 20\%. The taxable value of the land is calculated by a mass valuation at least every 5 years.

Land Lease Tax: Users of State land are obliged to pay Land Lease Tax. The annual tax rate is set by the particular municipality within the range specified by the Government Resolution: from 0.1\% to 4.0\% of the taxable value of the land.

Corporate Income Tax (CIT): Lithuanian and foreign entities are subject to Corporate Income Tax. A rate of 15\% tax is applicable to the taxable profits (including income from any sales transaction of real estate) of a Lithuanian entity and foreign entity through permanent establishments situated in Lithuania or otherwise than through permanent establishments when the income is received in Lithuania. The tax period is a calendar year and shall be paid by the first day of the sixth month of the following tax period.

In case of inheritance of land, i.e. when an owner of a plot of land (who is a citizen of Lithuania) dies and an assignee of the rights for the land is a foreigner that does not conform to the European and Transatlantic criteria, such a heir shall have a right only for the amount of money obtained from selling the land. If an assignee is a foreigner that conforms to the European and Transatlantic criteria, he (she) will acquire the property rights for the land, i.e. shall be entitled to use, manage and dispose it freely at the own discretion, because the relevant legal norms of Republic of Lithuania provide him (her) a right to acquire land in Lithuania.

It is notable that the same rules are applied in case of donation of land to a foreigner. If an agreement on donation of land is concluded with an alien that does not conform to the European and Transatlantic criteria, such an agreement shall be recognized null and void from the date of its conclusion as being in conflict with imperative legal norms (for such persons, no procedure for acquiring land parcels in Lithuania is provided by laws). Whereas

\textsuperscript{55} According to information of National Land Service, 21867 consents were granted for the acquisition of the agricultural land (21 times refusal of consent if the available agricultural area is found to exceed 500 ha).

foreigners that conform to the European and Transatlantic criteria may acquire land in Lithuania without any restrictions even on a base of an agreement on donation.

2.1 Taking land for public needs

When the land in the Republic of Lithuania is recognized as necessary for meeting the needs of the public, and this land belongs to private persons, the National Land Service under the Ministry of Agriculture adopts a decision on the land parcel to be taken from landowners. On this basis, a lease or land for use contracts of private land shall be terminated before the deadline.

When a private land parcel is taken for public needs, the land owners and/or other user must be fairly remunerated:

- In case a private land parcel is taken for public needs, the land owner and/or another user must receive a fair compensation in cash amounting to the market price, or, upon a written agreement of the owner of the land, he is given a parcel of a state-owned land adjacent to the taken land parcel for public needs;

- The value of plants within this land parcel taken for public needs, the volume of timber, the lost harvest and invested funds for growing of agricultural production and afforestation, the amount of losses that were incurred due to taking of the land parcel for public needs as well as structures and facilities constructed or being constructed on that parcel, and the plants growing therein for public needs shall be compensated to the land owner or another user.

Most of the disputes about land taken for public needs arise because of the fair compensation for the property is questioned. Faced with the procedure for taking an immovable property for public needs, landowners often disagree with the proposed compensation for property being taken by the public need and are inclined to raise litigious disputes over the established incorrect remuneration for the property taken for public needs. The main evidence in the cases of compensation for land taken for public needs is the property valuation report or an act of examination of property valuation. The value of land taken for public needs is to be determined on the day when a decision is adopted to take the land for public needs. The value of property is usually determined by the price of identical or similar property transfer transactions.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

3.1 Credit market

In Lithuania, the loans granted by banks for the land purchase had very limited impact on the general activities in the land market. They accounted for no more than 6% of all land
transaction in the period from 2009 to 2015. Indeed, the studies on the source of funding for tangible investment in crop and livestock farming, hunting and related sports activities show that around 75% of these activities are funded by companies from their own sources56.

Various recently carried out surveys conclude that the share of Lithuanian farmers expressing concerns relating to access to land and finance is more than twice as high as the EU average. Generally, small- and medium sized farms (and especially young farmers) have no resources to acquire land and are much more concerned with this issue than large farms.

3.2 Lease of state-owned land

According to a general principle, state land shall be leased by auction to the person offering the highest rental price. Exceptions, where state-owned land may be leased without an auction are prescribed by the law: 1) if land is built upon with buildings, structures, or installations that belong to natural or legal persons by the right of ownership, or are leased by them; 2) if a license to exploit subsurface resources or caves is obtained; 3) if it is required for the implementation of economic or cultural projects of national significance, regional socio-economic development, or infrastructure projects; 4) if the state-owned land parcels do not exceed a prescribed size, and are located between other state-owned land parcels leased to the lessees of such land parcels; 5) if it is required for the implementation of a concession project; 6) if it is necessary for the implementation of a general partnership agreement between the government and private entities; or 7) if aquaculture ponds are constructed upon it.

The duration of a contract of lease of agricultural land in state ownership shall be established upon the agreement between the lessor and the lessee, nevertheless, the term may not exceed 25 years.

Where the land plot pursuant to the territorial planning documents is allocated to be used for public needs, such land plot shall be leased only for a period until it is expropriated for the purposes intended.

State-owned land that is leased for Lithuanian and foreign companies is subject to land lease tax at a rate established by the municipalities. The minimum tax rate set by the government is 0.1%, and the maximum rate is 4% of the value of the land.

Registration of land rental agreements is compulsory in case of leasing the state land. The tenant is obligated to register the State land lease agreement with the Register of Real Estate of Lithuania within three months after conclusion of the agreement.

Municipality land may be leased in accordance to the procedure set down by the Council of the particular Municipality. Users of Municipality land are obligated to pay a land lease payment. The annual payment is set by the particular municipality within the range specified by the Government Resolution: from 0.1% to 4.0% of the taxable value of the land.

The Law on Land requires that the lessee shall use the land in compliance with the principal purpose of the land use and by the method of use stipulated in the contract. The lease of state-owned land without an auction is considered to be a lease on preferential terms. One of the objectives of such a lease is to enable lessees to properly exercise their property rights and legitimate interests. Conversely, non-compliance with laws regulating the lease of state-owned land creates the preconditions for private persons to illegally lease state-owned land on privileged terms, and thereby avoid the payment of real (auctioned) prices for leased state-owned land, thus unjustly enriching themselves at the expense of the public, in clear violation of the public interest.

3.3 Law enforcement

The public administration is mostly efficient and stable, but municipalities have limited policymaking capacity despite their significant responsibilities (EC, 2020).

According to National Land Service, in 2019 13094 land use inspections have been carried out, of which 4617 of inspections (35%) following citizen’s notification. 3976 land use infringements were detected during inspections (approximately 30% of all inspected cases). Moreover, 30165 public land lease and loan contracts were checked assessing a fulfilment of all the conditions envisaged57.

Due to increasing irregularities linked to implementation of the new agricultural land law, the Seimas (Lithuania’s Parliament) has recently decided to strengthen the control of transfer of agricultural land and prevent the acquisition of more agricultural land than is permitted by law. Furthermore, by increasing the development of the relevant e-services the Parliament tried to reduce the considerable administrative burden that falls on those who wish to register farms. (Seimas, 2020)

https://www.lrs.lt/sip/portal.show?p_r=35403&p_k=2&p_t=271881

4. Reference list of legal regulations

- THE CONSTITUTIONAL LAW OF THE REPUBLIC OF LITHUANIA ON THE IMPLEMENTATION OF PARAGRAPH 3 OF ARTICLE 47 OF THE


- REPUBLIC OF LITHUANIA, LAW ON LAND, 26 April 1994 No I-446, (As last amended on 19 May 2016 – No XII-2362), Vilnius https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=11dyhewgj9&documentId=4bf34552ad7211e68987e8320e9a5185&category=TAD (attached)

THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR THE NETHERLANDS

Huib Silvis and Martien Voskuilen
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Agricultural land market regulations in the Netherlands around 2020

Huib Silvis and Martien Voskuilen

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1. **Introduction**

1.1 **Cultivated area and titles of land use**

The majority of the total cultivated area in The Netherlands - 1.8 million ha in 2019 - is owned by the user of the land (57.5%). The leased area (without leasehold) is approximately 478,000 ha. On balance, the ratio between ownership and lease has changed little in the period 2008-2019. However, the regular lease area has decreased significantly. The decline is due to the fact that contracts expire, for example in case of company closure. New regular contracts are rarely concluded. This has to do with the strong protection of the tenant, in particular the automatic extension of the lease, and the regulation of the lease prices, the highest permissible lease prices per lease price area. The short-term deregulated (liberalized) lease does not have these characteristics. This lease form was introduced in 2007 and has developed strongly.

<table>
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<th>2010</th>
<th>2015</th>
<th>2019</th>
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<td>1,055,340</td>
<td>1,078,136</td>
<td>1,039,596</td>
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<td>35,879</td>
<td>42,004</td>
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<td>Lease</td>
<td>513,379</td>
<td>506,605</td>
<td>476,889</td>
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<td>- which regular lease</td>
<td>378,961</td>
<td>350,126</td>
<td>285,569</td>
<td>233,567</td>
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<td>- lease for special crops</td>
<td>12,418</td>
<td>14,509</td>
<td>13,714</td>
<td>13,880</td>
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<td>- lease with fixed duration</td>
<td>92,001</td>
<td>87,918</td>
<td>73,555</td>
<td>86,691</td>
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<td>- lease of small parcels (&lt; 1 ha)</td>
<td>1,288</td>
<td>1,138</td>
<td>1,010</td>
<td>777</td>
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<td>- lease within nature reserves</td>
<td>7,493</td>
<td>7,865</td>
<td>6,424</td>
<td>5,446</td>
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<td>2,885</td>
<td>7,119</td>
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<td>42,165</td>
<td>89,498</td>
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<td>Other</td>
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<td>264,225</td>
<td>239,508</td>
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<td>- temporary use in landinrichting</td>
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<td>5,938</td>
<td>2,002</td>
<td>578</td>
</tr>
<tr>
<td>- in use of tbo</td>
<td>15,108</td>
<td>13,610</td>
<td>11,302</td>
<td>12,628</td>
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<td>- other (informal lease)</td>
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<td>228,472</td>
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<tr>
<td>Total area</td>
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<td>1,862,049</td>
<td>1,836,538</td>
<td>1,806,626</td>
</tr>
</tbody>
</table>

a) Excluding glasshouses

Source: CBS-landbouwtelling, processing Wageningen Economic Research.
1.2 Number of farms

The number of agricultural and horticultural enterprises is declining faster than the agricultural area (figure 1). There are hardly any bankruptcies in agriculture and horticulture. The number of agricultural enterprises in the Netherlands is declining on average by two to three percent per year. This is mainly due to the termination of the enterprise with the generation change.

Figure 1. Number of farms in The Netherlands, 2000 and 2019

1.3 Prices

The Netherlands leads the European ranking of agricultural land prices, with an average price of more than 60,000 euros per hectare. In general, prices are lowest in the north and highest in Flevoland and the south. The price level differs, but the development shows the same pattern in the various regions within the Netherlands.
Figure 2. Average price of agricultural land (euro/ha) in The Netherlands, 2008-2019

Source: Kadaster/RVO.nl/Wageningen Economic Research.

Figure 3. Average lease prices (euro/ha/year) in The Netherlands, 2008-2019

*) Provisional data.
With price regulation: regular lease en deregulated lease longer than 6 years.
Without price regulation: other lease contracts, excluding leasehold and lease of in nature areas.
Data: Wageningen Economic Research.
2. Key land regulations affecting land markets

2.1 Acquisition of agricultural land

2.1.1 Introduction
The Netherlands does not have specific legislation on the selling and buying of agricultural land. There are no establishment or residence requirements and no requirements for professional qualifications. Nor are there any specific requirements for purchase contracts: there is no prior review or approval of purchase transactions, there are no requirements regarding the price or maximum size of an enterprise.

2.1.2 Non-agricultural capital and cross-border acquisition
There is no specific legal framework in place dealing with acquisition by non-agricultural capital or with cross-border acquisition. No specific rules are provided for as regards the acquisition of landownership or use of agricultural land by legal persons. And foreign parties can acquire agricultural land in the Netherlands under the same conditions as residents. Setting specific requirements is seen as an infringement of the free movement of capital and the freedom of establishment in the EU. Moreover, such requirements are not considered relevant due to the high land prices in the Netherlands (see section 1) and the legal restrictions on the use of agricultural land that arise from legislation with regard to spatial planning, nature and the environment (see section 3).

For example, cross-border acquisitions of agricultural land in the Netherlands have been done by buyers and investors from Belgium; in particular the region of Zeeuws-Vlaanderen is apparently popular for Belgians. The other way round, there are Dutch farmers who buy a farm in other European countries, for instance Germany, Poland or the Czech Republic. Sometimes this is done in addition to the agricultural holding they already have in the Netherlands, sometimes this is done by means of an emigration.

Acquisitions of agricultural land by private parties is also not uncommon in the Netherlands. Often this is seen as an investment, in combination with the conclusion of a lease or leasehold contract with a farmer. Any party buying agricultural land to which a lease contract applies, will take over all the rights and obligations of such a contract and can therefore only end such a contract on the legal grounds applicable to such contracts. There are no specific requirements for cross-border acquisitions or acquisitions by non-agricultural capital in this respect, the same rules apply to everyone alike.

Mortgaging agricultural land/rights is no different from mortgaging other immovable property in The Netherlands. A mortgage must be created by a notary (through a mortgage deed signed by the mortgagee and the mortgagor), who must then register the mortgage in the public land register.
2.1.3 Pre-emptive rights

The regular tenant is protected by the statutory pre-emptive right. Executing the pre-emptive right requires the buyer to continue the agricultural business. If resold within ten years, a fee is payable to the lessor. The pre-emptive right of the tenant can be circumvented by the sale to a ‘safe party’ (veilige verpachter) who does not intend to farm the land itself.

The Municipalities Preferential Rights Act (Wet voorkeursrecht gemeenten, Wvg) is an instrument that municipalities can use to acquire land (see section spatial planning 3.3).

2.2 Tenancy

2.2.1 Introduction

Agricultural tenancy law protects the position of the tenant, in a way that is comparable to the protection that a residential lessee has under rental law (Rheinfeld, 2017). To make this protection tangible, the law has been given a strong mandatory character. This means that agricultural tenancy law mainly contains provisions that the parties involved may not deviate from. As such, there is a mandatory system of rent review, contract renewal, substitution and the tenant’s right of first refusal (Dutch: voorkeursrecht), which, in the ‘standard’ tenancy form of regulated tenancy, may not be departed from to the detriment of the tenant.

Through the statutory regulation of agricultural tenancy agreements, Dutch legislation has sought to unify two interrelated objectives. In the first place, tenancy is intended to be a financing instrument for the agricultural sector. In addition, the regulation aims to protect the tenant, as the weaker party in the tenancy agreement, by establishing mandatory provisions.

In achieving these two objectives, the danger arises that the interests of the landlord are liable to suffer. Merely the fact that it becomes less attractive for owners of land and buildings to lease out their assets as and when tenants are given greater protection, forces politicians to search for a balance between the interests of both parties. This conflict of interests is referred to in the literature on agricultural tenancy law as the tenancy dilemma.

2.2.2 Regulation of 2007

The new agricultural regulation of 2007 as set out in Title 7.5 of the Dutch Civil Code did not represent a drastic change versus the Agricultural Tenancies Act, which dated from 1958. The essence of the Act was basically maintained. Present tenants are largely still

58 The 1995 amendment to the Agricultural Tenancy Act introduced two new forms of deregulated lease: one-time lease (eenmalige pacht) and cultivation lease (teeltpacht). Criminal enforcement of the lease legislation was ended, the possibilities offered by law for civil enforcement were considered sufficient.
protected as before. The regulation contains a number of technical adjustments and several new sections.

- A new aspect is a system of deregulated (liberalized) tenancy agreements for loose land, which involve hardly any protection for the tenant.

- Also new is that the tenant cannot claim a right of first refusal if the land owner intends to sell the land to a ‘safe landlord’. That is a landlord who confirms that he will not invoke a provision to personally exploit the land.

- Lastly, the age limit of 65 of the tenant as a ground for cancellation is repealed.

Despite the fact that the new agricultural tenancy law of 2007 did not involve a fundamental revision (and thus no solution for the tenancy dilemma) and that regulated tenancy (including full protection of the tenant) remains the starting point for the law, actual agricultural tenancy practice has continued to move in a different direction since 1 September 2007.

Deregulated (liberalized) tenancy, i.e. the tenancy form introduced with Title 7.5 of the Civil Code, which provides hardly any protection for the tenant, has in practice become the main principle for newly concluded tenancy agreements. Regulated tenancy thus risks declining into a reserve of old cases: the number of regulated agricultural tenancy agreements steadily drops as regulated tenancy agreements come to an end, with only few new ones being concluded.

Regular contracts have a duration of 12 years for a farm (including buildings) and six years for loose land. These contracts are automatically renewed. Leasehold contracts of agricultural land have a minimum duration of 26 years. Short term liberalized contracts are 6 years at the maximum and the minimum duration for such contracts is one year.

### 2.2.3 Maximum allowable lease prices

For regular tenancy contracts and for deregulated lease contracts longer than 6 years there are maximum allowable prices. These prices are fixed annually. For contracts after 1 September 2007 (‘new contracts’) there are absolute maximum prices. These prices differ by region (there are 14 lease price regions: pachtprijsgebieden) and depend on a five year moving average of the economic results of land-based farms in the region. For old contracts (before September 1, 2007) the maximum allowable prices are changed by a percentage (Dutch: veranderpercentage), which equals the relative change of the maximum allowable price for the new contracts. The latest norms are presented in the Table 2 below.

The lease standards for 2020 are based on the average land remuneration for the years 2014-2018. For loose land (arable land and grassland), the lease standards are based on the land remuneration of arable and dairy farms. The lease standards for loose horticultural land (two regions) are based on the land remuneration of open-ground horticultural enterprises. Details of the data and the calculations are presented in (Silvis et al., 2020).
Table 2. Maximum allowable lease prices 2020 and 2019 and the percentage of change

<table>
<thead>
<tr>
<th>Lease price region</th>
<th>Regional norm 2020 (euro/ha)</th>
<th>Regional norm 2019 (euro/ha)</th>
<th>Percentage of change 2020/2019 (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loose land (arable and grassland)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bouwhoek en Hogeland</td>
<td>677</td>
<td>682</td>
<td>-1</td>
</tr>
<tr>
<td>Veenkoloniën en Oldambt</td>
<td>451</td>
<td>581</td>
<td>-22</td>
</tr>
<tr>
<td>Noordelijk weidegebied</td>
<td>535</td>
<td>646</td>
<td>-17</td>
</tr>
<tr>
<td>Oostelijk veehouderijgebied</td>
<td>601</td>
<td>688</td>
<td>-13</td>
</tr>
<tr>
<td>Centraal veehouderijgebied</td>
<td>448</td>
<td>545</td>
<td>-18</td>
</tr>
<tr>
<td>IJsselmeerpolders</td>
<td>1.135</td>
<td>1.013</td>
<td>12</td>
</tr>
<tr>
<td>Westelijk Holland</td>
<td>464</td>
<td>501</td>
<td>-7</td>
</tr>
<tr>
<td>Waterland en Droogmakerijen</td>
<td>255</td>
<td>324</td>
<td>-21</td>
</tr>
<tr>
<td>Hollands/Utrechts weidegebied</td>
<td>714</td>
<td>796</td>
<td>-10</td>
</tr>
<tr>
<td>Rivierengebied</td>
<td>660</td>
<td>731</td>
<td>-10</td>
</tr>
<tr>
<td>Zuidwestelijk akkerbouwgebied</td>
<td>377</td>
<td>315</td>
<td>20</td>
</tr>
<tr>
<td>Zuidwest-Brabant</td>
<td>761</td>
<td>768</td>
<td>-1</td>
</tr>
<tr>
<td>Zuidelijk veehouderijgebied</td>
<td>486</td>
<td>580</td>
<td>-16</td>
</tr>
<tr>
<td>Zuid-Limburg</td>
<td>544</td>
<td>576</td>
<td>-6</td>
</tr>
<tr>
<td>Loose horticultural land</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westelijk Holland</td>
<td>3.633</td>
<td>3.141</td>
<td>16</td>
</tr>
<tr>
<td>Rest van Nederland</td>
<td>2.646</td>
<td>2.431</td>
<td>9</td>
</tr>
</tbody>
</table>


2.2.4 Reform initiatives

The tenancy law was evaluated by professor D.W. Bruil, commissioned thereto by the State Secretary of Economic Affairs, in 2014. His evaluation highlighted several bottlenecks and emphasized the importance of sustainable land use. Bruil made several recommendations for renewal of agricultural tenancy law. However, his proposals elicited critical responses from interest groups and in the professional literature. In response to this criticism representatives of the interest groups of landowners and tenants have tried to reach agreement. However, no
agreement has been achieved that has the full support of all tenant and landlord organizations.

As a result of the lack of consensus, Dutch landlords and tenants are now dependent on political choices in the tenancy dossier. However, it is expected, when it comes to a decision regarding a revised tenancy system, that the politicians involved will ensure that there is sufficient support within the tenancy practice. The past (both recent and more distant) has made clear after all that, without sufficient support by both tenants and landlords, new agricultural tenancy legislation is practically certain to fail (Rheinfeld, 2017)).

Agriculture minister Schouten intends to submit a letter to parliament before the end of the year. The minister is looking for a balance between new forms of long-term lease and the discouragement of short-term lease. Taking account of the parliamentary elections in March next year, it is not expected that new legislation will be established by the present cabinet.

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

3.1 Agricultural and environmental policies

3.1.1 European policies

Agricultural and environmental policies for land-based agriculture are largely determined by EU policies. Originally, the Common Agricultural Policy (CAP) was mainly aimed at liberalizing the common market and supporting a reasonable reward for the production factors used through price policies. The core element of the reform process of the CAP has been the shift from product price support to producer income support. The CAP has become more market-oriented and less reliant on the management of markets than before. Market instruments are used to provide market safety nets, but intervention prices are set at low levels which ensure that they are only used in times of real crisis. Furthermore, all of the EU restrictions on production volumes for sugar and dairy have been ended.

At the same time environmental policies have gained increasing weight in agriculture. EU policies combat negative externalities of the behaviour of market parties, including pollution of water, air and soil. A large number of restrictive environmental standards have been developed to solve environmental problems. Today, environmental policy priorities include combating climate change and promoting the efficient and responsible use of natural resources.

To improve the ecological sustainability of agriculture, the CAP has increasingly incorporated environmental policies. The environmental dimensions of the CAP mainly provide income-supporting elements for environmental quality (greening in the first pillar and agri-environment subsidies in the second pillar).
3.1.2 Implementation

An important example of EU environmental policy for Dutch agriculture is the Nitrates Directive. According to this directive, 170 kilograms of nitrogen from livestock manure per hectare may be used on agricultural land. Thanks to the derogation, the Netherlands has permission to deviate from this. Under certain conditions, the amount of nitrogen may be 230 or 250 kilograms. The application standard of 230 or 250 kilograms of nitrogen with derogation applies only to manure from grazing livestock.

As of 2019 direct CAP payments to Dutch farmers consist of a fixed amount per hectare ("flat rate"). In order to receive the payments, a number of standards must be met, with the aim of promoting more sustainable agriculture. The standards are derived from existing environmental legislation and regulations and laid down in CAP framework conditions for direct payments.

In addition, the Netherlands has developed guidelines for Good Agricultural and Environmental Condition (GAEC). If the rules are violated (non-compliance), farmers are fined in the form of a reduction in the support they receive from the CAP. The payments to be reduced include not only direct payments, but also, for example, area payments related to agri-environmental measures.

3.1.3 National production limits

In order to accommodate the expansion of the dairy sector after the abolition of the milk quota in 2015, the Responsible Growth of Dairy Farming Act (Dairy Act) (Wet verantwoorde groei melkveehouderij) came into force on 1 January 2015. The purpose of the law is to maintain the balance in the fertilizer market and to prevent the phosphate and nitrogen ceilings from being exceeded. The Dairy Act does not rule out enlargement of farms without additional land (landless growth). To limit this possibility, a regulation (AMvB grondgebonden groei melkveehouderij) was introduced, which came into effect on 1 January 2016. As of 1 January 2018, this regulation has been anchored in the Fertilizers Act (Meststoffenwet), containing additional rules for the responsible growth of dairy farming, the Act of land-based growth of dairy farming. There are rules to what extent the farm must use extra land if the phosphate production of the dairy cattle grows, for example by expanding the dairy herd. However, all this turned out to be insufficient to stem the growth of manure production at the national level. In 2017, drastic phosphate reduction measures were taken to respect the national phosphate ceiling and thus to maintain the derogation. As a result, the dairy herd decreased in 2017. In order to maintain the reduced level, the phosphate rights system (Dutch: fosfaatrechtenstelsel) was introduced on 1 January 2018. These rights are tradeable. There are other production limits for intensive livestock (pigs and chicken) in the form of licenses (Dutch: varkens- en pluimveerechten), which are also tradeable.
3.2 Taxes

3.2.1 Water authority tax

Owners of land have to pay water authority tax. The water system levy is for the construction and maintenance of dikes and the costs of managing ditches and lakes in the river area. The tax differs per water authority (see text box). Landlords may pass on a maximum of 50% of the water tax to the tenant.

Box 1. Water governance in the Netherlands

Dutch regional water authorities (Dutch: waterschappen or hoogheemraadschappen) are responsible for water management at a regional and local level. The concept of water governance can be described as public care that relates to flood protection, the water regime (surface water and groundwater in both the quantitative and qualitative sense) and the waterways. Water authorities hold elections, levy taxes and function independently from other government bodies. These regional water authorities are among the oldest forms of local government in The Netherlands. The territory of a regional water authority covers several municipalities and may even include areas in two or more provinces. As of 2020, there are 21 regional water authorities in The Netherlands.

The water authority taxes may consist of a treatment levy, water system levy and road levy. The water system and road levy consist of a resident levy, a levy built, a levy unbuilt and a levy nature. The levy unbuilt is paid by farmers, but also by owners of land with roads and railways.

For farmers, the rate of the "water system levy" category unbuilt is particularly important. In this context, water authorities sometimes make a distinction between areas inner or outer dikes. This is based on the idea: whoever benefits, pays.

Example calculations by water authorities show that for a farm of 60 hectares, the farmer spends around € 7,000 per year on the water authority tax. The tax differs per region and the differences between regions are large. In 2020, the average levy per water authority for the category unbuilt is 100 euros per ha, with a range of 50 euros (Vallei en Veluwe water authority) to 178 euros per ha (Delfland water authority).

According to the Lease Prices Decree 2007 Article 22 (reversal of water authority levies), the lease price can be increased by a maximum of 50% of the water authority taxes as determined in the year concerned.

3.2.2 Real estate tax

For agricultural land there is an exemption from real estate tax. The exemption in the Real Estate Valuation Act (Dutch: Waardering Onroerende Zaken, WOZ) concerns commercially
exploited cultivated land. Only a small part, maximum 10%, of the cultivated land may be used for non-commercial purposes.

### 3.2.3 Income tax

Taxation with respect to agricultural land depends on the type of owner. Individuals pay income tax. Other owners, such as insurers and investment institutions, pay corporate tax (25%; 16.5% over the first 200,000 euro). There are also owners who do not pay tax on agricultural land, such as estate owners with leased land under the Nature Conservation Act, government bodies, churches, site management organizations and institutional investors, such as pension funds.

Income tax is levied income. The tax rate depends on the amount of income and the income source. The sources of income tax are grouped into three categories, called boxes:

- **Box 1**: income from work and homeownership: a progressive tax rate system comprised of four (or actually three) brackets determines how much tax one pays over income. The tax rates (2019) varies between 36.65% and 51.75%. Expenditures or personal allowances can be deducted from one’s income to reduce the amount of tax due.

- **Box 2**: this income source refers to a financial interest in a company. If a minimum of 5 percent of the shares in a company is owned, 25 percent tax is levied on income received from it.

- **Box 3**: income from assets (savings and investment) is being taxed based on a hypothetical return on a fixed return on savings and investments. The income from savings and investments in the first two brackets below is attributed to a savings part and an investment part (proportionally) at a rate of 1.80% and 4.22% for 2020. That outcome is subsequently assumed to be in return on investment.

<table>
<thead>
<tr>
<th>Taxable income from savings and investments (brackets)</th>
<th>Savings part 0.06%</th>
<th>Investment part 5.33%</th>
<th>Effective return on investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to EUR 72,797</td>
<td>67%</td>
<td>33%</td>
<td>1.80%</td>
</tr>
<tr>
<td>EUR 72,797 up to EUR 1,005,572</td>
<td>21%</td>
<td>79%</td>
<td>4.22%</td>
</tr>
<tr>
<td>EUR 1,005,572 and more</td>
<td>0%</td>
<td>100%</td>
<td>5.33%</td>
</tr>
</tbody>
</table>

The net assets are taken into account at the value at the beginning of the tax year (in Dutch: “Rendementsgrondslag”), only insofar this amount exceeds the threshold (heffingsvrij
vermogen). The qualifying assets are assets which have a value in the market place such as real estate (not main residence) and rights directly or indirectly vested on real estate.

Private individuals who lease their agricultural land, have to pay personal income tax in Box 3. The law makes no reference to the motive of owning assets. Only assets and liabilities which belong to income generated in Box 1 or Box 2 are not to be included in the taxable basis of Box 3. For tax year 2018, the valuation of leased land (regular lease) in box 3 was increased from 50% to 60% of the standard value of unleased land. The valuation of other lease forms depend on the remaining duration of the contract (60-98%).

### 3.2.4 Capital gains tax

Agricultural land is considered to be an asset that does not lose its value; it can therefore not be depreciated for tax purposes. If the land used in an agricultural enterprise is sold, there is an exemption for the gains realised (landbouwvrijstelling). No tax is due on the gain of the seller if the gain relates to an increase in value between the time of purchase and the time of sale, provided the agricultural use of the land is continued by the buyer (Article 3.12 Income Tax Act 2001). The exemption includes both positive and negative changes in value, so a loss on agricultural land is not deducted from the profit.

Gains from land sales are taxed if they relate to an increase in the land value due to:

- The owner having taken measures such as levelling the land or installing drainage systems.
- A change in zoning.
- Agricultural land being converted into residential land.

A seller of agricultural land can defer the taxation of the capital gain under the reinvestment reserve facility (herinvesteringsreserve). This facility ensures that no tax is due on the gain, provided that the gain is re-invested in a similar asset within three book years after the book year in which the reinvestment reserve was created.

Lessees that buy the land from their lessors sometimes pay a price that is lower than the market value. This benefit (pachtersvoordeel) is taxed when the lessee later sells the land.

### 3.2.5 Transfer tax and notary fees

Transfer tax and insurance tax are due according to the Act on Legal Transactions Taxes (Wet op de belastingen van rechtsverkeer, Wbr). Property transfer tax of 6% of the price is payable by the buyer on the sale and transfer of real estate other than residential property (2%). Since 1 January 2007, a general exemption applies to the acquisition of cultivated land exploited for agriculture (see art.15, paragraph 1q). The land must be used for agricultural purposes for a period of ten years following the transfer. If this period of ten years is not completed, the buyer will in principle be liable for the property transfer tax. Certain
exemptions apply, for example when an enterprise has to be moved due to government policy and the government purchases land for this reason.

There are notary fees associated with the deed of transfer. The deed of delivery is the deed that transfers ownership. This deed must be drawn up by a notary and signed by the seller, the buyer and the notary. The transfer of ownership is only complete after the notary has registered a copy of the deed of transfer in the public registers at the Land Registry Office and the public registers. The fee differs per notary.

3.2.6 Fiscal facilities for succession

There are general fiscal facilities for succession which can also be used in farming:

- Silent shifting (art. 3.63 Income Tax Act) or shifting through a business company structure (limited liability company, besloten vennootschap).
- Business succession scheme (BOR) in the Succession Act: this entails an exemption from gift and inheritance tax (Articles 35b to 35f of the Succession Act). The valuation is based on the 'going concern value' (continuation value), which is much lower than the free traffic value. It is the value that a business successor can pay for the business in order to make a reasonable return out of it
- There are special norms (normwaarden), developed together by the Tax authority and the farming sector, for establishing the going concern value of a farm. This value is important in assessing the fiscal consequences of donating and inheriting a farm.

3.3 Spatial planning

3.3.1 Roles of national government, provinces and municipalities

The government has the authority to determine how the scarce space is divided among the various uses, such as housing, working, infrastructure, agriculture, recreation, nature and water. To this end, the government is drawing up plans to divide the space and designate areas for specific uses. The national government, provinces and municipalities all play a role in this planning:

- The national government focuses on national interests, including the main networks of roads, railways and waterways, protecting against flooding, and preserving unique culture and nature, such as the world heritage sites.
- The provinces are responsible, among other things, for implementing the landscape policy. Their task is to ensure sufficient green space in and around the cities.
- The municipalities are responsible for housing and business parks, among other things. For example, for the construction of a residential area, the municipality or developers
buy agricultural land and divide it into building plots. The municipality is responsible for the construction of roads and other public facilities.

The Spatial Planning Act (Wet ruimtelijke ordening, Wro) regulates how the spatial plans of the national government, provinces and municipalities are drawn up and how they are adapted. The most important instrument for spatial planning in a municipality is the zoning plan (bestemmingsplan).

In rural areas, the subdivision of the land can be adapted by exchanging land. The Rural Areas Development Act (Wet inrichting landelijk gebied, Wilg) stipulates that the provinces can organize reallocation. Owners can also exchange land on a voluntary basis via a so-called parcel exchange (Kavelruil).

3.3.2 Pre-emptive rights and expropriation

The Municipalities Preferential Rights Act (Wet voorkeursrecht gemeenten) makes it possible (under certain conditions) for the government to take possession of land. If a municipality wants to place a new residential area or business park on a piece of agricultural land, it can establish a pre-emptive right on the plot. If the owner of the plot wants to sell the land, he must first offer the plot for sale to the municipality. The basic principle is that the owner and the municipality determine the selling price in consultation. If this is not successful, the judge will determine the price on the advice of experts. He will determine the so-called "traffic value" of the land. This is the price that would be established in free exchange between a reasonably acting owner and a reasonably acting buyer.

The conditions under which government authorities can expropriate (agricultural) land are set out in the Expropriation Act (Onteigeningswet). Expropriation is only allowed if it serves the public interest and meets certain conditions. Additionally, the financial position of the landowner may not be adversely affected as a result of the expropriation.

3.3.3 Environmental Act will replace the Spatial Planning Act

The government wants to simplify and merge the rules for spatial development with the new Environmental Act (Omgevingswet). This Act should make it easier, for example, to start construction projects. The Crisis and Recovery Act (Crisis- en herstelwet, Chw) already makes this possible, for example by adjusting existing rules. The Environmental Act is expected to enter into force on 1 January 2022. In September 2020, the cabinet published the national vision on the living environment: the National Environmental Vision (Nationale Omgevingsvisie, NOVI). This gives direction to the major tasks that will radically change the countr in the coming thirty years: building approximately 1 million new homes, space for generating sustainable energy, adapting to climate change, developing a circular economy and switching to circular agriculture.
4. Implementation and enforcement issues of land regulations

4.1 Institutions

Ownership is a real right and regulated in the Dutch Civil Code, Book 5 (Zakelijke rechten). Lease of land is a personal contract and regulated in the Dutch Civil Code, Book 7 (Bijzondere overeenkomsten), Title 5 (Pacht). In contrast, leasehold (erfpacht) is a limited real right and is regulated in the Dutch Civil Code, Book 5 (Zakelijke rechten), Title 7 (Erfpacht).

Only formally, there is a law on the transfer of agricultural land ownership, i.e. ‘Wet van 26 maart 1981 houdende regeling van het agrarisch grondverkeer’. This law, Wet agrarisch grondverkeer, shortly WAG, is a dead letter because it has not been implemented. (https://wetten.overheid.nl/BWBR0003386/2019-01-01).

Lease contracts must be submitted to the Agricultural Tenancies Authority (Grondkamer) for registration and assessment. The Agricultural Tenancies Authority has the following tasks:

- Promoting good tenancy relations;
- Testing lease contracts against the lease regulations in the Civil Code and price testing;
- Interim reassessment of the lease price at the request of the tenant or lessor;
- Valuation of the value of a lease object in connection with the application of the leaseholder's pre-emptive right (in the case of intended sale);
- Decide whether the lessor has a valid reason to ignore the preferential right of the lessor.

The Agricultural Tenancies Authority is a public body (not a court). There are five regional Agricultural Tenancies Authorities:

- North (Groningen, Drenthe, Fryslân)
- Northwest (Noord-Holland, Flevoland, Utrecht);
- East (Overijssel, Gelderland);
- Southwest (Zeeland, Zuid-Holland);
- South (Noord-Brabant, Limburg).

The secretariat is provided by the Netherlands Enterprise Agency (www.RVO.nl).

Regular and liberalized leases are reviewed by the Agricultural Tenancies Authority. This is not the case with leasehold, which has a minimum duration of 26 years. Like ownership, leasehold contracts are registered at Land register of the Cadaster.
The Agricultural Tenancies Authority assesses whether there has been too great an infringement of the freedom of contract and thus the autonomy of the tenant as land user.

Appeal is possible to the Central Agricultural Tenancies Authority in Arnhem.

The legislation on landlease contracts is enforced by private law; there are specialized courts dealing with disputes on lease contracts: the Lease Chamber (Pachtkamer). Unlike the Agricultural Tenancies Authority, this is a court of law at the court, sub-district sector. An appeal is possible at the Pachthof, the lease chamber of the Arnhem-Leeuwarden Court of Appeal (location Arnhem).

Although lease contracts have to be registered by the Agricultural Tenancies Authority, oral and written agreements on land use that are not reported occur widely. These practices are not subject to criminal law. Landowners may be afraid of the formal lease regulations and do not want to involve the Agricultural Tenancies Authority in their operations. Informal agreements are possible through good relations of trust with their tenants.

4.2 Enforcement and application

The legal restrictions on the use of agricultural land that arise from agricultural and environmental policies (see section 3) give rise to a variety of enforcement and application issues. However, as explained in section 2 the selling and buying of agricultural land is completely liberalized in The Netherlands. In the absence of special requirements, the transfer of land ownership does not involve issues of enforcement and application.

The lease market is a different story. The rules of the regular lease agreements and the liberalized lease agreements should be clear for the parties and in case of disagreement there are institutions and procedures in place (4.1). The informal lease agreements based on trust provide a special issue. For the landowner there is a risk involved in informal land lease, because the informal tenant may inform the Agricultural Tenancies Authority of the lease practice. The Agricultural Tenancies Authority may then decide in favour of the tenant that a regular lease contract applies (with all the advantages for the tenant).

5. Other land-related measures not discussed elsewhere

None
6. Reference list of legal regulations

Ownership: Dutch Civil Code, Book 5 (Zakelijke rechten).

Leasehold (erfpacht): Dutch Civil Code, Book 5 (Zakelijke rechten), Title 7 (Erfpacht).

Lease of land: Dutch Civil Code, Book 7 (Bijzondere overeenkomsten), Title 5 (Pacht).
Title 7.5 of the Dutch Civil Code

Relevant Acts:
- Crisis and Recovery Act (Crisis- en herstelwet, Chw)
- Expropriation Act (Onteigeningswet)
- Fertilizer Act (Meststoffenwet), Act of land-based growth of dairy farming
- Income Tax Act (Inkomstenbelasting)
- Legal Transactions Act (Wet op de Belastingen van Rechtsverkeer, Wbr), Transfer tax: 'Agricultural land exemption': Article 15, paragraph 1, section q of the Act
- Municipalities Preferential Rights Act (Wet voorkeursrecht gemeenten, Wvg)
- Real Estate Valuation Act (Wet Waardering Onroerende Zaken, WOZ)
- Responsible Growth of Dairy Farming Act (Melkveewet, Dairy Act) (Wet verantwoorde groei melkveehouderij)
- Rural Areas Development Act (Wet inrichting landelijk gebied, Wilg)
- Spatial Planning Act (Wet ruimtelijke ordening, Wro)
- Succession Act

Lease Prices Decree 2007 (Pachtprijzenbesluit 2007) <wetten.overheid.nl>


7. List of supporting materials (see the share point)


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR POLAND

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Agricultural land market regulations in Poland around 2020

Dominika Milczarek-Andrzejewska

1. Introduction

In the last several years the agricultural land market in Poland was characterized by a decrease in the size of agricultural land resources, agricultural land abandonment, and a dynamic increase in the prices of agricultural land (Milczarek-Andrzejewska et al., 2018). As a result of land conversion for non-farming purposes, the area of agricultural land decreased by over half a million ha in the years 2010-2018 (Baer-Nawrocka, Poczta, 2020)\(^5\). The main reasons for such changes are mainly the fast economic development of the country and processes such as uncontrolled urbanization (Chmielewska, 2015) or infrastructure investments (Bański, 2018). The situation on the agricultural land market in Poland is also shaped by historical (e.g. territorial changes after the Second World War), natural (soil quality and topography), political (Common Agricultural Policy and national regulations), as well as cultural factors (attachment to the land) (Marks-Bielska, 2020).

In 2019 there were over 1.4 million farms that used 14.7 million ha of agricultural land. The majority of agricultural land in Poland is owned by private owners (over 90%). However, around 1.3 million ha still belongs to the state – managed by the state agency the National Support Centre for Agriculture\(^6\) and usually leased to private farms (GUS, 2020b).

Land use is very fragmented and farming is mostly undertaken by small family farms. The farm structure tends to be unfavorable in many regions of Poland due to historical, economic, and socio-cultural factors (Baer-Nawrocka, Poczta, 2018). Over half (53.5% in 2019) are the smallest farms, i.e. up to 5 ha of agricultural land. The percentage of the largest farms with an area of over 50 ha of agricultural land is only around 2%. For several years, the average agricultural area on the farm has remained at the level of ca. 10 ha (ca. 11 ha in 2020) (GUS, 2020a, ARiMR, 2020). In general, a much more favorable structure of farms is observed in regions, where relatively large farms were established based on former state-owned farms.

\(^5\) This decrease was observed mostly in smaller farms of the area below 20 ha of farmland. Although the area of farmland decreases in all regions, the scale of these changes differs from region to region. The highest decline is observed mostly in the southern regions of Poland (the Małopolskie, Podkarpackie, Świętokrzyskie, and Śląskie voivodships) while the smallest decrease is noted in the western part of Poland (Warmińsko-Mazurskie, Kujawsko-Pomorskie voivodships, which traditionally has enjoyed strong agriculture and a large share of large farms with high soil quality) and Podlaskie voivodship (the north-eastern region of Poland) (Baer-Nawrocka, Poczta, 2018, 2020).

\(^6\) Land overtaken by the state agency responsible for agricultural land trade amounted to ca. 4.7 million ha (GUS 2020b). From 1992 until the end of 2017, about 2.71 million hectares of land from the State’s Stock of Agricultural property was sold, which accounted for 57.2% of the total are taken over. Over half of the total area of sold land was located in the following four voivodeships: Zachodnio-Pomorskie, Dolnośląskie, Wielkopolskie, and Warmińsko-Mazurskie (IERGiŻ 2018).
(Zachodniopomorskie, Warmińsko-Mazurskie, Lubuskie, Pomorskie, Opolskie and Dolnośląskie voivodeships). In these voivodeships, most of the agricultural land is concentrated on farms of over 50 ha. Small and economically weak farms are located mainly in the south-eastern voivodeships. According to the data of the Agency for Restructuring and Modernization of Agriculture, the average farm size is the lowest in the Małopolskie Voivodeship (ca. 4 ha) and the highest in the Zachodniopomorskie Voivodeship (ca. 32 ha) in 2020 (ARiMR, 2020).

Also, these are mostly large private farms with a significant production that lease agricultural land. It can be estimated that about 20% of farms use their own and leased land (IERGiŻ, 2018). Even though lease has a long tradition in Poland, it not as popular as in other countries of the European Union. Until recently, the lease of state-owned land was of primary importance in lease transactions. Currently, the lease trade between farmers (so-called inter-neighbor market) is gradually increasing. It results mainly from the small supply of land put for sale and the high costs of its purchase (IERGiŻ, 2018, Lichorowicz, 2010).

On the other hand, due to the lack of resources and skills, the land is often misused and increasingly often abandoned in small farms. This problem – occurring throughout Poland - is particularly visible in mountain areas in the south-eastern regions of the country. These regions are undergoing massive land abandonment or extreme extensification of production (Baer-Nawrocka, Poczta, 2020).

Agricultural land prices in Poland have risen very dynamically over the past several years, as regards both private and state land turnover (e.g., Marks-Bielska, 2017). They were significantly affected by the inclusion of Polish agriculture in the common agricultural policy and direct payments related to land use. In the years 2004-2017, the average price of a hectare of agricultural land in Poland increased over six times both in private and state turnover (IERiGŻ, 2005, 2018).61

Also, agricultural rental prices both of state and private land have increased significantly. The average rent paid for land leased from the State’s Stock of Agricultural Property doubled in the years 2004-2017.62 The observed increase in the rental prices in neighborly trade was a consequence of the general situation on the land market: an increase in agricultural land price and increasing demand for land, with a simultaneous low supply of land, put up for sale.

As one of the important factors determining the situation on land markets is the national policy, the goal of this country report is to present the recent regulations and their influence

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61 In 2004-2017 the average price of a hectare of agricultural in private increased from ca. PLN 6.6 thousand in 2004 to ca. PLN 4.3 thousand in 2017 and in the case of state-owned land from ca. PLN 4.7 thousand to ca. PLN 31 thousand, respectively (IERiGŻ, 2005, 2018). In 2019, the upward trend in private land prices continued. The differences between the two markets result from the fact that prices of private land usually refer to arable land, while the prices of state-owned land refer to the broader category of agricultural land. Different hectarage and geographical location of the land offered for sale by the State Treasury resources is also a factor in pricing.

62 They increased from 3.5 quintals of wheat from 1 ha in 2004 to 7,7 quintals in 2017 (IERGiŻ, 2005, 2018).
on the agricultural land market in Poland. In the next section, we describe key national land regulations affecting the agricultural land market. Section 3 contains a discussion on regulations in surrounding environments of the land markets affecting its functioning. Then, we attempt to present the implementation and enforcement issues of land regulations and the potential implications of these restrictions. Section 5 concludes. At the end of the report, there are two lists: the reference list of legal regulations and the list of supporting materials.

2. Key land regulations affecting land markets

The agricultural land market in Poland is relatively highly regulated in comparison to other EU countries and regulations favor family farms that operate on land they own (Swinnen et al., 2013). Recent changes, especially those introduced in 2016, have increased the scope of the restrictions.

However, at the beginning of the transition period, there was no legal mechanism to protect agricultural property (Litwiniuk, 2019). The amendment to the Civil Code, which entered into force on October 1, 1990, led to the decomposition of the former regulations concerning the ownership turnover of agricultural land. This amendment abolished restrictions on the purchase of real estate. Since its entry into force, agricultural real estate could be purchased by any entity, and most importantly, from the point of view of structural transformations, the division of agricultural land could - as a rule - be made without restrictions (Truszkiewicz, 2019a). Also, the activities of the Agricultural Property Agency of the State Treasury, which was founded in 1991 based on the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury, were focused at that time on the acquisition real estate belonging to former state farms and its privatization (mostly via sale and lease with a right to purchase) (Milczarek, 2020). Removing legal restrictions on the size and legal as well organizational structure of farms created favorable conditions for the formation of various types of agricultural holdings operated by legal persons. This trend was stimulated by very low agricultural land price and state subsidies and benefits (e.g. preferential real estate loans) (Dzun, 2015). The entry into force on July 16, 2003, of the Act of April 11, 2003 on shaping the agricultural system was to significantly strengthen the protection of agricultural land (Litwiniuk 2019). This Act was passed in a hurry just before the day of signing the Accession Treaty by Poland on April 16, 2003.

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63 The Act of 28 July 1990 r. on amending the Act – Civil Code (Journal of Laws No. 55, item 321).
64 The liberal approach was also reflected in the Act of 20 December 1990 on the social insurance of farmers (Journal of Laws 1991, No. 7, item 24). The state, despite financing a large part of social insurance for individual farmers from the budget, entirely resigned from the active policy on the agrarian structure in connection with the retirement or pension of the farmer (Truszkiewicz, 2019a).
65 This Agency was founded based on the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury and replaced by Agricultural Property Agency in 2003.
67 Journal of Laws 2003, No. 64, item 592.
2003. It created legal instruments enabling the state, through the Agricultural Property Agency\textsuperscript{68}, to control the ownership turnover of agricultural land, applied - in accordance with the principle of national treatment - to all buyers, including foreigners. \textsuperscript{69} As part of the 2003 Accession Treaty, a transitional period concerning the acquisition of agricultural land was agreed upon. The compliance of this act with the EU principle of the free movement of capital raised doubts from the very beginning (Truszkiewicz, 2019b).

In 2016, in response to the expiration of the transitional restrictions on agricultural land acquisitions by foreigners, the Polish government introduced new rules governing agricultural land sales transactions. As direct restrictions on foreign investors would now be illegal under the EU treaties, new regulations - as in other Central and Eastern European countries - limited access to agricultural land not only for foreigners but also for some groups of domestic investors (Ciaian et al., 2017). Therefore, a new chapter in shaping the ownership relations in agriculture in Poland was initiated in 2016 when the Act of April 11, 2003 on shaping the agricultural system was significantly amended\textsuperscript{70} and the Act of April 14, 2016 on Suspending the Sale of Real Estate in the Agricultural Property Stock of the Treasury and amending certain acts\textsuperscript{71} went into force. This last act introduced fundamental changes in the turnover of agricultural land owned by the State Treasury\textsuperscript{72} as well as land belonging to local government units (Truszkiewicz, 2019a).

After the beginning of the transition process, three periods of state interventionism on the agricultural land market in Poland can be therefore distinguished. In 1990 - 2003, the agricultural land market was relatively liberal. In the years 2003 - 2016, the first restrictions on the freedom of trade were introduced. New restrictive trade regulations apply from 2016 until now (Karwat-Woźniak et al., 2017).

These three above-mentioned acts (with successive changes) are the most important regulations regarding the agricultural land market today. These regulations are having the most impact on both private and state land transactions. So far, The Act of 11 April 2003 on Shaping the Agricultural System has been changed several times and the last amendment was passed on April 26, 2019. It regulates only so-called private turnover i.e. private land transactions. Other acts, however, concern transactions with state-owned land. The acquisition of state agricultural land is regulated by the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury (with several important amendments) and the Act of 14 April 2016 on Suspension of Sale of Property from the

\textsuperscript{68} In 2017 the National Support Centre for Agriculture National Support took over the tasks of the Agricultural Property Agency.

\textsuperscript{69} For example, after the amendment of this act in 2010 (Journal of Laws 2010, No. 110, item 725), the Agricultural Property Agency had the right of pre-emption and purchase of agricultural properties with an area of more than 5 ha.

\textsuperscript{70} Journal of Laws 2016, item 1159.

\textsuperscript{71} Journal of Laws 2016, item 464.

\textsuperscript{72} belonging to the Agricultural Property Stock of the State Treasury (ZWRSP) and managed by the Agricultural Property Agency (and from 2017 by the National Support Centre for Agriculture).
Agricultural Property Stock of the State Treasury and Amendments to Certain Acts. In addition to these regulations, the Act of 24 March 1920 on the Purchase of Real Property by Foreigners includes important provisions concerning agricultural land. The last amendment to this act was adopted in 2016.

The purpose of these regulations introduced in 2003 and 2016 was to prevent speculative trade, excessive concentration of agricultural land, and land grabbing (Stacherzak et al. 2019). The most important measures included the right of pre-emption of the tenant and the state agency (since 2017 National Support Centre for Agriculture), the suspension of the sale of agricultural land owned by the State Treasury, and preferences regarding the purchase of agricultural land by certain groups of citizens (i.e. family farmers).

The Act passed in 2003 can also be seen as a compromise between interests of individual farmers who wanted to expand their farms and large farms (managed usually by legal persons) based on former state-owned farms. As Pyrygies (2019) points out, this compromise was called into question a few years later. In September 2011, the Act on the Management of Agricultural Property of the State Treasury was amended. The change authorized the Agricultural Property Agency (today the National Agricultural Support Center) to propose to exclude 30% of the leased state agricultural land if the total area of leased land was over 428.5 ha. The Agricultural Property Agency (APA) decided which land was to be excluded from the lease. If the lessee did not agree to such an exemption, he forfeited the priority right to purchase the property or the possibility to extend the lease without a tender. For the first time since 1992, this act sanctioned far-reaching interference in the rights of tenants (Pyrygies, 2019). As the majority of the tenants were large farms operated by legal entities, this was an additional regulation introduced for the benefit of family farms.


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73 Journal of Laws 1920, No. 31, item 178.

74 Overall, based on data collected by the Ministry of the Interior and Administration, it can be estimated that in 1996-2017, foreigners became owners of over 56.4 thousand ha of land, constituting around 0.2% of Poland’s area (IERGiŻ, 2018). However, data on the size of agricultural land bought by foreigners is being contested. As stressed by Ciaian et al. (2017), it is difficult to assess how much land foreigners own and the share of foreign land ownership (or control) can be much higher than reported by official sources. According to the report of the Supreme Audit Office, the data of the Ministry of the Interior and Administration were 3-4 times lower than the actual state in 2013 (NIK, 2014).

75 Act of September 16, 2011 Amending the Act on the Management of Agricultural Real Estate of the State Treasury and Amending Certain Other Acts (Journal of Laws No. 233, item 1382)

76 These regulations have triggered many lawsuits. Some companies agreed to give up 30% of their land in exchange for the pre-emption right but could not use this right later because the new government passed regulations that suspended the sale since 2016.

77 Journal of Laws 2019, item 1080.
Below we describe these regulations in detail, with particular emphasis on the provisions on the trade of private and state-owned agricultural land, transactions carried out by natural and legal persons, as well as by foreigners (from EU and non-EU countries).

In principle, new regulations on private agricultural land trade regulate the sale of land plots larger than 0.3 ha. In 2016 – 2019 such plots could only be purchased by an individual farmer running a family farm. After the changes introduced on June 26, 2019, non-farmers can buy a plot of less than 1 ha. However, the right of pre-emption by the National Center for Agricultural Support has been left, which is to protect against speculation in land trading. Transactions by legal persons require the consent of the Director-General of the National Support Centre for Agriculture. The buyer of land is obliged to run the farm, which includes purchased land plots, for five years. Individual farmers are obliged to run the farm in person. During this time, the plots of purchased land cannot be sold or transferred to other persons.

There are some significant exceptions. For example, these regulations do not apply to situations when land is sold between relatives or when the local government, the state (the National Support Centre for Agriculture), and the Church buy the land; or when the land transaction is the result of inheritance. Some other exemptions consider, for example, land designated in spatial planning for purposes other than agricultural activity and located within the administrative boundaries of cities.

The Act of 11 April 2003 on Shaping the Agricultural System also defines a family farm as a farm run by an individual farmer, in which the total agricultural area does not exceed 300 ha. An individual farmer is a natural person being the owner, user, spontaneous owner, or tenant of the agricultural property, with a total area not exceeding 300 ha. (S)he must have agricultural qualifications, be a resident of a given municipality (where at least one of his agricultural plots is located), and manage the farm personally for at least 5 years.

This definition is also important when purchasing state agricultural land. According to the Act of 14 April 2016 on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury and Amendments to Certain Acts, sale of state-owned land may take place if, as a result, the total area of agricultural land owned by the buyer does not exceed 300 ha. But only land plots smaller than 2 ha can be sold, while larger than 2 ha can only be rented. There are some exceptions. For example, they include land within the special economic zones or land intended for non-agricultural uses. Other exceptions need to be approved by the Ministry of Agriculture and Rural Development. This act also defines pre-emption rights. The state-owned land, offered for sale by the National Center for Agricultural Support, may be purchased in the first place by an agricultural cooperative, which effectively holds the dominion of the land and tenants if the land tenancy lasts for at least three years. However, in practice, the pre-emption right may be granted only to tenants who are

78 Before the above-mentioned changes to the law in 2019, this requirement was ten years.
individual farmers running farms where the total area of agricultural land does not exceed 300 ha.

Special treatment of family farms is also encouraged by the restricted tender procedure, organized by the National Support Centre for Agriculture, for individual farmers expanding their family farms (Stacherzak et al., 2019). As it was written in the justification to the draft of this act, “State agricultural land should still be at the disposal of the Agricultural Property Agency [former name of this agency], and the basic method of management of state land should be permanent leases favorable to farmers, which should ensure ownership control over the way of its management (Truszkiewicz, 2019b: 209).

The act on the suspension of sale of property from the Agricultural Property Stock of the State Treasury, as well as the amendment to the act on shaping the agricultural system, binding since 30 April 2016, introduced several limitations to the purchase of agricultural land by legal persons. They also complicated the procedures for disposing of real estate by the National Support Centre for Agriculture. Legal persons are, therefore, excluded from the purchase of private and state land. The acquisition of agricultural real estate with the consent of the President of the Agricultural Property Agency is the only option for legal persons to acquire agricultural real estate. In practice, the above regulations considerably hinder the conduct of agricultural activities by commercial law companies (Bieluk, 2017).

Restrictions for foreigners were enacted for the first time in the Act of 24 March 1920 on the Purchase of Real Property by Foreigners. This Act, in its amended form, has remained in force until today. According to this act, acquisition of real estate by a foreigner from outside the EU and Switzerland requires a permit. The permit is issued by the minister responsible for internal affairs if the Minister of National Defense does object and in the case of agricultural real estate if no objection is raised by the minister responsible for rural development. Acquisition of agricultural land with an area exceeding 1 ha by a foreigner from outside the EU and Switzerland requires a permit in each case (no exceptions). The permit is also required if the agricultural real estate is located in the border zone. Exceptions from the requirement to obtain a permit apply to agricultural land not exceeding 1 ha and forest land (regardless of the area) located outside the border zone. Foreigners from outside the EEA and the Swiss Confederation are obliged to obtain a permit to acquire shares and stocks in commercial companies based in Poland, controlled by foreigners, who are the owner or perpetual users of real estate in the territory of the Republic of Poland (Truszkiewicz, 2019b).

It is worth noting that thanks to all these regulations, the National Center for Agricultural Support became the most important state agency shaping the agricultural land market in Poland. It manages not only agricultural land owned by the state treasury but also exercises control over the private turnover of agricultural land.

Concerning the regulations on the lease of agricultural land, Lichorowicz (2010) states that the legal status of tenants of agricultural land in Poland is fragmentary, random and giving better legal protection to the interests of the lessor than the lessee. It does take into account
the specificity of agricultural leases to a small extent and generally deviates from the standards of regulation of agricultural leases functioning in Western European countries. Compared to the formalized procedure of leasing land from the State’s Stock of Agricultural Property, private leases are not sufficiently regulated by law, as they mostly are verbal agreements between interested parties. It applies both to the lease period (usually 2-5 years) and the rent amount (usually renewed on an annual basis). Currently, the inter-neighbor lease market is affected to a higher degree by the National Support Centre for Agriculture, which under new legal regulations, began to prefer this form of use of land from the Stock. It significantly increased the rental offer in selected areas of Poland (mostly in western and northern regions of Poland) (IERGiŻ, 2018).

3. Institutions (regulations, customs, practices) in surrounding environment of the land markets affecting its functioning

Other regulations that have an indirect, but significant, impact on the functioning of the land market in Poland relate to the protection of agricultural land and spatial planning in rural areas. According to the Act on the Protection of Arable and Forest Land of February 3, 1995\(^{79}\), agricultural and forest land in Poland is under legal protection. It is a separate legal regulation from the regulation on environmental protection.\(^{80}\) The objectives of both these acts are very similar. However, the protection of agricultural land is primarily related to the protection of land productivity. This is why, it is closely related to agricultural law (Czechowski, Marciniuk 2019).

The Act on the Protection of Arable and Forest Land of February includes protective provisions regarding both the so-called quantitative and qualitative protection of agricultural land. The provisions of the Act on quantitative protection are aimed at controlling activities that may result in the reduction of agricultural land due to conversion into non-agricultural or non-forest purposes. Qualitative protection consists mainly of preventing the processes of degradation and devastation of agricultural land and damage to agricultural production resulting from non-agricultural activities and mass movements of the land (Marciniuk, 2020).

Under the provisions of the Act, only fallow lands and lands of the lowest quality may be used primarily for non-agricultural and non-forest purposes. It is strictly related to the provisions on spatial planning. Changes in the use of agricultural as well as forest land can be made only under local spatial development plans.\(^{81}\) Both the adoption and amendment of local spatial development plans fall within the competence of the local government authorities (gmina).\(^{82}\) Local government authorities have also a relatively large degree of

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\(^{79}\) Journal of Law 1995, No. 16, item 78.


\(^{81}\) adopted based on the Act of 27 March 2003 on spatial planning and development (Journal of Law 2003, No. 89, item 717).

\(^{82}\) It is worth noting that most municipalities do not have development plans, and in municipalities where such plans exist, not all area is covered. In such a situation, the
freedom in making decisions regarding changes in land use within their area. However, the change of use of the most valuable agricultural land (class I-III) and forest land for non-agricultural and non-forest purposes, requires the permission of the minister responsible for rural development. Besides, the protection of agricultural land varies depending on its location. Agricultural land located within the administrative boundaries of cities is excluded from protection (Czechowski, Marciniuk, 2019).

Generally, it can be assessed that “legal regulations on the protection of agricultural land have evolved over the years to promote land conversion and new residential construction projects. The current laws on the conversion of farmland and forests to other uses are less rigorous, and they are not effective in curbing the loss of agricultural land” (Kurowska et al., 2020: 6). Therefore, despite the institutional and legal protection, farmland conversion in Poland can be seen as not particularly difficult since there are several exceptions and the regulations can be negotiated and flexibly avoided (Pływaczewski, Źróbek, 2016). The conversion of agricultural land into other uses has been relatively simple to conduct, and hence, in areas under suburbanization and peri-urbanization, such legal norms on conservation are not a real obstacle. The growing competition between agricultural and non-agricultural use of agricultural land located mainly in areas adjacent to large and medium-sized cities is one of the phenomena observed recently in Poland (Milczarek-Andrzejewska et al., 2018). The research conducted by Kurowska et al. (2020) shows that the risk of farmland and forest loss is highest in 4 out of 16 Polish voivodeships (Mazowieckie – 4.50 %, Łódzkie – 4.30 %, Małopolskie – 5.95 %, and Pomorskie – 4.31 %). Besides, urban sprawl in Poland has often led to the conversion of farmland of high and very high quality for non-agricultural purposes (e.g., Kacprzak, Maćkiewicz, 2013). Several researchers stress that changing the purpose of land from agricultural to non-agricultural is excessive and there is a greater need for policy shifts towards more balanced and consistent state regulations of land management (e.g., Górska, Michna, 2010; Dzun, Musiał, 2013).

Besides, there are no effective barriers to land fragmentation in Poland. Small plots of land are easier to sell than large ones. For farmers running small farms (1-5 hectares), which is insufficient for profitable agricultural activity, a very attractive goal is to convert their land for residential or industrial and service purposes. Small areas are also easier to convert to non-agricultural use (Milczarek-Andrzejewska, 2018).

It was argued in the literature that a significant drawback of the Polish agricultural policy is also the lack of regulations relating to the lease of agricultural land. It should be noted that the legislation of the last two decades has also significantly eased the conditions for allocating agricultural land to non-agricultural purposes. Moreover, due to the lack of budgetary resources regulatory activities (consolidation and replacement) were reduced (Truszkiewicz, 2019a).
4. Implementation and enforcement issues of land regulations

At the beginning of this section, we attempt to assess the enforcement and practical application of the regulations on agricultural land sales introduced mainly in the last 5 years. However, comprehensive evidence is not available. We base our analysis on the report prepared by the Supreme Audit Office of Poland (Najwyższa Izba Kontroli, NIK), popular press materials, and informal interviews with experts.

In general, the regulations introduced in the last years are seen as very restrictive. The report prepared by NIK in 2019 states that “without undermining the need to introduce new legal solutions to ensure the country's food security and to strengthen and protect family farms, NIK notices too restrictive regulations of this legal matter” (NIK, 2019: 13). Overly restrictive regulations on the agricultural land market were already mentioned during public consultations in 2016 before the Act of April 14, 2016 on Suspending the Sale of Real Estate in the Agricultural Property Stock of the Treasury and amending certain acts went into force. However, the Minister of Agriculture and Rural Development did not take into account the opinions of interested parties (NIK, 2019). The need to ease restrictions in agricultural land turnover was noticed by the Minister only after the law came into force which resulted in the amendments to The Act of 11 April 2003 on Shaping the Agricultural System introduced in 2019. However, these changes were relatively small (see Section 2).

The NIK Report also assessed the implementation process of stricter regulations introduced in 2016. The Report shows that the general assessment of all authorities responsible for controlling the agricultural land market (including the Ministry of Agriculture and Rural Development, the National Center for Agricultural Support) was positive. There were only single cases of violation of the procedures of, for example, sale and lease of state-owned land or irregularities in the exercise of control powers in the field of private agricultural real estate trading (NIK, 2019).

The new regulations are seen as very restrictive also by other agricultural land stakeholders. According to informal interviews with experts (e.g. notaries), the current regulations are complicated83 and they are unfavorable not only for non-farmer entities but also for Polish farmers. Large farms run by natural persons are sometimes divided between family members into smaller farms to increase farm area above 300 ha. Legal persons have practically no possibility to buy larger plots of agricultural land. According to the opinion of experts, the regulations are strictly adhered to. The National Center for Agricultural Support, being the control agency, has become an important player in agricultural land trade. It manages not only agricultural land owned by the state treasury but also exercises control over the private turnover of agricultural land.

In the second part of this section, we also briefly discuss potential implications of current restrictions for agricultural land market in Poland. As many researchers show, the restrictions

83 See for example an article on the concept of agricultural real estate under the Act of April 11, 2003 on shaping the agricultural system http://www.codozasady.pl/en/the-concept-of-agricultural-real-estate-under-the-agricultural-system-act/
to the land market transactions introduced in 2003 and 2016 significantly affect the agricultural land market in Poland (e.g. Ciaian et al., 2017, Stacherzak et al., 2019, Truszyński, 2019a,b). Recent changes to the law in 2019 introduced provisions to alleviate existing restrictions, but the overall approach has not been changed. Below we present the potential implications of these regulations for the agricultural land market in Poland.

First, the expected impact of these regulations on the improvement of the agrarian structure is assessed as minor. Although the title of the Act of April 11, 2003 on Shaping the Agricultural System suggests that it is an act of fundamental importance for Polish agriculture, its role is in fact marginal. As shown by Truszyński (2019a), the legal instruments provided for in this act in the form of the statutory pre-emption right and the right to acquire agricultural real estate by the National Support Centre for Agriculture in 2016 was primarily driven by the creation of barriers to the acquisition of agricultural real estate by foreigners, and not the shaping of the agricultural system, as presented in the preamble to the Act and its Art. 1. (Truszyński, 2019a). On one hand, the introduced restrictions favor the creation of larger farms, but on the other, at the same time, they limit the creation of large-size farms. In addition, the pace of positive changes will be significantly longer, and in some regions of Poland will even be slowed down. In the opinion of several authors, such far-reaching restrictions on the trade in agricultural land were not necessary as they could have been achieved with the use of different legal instruments (Truszyński, 2019a). The new regulations, introduced in 2019, alleviate to some extent the earlier restrictions on land sale transactions, but, as stressed by Truszkiewicz (2019a: 211-212), they will certainly not improve the effectiveness of the National Support Centre for Agriculture in shaping the agricultural system in Poland.

Second, these restrictions distort the agricultural land market and could have significant economic implications. For example, Ciaian et al. (2017) investigated potential impacts on land prices, transaction distortions, the land market transparency, and transaction costs that the new regulations create for market participants. They concluded that the new land market regulations will likely result in reduced competition and thus affect land prices. According to research made by authors, land prices are expected to decline, and land market transactions would decrease (Ciaian et al. 2017). As predicted, the introduced changes in the agricultural land turnover resulted in a reduction in the number of sales transactions, a slow-down in the growth rate of agricultural land prices as well as rents for state-owned land (NIK, 2019). As assessed by the government in the justification of the Act of 26 April 2019 on Changing the Act on Shaping the Agricultural System and Amendments to Certain Acts, the growth in agricultural real estate prices was halted after the introduction of provisions in 2016 (Sejm, 2019). The price of agricultural land in the Agricultural Property Stock of the State Treasury, compared to 2016, fell by 15% in 2018, to just over 26 thousand PLN per ha (GUS, 2018).

Third, new regulations significantly change access to land to non-farmers (as well as legal entities and foreign buyers). As written in the above mention justification to the Act of 26 April 2019, the introduction of restrictions in the trading of agricultural real estate prevented in 2016-2019 the acquisition of agricultural land by entities whose basic life and professional
activity takes place outside agriculture, and which bought land for speculative purposes or treated this purchase as a form of capital investment (Sejm, 2019). The preferential treatment given to local farms seems to address then, at least in part, several concerns raised in the “land grabbing” literature (Ciaian et al., 2017). However, some authors criticize such radical restrictions. They point out that this could decrease the inflow of capital to the agricultural sector. As access to land does not depend on economic efficiency but rather on the legal status of the buyer, the sector's efficiency may decrease (Jędruchniewicz, Maśniak, 2018).

5. Conclusions

Currently, the agricultural land market in Poland is highly regulated. After a period of liberalization at the beginning of the transition period, the first restrictions on the freedom of agricultural land trade were introduced in 2003 just before Poland’s accession to the European Union. Further changes came into force in response to the expiration of the transitional restrictions on agricultural land acquisitions by foreigners in 2016. Recent amendments to the law in 2019 introduced provisions to alleviate existing restrictions, but the overall approach has not been changed. The agricultural land market is also influenced indirectly by regulations on the protection of agricultural land and spatial planning in rural areas.

The purpose of the regulations introduced in 2003 and 2016 was to prevent speculative trade, excessive concentration of agricultural land, and land grabbing on both private and state agricultural land market. In principle, the regulations favor family farms that operate on land they own and include several limitations to the purchase of agricultural land by legal persons. The acquisition of the real estate by foreigners from outside the EU and Switzerland is regulated by a separate act. The purchase of agricultural land by non-EU foreigners requires a permit.

The most important measures include the right of pre-emption of the tenant and the state agency (since 2017 National Support Centre for Agriculture), the suspension of the sale of agricultural land owned by the State Treasury, and preferences regarding the purchase of agricultural land by certain groups of citizens (i.e. family farmers). In principle, new regulations on private agricultural land trade restrict the sale of land plots larger than and equal to 1 ha. Such plots can only be purchased by an individual farmer running a family farm. A family farm is defined as a farm managed by an individual farmer personally for at least five years, in which the total agricultural area does not exceed 300 ha.

Transactions by legal persons require the consent of the Director-General of the National Support Centre for Agriculture. The sale of state-owned land may take place if, as a result of this sale, the total area of agricultural land owned by the buyer does not exceed 300 hectares and does not exceed 300 hectares ever acquired from the Property Stock of the State Treasury by the buyer. But only land plots smaller than 2 ha can be sold. The plots of state-owned land larger than 2 ha can only be rented.
As many researchers show, the restrictions on the land market transactions introduced in 2003 and 2016 significantly affect the agricultural land market in Poland. The recent legislative changes are also perceived as very restrictive in practice by agricultural land stakeholders. These restrictions distort the agricultural land market and could have significant economic implications. They already resulted in reduced competition and lower growth of agricultural land prices. However, the expected impact of these regulations on the improvement of the agrarian structure in Poland is assessed as minor. The farm structure tends to be unfavorable in many regions of Poland due to historical, economic, and socio-cultural factors. In general, a much more favorable structure of farms is observed in regions, where relatively large farms were established based on former state-owned farms.

To conclude, the current regulations can slow down some processes observed in the agricultural land market in the last several years, i.e. dynamic increase in agricultural land prices and land concentration in some regions. However, the trends like a decrease in the size of agricultural land resources and agricultural land abandonment resulting from economic development and competition between agricultural and non-agricultural users will still be noticeable.

5. Reference list of legal regulations

All legal regulations in Poland are available through Internet System of Legal Acts in Poland: http://isap.sejm.gov.pl/isap.nsf/home.xsp

- Agricultural system
  - the last very important amendment: Ustawa z dnia 26 kwietnia 2019 r. o zmianie ustawy o kształtowaniu ustroju rolnego oraz niektórych innych ustaw (the Act of 26 April 2019 on Changing the Act on Shaping the Agricultural System and Amendments to Certain Acts) (Journal of Laws 2019, item 1080)

- State land
  o Ustawa z dnia 14 kwietnia 2016 r. o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw (Journal of Laws 2016, item 464) (the Act of 14 April 2016 on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury and Amendments to Certain Acts) (1 change, last change in 2017)

• Purchase by Foreigners
  o Ustawa z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców (the Act of 24 March 1920 on the Purchase of Real Property by Foreigners) (Journal of Laws 1920, No. 31, item 178) (25 changes, last change in 2016)

6. List of supporting materials (see the project archive)

• Statistical Yearbooks of Agriculture

• Reports on activity of the state agencies responsible of management of state agricultural land
  o for the years 2016-2019 available at: https://bip.kowr.gov.pl/raporty-z-dzialalnosci

• Reports on agricultural land market

• Rural Poland. The reports on the state of rural areas (var. vol.)
  o published by the Foundation of the Development of Polish Agriculture every second year since 2000, recent reports available at https://www.fdpa.org.pl
Agricultural Law


References:


IERiGŻ (var. vol.). *Rynek ziemi rolniczej – stan i perspektywy*. Warsaw: IERiGŻ.


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR ROMANIA

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Agricultural land market regulations in Romania around 2020

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1. Introduction

In 2016 with 13.5 million ha as used agricultural area (UAA) Romania is the 5th of EU member countries after France (29 million ha), Spain (23.6 million ha), Germany (16.7 million ha) and Poland (14.5 million ha), but its agriculture is insufficiently mechanized, being affected by the fragmentation of agricultural property, lack of capital and irrigation systems, as well as lack of professional education of agricultural workers.

In Romania 64% from UAA (8.9 million ha) is arable land and 66.7 from it is cultivated with cereals. In 2016, 32% from EU farms there was in Romania and 3.1 million farms (91.8%) from it exploited areas less than 5 ha. The situation is reversed in the case of farms which owned at least 50 ha and exploited 51.1% from UAA [1].

The number of small farms in the category 5 - 10 ha increased from 182,440, as they were in 2010, to 194,200 in 2016. The same situation is registered in the category of farms operating an area of 10-20 ha, in 2010 there were 43,610, and in 2016 their number increased to 50,120 and with farms in the category 20-30 ha, their number increased from 9,730 in 2010 to 10,990 in 2016. However, there was a decrease in the number of farms in the category 30-50 ha, of from 8,210 in 2010 to 7,530 in 2016 and those with an agricultural area used from 50 hectares to 100 hectares, from 7,480 in 2010 to 6,010 in 2016 [2] [3]. A decrease was also recorded on farms with more than 100 hectares, from 13,730, as many as in 2010, to 12,310 in 2016.

From an economic perspective, standard output (SO) in the category <4,000 euros, in 2010, there were 3,418,930 peasant households, and in 2016, their number decreased to 2,895,780; over 8,000 euros SO, in 2010, in our country there were 313,000 farms, and in 2016, their number increased to 340,280; over 15,000 euros SO there were 78,460 farms in 2010, and in 2016 their number increased to 114,160 [3]

It should be noted that the number of farms with an output standard (SO) of more than 25,000 euros has increased from 22,240 in 2010 to 35,630 in 2016 and those with an OS of more than 50,000 euros, from 13,370 in 2010 to 19,490 in 2016.

For large farms, the number of those with more than 100,000 euros SO, increased from 6,450 in 2010 to 7,730 in 2016, of those with more than 250,000 euros SO, from 4,120, in 2010 to 5,180 in 2016, and the number of farms that have over 500,000 euros SO, from 1,450, as they were in 2010, to 2,180, in 2016. The number of farms that have 500,000 euros SO or above this amount also increased, from 1,010 in 2010 to 1,610 in 2016.
2. Key land regulations affecting land markets

Throughout its modern and contemporary history, Romania has known periods in which the sale of agricultural land has been without any restrictions (under the regulation of the Civil Code of 1864), but also periods in which it has been controlled by the state (since 1947) and even (since 1974), periods in which it was gradually liberalized again (in 1991, 1998, 2005 and, more specifically, in 2011 and 2014, under the new Civil Code) [4], so that there is now a limiting and bureaucratizing the legal movement of agricultural land (most recently, in 2020).

- **Law no. 18/1991** (Land Act) with subsequent amendments, where at Art. 4 (1) stipulates that the lands may be subject to private property rights or other real rights, having as holders natural or legal persons, or may belong public domain or private domain and at Art. 8 (3) establishes that the property right is made, upon request, by issuing a title deed within a minimum area of 0.5 ha for each person entitled, according to this law, and a maximum of 10 ha of family, in arable equivalent. The last amendment to the law was made by Law 87/2020 [5]

- **Law no. 268/2001** on the privatization of companies that manage public and private land owned by the state for agricultural purposes and the establishment of the State Domains Agency with subsequent amendments. The law regulates:
  a) the legal framework regarding the privatization of the agricultural commercial companies that hold for exploitation lands with agricultural destination, which had been constituted through the reorganization of the state economic units as autonomous companies or commercial companies
  b) the legal status of the State Domains Agency
  c) the administration of the commercial companies and the regime of concession or lease of the public and private lands of the state property for their exploitation.

- **Law no. 312/2005** on the acquisition of the right of private property over land by foreign citizens and stateless persons, as well as by foreign legal entities. Although Article 9 states that the law will enter into force on the date of accession to the European Union, more precisely on 1 January 2007. However, if a citizen of another EU member state wished to buy land in Romania, he would have encountered difficulties and his approach would have depended a lot on the law firm and the notary office he would have contacted, also because the same Law 312/2005 was interpreted differently by officials, lawyers and notaries.

However, the law is much clearer regarding the possibility of acquiring land by non-EU citizens, for which it is specified, without right of interpretation, that they can buy buildable land in Romania only from 2012, more precisely five years after the law enters force, and agricultural land for farms only since 2014, which means over seven years.
• **Law no. 287/2009** (CIVIL CODE of July 17, 2009) with subsequent amendments [5]:

a) Art. 1836 to Art. 1850 are regulated the categories of goods that can be leased; duration of lease of agricultural goods; the form, content, registration and expenses related to the lease; changing the category of use of the leased land; insurance of leased goods; reduction of the rent established in money in case of crop loss; the executory character of the lease contract; assignment of the lease; prohibition of subletting and special cases of termination of the lease.

b) **Art. 1849** established that the lessee has the right of preemption regarding the leased agricultural goods, which is exercised according to general rules established at Art. 1730-1739.

• **Law no. 17/2014** on some measures to regulate the sale-purchase of agricultural land located outside the built-up area [5] (Romania land market liberalization).

a) The purposes of this law was established at Art. 1:

1. ensuring food security,
2. protecting national interests and exploiting natural resources according with the national interest;
3. establishing some measures regarding the regulation of the sale-purchase of the agricultural lands located outside the build-up area;
4. merging agricultural lands in order to consolidation agricultural farms and establishing economically viable farms.

b) The provisions of this law apply to Romanian citizens, respectively to the citizens of a state member of the European Union or of the States party of the Agreement on the Economic European Area (EEA) or the Swiss Confederation, as well as stateless persons with the domicile in Romania, in a member state of EU, in a state that is a party of EEA or in the Swiss Confederation, as well as legal entities having Romanian nationality, respectively of a Member State of EU and the States party of EEAs or of Swiss Confederation. Citizens and legal persons which belong to a Member State of EU or the states that are party of the EEA or the Swiss Confederation may hold agricultural land in Romania under conditions of reciprocity.

c) The citizen of a third state and the stateless person domiciled in a third state, as well as the persons having the nationality of a third state can acquire the right of ownership over the agricultural land located outside the built-up area under the conditions regulated by international treaties, based on reciprocity, under the conditions of this law.

• **ORDER no. 719/2014** on the methodological norms for the application of title I of Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area and to amend Law no. 268/2001 on the privatization of companies that manage public and private land owned by the state for agricultural
purposes and the establishment of the State Domains Agency, in order to obtain the specific approval of the Ministry of Culture of 12.05.2014

- **Law no. 175/2020** on amending and supplementing **Law no. 17/2014** on some measures to regulate the sale-purchase of agricultural land located outside the built-up area and amending Law no. 268/2001 on the privatization of companies that manage public and private land the State for agricultural purposes and the establishment of the State Domains Agency (June 2020).

This normative act is in force since 13.10.2020 and its establish new rules for the sale of agricultural lands located outside the built-up area will be modified, aiming mainly at the right of preemption to the sale of agricultural lands. The main changes concern: the introduction of new categories of beneficiaries of the right of pre-emption and the extension of the term for exercising the right of preemption to 45 working days.

Also, the resale of out-of-town agricultural land before the end of an eight-year period from the purchase will entail the obligation to pay an additional tax, calculated according to the difference between the sale price and the purchase price.

### 3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

The administrative procedure for sell – buying agricultural land in Romania is regulated through the **ORDER of Ministry of Agriculture and Rural Development no. 719 of May 12, 2014** regarding the approval of the methodological norms for the Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area and to amend Law no. 268/2001 regarding the privatization of the commercial companies that hold in administration lands of public and private property of the state with agricultural destination and the establishment of the Agency of State Domains.

Law 175/2020 has brought important modifications to Law 17/2014 and Law 268/2001. Starting with October 13, 2020, when Law 175/2020 entered into force, dozens of complaints were registered at the Ministry of Agriculture from many farmers, landowners and town halls, who were already conducting transactions, and the deadline of 15 days for the elaboration of methodological norms by the Ministry of Agriculture was a very short one and already exceeded. As a consequence, the Minister of Agriculture will request the extension of the deadline for entry into force by Government Ordinance [6].

The institutions involved in sell/buy agricultural land are the following:

1. Ministry of Agricultural and Rural Development (central body and county branches)
2. Ministry of Defence
3. Ministry of Culture
4. Town or village mayor's office
5. National Agency for Cadastre and Real Estate Advertising (NACREA)
In order to sell an agricultural land located outside the built-up area, the seller must submit to the town hall the application for displaying the offer for sale and the offer for sale, together with the following documents:

a) copy of identity card/passport;
b) legalized or certified copy for compliance by the mayor's office of the deed of ownership over the land that is the object of the sale offer (legalized title deed);
c) the land book extract for information issued no later than 30 days before the display of the offer;
d) the cadastral plan extract of the building, in 1970 stereographic coordinate system;
e) declaration on the seller's own responsibility, made in authentic form by the notary or in attested form by the lawyer, from which to result the quality of owner of the land that is the object of the sale offer and the conformity with the original of the documents accompanying the sale offer;
f) the fiscal attestation certificate issued by the mayor's office;
g) declaration on the seller's own responsibility that he complied with the provisions regarding the agricultural lands located outside the built-up area, on which classified archaeological sites are located, if applicable;
h) copy of the ascertaining certificate from the Trade Register or of the act based on which it carries out its activity, in the case of the seller legal entity;
i) if the seller is represented by a third party, he must present the notarial power of attorney, respectively the delegation, the Shareholders General Meeting (SGM) decision, the decision of the sole shareholder, the decision of the representative of the association form, as the case may be, in original, and copies of the identity document.

3.1. The display of the sale offer

The City Hall will display, for 30 days, at the headquarters and/or on its website, the sale offer. During this period, those who have the right of pre-emption (priority over other potential buyers) can submit to the mayor's office the communication of acceptance of the sale offer, accompanied by a copy of an identity document, to individuals or certificate, in the case of legal entities such as and proof of pre-emptor status (co-ownership deed, lease, deed of ownership of neighbouring land). Those who have priority in the purchase can be: co-owners, lessees, owners of neighbouring lands that have a common border with the land put up for sale and the Romanian State, through the State Domains Agency.

The seller decides to whom he wants to sell the land and will communicate to the mayor's office the name of the chosen buyer. The City Hall, in turn, has a period of three days to send the file to the administrative structures of the Ministry of Agriculture and Rural Development, which will issue the final opinion or the negative opinion on the sale.
In the event that none of the pre-emptors exercises the right to acquire the land, the notice will be replaced by a certificate issued by the mayor's office within which the land is located, and the owner will be able to sell the land freely. However, the price at which the land is sold must be at least equal to that set out in the initial offer to sell and comply with the conditions set out therein. If the offer does not provide for any other conditions of sale than the price, the land may be sold under any conditions, except for the reduction of the price.

3.2. The sale/purchase contract
At the conclusion of the contract for the sale of the land, the public notary will request from the seller the obligatory presentation of the following documents:

1. the approval issued by the mayor's office, by which it is communicated whether or not the approval of the Ministry of Culture is needed / the approval issued by this ministry;
2. the final version issued by the central structure or territorial structures of the Ministry of Agriculture and Rural Development;
3. the certificate issued by the mayor's office if the sale is free, accompanied by a copy of the offer of sale certified for conformity by the mayor's office officials;
4. the specific approval issued by the Ministry of National Defence for agricultural lands located outside the built-up area at a depth of 30 km from the state border and the Black Sea coast, as well as those located at a distance of up to 2,400 m from the special objectives.

3.3 Registration of the agricultural lands
In order to register in the land book the property right acquired on the basis of a court decision, which takes the place of a sale-purchase contract or on the basis of a sale-purchase contract authenticated by the notary public, the application for registration will be accompanied by a legalized copy the following documents:

1. the approval issued by the Ministry of National Defence (if it's applicable);
2. the notice of the mayor's office, by which it inform if obtained the approval of the Ministry of Culture, necessary in the land sell/buy process;
3. the final notice issued by the Ministry of Agriculture and Rural Development;
4. the pre-contract concluded previous to the pronouncement of the court decision;
5. the authentic statement on the owner's own responsibility that the Ministry of Defence and/or the Ministry of Culture has not answered within 20 working days;
6. the certificate issued by the mayor's office, if the sale of the land is free, accompanied by a copy of the sale offer, certified for compliance by the mayor's office officials.

It is necessary to mention that above documents there are cited in the court decision that takes the place of the sale-purchase contract or in the sale-purchase contract authenticated
by the notary, it is not necessary to attach them to the application. The Documents unpresented, entails the rejection of the registration in the land book of the property right.

3.4 A more complex sale/buy procedure with Law 175/2020

Law 175/2020 will provide a complex procedure for the sale of agricultural lands located outside the built-up area by extending the categories of pre-emptors and by increasing the procedural deadlines.

A complex sale procedure means that many state institutions with very complicated institutional cooperation rules are involved in agricultural land sales cycle with grows of risks from buyer part.

As a consequence of the amendment of Law 17/2004 by Law 175/2020, which entered into force on 13.10. 2020 we have:

a) The number of classes of pre-emptors increases from four to seven, as follows:

1. co-owners, first degree relatives, spouses, relatives and relatives up to and including the third degree
2. owners of agricultural investments for orchards, vines, hops, exclusively private irrigation and / or tenants who are at least 5 years old in Romania,
3. owners and / or tenants of agricultural lands adjacent to the land subject to sale, preferably with the largest common border / young farmer / from the same administrative-territorial unit
4. young farmers (up to 40 years old), with domicile or residence in Romania for at least 1 year, priority who carry out animal husbandry activities
5. Academy of Agricultural and Forestry Sciences «Gheorghe Ionescu-Şișești ” and the research-development units in the fields of agriculture, forestry and food industry,
6. natural persons with domicile / residence located in the administrative-territorial units where the land is located or in neighbouring administrative-territorial units,
7. the Romanian state, through the State Domains Agency.

b) More complex procedure. If no pre-emptor will show his intention to buy, the sale will not be free, but may be made within 30 days to certain potential specialized buyers:

1. individuals domiciled or residing in Romania in last 5 years, during which it has carried out agricultural activities in Romania and is registered by the Romanian tax authorities (in other words, to individual farmers)

2. legal entities with registered office and / or secondary headquarters in Romania in the last 5 years, during which he carried out agricultural activities in Romania in proportion of at least 75% of the total income, with the partner / shareholder who has control, with domicile or residence in Romania in the last 5 years with other words, to companies in the field of agriculture.
If the potential buyer does not meet the mentioned conditions, the Ministry of Agriculture and Rural Development will issue a negative approval.

If in this period of 30 days, after the 45 working days of pre-emption, none of the potential buyers will meet the mentioned conditions, the sale will be free.

The death of the seller or of the pre-emptor before the conclusion of the contract of sale or before the pronouncement of the judgment taking the place of the contract of sale entails the annulment of the final opinion.

c) **Longer terms.** The sale offer will continue to be registered at the mayor's office, which will have the obligation to notify the registration of the sale offer to the holders of the pre-emption right, at their domicile, residence or, as the case may be, at their headquarters, within 10 working days. Although it delays the procedure, it guarantees a better protection of the pre-emptors’ rights compared to the simple display of the sale offer at the town hall and on the website. The sale offers will also be published on the website of the Ministry of Agriculture and Rural Development.

The pre-emption period will increase to 45 working days and will start to run from the receipt of the notification from the mayor's office, during which time the seller can withdraw the offer.

In the next 30 consecutive days of the pre-emption term, the sale can be made only to potential specialized buyers, after which the sale can be made to anyone, based on the minutes of completion of the procedure issued by the mayor's office.

d) **New taxes.** In case of alienation of agricultural land less than 8 years after purchase or in case of alienation of the control package of companies that have at least 25% of active agricultural land located outside the built-up area, the difference between the sale price and the purchase price, based on the grid notaries of that period, will be taxed at 80%.

e) **Obligation to keep the destination of the land.** The owners of agricultural lands located outside the built-up area have the obligation to use them exclusively in order to carry out agricultural activities from the date of purchase, and if there are agricultural investments on agricultural land for orchards, vines, hops and exclusively private irrigation, will preserve the agricultural destination of these investments. This provision is not correlated with the possibility of changing the category of use of arable land located outside the built-up area provided by art. 78 of Law no. 18/1991.

f) **Higher sanctions.** The alienation made with the non-observance of the preemption right will be struck by absolute nullity, and the deed will be a contravention and will be sanctioned with a fine from 100,000 lei(20,500 euros) to 200,000 lei(41,000 euros).

The objectives pursued by the legislator of Law no. 175/2020, according to the explanatory memorandum, are:

1. stimulating young farmers
2. expanding and consolidating the agricultural holdings of existing agricultural producers

3. ensuring the sustainable development of Romania agriculture, in general.

The dynamics of the agricultural land market will prove whether these objectives will be achieved through the amendments brought by the Law no. 175/2020 of the civil circuit of agricultural lands outside the built-up area, but some observations are required at this moment when the law entered into force.

First of all sellers (especially small ones) will be affected by the limitation of the choice of the potential buyer, because will need to go through a more complex and longer pre-emption procedure that will has as consequence a limitation of demand, which will lead to a lower price on the agricultural land market.

The new taxes on the sale of land less than 8 years after the acquisition may has a negative influence the ability of small farmers to adapt to market situations, who will no longer be able to use their own land as a source of financing.

The obligation to maintain the agricultural destination of the lands is not correlated with the legal provisions in force regarding the removal of the lands from the agricultural circuit and may affect the producers of renewable energy (eolian farms) or industrial parks.

Regarding this last topic we can mention another inadvertence between Law 175/2020 and Law 238/2004 (Petroleum Law) which offers the holders of oil agreements the right of use for the lands included in the oil perimeter related to the agreement. Thus, the owner negotiates with the owner of the land, and, following an agreement with the latter, the owner can either buy or rent the land for a longer period, the landowner having the opportunity to negotiate and receive the price he consider correct [7]. Thus, the holder carries out oil operations, in order to use the country's basement, to supply energy in the interest of the Romanian State.

3.5 A preliminary assessment of the impact on the agricultural land market of the entry into force of Law 175/2020

The analysis of the regulation text shows that already existing administrative procedures are multiplied by new procedures of a bureaucratic nature. By example, for those involved in the sale / purchase process must take into account the fact that the life cycle of the procedure includes two cumulative terms, one of 45 days and one of 30 days resulting from the exercise of the right of pre-emption.

The law also stipulates that the direct or indirect sale of agricultural land located outside the built-up area, carried out before the end of an 8-year period from the acquisition, will entail the obligation for the seller to pay an 80% tax calculated on the difference between the sale price and the purchase price. In case of sale of the control package of the companies with agricultural lands outside the built-up area representing more than 25% of the assets, the
80% tax will be calculated from the difference in value of the respective lands calculated based on the notaries grid between the acquisition of the land and the alienation. control.

Obviously, such a provision will discourage agricultural land transactions and there will be a tendency to transfer the additional tax to the sale price. A natural consequence of this premise is that the prices for agricultural land located outside the built-up area will suffer a substantial increase. The future dynamics of the market remain to confirm or refute this hypothesis.

Among small farmers there is a financing practice which consists in selling plots of land in less favorable agricultural years in order to cover expenses during these years and to buy back / buy other plots from the profit of favorable agricultural years.

We must mention that since the entry into force of Law 17/2014 till beginning 2019, 688,999 offers for sale were registered, with a related land area of 757,700.49 ha.

Over taxation in the case of the sale of land owned for less than 8 years will discourage this practice, leaving the small farmer without an easy financing mechanism, especially where bank loans are extremely difficult to access.

3.6 Some other aspects regarding the entry into force of Law 175/2020
The Minister of Agriculture declared on 16.10.2020 that the text of Law 175/2020 on the sale of agricultural land, which entered into force on 13.10.2020, must be amended so that the law becomes applicable and “does very clear for those for whom was done “. He claims that the way the normative act was drafted confuses all those with ongoing transactions because it stipulates that the requests registered before the entry into force of the legislative changes should be solved according to the new procedures, not only the requests submitted after the law.

The Ministry of Agriculture works on the methodological norms of application, but the term of 15 days provided by law is a very short one for their completion so that the law is also applicable. Under these conditions, notaries haven’t a methodology to approve sale-purchase transactions of agricultural land and therefore the market was blocked. To unlock the agricultural land market, the Government adopted the Government Emergency Ordinance 203/23.november.2020.

GEO 203/2020 provides the rules derogating from Law no. 175/2020, which apply to the sale of out-of-town agricultural lands that are the object of the requests that ask to display of the sale offer, registered until 13.10.2020 inclusive. The main regulations are the following:

- the verification of the requests for displaying the sale offers together with the afferent documentation, as well as of the acceptance of offers together with the documents justifying the preemptor quality will be done mainly according to the rules of Law 17/2014 applicable before the entry into force of the amendments introduced by Law 175/2020;
• the issuance of final approvals of documents, no later than 10 days after the entry into force of GEO 203/2020;
• final notices and clearance certificates are valid from the date of communication to the seller until 31.01.2021.


Therefore, the sale of out-of-town agricultural land for which applications for the display of the sale offer have been initiated by 13.10.2020, must be completed by 31.01.2021, otherwise, the sellers will be obliged to resume the procedure of the agricultural land sale according to the new conditions established by Law 175/2020.

In a study conducted by Deloitte Romania and published in September 2020, the company's consultants claimed that the new law for the sale of agricultural land makes buying difficult for some investors and extremely difficult for those in non-agricultural fields who intend to start or expand certain investments. Among the most affected are renewable energy producers who, after the entry into force of the law, will have difficulty in acquiring or securing in any other legal way land located outside the city for the development of energy projects. As a direct consequence, Romania may not be able to meet its targets for European institutions for renewable energy production.

4. Implementation and enforcement issues of land regulations

In October 2017, the European Commission issued a set of guidelines [8] to help Member States protect their agricultural land from unorthodox transactions such as excessive price speculation and property concentration.

Romania was particularly interested in these measures, being among the countries very affected by these two phenomena, according to a broad current of opinion from society. At the beginning of 2018, the draft of the current Law 175/2020, in force from October 13, 2020, regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area, was submitted to the Parliament.

According to the recommendations of the European Commission, Member States may decide on measures to control the sale of agricultural land, imposing restrictions deemed acceptable by the Court of Justice of the European Union:

• prior authorizations granted by national authorities for the purchase of land;
• limiting the size of land that can be purchased;
• introduction of the right of pre-emption for certain categories of buyers (local farmers, neighbors, co-owners and the state)
• state intervention prices

Law 175/2020 provides for the increase of the number of preemptor categories from four (Law 17/2014) to seven. The preemption-based procedure has been recommended by the European Commission to secure land transactions in the Member States, but this increase
entails an increase in the complexity of the buying / selling procedure, which can make it inoperable.

Same recommendations mention that discriminatory restrictions, such as residence preconditions, are not accepted. **Disproportionate restrictions** on cross-border investment are also illegal. The following are considered to be disproportionate, based on case law:

1. imposing the condition that the buyer of the land himself take care of the agricultural exploitation
2. the ban on companies buying land
3. the obligation to have qualifications in the agricultural field as a precondition for the acquisition of land.

Law 175/2020 include (3) as the condition to own agricultural land. Legislative provisions that directly or indirectly oblige citizens to choose certain occupations and remain captive in a professional context without being able to move from one occupation to another seriously undermine fundamental human rights.

In this context, we mention the case **C-452/01 / Mrs. Ospelt, CJEU** [9] which addressed the issue of restrictions in the acquisition of agricultural land, imposed in national legislation, in order to keep that land in the agricultural circuit. In the national law of the Member State, the purchase of agricultural land was conditioned by the buyer's commitment to work it directly. The buyer received a negative opinion when purchasing the agricultural land, although he (a legal entity) agreed to continue the existing lease agreements. [10]

The **CJEU** appreciated that the obligation to work the agricultural land directly, as a condition to be able to buy the land, is **disproportionate**, because the possibility of renting the lands to the farmers with reduced resources who cannot acquire agricultural land is limited. A less restrictive option to keep the agricultural destination of the land could have been that of forcing the land buyer to keep it in the agricultural circuit.

In 2014, a report by the Transnational Institute, for the European Commission, states that approximately 40%, respectively over 5 million ha of agricultural land in Romania, became the property of some EU or non-EU citizens [11]. A former Minister of Agriculture stated in relation to the report of the Transnational Institute that the data presented are not correct, being about one million hectares. At the same time, the employers in the field estimated at 2.5 million hectares the area owned by foreigners, in one form or another.

The surface of agricultural land exploited by foreign individuals and legal entities was 422,000 hectares [12], at the end of 2018, being registered 793 people who used these lands, according to data provided by the Ministry of Agriculture and Rural Development (MADR) at the request of the National Press Agency AGERPRESS. According to the countries where they come from, we have: from Italy - 194, Germany - 80, France - 33, Austria - 31, Holland - 28, Spain - 23, Belgium - 17, Denmark - 16 and Greece - 10 people, etc. From its, the first ten foreign investors in agricultural areas in Romania own approximately 180,000 hectares, according to the Agency for Payments and Intervention in Agriculture (APIA) [13]. Among
the top ten owners of agricultural land in Romania is the company Maria Trading, which operates the largest slaughterhouse on the local market, Agro Chirnogi and Delta-Rom Agriculture. These companies are controlled by foreign investors. Maria Trading, which owns 12,000 hectares of agricultural land, and Agro Chinogi (10,000 hectares) own a group of Lebanese businessmen, while Delta-Rom Agriculture, which owns more than 10,000 hectares of land, is controlled by an offshore in Luxembourg.

Belong to our reality that “the magnitude and speed of land concentration are alarming, especially in countries such as Romania, Hungary and Bulgaria. But even in Germany, Italy and Spain these problems are not unknown”, is mentioned in a European Parliament report from 2017. Regarding Romania the evaluation of EU Parliament is correct, the concentration of agricultural land is higher today than in 1930. 0.4% of farms now own 50% of the agricultural area, while in 1930 they owned only 28%. [14].

On the other hand, as of December 31, 2017, foreign direct investment in agriculture, forestry and fishing had a share of 3% of total foreign direct investment in Romania, according to the National Bank of Romania, being about 2272 million euros.

The provisions of Law 175/2020 concern only the transactions of sale / purchase of out-of-town agricultural land, without referring to other types of transactions such as mergers, splits, contributions to the share capital, share holders agreement, etc. Managers of large companies operating in agriculture, will resort to these types of complex transactions that are currently less used in the agricultural sector. For the same reasons, it is considered [15] that Law 175/2020 will not significantly affect foreign investments or large transactions. However, the complexity of transactions and the need for specialized advice will increase.

5. Other land-related measures not discussed elsewhere

The rise of populist tendencies in the politics of many EU countries induces a distorted approach to the economic phenomena typical of free markets through unorthodox methods such as interventionism, protectionism, restricting the free movement of capital, etc. The agricultural land market is just one example. The channel through which all these distortions are transmitted to the market is that of the economic legislation of the countries or groups of countries that adopt total or partial economic populism.

Basically, a regulatory risk is created and induced in the market and affects the normal functioning of the markets. This risk is not always insurable, being a problem, which at the moment is a scientific one and not an economic one.

LRI (Land Regulatory Index) [16] can be a measure of the inadequacy of agricultural land legislation to free market requirements and implemented so that an InsurTech product can be used as a form of regulatory risk coverage.
6. Reference list of legal regulations

- Law no. 18/1991 (land fund law) with subsequent amendments
- Law no. 268/2001 on the privatization of companies that manage public and private land owned by the state for agricultural purposes and the establishment of the State Domains Agency with subsequent amendments
- Law no. 312/2005 on the acquisition of the right of private property over land by foreign citizens and stateless persons, as well as by foreign legal entities
- Law no. 287/2009 (CIVIL CODE of July 17, 2009) with subsequent amendments
- Law no. 17/2014 on some measures to regulate the sale-purchase of agricultural land located outside the built-up area (Romania land market liberalization).
- ORDER of Ministry of Agriculture and Rural Development no. 719 of May 12, 2014 regarding the approval of the methodological norms for the Law no. 17/2014 regarding some measures to regulate the sale-purchase of agricultural lands located outside the built-up area and to amend Law no. 268/2001 regarding the privatization of the commercial companies that hold in administration lands of public and private property of the state with agricultural destination and the establishment of the Agency of State Domains. Law 175/2020 which will be in force starting with 14.10.2020 will bring important modifications to Law 17/2014 and Law 268/2001
- Law no. 175/2020 on amending and supplementing Law no. 17/2014 on some measures to regulate the sale-purchase of agricultural land located outside the built-up area and amending Law no. 268/2001 on the privatization of companies that manage public and private land the State for agricultural purposes and the establishment of the State Domains Agency (June 2020)
- Legislative Portal of the Ministry of Justice from Romania – http://legislatie.just.ro/

7. List of supporting materials (available from the project archive)


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR SLOVAKIA

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Agricultural land market regulations in Slovakia around 2020

Ján Pokrivčák and Anna Bandlerová

1. Introduction

Of the total area of Slovakia of 49,035 km², non-agricultural land comprises 51.4% (25 204 km²) and agricultural land 48.6% (23 831 km²). Forests cover 41.3% of the territory of Slovakia, which amounts to 20,251 km² (Eurostat, ).

Total agricultural area in Slovakia is 2,39 mil. ha. Of which arable land comprises 1,41 mil ha (59% of agricultural land), permanent grassland and meadows 0,86 mil ha (33%), orchards 0,02 mil ha, and vineyards 0.03 mil ha. Areas with natural constraints cover 52% of agricultural land which is 1.24 mil ha (Eurostat).

In 2017 4,4 mil. people in Slovakia owned agricultural land. On average a land owner owned 0.9 ha of agricultural land. An average size of agricultural parcel reached 0.5 ha and the number of parcels amounted to 8.4 million. A land parcel was owned on average by 12 persons. There were 100.7 mil. agricultural land ownership relationships in Slovakia in 2017 (MARD SR, 2019).

The extreme land fragmentation causes significant transaction costs at the land markets in Slovakia.

About 90% of land is rented. Rental market therefore dominates agricultural land market in Slovakia. Farms own only 10% of the land they cultivate. Some farms use financial markets to invest in land ownership, to purchase land they cultivate. Farms rent land mainly from natural persons (more than 50 percent), from the Slovak Land Fund, own members of agricultural cooperatives or from other institutions (e.g. Roman Catholic Church). About 60 percent of land was rented for the period of 5-10 years, 22 percent of land on 10 to 15 years and remaining 18% for the period longer than 15 years.

In Slovakia, about 77,5 percent of agricultural land is privately owned, 16,7 percent is land by unknown owners and 5,8 percent is state land. Land of unknown owners and state land is managed by the state-owned Slovak Land Fund. It means that more than 20% of agricultural land is under the state control.

Based on the analysis of data obtained from 12 representative districts in Slovakia the average price of agricultural land was 8 700 EUR per ha in year 2017 while price of arable land was 12 100 EUR per ha (VUEPP, 2018). The price of permanent pastures was on average 4 600 EUR per ha. Market price of arable land was about seven times higher than the administrative price (value of agricultural land) while market price of grassland was eleven times higher than the administrative price.
Average rental price in twelve representative districts of Slovakia was 50 EUR per ha while average rent for the land managed by the state-owned Slovak Land Fund was 25 EUR per ha. The highest average rental price per cadaster area was 221 EUR per ha (Dömötörévá, S. and Repka, M, 2020).

Land tax is paid mainly by land users which is agreed in rental agreements. Only in 5 percent of cases land tax is paid by land owners. Average land tax reached 20 EUR per ha. The rent is normally fixed for the whole duration of the rental contract and it is independent from the official land price.

Agricultural land market is strongly affected by the structure of farms in Slovakia. Of 25 660 farms, 20 400 are smaller than 20 hectares, 2860 farms range from 20 to 100 hectares and 2 400 farms are larger than 100 hectares. Farms bigger than 100 hectares are dominant in Slovakia and they cultivate about 90% of all agricultural land (Figure 1). The share of farms with the size below 20 hectares is about 3.5% of total agricultural land. Remaining 6.5% of land is cultivated by farms which size ranges from 20 to 100 hectares.

*Figure 5. Distribution of UAA and number farms subject to public support under the CAP based on size in ha (2016)*

Source: Agricultural paying agency in Slovakia, 2016

*Table 1. Structure of farms in Slovakia by hectares*

<table>
<thead>
<tr>
<th>Country</th>
<th>0 ha</th>
<th>Less than 2 ha</th>
<th>From 2 to 4.9 ha</th>
<th>From 5 to 9.9 ha</th>
<th>From 10 to 19.9 ha</th>
<th>From 20 to 29.9 ha</th>
<th>From 30 to 49.9 ha</th>
<th>From 50 to 99.9 ha</th>
<th>100 ha and over</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-28</td>
<td>2.09</td>
<td>42.05</td>
<td>21.47</td>
<td>12.08</td>
<td>8.28</td>
<td>3.46</td>
<td>3.63</td>
<td>3.64</td>
<td>3.30</td>
</tr>
</tbody>
</table>

Source: Eurostat
The average size of the farm is 80.7 ha, which is five times higher than the EU average farm size of 16.6 ha (EU Statistical Factsheet Slovakia, 2018). In Slovakia there is higher proportion of large farms above 100 ha than in the rest of the EU. Slovakia has also 6.82% of livestock farms with 0 ha while the EU average is 2.09.

The farm structure affects land prices and rents as many large farms have dominant positions in local land markets (Ciaian, P., and Swinnen, J., 2006).

2. Key land regulations affecting land markets

2.1 Land Consolidation

After the fall of socialist system, the importance of private land ownership and land consolidation was stressed by Act 229/1991 Coll. which was passed in 1991. Legal and technical conditions for land consolidation were established by Act 330/1991 Coll. on land consolidation, land ownership, land offices, land fund and land societies.

The process of land consolidation according to the Act 330/1991 Coll. faced difficulties because of various problems, including proving the land ownership due to lack of appropriate evidence on land transfers and use during socialism when with proving the land ownership due to lack of appropriate evidence on land transfers and use during socialism. Government Regulation 869 from year 1993 passed the Conception of Land Consolidation in the Slovak Republic while Regulations 572 from 1994 and 1023 from year 2000 established organizational rules for land consolidation process.

Regulation 882 from year 2009 updated the Conception of Land Consolidation in the Slovak Republic and stressed the importance of speeding up the land consolidation process. In 2019 the Ministry of Agriculture and Rural Development of the Slovak Republic passed a document entitled Proposed Measures on Rapid Conduct of Land Consolidation which summarizes the history of land consolidation process in Slovakia, reasons behind land consolidation, costs and benefits of land consolidation and proposes further steps to complete land consolidation processes in Slovakia either within 20 or 30 years. Land consolidation is high on the agenda of the current government (year 2020), which plans to use RDP money, national budget resources as well as resources from Next Generation EU scheme to complete it (MARD SR, 2020).

In 1995 act no. 180/1995 Coll. on some measures for consolidation of landownership was adopted. It includes the legal rules on minimum size of agricultural land plots that are situated outside the built-up areas of municipalities. The act contains measures to prevent further land fragmentation. The owner has to pay a fee equal to 10 percent of the value of agricultural land when the new land plot created by subdividing the existing one is smaller than 2 ha but greater than 0.5 ha. The fee equal to 20 percent of the agricultural land value has to be paid when the newly created has a size smaller than 5 ha but greater than 2 ha. The
creation of land plots smaller than 2 000 m² is not allowed by the law. However, there are some exemptions in the act.

By now land (year 2020) consolidation has been achieved at 12 percent of the agricultural land in Slovakia. Since 2003 land consolidation has been co-financed from the Rural Development Programs of Slovakia.

2.2 Land Renting

About 90 percent of agricultural land is rented in Slovakia. Land renting is governed by the Act 504/2003 Coll. on renting of agricultural land, agricultural enterprise and forest land. In general, renting of agricultural land is ruled by the Civil Code. Specifics of renting of agricultural land are comprised in Act no 504/2003 Coll. The act distinguishes two cases: (1) renting of agricultural land for agricultural purposes and (2) renting of agricultural land for agricultural purposes in order to conduct business by enterprises. While former case deals with renting of agricultural land by natural persons which rent in land to produce agricultural commodities for self-consumption within their household the latter case deals with renting of agricultural land for production for the market by both natural and legal persons.

The Act 504/2003 Coll. and its amendments stipulates minimum duration of rental contract of agricultural land to conduct business by enterprises to be 5 years and maximum of 15 years. It used to be 25 years until year 2019.

In case of renting of agricultural land for conducting business by agricultural enterprise where the rental contract is concluded for infinite time period, it can be terminated with the effect from November 1st of the current year with five-year advance notice period.

The notification has to be conducted in writing in case of renting of agricultural land for conducting business by agricultural enterprise. However, tental contract can be changed when the ownership of the land is changed.

The law states that the minimum rent is 1% of the land value. The land values are established by the government decree No. 38/2005 and its amendments. The value of the land is based on its agronomical quality. In practice, the market rent is higher than the minimum set by the law. In case the landlord is the Slovak Land Fund, the internal rules of the Slovak Land Fund set the minimum rent to be 2.20% of the land value in 2014. The market rent is still about double the 2.2% of land value. In 2020 the Ministry of Agriculture and Rural Development Programs of Slovakia.

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84The Slovak Land Fund is a legal entity established by the law for administration of state land and land of the unknown owners. The land of unknown owners is the land without documentation of the land ownership due to missing data on the landlords, which was lost or destroyed during the history. The lands of unknown owners together with the state land occupy about one fourth of the total agricultural land in Slovakia.

85In compliance with the Slovak Land Fund General Director order, until 2014 the lease required by the Slovak Land Fund from the lessee was 1.5% of the land price determined according to Bonited Soil-Ecological Units. In 2014 the lease payment increased on 2.20% of this price and since 2015 it is yearly modified by the year-on-year average inflation rate published by the Statistical Office of the Slovak Republic for previous year. These modifications are aimed to approximate the lease payment of the Slovak Land Fund land towards the market lease payments.
Development declared that the Slovak Land Fund will be charging the usual rent – the average rent in the cadastre area where the plot is located. The rent for land under agricultural buildings and yards rented out by the Slovak Land Fund is at least twice the usual rent in the cadastre area.

The usual rent is defined by the law as the average rent payment calculated annually using the data from the register of the land rental contracts in the particular cadastre area. This register was created by the amendment of the law on renting of agricultural land which went into effect by 1st May 2018.

The landlords in Slovakia are mostly natural persons, followed by churches, the Slovak Land Fund, land associations, etc. If agricultural land plot is co-owned by more persons, the rental contract must be agreed by owners that own majority of land plot. If the plot is co-owned by spouses, both spouses must agree with the renting of the plot.

The rental contract with duration more than 5 years in case of renting of agricultural land by enterprises for conducting business must be notified at the Land Office. There are, however, existing contracts with duration above 5 years that are not notified as they had been concluded prior to the effectiveness of the law.

The tenant has to pay rent annually for the previous year until October 1st, unless the parties agree otherwise. The rent should be explicitly stipulated in the land rental contract in the case land is rented for conduct of business by agricultural enterprise.

An early termination of the rental contract is possible under conditions stated by law or agreed upon in the signed contract. Termination of contract is realized in written form. A tenant is entitled to withdraw from the contract immediately after fulfilling the respective requirements. A landlord may withdraw from the contract only after notifying tenant in case of inadequate use of the rented land and when tenant does not pay rent in time.

Tenant has the right to extend the rental contract when certain preconditions are fulfilled.86

In accordance with provision of the § 13 par. 4 of the Law on renting of agricultural land, when land managed by the Slovak Land Fund in accordance with special rule is concerned, the tenant, duly and properly meeting his/her obligations from the rental contract, has the prior right for concluding of the new rental contract for the usual rent payment.

The amendment to the Act 504/2003 Coll. as of April 30, 2018 revoked the automatic extension of renting contract at the date of termination for all rental contracts, even to those signed before the effectiveness of the amendment. The amendment aims to enable young farmers or owners of land to access their land and to start agricultural activity. Furthermore, the amendment dealt with the problems arising from double declaration of direct payments

86 If the tenant, the earliest one year and the latest two months before the termination of the contract, delivers to the landlord, in a demonstrable manner, the proposal for a new rental contract and if, within two months from the date of proposal delivery, the landlord does not refuse this proposal for one of the reasons mentioned in paragraph 2 or because the proposed rent is not the usual amount, a rent relationship will arise under the terms of the contract proposal.
whereby the right to obtain direct payments were declared by both current user of the land and the third party with which the owner signed the new contract. Pre-emptive right to new rental contracts remains, however.

Land rent relations are usually established by the land rental contract. However, there are other possibilities to establish the land rent relations in Slovakia, i.e. *ex lege* and by the decision of the state bodies. The land lease *ex lege* is regulated by the Act 504 on agricultural renting and by the Act no. 229/1991 on legal regulation of land ownership and other agricultural property. By Act 229 if there is no contract between a land user and a landlord, the rental contract shall be established between them at the moment when the Act 229 comes into force. This date was June 24th, 1991. In year 1991 which was just 2 years after the collapse of socialism, there were many land users, i.e. cooperatives or state farms that used agricultural land without any formal contract, which was the legacy of socialism. According to this provision, the rental contract *ex lege* is applied only in the absence of an agreement between a land user and a landlord. From this point, the tenant had to start paying the rent, minimum of 1 percent of the land value.

The second legal rule related to the land renting *ex lege* determines that if the land user who uses the land without the rental contract, proves that he/she proposed to conclude the rental contract and the land owner did not refuse to conclude the contract within two months from the day of receiving the proposal, it is assumed, that the rental contract is established between the land user and the landlord for an indefinite period of time.

The Slovak law protects the user of agricultural land (tenant) more than the owner (landlord):
- the tenant has a pre-emptive right to enter into a new rental contract, the tenant has no pre-emptive right only if a) landlord will use the land to conduct business in agriculture, b) if landlord provides the land for renting to his/her close relative, c) if the tenant will be legal person of which the landlord is a member or associate, d) if the land will be used for non-agricultural use, e) if the ownership of the land was changed. The tenant has to propose new rental contract to the landlord to use his/her pre-emptive right not later than 2 months before the expiration of the rental contract. Landlord has 2 months to reject the proposal. Rejection can be done based only on 5 stated legal reasons as explained above or due to rent that is lower than the usual rent in the cadaster area. When proposal is not rejected the new rental contract is established with the same conditions as stated in the old contract, with new usual rent, however. Therefore, passive behavior of the landlord leads to the creation of the new rental contract. Not fulfilling the pre-emptive right of the tenant is sanctioned by invalidation of the new rental contract between the landlord and the third party with respect to the specific land parcel. Tenant has the pre-emptive right to new contract with the Slovak Land Fund too. This pre-emptive right cannot by applied if the Fund will rent the specific parcel to young farmer, small farm, a farm producing fruits or vegetables or breeding animals on more than half of the specific land parcel, farm that processes its own products and has already rented other land (this applies to maximum of 50 hectares rented from the Fund)
- the minimum duration of rental contract is 5 years in case land is rented by enterprise to conduct business and the contract cannot be terminated earlier, only by mutual agreement

- the tenant has a right to ask for the rent reduction if the revenues were not achieved due to a substantial change in economic conditions or if the prices of commodities declined by half.

2.3 Acquisition of land

After the accession into the EU, Slovakia has obtained a 7-year exemption for land purchase by non-Slovak EU citizens. This exemption was prolonged for additional 3 years, until 30th of April 2014. Since 1st July 2014, the Act No. 140/2014 Coll. on the acquisition of the ownership of agricultural land and amending and supplementing certain laws has come into the effect. This Act repealed the provision § 3 of the Act No. 229/1991 Coll. on regulation of ownership of land and other agricultural property according to which land ownership could not be transferred to non-residents unless otherwise provided by a separate act. Moreover, the Law no 140/2014 Coll. amended the provision § 19 (a) of the Act No. 202/1995 Coll. on Currency Law. This law currently allows non-residents to acquire the property right to agricultural land under the same conditions as residents. The Act No. 140/2014 Coll. introduced the new system of acquisition of the ownership right to the agricultural land.

Before the Law No. 140/2014 Coll. had entered into force individuals and legal entities could have concluded a contract on the transferring of the ownership right to land (e.g. purchase contract, donation contract, exchange contract, etc.) without any constraints. Act No. 140/2014 Coll. made acquisition of agricultural land more difficult.

In particular the owner of agricultural land, who wants to sell or donate his/her land is obliged to publish his/her offer in the register of published offers on the website of the Ministry of Agriculture and Rural Development of the Slovak Republic for at least a period of 15 days. At the same time, the owner is obliged to publish the offer on the bulletin board of the municipality, where agricultural land is located. The potential land acquirer is obliged to express the interest in the acquisition of ownership of the offered land both in the Register and at the municipality. The ownership of agricultural land may be acquired only by the person who has either permanent residence (in the case of natural person) or registered office (in the case of legal person) in the territory of Slovakia for at least 10 years and carries out agricultural production as a business for at least three years before the date of the conclusion of the contract on the transfer of ownership of agricultural land. The priority is given to purchasers in the subsequent order:

a) Person who lives or is registered in the municipality where the land is located

b) Person who lives or is registered in the municipality adjacent to the municipality in which the agricultural land is located, or
c) Regardless of the place of business.

Young farmers are not required to comply with the requirement of a three-year business conduct in agricultural production. However, they cannot rent out, sell or donate the acquired agricultural land for three years from acquiring the ownership of the agricultural land.

November 14, 2018 the Constitutional Court of the Slovak Republic decided that the Act No. 140/2014 is against the Constitution of the Slovak Republic and repealed some of the provisions of the law. At the EU level the European Commission initiated a process against Slovakia on the grounds that the law 140/2014 is against the Treaty on the Functioning of the EU. The decision of the Constitutional Court solved this problem too, however. Therefore, currently there are no restrictions on ownership of agricultural land by EU nationals and no priorities to acquire the agricultural land.

3. Land regulation institutions and practical solutions in surrounding environments of the land markets

3.1 Historical background

Current extreme fragmentation of agricultural land ownership in Slovakia stems historically from Hungarian customary law, which also applied in our territory and according to which land was inherited by all children equally and from 40 years of socialism when private property rights to land were delinked from the land use by socialist cooperatives and state farms. During socialism agricultural land ownership de facto did not exist though it existed de iure. During this period, usage relations to agricultural land took precedence over ownership of agricultural land.

Because of the historical reasons, an average agricultural land parcel is owned by many owners. Some of the owners are unknown, some owners are absentee and their address is not known either. In many instances, co-owners live in different cities or even countries and there are often legal conflicts between some of the co-owners. Some co-owners are deceased and their property is in the inheritance process. The outcome is that there is high uncertainty in rental contracts.

3.2 Land Cadastre

According to KPU (Chamber for Land Consolidation) and ZZKK (Labour Union of Geodesy and Cartography) there is an urgent need to continue working on land consolidation in Slovakia (Urban, J. et al., 2020). There are several reasons for that:

- Current cadastre data and maps are old and, in some instances, they date back to 100 years ago. Therefore, there are many errors in the cadastre.
The evidence in cadastre often differs from the reality in terrain which endangers in many cases the security of private land ownership rights.

Half of the territory of Slovakia uses old maps which suffer from low technical quality, and insufficient precision.

Cadastre is in many cases non-transparent because in parallel fashion there are two registers used (register C and register E).

Some legal documents are missing, land ownership is in some cases erroneous or incomplete.

Land consolidation is taking place in an ad hoc fashion based on requirements of certain ministries. The process is not well coordinated.

Land fragmentation hinders investment in infrastructure and slows investment into environmental measures in agriculture.

Different maps and data are not in some instances interconnected.

3.3 Direct payments

Receiving direct payments is based on data from LPIS – land parcel information system – that consists of land blocs. The borders of land blocs are not determined with geodetic precision and they are not unequivocally related to plots registered in the cadastre (register E and register C). This situation, in combination with extreme fragmentation of land ownership, creates problems in declaration of direct payments and creates huge transaction costs for farms, especially newly created and young farmers.

3.4 The Slovak Land Fund

The land owned by state is managed by Slovak Land Fund established on January 1, 1992 as a legal entity registered in the Business Register. The Slovak Land Fund is managing also the land of unknown owners. The notion of “unknown owners” includes two groups of owners. The first one is a group of not identified owners which includes (1) the owner registered in Land register, but the place of his residence or seat is unknown; (2) deceased owner whose inheritance proceedings already took place, but the decision in these proceedings has not been delivered into the central evidence of Land Register (for some reasons); (3) deceased owner whose inheritance has not been negotiated, because the land was in use by a socialist organization and such land was, in some cases, not included into inheritance proceeding. The second group includes unknown owners; it means there is missing any information about the owners because the historical land books were destroyed or lost during the world wars. According to the Slovak Land Fund’s annual report (2012), approximately 16.7% of agricultural land in Slovakia is owned by unknown or not identified owners.
Until 2020, the Slovak Land Fund rented land it managed to farmers at administrative rents, which was significantly below market rent. This situation created market distortions. This situation was changed in 2020, when the Slovak Land Fund started to use the usual rent, which is the average rent in the cadastral area.

In renting out the land the Slovak Land Fund is obliged by the law to give preference to young farmers\(^\text{87}\) and small farms\(^\text{88}\) or microenterprises\(^\text{89}\) which focus on special plant production or special animal production\(^\text{90}\) or farmers who at least on a half of the cultivated area conduct special plant production (grow fruits and vegetables) or farmers who produce final product and prove that he/she owns or rents agricultural land from other owners. However, in reality the Slovak Land Fund rented only very small area to small farms or young farmers.

The requirements to own or to rent some agricultural land was abolished in the Act on renting of agricultural land. However, the government decree no. 238/2010 Coll. on the renting of land from the Slovak Land Fund still requires potential tenants to attach to the request on renting of agricultural land from the Fund a copy of existing land rental contracts. The Slovak Land Fund may rent out to small and young farmers fulfilling all conditions maximum of 150 hectares. The policy makers wanted to use the land managed by the Slovak Land Fund to support small and young farmers and to support production of fruits and vegetables and animal production which provide more benefits for the rural development than production of cereals or oilseeds.

However, in reality the Slovak Land Fund rented only very small area to small farms or young farmers. The reasons are that the rental contracts were signed for a long period of time initially, Fund wants to reduce transaction costs of renting its land, large farms have dominant positions in the specific cadastres where state land or land of unknown owners managed by the Slovak Land Fund is located, and due to the political influence of large farms.

\[^\text{87}\]In accordance with art. 2 par. 1 letter n) of the Regulation (EU) No 1305/2013 of the European Parliament and of the Council, “young farmer” means a person who is no more than 40 years of age at the moment of submitting the application, possesses adequate occupational skills and competence and is setting up for the first time in an agricultural holding as head of that holding.

\[^\text{88}\]In accordance with art. 2 par. 2 Annex I of the Commission Regulation (EU) No 651/2014, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.

\[^\text{89}\]In accordance with art. 2 par. 3 Annex I of the Commission Regulation (EU) No 651/2014, a micro-enterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

\[^\text{90}\]Special plant production is represented through cultivation of vineyards, hop-fields or orchards or cultivation of special crops such as vegetables, root crops, legumes, medical herbs, aromatic herbs, spice, poppy, hemp, amaranth, buckwheat, millet. Special animal production represents the stocking density of agricultural land from 0.4 livestock unit per hectare(details in the regulation of the government No. 416/2014).
4. Implementation and enforcement issues of land regulations

All relevant institutions in Slovakia are aware about the need to conduct land consolidation to deal with extreme fragmentation of land ownership. In the meantime, there is a lot of uncertainty and problems of non-transparency at the rental and sale markets.

The users of agricultural land are mostly follow-up farms to socialist cooperatives. These farms undertook measures to legitimize the use of all their agricultural land. During socialism the use of land took priority over the land ownership and therefore the socialist cooperatives did not need to have property rights to land sorted out. However, there are still many instances to be found that some rental contracts are problematic. This is the outcome of the situation at the land market which suffers from extremely high transaction costs stemming from:

- missing, erroneous or incomplete legal documents
- old and imprecise maps
- difficulty or impossibility to contact owners (owners are deceased, absentee owners, their addresses are unknown, co-owners have legal conflicts among themselves, inheritance process is incomplete…).
- imperfect correspondence between land parcel information system used to distribute direct payments and cadastre registers to register land ownership.

Rental contracts to use land are incomplete in Slovakia. Some land plots are used by farms without a rental contract and some co-owners of land plot did not sign the rental contract with the farm. In some case majority of co-owners did not sign the contract.

In case owners are unknown for whatever reason, the parcel or the share of the parcel is managed by the Slovak Land Fund, which overall manages about 20 percent of agricultural land in Slovakia. It means, that significant share of agricultural land is still under control of the state. The Slovak Land Fund exerts a significant influence on the rental market with agricultural land and in many cases, it creates non-transparency. For example, the market rent often differed significantly from the rent charged by the Fund, which used administered price. However, since 2020 the Fund started to use the usual price, which is the average rent per cadastre area.

The Act 504/2003 Coll deals with some problems at rental market but it does not solve them satisfactorily. According to the law if the land user who uses the land without the rental contract, proves that he/she proposed to conclude the rental contract and the land owner did not refuse to conclude the contract within two months from the day of receiving the proposal, it is assumed, that the rental contract is established between the land user and the landlord for an indefinite period of time. In such a case, the proper notice to terminate the contract is 1 year.

Imperfections at land rental market are tolerated and status quo prevails if there are no conflicts created between owners themselves, or owners and users of land or between the
users of land themselves. The conflicts often arise when new farmers, for example new young farmers, enter the business and they attempt to rent land or some farms attempt to expand.

The number of conflicts for land use increased when Slovakia adopted direct payments per area of agricultural land after accession to the Common Agricultural Policy of the European Union. Land conflicts are either solved by agreement or the legal system is used. The use of legal system to solve land conflicts takes significant amount of time which is a major problem for the growth of Slovak agricultural production.

The problem often arises with so called double declaration of land plots for direct payments. This is the case when two different farmers claim their right to use the particular land parcel. In such a case Paying agency refuses to pay direct payments to both farms, which could create significant problems for either both of them or at least one of them. Double claiming often arise within strategic behaviour of some farms to create costs for their competitor.

5. Reference list of legal regulations

All legal regulations can be found on: https://www.slov-lex.sk/web/en/homepage

Zákon č. 229/1991 Zb. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku
*Act on consolidation of land ownership and ownership of agricultural property.*

Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a pozemkových spoločenstvách
*Act on land consolidation, consolidation of land ownership, land offices, land fund and land societies*

Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie pozemkového vlastníctva
*Act on some measures on consolidation of land ownership*

Zákon č. 503/2003 Z. z. o navrátení vlastníctva k pozemkom a o zmene a doplnení zákona Národnej rady SR č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom.
*Act on return of land ownership and on additions to the law on some measures on consolidation of land ownership*

Zákon č. 262/1993 Z. z. o zmiernení niektorých majetkových krídv spôsobených cirkvám a náboženským spoločenstvám.
*Act on mitigation of some property injustice caused to churches and religious communities*
Zákon č. 220/2004 Z. z. o ochrane a využívani poľnohospodárskej pôdy a o zmene zákona
č. 245/2003 Z. z. o integrovanej prevencii a kontrole znečisťovania životného prostredia a o
zmene a doplnení niektorých zákonov, zákon č. 326/2005 Z. z. o lesoch
*Act on protection of agricultural land and on change of law on integrated prevention and
control of environmental pollution and on change and addition to other acts*

Zákon č. 162/1995 Z. o katastri nehnuteľností a o zápise vlastníckych a iných vecných práv
k nehnuteľnostiam
*Act on property cadaster and on registration of ownership and other rights to property*

Zákon č. 40/1964 Zb. Občiansky zákonník
*Civil Code*

Zákon č. 504/2003 Z. z. o nájme poľnohospodárskych pozemkov, poľnohospodárskeho
podniku a lesných pozemkov a o zmene niektorých zákonov
*Act on renting of agricultural land, agricultural enterprises and forest land and on changes
of some laws*

Nariadenie vlády SR š. 238/2010 Z. z., ktorým sa ustanovujú podrobnosti o podmienkach
prenajímania, predaja, zámeny a nadobúdania nehnuteľností Slovenským pozemkovým
fondom
*Government regulation on establishing details of conditions of renting, exchange and
acquisition of property by the Slovak Land Fund.*

Vyhláška MP SR č. 38/2005 Z. z. o stanovení hodnoty pozemkov a porastov na nich na účely
pozemkových úprav, ktorá je základným právnym predpisom na určenie minimálnej ceny
nájmu;
*Decree of the Ministry of Agriculture and Rural Development on setting of value of land and
plants for the sake of land consolidation, which is a basic legal act on the determination of
minimal rent.*

Vyhláška MPaRV SR č. 172/2018 Z. z., ktorou sa ustanovujú podrobnosti o spôsobe
a rozsahu vedenia a poskytovania evidencii a stanovenia obvyklej výšky nájomného;
*Decree of the Ministry of Agriculture and Rural Development on setting of details and
methods and scope of conducting and providing evidence and determining the usual rent.*

Zákon č. 140/2014 Z. z. o nadobúdani vlastníctva poľnohospodárskeho pozemku a o zmene
a doplnení niektorých zákonov
*Act on acquisition of agricultural land and on change and addition to some laws.*
6. List of supporting materials

Ministry of Agriculture and Rural Development. Agriculture and Rural Development Expenditure Review. https://www.mpsr.sk/?navID=47&sID=184&navID2=1263Revizia


P Ciaian, JFM Swinnen. Land market imperfections and agricultural policy impacts in the new EU member states: A partial equilibrium analysis. American journal of agricultural economics 88 (4), 799-815

P Ciaian, A Kancs, JFM Swinnen. EU land markets and the Common Agricultural Policy. CEPS Paperbacks

P Ciaian, A Kancs. The capitalization of area payments into farmland rents: micro evidence from the new EU member states. Canadian Journal of Agricultural Economics/Revue canadienne d'agroeconomie

THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR SLOVENIA

Andrej Udovč
University of Ljubljana, Biotechnical Faculty, Slovenia
Agricultural Land Market Regulations in Slovenia around 2020

Andrej Udovč

1. Introduction

Slovenia is a country with 2,081,000 inhabitants and an area of 20,271 km². Out of this there are 1,180,281 ha of forests, what represents 58.2 % of the countries' total surface. The agricultural land has an area of 676,000 ha, of which 605,000 ha is, according to the most recent Farm Structure Survey (SOS, 2016) operated by 69,902 agricultural holding. The average size of UAA per of Slovenian agricultural holding is 6.9 ha. The agricultural holding are totally cultivating 481,415 ha of utilized agricultural area (UAA), and the rest to the 605,000 ha is nonproductive agricultural land. Out of 481,415 ha the major part are permanent graslands (276,244 ha), followed by arable land with 176,807 ha. The vineyards are covering 15,241 ha and orchards and olive groves 11,297 ha.

Livestock is the most important agricultural activity, with 80 % of all agricultural holdings engaged in livestock production. The average number of livestock units (LSU) in these holdings is 7.5 LSU. The 69 % of agricultural holdings, which manage 75 % of UAA, were specialized in a specific crop or animal production. The age structure of the holders-managers is unfavourable; the average age of the holder is 57 years.

91 % of all agricultural land is in private ownership and 9 % are owned by the Republic of Slovenia. For managing its propert the Slovenian government has established in 1993 the Farmland and Forest Fund, which manages 59,682 ha of agricultural land. Since its establishment the Fund is the biggest and most important single player on the agricultural land market. The Fund manages and disposes of the state owned agricultural land, farms and forests, and so assures their rational use and cultivation. The basic purpose and objective of trading of the Fund with land is to merge the production properties and thereby assure rational and prospective size of plots and to improve the size structure of the farms. By purchasing, selling and exchanging the fund beside increasing and rounding up the farmland and forests, rounds up the ownership shares of agricultural land and forests. For this purpose the Fund purchases the parts of land in co-ownership by the state, the adjacent land and land in complexes. The fund also purchases the agricultural land restored to previous owners in the course of denationalization procedures and which is then offered to lease. This is how the farmers who do not have the necessary means for purchase are assisted. The Fund purchases smaller plots that may be attached to the adjacent farms or can be compounded into bigger interesting agricultural land areas.

The Fund is also the biggest lessor of agricultural land as it puts the stat owed agricultural land out to lease. Following the adopted development policy and directions of Republic of Slovenia it provides in this way interested farmers and farm enterprises additional land for
farming activities, enables their enhanced production and consequently higher income and development.

2. Key land regulations affecting land markets

The key regulations that regulate the agricultural land market in Slovenia is the Agricultural Land Act (ALA). Important is also the Farmland and Forest Fund Act, which established the above mentioned Farmland and Forest Fund for management of the agricultural and land in the ownership of the Republic of Slovenia.

The Agricultural Land Act regulates the protection and management of agricultural land by laying down its classification, use and cultivation, agricultural land transactions and lease arrangements, agricultural operations and common pasture. The goals of the act are the following:

- to preserve and improve production potential and increase agricultural land area intended for food production;
- to foster the sustainable management of fertile soil;
- to foster landscape preservation and preserve and develop rural areas.

Significant restrictions on the trade in agricultural land is determined by Article 23 of the ALA. The article determines the order of pre-emption beneficiaries in the purchase of agricultural land. Acquisition of property rights through legal transactions on agricultural land, forest or farm is possible only with the approval of the administrative unit (Article 19). ALA also determines who is a farmer and what is considered an agricultural organization according to ALA (Article 24).

A legal transaction with agricultural land can be approved in two ways, namely:

- by issuing an administrative decision approving a legal transaction, where the administrative decision is an individual authoritative legal act deciding on the right or legal benefit of the party
- by issuing a decision, only in special cases, which is faster and easier.

According to the ALA, a legal transaction is not approved in four cases:

- if the terms and conditions set in ALA for selling are not met in the transaction and a certificate cannot therefore be issued and the certificate is not refused by a decision on an administrative procedure,
- if the transaction does not take place according to the procedure and manner prescribed by the ALA,
- if the order of pre-emption beneficiaries determined by the ALA is not taken into account,
- in the event of a physical division of plots of land that has been regulated by land consolidation.

The transaction that don’t need the approval an administrative but just an formal decision are:

- if it is an acquisition of agricultural land or farm in the context of agricultural operations;
- between co-owners when agricultural land, forest or farm is owned by two or more co-owners, when the contract is concluded by all co-owners.
- it is agricultural land parcel with an area of a maximum of 1000 m², on which there is a less demanding or demanding facility, which has, in accordance with the law governing the construction of facilities, issued a final construction permit.

An owner wishing to sell agricultural land or farm must submit a bid to the administrative unit in the area where the property is located. The owner is deemed to have authorized the administrative unit to receive a written statement of acceptance of the offer. The offer must contain: information about the seller: personal name and address of permanent or temporary residence or company and registered office; data on agricultural land or farm (parcel number, cadastral municipality, area); price and any other terms of sale. The administrative unit must publish the offer on the official notice board and on the unified state portal of e-government. He sends the offer to the local community and the local office or information office to publish it on the notice board. The deadline for acceptance of the offer is 30 days from the day when the offer was published on the notice board of the administrative unit. If no one accepts the offer within this period, the seller repeats the offer if he is still interested in the sale.

Anyone wishing to buy a given agricultural land or farm must give a written statement of acceptance of the offer and submit it or send it to the administrative unit. After the deadline for acceptance of the offer, the administrative unit informs all the receivers of the offer and the seller who accepted the offer. When the administrative unit receives a statement of acceptance of the offer, the legal transaction is concluded under the suspensive condition of approval by the administrative unit.

From the point of view of the discussed topic, the most important is Article 23 of the ALA, which determines the pre-emption right in the purchase of agricultural land or farm of beneficiaries in the following order:

1. co-owner;
2. a farmer whose land he owns borders on land for sale;
3. the lessee of the land for sale;
4. another farmer;
5. an agricultural organization or sole proprietor who needs land or a farm to perform agricultural or forestry activities;

Under the same conditions, the right to purchase shall be determined among farmers classified in the same place in the following order:

1. a farmer for whom the agricultural activity constitutes the sole or principal activity;
2. a farmer who cultivates the land himself;
3. a farmer appointed by the seller, except in the case of the sale of real estate, which is the real property of the state and the seller must appoint a farmer on the basis of the method of public auction.

If no one exercises the pre-emption right, the seller may sell the agricultural land to anyone who has accepted the offer in a timely manner and in the manner prescribed by the ALA and if the concluded contract is approved by the administrative unit. The precondition for such buyer is to have a farmer status as defined by the ALA.

The process of approving the sale of agricultural land is a complex and demanding administrative procedure, especially in cases where several potential buyers accept the offer and the administrative unit has to decide who is the buyer who can conclude a legal transaction with the seller.

The provisions of Article 26 of the ALA in conjunction with Article 27 of the ALA apply to the lease of agricultural land. Article 27 determines the order of pre-emption beneficiaries in the lease of agricultural land.

Generally, the farmers are satisfied with the provisions set in the Act, as it gives them a certain guarantee that the transfers of agricultural land are happening within the agricultural sector and for the agricultural production purposes. Especially for them important that the provisions are excluding the non-agricultural investors, who would acquire the agricultural land for non-agricultural purposes, what would further reduce already now small pool of available agricultural land for transactions.

Nevertheless the Act is currently under intense political debate, as the farmers union would like to change its provisions regarding the equal position of the agricultural enterprises and farmers at pre-emption rights when competing for purchasing or renting the agricultural land. The issue is mainly concentrated on situation when the farmer and agricultural enterprises are competing for renting the state owned land which is offered for lease by the Farmland and Forest Fund. As the current Agricultural Land Act gives a higher priority to the existing tenant and as the transitional legislation gave the former socialist agricultural companies the right to continue using the former socialist owned agricultural land, the existing tenant pre-emption right practically excludes the other farmer to rent the state owned land.
3. **Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning**

In this respect is important the Agricultural Holdings Inheritance Act. The Agricultural Holdings Inheritance Act regulates the division of agricultural holding in the inheritance process. The aim of the act is to protect the agricultural holdings of the certain minimum and maximum total size, to be divided among the legal hairs. It sets the rule, that the agricultural holding must be inherited by only one hair, while all the other legal hairs are compensated financially by the one taking over the farm. By some – mainly farmers, this Act is considered as the most restrictive regarding the land market functionality.

The regulation basically prohibits division of the agricultural holding in the size between 5 ha and 600 ha. Such farms are called Protected farms and are defined in an official procedure which is started automatically when it is from the official records established that the certain farm falls within the defined margins.

This Act influences the market because the designation of the so called “protected farm” effectively impedes the selling of any part of such farm. It is only possible to sell such farm as a whole (all agricultural land, forest and agricultural buildings) to another farmer, what is not something, that it common in the operating of the Slovenian agricultural market. Especially selling of the buildings is an obstacle, as they are usually situated together with the housing part of the farmyard.

As the identification of the protected farm is an administrative procedure done autonomously by the responsible local authority resulting in an administrative decision, the regulation is strictly enforced.

The other institution that considerably influences the agricultural land market is existence of non-registered leasing of agricultural land. Even that the ALA direct that all the leases have to be agreed on the same procedure as selling the agricultural land (Article 27), or because of that, the vast majority of lease of private agricultural land are concluded informally without any contract. This also results in a very poor information on the height of the rents for different types of agricultural land. As these leases are also not reflected in the system of payments rights it is stipulated that in many cases the rent equals the corresponding value of the payment rights for the rented plot.

This part of the ALA legislation is not strictly enforced. In practice the leasing procedure under the ALA is largely used only by the Fund, which is as a manager of state-owned agricultural land obligated to follow the law. Other stakeholders use the lease, as regulated by the ALA, only exceptionally. There is an assessment, that strict enforcing of the leasing procedure under the ALA among the farmer, who are physical persons, would not result in higher transparency of the lessor-lessee relationships, but in higher degree of agricultural land abandonment.
4. Implementation and enforcement issues of land regulations

The process of selling and leasing, as regulated by the ALA, proved to be very time-consuming and procedurally complex, as evidenced by the individual stages in the process and the tasks that the parties must perform to get what they want, i.e. sale or lease of agricultural land.

According to the ALA, a legal transaction with agricultural land can be approved in two ways, namely:

- by issuing an administrative decision approving a legal transaction, where the administrative decision is an individual authoritative legal act deciding on the right or legal benefit of the party, and therefore contains legal advice and thus the possibility of appeal and legal remedies. The order of review of the legality of decisions on the approval of legal transactions is as follows: Ministry of Agriculture, Forestry and Food of the Republic of Slovenia and the Administrative Court, there is a possibility of review by the Supreme Court and exceptionally review of the constitutionality of individual provisions

- by issuing a decision, only in special cases, which is faster and easier.

According to ALA, a legal transaction is not approved in four cases:

- if the terms and conditions set out above are not met in the transaction and a certificate cannot therefore be issued and the certificate is not refused by a decision on the administrative procedure,

- if the traffic does not take place according to the procedure and manner prescribed by the ALA,

- if the order of pre-emption beneficiaries determined by the ALA is not taken into account,

- in the event of a physical division of plots of land regulated by land consolidation.

Currently, when selling, the prices of agricultural land are formed freely or dictated by market laws. According to the current ALA, owners of agricultural land can offer their land for sale at any price, even at a very high price, but also at a very low price. Despite the fact that price formation is left to the market, agricultural land prices are not showing disproportional growing or falling.

5. Other land-related measures not discussed elsewhere
6. Reference list of legal regulations

Zakon o kmetijskih zemljiščih. Uradni list RS, št. 71/11-UPB2, 58/12 in 27/16 (http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO541)

Zakon o dedovanju kmetijskih gospodarstev. Uradni list RS, št. 70/95, 54/99 – odl. US in 30/13 (http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO383)


7. List of supporting materials (available from the project archive)

Statistical information on land prices
Slovenian agriculture in numbers
Leasing of farmland
Trading of immovable assets
THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR SPAIN

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Agricultural land market regulations in Spain around 2020

Ana Sanjuan and Hugo Ferrer Pérez

1. Introduction

In Europe, land ownership structure is very varied, and the Spanish reality is not very different. This is characterized by market rigidity, inequitable distribution and is undergoing a process of property concentration, which in recent years seems to have been accelerated.

In this section, a brief description of the current situation will be offered taking into account the difficulty that this objective entails, due to the numerous factors and actors that affect the structure of land ownership in Spain. In addition, having a detailed knowledge of the structure of land ownership is of great strategic importance for the future of the agrifood sector in the country.

In this sense, a large number of highly heterogeneous statistical sources are available, which collect data on some of the most relevant characteristics of agricultural farms, such as the number and the size of farms, its distribution according to land use, the crop type, type of legal personality of the farm’s owner, the tenure regime, among others, or about the land price or the rental fees. However, and in contrast with the large number of official statistics, the number of studies focused on the analysis of the land structure from a more generalized point of view is limited. In fact, as far as we know, the work entitled Estructura de la propiedad de la tierra en España. Concentración y acaparamiento (Soler and Fernández, 2015) is the most recent attempt to offer a vision on this issue.

In order to support the state of the art with more up-to-date statistical figures, this report was based on the following sources: Farm Structure Survey offered by the Spanish National Institute of Statistics (INE); the Statistical Yearbook of Spain, the Survey about Land Prices and the Rental Fees of farm leases published annually by the Ministry of Agriculture, Fisheries and Food (MAPA).

In general, a tendency to reduce both the number of farms and the total area (Area) and the utilised agricultural area (UAA) has been experienced in the last twenty years in Spain. In the period between 2003 and 2016, the number of farms has fallen by 17.3%, the UAA by 7.73% and the total area by 9.91%, as can be seen in Table 1. However, as shown in Table 2, the average UAA per farm and the average total area per farm have grown by 11.6% (from 22.46 ha. to 25.06 ha.), and by 8.9% (from 29.67 ha. to 32.33 ha.), respectively.

If we look at the classification by farm size shown in Table 1, it can be seen how the small farms (less than 5 ha.) is the category that has suffered the greatest decrease, from 54% to 50% of the total number of farms with land. This decreasing trend is smoothed out for the following categories of farm size while it is reversed in those farms with areas between 50 and 100 ha. and greater than 100 ha.
Table 5. Evolution of number of farms, area and Utilised Agricultural Area (UAA) by farm dimension in 2003-2016

<table>
<thead>
<tr>
<th>Farm size (ha.)</th>
<th>No. farms in 2003 (%)</th>
<th>No. farms in 2016 (%)</th>
<th>% change in 2003-2016</th>
<th>UAA (ha.) in 2003 (%)</th>
<th>UAA (ha.) in 2016 (%)</th>
<th>% change in 2003-2016</th>
<th>Area (ha.) per farm (ha.) in 2003 (%)</th>
<th>Area (ha.) per farm (ha.) in 2016 (%)</th>
<th>% change in 2003-2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 1</td>
<td>105,111</td>
<td>9.4%</td>
<td>72,009</td>
<td>7.8%</td>
<td>31.5%</td>
<td>38,147</td>
<td>0.2%</td>
<td>70,476</td>
<td>0.2%</td>
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<td>225,349</td>
<td>20.1%</td>
<td>166,915</td>
<td>18.0%</td>
<td>-29.9%</td>
<td>227,875</td>
<td>1.0%</td>
<td>509,945</td>
<td>1.5%</td>
</tr>
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<td>(2,5]</td>
<td>276,604</td>
<td>24.7%</td>
<td>230,338</td>
<td>24.8%</td>
<td>-16.7%</td>
<td>734,801</td>
<td>3.2%</td>
<td>1,008,581</td>
<td>3.4%</td>
</tr>
<tr>
<td>(5,10]</td>
<td>169,093</td>
<td>15.1%</td>
<td>140,561</td>
<td>15.2%</td>
<td>-16.9%</td>
<td>999,039</td>
<td>4.3%</td>
<td>1,225,957</td>
<td>4.1%</td>
</tr>
<tr>
<td>(10, 20]</td>
<td>131,375</td>
<td>11.7%</td>
<td>112,284</td>
<td>12.1%</td>
<td>-14.5%</td>
<td>1,562,656</td>
<td>6.7%</td>
<td>1,848,460</td>
<td>6.2%</td>
</tr>
<tr>
<td>(20, 30]</td>
<td>60,622</td>
<td>5.4%</td>
<td>50,194</td>
<td>5.4%</td>
<td>-17.2%</td>
<td>1,227,462</td>
<td>5.3%</td>
<td>1,452,387</td>
<td>4.8%</td>
</tr>
<tr>
<td>(30, 50]</td>
<td>53,137</td>
<td>4.7%</td>
<td>52,201</td>
<td>5.6%</td>
<td>-1.8%</td>
<td>2,004,089</td>
<td>8.6%</td>
<td>2,543,820</td>
<td>8.5%</td>
</tr>
<tr>
<td>(50, 100]</td>
<td>49,414</td>
<td>4.4%</td>
<td>50,485</td>
<td>5.4%</td>
<td>2.2%</td>
<td>3,540,418</td>
<td>15.2%</td>
<td>4,358,896</td>
<td>14.5%</td>
</tr>
<tr>
<td>greater than 100</td>
<td>50,135</td>
<td>4.5%</td>
<td>51,942</td>
<td>5.6%</td>
<td>3.6%</td>
<td>12,895,266</td>
<td>55.5%</td>
<td>17,076,413</td>
<td>57.0%</td>
</tr>
<tr>
<td>Total</td>
<td>1,120,839</td>
<td>926,929</td>
<td>-17.3%</td>
<td>23,175,260</td>
<td>23,229,753</td>
<td>-7.7%</td>
<td>33,258,378</td>
<td>29,965,179</td>
<td>-9.9%</td>
</tr>
</tbody>
</table>

Notes: Columns named by (%) reports the share of the magnitude in the column on the left with respect to the respective total reported in the last row. Notation (a,b] means that a is not included and b is included in the class interval.

Source: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).

Table 6. Average UAA and Area per farm

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2016</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total UAA / total farms</td>
<td>22.46</td>
<td>25.06</td>
<td>11.6%</td>
</tr>
<tr>
<td>Total Area / total farms</td>
<td>29.67</td>
<td>32.33</td>
<td>8.9%</td>
</tr>
</tbody>
</table>

Notes: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).

Analyzing the results by main farmland use, it can be observed in Figure 1 a generalized decrease except for those farms greater than 30 ha. destined to permanent pastures that increased up to 41%.
In terms of land ownership distribution, Figure 2 shows that Spain had 926,929 farms in 2016, of which 93.49% corresponded to owners who are natural persons, 75.67% to natural persons who are also the manager; mercantile companies accounted for 2.38%; public entities for 0.38%; farmers cooperatives were in possession of 0.56% of the farms and the remaining 3.19% corresponded to another type of ownership that includes “aparcería”, or communal lands donated to farming for exclusive use, among others.

Now, looking at Figure 3, there seems to be a change in the land ownership structure in which the farmer cooperatives and mercantile companies have become more important at the expense of reducing the presence of natural persons as owners, which anyway, continue to be the main owners of farm land. Besides, it is noteworthy to mention that there has been a significant increase in state-owned farms with less than 5 ha.
Figure 7. Evolution of the land tenancy situation by types of owner in Spain (2003-2016)

Source: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).

Figure 8. Evolution of the number of farms by types of owner and farm size 2003-2016 (% change)

Note: Notation $(a,b]$ means that $a$ is not included and $b$ is included in the class interval.

Source: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).
However, if we address the state of the UAA according to the tenure regime, from Figure 4 it can be noted several facts: first, ownership has decreased by 21.5% from 17,456,937 ha. in 2003 to 13,711,971 ha. in 2016; second, the weight of the rental regime has increased a 12% from 6,760,728 ha. to 7,572,894 ha.; and third, other tenancy regimes have gained a 103.1% in the same period, from 957,595 ha. to 1,944,888 ha.

*Figure 9. Evolution of UAA by ownership regimes in Spain (2003-2016)*

Source: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).

*Figure 10. Evolution of the number of farms under more than one ownership regime (2003-2016)*

Note: Own elaboration from official statistics extracted from Encuesta sobre la Estructura de las Explotaciones Agrarias en España 2003-2016 (INE).
Now, as for the situation of farms with more than one ownership regime, Figure 5 illustrates that there is a decrease of the number of farms of the categories “>50% under ownership” and “>50% under tenancy” but farms under the category “>50% under other regimes” have experienced relatively the highest increase.

Market rigidity is one of the main characteristics of the Spanish land ownership structure. In this sense, over the period 2009-2019, the average number of land transactions has remained quite stable around 380,000 on average, representing a dramatic fall (about 20%) if compared to the 481,092 performed in 2007. Looking at Figure 7, inheritance and sale are the most frequent, accounting for around 40% and 36% in the last five years, respectively. Besides this, it can be seen that the worldwide financial crisis significantly affected land sales, that suffered a dramatic drop between 2007 and 2009. From 2013 sales started recovering but at lower pre-crisis levels.

**Figure 11. Evolution of number of land transactions by type of transaction (2007-2019)**

![Graph showing evolution of land transactions by type from 2007 to 2019.](image)

Source: Own elaboration from Estadística de transmisiones de derechos de la propiedad (INE).

Besides this market rigidity, over the last years, an increasing trend in both sales prices and rental prices, especially in irrigated land is reported by Figure 7 and Figure 8, respectively.
Against this background, it can be said that Spain is suffering from an important decrease in terms of number of farms and utilized agricultural area, specifically in those with less than 5 ha, and at the same time, the number of farms are increasing their sizes. Moreover, farmers cooperatives and mercantile companies have significantly increased their presence on the ownership structure although the natural person remains as the traditional ownership regime in the country. These two legal entities have also demonstrated to be useful tools to produce outputs with higher value, reduce production costs and address environmental challenges. In
this context, the land rental regime has reinforced its positioning in the current domestic scene as a tool to achieve more market flexibility and acquire new lands.

2. Key land regulations affecting land markets

In recent decades, agriculture in Spain has undergone profound structural changes: from a more traditional model of agricultural production to a more technical one oriented to more open and competitive markets. This has forced to renew the legislative framework, integrating the EU laws to adapt it to increasingly complex agricultural policies that respond to increasing social demands. Thus, the current legislation used in this work is considered as the basic regulatory framework in the context of farm ownership with the aim of attempting to correct the structural deficiencies that condition the competitiveness of the Spanish agricultural sector, as well as to ensure its environmental sustainability and improve the socio-economic conditions of farmers and their companies (individual or collective).

The Spanish current legislation includes a set of general rules governing the agricultural sector, which is market oriented and relies on the private land ownership regime and the rights that give legitimacy to the farmer to use it. In this context, and based on the main aim of this report, it can be enumerate the most relevant laws:

i) Decree 118/1973 of 12 January, approving the Text of the Law of Reform and Agricultural Development (Decreto 118/1973, de 12 de enero, por el que se aprueba el texto de la Ley de Reforma y Desarrollo Agrario).


Additionally, there are some other regulations, narrowly linked and complementary to the aforementioned laws, which are detailed in Section 6 Table 4.

The Law of Reform and Agricultural Development, LRAD hereafter, was adopted in 1973 and drafted as a recast of previous laws passed over the period 1939-197191 with the objective of adapting the Spanish law to the social reality of that moment, which, by the way, was suffering profound changes driven by high-profile social transformations and technological advances. In fact, this Law was oriented to fostering economic progress, production, reforestation, land rental stability, credit facility, land distribution, regularization

91 See Lamo de Espinosa and Enriquez de Navarra (1974) for further details regarding the formative process of the Law of Reform and Agricultural Development.
of undeclared work and rural social reform, among others (Lamo de Espinosa y Enríquez de
Navarra, 1974).

It is noteworthy the great effort made with the LRAD, evidenced by the contemporaneity and the high-level of its technical contents, which is still in force across the country. Nevertheless, the LRAD has been overtaken by time due to the several crisis that affected the Spanish agricultural sector and the deep structural transformations that have taken place in Spain and Europe over the last fifty years. Consequently, and in the absence of any new national regulation of such full coverage, every Autonomous Community in Spain (i.e. administrative region) have assumed competences in this issue through their Autonomy Statute as an attempt to adapt the LRAD to the new scenarios of agricultural policy and rural and regional development.

Under these circumstances, agricultural farm models were forced to be modernized and this evidenced that the existing laws were deficient and a review of the legal framework was therefore needed. With the objective of amending these structural weaknesses, the Law 19/1995 on Modernization of Agricultural Farms (LMAF hereafter) was passed. The LMAF, which is still in force, provides a set of general rules oriented towards improvement and modernization of the Spanish agricultural sector.

This modernization process included a restructuring process to maintain and enhance the competitive strength of farms, to ensure basic environmental sustainability and to be able to generate new paths to achieve satisfactory income levels for the professional farmers taking into account the following structural issues: small size of farms, ageing of the rural population, reduced rural employment, land market rigidity or inefficient sales organization, among others.

A key factor in the design of an appropriate strategy for modernizing farm structures is the mobility of land, and one of the mechanisms that seems to be most useful is the land rental. In this regard, the Law 49/2003 on Agricultural Land Rental and its subsequent amendment in Law 26/2005 regulate the regime of land rentals in line with the importance acquired within the framework of EU law and with a clear orientation towards making the rental regime more flexible, since it has been observed that in Spain there is a growing trend as a form of land tenure and it is not expected to change in the future due to the high level of land sales prices.

Moreover, the set of measures contained in the two aforementioned Laws are aimed at providing primacy to the will of the contracting parties, increasing the competitiveness of the farms, promoting generational renewal since a negative trend has been observed for some time in terms of rural population and employment, establishing the required boundaries to avoid speculative actions of intermediary agents that may unbalance the equilibrium sought between modernization and flexibility of farms in Spain, which are mainly oriented to food production able to generate economic profits, guarantee consumers’ safety, preserve the environment and promote rural cohesion.
3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

First, we will make a reference to the land market regulations, as it may affect the land use. In this regard, the Royal Legislative Decree 7/2015 establishes the bases of sustainable territorial and urban development protecting the rural environment, establish rules for the right of rural land ownership, for its valuation and for income capitalization. Additionally, each Spanish Autonomous Community has developed its urban planning law according to its needs, such as the Legislative Decree 1/2014, of July 8, of the Government of Aragon.

In addition to the Agrarian Reform and Development Law, each Autonomous Community, according to their respective Statutes of Autonomy, has completed its regulatory action. In particular, there are specific actions in terms of preserving the regional heritage, land assets and rights the Autonomous Community holds. Thus, the public administration has mechanisms to place value on abandoned lands due to rural depopulation and lack of generational replacement, to ensure the continuity of agricultural farms and, thus, to promote the incorporation of young people and women into the agricultural sector. For example, the Autonomous Community of Aragon approved the Law 14/1992 in this respect.

Access to finance is of vital importance for the Spanish agricultural sector, especially in the current situation of economic crisis and instability, and where there is a general shortage of credit in the financial markets. In this line, the MAPA has taken the initiative to undertake a Plan of Measures for the Improvement of the Financing of the Agricultural Sector that aims to facilitate access to public and private financing, provide liquidity and improve credit conditions since the sector’s indebtedness has been rising since 2015. In 2018, in Spain a total of 20.380 million euros of credit was granted to the agricultural sector, which represented an annual increase of 5.8% despite the fact that total credit fell for the productive activities as a whole (-7.3%) (MAPA, 2019).

Added to this is the forthcoming formalization of the reform of the Common Agricultural Policy for the coming years (period 2021-27) that will pursue, among others, the unity of the market and the development of a more sustainable productive activity. The CAP aid for farmers and cattle breeders is a great attraction for financial institutions who will try to attract customers to direct their aid.

In this context, it is important to remember that farmers and cattle breeders have facilities when it comes to accessing financing offered by credit institutions, public and private, since it is a vital production factor for their operation and consolidation and because it allows incorporating more labour and technology that will ultimately serve to substantially improve agricultural income.

Moreover, it must be noted that these agricultural activities are narrowly linked with the preservation of the natural areas and protection of the environment. Given that Spain is a State Member of the European Union it should adapt its legislation framework and implement what is dictated by the EU Community law at the cost of warnings or fines. For instance, in the last months, Spain (Italy, also) has received warnings for breaching the
objectives established by the Nitrates Directive (Directive 91/676/CE), which is a key piece to safety regulation of water pollution (surface water and groundwater) in Europe. Then, it seems that in Spain the regulation established by the last modification of the Royal Decree 261/1996 of 16 February on the protection of waters against the pollution produced by nitrates from agricultural sources has not being fully enforced.

At regional level, there are Codes of good practices in agriculture that respond to the requirements of the EU Community law focused on the adequate use of nitrogen fertilizers for the protection of water and atmosphere against possible pollution. Also, there are some Autonomous Communities that have regulated the sustainable use of phytosanitary products like in Aragón through the Order of January 16, 2013 of the Department of Agriculture, Livestock and Environment).

In Spain, given the productive potential of irrigated land, the MAPA has established a sustainable management based on an efficient use of water, improving irrigated land structures, promoting rural life, enhancing agricultural productivity, among others. Besides this, prices as was seen in Section 1, are much higher for irrigated land because productivity in these areas is much higher and hence the profits. For this reason, this is a driving factor regarding bargaining power and in the price setting process.

In Spain, the agricultural sector is subject to laws and regulations that are quite demanding, aiming at the promotion of land mobility, among other relevant objectives. In this sense, one can barely find limitations for natural and legal persons, except for national security reasons in particular geographical areas of the Spanish territory, in terms of land transactions in order to ease the incorporation of young people to the sector, promote farming cooperation and increase the duration and flexibility in the case of the rental market.

4. Implementation and enforcement issues of land regulations

In this sense, it can be said that a common feature of the laws currently regulating the agricultural sector is that the new rules and amendments to the existing ones allow to correct the points where the previous ones failed in their practical application, while fully integrating the EU Community law but not without difficulty in achieving compliance and supervision.

For instance, regarding the control of compliance with the relationship between the productive activity and the protection of the environment for the sake of the public interest is a tough task. However, if the established requirements are not fully met, the control and supervision mechanisms come into operation: 

(https://www.agroclm.com/2020/07/19/bruselas-impondra-fuertes-sanciones-a-espana-sino-actua-contra-la-contaminacion-de-las-aguas-por-nitratos/)

Regarding the issue of land ownership, Spain has a regime of liberalism for the acquisition of the condition of owner of rural land across the country no matter if it is a natural or legal person or even the nationality except for very specific situations. These only affect to foreigners and depend on the land location, and were set seeking the protection and national
defense and need the approval of the corresponding military body. The validity of this rule seems to be not exempt from debate, since it may seem more relevant in the past than to at present, as can be seen in: https://hayderecho.expansion.com/2016/04/12/el-anacronismo-de-la-autorizacion-militar-para-ciertas-adquisiciones-de-bienes-por-extranjeros/
or in: https://elpais.com/diario/2004/02/05/espana/1075935616_850215.html.

These limits consist of maximum percentages of acquisition and are established by the Royal Decree 689/1978 of 10 February and are as follows: i) if the land is in an island with an area greater or equal to 82.8 sqkm., the maximum percentage is 15%. If it is smaller, then the percentage is null. ii) if located in those restricted areas, then depending on the location, it ranges between 0-15% as follows: Areas of Galicia and Cartagena, Portugal’s and France’s (except for Llivia which is 0%) border: 15%; Strait of Gibraltar, Cadiz bay: 10%; Spanish territories in North Africa: 5%.

5. Other land-related measures not discussed elsewhere

Of great interest could be the link between renewable energies, in particular photovoltaic solar energy, and the value of the land for landowners in countries where there is a demand for solar energy. Thus, farmers are getting concerned about how much profit they can gain by leasing their lands for building a solar farm instead of for food production.


https://www.solarlandlease.com/lease-rates-for-solar-farms-how-valuable-is-my-land#:~:text=The%20most%20commonly%20asked%20question,%242%2C000%20per%2020acre%2C%20per%20year.

6. Reference list of legal regulations

Table 4 below contains the set of Spanish laws along with the permanent hyperlink to the respective legal site with access to a pdf file. Texts do not exist in English.
<table>
<thead>
<tr>
<th>No.</th>
<th>Laws</th>
<th>Permanent access</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil (last modification 4th August 2018).</td>
<td>BOE-A-1889-4763</td>
</tr>
<tr>
<td>2</td>
<td>Orden de 27 de mayo de 1958 por la que se fija la superficie de la unidad mínima de cultivo para cada uno de los términos municipales de las distintas provincias españolas.</td>
<td>BOE-A-1958-9342</td>
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<tr>
<td>3</td>
<td>Decreto 118/1973, de 12 de enero, por el que se aprueba el texto de la Ley de Reforma y Desarrollo Agrario.</td>
<td>BOE-A-1973-167</td>
</tr>
<tr>
<td>4</td>
<td>Ley 8/1975, de 12 de marzo, de zonas e instalaciones de interés para la Defensa Nacional.</td>
<td>BOE-A-1975-5292</td>
</tr>
<tr>
<td>5</td>
<td>Real Decreto 689/1978, de 10 de febrero, por el que se aprueba el Reglamento de zonas e instalaciones de interés para la Defensa Nacional, que desarrolla la Ley 8/1975, de 12 de marzo, de zonas e instalaciones de interés para la Defensa Nacional.</td>
<td>BOE-A-1978-9612</td>
</tr>
<tr>
<td>8</td>
<td>Real Decreto Legislativo 1/1993, de 24 de septiembre, por el que se aprueba el Texto refundido de la Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados.</td>
<td>BOE-A-1993-25359</td>
</tr>
<tr>
<td>9</td>
<td>Ley 19/1995, de 4 de julio, de Modernización de las Explotaciones Agrarias (last modification 5th October 2011).</td>
<td>BOE-A-1995-16257</td>
</tr>
<tr>
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<tr>
<td>-----</td>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>11</td>
<td>Ley 26/2005, de 30 de noviembre, por la que se modifica la Ley 49/2003, de 26 de noviembre, de Arrendamientos Rústicos.</td>
<td>BOE-A-2005-19784</td>
</tr>
<tr>
<td>12</td>
<td>Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio.</td>
<td>BOE-A-2006-20764</td>
</tr>
<tr>
<td>13</td>
<td>Ley 14/1992, de 28 de diciembre de patrimonio agrario de la Comunidad Autónoma de Aragón y de medidas específicas de reforma y desarrollo agrario.</td>
<td>BOE-A-1993-2874</td>
</tr>
<tr>
<td>15</td>
<td>Real Decreto Legislativo 7/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana.</td>
<td>BOE-A-2015-11723</td>
</tr>
</tbody>
</table>
7. List of supporting materials (available from the project archive)

News on EU Directive of Nitrates against Spain:
https://www.retema.es/noticia/la-comision-europea-reclama-a-espana-el-cumplimiento-de-la-directiva-europea-sobre-ni-HmqV7

PAC & banks:

PAC & cooperatives:
https://www.agronewscastillayleon.com/ramon-armengol-traslada-al-consejo-europeo-la-necesidad-de-contar-con-medidas-en-la-pac-que-apoyen

Irrigated land management:
https://www.mapa.gob.es/es/desarrollo-rural/temas/gestion-sostenible-regadios/

Reference list:


THE STUDY ON "AGRICULTURAL LAND MARKET REGULATIONS IN THE EU MEMBER STATES"

COUNTRY REPORT FOR SWEDEN

Allard Jellema and Huib Silvis
Wageningen University, Wageningen Economic Research, the Netherlands
Agricultural land market regulations in Sweden around 2020

Allard Jellema and Huib Silvis

1. Introduction

1.1 General characteristics of the Swedish agricultural land

In 2020, the total amount of agricultural land in Sweden amounted for 3,013,000 hectares. The total amount of arable land is 2,548,400 hectares, according to preliminary statistics. This number is almost the same as in the year 2019. The total area of pasture and meadow is 464,900 in 2020 which is an increase by 3,700 hectares (+1%) compared with 2019 (Jordbruksverket, 2020a).

According to the Swedish Farm Register, in the year 2016 there were around 63,000 agricultural holdings in Sweden with an average of 41 hectares of arable land. Table 1 shows the number of agricultural holders by size (SCB, 2020).

Table 1. Agricultural holdings in Sweden by size (source: SCB, 2020)

<table>
<thead>
<tr>
<th>Size</th>
<th>1990¹</th>
<th>1999¹</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>All holdings</td>
<td>96,560</td>
<td>80,119</td>
<td>62,937</td>
</tr>
<tr>
<td>– 2.0 ha</td>
<td>..</td>
<td>..</td>
<td>4,156</td>
</tr>
<tr>
<td>2.1 – 5.0 ha</td>
<td>14,957</td>
<td>11,344</td>
<td>9,080</td>
</tr>
<tr>
<td>5.1 – 10.0 ha</td>
<td>19,020</td>
<td>15,229</td>
<td>13,482</td>
</tr>
<tr>
<td>10.1 – 20.0 ha</td>
<td>20,832</td>
<td>16,656</td>
<td>11,408</td>
</tr>
<tr>
<td>20.1 – 30.0 ha</td>
<td>12,177</td>
<td>9,295</td>
<td>5,413</td>
</tr>
<tr>
<td>30.1 – 50.0 ha</td>
<td>14,223</td>
<td>11,445</td>
<td>5,901</td>
</tr>
<tr>
<td>50.1 – 100.0 ha</td>
<td>11,348</td>
<td>10,969</td>
<td>6,807</td>
</tr>
<tr>
<td>100.1 – 200.0 ha</td>
<td>..</td>
<td>4,073</td>
<td>4,266</td>
</tr>
<tr>
<td>200.1 – 300.0 ha</td>
<td>..</td>
<td>708</td>
<td>1,368</td>
</tr>
<tr>
<td>300.1 – 400.0 ha</td>
<td>..</td>
<td>203</td>
<td>500</td>
</tr>
<tr>
<td>400.1 – 500.0 ha</td>
<td>..</td>
<td>83</td>
<td>227</td>
</tr>
<tr>
<td>500.1 – ha</td>
<td>..</td>
<td>114</td>
<td>329</td>
</tr>
</tbody>
</table>

¹For the years 1990 and 2016 only holdings with more 2.0 hectares are included.

92 Pasture is agricultural land on which e.g. cattle, sheep, goats as well as horses are kept for feeding. Meadow is agricultural land covered or cultivated with grass, usually mown in late summer/autumn.
In densely forested areas in Sweden, farming and forestry are often combined. Especially in the north of Sweden there are mostly small farms.

Animal husbandry is the main line of production. In the central parts of Sweden and in the southern county of Skåne cropping are the main line of production. The conditions for crop production differ greatly between the north and south of Sweden. About 60% of arable land is found in southern Sweden.

Cereals and leys strongly dominate crop production in Sweden. The amount of leys increases in the north of Sweden and makes up most of the arable land in Norrland. Oil seed production is mainly located in Götaland and Svealand. Potatoes are produced throughout the entire country. Sugar beets are mainly produced in Götaland, especially in the counties of Skåne, Halland, Blekinge and Kalmar (SCB, 2020).

1.2 Agricultural land prices in Sweden

In 2019, the average price of arable land was 95,900 SEK per hectare. Between the years 2018 and 2019 the price of arable land in Sweden increased on average by 6%. The price of arable land has doubled since 2009. There are big land price variations in prices between different parts of Sweden. Land prices are highest in the plain areas of southern Götaland where the average price lies around 264,700 SEK per hectare. Compared to northern parts of Norrland, prices are on average 15 times higher in Götaland (Jordbruksverket, 2020b).

In 2019, the average price of pasture and meadow was 34,200 SEK per hectare. This is 3% less than it was in 2018. Similar to the prices of arable land, there are big differences in prices between different parts of Sweden when it comes to pasture and meadow. The price per hectare of pasture and meadow is highest in the plain districts of southern Götaland. Here, the average price is 91,200 SEK per hectare in 2019. This same year, the price of pasture and meadow in the northern parts of Norrland was on average 6,200 SEK per hectare. The northern parts of Norrland have since 1995 had the lowest average price per hectare. Figure 1 shows the price development of arable and pasture/meadow from 1990 to 2019 (Jordbruksverket, 2020b).

In 2019, almost 2,800 properties comprised of arable and/or pasture/meadow land were sold. Just over 2,200 of these properties were comprised of arable land and just over 1,400 comprised of pasture/meadow. In total, around 17,200 hectares were sold. Approximately 12,700 hectares were arable land and 4,500 hectares were pasture/meadow (Jordbruksverket, 2020b).

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93 Sweden is divided in three traditional lands: Norrland (northern part of Sweden), Svealand (central part of Sweden) and Götaland (southern part of Sweden).
Figure 1. Price development for arable and pasture/meadow land in Sweden from 1990 to 2019, SEK thousand/ha (source: Jordbruksverket, 2020).

Figure 2. Number of properties sold with arable and/or pasture/meadow and the total amount of hectares sold between 1990-2019 (source: Jordbruksverket, 2020).

Figure 2 shows the number of properties sold comprising of arable and/or pasture/meadow and the total amount of hectares sold between 1990-2019. From figure 2 can be concluded that in 1999 there was a clear peak with over 3 000 properties sold comprising of arable and/or pasture/meadow. Together this represented approximately 34 000 hectares. The
reason for this sudden increase of sold properties in 1999 is probably the result of changed rules for calculating capital gains which entered into force at the turn of the years 1999/2000. The previous rules were more favourable which explains why more sales took place at the end of 1999. The average number of hectares per property sold has decreased over time. In the period 1990-1994, the average was 13-14 hectares per property. Since 2006 this number has been around 6-7 hectares. From figure 2 can additionally be concluded that the number of sales and the amount of area sold do not seem to affect the development of the price (Jordbruksverket, 2020b).

1.3 Agricultural land lease prices in Sweden

Land lease prices in Sweden have increased continuously since Sweden’s EU accession in 1995. The last decade, the average price for leasing one hectare of agricultural land has increased by more than 30%. Between the Swedish accession to the EU in 1995 and 2011, the average lease price land in Sweden has doubled. However, since 2011 the price increased has stagnated.

Figure 3. The development of lease prices for agricultural land in Sweden between 2006-2018, SEK/hectare (source: Jordbruksverket, 2020).

According to rental price survey (conducted every two years by the Swedish Board of Agriculture), the rental price for one hectare of agricultural land has been relatively stable since 2011 as it remained around 1 600-1 7300 SEK per hectare (Jordbruksverket, 2019). Figure 3 shows the development of lease prices for agricultural land 2006-2018, including free leases.
In 2018, leasing one hectare of agricultural land cost an average of 1,726 SEK per year. Leasing one hectare of arable land and one hectare of pasture/meadow cost 1,815 SEK and 555 SEK per year respectively (Jordbruksverket, 2019). Rental prices of agricultural land in Sweden vary a lot. In southern Sweden, the average price per year is 3,196 SEK/hectare, which is about 10 times higher than the average price for renting agricultural land in southern Sweden, where the price was 323 SEK per hectare in 2018 (Jordbruksverket, 2019).

2. Key land regulations affecting land markets

2.1 Rules and regulations Swedish agricultural land market

Prior to Sweden becoming a member of the EU in 1995, Swedish agricultural policy was deregulated in the late 1980s and early 1990s, leading to the abolishment of price regulations of agricultural produce. This ultimately led to the deregulation of the Swedish agricultural land market as well. Since the deregulation, only a limited amount of restriction on the agricultural land market in Sweden remain.

2.2 The Land Acquisition Act

Natural person, both domestic and foreign, face almost no restrictions when acquiring agricultural land in Sweden. However, in certain sparsely populated areas and redevelopment areas (omarronderingsområde) all natural and legal person (both domestic and legal) must, according to the Land Acquisition Act (Jordförvärvslag 1979:230), have permission to acquire agricultural land.

The Land Acquisition Act has two main purposes. First, it aims to promote employment and housing in sparsely populated areas. If a person acquires a property located in a sparsely populated area and this person does not intend to live on the purchased property or work in the locality, permission for the acquisition is not given. Second, to maintain the balance between natural and legal persons owning agricultural properties. In order to avoid legal persons overrunning natural persons on the agricultural land as well as forestry market, strict rules apply that limit legal persons’ opportunities to buy land from natural persons.

Different rules apply for natural and legal persons. Box 1 gives an overview of the rules and regulations for buying agricultural land in sparsely populated and redevelopment areas.

Box 1. Rules and regulations for buying agricultural land in sparsely populated and redevelopment areas.
In certain sparsely populated areas and redevelopment areas (omarronderingsområde) all natural and legal persons (both domestic and foreign) must have permission to acquire agricultural land (Jordförvärvslag, 1979:230). The sparsely populated and redevelopment areas concerned are noticed in the Land Acquisition Scheme (Jordförvärvordning, 2005:522) and may change from time to time. The government decides which municipalities or parts of municipalities are to be considered sparsely populated and redevelopment areas.

As a natural or legal person, one must apply for a permit if one wants to purchase an agricultural property located in a sparsely populated area or redevelopment area (Note: different rules for natural and legal persons).

In order to get permission to acquire agricultural land, natural and legal persons must apply for an acquisition permit (förvärvstillstånd) at the County Administrative Office (Länsstyrelsen) within whose area the property is located.

In order for natural persons (both domestic and foreign) to obtain a permit, the following rules apply:

A natural person does not have to apply for an acquisition permit in the following situations:

- the person already owns part of the property;
- the person gets the property by inheritance or will;
- the person buys, exchanges or gets the property from a parent, grandparent, spouse;
- the person has for at least one year been registered in a sparsely populated area in the municipality where the property is located.

For a natural person to receive an acquisition permit, the following conditions apply:

- the person plans to settle permanently on the acquired property within 12 months of acquisition (the person must prove this);
- if the person has not planned permanent residence on the property, it must instead show that the acquisition will permanently benefit local employment;
- when acquiring a property dominated by agricultural land, the land should be used by someone who lived nearby;
- when acquiring a property dominated by forest, the person must show that employment is imminent.

If these conditions are not met, the authorities can refuse a permit.
In order for legal persons (both domestic and foreign) to obtain a permit, the following rules apply:

In the following situation, legal persons are not required to apply for an acquisition permit:

- when they acquire the property from a legal person other than the property of a deceased, and the property is not located in a sparsely populated or redevelopment area.

In the following situations, legal persons are required to apply for an acquisition permit:

- when legal persons acquire agricultural property, located in sparsely populated or redevelopment areas, from other legal persons;
- when legal persons acquire agricultural property, regardless of area, from natural persons or deceased.

Legal persons may be granted an acquisition permit, if for example:

- the buyer relinquishes, can be assumed to relinquish or during the five immediately preceding years has relinquished agricultural property either to a natural person, or to the state for nature conservation purposes. In such a case, the relinquished agricultural property must, in terms of production, roughly correspond to the property referred to in the acquisition;
- the property is intended for purposes other than agriculture and forestry. When doing this, it must be clear from the municipality’s (were the property is located) adopted land use plan or an equivalent planning document that the property may be used for the purpose stated in the application for an acquisition permit;
- the acquisition mainly concerns forest land and the buyer conducts industrial activities in the locality for which timber from the acquired property is needed;
- there are other special reasons. By this is simply meant a special reason that does not counteract the purpose of the Land Acquisition Act: to preserve the balance between different categories of owners and which is specific to this particular case.

Application procedure

Natural and legal persons (both domestic and foreign) should apply for an acquisition permit by filling in documents available on the website of the Swedish Board of Agriculture (Jordbruksverket) (www.jordbruksverket.se). Anyone applying for an acquisition permit must pay a fee to the County Administrative Board to get their application tested.
For natural persons, the fee is currently SEK 4600 (approx. €440,-). The application should be send together with the acquisition document by e-mail or post to the County Administrative Board within whose area the property is located.

For legal persons, there are different fee categories:
- Legal persons acquiring property from natural persons or deceased must pay a fee of SEK 7 100 (approx. €680,-) if the property is worth less than SEK 10 million (approx. €970 000,-). If it is worth more, the fee will be SEK 15 900 (approx. €1500,-).
- Legal persons acquiring property, located in sparsely populated area, from another legal person must pay a fee of SEK 4600 (approx. €440,-). However, legal persons do not have to pay a fee if the property is located in a redevelopment area that is not at the same sparsely populated.

In case of a rejection
If the County Administrative Board rejects an application for an acquisition permit, one can appeal to the Swedish Board of Agriculture. If the Swedish Board of Agricultural also refuses, one can appeal further to the administrative court (förvaltningsrätten). In the event of an permission being rejected in the administrative court, the case can be transferred to the appellate court (kammarrätten). As a last resort there is the Supreme Administrative Court (Högsta Förvaltningsdomstolen). In order for the appellate court and the Supreme Administrative Court to hear the appeal, leave to appeal must first be granted.

When a natural person applies for registration of the ownership to the Land Registry (Lantmäteriet) the acquisition permit must be enclosed, otherwise the application of registration may be refused.

Source: Jordbruksverket (2020c)
2.3 Agricultural land lease

In Sweden agricultural lease (jordbruksarrende) refers to the lease of buildings and land for agricultural purposes. In general there are no specific size limits for plots to be considered as agricultural lease. Although, in case of a very small plot which includes buildings, the lease might not be considered as an agricultural lease. Agricultural leases are classified as either ‘farm leases’ (gårdsarrende) or ‘side leases’ (sidoarrende). Different legal provisions apply to both types of leases.

If an agricultural lease includes housing for the tenant, the lease is considered a ‘farm lease’. It is not compulsory for the tenant to live in the house. A such, a tenant can enter several farm leases simultaneously. Only natural persons (both domestic and foreign) can enter a farm lease. Thus, a legal person (both domestic and foreign) cannot enter a farm lease. The reason for this is that a legal person is not considered to be able to have a residence. In farm leases, provisions to protect the tenant (besittningsskydd) are included. Farm lease contracts are signed for a five year period.

Agricultural leases which are not farm leases are considered side leases. According to what was mentioned above, a legal person can only enter side leases. In most side leases, no residential building is included. As such, there is no requirement for a minimum rental period. In side leases, provisions to protect the tenant (besittningsskydd) are not applicable when the contract covers a period of maximum one year. In the event a contract period exceeds one year, provisions to protect the tenant are included (Sveriges Domstolar, 2020c).

2.4 Provision to protect the tenant (besittningsskydd)

In Swedish law, rules and regulations for leasing agricultural land are based on the idea that legal provisions should function as protection for the party that traditionally is considered to be the weaker part in a contractual agreement: the tenant. Thus, rules and regulations for leasing agricultural land are mainly intended to protect the tenant. It is rather difficult to avoid these rules and regulations.

One of the main legal provisions to protect the tenant is the so called ‘besittningsskydd’. According to this provision, a tenant is entitled to an extension of the lease unless the landowner has good reasons not to extend the lease. If the landowner terminates the lease, the tenant has the right to have the issue tried by the Swedish Tenancy Tribunal (Arrendenämnden, see below). In general, the tenant has to extension even though the landowner has terminated the lease.

The tenant does not have besittningsskydd in the following cases:

- the lease is considered a side lease and the contract period is limited to one year
- the landowner has terminated the agreement due to a mortgage or a surety where the leased land is used as security
- the landowner has terminated the agreement due to serious misconduct by the tenants
- the landowner’s partner or children want to use the leased land
- the leased land is needed for structural adjustments (measures aimed to improve efficiency and profitability of for example a farm)
- the land leased shall be used in accordance with a detailed development plan (as issued by for example a municipality)
- the land leased must be used for other purposes than agriculture (Sveriges Domstolar, 2020a).

2.5 In case of tenancy disputes

In case of a rental dispute, for example when one of the parties breaches the land rental contract, it is for both parties possible to start a legal contract enforcement procedure. This should be done via the Swedish Tenancy Tribunal (Arrendenämnden) which, amongst other things, mediates in tenancy disputes and deals with disputes concerning the extension of lease agreements for agricultural leases.

If one wants the tenancy tribunal to take up a case, one first has to submit a written application to the tribunal. When the application in considered complete, the tribunal will send a copy of the application to the other party involved in the dispute. After this stage, the tribunal will try to get both parts in the dispute to negotiate in order to reach an agreement. If the parts do not reach an agreement, the tribunal will call both parts to a hearing in which both can defend their case. After the hearing, the tribunal will review the case after which the tribunal proposes a solution or comes with a decision on the matter at hand. In the next stage, both parts are called back. The tribunal presents the solution ore the decision the tribunal has made. One can appeal some of the tribunal’s decisions.

It costs nothing when submitting an application to the tribunal. However, the parties involved are responsible for their own legal costs. This means that the party that loses the dispute will

3. Institutions (regulations, customs, practices) in surrounding environments of the land markets affecting its functioning

3.1 Legal persons acquiring property

The Land Acquisition Act contains rules on the acquisition of agricultural property. As mentioned above, the Land Acquisition Act (Jordförvärvslagen, 1970:230) has two main purposes. First, it aims to promote employment and housing in sparsely populated areas. Second, to maintain the balance between natural and legal persons owning agricultural properties. In order to avoid legal persons overrunning natural persons on the agricultural land as well as forestry market, strict rules apply that limit legal persons’ opportunities to buy land from natural persons.
According to the current rules, a legal person must have permission when acquiring agricultural property (see box 1). Permission by means of an Acquisition Permit is provided by the County Administrative Board or the Swedish Board of Agriculture in case of major acquisitions. A permit can only be granted to a legal person under special circumstances, for example when an agricultural property is marked as a cultural monument and at the same time is too expensive to maintain for an individual entrepreneur to be able to afford taking care of the property. Another example is when a legal person simultaneously sells or transfers the corresponding amount of agricultural land to the state or to a natural person so that the total amount of agricultural property owned by a legal person remains unchanged (SOU, 2015).

A government inquiry from 2014 emphasised that the current legislation means that it is difficult for those who run a agricultural property as a limited company (legal entity) to acquire agricultural property. This legislation is also thought to effect the establishment of new businesses in rural areas (SOU, 2014). A government inquiry from 2015 stressed that current legislation has an inhibiting effect on the competitiveness of the agricultural sector. The law complicates the acquisition, exchange, transfer and sale of agricultural property and, in addition, gives rise to administrative work (SOU, 2015).

3.2 Environmental laws and regulations

Sweden is one of the earliest OECD member states to develop environmental policies. In addition, Sweden has one of the oldest Environmental Protection Agencies, illustrating how important Sweden’s concern with environmental issues is in the national context (OECD, 2018). Swedish environmental policy exists out of a generational goal, 16 environmental quality goals and a couple of milestones covering a wide range of environmental issues such as waste, biodiversity, hazardous substances, sustainable urban development, air pollution and climate change (Sveriges MiljöMål, 2020). The agricultural sector is concerned with several of these objectives, like eutrophication, landscape protection and biodiversity protection. Reducing GHG emissions in the agricultural sector has more recently been added to this list of objectives (OECD, 2018).

The Swedish Environmental Code (Miljöbalk, 1998:808) aims to promote sustainable development. The agricultural and horticultural sectors, just like any other economic sector in Sweden, must follow the rules and regulation in de Code in addition to a number of rules that specifically apply to the agricultural and horticultural sectors. A significant number of the rules and regulations originates from EU environmental legislation (SOU, 2015).

The following are examples of environmental rules and regulations in Sweden that might affect how agricultural land can be used:

- Animal husbandry
  In order to start an operation with animal husbandry or expand the number of animals, a permit is required in accordance with the Swedish Environmental Code, which
includes a review process. In these cases, the company must submit an environmental impact statement to the County Administrative Board (SOU, 2015).

- **Reducing nitrate losses**

  Measures to reduce plant nutrient losses from agriculture and horticulture is based on EU directives (for example, the EU Nitrates Directive and the EU Water Framework Directive) and the Swedish environmental goals. The EU directives and national regulations contain detailed provisions that for example apply to the handling of manure, etc. The Nitrate Directive requires that in nitrate sensitive areas special measures are taken. In Sweden, these areas comprise the majority of agricultural land (SOU, 2015).

- **Protection of biotopes**

  Several biotopes in agricultural landscapes, e.g. stonewalls and so-called non-arable outcrop (small areas of nature, e.g. forest, surrounded by cultivated land), are throughout the country protected (this entails restrictions on how a agricultural property can be used) (SOU, 2015).

### 3.3 Factors influencing agricultural land prices

In 2011, the Swedish Board of Agriculture (Jordbrukverket) published a study on the factors that influence the price of agricultural land in Sweden. The study showed that regional variations in agricultural land prices are largely determined by potential soil yields. Consequently, the fertility of soil has substantive influence on agricultural land prices. Since the use of agricultural land and related agricultural production to a large extend are adapted to the usability of the land, other agricultural variables, such as farm size, have comparatively little influence on land prices.

The study also shows that farm subsidies (Single Payments Schemes) is capitalized in the value of agricultural land. According to the results of the study, municipalities with 1% higher farm subsidies have 0.6% higher agricultural land prices compared to average municipalities. This is relatively high compared to the results from similar studies conducted in other European countries.

This can be explained by the fact that farm subsidies have a greater impact on the price of land in the areas where the constitute a significant proportion of the land’s total return, i.e. in the areas where the land is relatively “low-productive”.

Unlike the effects of farm subsidies, agri-environmental payments seem to have a negative effect on agricultural land prices. This indicates that municipalities that receive a comparatively large amount of compensation for environmental measures have lower land prices. This probably shows that farms in municipalities that receive a lot of environmental compensation usually use comparatively large amounts of land with sensitive natural values.
Such agricultural land is often relatively low-productive while environmental measures are often costly (Johansson and Nilsson, 2011).

4. Implementation and enforcement issues of land regulations

4.1 Oral rental agreements

According to Swedish law, rental agreements for agricultural land must under all circumstances be written (chapter 8, 3§, Jordabalk 1970:994). This means that no one can base any rights on an oral agreement. It is also important that the parties in a rental agreement have agreed upon a rental fee. If there is no rental fee, there is no official rental agreement. In such a case, neither party can invoke any rule of law in the Land Code (Jordabalk 1970:994).

Even though rental agreements must be written, figures from the Swedish Board of Agriculture (Jordbruksverket) show that in 2018, 69% of the agricultural rental agreements in Sweden were in writing, which is unchanged compared to 2008.

Between 2011 and 2014, the Swedish government agency Statens offentliga utredningar (SOU, State public report), conducted a survey to study the application of Swedish agricultural land lease rules and regulations in practice. The outcomes of the survey showed that 25% of the respondents who use oral agreements instead of the written alternative chose for the first alternative because it is less complicated than the latter one. 40% of the respondents indicated that the issue of drawing up an a written agreement was never discussed. About 10% stated that the landowner and/or tenant agreed not to draw up a written agreement because the landowner planned to use the land himself/herself, change the purpose of the land, or sell it at a later stage (SOU 2014:32, 2014). As such, rules and regulations (like besittningskydd) are circumvented.

4.2 One year contracts for lease

One-year-contracts are quite common in Sweden. In the above mentioned study by the Swedish government agency SOU, the use of one-year-contracts was also investigated. In approximately 30% of the one-year-contracts included in the study (for side leases), the lease period had been set at a maximum of one year so that legal provision to protect the tenant (like besittningskydd) do not apply to the agreement (in case of side leases, provisions to protect the tenant are not applicable when the contract covers a period of maximum one year). In just over 10% of the cases, one-year-contracts were used as the landowner planned to use the land himself/herself, change the purpose of the land, or sell it at a later stage. However, in the study is emphasized that the underlying reason to draw up a one-year-contract is to circumvent provisions to protect the tenant. In 60% of the cases, one-year-
contracts were used for “other reasons” or because the landowner and/or tenant did not know why the lease period was set for a maximum of one year.

5. Reference list of legal regulations

SFS 1979:230. Jordförvärvslag. (Land Acquisition Act)
SFS 2005:522. Jordförvärvordning. (Land Acquisition Scheme)

When a property is sold by the (local)government

SFS 2010:900. Plan och bygglag. (Planning and Building Act)
SFS 2017:725. Kommunallag. (Local Governments Act)

Additional references (literature used in this country report)


SOU, Statens offentliga utredningar 2014b. *Tillväxt och värdeskapande - Konkurrenskraft i svenskt jordbruk och trädgårdsnäring*.

