

STATUS OF AGRICULTURAL LAND MARKET REGULATION IN EUROPE

POLICIES AND INSTRUMENTS



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EDITORIAL

2014 was the International Year of Family Farming, the importance and benefits of which are well recognised. Family farming provides jobs, added-value and a social connection within each region.

Across the world, the vast majority of farming is still family-based, in the sense that the operating capital is held by the family or the workforce is mostly comprised of family members. Decisions on the running of the farm are taken by the family and are therefore local.

This agricultural model is globally under threat. On every continent, including Europe, production units are emerging at very different levels, with labour that is less and less family-based and with operating capital that, increasingly, is not owned by the farmers themselves.

Access to land constitutes a fundamental factor in this shift of model. Management of this increasingly rare resource cannot be left to the market alone. Drawing on its experience in this field, the European Association of Land Management Institutions (Association Européenne des Institutions d'Amenagement Rural - AEIAR), has decided to conduct a review of the regulatory measures in place to govern farming structures across the various countries of the European Union. Regulatory tools do exist but they have lost their effectiveness in the face of the progress of company-owned farms, ownership of which is transferred through the sale of company shares.

Against a global background of climate change and population growth, farming has once again become a key concern. The land market is central to this issue, as demonstrated in recent works by the European Economic and Social Committee and the European Parliament.

The AEIAR is therefore contributing to this critical discussion on the regulation of farming structures, the cornerstone of Europe's food sovereignty and a flourishing rural community.

Michel Baylac, President of the AEIAR



I INTRODUCTION

In September 2013, under the presidency of Michel Baylac, the AEIAR's Administration Board decided to undertake an analysis of «the regulation of the development of agricultural structures in Europe».

This decision was motivated by several factors:

- The regulation of the development of agricultural structures, including the organisation of agricultural production units and their transfer, is one of the AEIAR members' core activities,
- Changes to the legal forms of agricultural production structures requires land regulation tools to be revised and updated,
- The potential questioning of regulatory tools, including the pre-emption right in various countries, within a general context of the liberalisation of policies.

Obsolescence of regulatory tools

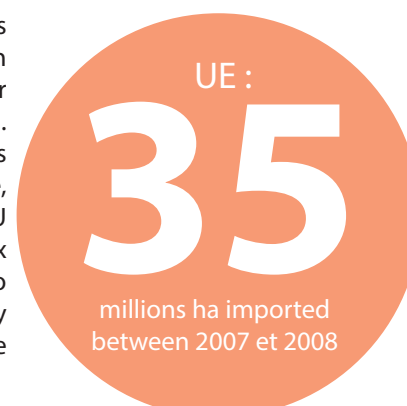
The members of the AEIAR realise that the emergence of company structures among agricultural production units calls into question the relevance of existing regulatory tools in each country. Upon entering the European Union, several new member states in the East negotiated a moratorium on the purchase of land by foreigners. This will soon be lifted. Nevertheless, despite the moratorium intended to prevent their arrival, foreigners, whether from an agricultural background or not, have been able to farm by buying shares in farming companies, which,

being locally registered, can rent and purchase land. Regulating access to farm ownership does not result in the regulation of how agricultural production units can develop, which would involve regulating the land rental market and company share transfers. In France, «the agricultural structures policy», created in 1960 to control the land market through SAFERs (land development and rural establishment companies) and the control of farm development by departmental committees, can no longer control the development of corporate farming structures, as, since 2006, company share transfers are no longer subject to authorisation. In Germany, transfers of shares in farming companies are not subject to authorisation, although the sale and rental of land still is.



Increasing competition for land and the end of the family model

In a new global context in which the increasing demand for biomass is attracting private capital looking for profitability, as well as sovereign wealth from countries with little agricultural or forestry land that wish to secure their physical supply, competition to control biomass production is increasing. Some of those competing are agri-food businesses and those using biomass who want to ensure their supply. The influx of foreign capital in agriculture, from within European and outside, is not a phenomenon limited to new EU members. Chinese investors are buying into French vineyards (in Bordeaux and Burgundy, for example) and have even tried to invest in arable crops. To invest in a local market, non-farming investors simply have to offer slightly higher prices than those agreed by the usual local buyers, whether the price of land is initially «low» or «high».



Farming is moving ever more rapidly away from the family farm model, which was the reference model used even before the establishment of the common agricultural policy. The FAO and the European Economic and Social Committee are concerned about the matter. The year 2014, designated by the FAO as the International Year of Family Farming, offered a unique opportunity to discuss the future of farming structures. The European Economic and Social Committee, in its opinion of 21 January 2015, considered land grabbing and land concentration in Europe and around the world to represent an imminent threat to family farming.

Diminished European food sovereignty

Changes currently under way also raise the issue of Europe's food sovereignty and that of its Member States. Europe is a net importer of the equivalent of the production of 35 million hectares (annual average 2007-2008), or the equivalent of 20% of EU-27 farmland.

The EU's reliance on non-EU farmland has intensified in recent years. Between 1999 and 2002, it was 26 million hectares (annual average). It has rapidly increased along with increases in population, quality of life and consumption of meat, and with the incorporation of biofuels into petrol and diesel. Increasing urbanisation is aggravating the problem. The investment of non-European capital in the agricultural production units of Member States could further exacerbate Europe's dependence on decision-making centres outside the Union.

The renewal of land regulation policies

Insofar as land policies are primarily the responsibility of Member States, in this report the members of the AEIAR would like to analyse and discuss:

- The existing regulatory provisions in each of their countries for managing the land market (free and rented), access to land rental and to shares in farming companies or farm financing companies,
- The arguments to be reiterated, developed or renewed for conserving or extending the scope of these regulations in each State in order to improve the management of their limited and non-renewable agricultural land resources.

¹Cf. EU agricultural production and trade (Harald von Witzke (Humbolt University Berlin), Steffen Noleppa (Agripol)).

Reminder

The Treaty on the Functioning of the European Union forms the basis for national farming policies:

- Article 49 of the Treaty on the Functioning of the European Union prohibits restrictions on the freedom of establishment of nationals of another Member State.
- Article 54 stipulates that this freedom extends to access to non-profit-making activities and that companies shall be treated in the same way as individuals.
- However, Article 50 indicates that «the European Parliament, the Council and the Commission shall enable a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39, paragraph 2».
- Said Article 39, paragraph 2, states: «In working out the common agricultural policy and the special methods for its application, account shall be taken of:
 - a. the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions,
 - b. the need to effect the appropriate adjustments by degrees,
 - c. the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.»

Thus, the combination of Articles 49, 54, 50 and 39 provide a strong foundation for national agricultural policies, applicable both to individuals and to legal entities. (cf. Appendix 1).

II. EUROPEAN AGRICULTURAL STRUCTURES

The structure of agricultural production units today is a result of European history, from the end of feudalism to market economy societies, following, in some regions, a period of administered economy in the Soviet era. Before presenting the regulatory tools in place within various Member States, this chapter outlines several structural traits of farms across Europe.

II-1 Modes of tenure

The maps below show:

- the percentage of land rented for agricultural use in each European region in 2010; on this map, the darker the colour, the larger the proportion of rented land,
- and the percentage of land of the farms of over 100 hectares in size, for each European region.

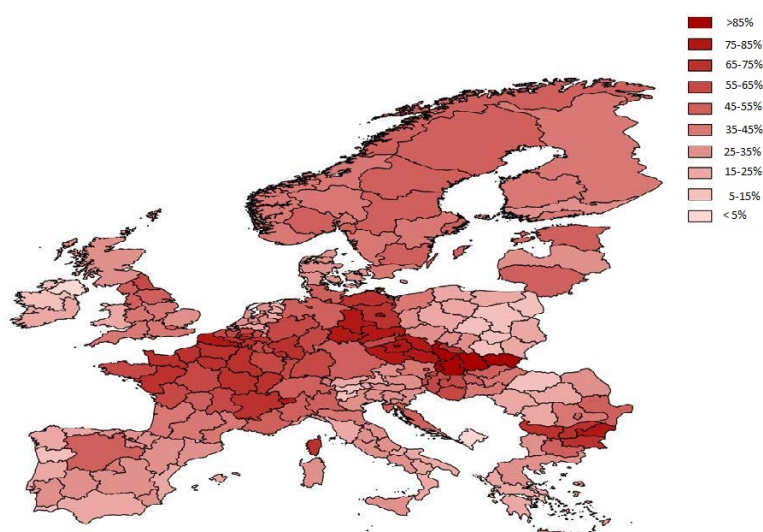
It appears that, except in the countries of North-West Europe, there is a strong correlation between high rates of rented land and a high proportion of land farmed by units of over 100 hectares in size.

In Western Europe, Belgium and northern France are the areas where rented agricultural land is most common. More than two thirds of land there is rented. Tenanted farming is even more widespread in certain regions of Eastern European countries, where it often accounts for more than three quarters of land.

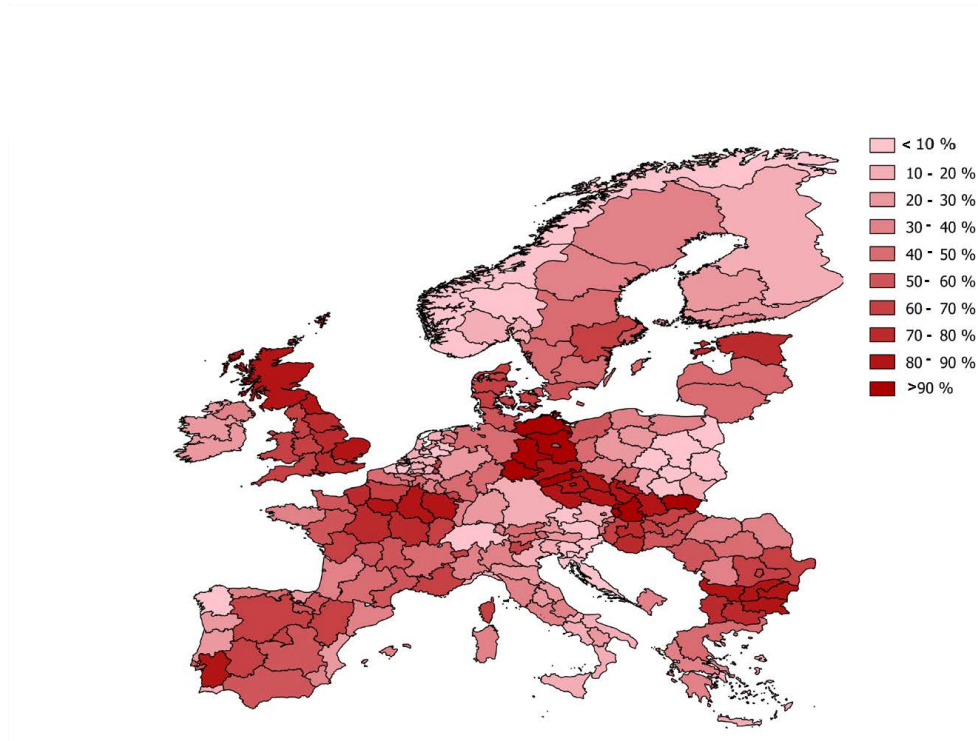
In Western Europe, rented farmland has permitted the progressive growth of primarily family-funded farms. If the map below had been drafted in 1990, it would have been paler in the West. In the East, the development of tenanted farming is principally a result of the dismantling of the cooperative or state farms of the former Soviet Union. Often, the former managers of these structures were able to gain control over farm companies by obtaining land granted or sold by the State, or by renting it from small private landowners. The heirs of the former landowners or the new beneficiaries of small plots, lacking both the necessary operating capital and skills, had no choice but to lease out their lands to the new private enterprises that were being formed.

These new production units joined together plots of several hundred hectares in size, often forming farms of over a thousand hectares. This is the situation found in the Länder of the former East Germany, and in Hungary, the Czech Republic, Slovakia and Bulgaria. In Romania, the 3 largest farms all exceed 50,000 hectares in size. Since the early 2000s and since the financial crisis of 2008 in particular, these structures have been attracting non-agricultural investment funds, from within Europe and outside.

Percentage of land rented for agricultural use in each European region in 2010



Percentage of land of the farms of over 100 hectares in size, for each European region.



Source: *Terres d'Europe-Scafr* from Eurostat

Alongside these large-scale operations, there is also local and subsistence farming, developed from plots of 5000 m², which were granted to the workers from the cooperative or state farms. In regions where there was resistance to forced collectivisation, such as in Poland (on three quarters of farmland) and in the mountainous areas of Romania, owner-operated family farms are most prevalent.

In both West and East, tenanted farming is the preferred structure for large-scale farms. There are, however, some notable differences: the largest farms in western Europe cover several hundred hectares and the vast majority of them are still family-owned, whereas those in the east can exceed a thousand hectares and are not, and never have been, family run.

II-2 Number and size of European farms and number of jobs provided

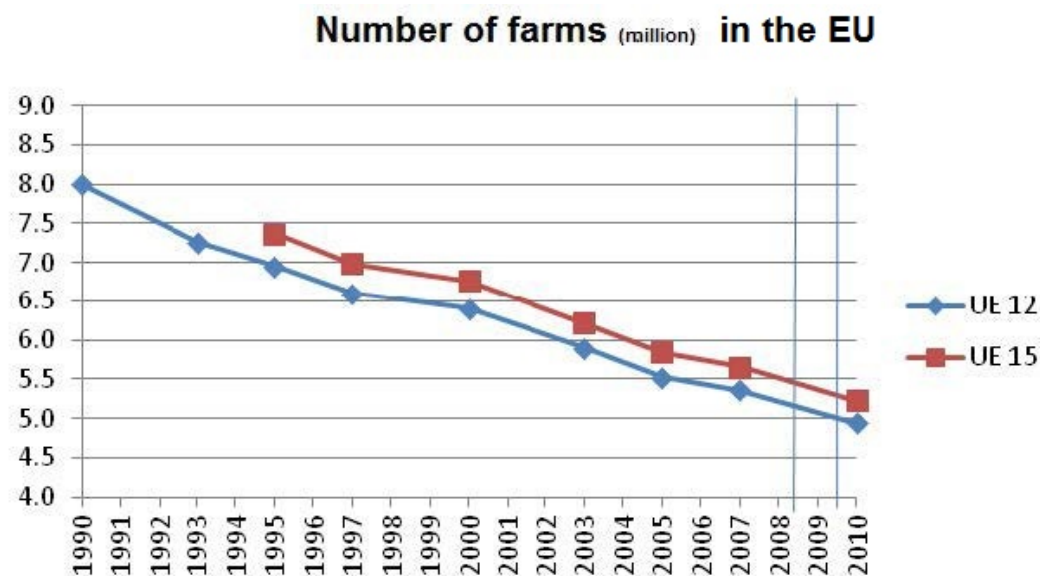
The European common agricultural policy applies to agricultural structures that show wide variation within individual regions and countries, and between one country and another (see appendix 4). The number of farms is falling, while their average size continues to increase. The operating capital of the largest structures is increasingly rarely provided by one individual. The capital assets of agricultural enterprises are increasingly owned by capital structures.

« In both West and East, tenanted farming is the preferred structure for large-scale farms. »

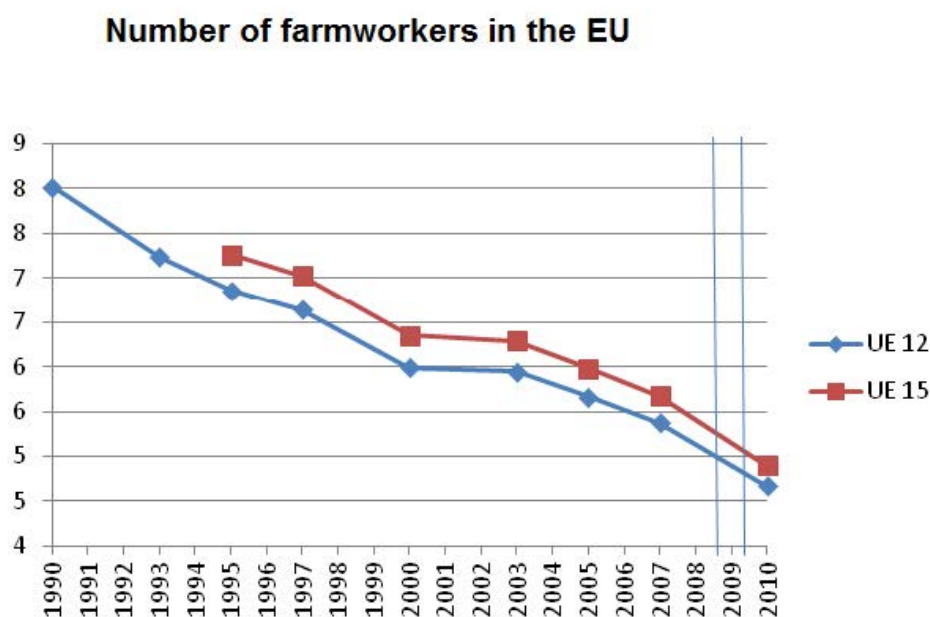
A decrease in the number of individual farms

Thus, in the space of 14 years (1993-2007), in EU-15, the number of farms and farmworkers fell by about 22%, while the total area of farmland decreased by 3% (nearly 4 million hectares).

Source: Terres d'Europe-Scafr from Eurostat



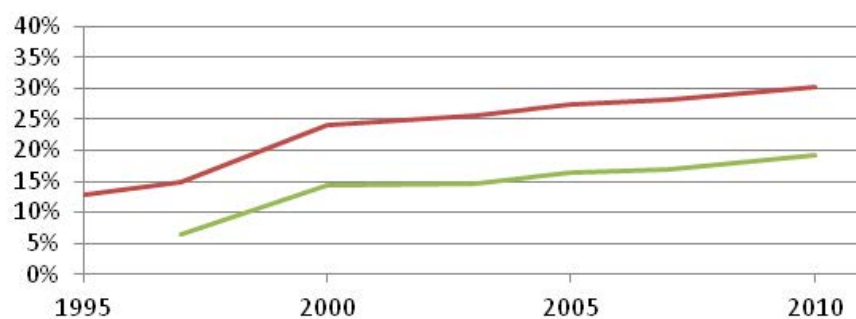
Source: Terres d'Europe-Scafr from Eurostat



Source: Terres d'Europe-Scafr from Eurostat

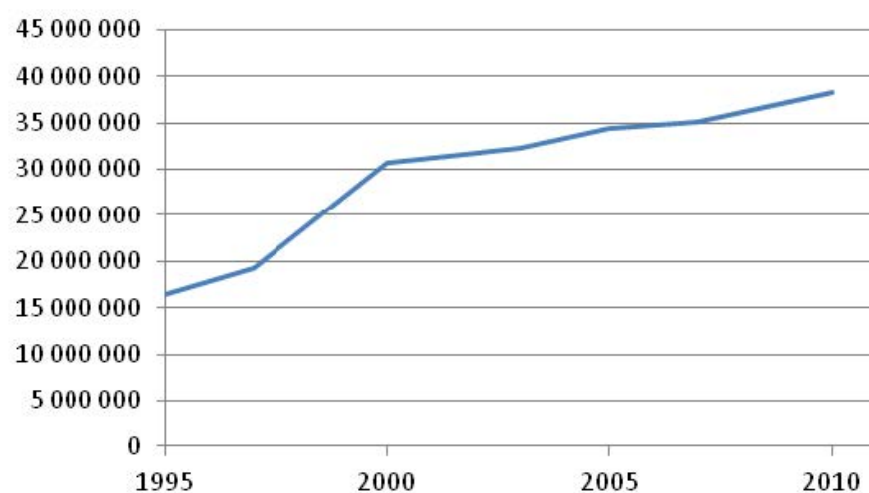
While the total number of farms is in sharp decline, non-individually-owned farms are the only type of farm to be increasing in number and size

Evolution of the non-individually-owned farms (red) and farmworkers in these structures (green)



Source: Terres d'Europe-Scafr from Eurostat

**Evolution of the farming surface of non-individually-owned farms
(absolute value) in the EU-15**



Source: Terres d'Europe-Scafr from Eurostat

Progress of company-owned farms

In 2010, in EU-28, farming companies (2% of farms), excluding co-operatives of individually-owned farms, worked 27% of farmland and employed 12% of the workforce.

Distribution of EU farms according their status

	Individual- lyowned farms	Co-operatives of individual- lyowned famrs	Agricultural companies	Total
Number (millions)	11,9	0,07	0,3	12,3
%	97 %	0,6 %	2 %	100 %
Size (millions ha)	120	9	47	76
%	68 %	5 %	27 %	100 %
Work unit (millions)	8,6	0,2 %	1,2 %	9,9 %
%	86 %	2 %	12 %	100 %

Source: Terres d'Europe-Scafr from Eurostat

farms of less than 2 hectares in size, which make up half of the total number of farms, work less than 3% of land.

Distribution of the 12 million farms in Europe and the 176 million hectares of farmland

	By number	By size (area)
Under de 2 ha	50 %	
Between 2 and 10 ha	30 %	< 3 %
between 10 and 30 ha	10 %	10 %
between 30 and 100 ha	7 %	13 %
Over 100 ha	< 3 %	25 %

Source: Terres d'Europe-Scafr, from Eurostat 2010 report on Europe 28

Percentage of farms of over 100 ha in various countries

	By number	By size (area)
EU 28	< 3 %	50 %
Germany	11 %	55 %
Belgium	5,3 %	25 %
Bulgaria	1,5 %	82 %
Croatie	0,4 %	19 %
France	18 %	60 %
Hungary	1,3 %	65 %
Italie	1 %	26 %
Lithuania	1,9 %	42 %
Poland	0,6 %	22 %
Czech Republic	19 %	89 %
Romania	0,4 %	49 %
United Kingdom	21 %	74 %

Source: Terres d'Europe-Scafr from Eurostat

In Romania, 0.4% of farms work 49% of farmland.

Towards capital-intensive farming?

Without regulation, on the basis of current trends, the concentration and specialisation of farms across Europe will continue, with a decline in the number of farmers. Production units will raise increasing amounts of capital and the workforce will increasingly be employed. (In France, the number of farms could fall by around 40% between 2010 and 2025).



III. REGULATORY TOOLS AND MEASURES BY COUNTRY

GERMANY



The “Law on measures to improve the structure of the agricultural sector and the security of farming and forestry holdings” (Law on real estate transactions, “Grundstückverkehrsgesetz”) came into force on 28 July 1961. Some minor changes were made to the Law in 1974, 1986, 2005, 2006 and 2008. A right of pre-emption can be exercised by the non-profit agricultural associations (“Landgesellschaft”). Their legal basis is the Reich Settlement Law (“Reichsiedlungsgesetz”) of 1919.

Until the Federalism Reform in 2007, the Federal government had legislative competence for the Law on real estate transactions, rural settlement, the farm tenancy transactions act, and land consolidation. Federal laws remain applicable until they are replaced by laws at Land-level. Only the Land of Baden-Württemberg has made use of this. The Baden-Württemberg “Law on the improvement of the agricultural structure” was enacted in 2010 in this Land.

Regulation of the land market

The aim of the (Federal) Law on real estate transactions, like the Baden-Württemberg Law on the improvement of the agricultural structure, is to prevent threats to the structure of the agricultural sector and not to control the real estate market.

In Germany, sales of agricultural land over a certain size must be approved by the administrative authorities in the Federal Länder. The threshold size for approval is set by the Federal Länder and ranges between 0.25 and 2 hectares. The approval authority is either a technical authority at regional level or part of a regional administration.

Approval can be refused by the authority in the following cases:

- If the sale will lead to poor distribution of the land (case law dictates that this is the case if the buyer is not a farmer);
- If the agricultural structure worsens on account of the negative reduction or the subdivision of the land
- The sale price is disproportionate compared with that of an equivalent piece of land (case law dictates that this is the case if the sale price exceeds the market rate by over 50%. The limit in Baden- Württemberg is 20%).

If the sale is approved then a pre-emption rights cannot be exercised.

In the case of a disproportionately high price, the sale must be refused but no pre-emption right can be exercised.

In general, approval is refused if the farmland is to be sold to a person who is not a farmer (poor land distribution). In this event, the Landgesellschaft (non-profit rural land management company) can exercise a pre-emption right.

If approval of the sale is refused, the authority hands over the case to the Landgesellschaft. The Landgesellschaft reviews the implications of exercising their pre-emption right based on legal and economic factors, since it carries risk for them. The pre-emption right is exercised if there is at least one agricultural holding, capable of being scaled up, that needs the land to extend their property or that has the financial capacity to purchase the land, or if the land is needed for a specific measure to improve farming structure, for example as part of a land consolidation process.

The Landgesellschaft replaces the buyer originally envisaged (the initial buyer) under the contractual conditions agreed upon at the outset. The Landgesellschaft becomes the owner and is registered in the land register. It subsequently sells the land to an agricultural holding that meets and accepts the above-mentioned conditions (second buyer).

In Baden-Württemberg, in accordance with the 2010 Law on the improvement of the agricultural structure, the Landgesellschaft can exercise a pre-emption right in favour of the landbank that it manages without having a second buyer at hand. The land must be used for the improvement of the agricultural structure within a period of ten years.



**Intervention of rural public interest companies,
(Landgesellschaften) in agricultural real estate transaction.**

Years	2008	2009	2010	2011	2012	2013
Number of sale transactions	43,310	40,794	38,389	40,524	39,859	39,561
Number of sale transaction that are transferred to the Landgesellschaft to review the exercise of pre-emption right	430	443	635	801	912	924
% of sales transactions reviewed	1,00	1,09	1,66	1,98	2,29	2,33
Number of cases in which the preemption right is exercised	116	114	179	241	244	225
% of cases exercised from all cases reviewed	27,0	25,7	28,2	30,1	26,7	24,4

Of all cases reviewed, pre-emption rights were only exercised in 25 to 30% of cases. In most cases there was no farmer (second buyer) who was interested or who was in a position to purchase the land

Regulation of land leases

In Germany, the legal basis for the control of leases is the Federal "Law on land lease" (1952/1985) and the Law on the improvement of the agricultural structure in Baden-Württemberg (2010).

The purpose of these laws is to fend off any dangers to the structure of the agricultural sector. They do not provide an instrument by which to regulate the land rental market.

New lease agreements or significant changes to lease agreements require the approval of the Land government authorities.

The owner has to notify the authorities within one month of the signature of the agreement.

The same reasons can be invoked as for the refusal of a sale: poor distribution of land, fragmentation of land or a disproportionately high leasing price. The legal consequence is primarily the modification of the lease agreement. If the signatories to the agreement do not change the agreement within the agreed period the lease agreement is deemed legally void.

The biggest problem in enforcing the law is that the authorities are not informed about agreements, and there is no sanction for failing to notify the authorities.



Regulating the transfer of shares in farming companies or agricultural land companies

The sale of shares and securities in agricultural companies does not require any approval. This is an ongoing problem, especially in the eastern part of Germany.

Regulation of access to the agricultural profession

There is no regulation in this respect.

Current issues and outlook for the future

From 2008 to 2013, the significant increase in the sale prices of agricultural land (Germany: +78%; West German Länder: +53.7%, East German Länder: +154.2%) has resulted in a situation where fewer farmers are prepared or have the economic capacity to purchase land as second buyers after the Landgesellschaft has exercised its pre-emption right.

The purchase of land by non-farmers and capital investors is a controversial and critical issue. Moreover, the sales of shares in agricultural companies and cooperatives are not subject to any approval under the Law on real estate transactions. There are also shortcomings in the execution of law. In terms of guiding case law, there was a lack of statements about the objectives of agricultural policy in the relevant agricultural report by the Federal Government. Consequently, some Länder are currently discussing legislative changes. There have already been initiatives in some of the regional Parliaments (Saxony, Saxony-Anhalt, Mecklenburg-Vorpommern, Brandenburg, Lower Saxony and Bavaria). The Federal and regional governments initiated a working party in January 2014 to analyse developments on the German real estate market for the Conference of the Agricultural Ministers in Germany, and to set out the future objectives of the real-estate market policy, which could also bring about legal options for action.

Improvements to the enforcement of the Law on real estate transactions and associated legal reforms are also under discussion, as well as an adjustment of minimum levels for control, a reduction of the price limit to 120% of the average price, how to increase rates of Landgesellschaften pre-emption right usage without a second buyer, as well as the inclusion of share sales in the control procedure.

Furthermore, efforts are being made to exempt the Landgesellschaften from the land transfer tax when they exercise a pre-emption right, so that these taxes only are only incurred when the sale to the farmer takes place and not twice as has been the case up to now.

Enforcement is to be improved in land leasing legislation. The possibility of applying sanctions is being considered in the event that new lease agreements or changes to existing agreements are not reported to the authorities.

An expert opinion for the BLG from 2012 showed, there is some scope for tightening up the wording of the Law on real estate transactions without running counter to German Basic Law and EU Law.

In a second opinion commissioned by the BLG, it was ascertained that legal rules on the sale of shares in agricultural companies can be imposed via requirements for real-estate transaction approval falling under the legislative jurisdiction of the Länder.

Land prices:

+154.2%

between 2008
and 2013



BELGIUM

Until the early 1990s, Belgium farming policy was governed by the Belgium State, more specifically by the Ministry of Agriculture. Since 2001, the agricultural policy has been regulated at regional level. Tenanted farming is no longer under the governance of the state. It is now up to the regions to develop this instrument.

THE FLANDERS REGION

Until the early 1990s, Belgium farming policy was governed by the Belgium State, more specifically by the Ministry of Agriculture. Since 2001, the agricultural policy has been regulated at regional level. Tenanted farming is no longer under the governance of the state. It is now up to the regions to develop this instrument.

THE FLANDERS REGION

The average farm size is 31.2 ha and farmers themselves own only one third of the land in use. Agriculture is also vulnerable to changes in land use. Due to strong competition for land, the average price of land is high (on average €28,300 per hectare in 2009) and continues to increase at a rapid rate. Because of the high pressure on land, the remaining farms must undertake more intensive cultivation in agricultural sectors that provide high added-value per hectare while remaining small in size in terms of hectares. This results in the need to invest more and creates a growing dependency on industrial agricultural companies and financial institutions. Despite these developments, there are no specific regulations for family farms and no specific regulations concerning access to land (in order to control land prices). Nevertheless the decision-makers are aware of the problem and the necessity to intervene with policy instruments that keep agricultural land for professional farmers.

It is estimated that more than
6 000 ha
of land is taken out of agricultural use each
year for other functions.

The most common structure for farms is family farms, with agricultural farming companies representing 24.5% of the number of farms. However, even these are also mostly managed by a family drawing sufficient revenue from it for a household (sometimes including the successor). The structure of agricultural companies facilitates the succession of farms that have significant needs for capital, such as the horticultural sector. Large industrial agricultural companies are more prevalent in the landless livestock sectors (pigs, poultry and veal). Nevertheless, a part of the capital (including agricultural land, buildings, and houses) of these companies may be held by several farmers who manage the day-to-day rearing of the animals.

Most farms in Flanders are family farms: 99% of farms have less than 134.4 ha of agricultural land and the 5 largest farms have an average of 600 ha of agricultural land.

Even though family labour is on the decline overall, in specialised farms it still persists. This difference is due to the fact that non-specialised farms generate additional revenue through service provision. Service provision in medium-sized farms is increasing in parallel with the need for capital in the greenhouse and horticultural sectors. Even though the average size of farms is growing slowly and they are more and more specialised, there is no indication that the family farm model is in strong decline.

Flanders is experiencing considerable land pressure for non-agricultural use of agricultural land. Farmers must compete with other land needs for growing urbanisation and associated developments (for example large infrastructure projects, industry and port areas) and space for nature, water (flood plains) and leisure. In addition to these developments, there is also less visible absorption of agricultural land by non-farmers in traditionally agricultural areas (for example, spaces for horses, enlargement of residential gardens, local companies), which is adding to the problem. It is estimated that more than 6,000 ha of land (0.75%) is taken out of agricultural use each year for other functions.



Regulation of the land market

The pre-emption right accorded to farmers and the government is one of the rare instruments that exist in Flanders to regulate the land market. There are 15 different types of pre-emption right based on various laws. Each law defines the area in which the pre-emption right may be used. When the owner sells a piece of land that is used by a tenant farmer, the farmer has the pre-emption right. When there are several pre-emption rights on the same parcel of land, the farmer's pre-emption right takes precedence, even if the State or the local authority holds a pre-emption right.

The Flemish Land Agency (VLM) has a pre-emption right in integrated territorial development projects, based on several laws: land consolidation (re-parcelling to support large infrastructures, re-parcelling of land on a voluntary basis and for overall territorial consolidation), land development, and land management for nature. The zones where the VLM can exercise a pre-emption right are defined by the Minister of Environment.

No revision of the price is possible when using the pre-emption right. The person or administration that has the pre-emption right can purchase the land at the same price and under the same conditions as those defined by the initial agreement between the seller and the purchaser. When the person or the administration cannot or does not want to purchase under these conditions, the initial sale can still be carried out.

The Flemish Land Agency can also exercise their pre-emption right when a local authority (Flemish regional, provincial or local authority) wants to sell the land on the private market.

Table of pre-emption rights most used by the Flemish Government in 2013

Pr-emption right related to	Number of offers	Number of times pre-emption right was exercised	Area acquired through exercise of pre-emption rights (ha)
Land management for nature	105	2	123, 9
Nature reserve areas	710	27	31, 3
Nature network	751	12	26, 4
Overall territorial consolidation	881	24	129, 4
Integrate management of water	6 127	39	125, 2
Other (including building plots)	8 626	26	3, 8
Total	17 200	130	440 ha





Regulation of land leases

Because of the high proportion of rented agricultural land, Belgium has developed a number of policies aimed at protecting professional tenant farmers and ensuring the continuation of agricultural activity.

Firstly, in addition to the pre-emption rights mentioned above, the status of tenant farmer requires that the term of rental agreements is a minimum of 9 years. Secondly, the term of agreements may be 18 years or more. Thirdly, there is also the option of a «career agreement», the term of which is equal to the expected career of the farmer (the minimum term being 27 years). Finally, there are also very long-term agreements. These agreements are accompanied by construction rights (recht van opstal). These give the farmer the right to have buildings on land belonging to a third person. Contracts of 9 to 18 years are automatically extended by successive nine-year periods, unless the tenant or the owner gives notice. However, the reasons for which the owner may give notice are generally limited to the use of the agricultural land for their own professional farming or that of their spouse or children. Rental agreements can also be transferred when a tenant retires and has a spouse or children who wish to take up the rental agreement. In addition, when they inform the owner in writing of the transfer, the agreement can be renewed and a new 9-year (minimum) agreement period commences. Despite these rules, the Flemish Land Agency can conclude an agreement with a farmer on an annual basis, for flexible use of the land for projects to develop the territory for which the property has been purchased.

The maximum rental price for a 9-year rental agreement is regulated and is equal to the cadastral value of the land, multiplied by a rental coefficient. On average, the rental price is low in comparison to the sale price of agricultural land; rent prices are from €250-€300 per hectare. The coefficient is increased by fixed percentages in the case of longer agreements of between 27 and 99 years.

In order to avoid this old and strict rent framework, which was intended to provide protection to tenant farmers and enforce low rents, numerous options have been set up for the rental of agricultural land. Over recent years, experts have observed an increase in the number of seasonal agreements and informal agreements between retired and young farmers. This could be connected to the rigidity of rental agreements, to the low price of maximum rents and to the introduction of single farm support from the EU.

Furthermore, the rented land market is free and without restriction compared with the regulations on the quantity of rented land. Generally speaking, there are no restrictions negotiating land prices and transactions do not need to be approved by a government body.

Regulating the transfer of shares in farming companies or land investment companies

There is no regulation of transfers of agricultural companies or land investment companies.

Regulation of entry into the agricultural profession

There is no restriction to entry into the agricultural profession. However, in order to benefit from European support for the modernisation of farms or to set up young farmers, farmers and farms must meet some minimum requirements.

Current issues and outlook for the future

Landowners and farmers' organisations acknowledge that these strict regulations have negative effects for both parties. The recent reform of the Belgian State, which delegated control of land rental to regional authorities, could lead to an agreement on the reform of the agricultural land rental policy in the near future.

With the exception of the pre-emption right and the strong protection accorded to farmers with respect to their rented land, there is no legislation on controlling access to land. Farmers are in competition with other sectors for access to farmland.



The Flemish government has decided to protect farmland by:

- setting up a Flemish landbank and local reserves of land to support projects with an impact on agriculture, nature and the countryside,
- implementing development projects for integrated land to improve the function and structure of open spaces
- paying compensation for loss of lands or changes in zoning plans.

WALLONIA

Farmland under pressure

Despite having a larger area of usable farmland than Flanders, Wallonia is nonetheless experiencing land pressures. Usable farmland covers 722,562 ha (in 2011) representing 43% of the whole Walloon territory. Each year, 1,000 ha are lost due to soil-sealing (urbanisation and re-zoning). Land speculation is high. The price ratio between a building plot and a cultivated parcel is about 20.



Specialised agriculture

Walloon agriculture is highly specialised. In 2013, 86.1% of Walloon farms were qualified as specialist farms, with only one main type of production. Of these, 24.5% are farms specialising in beef cattle and 29.5% specialise in dairy cattle.

Crop fields in the North, cattle breeding in the South

Rural areas of Wallonia are characterised by a distinct north/south divide, along a border formed by two rivers (the Meuse and the Sambre). In the northern part we find the most expensive, most fertile land, field crops and the biggest farms. The southern part houses farms focusing on cattle breeding (dairy and beef) as well as encompassing most of the grasslands. The south of the Sambre and Meuse valley is also the most biologically rich area, and is where most of the Natura 2000 sites are found.

Concentration of land ownership, a problem for young farmers

The number of farms has decreased from around 30,000 in 1990 to 13,000 in 2012. In parallel, the size of farms has grown dramatically over recent decades. The average size of a Walloon farm has increased from 25.8 ha in 1990 to 55.6 ha in 2013. This phenomenon has been accompanied by the concentration of land ownership. In 2013, 14.4% of farms were over 100 ha in size. They represented 37.6% of total farmland. Of course, 31% of farms are under 25 ha in size, but they just represent 6.6% of total available farmland. Alongside these figures, the increasing age of farmers needs to be considered. Many farmers will not have successors, and their farms will be dismantled. The land market represents about 1% of total farmland per year. The price of the land has increased dramatically, reaching €60,000/ha in the region of Hesbaye. Access to land is more and more difficult for young farmers wanting to set up a farming business. Land tends to be a safe investment attracting non-agricultural capital.

Up to
60.000 €/ha

Farm leasing: the principal type of farm

In Wallonia, 68% of cultivated land is leased (2011). For the moment, the leasing conditions are the same as in Flanders. Terms are identical. The coefficient of farm rent is also calculated by provincial commissions and periodically updated. Thanks to the latest reform initiated by the Walloon Code of Agriculture, the future landbank will be able to depart from the farm leasing rules, and will be able to

allow one-year contracts.



Current issues and outlook for the future

In Wallonia, the regional farming policy is implemented by the Direction of Rural Land Management of the Public Service of Wallonia. This authority is also in charge of land consolidation (e.g. reparcelling).

In the past, Wallonia had few instruments with which to regulate the agricultural land market. Laws on land consolidation (1970, 1976 and 1978) allowed the Walloon government to exercise a pre-emption right in areas under land management or likely to be reparcelled. Few lands were bought using that pre-emption right.

2014 was a turning point. A new regulatory text, the Walloon Code of Agriculture (CWA) was adopted. This text lays the foundation for new land instruments such as land observatory, a landbank, and an up-dated pre-emption right (without price revision) with more wide-ranging objectives (e.g. biodiversity and supporting young farmers).

The creation of a land observatory (Art. D 357 of the CWA) responds to the need for analysis of the agricultural land market. For the moment, little official data on the land market is available. The observatory will collect and analyse information for policy-making. The notaries should be the main data providers.

The landbank (Art. D 354-356 of the CWA) will facilitate access to land. Landbank properties will be rented or sold with transparency. This new structure will also allow centralised management of state-owned lands.

Support for young farmers is one of the major themes of the agricultural policy of the Walloon Government for 2014-2019. These new tools should implement that will. Furthermore, following the regionalisation of farm leasing policies, a reform of this device is imminent.

FRANCE

Regulation of the agricultural land market

In France, fifty years ago, driven by the farming profession, a tool for the regulation of the land market was implemented in the form of SAFERs, private, non-profit-making organisations, working the public interest and controlled by the State via two government commissioners, one from the Ministry of Agriculture and the other from the Ministry of Finance.

SAFERs are responsible for observing land transactions, setting-up and restructuring agricultural and forestry structures, supporting local development and contributing to the protection of the environment.



In terms of the rural land market, SAFERs are informed by notaries of all changes in ownership of agricultural land. They have a pre-emption right, i.e. a right to substitute themselves for the initial purchaser. They are entitled to purchase the land at the price and under the terms agreed between the vendor and the original buyer. SAFERs may only exercise this right in the course of one or more of their statutory obligations: any pre-emption must therefore be justified and approved by two government commissioners.

The purpose of the pre-emption must be in accordance with one or more of nine motives defined by law:

- Supporting farmers setting-up, returning to or remaining in business.
- Consolidating farms to enable them to reach an economically viable size and improving the plot distribution of existing farms.
- Maintaining the balance of farms when compromised by public works.
- Maintaining the family-run nature of the farm.
- Combating land speculation.
- Preserving existing viable farms when they are compromised by the separate sale of lands and residential or agricultural buildings.
- Developing and protecting forest and the improvement of forestry structures in accordance with State agreements.
- Protecting the environment as part of strategies defined or approved by the State, local and regional authorities or associated bodies.
- Protecting and developing peri-urban agricultural and natural areas.



« An evolution of the missions in line with the issues »

When exercising pre-emption rights, SAFERs are entitled to a price review if they consider the price to be higher than market rate. In this event, the SAFER will suggest a lower price to the vendor. The vendor can either accept the deal at the suggested price, take the property off the market, or take the matter to court to establish the price.

All pre-emption transactions must be approved in advance by both Government Commissioners. SAFERs are also notified of changes in ownership of rented land, and have a similar pre-emption right over rented land. However, the pre-emption right held by the farmer in situ, provided they have been there for more than three years and do not already own more than 3 reference units, has precedence over the right of the SAFER. Since 2012, SAFERs have also been informed of any sales of usufruct and bare-ownership over rural land, and, since October 2014, of transfers of ownership free of charge (in accordance with the Law on the Future of Agriculture, Food Supplies and Forests, (LAAAF)). The new Law on the Future of Agriculture, Food Supplies and Forests (LAAAF) grants SAFERs, in certain circumstances, a right of pre-emption over sales of usufruct and bare ownership.

The table below shows, for the year 2013, acquisitions made by SAFERs, mostly made independently, on the land market. It indicates the number of SAFER acquisitions made through pre-emption.

SAFER acquisitions made via pre-emption in 2013

		Number	Size (ha)	Value (BNS euro)
Total rural land market	A	207 000	505 000	15,0
Sales for non-agricultural use	B	113 700	81 700	10,45
Agricultural and forestry sales	C	93 200	422 900	4,1
Acquisitions by Safer	D	9 500	80 500	1,0
of which pre-emptions	E	1 330	6 100	0,05
Rate of Safer acquisition via pre-emption	$F = E / (C+D)$	1,4 %	1,4 %	1,3 %

Source : Terres d'Europe-Scafr d'après Safer

The number of pre-emptions with price revisions (785) resulting in withdrawal from sale is 593. Taking this figure into account, the rate of intervention by pre-emption is 2.3%.

Regulation of land leases

There is no direct regulation of the rental market. Nevertheless, French rural leases have a legal public order status imposing strict rules upon the parties intended to protect the farmer and the balance of the contract. The rental price is also controlled. It must fall between fixed price brackets, defined by regional authorities after consultation with representatives of landowners and farmers.

The cost of rent is updated via an annual index that takes into account changes in farmers' revenues (for 60%) and cost of living (for 40%).

In recent years, the status of land rental has become more flexible, largely in order to allow landowners to reclaim their family properties more easily. Now, the landowner wishing to take back possession of rented land in order to work it personally or allow it to be worked by a spouse or dependent, can benefit from an exception system (under the CDOA cf. below) provided that four conditions are met: the landowner or family member or relation up to the third degree of kinship, must have the requisite professional capability or professional experience; the repossessed land must be untenanted on the date of declaration to the CDOA (regional agricultural planning commission) and the property must be held by this family member or relation for at least nine years. The LAAAF added a fourth condition: "that the property be intended for use by a new farmer or for consolidation of the declarant's farm, provided that the total area of the latter after consolidation does not exceed the area limit set by the regional planning policy document". Under these conditions, the landowner does not have to request permission from the CDOA: a simple declaration will suffice.

On the other hand, the status of leased land imposes several conditions on the beneficiary of the repossessed land:

- They must not be over retirement age,
- They must provide evidence of professional capability or experience,
- They must farm the repossessed land for a minimum of 9 years and participate fully in the farming of the property,
- They must occupy the residential buildings on the repossessed property or a local residence
- They must have the necessary livestock and equipment (or have the means to acquire them)

This repossession sometimes has a detrimental impact on the farmer in situ because the law imposes no conditions on the landowners plan for repossession, particularly its viability, and does not protect the farming business of the farmer in situ.

The transfer of shares in farming companies or agricultural land companies

Through independent negotiations and in order to fulfil their remit, SAFERs may acquire shares in civil or commercial farming companies.

With the application of the LAAAF, SAFERs will be notified of transfers of company shares and will be aware of the size of the market. They will only be able to exercise their pre-emption right in cases where all shares or stocks are being sold.

Monitoring of new farms and expansion (Control of Structures)


The set-up of new farms and the expansion of farms is monitored by the State through a regional agricultural planning commission (Commission départementale d'orientation agricole, or CDOA) where the surface area to be farmed exceeds a certain limit set by each region or département, or when the applicant does not have the requisite professional capability or experience.

Before the Law of 2006, the CDOA monitored companies: reductions in numbers of associates, changes in capital, double participation. The Law 2006 put an end to this type of control, with the result that there is no longer any control over the concentration of land in favour of a single legal entity.

The CDOA is chaired by the Prefect of the département (a State representative); it comprises:

- elected members (the President of the Regional Council the President of the General Council, a President of an public institution for inter-district co-operation, or, where appropriate, the representative of a joint management committee for a regional or national park);
- representatives of the State (the Departmental Director of Agriculture and Forestry, and the paymaster general),
- farming professionals (three representatives from the Chamber of Agriculture, including one representing agricultural co-operative companies, the Chairman of the agricultural social insurance mutual fund, two representatives of agricultural products processing activities, including one representing non-co-operative agri-food enterprises, the other representing co-operatives, eight representatives of farmers' unions, one representative of salaried farm workers, two representatives of agri-food product distribution, including one representing independent food retailers, one representative of farming financing, and one representative of sharecroppers);
- one representative of farming landowners;
- one representative of forestry landowners
- two representatives of approved associations for the protection of the environment
- one representative of craft trades
- one representative of consumers
- two qualified persons
- if necessary, a representative of the public body managing any national park located wholly or partly in the département.

The primary objective of the CDOA is to encourage the set-up of farms, mainly by preventing the dismantling of viable farms, to promote the expansion of farms of which the size, production references or entitlement to aid are insufficient, and to allow part-time farmers with other jobs to get set up or stabilise their business in areas where demographic changes and the economic outlook justify this approach.



For some transactions, permission needs to be obtained, including for new farms, expansion projects or the consolidation of farms where the total land area envisaged for farming exceeds the limit set by departmental authorities. This limit is between 1 and 2 times the reference unit.

Thus, with the LAAAF of October 2014, a regional planning policy for farms will be defined for each region (and no longer for each département) with reference units for each crop.

For example, in the département of La Nièvre, this unit is 100 ha in multicrop-livestock, 14.25 ha for orchards and 4.25 ha for flower crops. Above this limit, the Structures Commission regulates new farms. For example, in La Nièvre, this limit is one reference unit.

Regardless of the area of land in question, permission from the Structures Commission may still be necessary. This is in the event that new farms or farms being expanded or consolidated have serious consequences as defined by law (e.g. the removal of a farm, private farming from a building essential to its operation, the professional incapacity of one of the members of the farm, one of the members of the farm reaches the age required to benefit from a farmer's pension, the absence of a member of the farm who has the status of farmer, excessive distance from the original farm site, etc.).

The authority's decision is final and sanctions may be applicable if farming takes place despite refusal of permission.

Civil sanctions

If the farmer is a tenant, the land lease may be deemed null and void. This sanction is quite a deterrent but effects only tenants and not landowners farming their land directly.

Economic sanctions

The farmer cannot benefit from any public assistance of a financial nature awarded for farming (e.g. DJA (dotation jeune agriculteur, young farmer's grant), PAM (Plan d'amélioration matérielle, plan for material improvement), subsidised loans, PHAE (Prime herbagère agro-environnementale, agro-environmental grazier bonus) or CAP allowances. This sanction applies when farming permission is definitively refused, i.e. after appeals have been made to the administrative courts which may take a long time, with the result that withdrawing financial aid is difficult to implement.

Administrative sanctions

After issuing an order to file a farming application or to cease farming, the administrative authorities may impose a fine on any farmer that fails to comply. This fine ranges from €300 to €900 per hectare.

There is a regional appeal committee that examines claims from farmers on whom administrative (pecuniary) sanctions have been imposed. The farmer has one month in which to appeal. The committee can either confirm the sanction, reassess the fine or cancel the sanction.

As soon as the farmer is notified of the Commission's decision, they may appeal against it.

This administrative sanction is provided for by a law dating from 1999, replacing a criminal sanction that was virtually never imposed. In practice, the administrative sanction is not systematically applied. There have been several cases, in certain départements, in which it has been used, but very few.

The law provides for a set of sanctions upon farmers who do not comply with the CDOA, but they are not a major deterrent since they are rarely implemented.

NB: With regard to the influx of foreign capital in farming: There is no farming-specific system of intervention or monitoring relating to the influx of foreign capital in farming.

Current issues and outlook for the future

With the new law, the LAAAF, published in the Official Journal of France on 14 October 2014, governance of farm development will take place at regional level. It would be helpful to look at the various regional farming policies and their implementation to find out whether regulation will be more or less strict than in recent years, which have seen a relaxation in both the regulatory framework (no regulation of company share transfers since 2006) and the application thereof within départements.

With improved awareness of company share transfers (due to the transfer notifications made to SAFERs), there will be fresh opportunities to intervene in share transfer transactions that would result in one shareholder controlling the majority of shares.





HUNGARY

Law CXXII (122) of 2013 on agricultural and forestry land transactions, in connection with the Questionnaire Law CCXII (112) of 2013, reinforces and supplements previous law. Consequently, land issues are regulated by both laws. These legal measures affect the entirety of the country's rural land and all stakeholders in the land market, regulating both the acquisition and use of land; both laws must therefore be taken into account in land issues. They limit the amount of land that may be acquired and used, and lay down general constraints with respect to the obtaining of property rights..

Problems arising from the Hungarian land ownership structure

As a result of the privatization and compensation process, there are 8.6 million hectares of land divided between 3.9 million plots in Hungary, with an average size of 2.2 hectares. There are 2.8 million landowners managing 6 million hectares while 1.8 million owners rent out their land.

Hungarian land ownership falls into two categories: there are a small number of holdings and cooperatives that own large areas of land, and large numbers of small farms at the limit of viability.

« A dual land tenure system »

The goals of the new Land Mobility Act

The goals of the new Land Mobility Act are the following:

- Eliminate discrimination between the citizens of the EU Member States and Hungarian citizens based on their nationality in the field of land ownership and land tenure.
- Because of the limited availability of non-renewable land resources, land can be owned only by the person who will actually cultivate it, and it is not available for the investors that are not in the business of agricultural production.
- Prevent the implementation of illegal contracts resulting in the acquisition of land property contrary to the prohibition laid down in the national legislation («pocket contracts»).
- Promote small and medium farms, and support the creation of a new agricultural structures based on family farming by reducing, but not eliminating, large agricultural holdings (they are needed to produce marketable high-volume products and products with stable quality).
- Renew rural areas in order to keep the local population in situ, to raise agricultural incomes and to boost local employment.
- Promote animal husbandry.

The Land Mobility Act implements the Constitution's regulations regarding the protection of natural resources, especially soil. With the third modification of the Constitution, the Act on agricultural and forestry land mobility became crucial in order to establish sustainable rules.

The tools of the new Land Mobility Act

The tools of the new Land Mobility Act are the following:

- Official approval of the acquisition of ownership and usage rights by the local land committee. The local land committee has a right of veto in the authorisation procedure for land acquisition. The members of the local land committee are elected from local farmers who possess land in the area.
- The circle of those who are entitled to acquire land is narrow: agricultural or forestry land can only be owned by farmers and can only be used by farmers or agricultural companies. These rules ensure that only people with agricultural education or experience and able to engage in professional agricultural production can own land.
- The act requires personal activity from the landowner. This rule does not support the acquisition of land by anyone for speculative investment purposes.
- The pre-emption right and the priority usage right ensure that land is primarily acquired by the local farmers. Others can only acquire it if no one in the area would like to do so. This helps the gradual consolidation and concentration of land.
- The limit imposed on the size of land holdings and all land held in possession prevents excessive concentration of land ownership or the establishment of large agricultural holdings, and it enables land to be acquired once lease contracts have ended.


Procedure (point 1)

The act lays down the rules of the authorisation procedure. The offer to purchase land, duly accepted by the owner, shall be incorporated in a contract. The owner shall notify anyone with a pre-emption right about this contract. The notary of the local government in which the land is located publishes the contract for 60 days. Holders of pre-emption rights are entitled to make a legal declaration on accepting the contract or waiving their pre-emptive rights within this 60 day notice period. The notary sends the documents to the agricultural administrative authority for approval of the sale. The local land committee shall give an opinion to the authority on whether it supports the sale or not. An appeal can be submitted to the local government. If the local land committee rejects the contract or the person with pre-emption rights, the authority has to deny approval of the contract. If the local land committee agrees with the contract or the person who has pre-emption rights, the authority examines whether the conditions of the acquisition are met (e.g. the farmer's status, the maximum limit on land holding and all land held in possession, the proportionality of the price, any enforceable land protection fine, unpaid land use fees). The authority establishes a ranking of persons with pre-emption rights and approves the contract with the highest-ranked person. The acquisition can then be recorded in the land registry.

Personal conditions (point 2)

Ownership rights over land may be acquired by resident individuals and citizens of Member States that are farmers. Legal entities are not able to acquire land. Because of the nature of a legal entity it is not possible to control the individual(s) responsible for it, and this can circumvent the requirements of the act, especially the maximum limit for land holding and all land held in possession. It is easy to change the ownership structure of the legal entity, making it impossible to control the implementation of the requirements. Moreover, it enables the acquisition of land by third-country (non-EU) nationals.

The conditions of the farmer's status are the following: he/she must be a resident individual or citizen of a Member



State, registered in Hungary, and have a professional qualification in agriculture or forestry, or, in the absence thereof, must be certified as having at least three years' agricultural experience (the requirement for agricultural experience in Hungary is the same as the regulation in the Accession Treaty: "who have been continuously legally resident and active in farming in Hungary at least for three years").

The conditions relating to farming companies are as follows: it must be a legal entity or an unincorporated organisation registered in a Member State, also registered with the agricultural administrative authority, and with its primary business having been continuous agricultural or forestry activity for at least three years; more than half of its annual net sales must come from agricultural or forestry activity; and it must have a manager with a professional qualification in agriculture or forestry or at least three years' agricultural experience. The goal of these requirements is to ensure the performance of professional agricultural activity in order to increase the quantity and quality of agricultural production. Knowledge of the Hungarian language is not required, and professional education gained in the EU is accepted.

Against speculation (point 3)

Land can be owned only by the person that actually cultivates it, and it is not available to investors not engaging in agricultural production. When acquiring ownership of land, the person acquiring the land shall make a commitment to cultivate the land himself/herself and not to transfer usage rights to other persons. The reason for these rules is to prevent speculative land purchases. Land is a non-renewable resource which has limited availability. Investment without agricultural production can result in unjustified price increases and prevent farmers acquiring more land. The rise in the price has the effect of increasing the rental fees and production costs, and therefore the price of food.

« Land can be owned only by the person that actually cultivates it.»

Pre-emption rights, priority usage rights (point 4)

Anyone exercising a pre-emption or priority usage right can enter into a contract. There is no obligation to exercise this right, only the option. Anyone exercising this right shall accept all conditions of the contract without modification. The purpose of pre-emption rights is to ensure land consolidation and concentration. Only local farmers have this right, for the purpose of consolidating lands close to the residence of the farmer. The definition of «local farmer» requires three years' local residence in accordance with the Accession Treaty.

Maximum limit on land holdings and all land held in possession (point 5)

The maximum permitted size of land holding is 300 hectares, as per previous laws and historical tradition in Hungary. The maximum permitted size of land held in possession is 1200 hectares, for the purposes of which any land owned and any land used through another entitlement must counted together. As an exception, it is possible to acquire 1800 hectares in 3 cases:

- in order to produce feed for animal husbandry,
- in order to establish an isolation zone to ensure seed production,
- for a cooperative, if it leases the land from his members.

Current issues and outlook for the future

The new Law on Land Mobility has been implemented in two stages: the regulations on the use of land and structure came in to force on 1st January 2014, and the rules on ownership came in to force on 1st May 2014. They have no retrospective effect.



ITALY

Regulation of the land market

Despite the weakness of specific laws on the regulation of the land market in Italy, farm transactions are encouraged by ISMEA, (the Institute of Studies, Research and Information on the Agricultural and Food Market), which is a public economic body established by Decree of the President of the Republic No. 278 of 28 May 1987, and which works in synergy with the Ministry of Agriculture.

In 1999, ISMEA was merged with the Cassa per la Formazione della Proprietà Contadina, an old public financial institution that operated in Italy to support the establishment of farms and rural land reform.

The Institute gained vast experience in the implementation of national Italian policies for agrarian reform between 1950 and 1970, which aimed to eliminate large, unproductive properties in Italy. Following the dissolution of large unproductive properties by law, the Institute has for many years offered economic tools to support the creation of new farms and to set up new entrepreneurs.

ISMEA is a land institute recognised at national level:

- As a reference point for institutions, banks and companies providing transparency for the land market;
- As a member of the OIGA - Italian Centre for Youth Entrepreneurship in Agriculture, legally constituted by the Ministry of Agriculture. This organisation includes ISMEA and representatives of the major youth farm organisations at national level, as well as representatives of professional colleges of agricultural technicians. Its mission is the substantive examination of issues related to entrepreneurial youth in agriculture;
- As a user of methods for farm assessment according to the standards established by the Property Assessment Law drawn up by the Italian technical exchange (Tecnoborsa), an organisation owned by the network of Italian Chambers of Commerce founded in 1997 to contribute to the development, control and transparency of the Italian property market;
- As managing the processes and procedures of the internal quality system, certified by national authorities as UNI EN ISO 9001: 2008 and UNI EN ISO 14001:2004 compliant

The activities carried out by ISMEA are consistent with the demand for modernisation of the agricultural system and rural aid needed in Italy and by many new European Member States.

In terms of the reallocation of public assets, the Institute encourages the elimination of large farms or property belonging to public bodies, and then promotes their privatisation. This may involve:

- the reallocation of farms through public auction;
- the sale of land by means of public competition;
- assistance for setting up young farmers through a specific property leasehold sale system.

To this end, ISMEA has several tools for encouraging young farmers (under 40 years old): grants for new land purchase transactions with or without low-interest loans; and grants for investment and assistance. It also helps farmers to carry out rural land re-parcelling operations and improves subsidised commercial agricultural units by offering guarantees and financial facilities. Everything is done in accordance with the European aid system no. 259/2009 XA in favour of young farmers.

ISMEA also provides several different guarantees to enable food processing enterprises/companies to obtain funding through SGFA (Società di Gestione Fondi per l'Agroalimentare), which is 100% owned by ISMEA.



The «first-demand» guarantee (joint-guarantees, sureties, or security-backed) facilitates access to loans by reducing the gaps and funds required by Basel 2. All types of loans may be taken out, whether for investment, modernisation, research and experimentation, marketing or debt restructuring expenditure. Loans for investments can also be taken out under PSRs (regional sector plans) with regional financial resources. Thanks to a venture capital fund, the Institute also promotes the capitalisation of food-processing businesses and investments via risk capital and equity loans.

Rent control in Italy

Rent control is fixed by law no. 203/1982 and subsequent measures. These tools are now regarded as being too restrictive, despite the fact that they provide full protection for all tenants from a certain point of view. The term of the lease is fixed at 15 years, but is often reviewed using exemptions signed by departmental technical committees (joint bodies representing the interests of rural landowners and tenant farmers).

In Italy, pre-emption rights are governed by laws 590/65 and 817/71, in which it is stated that, in the event of the sale of agricultural land, a pre-emption right may be exercised by the adjoining owner-farmer (who must be actually cultivating) and/or by any tenant who has been farming there for at least 2 years. Under recent legislation, pre-emption rights have been extended to farming companies of which at least half of members are farmers with professional skills and capabilities (Legislative Decree No. 99/2004).

Exercising pre-emption rights in Italy involves a complex procedure, including notification, i.e. the transmission of the preliminary purchase plan, which includes all the features of the object of the sale (including the price), to neighbours and/or tenants, who have 30 days in which to express their intention to exercise their right.

If the seller fails to comply with the transmission of the planned sale to neighbours and/or tenants, the latter may exercise the «buy-back right» in the year in which the contract is concluded.

For land purchases by ISMEA aimed at resale with retention of title, the pre-emption right in favour of third parties does not apply.

In the event of sale of neighbouring land, ISMEA holders are treated in the same way as farmers.

Current issues in Italian farming

- Generational renewal rates in Italy are among the lowest in the EU
- The average size of commercial farms in Italy is the lowest in the EU (approx. 7.6 ha) which is an indicator of the structural weakness of commercial farms
- The difficulty in accessing bank financing: above-average financial charges and a fall in available cash
- The price of farmland is very high compared with other EU countries, and is constantly increasing
- The asymmetries and lack of transparency in the Italian land market due to the legal and economic context.

In order to overcome these obstacles, the government has now introduced legal and economic instruments with which ISMEA has been involved, such as:

- Support for the development of rural enterprises and companies,
- Measures to promote generational renewal in farming,
- Facilitated access to credit.
- l'accès facilité au crédit.

LITHUANIA



In Lithuania, the pre-emption right without price revision is the rule for farmers and agricultural companies. When a property is in undivided co-ownership, a seller must offer his share of the property to its co-owners first. If the co-owners do not want to buy, as for any other sales, the seller informs the national land department or a notary of the price and conditions of sale, and provides the names of any tenant farmers. The national land department issues a sales certificate and specifies those persons who have priority in the purchase: the tenant farmer and the neighbours. If none of the persons with pre-emption rights wish to purchase, the landowner has the right to sell the land to another person of his or her choosing under the conditions and at the price previously established.

Since 2014, any farmer who has registered a farm (an agricultural holding) has a pre-emption right over agricultural land bordering his or her farm. Neighbouring owners are identified through the property register and register of residents. If those with a pre-emption right do not wish to exercise it, the following are permitted to purchase:

- Any person who has registered a farm (agricultural holding) of at least one hectare and who has been an independent farmer (for at least one year);
- Any person who has agricultural training;
- A legal entity, provided that its revenue from agricultural activity has equalled or exceeded 50% of its total revenue, produced from at least one hectare of agricultural land, for at least one year.

A tenant farmer who wishes to continue farming and who has always complied with his/her contract has a pre-emption right. For State-owned land, the owner of the buildings has a pre-emption right provided the land is occupied, if the land is part of a personal farm. In other cases, tenant farmers and farming companies have a pre-emption right.

There is no control over the transfer of company shares.

Access to the agricultural profession requires evidence of qualifications showing an individual's training towards a diploma or an agricultural training certificate.

An agricultural holding is limited to 500 hectares excluding buildings. Since 2014, an individual wanting to purchase agricultural land must complete a form in which he or she states that after purchase they will have no more than 500 hectares in total (including holdings in companies).

The inflow of capital in the agricultural sector is limited to persons who have resided in Lithuania for more than 3 years and who have conducted agricultural business there. These restrictions do not apply to rentals. They were lifted on 30 April 2014.

Current issues and outlook for the future

A pre-emption right is accorded to individual farmers or farming companies for the purposes of expanding their business from adjacent plots or to buy adjacent land.

There is no regulation of the size of farms.

«Speculative» purchases are a worry, as are the low cost of land, the fragmentation of ownership and the rapid concentration of farms (to the detriment of small and medium-sized farms). Until 2014, private companies could buy land for non-agricultural usage.

The Ministry wants to avoid land abandonment and restrict «speculation».

Avoiding land
abandonment and
restricting
speculation



POLAND

In Poland, the agricultural land market is comprised of two main segments:

- The private agricultural land market, which includes all transactions (lease and sale) made by private owners whether individuals or legal entities.
- The public agricultural land market (involving land belonging to the State Treasury), which includes transactions made between the Agricultural Property Agency (known as the ANR, an abbreviation of its Polish name: Agencja Nieruchomości Rolnych,) and potential buyers of agricultural land belonging to the State Treasury.

The ANR has two legal acts governing the management of agricultural land in the public market: the Act on Management of Agricultural Property belonging to State Treasury and the Act on Formation of Agricultural System.

In 1991, the ANR took over 4.7 million ha of land belonging to the State, of which 2.6 million ha have already been sold to private owners and transformed into private farms. At present, the agricultural land resources owned by the State Treasury amount to 1.5 million ha, of which 1.2 million ha are actively leased.

According to the Agricultural Census of 2010, Poland has 2.3 million agricultural farms comprising 15.5 million ha in total. The majority of farms, 1.5 million units, do not exceed 5 ha; the next 670,000 farm units have between 5 and 50 ha; there are 20,000 farm units with between 50 and 100 ha; and 11,000 units exceed 100 ha in size.

In Poland, family farms, which can be up to 300 ha in size, are the dominant structure for agricultural farms: there are 2.275 million family farms. Only 3,000 Polish farms exceed 300 ha in size and can be defined as large-scale farms. Despite the disproportion in quantity, family farms can compete with large-scale farms, which are often run by large agricultural companies.



Leasehold of agricultural land in Poland

Legal regulations relating to the lease of agricultural land in Poland are the same for both the public and private land markets: lease contracts are drawn up in accordance with the legal principles of the Civil Code.

There are no specific regulations concerning the size of the leased land, the length of the contract or the status of parties to the transaction. There are no restrictions for Polish citizens or foreigners as regards leasing agricultural land in either market.

However, there are some exceptions in the regulations on leasing agricultural land in the public market:

- Tenants who lease State Treasury agricultural land from the ANR have a pre-emption right to buy this land when the ANR intends to sell it (which means they can buy it without a tender procedure).
- When a parcel offered for leasing exceeds 500 ha, approval by the ANR President is required,
- Currently the ANR is signing short-term lease agreements.

An amendment to the Act on Formation of Agricultural System of September 2011 authorises the ANR to exclude 30% of leased land. This applies to tenants who lease more than 429 ha of agricultural land belonging to the State Treasury from the ANR. Subsequently, this land is sold, through restricted tenders, to farmers who want to extend their family farms.

The structure of public agricultural land leased in Poland



At present, nearly 1.2 million hectares is leased by the ANR, through nearly 60,000 agreements:

Nature of public land leased in Poland

Area leased	Total are leased (ha)	Number of lease agreements
Less than 10 ha	95 000	47 700
10 à 100 ha	286 000	9 700
100 à 300 ha	232 000	1 318
300 à 500 ha	209 000	539
500 à 1000 ha	159 000	230
Plus de 1000 ha	200 000	97
Total	1 181 000	59 584

According to data on leasing from the Agricultural Census and the ANR, Poland has allowed the large farms created on State Treasury land to be restructured

Lease of state-owned farmland by strategic companies

In Poland there are 45 strategic agricultural production companies, of considerable importance to the national economy, in which the ANR holds 100% of the shares and manages the property rights. These companies also lease agricultural land from the ANR and farm 120,000 hectares in total. The transfer of shares in these companies requires the authorisation of the Council of Ministers

Sale of agricultural land in Poland

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Sale of agricultural land in Poland


Unlike the system operating for leasing land, the rules for the sale of agricultural land are different for the private and public land markets.

On the private land market, agricultural land may be freely exchanged between Polish citizens and the ANR has limited rights to intervention. Notary offices are obliged to inform the ANR of all sale contracts relating to the sale of agricultural land exceeding 5 ha in size (the ANR has a pre-emption right including price revision) . The ANR does not have a pre-emption right when:

- land is bought by family farms to increase their size up to 300 ha,
- the sale is carried out between relatives.

The ANR regulates the exchange of agricultural land on the public land market. Two legal acts provide the instruments that promote the expansion of family farms and counteract excessive concentration of agricultural land:

- The ANR sells public farmland through a tender procedure, with the exception that tenants can buy land leased from the ANR without tender (benefiting from their pre-emption right),
- The ANR organises restricted tenders for farmers expanding their family farms,
- Public sales by the ANR are limited to 500 hectares; the ANR cannot sell public farmland if the entire property of a buyer exceeds 500 hectares,
- The ANR has a buy-back right during the 5 years following its sale. The ANR can re-purchase the property at the initial sales price.



The activities of institutions such as the ANR, Ministry of Agriculture, Agricultural Chambers, farmers' associations and agricultural unions on the public land market are aimed at improving the situation for farmers, supporting the enlargement of family farms in Poland and counteracting the creation of large-scale farms:

- an individual (family) farm cannot exceed 300 hectares,

Acquisition of agricultural land by foreigners

Foreigners must obtain authorisation from the Ministry of the Interior in order to purchase agricultural or forestry property. This procedure, governed by two laws, is subject to a transition period of 12 years (up to May 2016). However, since Poland joined the European Union, citizens from the European Economic Area (EU, EFTA, Iceland, Liechtenstein and Norway) and Switzerland do not need authorisation to purchase shares in companies. There are no special regulatory provisions for transfers of company shares.

Current issues and outlook for the future

There are no restrictions to access to the farming profession.

Farmers' associations and agricultural unions monitor the public land market and demand better access to state-owned land for farmers.

Agricultural unions want to support family farms (particularly through purchase).

The Ministry for Agriculture is trying to encourage the purchase of land rather than the rental thereof. It is therefore supporting farmers by making changes to legal procedures for the sale of agricultural land to farmers.

Currently, in Poland, there is much debate on the need for stronger regulation of the agricultural land market. The State (ANR) needs to provide strong support to family farms, by giving them better access to farmland sold on the market.



APPENDICES

APPENDIX 1: Extract from the Treaty on the Functioning of the European Union

Article 49
CHAPTER 2

RIGHT OF ESTABLISHMENT

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 54
(ex article 48 TEC)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

«Companies or firms» means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 50
(ex article 44 TEC)

1. In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

- a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade,
- b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Union of the various activities concerned,
- c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment,
- d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities,
- e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39(2),
- f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries,
- g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union,
- h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 39

(ex article 33 TEC)

1. The objectives of the common agricultural policy shall be:

- a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour, EN C 83/62 Official Journal of the European Union 30.3.2010
- b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture,
- c) to stabilise markets,
- d) to assure the availability of supplies,
- e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of

- a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions,
- b) the need to effect the appropriate adjustments by degrees,
- c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

APPENDIX 2: Amendment to the urban pre-emption right to give local councils the opportunity to invest in real-estate company shares, in France

Extract from the ALUR Law (Accès au logement et l'urbanisme rénové, or access to housing and town planning reform) that was passed by the French national assembly on 14th March 2014:

«The following are subject to urban pre-emption rights (...):

«1. Any property or set of company rights resulting in the allocation of ownership or possession of a property or part of a property, whether built or not, when transferred against payment in any form whatsoever, with the exception of those included in a transfer plan ordered in accordance with Article L. 631-22 or Articles L. 642-1 and following of the Commercial Code.

«2. Transfers of joint ownership rights over a property or part of a property, whether built or not, except where the transfer is to one of the joint owners, and transfers of percentages against delivery of premises to be constructed;

«3. Transfers of the majority shareholding in a property company or transfers that result in a buyer becoming a majority shareholder of that company, where the assets of that company comprise a unit of land, whether built on or not, the transfer of which would be subject to a pre-emption right. Number 3 does not apply to property companies formed exclusively between family members and relations up to and including four degrees of kinship.

APPENDIX 3: EXTRACTS FROM THE LAW ON THE FUTURE OF AGRICULTURE, FOOD SUPPLIES AND FORESTS PUBLISHED IN THE OFFICIAL JOURNAL OF THE FRENCH REPUBLIC ON 14 OCTOBER 2014

SAFERs can «3. Acquire securities or shares in companies whose main purpose is farming or farm ownership, including, by way of derogation to Article L.322-1, all or part of the shares in agricultural and rural land groups;»

«Art. L. 141-1-1. – I. – In order to perform their mandate, land development and rural establishment companies (SAFERs) are informed in advance by the notary or, for transfers of company securities or shares, by the transferor, under the terms set out by Decree of the Council of State, of any transfer inter vivos against payment or free of charge relating to any movable or immovable property or rights thereto mentioned in part II of Article L. 141-1 located in their jurisdiction. This obligation of information also applies for transfers of usufruct or bare-ownership rights, in which case the content and value of the property concerned must be specified.

«Land development and rural establishment companies can, subject to part I of Article L. 143-7, exercise their right of pre-emption in the event of the transfer against payment of all or part of the shares in a company whose primary purpose is farming or farm ownership, provided that the purpose of exercising this right is to help a farmer set up in business.»

APPENDIX 4: DATA TABLE FOR EUROPE IN 2010

2010	Exploitations totales				Part des exploitations individuelles			Part en faire valoir direct
	Nombre	surface moyenne ha	Total SAU ha	Total UTA	en nombre	en surface	en SAU	
Belgium	42 850	32	1 358 020	61 550	90%	88%	82%	33%
Bulgaria	370 490	12	4 475 530	406 520	99%	39%	88%	35%
Czech Republic	22 860	152	3 483 500	107 990	87%	29%	28%	22%
Denmark	42 100	63	2 646 860	52 300	95%	93%	88%	69%
Germany	299 130	56	16 704 040	545 500	91%	66%	75%	39%
Estonia	19 610	48	940 930	25 120	91%	48%	57%	40%
Ireland	139 890	36	4 991 350	165 360	100%	91%	99%	76%
Greece	723 060	7	5 177 510	429 520	100%	67%	99%	42%
Spain	989 800	24	23 752 690	888 970	94%	70%	77%	61%
France	516 100	54	27 837 290	779 660	71%	42%	46%	37%
Croatia	233 280	6	1 316 010	184 480	99%	84%	93%	54%
Italy	1 620 880	8	12 856 050	953 790	99%	89%	95%	65%
Cyprus	38 860	3	118 400	18 590	99%	89%	87%	46%
Latvia	83 390	22	1 796 290	85 150	98%	88%	92%	69%
Lithuania	199 910	14	2 742 560	146 770	100%	87%	88%	51%
Luxembourg	2 200	60	131 110	3 700	94%	88%	86%	41%
Hungary	576 810	8	4 686 340	423 490	98%	52%	82%	44%
Malta	12 530	1	11 450	4 870	98%	94%	91%	24%
Netherlands	72 320	26	1 872 350	161 690	94%	95%	78%	59%
Austria	150 170	19	2 878 170	114 270	94%	86%	92%	64%
Poland	1 506 620	10	14 447 290	1 897 240	100%	89%	98%	71%
Portugal	305 270	12	3 668 150	363 400	97%	68%	90%	72%
Romania	3 859 040	3	13 306 130	1 610 260	99%	56%	94%	60%
Slovenia	74 650	6	482 650	76 650	100%	94%	96%	72%
Slovakia	24 460	77	1 895 500	56 110	91%	19%	31%	12%
Finland	63 870	36	2 290 980	59 730	90%	88%	84%	65%
Sweden	71 090	43	3 066 320	56 850	93%	79%	80%	57%
United Kingdom	186 800	90	16 881 690	266 280	96%	83%	93%	64%
EU 28	12 248 040	14	175 815 160	9 945 810	97%	68%	86%	54%

Source: Terres d'Europe-Scafr, from Eurostat

ABOUT THE AEIAR - ASSOCIATION EUROPÉENNE DES INSTITUTIONS D'AMÉNAGEMENT RURAL

History and Creation

In 1966, various establishments and institutions from the founding Member States of the EEC, acting in the public interest and acknowledged as such in their respective countries, came together to found the AEIAR.

The AEIAR is open to all recognised institutions of Member States of the EU that pursue the same goals and act in the public interest in the field of rural development.

Aims and Missions

Members share a common mission to improve agricultural structures, support the economy, and to improve the living and working conditions and natural environment of the rural community.

The AEIAR's objective is the continuing exchange of information about the planning and implementation of various rural development measures. As such, information is constantly circulating between members and study days are organised on an annual basis. The results of the Association's work are communicated to European Union decision-makers and to national and regional authorities within Member States. The Association also issues opinions and provides expert advice upon request.

MEMBERS OF THE AEIAR

Germany

- Bundesverband der gemeinnützigen Landgesellschaften (BLG)
- BBV-LandSiedlung GmbH
- Hessische Landgesellschaft mbH
- Landgesellschaft Mecklenburg Vorpommern mbH
- Landgesellschaft Sachsen-Anhalt mbH
- Landgesellschaft Schleswig-Holstein mbH
- Landsiedlung Baden-Württemberg GmbH
- Niedersächsische Landgesellschaft mbH
- Sächsische Landsiedlung GmbH
- Thüringer Landgesellschaft mbH

Belgium

- Direction de l'Aménagement Foncier Rural (DGO3) – Wallonie
- Vlamse Landmaschapij (VLM) - Flandre

Croatia

Ministry of Agriculture, Fisheries and Rural Development (MPS)

Spain

Instituto De Cuestiones Agrarias Y Medioambientales (ICAM)

France

- Fédération Nationale des SAFER (FN SAFER)
- Terres d'Europe – SCAFR

Greece

Agro land S.A.

Hungary

Hungarian National Rural Network

Italy

Istituto di Servizi per il mercato agricolo-alimentare (ISMEA)

Lithuania

National Land Service (NLS)

Luxembourg

Office National du Remembrement (ONR)

Poland

Agencja Nieruchomości Rolnych (ANR)

« Across Europe, less than **3%** of farms work **half** of available farmland »

Farmlands have become a scarce and coveted resource. Their management can not be only left in the hands of the market. A public regulation is sometimes necessary.

This report establishes a comprehensive overview of the farmland market regulation in 7 members countries of the European Union. This document reviews the evolution of agrarian structures and its economic, social and environmental consequences.

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