



RURALIZATION

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The opening of rural areas to renew rural generations, jobs and farms

DRAFT

The report is subject to possible changes due to approval process by the European Commission

D6.4

Report on selective qualitative analysis,

which includes 8 selected legal and policy arrangements in selected countries, and analysis of results and a report on the discussion with experts



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Author(s)	Willem Korthals Altes (ed.) (TU Delft), William Loveluck (Tdl), Nicole Mathieu (CNRS), Blandine Veith (CNRS), Imre Kovách (UNIDEB), Boldizsár Megyesi (UNIDEB), Alice Martin-Prevel (Tdl), Sylwia Dołzbłasz (UWR), Krzysztof Janc (UWR), Andrzej Raczyk (UWR), Robert Skrzypczyński (UWR), Attila Szocs (Eco Ruralis), Kati Volgmann (ILS), Herman de Wolff (TU Delft)
Contributor(s)	Titus Bahner (Kulturland), Annelies Beyens (Landgenoten), Veronique Rioufol (Tdl), Petra Tas (Landgenoten), Marjolein Spaans (TU Delft), Viviane de Lafond (CNRS), Florian Ahlmeyer (ILS), Janna Albrecht (ILS), Barbara Metzl (CE: Support discussion meeting)
Reviewer(s)	RURALIZATION G.A. and E.B.

¹ PU= Public, CO=Confidential, only for members of the consortium (including the Commission Services), CL=Classified, as referred to in Commission Decision 2001/844/EC

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Acronyms & Abbreviations

AGS	Agricultural Structure Act
ASVG	Agricultural Structure Improvement Act Baden-Württemberg (<i>Agrarstrukturverbesserungsgesetz: Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur in Baden-Württemberg</i>)
BBL	Central land agency (<i>Bureau beheer landbouwgronden</i>) (Netherlands)
BLG	<i>Bundesverband der gemeinnützigen Landgesellschaften</i> . National non-profit rural associations
BSE	<i>Bovine spongiform encephalitis</i> ('mad-cows disease')
BVVG	Bodenverwertungs- und -verwaltungs GmbH
CAP	Common Agricultural Policy
CDOA	Departmental agricultural guidance committee (<i>Commission départementale d'orientation Agricole</i>) (France)
CEE	Central and Eastern Europe
CSA	Community Supported Agriculture
DDT	Departmental Directorates of Territories (<i>Directions Départementales des Territoires</i>) (France)
DJA	Young Farmers' Grant (<i>Dotation Jeunes Agriculteurs</i>) (France) or YFG
EC	European Commission
ECA	European Court of Auditors
EEA	European Economic Area
EIP-AGRI	European Innovation Partnership for Agriculture
EP	European Parliament
ESPON	European Spatial Planning Observatory Network
EU	European Union
FADN	Farm accountancy data network
FG	Focus group
FNSEA	National Federation of Farmers' Unions (France).
GAEC	<i>Groupement Agricole d'Exploitation en Commun</i> (France)
GDR	German Democratic Republic
GFA	Agricultural land groups (<i>Groupement Foncier Agricole</i>) (France)
GrdstVG	Real Property Transaction Act (<i>Grundstückverkehrsgesetz</i>) (Germany)
KOWR	National Agricultural Support Centre (<i>Krajowy Ośrodek Wsparcia Rolnictwa</i>) (Poland)
LPachtVG	Lease transaction law (<i>Landpachtverkehrsgesetz</i>) (Germany)
NFP	National Food Plan
NGO	Non-governmental organisation
PAZ	Protected Agricultural Zone
PLUi-H	Intercommunity Local Urbanism Plan – Habitat (<i>Plan Local d'Urbanisme Intercommunal de l'Habitation</i>) (France)
PPP	Personalised skill-development plan (<i>plan de professionnalisation personnalisé</i>) (France)
PRAD	Regional Plan for Sustainable Agriculture (<i>Plan Régional de l'Agriculture Durable</i>) (France)

QoG	Quality of Government
RSiedIG	<i>Reichssiedlungsgesetz</i> ; German national settlement act (original from 1919)
RURALIZATION	'The opening of rural areas to renew rural generations, jobs and farms', an EU Horizon 2020 project funded under grant agreement 817642
SAB	Stakeholder Advisory Board
SAFER	Land development and rural establishment society (<i>Société d'aménagement foncier et d'établissement rural</i>) (France)
SDREA	Regional plan for agricultural holdings (<i>Schéma Régional des Exploitations Agricoles</i>) (France),
SGP	Standard gross production
TFP	Territorial Food Project
UAA	Utilised agricultural area
UN	United Nations
WFD	European Union Water Framework Directive
WP	Work Package
YF	Young Farmers
YFG	Young Farmers' Grant (<i>DJA: Dotation Jeunes Agriculteurs</i>) (France)

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Management Summary

Access to land is one of the main issues faced by new generations in rural areas. The RURALIZATION project addresses this topic by analysing (Loveluck *et al.*, 2021) and developing (in progress) innovative practices, studying land holdings and land market trends (Korthals Altes, 2021) and by studying legal and policy arrangements regarding access to land. Results will be discussed in focus group discussions. The legal and policy arrangements are studied both by a general overview of the situation in all EU Member states (Korthals Altes and de Wolff, 2021) and by an in depth qualitative analysis of 8 selected legal and policy arrangements (this report) with the objective to find out how these legal and policy arrangements may contribute to ensuring access to land for rural newcomers and new entrants into farming.

The analysis of the new Agricultural Structure Acts and the case of Thuringia in Germany by Kati Volgmann (Chapter 2) focuses on the way that the decentralised legislative competence for agricultural land and land lease transactions has been taken up in the federal state of Thuringia. The conclusion is that this has only been partially, especially outside the field of the formal regulations, being used as an opportunity to provide access to land for new generations. A promising element is the potential regulation of deals in land shares by the new law. This is especially relevant as this is an issue in more jurisdictions. Many land instruments only impact on direct land ownership (family farms), but do not interfere in indirect land holdings (company farms). In this way, farming practices, looking for a deregulating environment end up in more shareholding farms, which makes not only the instruments less effective, but it may result also in the contrary of what is aimed by these instruments: safeguarding family farming. However, as is often in the case of legislation, it is all about the details that matter. The Thuringia law is still in preparation and in the process of law making these details may still change. So, there is still uncertainty on the question whether the new legislation will make a difference.

The analysis of the Act on the Formation of the Agricultural System in Poland by Sylwia Dołzbłasz, Krzysztof Janc, Andrzej Raczyk and Robert Skrzypczyński (Chapter 3) is on the leading agricultural land law in Poland and reviews the current state of farmland access regulations by showing conflicting perspectives on the issue of access to farmland. The stakeholders interviewed in the study agreed on regulating access to land, but also see room for improvements, such as, by widening the range of eligible actors or by providing better access to land to those without strong market-power capabilities. For farmers willing to start or to grow, keeping or tightening the regulations may limit demand – and the price – for land. Differences can be observed in the way they see this, large-scale farmers, willing to grow even further, would allow regulations that would allow for them to grow without other competitors. For new entrants, however, such large farmers are a too strong competitor in themselves and new entrants would welcome regulations that put them in a better position than large farmers accumulating extra lands without any cap on area size. They would welcome a non-market pathway for access to land (e.g., land banks). This approach would be also beneficial for experimental farms/communities that combine sustainable living with food production, biodiversity protection or education, as well as for NGOs that need farmland for establishing, e.g., animal sanctuaries. A common motif among the stakeholders was to

reconsider whether access to low-quality soils should be also as much restricted. So, the debate in Poland is about land as a valuable resource that should continue to be protected from land grabbing, speculation, non-agricultural uses, and excessive concentration. However, different parties, such as larger farmers versus smaller ones, have a different a position on the specific arrangements. The current situation is that access to land for new entrants is not safeguarded.

The analysis of the privatization of farmland in Hungary by Imre Kovách and Boldizsár Megyesi (Chapter 4) analysis how access to land has developed in the three steps by which this privatisation took place. The original privatisation in the 1990s provided, initially, access to land for many family farms. However soon after this has happened a process towards concentration took place. Currently, the 8,700 largest farms cultivate two-thirds of the land. The concentration of land use and land ownership is a consequence of the legal settlement and implementation of land compensation, the rapid and radical reduction of agricultural subsidies, and a series of policy interventions. The sale of state-owned land after 2010 and the political program for the allocation of land to individual farms, as well as the abolition of undivided common property from 2018, have not significantly changed the overwhelming predominance of large farms. In three decades, one million out of 1.5 million family farms have stopped farming. The number of producers producing primarily for their own consumption is declining very rapidly due to concentration, aging, lifestyle changes and poverty, but they still make up a mass of three hundred thousand. The structure of agricultural society is highly polarized. The owners of the largest estates collectively own more land than the aristocrats of the first half of the 20th century. Several top and middle managers of agricultural cooperatives and state farms played a key role in unifying, privatizing, and modernizing the lands of large farms. They make up two-thirds of the largest owners. Around 20 percent of the large owners started out as sole proprietors who bought or leased some of their land in the 1990s and then used this capital to engage in larger, state-controlled land privatizations. The third, smallest group in terms of staff includes external investors, political clients, local political leaders and the local oligarchy, as well as large foreign-born entrepreneurs.

The Romanian Land Law is analysed by Szocs Boruss Miklos Attila (Chapter 5) who questions whether this is an enabling framework or a hinderance for newcomers and new entrants in farming. This analysis is done against the background of a very polarised structure of land holdings with the largest number of farm holders in the EU, but also of a very small minority of land holders, holding most of the land. The law introduced in 2014 and amended in 2020 regulates a pre-emption system for the sale of farmland. Through the interviews it is clearly highlighted that the current form of the land law is working for a well-defined typology of new entrants in farming but not so much respecting newcomers. Being an established young farmer, having the residency already in the country, having a formal farming background are definitely strong advantages in the process of accessing land for farming in Romania. Also, being part of a local rural community or extending a family farm succession project seem to be promising factors likewise. However, the new land law brings a lot of uncertainty for farming enterprises in their quest to purchase land by not making a differentiation between start-up projects, human scale farming and large speculative investments into land. Through the general limitations on fiscal residency and shareholding of farming enterprises together with progressive taxation, the law does succeed to put a stranglehold on speculative land

investments but also covers in bureaucracy new entrant farming projects with the potential to rejuvenate the farming sector.

The analysis of a programme on unsealing land and its potential use for new entrants in agriculture in Flanders by Willem Korthals Altes (Chapter 6) takes place in a different context. Flanders is for a large part neither urban, nor rural and there is a context of omnipresent urban sprawl. Even in the agricultural zone many urban uses of rural properties are either allowed or there is an official policy not to enforce rural use. Planning is centralised at NUTS 1 level and local authority units are considered to be irresponsible in allowing urban uses in rural areas. Policy ambitions to stop urban sprawl (by 2040) and to reduce sealed land in the agricultural zone (by 2050) have been formulated, but there is no effective implementation, by which these ambitions could be reached, in sight. The economic interests of urban development have a strong position. In this context a programme to unseal land has been formulated. The idea of this programme is that by calls coalitions of parties come together to implement local solutions, such as making a school garden instead of a paved school yard, or projects to transfer parking places in parkland, to unseal land. Apart from the qualitative results of the specific project, this may have a wider effect on the articulation of unsealing as a government aim with local support that may be brought forward by local authorities. There is a more systemic project on the reuse of former farm buildings as farmland. Although the outcomes of the programme to forge coalitions to develop specific unsealing of the land is positive, and it may result that land of roads will be unsealed more often, the structural prospects for the provision of agricultural land are negative. It is not only about the prospects of urban values for land and properties in the agricultural zone, but also the costs of unsealing land and demolition of buildings, including underground structures as cellars, can be excessive, making it a less attractive alternative for farmers that aim to contribute to the quality of the rural environment.

The way how in Zeeland (The Netherlands) the province combines a land bank and voluntary exchanges between landowners to contribute to its environment and planning vision is analysed by Herman de Wolff (Chapter 7). By combining the land bank with voluntary exchanges between parties, the yardstick of the provincial land policy reaches further than its land portfolio alone. To enable to do so, the province has appointed regional land exchange contact persons that are outside the bureaucracy to ascertain that local knowledge of land policy opportunities are fed into the exchanges. Currently, the policies are mostly related towards improvement of the farm structure, biodiversity areas, recreational areas and infrastructure. Land policy is a tool to implement the vision and facilitating new entrants to farming makes no part of the vision amended in 2016. Currently the draft vision is developing in promoting new chances for young people in the province and achieving a sustainable agriculture. After the vision is adapted, a novel land policy will follow, which will change its direction towards new aims of the vision; which potentially will provide a larger chance for providing access to land for new generations. Currently a new vision is in preparation, which vision will be followed by a new land policy report, which serves as tool to implement the vision. In this vision sustainable agriculture and the attractiveness of the province for young people and families are on the agenda, which may result in that the current instrumental set-up of a land bank, plus voluntary exchanges, including a reticulist role of bringing landowners and new entrants together, may be used for these aims as well.

An analysis of the structures' policy (SDREA and CDOA) in France by William Loveluck compares the practices in the regions Nord and Côte d'Or (Chapter 8) shows that, although this policy has a track record of successes in relation to the aim to limit excessive farm enlargement since the 1960s, its current role is eroded as there are more and more cases in which the policy does not apply, there are less resources available for the implementation organisation and a structure in which competing applications have become scarce. The policy is, furthermore, so structured that it only can follow the trend in farm enlargement, but it cannot be a lever to realise change. The comparative study of Nord and Côte d'Or shows differences in policy approaches and positions of the policies indicating that the regional context matters, but not in the sense that in one of these regions an ideal situation exists. The overall impression is of a too complex legislative framework in relation to the effects that are achieved. Harmonisation of the four main forms of access to land use (purchase, rental, shares and delegation of work) within a more legible framework could help to limit the many ways in which structures policy is circumvented, while democratisation of the arrangement, opening up the governance of decision-making bodies that arbitrate on transfers of land use with balanced consideration of the points of view, would strengthen its legitimacy and applicability.

Territorial food projects (TFP) in France are analysed by Nicole Mathieu and Blandine Veith (Chapter 9) to pose the question whether they facilitate access to land for new generations. TFPs have been developed widely in various forms throughout France. They do not directly provide access to land for new generations, but contribute to the development of favourable conditions for access to lands. This is done by a mobilisation of the community to support aims of local food production. The emphasis on short food supply chains may provide ways for starting farmers to find a position for which they may also be supported by local government actors to get access to land to produce this food. In light of the powerful interests at stake in access to land for the younger generations, we believe that the legal arrangement of TFPs can have an essential role in a process towards a genuine renewal of the way land issues are perceived and managed.

The discussion and conclusion (Chapter 10) indicates that land regulations that shield land from international competition without measures to prevent accumulation by national landowners do not result in access to land for new farmers. A more focused approach to link land tools directly to public aims may result in better effects. However, it is not only legislation that make a difference, it is also the context of application of land tools that may ensure that instruments may have a positive effect on rural development.

Privatisation of land using auctions result in that the economically most powerful actors get the land; these are not the new entrants. Even within the agricultural sector the marginal costs and benefits of buying and extra hectare of land, especially as CAP decoupled payments are allocated per hectare, exceed that of a setting up a farm from scratch.

Pre-emption regulations are a way to reserve land for local actors or new generations of farmers. Parties may, however, find ways to get around it and if so, the measure may lose its relevance or even may result in a strong commodification of the land if transfer of shares in land is not affected by the pre-emption.

It is therefore essential to review policies regularly to prevent that evading manoeuvres become standard ways of working in the land market. One way to do so is to limit the use the application of these instruments in time and place, based on specific policy assessment of a specific situation, but not in types of land holdings (so, both direct and indirect holdings) it addresses. For this it is necessary to develop policies that fit to a specific territorial setting; the Territorial Food Projects are examples of such a territorial policy. Although there are linkages with actors operating in the land market supporting the programmes, these policies are not yet fully linked to land policy tools. Combining these two kinds of instruments may potentially result in more effective policy tools and instruments. Programming instruments result in territorial visions and programmes for action, specific land policy tools can be used as instruments for action in the land market as part of a portfolio of actions taken by the different agents supporting the territorial programmes. An issue is that access to land for new generations is, in many policy contexts, not high on the agenda.

Development of policy tools is, especially when they relate to land and property ownership, a complex and lengthy undertaking. More short time effects can be expected to result from ways of using and combining different policy instruments, which results may, however, not be enough to meet timely the challenges as put forward in the Green Deal (EC, 2019) and the European Commission's Vision for rural areas (EC, 2021).

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1 Introduction

1.1 The RURALIZATION project

The RURALIZATION project aims to look at ways to overcome rural decline issues that support rural regeneration and generational renewal. The empirical focus of the project is to develop, assess and disseminate novel instruments, strategies and policies that cater for rural regeneration, in relation to the **future dreams of rural youth**, facilitating **rural newcomers, succession** and **new entrants into farming** and by addressing the issue of **access to land**. RURALIZATION will also carry out a **trend analysis** to uncover relevant trends for rural regions. This knowledge base will culminate in generating effective policy tools, and through this RURALIZATION aims to contribute to the development of a **new rural frontier** that provides **exciting opportunities to new rural generations** for social and economic sustainability and to realise their dreams in a rural context. Overall, RURALIZATION develops a novel perspective for rural areas to trigger a **process of ruralisation as a counterforce to urbanisation**.

One of the main issues that new generations in rural areas face is to get access to land for new generations. In relation to access to land, the RURALIZATION project has four main lines of research and innovation.

Firstly, the project analysis and develops innovative practices. Here both already existing practices, developed by members of the Access-to-land-Network and others have been analysed (Loveluck *et al.*, 2021). This overview reports on 64 innovative practices. It concludes that there are 4 building block for changes: firstly, human capital improvements, secondly, land regulation adaptations enabling novel land management models as alternative for access to traditional land holdings; thirdly, strengthening the role of local authorities to support agricultural transitions and regeneration and finally, changing the CAP framework to foster access to land (Loveluck *et al.*, 2021). Currently, in this line of research and innovation, novel innovative practices are being developed, which build on previous experiences of innovative practices. Whereas legal and policy arrangements are primarily the work of national and local authorities, these practices are often led by NGOs and other agencies that do not wait until the government comes with something decent, but take the initiative, usually with local partners, to provide access to land.

Secondly, there is the issue of land markets and land holdings. In many contexts, land markets seem not to be favourably in providing access to land for new generations; Korthals Altes (2021) analysis the developments of land markets and land holdings to analyse the ways in which land markets may or may not cater for access to land for new generations. Generally, it can be concluded that most markets enable the consultation of land in growing farms and provide limited access to novel farmers. Furthermore, generational renewal often works by generations transfer within the family, in which gender specific transitions are still dominant. The markets are so more a context for generational renewal and the open market is not a place where many novel farmers get access to land. In most cases starting farmers are no competition for consolidating larger farms.

Thirdly, the projects studies legal and policy arrangements. This is done, both at a general level for all EU member states (Korthals Altes and de Wolff, 2021), and, as the topic of this report, more in depth for several legal and policy arrangements.

Fourthly, and finally, focus group discussions will be held to study whether the practices developed in the second part of this work package may provide solutions in specific local contexts.

The current report is based on an in-depth analysis of 8 specific selected legal and policy arrangements in Belgium, France, Germany, Hungary, the Netherlands, Poland and Romania. The outcomes have been discussed at an online stakeholders and expert meeting on July 1st 2021. The possibilities of and preconditions for more extended use of these arrangements have been on the agenda of this discussion.

1.2 Methodology

Based on the overview of laws and policies in the EU (Korthals Altes and de Wolff, 2021), 8 cases have been selected, which may provide extra insight in several aspects of laws and policies regarding access to land. In the selection the relevance of the outcomes for a variety of contexts was of importance.

A short list of potential cases to be selected is presented in the project report deliverable *D6.2 Report on legal and policy arrangements in 28 member states* (Korthals Altes and de Wolff, 2021).

So, the 8 case studies are not centred on theme, but provide a variety of contexts. Specific details of why a case study is relevant for access to land, can be found in the case study descriptions.

For each case study, relevant documents have been analysed and interviews are held with about 8 relevant stakeholders. In this report each case has an introduction, the context is described, the narrative of the case is provided and the relevance for access to land is discussed, which is followed by a conclusion.

The case studies results have been discussed at an online workshop with experts and stakeholders on 'Access to Land: Case Studies Legal and Policy Arrangements' held July 1st 2021. This workshop has had an attendance of 45 people of which half were outside the project. After an introduction to the project 7 case studies have been presented and discussed (Box 1).

Access to Land: Case Studies Legal and Policy Arrangements

Discussion with experts and stakeholders

AGENDA

📅 Event date: July 1st, 2021 ⌚ Time: 10:00h - 12:00h (CEST) 📍 Venue: Online

10.00h – 10.10h Introduction

Prof. Willem Korthals Altes (TU Delft)

10.10h – 11.00h National laws and policies

10:10h – 10:20h Privatization of Farmland in Hungary

Imre Kovách & Boldizsár Megyesi (UNIDEB)

10:20h – 10:30h Law on the Formation of Agricultural System in Poland

Robert Skrzypczynski (UWR)

10:30h – 10:40h Law on the sale of agricultural land in Romania

Attila Szocs (Eco Ruralis)

10:40h – 11:00h Discussion

Chair: Prof. Willem Korthals Altes (TU Delft)

11.00h – 11.50h Regional practices

11:00h – 11:10h Practice of Departmental Agricultural Orientation Commissions, France

William Loveluck (Terre des Liens)

11:10h – 11:20h An innovation programme to unseal land in Flanders, Belgium

Prof. Willem Korthals Altes (TU Delft)

11:20h – 11:30h Combining land ownership and land exchange in Zeeland, Netherlands

Herman de Wolff (TU Delft)

11:30h – 11:40h Food planning in France

Nicole Mathieu (CNRS)

11:40h – 11:50h Discussion on regional practices

11.50h – 12.00h General discussion and closure

Box 1 Agenda of meeting with experts and stakeholders

For some of the cases longer texts (beyond the requirements for the deliverable) will become available. These longer texts will be published at www.ruralization.eu and will remain openly accessible through institutional repositories.

2 Developments on new Agricultural Structure Acts and the case of Thuringia in Germany (Kati Volgmann, ILS)

2.1 Introduction

When young farmers, new entrants and young farm successors start farming, the financial obstacles are generally very high in Germany. This mainly affects the young generation that does not take over a farm, but starts a new one. In addition, opportunities for access to agricultural land are very limited. Especially in West Germany, there is hardly any available land. The situation for agricultural start-ups is somewhat different in East Germany, there is still potential because not all land has been leased or sold yet ([interview]).

Agriculture is one of the most capital-intensive sectors (excluding land purchase) in 2018. The capital input per full-time employee is about 600,000 EUR. Another obstacle is access to farm and land; the purchase prices for agricultural land have risen sharply in recent years. The national average was 25,500 EUR per hectare in 2018 (9,955 EUR in 2008). There are very large regional differences, too. For instance, the costs for land increased by 262 percent in this period in Mecklenburg-Western Pomerania and by 21 percent in Saarland. Farm successors are in a comparatively comfortable situation compared to those who start from the very beginning with only a very small amount of land (Lehnert, 2021, 88).

Young farmers need access to local networks, municipalities, churches (are often owners of land), private owners and to convince them of their farm concept (Gräschke *et al.*, 2021). There is no national official advisory service for young farmers where their questions about starting a business are answered. Expert knowledge must be obtained at great expense for innovative operating concepts. Mentoring programmes for young farmers, in which experienced farmers share their professional knowledge and life experience, are becoming increasingly important; this is more than a classic advisory culture, as they are accompanied over a longer period of time. Such programmes currently exist in Lower Saxony and Brandenburg (see 2.4).

In 2007 legislative competence for agricultural land and land lease transactions has been transferred from the national level to the federal states. This could be an opportunity to re-regulate previous developments on the land market and give young farmers and new entrants to agriculture a voice and new chances. The following analysis focuses on the legal regulations on the agricultural land market and their new developments in the federal state Thuringia. It is based on the analysis of written sources and 8 interviews with people from the Thuringian Farmers' Association, BVVG², the national association of non-profit rural land associations (BLG), an NGO working on agricultural issues, the Federal Ministry of Food and agriculture, the Ministry of Infrastructure and Agriculture of Thuringia, a working group of small and medium-sized farms and a lawyer with specific expertise. The following analysis examines:

² The BVVG is a federally owned company and is legally mandated to privatise the formerly state-owned agricultural and forestry land by 2030.

- recent trends on German land market (section 2.2.1), the legal arrangements on the agricultural land market (section 2.2.2) and the demands as well as recommendations for new Agricultural Structure Acts (AGS) in Federal States in Germany (section 2.2.3),
- the status of the Agricultural Structure Act (AGS) and report of the agricultural structure and land market in Thuringia (section 2.3.1) and the potential objectives and effects on the Agricultural Structure Act (AGS) in Thuringia (section 2.3.2),
- and further demands for access to land for young farmers and new entrants (section 2.4).

2.2 Short context

2.2.1 Recent trends on German land market

The agricultural land market in Germany has been characterised by radical changes and challenges for years. In particular, the drastic increase in the purchase and lease prices of agricultural land makes it difficult for many farmers to maintain their or acquire more land to secure their existence. This affects both established farmers as well as young farmers and new entrants to agriculture. The drivers of the price increases are manifold:

- With the **privatisation principle of the Bodenverwertungs- und -verwaltungs GmbH (BVVG)** the land prices have risen dramatically since 2007 (Forstner *et al.*, 2011). The purchase values of the BVVG land have clearly decoupled from the purchase values between third parties (Goetz, 2012a). From 2007 onwards, land was sold through public tenders to the party with the highest bidder. While transparency was created in the land market, this pushed up the prices (Tietz, 2018, 56). The average sales values of the BVVG are higher than the average purchase values per hectare shown in the statistics of the Federal Statistical Office. For the new federal states and the year 2019, the average purchase values of the BVVG are 31.4 percent above the average value stated by the Federal Statistical Office (in 2018: 28.5 percent higher, in 2017: around 25 percent higher) (Goetz, 2020, 7). Since 2010 there has been a restricted competition for arable land and grassland. Labour-intensive forms of farming - for example organic farming, vegetable cultivation and young farmers - are eligible to compete ([interview]). In 2020, about 1,400 Hectares were sold and 4,000 Hectares were leased to eligible farms (BVVG, 2021). However, they often do not succeed, especially because the price level is too high for start-ups ([Interview]).
- (Financial) **Incentives for renewable energies** have enormously intensified competition for agricultural land (Goetz, 2012a; 2012b).
- Every day, around 90 hectares agricultural land are converted into **non-agricultural land use**, so the land available for agriculture is permanently shrinking (Goetz, 2012b).
- The increasing activities of **non-agricultural capital investors** on the land market (share deals) have led to a change in the ownership of agricultural land through the purchase of company shares (predominantly in eastern Germany) (Tietz, 2017; AgrarBündnis and Netzwerk Flächensicherung, 2018). The investors usually come from other regions or economic sectors and often own several agricultural enterprises in different regions.

The appearance of such supra-regionally active investors has received a lot of attention in agriculture and agricultural policy, but also in the media (BLAG, 2015). The development of share deals is often critically discussed and linked to the claim of greater control and stricter regulations. There is a legal imbalance in land market policy; on the one hand there are laws restricting the purchase of agricultural land by non-farmers, but on the other hand there are no instruments to control share deals (Laschewski Lutz, 2020).

Tietz (2018; 2020, 54) assesses the rise in lease prices as a consequence of increasing competition between farms for decreasing acreage. This is mainly due to subsidies for the production of renewable energies. Intra-farm competition leads to farm managers orienting their lease offers more and more towards marginal returns or cross-subsidising lease payments from other farm sectors (Tietz, 2018, 55).

The causes for the development on the purchase market are different. According to Tietz (2018, p. 55), these are primarily due to non-agricultural sectors. The conversion to settlement and transport areas or the limited opportunities to invest capital profitably leads investors to seek real estates.

2.2.2 Legal arrangements in the land market in Germany

Legal instruments of the land policy regulation are the approval requirement under the 'Real Property Transaction Act'³, (GrdstVG) and the right of first refusal (pre-emption right or 'Vorkaufsrecht') for rural associations under the 'German Reich Settlement Act'⁴ (RSiedlG) in Germany. Both instruments are closely linked in terms of constitutional law and content. With the Federalism Reform I in 2007, the legislative competence for agricultural land and land tenancy as well as the RSiedlG was transferred from the national level to the 16 German federal states. The GrdstVG remains effective until they are replaced by new Agricultural Structure Acts (AGS) at federal state level. Baden-Württemberg is the only federal state that has so far passed its own state legislation in the Agricultural Structure Improvement Act⁵ (ASVG), which essentially incorporates the provisions of the GrdstVG and RSiedlG and develops them in individual issues primarily with regard to the special features of the agricultural structure of the federal state (Levesque (Ed), 2016, 17). Other federal states have not yet been able to adapt this act. However, some federal states debate about new drafts on Agricultural Structure.

³ In German: *Grundstückverkehrsgesetz* (GrdstVG) in the revised version published in the Federal Law Gazette part III, section 7810-1, last amended by art. 108 of the status of 17December 2008 (Federal Law Gazette part I, section 2586).

⁴ In German: The *Reichssiedlungsgesetz* (RsiedlG) is a German law passed by the Weimar National Assembly in July 1919.

⁵ In German: *Agrarstrukturverbesserungsgesetz: Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur in Baden-Württemberg* (Agrarstrukturverbesserungsgesetz - ASVG) vom 10. November 2009*

According to the GrdstVG, agricultural land sales are subject to approval from a lower limit of land size (from 0.25 to 2 hectares) set by the respective federal state. Approval can be refused by the authority in the following cases:

- If the sale will lead to poor distribution of the land,
- If the agricultural structure worsens on account of the negative reduction or the fragmentation of the land,
- The sale price is disproportionate compared with that of an equivalent piece of land (if the sale price exceeds the market rate by over 50 percent. The limit in Baden-Württemberg is 20 percent) (Levesque (Ed), 2016, 17; Booth, 2020, 3).

In practice and case law, the land policy regulatory framework of the GrdstVG and RSiedlG is currently applied on purchases of agricultural land by non-farmers, agricultural holdings, non-local farmers, by shareholders of an agricultural holding and by an agricultural holding company (Goetz, 2012b).

If permission is prohibited, e.g., because agricultural land is sold to a non-farmer, the non-profit rural associations can apply for the right of first refusal. Rural associations are joint-stock corporations with the legal form of a limited liability company. The rural association verifies the exercise legally and economically, as it bears the risk. The right of first refusal is exercised if there is at least one agricultural holding in need of, willing to and able to restock land. The rural associations replace the buyer originally envisaged (the initial buyer) under the contractual conditions agreed upon at the outset. The rural association 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) (BLG, 2020).

The situation is different in Baden-Württemberg. In accordance with the 2010 'Law on the improvement of the agricultural structure', the right of first refusal of the rural association Baden-Württemberg GmbH, was extended. Since then, it has been able to exercise the right of first refusal without having to prove that there is a second or subsequent purchaser, provided that the land is used to improve the agricultural structure for the next 10 years. The right of first refusal was exercised in 25-30 percent of the cases. In most cases, no farmer (second buyer) was found who was interested or able to acquire the land (Levesque (Ed), 2016, 17). The LPachtVG⁶ provides the legal grounding for lease control. In Baden-Württemberg this has been developed (in 2010) into a 'Law on the improvement of the agricultural structure' (Levesque (Ed), 2016, 18).

“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

⁶ In German: Landpachtverkehrsgesetz (LpachtVG), in revised version of 8 November 1985 published in the Federal Law Gazette part I, page 2075, last amended by art. 15 of the status of 13 April 2006 (Federal Law gazette I, part 885).

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.” (Levesque (Ed), 2016, 18).

This has led to a discussion on the improvement of the agricultural land law.

2.2.3 Demands and recommendations for new agricultural structure laws in Germany

For several years, the GrdstVG has been the focus of sometimes heated discussions on agricultural law and policy. It is demanded that the federal states exercise their right to enact new, stricter and more fitting regulations and replace the old federal law. This is particularly important because only the federal states can abolish the GrdstVG, RSiedlG and LPachtVG through their own laws ([interview]). Consequently, some federal states are currently discussing legislative changes. There have already been initiatives in some of the Federal States (Thuringia, Saxony, Saxony-Anhalt, Mecklenburg-Vorpommern, Brandenburg, Lower Saxony and Bavaria).

Based on the expert interviews and secondary literature, the following legal aspects should be addressed in the new AGSs of the federal states:

Preliminary contracts

Preliminary contracts should not be presented to a land transaction authority for verification. Sellers/lessors should/need to finalise the contract upon submission to the legal authority. The aim should be to reduce circumvention ([interview]).

The right of first refusal for new forms of farming

From an agrarian structural point of view, however, it is necessary to open up the right of first refusal for certain groups of people or forms of farming (common good ownership, alternative farming, solidarity farming, cooperatives). It would be important, for example, to improve access to land for young farmers and to facilitate the establishment of new farms. Securing the existence of side-line farms could also be an objective. If possible, land should be allocated in a way that supports a local and regional food economy (Thomas, 2019, 75).

The right of first refusal by the rural associations

One possibility could be that the rural associations receive a stronger right of first refusal in future and intervene more strongly in the event of price abuse. Within six years (currently ten years under discussion), the land can be used to improve agricultural structures (e.g., opening up for land - increasing the number of farms, also for access for agricultural structure enterprises). It is therefore important for Thuringia to define what the second acquisition of land may and can be used for ([interview]). In addition, it is important to designate in the law two authorities, the Land Transaction Authority (controls and refuses) and the rural association.

Price brake for purchase and lease

According to the EU Commission, state intervention in prices and land market regulation could be allowed. Only this way, farmers would have a chance against non-agricultural interested parties. It would make sense to estimate the value of agricultural land on the basis of its yield capacity and to derive corresponding purchase and lease prices (Thomas 2019: 76). Contrary to this very concrete price orientation, it would also be possible to introduce an intervention threshold if the regional comparative prices are exceeded by 20 percent. Currently, the authorities intervene as soon as the selling land price exceeds more than 50 percent of the local land price (Thomas, 2019, p. 75).

The allocation of agricultural land ([interview]) could be carried out in the same way as for a city or a church, so that the bidder with the highest price does not necessarily win the contract, but the one who proposes the best business concept. In order to promote organic farming, a price brake is needed. The costs for species-appropriate animal husbandry or extensive grazing are high and farmers cannot finance the "production factor soil" only through farming.

Furthermore, a right of first refusal for rural associations must be combined with a reduction of price abuse. However, price abuse has not been properly implemented for a long time, otherwise there would not be a problem in eastern Germany or, in the past, in Baden-Württemberg. A rural association can already buy if the price is exceeded at 20 percent in Baden-Württemberg. Even if no second buyer can be found, the rural association can buy the land anyway. A respondent [interview] is of the opinion that the rural association should have made use of their right of first refusal much more often. Then there would have been more land for purchase. Three to five interventions in a region may be enough, to demonstrate that interventions are taking place and to put an end to price elasticity in future purchasing processes. ([Interview])

Enforcement of LPachtVG

According to LPachtVG or ASVG in Baden-Württemberg, there is a duty of notification for new leases and changes to leases. At present, 75 percent of the leases are not notified in contravention of the law. In many regions, leasing prices are charged that are contrary to the law ([interview]). As a result, control by the authorities is considerably limited. In order to counteract the enforcement deficit, there is a possibility of improvement through a change in the law. The legal effectiveness of a land lease or its substantial amendment may then depend on the notification that has been made. According to a respondent [interview], sanctions in the direction of non-approval of financial support could be considered. It is very important that the LPachtG is enforced, because this can also lead to such large concentrations. The tenancy has a much greater impact on land mobility than the sale of agricultural land. Lease changes can thus trigger major agrarian structural breaks and can regulate land markets. (Goetz, 2012, p. 6)

Limiting and controlling share deals

For a long time, there have been claim to limit share deals and to control them more closely. One possibility would be an obligation to report share deals ([interviews], (Jungehülsing, 2020). Other demands go in the direction of a licensing requirement, namely through controls of companies that have land of a certain size (Lehmann and Schmidt-De Caluwe, 2015). The federal states could define the sizes individually. However, it has to be considered that this

regulation interferes with the fundamental rights of professional practice and property freedoms and can only be justified with the associated public welfare goals (Lehmann and Schmidt-De Caluwe, 2015, 67-68). It is important, emphasises a respondent [interview], that the Agricultural Structure Acts must be legally secure and not open to attack. Otherwise, the structures would be exploited.

With the modification of the Real Estate Transfer Tax Act (legally effective 01/07/2021), share deals are only made slightly more difficult. However, capital investors and hedge funds are still able to purchase farms uncontrollably via the share deal model. Until 30/06/2021, land transfer tax is due if more than 95 percent of the shares in a company with land ownership are transferred to new shareholders within five years. With the new act, the limit will be lowered to 90 percent. The holding period is extended from five to ten years (BLAG, 2015; Lehmann, 2021).

Abolition of the 'double land transfer tax'

In the case of the exercise of the right of first refusal by a rural association land transfer tax is incurred. When this land is later acquired by a farmer, this tax must then be paid a second time. This increases the farmer's acquisition costs for the land acquisition accordingly. This leads to a not inconsiderable price increase (double land transfer tax, ancillary costs and settlement fee). Despite the modification of the Land Acquisition Act, the double land acquisition tax still exists (BLAG, 2015; Lehmann, 2021).

2.3 Short narrative of the case

2.3.1 Status of the Agricultural Structure Act (AGS) and report of the Agricultural Structure and Land Market in Thuringia

In Thuringia in particular, there are public calls for a new agricultural structure law, not least because one of the largest agricultural enterprises, the *Agrar-, Dienstleistungs- und Baugesellschaft* (Adib), with a total area of around 6,000 hectares, was sold to an ALDI foundation (Boscor Land- und Forstwirtschafts GmbH) in 2020. The sale went through the press nationwide (Kalusa, 2020).

In March 2021, the report on the development of the agricultural structure in Thuringia from 1990 until 2020 was presented by the Ministry of Infrastructure and Agriculture of Thuringia (Thüringer Ministerium für Infrastruktur und Landwirtschaft [TMIL], 2021). The report serves as the basis for a new Agricultural Structure Act (AGS) in Thuringia. The first draft of the AGS is currently being prepared and will not be presented until autumn 2021, after the Landtag elections.

"Minister of Agriculture Benjamin-Immanuel Hoff explained in an interview with the *Bauernzeitung* that his ministry has worked out key points and now wants to discuss them, among others, with the associations in the federal state." (Hartmann, 2021)

Agriculture in Thuringia is facing major challenges. Many farms are confronted with a generational change. But the economic conditions for farms are difficult. In addition to the necessary investments in more animal welfare, climate, nature and species protection, the

consequences of climate change and low prices for agricultural products are complicating the business situation of many farms.

In addition, the purchase prices for agricultural land increased by 115 percent between 2005 and 2020 (TMIL, 2021, 34). The number of sales cases decreased by eight percent in Thuringia between 2010 and 2019 and the associated land sales decreased by 14 percent (Goetz, 2020, 6). From 2016 onwards, the decline in land sales was caused by the change in the BVVG's privatisation volume target. Thuringia has the highest share of leased land (75 percent) in Germany. The national average is 59 percent (Goetz, 2020, p. 6).

The political, social and technical changes have had a strong impact on Thuringia's agricultural structure. Before World War II, there were about 149,000 farms in Thuringia with an average of eight hectares of cultivated land. After the land reform and forced collectivisation in the GDR, there were only 202 farms with an average of 4,200 hectares of land left in 1989. Since reunification, there has been a massive transformation of the previously predominantly cooperative farms from 1990 onwards. In 1991, 2,100 farms were newly established and the number of farms increased to almost 4,600 in various legal forms and with an average farm size of around 220 hectares in 2019. Thuringian farms also had a large backlog of investments due to the investment backlog in the GDR and they had to invest in land purchases to secure the production base and especially the creditworthiness of the farms (TMIL, 2021, p. 5).

2.3.2 Potential objectives and effects on the Agricultural Structure Act (AGS) in Thuringia

So far, no details about the new AGS in Thuringia have become public. At this point, only few objectives and issues from the interview with an official of the Thuringian Ministry of Infrastructure and Agriculture [interview] can be mentioned. The draft law is intended to be streamlined with the aim of modern settlement law and more transparency in the market for agricultural land.

To achieve this, however, regulations that threaten agricultural structures must be prevented and this must be done in a consistent manner. The respondent from the ministry [interview] points out that the new AGS can only act within limitations and it remains questionable to what extent the legislator can intervene in the land market (land tenure, local residency).

The draft law could regulate the following objectives and issues:

- The proposals for an **upper limit of property and tenant land concentration** will presumably not be fixed, but rather the upper limits will be based on existing structures. Existing farms should be not disadvantaged and punished. It will probably be a relative measure based on reality.
- The **price brake** should be based on the local farming costs and consider, i.e., what a farmer is able to earn. The question that arises in this context is, whether the right

price level already exists and where it will end up. The aim is to reflect the economic reality of agriculture.

- In the draft act, indirect land acquisition (**share deals**) will be subject to so-called trigger thresholds. A **double tong** with area size (hectares) and shares in the enterprise could serve to curb the purchase of shares in enterprises. In this context, it must be taken into account that danger prevention is only necessary above a certain land size.
- **New forms of actors** in agriculture should also be reflected in the draft act. In the old acts, forms of solidarity-based agriculture, ecological agriculture and regenerative agriculture are not represented. The ownership of agricultural land has to be reformulated: In this way (according to [interview]) the proposal puts public welfare-oriented cooperatives on an equal level with existing forms of farming.

According to the respondent from the ministry ([interview]), the draft act for newcomers and young farmers will not turn things around or “miracles” are not to be expected. It is not possible to dictate to whom land is to be leased or sold. Nevertheless, it could strengthen the position of new forms in agriculture because they are to be put on an equal level with the previous forms. The new AGS may also be able to contain the concentration of agricultural land, as long as the legislation is complied with and the rural association exercises its right of first refusal. The *Thüringer Landgesellschaft mbH* (rural association of Thuringia) has to exercise a right of first refusal in favour of a farmer and hold land for up to six years. This can be a controlling factor for young farmers and newcomers to acquire land from the rural association. Here, consideration should be made whether public land (federal, state or municipal property) or land owned by rural association should be allocated according to criteria that take greater account of young farmers when selling and leasing land. But the coordination of private landowners as well as the churches should also be part of the tasks (Gräschke *et al.*, 2021; Lehnert, 2021).

A respondent [interview] points out that if share deals were more tightly controlled or regulated, there could be a potential to make agricultural land available to young farmers and newcomers. The price abuse clause in the leasing agreements must also be regulated, then there would be a chance to lower the leasing prices a little. In his opinion, there is no point in having a funding scheme for young farmers and start-ups, while having to high prices making farming unprofitable.

2.4 Discussion on access to land

In Germany and in the Federal State of Thuringia, there are few specific political or legal measures for young farmers and new entrants to access farmland. However, there are clear differences between farm successors, trained young farmers and new entrants. The opportunities for inner-family and non-family farm successors are slightly better than the opportunities for new entrants, who lack the technical and professional training and also lack the networks.

With regard to access to land, the **Hof(stellen)börse** and the **Land Allocation for Sustainable Agriculture Brandenburg**, among others, can be presented:

With the aim of helping young farmers to develop their own livelihoods, to secure the existence of existing farms by increasing the amount of land, and to enable farmers who want to give up farming to leave active farming in a socially acceptable way, the federal rural associations set up farm exchanges in the period from 2002 to 2005. The farm exchanges of the rural associations in the federal states are networked via the national BLG (rural association) (www.hofboersen.de). The organisation and the range of services offered by the farm exchanges are adapted to the regional structures and market conditions (BLG, 2020, p. 21). However, the practical relevance of these farm exchanges is controversial. In 2019, six farmsteads and 16 farms (including two start-ups) were newly occupied via the farm exchanges. In addition, 30 additional areas of land were purchased in Bavaria. Moreover, two farms were reoccupied on a lease basis (BLG, 2020, 22).

Another programme is the '**Land Allocation for Sustainable Agriculture Brandenburg**' (<https://flaechen.nachhaltige-landwirtschaft-brandenburg.de/>). On this platform, landowners can offer their land to young farmers and smaller farms in Brandenburg. In addition, young farmers can create an individual profile for a land application. This is intended to contribute to cooperation in the allocation of land between owners and farmers and to support sustainable, climate-friendly economic models in agriculture in Brandenburg.

According to information from the interviewee from the Thuringian Ministry of Infrastructure and Agriculture [interview] there are considerations in Thuringia for a young farmer programme in the next funding phase (compare Box 2box). Up to 100,000 EUR are to be provided as direct payments and investment support. More details will be announced in the near future.

The granting of start-up funding serves as a role model in Saxony-Anhalt: This funding for young farmers came into force on 30 June 2017. The LGSA (rural association of Saxony-Anhalt) is the farmer's central point of contact and checks, advises and coordinates the projects. Since the programme was announced, a total of 108 young farmers have contacted the rural association (17 in 2020 and 14 in 2019). The demand is for business management assistance, investment support and land.

A total of 63 applications have been approved for young farmer support at the federal state level so far, 11 in 2017, 18 in 2018, 24 in 2019 and 10 in the 2020 reporting year. In 2021, budgetary allocations are expected to be reserved for a total of 10 young farmers. The bottleneck factors cited were "unrealistic imagination, lack of ideas or poorly founded farm concepts, expected low farm results and lack of land availability" (BLG, 2020, 22). Furthermore, the LGSA (rural association of Saxony-Anhalt) cites "a lack of or only very limited land and expected low operating results, as well as a lack of business concepts and professional qualifications" (BLG, 2021, 20). The other rural associations report only few enquiries from "newcomers and new entrants". The rural association (BLG) points out that it will not work without the provision of substantial public funds to finance the purchase of land into a land pool to equip or increase such farms with leased land, which will later be acquired by them (BLG, 2021, 21).

A respondent [interview] sees a disadvantage in this funding because it requires a high standard output for the existence programme, which in turn favours larger farms and disadvantages smaller ones.

Box 2 Start-Up Funding

Nevertheless, when the programme starts, it should also be taken into account that not only monetary support is important for young farmers and new entrants. Advice services and networks are often crucial for success or failure. The advisory service could cover the areas of socio-economics, farm development and farm management. It should also act as an interface between federal and state administrations in order to fulfil corresponding synergy effects. The work of the chambers of agriculture can be used for advisory services (Gräschke *et al.*, 2021, 3).

Mentoring networks (Box 3) would be a useful way for newcomers and young farmers to exchange their questions directly with experienced farmers, where people are welcome and can create co-operations. Such processes can be initiated and structured. A respondent [interview] sees the federal state of Thuringia as having a responsibility here. It is about access to land, advice, funding, networks/corporations. So far, newcomers or young farmers have hardly any opportunities to gain a foothold on the land market (Rüter, 2020).

One mentoring programme is the **Mentoring Network** in Organic Agriculture, Competence Centre for Organic Agriculture in Lower Saxony (KÖN) (www.mentoring.bio). The programme supports young farmers with a mentor on various topics.

Another project is the **Fördergemeinschaft Ökologischer Landbau** Berlin-Brandenburg (FÖL) "Establishing a network for mentoring and advice for young farmers in Brandenburg" (www.junglandwirtebrandenburg.de). Twelve young farmers are supported by an experienced farmer as a mentor for two years. Valuable experience and expertise are to be shared in the start-up tandems. This includes targeted advice on topics such as farm development, farm succession, marketing strategies and exchange among the young farmers.

Box 3 Mentoring

This requires complementary measures. Another respondent [interview] emphasises in this context that there should be more support for start-ups and newcomers and names three pillars: (1) access to land, (2) access to capital and (3) access to start-up advice. However, he points out that the new Agricultural Structure Acts can only change access to land. Access to capital or access to start-up advice would be a common task of the agricultural structure for which support instruments must be established.

2.5 Conclusion

This chapter has focused on the way how in the federal state of Thuringia the decentralised legislative competence for agricultural land and land lease transactions has been used and analysis whether this has been used as an opportunity to provide access to land for new generations.

The conclusion is that this has only be partially taken up. There are initiatives outside the formal regulation that may provide some access. The objectives set in the law may allow for some improvements. A promising element is the potential regulation of share deals by the new law. However, as is often in the case of legislation, it is all about the details that matter and in the process of law making these may get in more or less enabling for new access to land. There is still a lot of uncertainty on these details and so, on the question whether the new legislation will make a difference.

3 Access to farmland in Poland: the *Act on the Formation of the Agricultural System* (Sylvia Dołzbłasz, Krzysztof Janc, Andrzej Raczyk and Robert Skrzypczyński, UWR)

3.1 Introduction

Land is a key – but limited – resource in agriculture. Apart from agricultural uses, it also plays an important role in a number of other activities and processes undertaken by, or relevant to, a variety of stakeholders (human and non-human alike). Hence, regulating access to land is a complex, multi-dimensional task, which always needs to take into account interests of those who are related to land in various ways. Regulating access to land is in essence a political process. In consequence, both studying existing regulations of access to land as well as developing new ones cannot avoid deeper, underlying questions of power distribution, (food) sovereignty, intergenerational justice, or inter-species conviviality. Underlying values and ethical stances need to be understood and reflected upon in order both to understand how access to land looks like today, and how it could look like in the future in order for it to “better” balance these different, often competing interests.

It is against this background that we aim to describe how Polish agricultural land policy impacts access to farmland for various stakeholders who are interested in acquiring it or making use of it in another way. This issue is relevant for a number of reasons. From the perspective of securing access to food for humans, farmland is often seen as a key, scarce resource that needs to be protected from other uses that could result in an irreversible (or at least not easily reversible) loss of its potential for food production. Taking this issue a step further, the ‘food sovereignty’ perspective asks how access to land looks like in practice (including power relations) and who should have the power over shaping agri-food systems in particular places. In turn, from the perspective of securing ecosystem services for human populations, land also needs protection from uses that undermine its potential for delivering these services (such as microclimate regulation, biodiversity, pollination, water retention, etc.). Another perspective would consider an ethical argument that non-human animals, or other forms of life in general, simply have a right to a non-degraded habitat appropriate for meeting their needs – for which land in appropriate condition is needed too. Yet another perspective would include the desire of humans to be able to use (potential) farmland for non-agricultural uses – such as housing or recreation. It is of course not our role to decide which approach is the ‘right one’, since even if we assume that there is a ‘right’ answer this decision should be an outcome of a political process that would allow all stakeholders to voice their needs and arguments (either by themselves, or by being represented in the process) and reach a compromise that would be acceptable for all. However, we see our role as researchers in providing assistance in that process by identifying outcomes of the existing regulations of access to farmland as well as identifying possible avenues for changes that could help better realize various values and goals that are translated into these policies.

Hence, the goal of this case study is to illustrate the characteristics of the regulations of access to farmland in Poland, examine their impact on selected types of stakeholders (also on the basis of their own reflections), and inquire what possible changes could be introduced in order to address the shortcomings of the current regulations voiced by these stakeholders. In doing so, we will also try to understand the main lines of tension between various interests, objectives and normative assumptions that revolve around access to farmland in Poland today.

3.2 Short context (legal, policy, socio-economic)

The state of the agricultural sector in Poland differs in some important ways from how farming looks like in other EU States today. As EUROSTAT (2020a) data show, 47% of the total country area is currently used for agriculture (EU-28: 38%), employing 9.1% of active labour force (EU-28: 4.4%) and generating 1.8% of the Poland's GDP (EU-28: 1.3%). Farming in Poland takes place at 1 410 700 farms (14% of all EU-28 farms), which could be generally described as small and fragmented – albeit the total number of farms has decreased significantly since the accession to the EU in 2005 when there were 2 476 400 farms in Poland. In comparison the EU-28, Poland has today a much lower share of both the smallest (UAA < 2ha) and medium-large (UAA > 30ha) farms in the total number of farms (Figure 1). It is the small-medium farms (UAA between 2 and 29.9 ha) – and especially the lower part of this range (2 - 4.9ha), that constitute the most common type of farms in Poland (Figure 1).

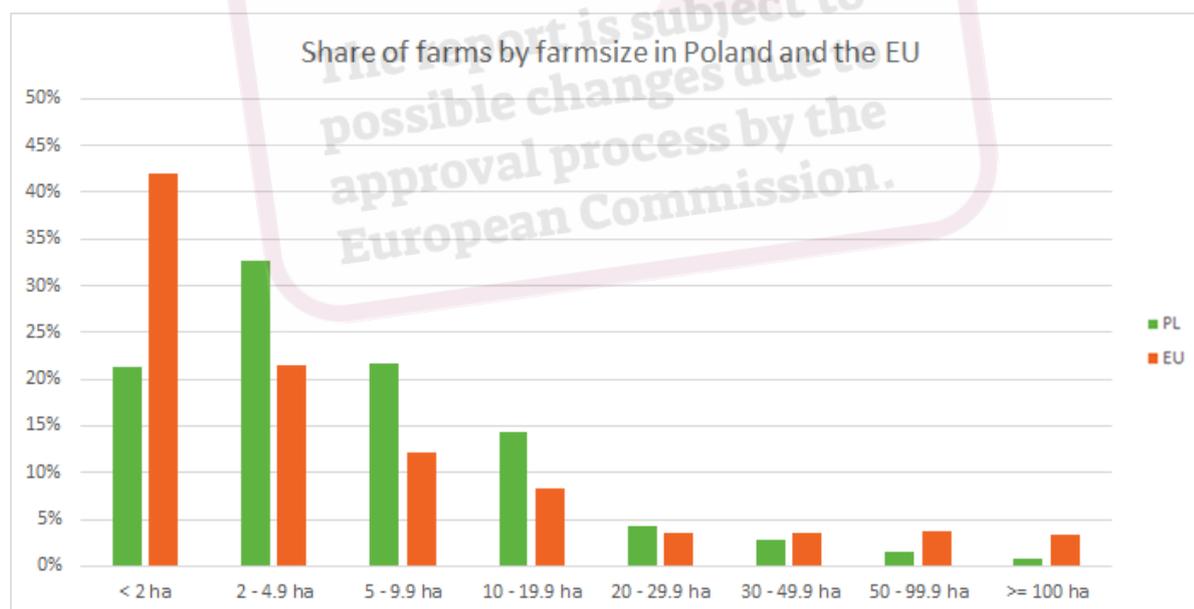


Figure 1. Share of number of farms by farm size (in UAA) (source: authors; data: EUROSTAT, 2020a)

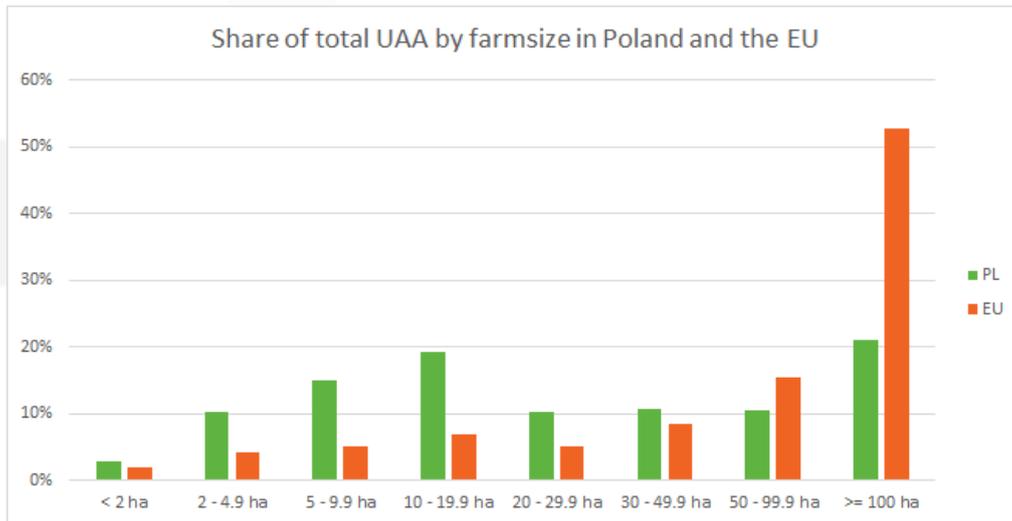


Figure 2 Share of land (in UAA) by farm size (source: authors; data: EUROSTAT, 2020)

The difference between Poland in EU that will be relevant for access to land is much more striking when the share of the total country UAA occupied by different types of farms is considered (Figure 2). Poland shows a much more balanced farm structure than the EU in general: except for the smallest farms (UAA < 2ha) each size-category of the farms, from the very small (2 - 4.9 ha) to the largest holdings (>= 100ha), occupies in between 10 and 20% of the total UAA of Poland. In other words, farmland is much less concentrated in large farms in comparison to the EU-28 where more than 50% of land is in the hands of 3% of the farms larger than 100ha. In the case of Poland that proportion is similar, as over 20% of land is used by the 1% of the largest farms (UAA >= 100 ha), but the difference in the share of total country UAA concentrated in the largest holdings is still very significant (20% in Poland, 50% in the EU).

What is of course crucial in places where land markets operate is the price of farmland. In 2019 the average price of farmland in Poland amounted to ca. €10 000/ha. This is a relatively low price when compared to some Western European countries, but at the higher end of the spectrum when compared to CEE countries such as Hungary, Romania or Latvia (Figure 3; Figure 4). Differences in prices between NUTS2 regions of Poland vary, but not very significantly (see also: Korthals Altes, 2021). However, the dynamic perspective needs to be considered here as well: in 2011 the average price of farmland in Poland was ca. €5000/ha, which means that the price has doubled in less than a decade. As Eurostat (2020) indicates, a similar or higher increase of prices happened also in a number of other CEE countries (Hungary, Czechia, Lithuania and Estonia all experienced two- to four-fold increase over 2011-2018).

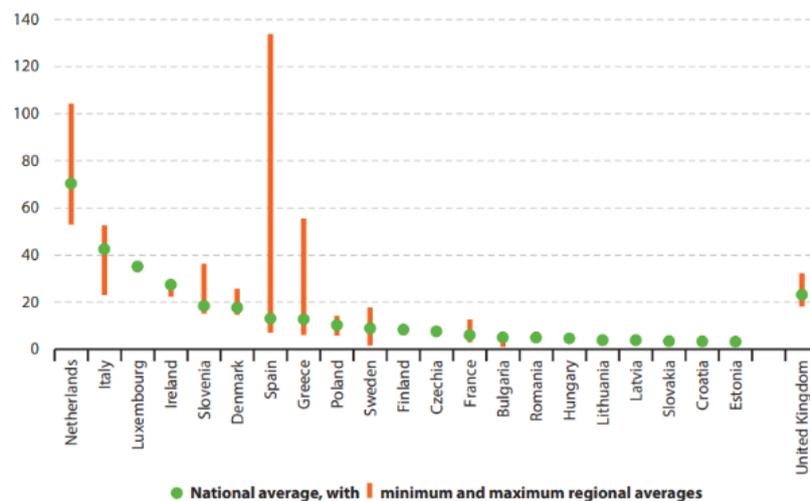


Figure 3 Land purchase prices (€ 1000 per hectare) in the EU in 2018 (EUROSTAT, 2020a, 27-28)

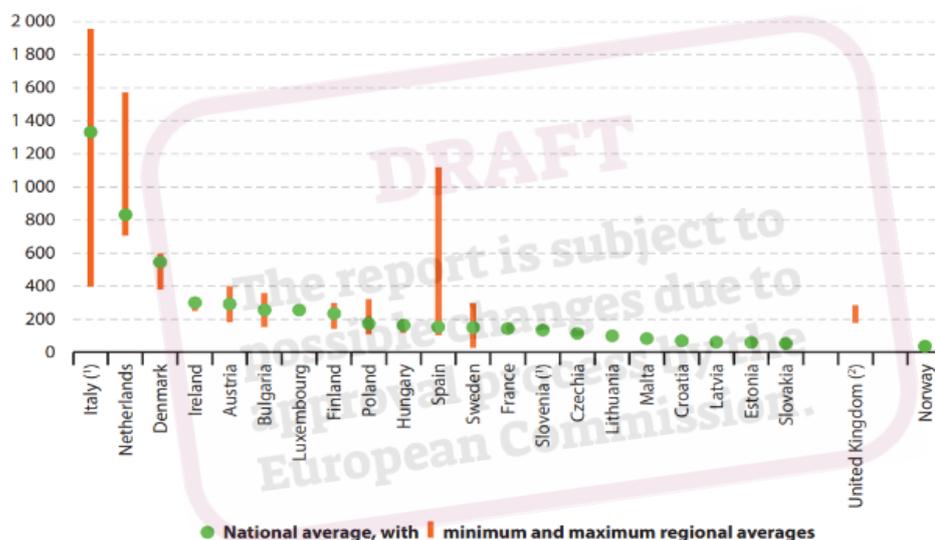


Figure 4 Agricultural rent prices (€ 1000 per hectare) in the EU in 2018 (EUROSTAT, 2020, 27-28)

Apart from changes in farm structures and land prices, recent years have also seen some important shifts in the political context around farming and access to land in Poland. These shifts are in large part a result of resistance to a number of global or regional trends of the last decades: negative aspects of globalization, neoliberal socio-economic policies (Poland's transformation period in the 1990s is currently being reassessed in the public debate), deterioration of prospects for small/medium farms as well as environmental degradation. It has to be noted that such resistance occurs in differing parts of the political spectrum. Therefore, the same phenomena fuel both a rise of nationalist isolationism amongst more conservative, right-wing groups of persons and a reaction amongst left-wing, progressive circles where state interventionism in markets, more stringent environmental regulations and fostering local development are proposed as a response to these trends. Therefore, these two conflicting lines of political thought sometimes seem to meet; but in many other ways, especially in basic normative assumptions, they are still contradictory.

This apparent paradox can be perhaps best explained by relatively widespread protests of farmers initiated by the 'Agrounia' farmers' association in 2020. In September 2020, the current right-wing government informed that they would introduce new animal welfare regulations that would [1] introduce a ban on fur production (from all animals except rabbits), [2] limit the ritual (religious) slaughter to the supply for domestic religious groups only (which means a ban on the export of meat from ritual slaughter), [3] introduce a ban on exploiting animals in circuses [4] and introduce a number of other – but related mostly to pets – regulations improving animal welfare. This proposal was met with a strong resistance from farmers mostly organized by a new association called 'Agrounia'. Agrounia adopted a narrative in which the regulations were portrayed as an attack on Polish agriculture (especially small- and medium-scale farmers), introduced in a top-down way. The protests had some nationalist undertones manifested in, e.g., a claim that fur would be produced anyway but in other countries where this is legally allowed, and this would lead to a comparative deterioration of Polish farmers' situation and undermine the situation of Polish agriculture in the EU, or even global market. However, the narrative of Agrounia quickly shifted from being centred on the proposed legislation to the broader protest against the difficulties that Polish farmers are facing today. In doing so, Agrounia adopted a number of perspectives that are traditionally considered as left-wing; for instance, they called for more state interventionism that would create more balance in the bargaining power of individual farmers vis-a-vis supermarket chains that they deliver food to. Other proposals revolved about support for the idea food sovereignty in general, including also environmental considerations that resembled those usually associated with left-wing circles or the Green party.

This is just once case that serves as an illustration of a growing, broader recognition among political actors – beyond left-wing circles that have been traditionally sceptical towards neoliberal policies – of negative consequences of a particular mode of development characterized by superiority of economic goals over social and environmental aspects of sustainable development, liberalization of markets, application of the rule of comparative advantage internationally or the minimalization of state intervention in markets. This recognition is being reflected in current regulations of access to land – and as of now it seems that it will continue to be so. What remains to be seen however, is to what extent this recognition will translate into dangerous, xenophobic nationalism as embodied by right-wing politicians in Poland today, or, conversely, whether the discourse will develop along an alternative path that emphasizes the protection of basic resources such as land (and its non-economic importance) but at the same time recognize the need for respect and more integration within the EU.

3.3 Short narrative of the case

The agricultural land policy of Poland is generally based on the *Act from 11.04.2003 on the Formation of Agricultural System* and its further amendments in 2016 (introduced by the *Act on halting the sale of the property of the Agricultural Property Stock of the Treasury and the amendment of other Acts*) and then in 2019 (introduced by the *Act on the Amendment of the Act from 11.04.2003 on the Formation of Agricultural System*). The main aim of the Act on the Formation of Agricultural System (2003) was to improve the structure of farms, prevent excessive concentration of land (individual farms up to 300 ha), and ensure appropriate

qualifications of farmers (agricultural education, temporary restrictions on the sale of agricultural land).

The 2016 Act on halting the sale of the property of the Agricultural Property Stock of the Treasury and the amendment of other Acts halted the sale of lands from the Agricultural Property Stock of the Treasury and also introduced a limitation according to which agricultural land can only be purchased by individual farmers (except for plots of land up to 0.3ha; the right to purchase land was also guaranteed to religious associations). The political goal of the 2016 Act was to effectively block the possibility of purchasing land by foreigners after the 12-year period of protection that followed the accession of Poland to the EU. Poland's transitional EU accession rules on the liberalisation of its land market banned foreigners from buying land until May 2016. Also, the 2016 Act banned all farmland in possession of the State from being sold (exceptions can be made by the Minister of Agriculture and Rural Development when this would be beneficial for "socio-economic reasons"). Consequently, the participation of foreign farmers in the ownership structure of land in Poland is minimal (foreign organic farmers report problems with land purchase), however it does not prevent the phenomenon of buying shares in companies which own land in Poland by companies with foreign capital.

Then, in 2019, an amendment to the Act on the Formation of Agricultural System was introduced that slightly loosened the restrictions of access to land by non-farmers. This amendment increased the area of land that is excluded from the regulations of the Act from 0.3ha to 1ha.

After two amendments, therefore, the rules of the Act are as follows:

- a farm or farmland can be bought only by an individual farmer, i.e., a person who (1) has been active in farming in the municipality where (s)he runs a farm for min. 5 years, and (2) owns not more than 300 ha of farmland, and (3) who has appropriate farming qualifications
- (exceptions to that rule include, i.e., family members of the seller, religious associations and national parks – these entities can bypass the rules of Act altogether);
- whenever someone else wants to buy farmland, they require a consent of the Director of the National Agricultural Support Centre (*Krajowy Ośrodek Wsparcia Rolnictwa, KOWR*);
- the consent can be granted to, i.e., individual persons with farming qualifications who declare that they will be running a farm on the purchased land for at least 5 years (provided that there was no farmer interested in buying the land) or universities buying land for purposes of realizing research activities;
- the consent can theoretically be granted to anyone, provided that the seller proves that there was no possibility to sell the land to a farmer and that the buyer will declare

- that (s)he will cultivate the land for at least 5 years following the purchase (except an occurrence of force majeure in which case a court decides whether it can be sold);
- the regulations are applied to purchases of farms or farming land, both in terms of property rights and perpetual usufruct;
 - the regulations are not applied to, i.e., parcels smaller than 1ha, parcels with min. 70% of area covered by ponds, and parcels within administrative boundaries of cities that are planned as housing areas;
 - KOWR keeps the pre-emption right, except when the land in question has been leased to a farmer for at least 3 years – in this case that farmer has the pre-emption right before KOWR;
 - KOWR also has the pre-emption right for buying shares of companies owning more than 5ha of farmland and for buying agricultural land from companies who enter the stock market.

The arrangement differentiates between farmers and non-farmers, thus indirectly – due to how a ‘farmer’ is legally defined – taking into account professional qualifications, place of residence and the amount of possessed land. These regulations strongly support individual farmers, i.e., farmers with professional qualifications who have been living in the municipality where their farm or one of their plots is located for at least 5 years, and who possess no more than 300ha of land in total. However, there is a possibility for a new entrant (even without qualifications) to buy land when the seller proves that there was no way to sell the land to an individual farmer, and the new entrant declares that (s)he will cultivate the land for 5 years (which is then verified by KOWR officials).

3.4 Discussion on access to land

There is a general agreement, both across various perspectives that can be found in secondary sources as well as among the persons interviewed for the purpose of this case study, that current regulations of access to farmland in Poland have been successful in limiting the problem of land grabbing and speculation – and thus the increase of prices of farmland associated with these problems. The logic of state interventionism, the underlying assumptions of the regulations and their general structure is generally not contested. However, there are various lines of criticism referring to some aspects of the regulations. In order to illustrate them, below we will summarize the perspectives of the nine interviewees participating in this case study (see Annex I for the complete list of interviewees).

National Agricultural Support Centre (KOWR)

The activities of KOWR are guided primarily by the goal of protecting and developing family farms (considered the basis of Poland's agricultural system), preventing excessive concentration of farmland, ensuring that agricultural activity is carried out by persons with appropriate qualifications, ensuring food security for citizens and supporting sustainable agriculture conducted in compliance with environmental protection requirements and conducive to rural development. The restrictions introduced by national legislation are intended to ensure that the land is used for agricultural activities, protected from rising prices induced by land grabbing and speculation, as well as secured for current and future food

security. At present, in the face of high demand, it is a problem to meet all needs, especially given that a large part of available land is made of small plots (of small area). Under current conditions, such fragmentation does not ensure profitability of agricultural activity. The representative of KOWR notes that the pressure to buy land for non-agricultural purposes is significant. Hence, KOWR supports strict requirements for persons wishing to purchase agricultural land. What is important is that these limitations are a response to the needs of farmers who oppose taking over land by persons not involved in agricultural activity (which gives rise to various types of conflicts between active farmers and non-farming newcomers to the area). The conditions set out in this way for those wishing to engage in agriculture are intended to ensure that they are genuinely involved in the life of the community. Hence, the actions of the KOWR are mainly aimed at ensuring the effectiveness of the regulations, or even tightening the system of granting access to land.

Two academic experts (Polish Academy of Sciences and University of Poznan)

According to the interviewed academic experts, access to land in the case of agricultural activity is mostly limited by economic factors (supply, prices), whereas in the case of setting up a new holding – by legal regulations, especially the requirement to reside in a commune where one's farm or its part is located for 5 years before purchasing land. The requirement to have agricultural qualifications for land purchase, although it seems justified, limits the entry into this segment of people who have capital and associate their professional activity with agriculture. In the view of the experts, the exclusion of agricultural land of low-quality classes from the regulations would bring positive economic effects and development of, e.g., recreational tourism, and would to some extent prevent depopulation of those rural areas where low quality land prevails. The possibility of purchasing land only by an 'individual farmer' restricts the flow of capital into agriculture, which in turn limits development opportunities. As a rule, the majority of measures, especially in the area of introducing progress and innovation, require significant financial outlays. Interviewed academic experts suggest that people other than 'individual farmers' (as defined in the Act) could be granted access to land, although this would have to be complemented with regulations containing clear qualitative and time-related criteria that should be met by such persons in order to be able to purchase land and/or keep the right to its cultivation afterwards.

Three individual farmers (two large-scale, i.e., cultivating 200-300ha, one cultivating 50ha)

In general, the interviewed farmers evaluate current policy on access to farmland positively. In their view, access to land in Poland is currently limited due to high prices and low supply. They evaluate well the restrictive rules for the purchase of agricultural land included in the Act. They believe that agricultural land should be available only to active farmers. Moreover, they positively evaluate the restrictions for foreigners, indicating that agricultural land should be in the hands of Polish farmers. They appreciate the activity of foreign farmers, who settled in Poland in the 1990s, mainly German and Dutch (there were different rules for buying land at that time) and are good 'real' farmers, but as of today they clearly indicate the need to protect agricultural land from being bought out by foreign farmers, especially companies. Similarly, they stress the need for restrictions for companies and claim that preference should be given to individual farmers. They evaluate well the system used by KOWR in tenders where State-owned land is sold (e.g., preferences for family farms and young farmers), while some of them negatively evaluate the restrictions for farmers who already have a large acreage and

would like to enlarge it. Foreign farmers have a different opinion about the rules of purchasing agricultural land in Poland. They emphasize that the rules are too restrictive and limit the possibility to lease only, which blocks the enlargement of their farms that had been operating in Poland for many years. Some respondents also notice the existence of restrictions for young people who want to set up a farm (requirement of 5 years in agriculture, 1 ha of land). Similarly, they see difficulties for people who would like to start agricultural activity without prior experience. Stressing the legitimacy of restrictions on the purchase of agricultural land to farmers, they point out that a better solution could be to apply not only the criterion of acreage (management of min. 1 ha), but the livelihood based on agriculture (e.g., min. 80% of income from agricultural activity). Also, some farmers see a need for reshaping how KOWR operates in practice in order to, i.e., provide practical guidance for farmers who are often not aware of all the complicated regulations when they want to purchase land.

A person who has recently bought farmland for non-agricultural purposes

There are a number of persons who try (and often succeed) to purchase farmland while not being an individual farmer. Current regulations allow that because the Director of the National Agricultural Support Centre (KOWR) can grant the permission for such a purchase theoretically to anyone, provided that the seller proved that (s)he was not able to sell the land to an individual farmer. The criteria used for that decision are, however, not transparent to those who are interested in making such purchases. These decisions are made by officials in 18 regional offices of KOWR (ca. 1 in each NUTS2 region) and there is no common understanding of neither the exact procedure (e.g., how exactly one proves that it was not possible to sell the land to an individual farmer), nor the criteria used in granting the permission. Therefore, there is an informal circulation of experiences and tips as to how to approach this procedure in order to increase one's chances to be granted such a permission. According to the interviewee, when someone is interested and willing to purchase land while not being a farmer, it is generally possible to 'find one's way to do that'. Of course, the obligation of cultivating the land for 5 years afterwards is still valid; but in practice mowing the field once per year is considered sufficient to meet this criterion. Therefore, the practice is often that the land is not used for agricultural production, but only kept in a "good agricultural condition" which satisfies the officials who may (and do) visit the farm in order to verify how the land is used after such purchase.

The respondent understood and appreciated the rationale behind the current regulations and their general shape. However, he argues that more flexibility should be provided for 'quasi-agricultural' uses of farmland. For instance, his idea for the farmland he had purchased is to construct an experimental, passive house made of local and recycled materials – an earthship – and then start a research project in order to verify whether such house can be a viable alternative to the dominant type of housing structures in Poland. He also intends to run a permaculture garden that would be integrated with the earthship (along permaculture design principles), and set aside part of the land for biodiversity conservation. Currently there is no special track for such experiments on the verge of food production, environmentally-friendly housing and biodiversity conservation – and in his view, there should be. Moreover, keeping the land cultivated means that he has to cut down young trees that spring up in that part of the parcel that he would like to set aside for biodiversity purposes.

A representative of an animal rights-NGO aiming at create a farm animals' sanctuary

Yet another perspective on the regulations of access to farmland is the perspective of an animal rights-NGO that found itself in a stalemate last year when they were looking for land on which to create a farm animals' sanctuary. The situation was a direct result of a court decision to 'expropriate' a farmer of a herd of ca. 180 cows that he owned. In Poland, when someone is convicted of abusing animals, as that farmer was, the court is obliged to take these animals away from their 'owner'. The Law stipulates that such animals are then given over to an animal-rights NGO that then finds them a new place to live or an animal shelter. While this rule works quite well in case of individual animals (a cat or a dog), it clearly poses a huge challenge when an entire herd of cows is the subject. However, since the case was widely discussed in the media (for a number of other reasons), the NGO that was supposed to take over the animals was able to find sponsors who agreed to pay for land (or a farm) and subsequent care over the animals. In other words, the NGO had appropriate resources to purchase enough land (ca. a dozen hectares) and they easily found potential sellers – but they did not have a formal possibility to purchase farmland on which such a shelter could be established. Of course, the rule of the exception granted by KOWR could be used in this case: but the (varying) practices of KOWR regional officials show that it usually takes a couple of months needed for the seller to prove that no individual farmer responded to the selling offer and the KOWR to realize or waive its pre-emption right. Hence, even with funds, a potential seller, and a quasi-agricultural use, the NGO was not able to purchase land in order to save the cows. Hence the interviewed representative of the NGO argues that there such 'quasi-agricultural' land users should be able to access farmland more easily.

An environmental NGO expert

The last interviewee, an NGO expert, agrees that current regulations are needed in order to address the problem of land grabbing resulting from different land prices across Europe. In her view, the logic and assumptions of the regulations are well-suited; however, as they are limited to market regulations only, they do not address the issue of non-market access to land that could be of key importance for farming and generational renewal due to its potential to attract actors – individual or collectives – that are willing to engage in sustainable, small or medium scale agriculture but lack investment funds to do that. One example she mentions from her experience is the situation of the Ecological Folk High School in Grzybów, a folk university that provides two-year full-time courses on organic farming (its fourth edition starts in 2021). Graduates are not, however, officially recognized as farmers and, furthermore, often lack funds to set up a new farm (even if KOWR made an exception and allowed the purchase of land). Moreover, many participants are not able, and/or reluctant, to take a significant loan needed to gather funds for such an investment. Hence, young people with high-level education in organic farming face a significant obstacle in setting up their farms. Even though the expert confirms that most interested persons with access to sufficient finances are able to get a permit from KOWR, what she suggests as a systemic solution to this problem is a 'land bank' similar to those that are operating in other European countries (e.g., Kulturland's activity in Germany). From her perspective, it is crucial to provide such non-market pathways to establishing a farm not only because it will allow more young entrants to start farming, but also because it is easier in the case of a land bank to regulate how the land will be used as it could e.g., lease or sell the land only for organic farming.

Discussion of the interviews

A number of common points can be discerned from the interviews conducted for this study. First of all, farmland (especially with high-quality soils) is perceived as a scarce resource that plays a key role in food production. Our respondents generally agree that it should be protected from market forces whose operation could bring sub-optimal results from the perspective of food security, landscape preservation, biodiversity conservation or the settlement (housing) structure. Secondly, the current system of regulations on farmland market is considered generally appropriate. While some stakeholders who benefit from land speculation or development into non-agricultural purposes would probably disagree with the normative assumptions of these regulations, none of our interviewees claimed that the foundations of the regulations are misplaced. And thirdly, our respondents generally agreed that current regulations might be too restrictive from the perspective of new entrants into farming. Different stakeholders assess the overall regulations slightly differently – e.g., what types of actors should be allowed to buy farmland – but all agreed that such regulations should exist.

Where the interviewees differed is selected aspects of the range or flexibility of regulations. Not unexpectedly, farmers and KOWR representatives would like to see the regulations even more tightened in order to keep the demand for farmland as low as possible – although large-scale farmers would like the 300ha limit to be waived in order for their holdings to grow further (but even farmers and KOWR agree that new entrants face difficulties in acquiring farmland). Academic experts, on the other hand, noted that the regulation of land with low-class soils could be loosened or even excluded from the regulations altogether as these soils are not very valuable for mainstream farming anyway and limit the influence of various types of capital into rural areas. Although academic experts seem to be in favour of (slightly) less market regulation, there seems to be some synergy of that point with the regenerative, experimental and usually grassroots approaches to farming/living as exemplified by the interviewee who bought farmland for conducting an experiment in sustainable rural living (that would also include food production). And indeed, we believe that such experiments play an important role in sustainability transitions of agri-food systems (Skrzypczyński *et al.*, 2021). Since the goal of such experiments is often to *regenerate* soil and environment, they are not as much limited to high-quality soils as conventional farming. From this perspective, current regulations could be also (slightly) loosened in order to facilitate the establishment of such experiments with sustainable living (incl. some food production and biodiversity conservation) on particular types of land. This, however, has to be done carefully so as to ensure that such uses are indeed contributing to broader sustainability.

An argument for more inclusive access to farmland is also illustrated by the case of an NGO that needed farmland in order to establish a farm animal sanctuary and had sufficient resources to do that – but was unable for formal reasons. While this is not directly related to food production, we believe that with time there will be more and more cases where farmland is used for such quasi-agricultural functions; and even if they are marginal in relation to how much land is used for food production – but also as a result of that – Polish and European legislators should consider including such functions in the catalogue of uses that have an easier track for access to farmland.

Our respondents also pointed out that while current regulations are generally sensible, we need not limit ourselves only to the logic of market regulations. An institution of land bank could definitely help in setting up new farms, especially by new entrants trained in non-formal ways (e.g., ecological folk high schools). It could also help ensure that land is used for socially- and/or environmentally-friendly types of farming (e.g., organic farming) while creating a soft landing for those farmers that pass on their farms to the land bank. Moreover, such an institution could also help in addressing the problem of quasi-agricultural uses that, even though are not strictly focused on farming, are beneficial in other ways (farm animal sanctuaries, sustainable living experiments, educational farms, etc.). Similar solutions exist in other countries and this seems generally transferable.

3.5 Conclusions

This case study aimed at illustrating current state of farmland access regulations in Poland and answering the question how it could be improved (from various perspectives). In order to show conflicting viewpoints, we tried to confront various perspectives on the issue of access to farmland, including its normative or political aspects. A general conclusion would be that the interviewed stakeholders broadly agree with regulating access to land, but would either introduce some changes in the details of the regulations – e.g., broaden the scope of eligible actors – or would establish parallel, non-market mechanisms for access to land to complement existing market regulations. Depending on the goal of these regulations, different actions could be undertaken by the legislators. For farmers, it seems crucial to keep or even tighten the regulations, since this will limit the demand – and price – for land. Large-scale farmers would argue that while only farmers should have access to land, there should be no limit on the total UAA in hands of an individual farmer that would block them from further land accumulation. Small-scale farmers and new entrants, especially ecologically-oriented, would probably benefit from keeping the restriction on total UAA but also from providing a non-market pathway for access to land (e.g., land banks). This approach would be also beneficial for quasi-agricultural, but socially beneficial uses, such as experimental farms/communities that combine sustainable living with food production, biodiversity protection or education, as well as for NGOs that need farmland for establishing e.g., animal sanctuaries. In terms of biodiversity, it is also important to review how the per-hectare payments induce non-farmers who own farmland to keep it in ‘good farming condition’, which is not translated into food production but might be at the same time harmful for biodiversity. Reviewing such payments could also increase the supply of farmland to the market, some of which is now kept only as capital investment. Finally, a common motif among the stakeholders was to reconsider whether access to low-quality soils should be also as much restricted. All in all, however, farmland is today considered in Poland as a valuable resource that should continue to be protected from land grabbing, speculation, non-agricultural uses, and excessive concentration.

4 Access to land in Hungary. Privatization of Farmland (Imre Kovách, Boldizsár Megyesi, UNIDEB)

4.1 Introduction

In Hungary, land privatization has gone through three stages. First stage was that, since 1992, privatisation has led to a very strong concentration of land use and land ownership, one of the highest in Europe, which is still the main factor influencing rural development and opportunities. Second stage is that in 2015-2016, when all the land still owned by the state was auctioned (380,000 hectares). All arable land in Hungary is 4.7 million hectares; so, this has been a large operation. And third stage is the regulation of the approximately 900,000 hectares of undivided common property. Politics tends to consider the issue of land property as the most important dimension of rural development in Hungary, although this is not fully justified. The question is whether next to the large concentration of land ownership that happened in the first stage deviations can be found which may provide more access to land for new generations or that there is generally a continuity of land privatisation towards large landholdings over all three stages.

4.2 Context: Re-privatisation of land property in 1990s

The current strong concentration of land ownership and use is the result of an era beginning with the 1991 land compensation. The legal framework for land ownership was set out in the Compensation and Cooperatives Act. The manner and duration of land privatization were determined by political intentions that also met social needs, while economic considerations were pushed into the background (Kovách, 1994). The number of beneficiaries exceeded 1,500,000, according to others to 2 million. There was not enough land to achieve the goals of compensation. Claims for compensation were submitted for 2,430 thousand hectares. 2 million hectares were privately owned and used by family farms. In the first phase of the land reprivatisation, which lasted until 1994, 340,000 claimants received land worth 27.5 million crowns. The average size of land acquired during compensation was 4.4 hectares. Two-thirds of the new owners were retired or non-agricultural occupants (Harcza *et al.*, 1998). The 1994 Land Act 1 excluded the ownership of land by legal entities and non-Hungarian citizens and maximized the size of land that could be acquired in 300 hectares. Leaders of the successor organizations of producer cooperatives, who were waiting to strengthen the larger farm size, accelerated the privatization of land and means of production still in community use and ownership from 1995 onwards in response to the passive agricultural policy of the Socialist government (1994-1998). By 1996, 94 percent of the designated lands had been auctioned. Three-quarters of the arable land was thus privatized, so that one and a half million became landowners. The amount of land transferred to family farms doubled between 1994 and 1996. Land property compensation was completed by 2000 with land registry entries and the issuance of shareholdings.

The structure of land ownership was characterized by the predominance of small estates in the 1990s. Units of less than five hectares accounted for 40 percent of the area, and farms of less than 10 hectares accounted for nearly sixty percent of all farms. As a consequence of the fragmented tenure structure, the structure of ownership and land use (hence the farm structure) is in the first two thirds of the decade, there was little overlap. The agricultural nearly two-thirds of the area was used as leased land. The larger, 50 hectares individual farms above. were also unable to gain access to more extensive land ownership, and they rented two-thirds of the land they cultivated, which significantly increased their production costs.

As a result of economic processes and political intervention, rapid land use concentration began in the second half of the 1990s, with hundreds of thousands of lands of smaller family farms being transferred to the ownership or use of larger farms (Kovács, 2007).

The structure of land use has, in essence, already shown signs of strong concentration by the time of EU accession. According to the 2007 CSO Economic Structure Survey (HCSO, 2008), farms larger than fifty hectares used eighty percent of the arable land. As a sign of concentration, the number of economic organizations has been steadily increasing, but there has also been a significant increase in land use in larger farms since the turn of the millennium. By 2007, half of the land used for individual use was cultivated on farms larger than 50 hectares. The largest lands were already in the use of economic organizations as early as the first decade of the 21st century. The number of individual farms has declined rapidly. In 1992 1395800 family farms were registered, by 2000 only 958500, by 2013 446 000 (Kovách, 2012; 2016).

In 2010, 13,830 farms, just over two and a half percent of all production units, used three-quarters of the agricultural area. 1752 farms cultivated 44 percent of the land, 2032474 hectares (Kovách, 2016). Three quarters of the agricultural area in Hungary in 2010 was 13,830 organization and family farms, i.e., just over 2.5 percent of all production units were in use. 1752 individual farms and different legal status organizations cultivated 44 percent of the land, 2,032,474 hectares. By 2013, the number of individual farms and organizations engaged in agricultural production fell from 533,940 to 453,070, but the land used decreased by only 20,895 hectares. The number of farms over fifty hectares increased to 20,206 (Kovách, 2016). The average land use per farm increased from 8.7 hectares to 9.3 (in the 1990s). The average land use per farm increased from 8.7 hectares to 9.3 (1 hectare in the early 1990s and only 2 hectares near the turn of the millennium). The cultivated land increased mainly on farms between 50 and 500 hectares (on average from 133 to 173 hectares). Farms larger than five hundred hectares although the average land use changed to a lesser extent (from 1387 hectares decreased to 1347), but in 2013 a total of 1,656,168 hectares, all land was 34 percent of the cultivation of this 1229 economic organizations (Kovách, 2016).

It seemed that the period after 2004, till 2010 brought a consolidation in land use, and after clear and rapid concentration farmers will enter a different development pathway: using the different subsidies and projects to intensify and diversify their farm holding. As we will show in the following the processes described by Kovács (2017) and her co-authors (Csurgó *et al.*, 2019), that after 2004, the EU accession, there was a consolidation, and stabilization of the Hungarian agriculture, proved to be false (Gonda, 2019). In the following we present the main dynamics influencing Hungarian agriculture in the last 10 years. These processes are not much

different from the earlier ones, but there are no signs of the consolidation, and certain interviewees; experts and farmers, but also news (Szabó and Szlavkovits, 2021), suggest that further concentration of the land use, and the stronger integration (Kelemen and Megyesi, 2007) of agriculture production will take place in the next 5-10 years. There are three main processes influencing this coming period: recent land-privatisation ('Land for farmers' program, the distribution of undivided property among the owners, and the policy processes around and the implementation of the new Common Agricultural Policy in Hungary. In the followings we discuss in details the first two, as our interviewees had information only about those.

We conducted eight interviews to reveal the recent land use patterns in Hungary; most of the interviewees were from our Eastern-Hungarian case study area, but the experts had a good overview of the whole country. We conducted five expert interviews: with members of civic organizations, with representatives of an advocacy society, with a representative of a local government and with scholars from a university. We also conducted interviews with farmers to present their ideas about land use patterns of present-day Hungary, and to better understand their views about the future.

4.3 Narrative of the case: The 'Land for farmers' programme and the Undivided property land policy

4.3.1 'Land for farmers' programme 2015-2016

The governing coalition, which has been in power since 2010, has identified increasing the land of individual farms and reducing concentration as its most important strategic goals. CXXII. On the turnover of agricultural and forestry land in 2013. Act CCXII of 2013. Act introduced a new land regulation, one of the basic objectives of which is to reduce the concentration of land use. The government report sets out the purpose of the new regulation below:

"The indirect, long-term goal of the regulation is that by gradually reducing large holdings, 80 percent of Hungarian arable land should be cultivated on small and medium-sized, mainly local family commodity farms, in accordance with the principle of public land use, promoting rational and sustainable land use and farmers' self-organization. " (Report No B / 3566 on the situation of the agricultural economy in 2013, 2015, p. 79)

The Ministry has shown signs of strengthening family farms and market orientation in the shifts in the structure of agriculture between 2010 and 2013. The 2013 government report highlights that the average size of land used by individual farms increased by 20 per cent by 2013, as a result of the rapid decline in the number of farms and the unchanged size of agricultural land. The report justifies the vision of strengthening small and medium-sized farms by reducing the number of farms with less than one hectare and farms with more than 500 hectares. The number of the smallest farms actually decreased by almost 82,000 between 2010 and 2013, but the land area is only 32,000 hectares smaller than the group of farms under 5 hectares. The report highlighted a 20,000 increase in the average size of land used by

individual farms, but no justification was found in the published data. The number of farms in the 10-500-hectare land category considered viable increased by 1505 (3.4%) and the utilized land by 93-410 hectares (4.8%) during the reference period. These data do not in any way reflect the particularly dynamic strengthening of economies considered to be of viable size.

The average area used by individual farms between 10 and 500 hectares averaged 44 hectares in 2010 and 45 hectares in 2013, so practically nothing has changed, but the average land area for all individual farms - 4.6 hectares in 2010 and 5.5 hectares in 2013 - do not indicate a 20 percent increase.

The concentration of land use. The average size of land used by private individuals was 9.5 hectares in 2009 and 7.1 hectares in 2014. The substantial strengthening of individual economies is questionable for two additional reasons. The CSO anticipates the mass disappearance of the smallest farms. However, the methodological problem of determining farm size was also a source of significant uncertainty in the interpretation of land use concentration. Due to the possibility of defining a farm size, it is a “sliding” category that can exclude tens of thousands of production units from the calculation of averages as well as from other calculations used for comparisons.

A significant source of land use concentration is the leasing of state-owned land and the privatization launched in 2015. The assets of the National Land Fund included 1,907,000 hectares in 2009, which decreased to 1,796,000 hectares by 2013. 17 percent of state-owned land, 305,744 hectares, was leased in 2013. Leases have long been the subject of intense public attention and loud criticism for the selection of beneficiaries. Farms with more than 100 hectares received four times as much land lease as smaller farms, and half of the leased land went to non-local farms (Ángyán, 2014). The tenants acquired 41 per cent of the state estates through tenders, and the other 59 per cent were awarded a contract of employment without a tender. An applicant was granted the right to use an average of six holdings (Ángyán, 2012; 2014). According to the National Land Fund statement, an average of 47 hectares per contract which does not contradict the arguments of those criticizing the favour of larger economies. 83 percent of leases were as of September 1, 2010. concluded before. The average leased land per contract is 80 hectares. In 2010 18 hectares of average land will be allocated to contracts after. This data also prove that the lease system certainly did not weaken land use concentration.

Under the ‘**Land for Farmers**’ programme, the government started selling 360-380 thousand hectares in 2015. The political goal of the program was to strengthen family farms and provide them with land. Around 300,000 hectares of arable land are sold at auctions. Land of less than three hectares (60-80,000 hectares) is sold without auctions. 380,000 hectares are 5 to 7 percent of agricultural land, the redistribution of which would not significantly change land use concentration even if only smallholder family farms purchased land. The first auction of 170,000 to 180,000 hectares took place by the end of January 2016. HVG provided data on the largest buyers, which I supplemented with data on the size of the pre-bid lands of the largest winners in the VS magazine and the SAPS list. It was not always possible to find out how much land was used by the largest land buyers in the auctions before the current bids, but the trend is still clear. In the first round of the sale of state lands, those who used to use larger areas of land were able to spend many millions of forints on land purchases. The

winner include both family farmers and economic organizations. The VS online magazine collected information on the three largest winners by county (Szabó *et al.*, 2016). Four-fifths of the 57 winners bought more than 200 hectares of land, with the smallest land acquired being 80 hectares. The winners include members of the local political elite, agricultural entrepreneurs and farmers from the west to Hungary.

Our interviews enforce the empirical data collected by journalist and the statistics. Almost all of the interviewed farmers and the representative of the civic organization had the impression that the analysed programme (Land for the Farmers) favoured large-scale agricultural holdings.

“In our village the agricultural company, the former state farm bought up 95% of the land offered for family farms. I don’t know how did they organize it, but the new owners are all linked somehow to this family. Although local medium size farmers were waiting for this opportunity and aimed at buying land, they could not compete with this company. They are disappointed and frustrated now.” (local government, female, 43)

Farmers were telling almost endlessly the different cases when the new owners arrived from outside the local community; an almost mythological representative of the new landowner is the “lawyer from Budapest”, who has a lot of money, and who does not need to farm in fact, just mow the grassland and ask for the subsidies. In these cases, local farmers have to sell their animals, or buy the hay, but still does not have the right to graze the herd.

In several cases the land, arable lands and pastures were sold together with the renter, but later the rent was increased so that the farmer could not pay it and had to give back the parcel.

“Of course, the new owner had to keep the contract, but it was allowed to them to ask for a higher renting fee, if there is a reason for it. We can go to the court, but despite it we have to pay the higher fee, which we cannot. The new owner is not interested in renting the land, it is much better to ask for the subsidies, and not to labour with the animals.” (farmer 35, male)

Farmers, but also experts see these processes unfavourable; they assume that it will lead to the decrease of small-scale farm, which further restricts local living possibilities, deteriorates local circumstances, local communities and results further population loss.

4.3.2 Undivided property land. Under implementation (2018-)

Interviewees see the settlement of undivided properties less sensitive issue, although it concerns even more land. The government decided to name the undivided property land and transfer it to individual ownership, affecting 970,000 hectares, 64,000 plots of land and more than 300,000 owners. On average, there is little land available to an owner, but land that becomes marketable through transfer can quickly reach capital-intensive and possibly even bigger local farmers with positions in local politics. The regulation covers the division of agricultural and forestry land, regardless of the title on which the joint property was created, however, if the property contains other sub-parts, except for the removed road, removed ditch and removed sewer sub-parts, it cannot be divided in this way. The land registered as a homestead, as well as the enclosed garden, are not covered by the law if the entire area of

the land plot - based on its actual use - is not considered to be utilized for agriculture and forestry.

The focus of the procedure (launched in 2020) is the agreement of the co-owners, the division can only be based on the agreement of the co-owners, the validity of the agreement requires the decision of a simple majority of the co-owners (50% + 1). As the agreement applies to all co-owners, a number of guarantee rules have been incorporated to protect minority co-owners. Such a guarantee rule is, among other things, notifying the co-owners in a certified manner at the beginning of the division process, and after announcing the division, the real estate authority publishes a notice on the government portal so that anyone can access the current list of properties affected by the division. The minority shall also be protected by the provision that during the division no owner may receive a property of less than the value calculated on the basis of the cadastral net income of the land in gold crown value (see for an explanation of this gold crown system: Tógyer, 2012) on the basis of his share of the property on which the division is based, unless expressly agrees.

When drafting an agreement, the co-owners must take into account the stipulation that the jointly owned property may not be formed as a result of the division, unless the co-owners concerned expressly agree to it. A requirement to be kept in mind during the settlement is that the new properties to be developed as a result of the settlement must be suitable for the intended agricultural and forestry cultivation. The co-owners may provide in the agreement for the development of a road to approach the new properties created as a result of the division, but in this case, they must also settle the issue of the ownership of the road. If no path is established, the agreement shall provide for the establishment of a right of servitude to ensure access to the real estate created.

With the aim of preventing the fragmentation of the property, the so-called area minimums have been established, for which a smaller plot of land cannot be formed during the division, so in the case of vineyards, gardens, orchards, reeds the minimum land area is 3000 square meters, in the case of arable land, meadows, pastures, forests and wooded areas 10000 square meters (1 hectare), and in the case of real estate classified as enclosed garden land, 1,500 square meters. For properties with mixed cultivation, smaller area minima must be taken into account.

According to the law, this is the case when the territorial minimum alone does not reach the property to be divided. For properties that do not reach the territorial minima, there is no room for subdivision, but the property becomes the property of a single co-owner, i.e., this potential co-owner can initiate the ingestion of the other's share of ownership. co-owners. If multiple co-owners wish to occupy the entire land, the landowner appears to be the largest co-owner, in the case of multiple equal uses, the larger owners have a stake in the property, and this equality is the right of the youngest co-owner.

In the case of real estate with a small area and a large number of co-owners, it can happen that the real estate that can be created on the basis of the existing ownership share of one or more co-owners does not reach the specified territorial minimum, either independently or jointly with acquisition or exchange, in which case the agreement shall provide for the addition of ownership shares that do not reach the territorial minimum to the ownership share of

another co-owner (incorporation). If several co-owners indicate their intention to be included, the part of the property that does not reach the territorial minimum may be ingested by the co-owner who undertakes to pay the highest consideration. If no co-owner wishes to absorb the given share of ownership, the co-owner initiating the division is obliged to do so. The acquiring co-owner shall pay in return an amount at least equal to the value of the property as determined in the valuation offer in accordance with the Implementing Regulation. If one of the co-owners concerned does not agree with the estimated amount, he or she will have the opportunity to have a new valuation expert opinion with a forensic expert. Payment of the consideration to a co-owner who does not participate in the settlement decision shall be placed in a court deposit.

In addition to regulating the new division procedure, the law also attempts to eliminate a problem that dates back decades, i.e., to identify persons registered as owners of real estate whose land is incomplete. In such cases, the law prescribes mandatory data disclosure, data reconciliation and, if successful, data adjustment for the real estate authority ex officio. If the data discovery does not lead to results, the real estate authority will try to find out the identity of the owner through a notice. If the owner cannot be identified on the basis of the data disclosure procedures, or in the case of the given property the person registered as the owner is older than 120 years, but the fact of his death has not become known in any way, the real estate authority determines ex officio that the owner is unidentifiable unordered. In these cases, the properties in question become the property of the state by operation of law.

As this issue is less sensitive, interviewees talked less about it. They see it as a necessary task to avoid further fragmentation of the land, and also hope that this way they can gain some till unused land. In several cases undivided properties are not only impossible to sell, but also impossible to rent. It is also difficult or impossible to get subsidies for these parcels.

4.4 Politics and access to land

Getting undivided common property lands that cover a large area to a real owner is very complicated, often in an opaque way, as reported by a young farmer as follows.

“Those who asked for the allocation of undivided joint property land, lands were given to them, and there are those who did not apply for, I do not know, until the two thousand and fifteen years, 2013 or 2014, and they were returned to an undivided joint property. Respectively, those who did not ask or did not agree to the allocation, they were also placed in an undivided joint land property, and then in the next few years it will be settled, or those who remained in an undivided joint land, now came a new amendment to the law, I think. its abolition will then take place in such a way that the undivided joint land who has the largest share may offer to the smaller ones that he will then take these lands. That is, it triggers the little ones out of this area. So why do we have such land, which we are so in, now we are perhaps the biggest in it, and we would also like to see if, when it comes to it, we try to bribe the land even from those who are willing to sell it to us these lands.

We were here, let's say, we have a ten-hectare plot, and these ten hectares are worth, say, a hundred gold crowns (this is the value of land in Hungary). And let us say we had

thirty-five gold crowns in it, another farmer had five gold crowns in it. The next farmer again had about forty gold crowns in it, and then the lands were divided in proportion to gold crowns, and it is no longer listed as a gold crown, but as a hectare hereafter.

So as such a proportion as the golden crown had to them, they now received the lands in such a proportion. Respectively, it was a bit more complicated, because there were two ways to measure the undivided common land property. There was one, the area ratio survey, this can come about if the land, all the owners in the area, agree to measure the land based on area. Here it goes like we talked about before, let's say we have a ten-acre land with a hundred gold crowns, there it means that ten gold crowns are one hectare, and then let's say, out of the thirty-five gold crowns, the one who had so much share in it got three and a half acres. But there is another, the general allocation. The way that there is a drawing by soil type is from the board that there are soil types SZ1, SZ2, SZ3, SZ4. It's tailored to the SZ1, let's say 25 gold crowns is the part in there, the SZ2 is only 18 and then that's how they go down. A higher number means a lower gold crown value. And thus, the one who belongs to SZ1 gets the least land, because there is a higher value of a crown, and the better we go out, the more land the owner gets proportionally, the more land the owner gets, because the quality of those land classes is much worse, thus you get more land for so many units of gold crown." (farmer, 31 years old, male)

Political intervention has been strong and decisive at all stages of land use concentration. Power decisions on land were not made in the ministry. The loss of influence of the Ministry of Agriculture can also be seen in the state and local decisions related to land. In the first phase of land use concentration, the intervention of the new power elite through compensation, privatization, and cooperative laws yielded mixed results. They aimed to re-privatize collectivized land, but as early as 1993, many hundreds of thousands of smallholders and parts of property were transferred to new owners due to inconsistencies, mistakes, and lack of state protection for new smallholders. The privatization of some state-owned farms and surviving cooperatives took place through direct political intervention. Representatives of large estates and large agricultural organizations have played an important role in managing EU agricultural accession and gaining positions in local government institutions, as well as direct intervention in regulating the distribution of EU subsidies and renewing long-term leases of state-owned land for several decades. Liberalized agricultural market, credit and land ownership regulations have further strengthened and increased concentration. After 2010, there was no land left to be privatized with state intervention to strengthen family farms and large-scale clientele. The termination of long-term leases to public lands was not expedient, so the sale and redistribution of that nearly four hundred thousand hectares was the appropriate means of creating a sale and very favourable credit conditions.

Our interviewees agree that without changes in the current land use and agricultural policies it is almost impossible for newcomers or new entrants to start farming. There is one exception: intensive horticulture, which requires very few lands, although it still needs a considerable investment at the beginning. The necessary knowledge can derive from education, and also market relations can be built gradually according to experts and farmers.

The case of arable crops and animal husbandry is completely different. Usually free, investible capital is not enough to start a farm business, because there is almost no free, available land in Hungary, and as we presented the different initiatives to provide free land are not or hardly accessible even for medium size farmers. If an elderly farmer decides to retire without an heir, most probably a bigger farm will buy up the property.

According to our interviewees land hunger has two main reasons: the subsidies arriving from the CAP and the flourishing market of the agricultural products. Without regulating the financially strong players of agricultural production, the integrator companies, which provide input material and buy-up the products, it is difficult or almost impossible to open up possibilities for newcomers, new entrants but maybe even for medium size farms.

4.5 Conclusion

The concentration of land use structure became significant after the Land Compensation and Cooperatives Act from the early 1990s to accession to the European Union in 2004, both historically and internationally. The extreme size of the concentration is characterized by the fact that a third of the largest 1,300 farms use one third of the agricultural land and that the 8,700 largest farms cultivate two-thirds of the land. The concentration of land use and land ownership is a consequence of the legal settlement and implementation of land compensation, the rapid, the radical reduction of agricultural subsidies, and a series of policy interventions. The sale of state-owned land after 2010 and the political program for the allocation of land to individual farms, as well as the abolition of undivided common property from 2018, have not significantly changed the overwhelming predominance of large farms.

The number of land users is falling radically. Three decades earlier, 1.5 million families were involved in some form of farming, while by 2016, one million had stopped farming. One of the causes of rural poverty is found in this change. The structure of agricultural society is highly polarized. In agricultural society, there are four social strata: self-sufficient and mini-farms on less than five hectares, owners of small and medium-sized farms, large landowners, and finally groups of agricultural workers. The number of producers producing primarily for their own consumption is declining very rapidly due to concentration, aging, lifestyle changes and poverty, but they still make up a mass of three hundred thousand. The literature attributes a dual function to self-sufficiency: on the one hand, it is motivated by the traditional survival strategy of the poor and lower middle classes, and on the other hand, by the growing demand for natural resources and lifestyle change efforts of the upper classes. The production of small and especially medium-sized farms has shifted from traditional mixed product acquisition to specialized farming. Even half of the farms under 10 hectares specialize in crop production.

The majority of farmers belong to the older age group, which may also mean further continuation of specialization. Younger producers farm on a larger area and have completely abandoned traditional forms of production. There is a significant correlation between the educational level of individual farmers and the size of the land used (Kováč, 2016). 43% of farmers over 200 hectares have a tertiary education, and one third of farmers between 100 and 200 hectares have a degree. Among farmers with an area of more than 100 hectares, there is not only a basic education. Uneducated or low-skilled farmers are slowly disappearing from the middle ground of agricultural production. Farmers of 200-500 hectares or more are

owners of significant assets, and are dominant actors in local societies due to their economic and power networks and prestige. The owners of the largest estates, up to two thousand, collectively own more land than the aristocrats of the first half of the 20th century.

Three groups implemented the highest rates of land use concentration in thirty years. Some of the top and middle managers of agricultural cooperatives and state farms played a key role in unifying, privatizing, and modernizing the lands of large farms. They make up two-thirds of the largest owners. The second group, around 20 percent, includes those who started out as sole proprietors who bought or leased some of their land in the 1990s and then used this capital to engage in larger, state-controlled land privatizations. The third, smallest group in terms of staff includes external investors, political clients, local political leaders and the local oligarchy, as well as large foreign-born entrepreneurs.

For the RURALIZATION project case studies of successors and new entrants⁷ show that young people cannot enter agriculture without inheriting land and financial and knowledge capital, as, for example, the price of arable land has risen slightly more than two and a half times, the price of leased land doubled between 2008 and 2016. Young farmers receive support from Hungarian state and EU funds, the amount of which, however, is enough to buy 6 hectares at an average price, and the conditions of its use are not an incentive either.

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The report is subject to possible changes due to approval process by the European Commission.

⁷ The case study reports will become available as *D5.2 30 case studies on rural newcomers, new entrants to farming and successors* at www.RURALIZATION.eu.

5 The Romanian Land Law – an enabling framework or a hinderance for newcomers new entrants in Farming? (Szocs Boruss Miklos Attila, Eco Ruralis)

5.1 Introduction

The local and grassroots implementation of Law no. 17/2014 on the sale and purchase of agricultural lands in Romania located outside the built-up area (extra-muros) and Law no. 175/2020 for amending and completing Law no. 17/2014 regarding certain measures regulating the sale and purchase of extra-muros agricultural land and amending Law no. 268/2001 on the privatization of companies managing the State's publicly- and privately-owned agricultural lands and for the setting-up of the Agency for the State's Domain.

Law no. 17/2014⁸ with its later amendments is a central policy tool in access to land for rural newcomers and new entrants into farming in Romania. As it is the primary legislation when it comes to farmland transactions in the country, its provisions and hinderances shape the national agricultural land market and the possibilities of new entrants, especially young farmers to start a successful farming business.

The current case study puts into analysis and reflection the provisions of Law no. 17/2014 (aka the land law of Romania) with its later amendments, especially through Law no. 175/2020⁹ (aka the new land law of Romania) and its methodological guidelines. The purpose of the analysis is to identify the different opportunities for new entrants and young farmers arising from the implementation of the law but also to describe some of the hurdles depending on the actors and the complexity of farmland transactions.

To achieve this, several experts were interviewed on their experience using the law and different viewpoints were taken in consideration: the expertise of local authorities, new entrants in farming, established farmers looking to expand their farm dimension, young farmers with intra and extra-family farm succession plans and not the least, different policy makers – that either were part of the political shaping of the current law or are engaged into later amendments.

The outcomes of this analysis take in consideration the fact that Law no. 17/2014 suffered several amendments based on political visioning, either liberalizing its use or, as the latest official amendment through Law 175/2020 proves, limiting the access to land for different actors. The conclusions drawn upon the current analysis are limited to the current provisions of the Law, but future dynamics and current policy discussions for upcoming amendments –

⁸ Law 17/2014 as published in the Official Monitor of Romania no. 178, from 12.03.2014 and from the Legislative Portal of Romania, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/189708>

⁹ Law 175/2020 as published in the Official Monitor of Romania no. 741 from 14.08.2020 and from the Legislative Portal of Romania, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/229148>

some already in the pipeline of Romanian policy making – were also taken in consideration and put into discussion when developing the interviews with stakeholders.

5.2 Short context

The adoption of Law 17/2014 was determined by one important date: January 1st, 2014. This date marked the official ending of the moratorium on Romanian farmland sales towards citizens of the European Union (EU), a provision that was in place for 7 years since Romania joined the EU in 2007.

Law 17/2014 was adopted to regulate farmland sales and its generally declared scope was to ensure food security, the protection of the national interests and rational exploitation of the country's national resources, regulate the farmland transaction processes but also to contribute to the consolidation of fragmented farmland plots into economically viable exploitations.

Romania holds the top ranking in the EU with regards to the number of farm holdings, 3.63 million in 2013, representing 33.61% of the EU holdings (INS, 2014). Moreover, about 60.2% of the EU farms are in Romania most of them practicing self-sufficiency. Romania has 14.7 million hectare of agricultural land that is distributed among millions of plots, shaping a system that is mostly based on family farming and averaging a 3.66 hectares per farm. Land is not evenly distributed amongst farmers, though.

The smallest farms, accounting for about 97% of the total number of farms have less than 10 hectares, while the largest farms (over 100 hectare) represent less than 1% of the total number of farms, nonetheless controlling about 51% of the farmland. The utilized agricultural land in Romania is distributed between different farm sizes: 40% have less than 5 hectare (2.8 million farms), 40% with over 1000 hectare (4 million hectare) and 20% with farms between 5 and 50 hectare (Popescu *et al.*, 2016).

The land law also came to define equal rights and purchase access for Romanian and other EU member state citizens and companies registered in Romania or another EU member state, thus respecting the EU Accession Treaty that Romania signed when joining the block. While equal rights were defined, Law 17/2014 also established a set of pre-emption rights for privileged stakeholders according to the scope of the law.

These policy changes came also at a moment when Romania was, and it is still facing persistent issues of farmland concentration and speculation, land grabbing and an unequal bargaining power of local communities (Franco and Borrás, Eds. 2013), especially new entrants in farming in the process of accessing land for agricultural purposes. Also worth noting, that while these issues deepen in Romania, official EU studies highlight that access to land is a primordial need and demand of young farmers and new entrants in farming, especially in new EU Member States (Zondag *et al.*, 2015).

So it was not a surprise, that the latest official amending of the land law, through Law no. 175/2020 – creating the new land law and its methodological guidelines that were set out to address the above mentioned issues and bring provisions with the purpose to empower local

stakeholders, especially young farmers, to re-define and extend the pre-emption right holders list and to address the issue of farmland purchases through company shareholdings and progressive taxation in order to counter speculative investments.

5.3 Narrative of the case and the current state of the new land law

In present, the sale and purchase of agricultural lands situated outside the city boundaries, the parties must respect the rights of pre-emption given by the law before they proceed with finalizing the transaction.

The most recent law amendments introduced through Law no. 175/2020 defined new categories of persons entitled to pre-emption rights and their ranking. Under the new land law, the persons who have the legal pre-emption right are entitled to purchase the land at the same price and under the same conditions as those negotiated between the seller and the buyer.

The seven categories of persons entitled to the pre-emption rights and their order are the following:

- Rank I: co-owners, together with relatives of the first degree, spouses, relatives, and in laws up to and including the third degree.
- Rank II: lessees, together with the owners of agricultural investments for the cultivation of trees, vines, hops, and exclusively private irrigations.
- Rank III: the owners and lessees of agricultural lands adjacent to the land being sold
- Rank IV: young farmers.
- Rank V: The Academy of Agricultural and Forestry Sciences 'Gheorghe Ionescu-Sisestî' and research-development units in the fields of agriculture, forestry, and food industry, as well as agricultural educational institutions.
- Rank VI: natural persons with domicile/residence located in the locality of where the land is located or in the neighbouring administrative-territorial units.
- Rank VII: the Romanian state, through the State Domains Agency.

It should be noted that if any person who has a pre-emption right does not express their intention to buy the land within 45 working days from the date of posting of the sale offer, then the land can be sold to the original purchaser on the original terms and conditions. For the purpose of exercising the pre-emption right, the ranking list is cumulative.

Faced to the original version of Law 17/2014, the new official amendments defined a new category of the person entitled namely, Rank IV – young farmers. The special conditions for the young farmers provided by the Law are that they have to carry out farming activities and to have the domicile/residence established in Romania for a period of at least one year prior to the registration of the pre-emption purchase offer.

Several explanations need to be noted for the object of our study:

Firstly, the law defines a young farmer as a person with an age of maximum 40 years, as established under EU Regulation nr. 1305/2013 with regards to the rural development support

given from the European Agricultural Fund for Rural Development. Then, if more young farmers express its pre-emption rights in a same purchase offer, the one practicing animal husbandry will be given priority.

When it comes to lessees, the law provisions that if they are individuals, they need to provide proof of domicile or residency in Romania for a period of at least 5 years before the purchase offer, and if the lessee is a company or an associate entity, it needs to prove that they have their fiscal residency in Romania for at least 5 years prior to the purchase offer.

Also, legal persons are required to submit documents showing that, out of the total income for the last 5 fiscal years, at least 75% represents income from agricultural activities and prove that the domicile of the controlling shareholder has been located in Romania for at least 5 years prior to registration of the sale offer; if, in the structure of legal persons, the controlling shareholders are other legal persons, the controlling shareholders must prove that their domicile has been located on the national territory for at least 5 years, before the registration of the offer for the sale of agricultural land locates outside the built-up area.

In latest changes, as of August, 2020, policy makers also introduced new restrictions on the use of agricultural land which is applicable to all agricultural land in Romania. According to the new land law, the landowner has the obligation to use the agricultural lands exclusively for the activities for which they were used at the date of their purchase. If there are investments on the land such as for trees, vines, hops, and exclusive private irrigation then the destination of the agricultural land must be kept. The legislation also provides as well that the Romanian Ministry of Agriculture must keep a National Register regarding the circulation and ownership of agricultural land located outside the city boundaries.

The new law also imposes a condition in relation to the transfer of agricultural land within eight years from the date of its purchase by any party. Under it, if the agricultural land is sold within eight years from the date of purchase it can only be done if the seller pays a tax of 80% of the difference between the current sale price and the original purchase price, based on the public notaries valuation grids for that period. After eight years from the date of purchase, this tax will no longer apply or be payable. Finally, it should be noted that in order to sell agricultural land it is now necessary to obtain a soil quality certificate.

The new land law has now clarified the position regarding the elimination of the seller's option between the various person whatever their rank who have the right of pre-emption. Before the new version, the seller had the right to choose between buyers if during the pre-emption period several persons with a right of pre-emption but with different rankings expressed their intention to purchase the agricultural land at the same price and under the same conditions.

Under the new regulation, the seller must respect the ranking and the order of the persons entitled as they are provided for by the Law. However, in case of competition between persons entitled who have the same ranking the seller can still choose to whom he wishes to sell the land.

Also, the land law introduces penalties and its new form has increased the amount of the fines for non-compliance with its provisions. The amount of the fines has been increased from

50.000 lei – 100.000 lei to 100.000 lei – 200.000 lei, a drastic increase meant to avoid fraudulent land transfers.

The Law has also introduced a new sanction for the noncompliance with its provision, namely the nullity of the transaction. This sanction will arise if the seller of the land does not respect the pre-emptor's preference order; the conditions imposed on the persons entitled; the conditions for transfer to other persons who did not benefit from the pre-emption right or payment of the additional taxation on the transfer of the agricultural land within the eight years period from its purchase.

It is important to realize that the changes must be seen as part of a larger European context and similar provisions were introduced in many European Union countries. The above-mentioned modifications to the legislation may be seen as favourable for those who intend to invest for a long period in the agricultural sector in Romania, by taking advantage of the stability of the ownerships of the lands brought about by these changes in the law.

Nonetheless, different stakeholders have different experiences and opinions about the latest version of the Romanian land law.

5.4 Discussion on access to land - The provisions of the new land law and how those can work in favour or against young farmers and new entrants in farming

Official data shows that from the inception moment of Law 17/2014 annual agricultural land sale offers tripled by 2018. Accordingly, in 2014 there were 45,646 sale offers registered, representing 58,000 hectares of farmland and local authorities emitted over 8,000 final approvals of purchase for farmland. In 2016, however, the number of offers for land sales spiked to more than 140,000, summing up to a little more than 144,000 hectares and official final approvals rose to more than 48,000.

While the Romanian state is defined as a pre-emptor through the States Domains Agency, official documents show that it did not use its pre-emption rights at all to intervene on the land sale market (Bărbulescu, 2018), though political debates from both Governing and opposition parties argued that land is highly speculated and controlled by multinational entities. This is important to mention especially in the light of another recent Governmental Decision – No. 811/2020 - that enables the State Domains Agency of Romania to redistribute publicly owned farmland to young farmers based on demand¹⁰.

So, is the new land law effective in securing access to land for newcomers, new entrants in farming and young farmers from Romania? To answer this question, the current study consulted different affected stakeholders.

¹⁰ Governmental Decision no. 811 as published in the Romanian Official Monitor nr. 889 from 29.09.2020 and retrieved from the Legislative Portal of Romania, <http://legislatie.just.ro/Public/DetaliiDocumentAfis/230518>

A young new entrant in farming purchased 3 hectares of farmland in the south-west of Romania in 2020 before the new amendments came into force, to set up a farming enterprise focusing on vegetable production. The 3 hectares were divided between two individual private sellers, so she needed to deposit two different purchase offers at the local authority.

As at the moment, the land law did not stipulate young farmers as pre-emptors she had to wait for the pre-emptors consultation process to be completed by the local authority in order to buy the land plots on the free market. The process was time consuming, which made her miss out on a yearly season of production on the targeted lands, but eventually, in lack of interest from the pre-emptors side she managed to purchase the farmland on the free market. The process also bared an emotional stress for her due to the insecurity that the farmlands will reach the free market, or be pre-emptively purchased by other actors before her.

Her analysis on the new land law was that due to the introduction of young farmers as pre-emptors, in present, young new entrants in farming have an increased chance of accessing land, possibly also decreasing the duration of a purchase. She also appreciates the provisions of the new land law on the basis which local residents have a first right to buy land that would have given her an advantage also in the process of buying farmland.

She highlights on the other hand that due to a lack of an official definition and attention towards the issue of new entrants, the new land law does not offer an advantage for new entrants above 40 years old, which still would need to either fit another pre-emptive category (e.g., to be local residents) or purchase the land on the free market.

Another young farmer that has taken over as a successor a family farm of 5 hectares in the south-east of Romania focusing on vegetable and crops production and has purchased in 2020, after the new land law came into force, another 1 hectare of farmland shared different perspectives. She recognizes that had a lot of advantages in the process of buying land.

First of all, she had the security of the already owned farmlands through the succession rights. Those were adjacent to the extra hectare that was on sale. Also, the new land law advantaged her as a pre-emptor in form of a young farmer and having formal education in agriculture. When the seller of the land deposited the offer at the local authority, she was among the first pre-emptors to be consulted (Rank 3 and Rank 4).

She also had her residency in the locality of the offer and was already engaged into farming. The process was faster and she managed to purchase the land without much hassle, only following the specific bureaucracy. When asked about possible hurdles that young farmers and new entrants can face in a similar process, she recognized that non-resident new entrants (e.g., new entrants from other countries setting up in Romania) that do not have a farming background would need a very long process to access farmland which would involve obtaining a residency permit in the country and accumulating some experience in farming. As it is a discouraging process, ultimately rural rejuvenation as a whole suffers.

An experienced farmer with Belgian origins that is in the process of setting up a 6-hectare farm in the north-west region of the country and needed to purchase farmland for his mixed farming activity involving the raising of animals and producing fodder shared a much more difficult experience. For him, as a newcomer in Romania, the new land law represented a major obstacle, if not, almost an impossible process. He witnesses that the new land law is rather hostile towards new entrants coming from other EU countries.

Only settled in the region recently, he needs to wait for 5 years to be eligible to buy farmland. Though he has formal education in farming and he is eligible to be a pre-emptor being a young farmer, he cannot exercise these rights due to the residency limitation. He managed to secure half of the land he needed through leases but these offer less security on a long term given their short duration (2 years). Also, if those lands will be up for sale, he would again lose out in the process, though having invested already in the lands. In his consideration, the law should treat new entrants regardless of their origin setting up human scale farming with more inclusiveness and be more precise in cracking down speculative investments without creating barriers for a next generation of farmers.

When it comes to legal entities, the process of securing land using the new land law can still be a challenge. This was the case of a farming enterprise start-up managed by a new entrant in farming from the North-East of Romania, engaging into the purchase of 11 hectares of farmland to upscale an agroecological farming project where he already owned and worked 2 hectares. One challenge was the fragmentation of land. For the securing of the 11 hectares, he had to approach 7 owners. Investing a lot of time and energy, he managed to purchase the lands using his pre-emption rights either as a neighbour, or a lessee. He satisfied the general provisions of the law with regards to residency of the company and active investments done in agriculture.

When asked about the efficiency of the new land law, he witnessed that while he welcomes the provisions on gearing land towards active farmers through proving that the company has an agricultural orientation and activity, he also feels that they are ambiguous and fail to be properly interpreted, a proof being also that he engaged with several jurists to interpret the laws fiscal requirements and all were different opinions when it came to the process of companies buying farmland in Romania.

To get a more complete perspective, the opinions and interpretations of local and national land experts, academics and policy makers were also requested. The two perspectives, one technical and the other political, could not have been more different.

A land expert, working as a cadastral officer at a local authority from central Romania and dealing with farmland purchase verifications and emission of final purchase approvals witnessed that the new land law implementation faces a lot of bureaucracy and in lack of adapted methodological guidelines there are still a lot of uncertainties and blockages. When asked about the processes that new entrants in farming and young farmers have to undertake in order to access land through purchases, he outlines that the requirements with regards to farming experience can be strong limiting factors due to weak definitions on what is considered as valid experience and their formalization level.

Land fragmentation is also considered as a major hurdle, due to the fact that local administration officers have to deal and treat individually each plot of land that makes the object of a purchase, generating delays in evaluation and in the emitting of purchase approvals. Considering the needs of young farmers and new entrants, local experts evaluate that a simplification in the process for them, through some well-defined and targeted legislative derogations would enhance their access to farmland.

On a political level several opinions were given, one from a member of the Romanian Chamber of Deputies – lower chamber of the Romanian Parliament, that participated in the policy debates over the new land law proposals and another from a member of the Romanian Senate – higher chamber of the Romanian Parliament, that participated in the policy debates over the original land law provisions.

According to their analysis there is a complex intersection of issues, conflicting with each other, that make the land market debate very flexible and prone to successive changes depending on the political priorities of ruling parties. On one hand there is the EU Accession Treaty of Romania, which underlines the requirements to keep the land market opened and indiscriminate towards EU citizens and enterprises based on the free movement of capital and free right of establishment principles. Thus, Law 17/2014, in its inceptive formulation, reflected the adaptation of the Romanian agricultural land market to these EU requirements.

Also, as highlighted in the objectives of the land law, political strategies around land address the issue of land fragmentation and developing economically viable farms. Nonetheless, subsequent changes to the land law, especially Law no. 175/2020 come to address other more national needs and social-economic issues, most importantly the issue of land speculation, the upscaling of the farming community through ensuring the viability of young farmers and a new generation in farming. The challenge, according to policy makers at least, is to find the right balance between policy provisions that support access to land for local farming communities and young farmers but are proportionally addressing speculative investments on land without discriminating towards EU citizens.

Finally, when asked if the current land law enhances the access to land for young farmers and new entrants, policy makers judge that by granting young farmers pre-emptive rights in the land purchase processes and creating provisions for more locally based investments into farmland, these actors gain more chances to be competitive on the land market but this comes with a flip side of a more bureaucratic land market in order to make it work in practice.

5.5 Conclusion

Most certainly, Law no. 17/2014 on the sale and purchase of agricultural lands in Romania located outside the built-up area and Law no. 175/2020 for amending and completing Law no. 17/2014 regarding certain measures regulating the sale and purchase of agricultural land located outside the build-up areas and amending Law no. 268/2001 on the privatization of companies managing the State's publicly- and privately-owned agricultural lands and for the setting-up of the Agency for the State's Domains proves to be a crucial set of legislative framework for access to land in Romania.

As the track record of these laws show, the land law has suffered a lot of changes due to the volatile Romanian policy environment and conflicting successive political agendas. Moreover, due to the land distribution patterns and dualistic land market of the country it seems that there is not really a “one size fits it all” answer. Through the interviews it is clearly highlighted that the current form of the land law is working for a well-defined typology of new entrants in farming but not so much respecting newcomers.

Being an established young farmer, having the residency already in the country, having a formal farming background are definitely strong advantages in the process of accessing land for farming in Romania. Also, being part of a local rural community or extending a family farm succession project seem to be promising factors likewise.

On the other hand, the new land law brings a lot of uncertainty for farming enterprises in their quest to purchase land by not making a differentiation between start-up projects, human scale farming and large speculative investments into land. Through the general limitations on fiscal residency and shareholding of farming enterprises together with progressive taxation, the law does succeed to put a stranglehold on speculative land investments but also covers in bureaucracy new entrant farming projects with the potential to rejuvenate the farming sector.

DRAFT

The report is subject to possible changes due to approval process by the European Commission.

6 Belgium: Using previously sealed land for agriculture in Flanders (Willem Korthals Altes, TU Delft)

6.1 Introduction

Urban land take is generally be seen as a one directional movement from rural land to urban land and there is no way back. There are, however some policy arrangements emerging to open sealed soils and to re-use these for green functions, including agriculture. One of these initiatives is the programme 'Flanders breaks out' (*Vlaanderen breekt uit*) in Belgium. Due to urban sprawl, soil sealing has been spread widely in Flanders, also outside the urban centres. In an experimental policy, in which a farmers' organisation is participating, different locations are selected to return urban areas to green functions. One of the reasons to do so – and a source of government funding by a programme to combat drought –, is that it has hydrological benefits if rainwater can infiltrate in the soil. The question is whether this is also a feasible solution to provide access to land to new generations. This case is based on literature research and interviews with people involved in The Flanders breaks out programme and the planning of rural areas, including at the regional authority (4 respondents), the province of Antwerp (2 respondents), the Flemish land agency (1 respondent), a farmers' union (1 respondent), and an architect (1 respondent) and a scholar (1 respondent) participating in the programme.

6.2 Context

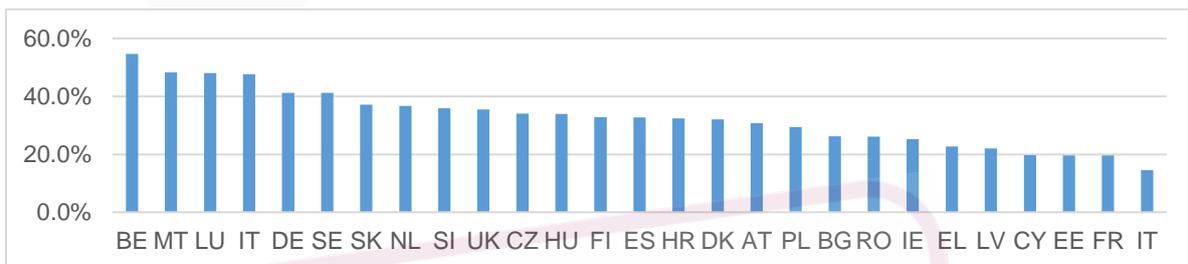
Flanders is a densely populated region (NUTS 1) in the North-West of Europe. Remarkable is that a large majority (72.5%) of the population lives in 'Towns and suburbs' (Table 1). Moreover, in Belgium as a whole this share is higher than in any other EU member state (Figure 5). Already in the industrial revolution authorities decided that it would be better to keep the workers in their communities, under the influence of the local church, instead of promoting a mass-urbanisation of workers without the ties of the rural communities (De Decker, 2011). Extensive railway and tramway networks allowed for that villagers could daily commute to industrial employment without the need to move (Leinfelder and Allaert, 2010). Spatial planning regulations were very permissive. It was in practice allowed to build homes along all major roads connecting the villages, resulting in a landscape of sprawl.

	Population		Area		Density inhabitants/km2
	#	%	km2	%	
Cities	1,242,948	18.9%	739	5.5%	1683
Towns and suburbs	4,774,759	72.5%	9,630	71.2%	496
Rural	571,362	8.7%	3,154	23.3%	181
Total	6,589,069	100%	13,522	100%	487

Table 1 Flanders Population in local administrative units by Degree or Urbanisation (EUROSTAT)

Flanders is an area characterised by mediocre population densities: a large part of Flanders is neither urban nor rural. Especially, between Ghent, Antwerp, Leuven and Brussels, there is 'ubiquitous urban sprawl' (Boussauw *et al.*, 2018, 9); elsewhere there are areas with 'a more rural character' 'with scattered buildings, but also many village centers, or urban centers'

(Pisman and Vanacker, 2021, 213) which are below the threshold used by Pisman and Vanacker (2021) to define urbanity. Flanders has 1485 population centres (villages, towns and cities), 13,000 km of ribbon development along roads (build in a way that it creates 'the impression of a built-up street wall and the view to the open area behind is limited' (Pisman and Vanacker, 2021, 215)) and 525,000 scattered buildings outside these centres and ribbons (Pisman and Vanacker, 2021). To compare this last figure: Flanders has about 3.3 million dwellings (STATBEL, 2020b). So, a substantial part of the buildings is located outside population centres. This sprawl cannot only be found in an extensive number of ribbons along major roads, but also outside the centres and ribbons. The population distribution is that about two third of the population lives in the population centres, a quarter in the ribbons and one twelfth in the scattered buildings (Pisman and Vanacker, 2021).



Source: EUROSTAT (2020b); data 2019, France: population 2018, Cyprus: census data 2011

Figure 5 Share of population in towns and suburbs

According to the EEA land use statistics (EEA, 2019), Flanders exists for 27.3% of artificial areas, which is a very high percentage. Belgium as total (so inclusive of Brussels and Wallonia) has a share of artificial land of 20.9%, which is next to Malta (29.8%) the highest of all EU member states. Flanders has a large amount of artificial land per head of the population (Figure 6).

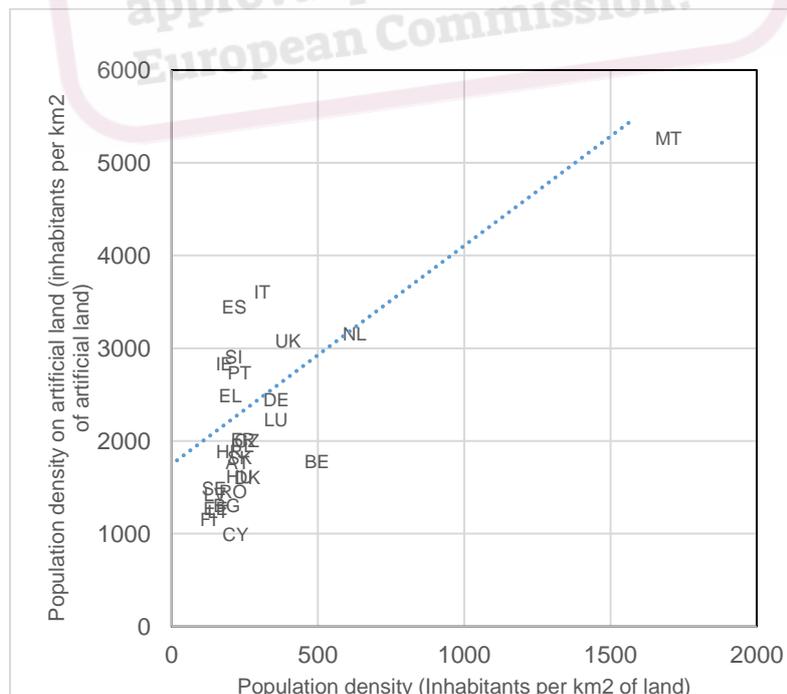


Figure 6: Population density on land and artificial land in the EU (EEA, 2019; EUROSTAT 2020)

It is not only that the area of artificial land is big, but also that the mixed pattern of artificial land use has a large impact on the quality of the landscape (Meeus and Gulinck, 2008). The ribbon-development along many roads contributes to fragmentation of landscapes (Verbeek and Tempels, 2016), which results in many more boundaries between houses and open spaces than in the case that suburban development is concentrated in suburban neighbourhoods. Openness is scarce and valued by farmers, country-dwellers and experts (Rogge *et al.*, 2007). On the other hand, farmers appreciate 'the economic value' of a 'site due to the profitability of farming at a short distance from the city' (Dewaelheyns *et al.*, 2014, 449). So, the location compensates for a less-than-optimal technical lay-out.

This spatial pattern is relating to spatial planning policies. For a long time, a spatial vision for the countryside has been missing. So, rural area was considered as 'nothing more than a residual space' (Leinfelder and Allaert, 2010, 1797) not (yet) urbanised. Planning policies have been developed, based on distrust of local decision making, by centralised planning at the region of Flanders. At this regional level (NUTS 1), it is indicated specifically (Braeckman and Vanhaverbeke, 1999), which land use is allowed. At NUTS 1 level an agricultural zone is defined in which agricultural activities are allowed. According to the (old) regional plan, which is still in force, this zone should be 750,000 hectare (Vlaamse Regering, 2011), but as the plan already indicated, the current allocation of land falls short to this destination. In practice land in use for agriculture (so excluding buildings and greenhouses) is a lot smaller with about 620,000 hectare in 2019 (STATBEL, 2020a). Within the agricultural zoned area, land and buildings are used for non-agricultural purposes (Verhoeve, 2015; Verhoeve *et al.*, 2015; Verhoeve *et al.*, 2018). There are different alternative land uses that can be found. A top-down policy is in need of exceptions, and these are consequently formulated allowing for all kinds of land uses that are foreign to the zone designations. So, many companies, even big companies, are situated outside zones for business activities (Braeckman and Vanhaverbeke, 1999).

There are several threats to agricultural functions in the agricultural zone. There is a large horsification of land uses in Flanders. Horse keeping is a sector with 'economic strength' which 'manages [to] replace agricultural enterprises' (Bomans *et al.*, 2011, 197). Bomans *et al.* (2011) show that in 6 municipalities the pasture of horses took 5.1 % of the total area, 8.0% of the area of open spaces and 30.3% of the areas of pastures. Other, non-agricultural land uses, are gardens, homes, forests (there is also a forest zone), commercial uses and roads, which together adds up to 29% of the agricultural zone in 6 municipalities the province of Antwerp (Verhoeve *et al.*, 2016). Furthermore, a study showed that in these 6 municipalities over 50% of the area of the buildings in the agricultural zone were used for non-agricultural purposes (Claes and Caeyers, 2020). In relation to housing even 76% of farm housing were used for non-agricultural housing (Claes and Caeyers, 2020). One of the issues is that there is no clear legal zero measurement of farm houses indicating that at a certain moment of time a dwelling was used as farmhouse or as normal house; in practice the enforcement of policies protecting farm houses is very difficult (De Waele *et al.*, 2021a). Furthermore, there are generous legal ways to use farm buildings for housing purposes. This is especially important as there is a large development of re-use of former buildings for artificial uses. Many farm buildings that have become obsolete for farm activities have been transferred to residential or business uses (Leinfelder and Allaert, 2010; Rogge and Dessein, 2013). The scale-enlargement of farming

goes so hand-in-hand with a penetration of urban uses in what is left from the countryside, which is so a patchwork or artificial and natural areas.

Land use measurement based on satellite imagery, such as the EEA (2019) land cover data, has issues to distinguish farmland used for farming from former farmland used for other purposes (Verhoeve, 2015). In Flanders, also other data sources provide limited insight in 'Non-agricultural economic activities using farms and farmland' (Verhoeve, 2015, XI, 32). As it is a non-agricultural land use, agricultural statistical sources do not cover it very well. It is more about looking for data that is lost from the data set, than that there is actual data available. However, there are different alternative explanations for agricultural change and non-agricultural economic activities using former farm land and buildings is only one of these.

In the agricultural report, published by the department on Agriculture and Fishery, it is indicated that, even within the agricultural zone, agriculture is more and more facing oppression (Platteau *et al.*, 2018).

"In the countryside, agriculture is now more under threat than ever before, even within the space intended for agriculture on spatial plans. The status of (reconfirmed) agricultural area appears insufficient to protect agricultural land from transformation processes such as hardening, petrification and the use of vacant farm buildings for purposes other than agriculture" (Platteau *et al.*, 2018, 6)

"Farm land is scarce and threatens to become almost unaffordable for family farms and young farmers. When a farmer stops his business, he tends to sell his land and buildings to the best bidder, who is often a non-farmer. Financially powerful companies buy the land as an investment, because they often speculate on another use, but they never farm themselves. In the best possible case, they lease the land (on a seasonal basis) to professional farmers." (Platteau *et al.*, 2018, 6)

One of the reasons for this, is that there is, on the one side a very generous policy allowing reuse of agricultural buildings for other purposes, and, on the other side, there is a low enforcement priority for non-conforming reuse. Official documents speak about 'efficient enforcement', which means, in many circumstances, no enforcement at all. Official documents indicate that there are often no consequences ('zonder gevolg') if land use does not conform with land use regulations (Vlaamse Overheid, 2016). Priority is for recent activities that are either a nuisance to others or affect the rights of others. Soil sealing has a priority, but the protection of agricultural land use, or continuation of agricultural use of agricultural buildings, has no priority. Only if the transfer of agricultural use to other purposes coincides with other issues, which have so a higher priority than keeping farmland per se, enforcement of regulations that prescribe the continuation of land use for farming purposes needs to be enforced. There is a priority for vulnerable areas (which is about 27% of the agricultural land area), but outside these vulnerable areas, non-agricultural use of agricultural properties (with limited impact on neighbours) has no enforcement priority and may continue 'without objection' (Vlaamse Overheid, 2016).

One of the reasons behind this lack of enforcement may be that enforcement procedures take long and many procedures taken up by the courts result in that the case is dismissed (De Wolf

et al., 2012). Discussed is also the issue that prescription did not take place for many issues in relation to deviant land use, as, to put it simply, every day of unlawful use was seen as a new offence (De Taeye, 2018). This means that the list of unallowed land uses is so long that almost all citizens have the feeling that they have something illegal around their properties (as also was indicated in the interviews), making illegality as a necessary part of life. Next to non-enforcement critics indicate that there is a pattern of allowing development by the making of 'serious mistakes' (De Latthauwer, 2007, 80) by the permitting authorities.

"Friends' services of politicians to voters have led to widespread zone alienation: situations in which buildings requiring a building permit, such as houses, have been built in an area that formally has a different designation" (Op de Beeck, 2001, 33 (Translation by authors)).

An amplifier of this phenomenon, is the practice of politicians to hear individual request by constituents (Claus and Leinfelder, 2019). They have a positive attitude and prefer to bring positive news on requests themselves and ask civil servants to bring the bad news, that is, to tell why matters are not possible. Furthermore, many Flemish politicians have double mandates they are both mayor or alderman in a local authority and member of regional parliament (Claus and Leinfelder, 2019). In their parliamentary role they tend to approve regulations making them able to support their constituents, which may explain the generous possibilities to reuse, amend, reconstruct and supplement buildings in the agricultural zone for non-agricultural purposes (Claus *et al.*, 2020).

The generous possibilities to use farms properties for non-agricultural uses has its impact on the property values. They become too expensive for farmers. The reuse value of agricultural buildings is so high that a farmer looking for a re-investment is about € 700,000 to € 800,000 cheaper to do this on a brand new greenfield location, than by redevelopment on the site of the original farm (De Waele *et al.*, 2021b). There are, however, large differences between the cases studied by De Waele *et al.* (2021b). So, in specific situations the outcomes may be different (De Waele *et al.*, 2021b). The more deviant the change in agricultural practice is, the more attractive it is to start in greenfield location. Relatively, the difference is highest for community-supported-agriculture (CSA) farms, for which greenfield locations are half the costs of redevelopment at a current site (De Waele *et al.*, 2021b, 33). The opportunity costs of not selling the old location, make it economically sound to sell the farm buildings and reinvest the money on a new site on farmland. Planning regulations provide only to farmers the opportunity to build on farmland, and in this way, this land has still a farmland price. Furthermore, the lifecycle costs of the investments make that after the investment cycle the new site has got an 'urban' value as it can be, again, sold for a non-agricultural price at the end of its life cycle. So, the development of new farm properties on greenfield locations are a first step in a rather complex process towards land take for non-agricultural uses.

Although there are no restrictions from planning law, other restrictions to build on greenfields, for example, relating to environmental regulations, may make it impossible to build a new noisy or smelly farm close to housing. After all, Flanders has a very large amount of urban sprawl; so, there are often close neighbours to a proposed farm. New inhabitants of farm buildings in the agricultural zone are a cuckoo in the nest. Inhabitants of these buildings complain about farm activities next door as farm activities are causing nuisance to the

enjoyment of their homes (Kempeneers, 2020). Moreover, about 10% of the statutory farmland is not used as farmland at all, and has non-agricultural uses in Flanders (Verhoeve *et al.*, 2015). The fact that many neighbours may object against new agricultural buildings next door, makes that in many areas, this cycle of selling and reuse of funds for reinvestment is not going as smooth anymore. This results in less access to land for farmers.

Ideas on a different way to address planning policy have suggested in a White paper of the Spatial Policy Plan for Flanders in 2016, which is known for its ambition of a ‘betonstop’ or ‘concrete stop’ (Segers *et al.*, 2020), which is the ambition to come to a full stop of the transfer of natural land uses to artificial land uses by 2040. This issue of a large percentage of artificial land use is central in the Strategic Vision of the spatial Planning Policy of Flanders (Departement Omgeving, 2018). Although the last decades many attempts have been made to contain this sprawl, the regional land use plan is generous in providing building opportunities both in ‘housing extension areas’ (*woonuitbreidingsgebieden*) and elsewhere, based on permissive regulations; the turn towards urban containment, which is currently called ‘construction shift’ (*bouwshift*), is still in preparation (Vlaams Parlement, 2020e).

The strategic spatial vision of the Flemish government formulates also a target that the sealed artificial lands in the area used by agriculture, nature and forest must be reduced by at least 1/5 by 2050 compared to 2015 (Departement Omgeving, 2018, 30). This involves that 9,260 hectares of land must be unsealed (Table 2). So, the policy is not only to restrict artificialisation, but also that buildings and pavements should transfer towards natural land uses. This is based on a distinction between artificial land use in a wide sense, including gardens and urban parks, and in a narrow sense, lands sealed by buildings or pavements.

	land use 2015 ha	of which artificial %	of which sealed %	ha	Ambition: 20% reduction of sealed land ha
Nature and forest	172,500	11.8%	1.8%	3,105	621
Agriculture	786,200	15.8%	5.3%	41,669	8,334
Other open area uses	27,300	23.6%	5.6%	1,529	306
Total	986,000	15.3%	4.7%	46,302	9,260

Table 2 Land use 2015 and ambitions of spatial vision (based on Departement Omgeving, 2018)

The timing of 2040 as ambition to reach the end of artificial land use growth, does not only buys time to work towards a spatial transformation in Flanders, but also provide an opportunity for future politicians to distance themselves from an old ambition, i.e., it is part of a political compromise. The term ‘betonstop’ did not originate in the policy itself but was introduced by a newspaper headline that summarized the policy ambition of the minister in one word (de Olde, 2018). It showed to be a powerful metaphor that has been taken-up massively by a wide variety of media; it got a life in its own, next to the formal policy document (de Olde, 2018). It is, however, also more than just an appealing metaphor. Some steps are taken to allow for the finalisation of development capacity in spatial plans. These extra steps are not considered to be sufficient yet, such as the Chair of the Farmers’ Union (*Boerenbond*) recently indicated (De Becker, 2020). It has already been nicked as ‘betonflop’ (De Decker, 2019). Currently the policy initiative has been renamed to ‘construction shift’ (*bouwshift*) indicating that development must concentrate in already build up areas.

One of the issues is that for too many parties, including the financing of local governments, development is key (De Decker, 2019); there is a 'growth machine' (Molotch, 1976) run by public and private actors profiting from urban sprawl. These vested interests are strong and powerful. Extensive compensation measures are prepared and proposed to the regional parliament (Vlaams Parlement, 2020c). The regional parliament organised an expert hearing on these matters (Vlaams Parlement, 2020e) and a complex amendment has been proposed (Vlaams Parlement, 2020a). One of the issues is that there are generous, often very old land use regulations that designate land as building land. These regulations are in a structure plan and must be developed further in detailed plans on the layout of roads and building plots, before development can commence. The old land designations are seen as 'permanent' and so compensation must be paid if these are crossed off. This is so expensive that it is not to be expected that this will be done on a large scale, because it involves the flow a lot of tax-payers money to a few landowners. An alternative is to replace permanent designations to temporary one, which could be according to one of the experts, the lawyer, professor Tom de Waele, under certain conditions meet constitutional requirements (Vlaams Parlement, 2020e, 35).

In an international comparative perspective (Alterman, 2010), plan compensation seems to be very generous in Flanders, as in most planning systems compensation is quite moderate. So, the outcome of a debate on a full stop on development is providing very high safeguards of landowners towards taking of potential development rights. It is strengthening future land take. As indicated in the hearing (Vlaams Parlement, 2020e), it is very unlikely that billions of Euros will be spend to compensate land owners for potential development value. This makes it very unlikely that the policy of a *betonstop* or *construction* shift towards 0 ha of land take will fly in its full extent and so alternative instruments may be found.

So, although there are high ambitions to make an end to soil sealing, debates of politicians in regional parliament suggest that this will not come to an end soon (Vlaams Parlement, 2020f). Here there is a mismatch between far going ambitions and practical policy implementation. Ambitions include, firstly, a constructions shift form greenfields to brownfields leading to a complete still stand of land take (0 hectare) by 2040 (Departement Omgeving, 2018, 26), secondly, the unsealing of 20% of sealed land in areas designated for agricultural, forestry and biodiversity between 2015 and 2050 (Departement Omgeving, 2018, 30) and thirdly, that these open space designations count for 72.5% of Flemish land use in 2050. However, there is currently no sign yet of a policy that convincingly will result in meeting these ambitions. The strategic vision has not been transferred yet in policy, and draft documents that are available do not foresee in taking the steps necessary to meet the ambitions.

In this context of, relative to population density, large amount of artificial land, it can be feasible not only to put a stop on new artificial land take, but also to open-up existing sealed land to change artificial land to non-artificial land uses.

Although the idea of re-naturalisation of artificial land use is innovative, it is not entirely unique. In relation to international literature on the reuse of artificial land there are some studies on the conversion of military sites to nature areas (Matković and Jakovčić, 2020). This often relates to large-scale military training areas with relative few built structures (Nolte, 2019). A complexity is that former military training areas may need soil sanitation due to leakage of fuel and left ammunition on the site (Klusáček *et al.*, 2019). Farm buildings may also

face abandonment. Jaarsma and de Vries (2013) use the decrease in farm number as proxy for redundant farm buildings. EUROSTAT (2021) reports that in 2016 there were over 4 million (28.6%) less farms in the EU than 2005. This points to a large challenge for the reuse of 'agricultural brownfields' (Skála *et al.*, 2013), including the reuse of land occupied by buildings. However, especially smaller farms are disappearing and in some cases the old farming family is still living in the farmhouse, and rent their lands to neighbours who continue farming (Grubbström and Eriksson, 2018). So, the reuse challenge is probably less than these figures suggest. However, not only buildings of smaller farms disappear, such as the challenge set by the buildings of former collectivised farms in CEE as studied by Skála *et al.* (2013). Many farm buildings used before 1989 were abandoned after 1989 and are still not used (Navrátil *et al.*, 2019). Also in other contexts, modern farming concepts may become outdated rather soon and big state-of-the-art buildings of a few decades ago are outmoded and face reconstructing challenges. These buildings have often no heritage value, may be hard to reuse for other functions, as they are tailor-made to a specific use, and it may be very expensive to deconstruct them, for example, because of the use of asbestos in roofs or concrete cellars in the ground. There is a gap between the ambitions of circularity and the actual situation of rural buildings, especially relating to the return to natural land uses.

An experimental policy to learn from innovative actions is in such a context much easier to execute than a policy that restricts existing development capacity in local land use plans. There is a wide array of initiatives to promote a higher quality of open spaces for which several innovative actions are running (Leinfelder *et al.*, 2020). These actions include the use of land consolidation to improve landscape by the use of water, open spaces and other land use in the suburban Flemish context. Another example is a student design exercise, which has been supported by the Flemish Government Architect, who is very much in favour for these kinds of changes (Van Geyte, 2019), to look for underused buildings and imagine what demolition could bring to landscape redevelopment. According to Joye *et al.* (2018),

“...the demolition of unused artefacts in the landscape will reduce landscape fragmentation, allow for better development of agriculture and nature, create higher quality for recreational purposes, and, in particular, restore valuable, soil related ecosystem services such as carbon sequestration and nutrient and water cycles” (Joye *et al.*, 2018, 574).

However, demolition faces challenges, ranging from economic issues as lost property values and demolition costs to affective issues if people feel that their area is damaged by demolitions. So there is a need for “‘mental space’ in society for demolition” (Joye *et al.*, 2018, 575). In the design exercise students were asked to find potential buildings and other structures that would be ripe for demolition, which resulted in a rich variety of structures, including unfinished buildings, former military and border control structures, and agricultural buildings. In a next step, more information has been gathered on the status of these structures, the owners and the obstacles for demolition (Joye *et al.*, 2018). In some cases, stakeholders were interviewed. A next phase has been the design of a future landscape without those structures, showing the potential of the areas. These kinds of exercises show potential and hindrances of landscape regeneration by removal of artificial surfaces and structures. So, there is a context for discussion and debate on the recycling of artificial land uses towards natural

land uses, which is in the Flemish context one of the few means to improve green landscapes considering that these landscapes are highly fragmented by built structures.

6.3 Narrative of the case

One of the specific innovation programmes is the subject of this study and this is the programme 'Vlaanderen breekt uit'. (Box 4).

Flanders is breaking out!

That is why Flanders is breaking out! Unsealing of surfaces provides more space for nature and food production, less flooding, cooler cities, greater biodiversity, healthier air and a better climate. For example, we are committed to climate adaptation and climate mitigation, and we are taking a step towards a more climate-robust and liveable Flanders.

Unsealing is the physical removal of constructions on surfaces: the demolition of a building or the removal of asphalt, so that the soil becomes permeable again and enables various other natural functions.

Sealed surfaces are spaces occupied by, for example, buildings, roads, car parks, terraces and driveways, which disrupt a number of natural functions of unsealed surfaces.

Box 4 Flanders is breaking out! (Departement Omgeving, 2021, translated by authors)

The results of the activities have been discussed at conferences ('*Onthardingsfora*') and progress have been presented in a working book (AWB and DO, 2020), which is presented as a living document presenting work in progress and lessons learnt. After the first conference in 2018, over 300 propositions have been submitted on promising unsealing practices, and 22 have been selected and received a grant and support, which involved the wider coordination of the whole process of test cases, design support of individual projects and the group of projects, legal and financial support, support in communication and participation, and a quality test of the whole programme (AWB and DO, 2020). The projects have been selected based on one or more of the following characteristics (AWB and DO, 2020):

- a quick-win project resulting in effective unsealing on short term,
- an initiative building a coalition that is willing to set-up testcases to face legal, instrumental and planning challenges, or
- a systemic initiative to translate testcases in policies, action programmes and pilot projects.

In this working book unsealing has different dimensions. It can be, first, an aim, second, a means, third, a lever, fourth, a novel practice and, fifth, a programme (AWB and DO, 2020).

Unsealing as aim. This reflects the policy aim to reduce artificial land in Flanders. The working document refers to the aim of the reduction of sealed land in public space by 20% between 2015 and 2050 (Departement Omgeving, 2018, 30) and also refers to the proposed stop of new artificial lands (the 'betonstop' or construction shift). The working book indicates that unsealing and densification must be seen as one action. Development of urban areas is than not expansion of urban spaces, but a concerted approach of reconversion, densification and unsealing (AWB and DO, 2020).

Unsealing as means. Unsealing can be also a means to produce ‘public space services’ of ecological, economic and societal value (AWB and DO, 2020). In the report, seven aims are considered for which unsealing is a means: first, to enhance biodiversity, second, to improve water management, third, improve soil quality, fourth, to enhance ambient air quality, fifth, to make the living environment more enjoyable, sixth, to prevent heat island effects and seventh, to provide space for food production. This last aim, to provide space for food production suggests that it may facilitate farmers to get access to land. However, land that becomes available due to unsealing is not of the best quality. Although originally it may be soil of high quality, sealing the soil is not beneficial for soil quality. Furthermore, unsealed lands are no large-scale fields, but smaller areas. However, the lands are located in the (sub)urban fabric in a way that it may help to build a farm within local networks of relations, which may be beneficial for community -supported agriculture. In relation to the re-use of land occupied by former farm buildings, the relationships between surrounding fields may be beneficial.

Unsealing as lever. Unsealing is one of the activities in a broader set of actions that may bring change to an area (AWB and DO, 2020). It is part of the placemaking of an area in which the quality of the physical and social environment is enhanced due to different coordinated actions with participation of people from the neighbourhood. So, it may help to increase neighbourhood participation to increase the quality of place.

Unsealing as novel practice. Unsealing is an alternative for the dominant practice of the growth of artificial land uses, which is still ongoing in Flanders. The example projects showed that it is not easy to start such an alternative and novel practice. In this novel practice there are 6 matters that are in need of attention (Box 5) (AWB and DO, 2020).

1. Unsealing as part of a larger environment. Unsealing is part of a specific context, which sets the constraints for action. Unsealing is a movement at different levels or scales and the effects of a small project may be an example for other projects elsewhere.
2. Unsealing is in need of organisation. It is often beneficial to forge coalitions of actors, such as a neighbourhood movement, that are benefiting from unsealing.
3. Unsealing is often about connecting various knowledge domains and is so in need of interdisciplinary cooperation; the cooperation across various domains of knowledge can also be an important by-product of unsealing.
4. Unsealing needs and produces carrying capacity and vision. Unsealing impacts the daily living environment of people. Local support is necessary, which can be found by a participatory approach. This may have other benefits for the community. Experimenting with temporary solutions and land uses may result in joint experimental learning on the impact of specific unsealing measures on the community.
5. Unsealing takes time. Although unsealing seems simple, in practice it takes a lot of time. It is beneficial to have a long-term vision with intermediary steps that may help to show progress.
6. Unsealing does not stop after the actions have been taken. The ‘afterlife’ (AWB and DO, 2020, 97) of the project is so part of the process design. Clear agreements should be made to ascertain that the project will be a success story and has a durable impact on the social and physical living environment.

Box 5 Unsealing as novel practice (AWB and DO, 2020)

Unsealing as a programme. Although there is a programme of unsealing, the facts on the ground are different. Sealing of grounds is still the dominant force in Flanders: it is ‘hundreds’

(AWB and DO, 2020, 105) times larger than the unsealing programme. So, it is programme of a qualitative effect, showing that there are alternatives to the dominant trend. Showing that it can mobilise people and that new practices can be developed, but an acceleration and structural integration is needed to make more impact (AWB and DO, 2020).

There are various types of projects. Most of them are relatively small spatial improvements. There are many examples of schools that open-up their paved playgrounds for school gardens, which is in a range between 700 m² and 4000 m². Although this does not provides access to land for new generations in farming, it has educational purposes for new generations at school getting in contact with unsealed land (AWB and DO, 2020). Other examples relate to urban renewal in which paved areas are transferred into green areas, like the transformation of a parking square into a 'park square' unsealing 3889 m² in the City of Ghent (AWB and DO, 2020, 122), the greening of the area around a brook in a town or the development of community gardens on former paved areas. In some cases, the size is a little larger (one or a few hectares) as on an industrial estate, around a fort, or by the transformation of a road for motor vehicles towards a green linear structure with room for walking, bicycles and destination traffic. Only few of the projects directly relate to agricultural areas, such as the redevelopment of pig stables to a picking garden by an initiative called Food Forest.

Specific is also that one of the systemic projects is on the reuse of agricultural properties as farmland. Here, as indicated above, the specific issue is that in Flanders there are generous regulations allowing the reuse and redevelopment of former farm buildings towards other functions. This makes that unsealing is a kind of philanthropy in which farmers that stop working refrain from taking the development gain from reuse of the property to (sub)urban uses, but give the grounds back to an unsealed landscape. This is not a very solid base for the uptake of this practice at a wider scale. Furthermore, the generous possibilities to reuse agricultural properties for other development purposes are a stand in the way towards access to land for new generations. Agricultural structures are economically primarily potential development sites; the generous compensation measures proposed by the incoming government strengthen this issue of access to land, as land which has a potential for development will not be easily accessible (much too expensive based on use for urban purposes) for new generations potential.

There is another systemic project that is much more promising in relation to its uptake, that is, the RE-MOVE project orienting towards unsealing roads. Flanders has a large surface of paved roads. Maintenance of these roads is costly. Not enough funds are allocated to keep them all in a proper shape. Limiting the road surface makes a good fit with ruling ideas on limiting public service provision to essential services. By limiting the surface of roads maintenance funds can be more focused. So, the quality of remaining roads can be improved. The systemic project has developed a method that local authorities can use to evaluate their road networks and choose different interventions for their roads. Next to the radical solution of removing an entire road, it may also entail other solutions, such as, making the road narrower or by unsealing the surface. Although, some of these roads are located near farmland, the linear geometry of roads makes that this will not very likely to result in novel land plots for new entrants into farming.

The novel incoming government has supported this ambition, being questioned by the former minister (of a green party) in parliament (Vlaams Parlement, 2020b). It indicated that this will may happen selectively, for example area prone to flooding, strategic agricultural areas and core biodiversity areas. In relation to the specific experimental practices developed a specific unsealing programme is in development. Part of this programme has been presented by the minister in a press release on a 'Blue Deal', which is published on the personal website of the minister (NN, 2020). This Blue Deal was not formally send to parliament (Vlaams Parlement, 2020g) nor decided on by the regional council of ministers (Vlaamse Regering, 2021). So, it seems to be more a communication instrument than an official policy based on formal government powers and government institutions. Nevertheless, some funds have been allocated referring to this programme, and the next round of the unsealing programme will focus on blue deal related themes. The sealing of land in Flanders makes that few waters are being infiltrated in the ground. There are issues of groundwater reserves, which belong (according to the blue deal (NN, 2020)) to the lowest of the OECD.

In the decisions on the new programme fund, which is part of the budget for 2021, the proposed 'BRV-fund', a fund that is mend to be used to finance spatial development projects, including unsealing activities, has been not been introduced yet. It is indicated that it is in need with a concerted approach with the policy instrument degree on the spatial vision (Vlaams Parlement, 2020d). In this instrument degree other purposes for these funds than an innovation programme might get priority. After all, there is a political choice to be made on how scarce resources will be spend. The programme is surfing form fund to fund and the bleu deal will be the next wave to catch. This shows the strength of the unsealing theme; that is, it can be used to cater for a variety of policy goals.

6.4 Access to land

The question in this case study whether this policy of 'breaking out' indeed may have the potential to create more room for food production in a way that it may facilitate access to land for new generations. We do not expect that by this line that land is becoming available for large 'mainstream' modern farms, which need a large amount of land. There are, however, in Flanders many initiatives of novel farming that are in need of much less land (Van Bogaert *et al.*, 2017); so, the question is whether unsealing may have potential for such novel types of farming . As it as an experimental policy it works with a series of experimental practices. Five of these practices relate to productive agriculture.

1. The reuse of land former agricultural buildings for agricultural purposes: investigating the opportunities
2. The change of a specific large pig farm with stables and pavement towards horticultural land
3. A project with secondary schools to investigate the potential for unsealing soils
4. The demolition of buildings on an old military fort and the reuse of unsealed lands.
5. Reuse of lands in an urban context (Antwerp).

The overall picture based on these projects is that the overall conditions are unfavourable. The structural feature of a high value loss, make it economically unattractive for landholders to tear down buildings to allow farming. Next to the opportunity costs of not using the values

of new functions, this comes with out-of-pocket costs of demolishing stables and other farm buildings. Although the opportunity costs might be larger, the out-of-pocket costs are much more tangible and have a more direct effect. Not making use of a value increase on paper can easier be set aside, than a payment that must be done from a bank account. It is so an activity that is in need of benevolent landowners who appreciate the continuation of farmland above their own purse. Such benevolent farmers exist, but more structural conditions have to change to get at a higher scale. Furthermore, there are some government services that occasionally may take such a loss, for example for a farm close to a biodiversity reserve, but as was indicated in the interview, they can currently cannot afford to do this too often.

For agroecological farming the fertility of the soil is key. In the Flemish context it may take twenty to thirty years of farming practice before the fertility has been build-up (Kuhk *et al.*, 2018). The quality of organic matter is key (Cools and Van Gossum, 2014). Recently unsealed land does not have a recent farming history, and the soil has been compacted due to pressure of sealed surfaces. Compaction is not beneficial for the fertility of the soil (Cools and Van Gossum, 2014). Moreover, urban soils may be contaminated by metal deposits and may contain 'technogenic substrata' (Yang and Zhang, 2015, 31). Examples are 'Brick debris, rubble, ashes, slags, garbage, coal-mine deposits, bottles, batteries, plastics, metals, textiles, lino, charcoals and organic residues' (Yang and Zhang, 2015, 31-32). Another study showed, however, that de-sealed soils in the city of Naples:

'...improved their physical and chemical fertility in a relatively short time, and increased the soil microbial biomass and biochemical activity to levels comparable or higher than those of an agricultural soil of the same area. Such an improvement occurred with no intervention and was favored by the colonization by volunteer plants' (Renella, 2020, 9).

These soils were classified as polluted, and were located in an area that has been subject to urban development since the 1920s. So, although, even on shorter term soil improvements may have effect on the fertility of unsealed soils (Kuhk *et al.*, 2018), there may be an issue of using unsealed land for food production due to toxic contamination, which issues, however, do not stand in the way of using the land to grow cut flowers, as these are not destined for human consumption. The contamination issue may also come with uncertainty on the reuse potential of a site and may result in extra costs for investigating the quality of the soil.

Next to a physical concept of soil fertility, there is an economic concept of soil fertility as has been brought forward by Marshall (1920, 1st ed 1890) over a century ago.

'We cannot then call one piece of land more fertile than another until we know something about the skill and enterprise of its cultivators, and the amount of capital and labour at their disposal; and till we know whether the demand for produce is such as to make intensive cultivation profitable with the resources at their disposal. If it is, those lands will be the most fertile which give the highest average returns to a large expenditure of capital and labour; but if not, those will be the most fertile which give the best returns to the first few doses. The term fertility has no meaning except with reference to the special circumstances of a particular time and place.' (Marshall, 1920, 1st ed 1890, Book IV Ch3 §3)

So, in the densely populated area of Flanders, the easy access to markets and other contextual factors, may allow for agriculture on soils of less quality. The study of Van Bogaert *et al.* (2017) shows that novel farmers often use crops that do not demand high quality fields. Examples are the mushrooms, which can be done in cellars in artificial areas, or novel foods as insect meat (Van Bogaert *et al.*, 2017). Many of these novel farms need different kind of locations than traditional farms. A fish farm feeding vegetable foods is for example very much related to a greenhouse, in relation to use of heath and potentially reuse of manure. (Van Bogaert *et al.*, 2017). Such a fish farm is, however, not a function that is in need of unsealed land. It is in need of a sealed location for the fish basins. Another farm uses recycled sea containers for the growing of fish, herbs and vegetables. So, also in this case farming has becoming a practice on sealed land. The necessity to have some scale, and the use of old sea containers had its impact on the site choice: as the initiative had to move based on complaints by one of the neighbours indicating to have commercial damage due to the negative appeal of the containers (Van Bogaert *et al.*, 2017, 7). Also the initiative 'Roof Food' in Ghent does not need unsealed land, but uses roofs at an industrial estate (Van Bogaert *et al.*, 2017). Next to food production, they also offer catering to companies and promote roof top gardening elsewhere by selling starters packages and seeds. The urban location is part of the package as delivery is by bike.

Also, other new farmers using rooftops and have a variety of products in which local networks of food production and consumption are key. Next to more alternative initiators, there are also some large supermarket chains that have allowed to use their roofs for horticultural food production. In some cases projects are funded by the European Fund for Regional Development (EFRD) (Van Bogaert *et al.*, 2017).

The main lessons and conclusions of Van Bogaert *et al.* (2017) provide relevant insights for the reuse of sealed land for farming by new entrants searching for access to land. First of all, many of these farmers pursue a broader agenda than food production; there are ecological and social motives as well. Their products often go beyond basic products. In some cases, they also do catering based on foods produced; sell seeds to consumers that aim to take-up urban gardening, etc. They are also well-established within a context of consumers. In relation to access to land it shows that they search for novel opportunities and adapt to the potential at hand. So, it seems to be that the less perfect land of unsealed land would not be a problem if the alternative is roof-top gardening, etc., as there is no high-quality soil on a roof top.

This group of farmers is different from the new entrants into farming that follow a course at *Landwijzer*, an organisation that provides courses for new farmers in agroecological farming. Based on the alumni brochures published (Landwijzer, 2020; Hillaert, Ed. 2019). These group is usually also aiming for relatively small farms, with good connections with consumers, but most of them need soil that supports an agroecological practice. Access to land is an issue for many of these alumni. The relatively small areas needed and the tight connections with consumers makes that an area that is partially based on unsealed land an option for some of them as these locations may provide opportunities for consumer relationships, and it is very difficult to get access to land anyhow. The advantage of tight relationships with consumers, may so outweigh the initial quality of the soil. Also of the early projects of agroecological farming from De Landgenoten is developed in a concerted approach with the development of affordable housing by a social housing organisation, which is also the landowner (Kuhk *et al.*, 2018). In this way the connection between farming and consumers may develop.

6.5 Conclusion

Quantitatively the programme on unsealing land in Flanders is not more than a drop in the ocean. Although there are ambitions to stop the sealing of land, the practice is tough. The vested interests in sealing of land are strong.

In relation to transferability of the practice, it is necessary to take the context into account. Flanders is an area in which a very large percentage of land is taken for urban purposes. Problematic is that this process is still going on. In many cases greenfield solutions are preferred above redevelopment on site. This is not only the case for urban development, but also for rural development of farms for which it is much more economically to sell existing premises to a non-agricultural user and to invest in a new site in the agricultural zone, than to redevelop a farm at an existing farm location. The Flanders context of the case shows that it is not easy to change such a practice as there are many vested interests in this process of developing urban values towards agricultural land. These vested interests have a considerable impact on political decision making.

Furthermore, the area of sealed soil per inhabitant is high. So, there is a large potential for the unsealing of lands. Although Flanders might top some of the lists in relation to this, there are other areas in which recycling of sealed land is an issue. Obsolete sealed areas stay sealed and the Flemish example has shown that unsealing of land can be a flag to combine a lot of initiatives to come to an improves use of lands. So, it can be a recommendable practice to organise unsealing programmes elsewhere. The impact it has in promoting access to land for new generations of farmers may be limited, but it may help to get some progress and may also help to promote the unsealing of lands which is in essence beneficial to farming as it helps to improve water management.

7 Combining land ownership and land exchange in Zeeland (Herman de Wolff, TU Delft)

7.1 Introduction

The province of Zeeland ('Sealand') is one of the twelve provinces in the Netherlands (Figure 7). It is the most rural province in the Netherlands. Almost half of the population in this province lives in local authorities classified as rural areas. According to the provincial Food agenda about 15% of employment is in the food sector, which includes next to agriculture also fishery (Provincie Zeeland, 2018).



Source: <https://commons.wikimedia.org/wiki/File:2019-Provincie-1200.png>

Figure 7 Zeeland (nr. 9) as one of the twelve provinces in the Netherlands

In the Netherlands, the government is organised on three levels: state level or the national level, the provinces on the subnational level and the municipalities on the local level.

In general, the provinces take care of the policy fields they consider in the provincial interest - within the boundaries set by central government. For specific tasks, central government has decided that the provinces are in charge. All provinces take the responsibility for the planning and guiding the development of rural areas, both for the areas outside existing urban areas as well as for developments that exceed the local interest. They are, amongst others, in charge of the nature policy (protection of natural habitats, protection of animal and plant species - all based on the European Habitats Directive), the realisation of recreational areas, the water policy (together with Water authorities), realisation and maintenance of infrastructure on the regional level (provincial roads, cycleways), the organisation of public transport and besides these also the financial supervision of municipalities.

Since the 5th of September 2012, the province of Zeeland has established a land exchange agency. With the further decentralisation of rural areas related policies and land transfer from central government to the provinces, this land exchange agency has developed towards an important agency in the realisation of rural policies of the province, being part of the active land policy of the province. The land exchange agency, helps the provincial government in making land available for public goals and for improving the agricultural structure, using a land bank in combination with land exchange. Since 2016, the use of this land exchange agency in provincial policies has been intensified (Provincie Zeeland, 2016b).

7.2 Context (legal, policy and socio economic)

Until 2007, central government was the initiating government as far as governmental interventions in rural areas concerned. The legal basis for these interventions was the *Landinrichtingswet*, the Rural areas development act (1985). Based on this act, integrated area development projects for the improvement of rural areas were set up. Besides an improvement of the agrarian structure, also other policy goals were taken into account in the improvement of rural areas: amongst others the quality of landscape, nature and biodiversity, recreational projects and infrastructure measures. Central government made in cooperation with the provinces a priority list for these integrated area development projects, and these projects were set up with the provincial government; central government facilitated the projects with financial aid and with the aid of a central land agency, *Bureau beheer landbouwgronden* (BBL). An organisation that tried to buy land in areas in which projects were going to be realised; land that could be strategically used during the project realisation, for example as exchange land if a specific piece of land was necessary for a public purpose. For the realisation of the projects land was needed, the province used land acquisition and enforced land consolidation in the projects. If necessary, the province could also use expropriation, but that was not a preferable option. In practice, the procedures to follow were rather complex and rather long lasting (Wilg, 2006a, section 3.4). Furthermore, the involvement of central government in land development projects, did not fit in changes in the perspective on governance in which decentralisation became a more important principle. With the province taking over in these projects, also the wish came up to make the procedure for the integrated rural development project less comprehensive and more tailor made, and with a much faster realisation period.

In 2007, a new act came into force to facilitate this approach, the *Wet inrichting landelijk gebied*, the Act on rural development (Wilg, 2006b). Besides fewer comprehensive procedures for rural land development and a more flexible approach, this act introduced an investment budget for a rural investment programme set up in cooperation between central government and the province involved. Within certain boundaries, the province got the freedom to optimize the use of the budget for the tasks and the goals agreed upon in the investment programme. But the wish to decentralize governmental policy went on. Before the first period of the investment programme based on the investment budget has been over, it was already ended by another decentralisation in 2011 (MBZK *et al.*, 2011). From that moment, the provinces got a central role in the realisation of development projects in rural areas.

However, related to the initiating role central government had for a long time in the rural land development, central government still owned a lot of land in rural areas. To enable the provinces to continue the plans related to the realisation of a nature network in the Netherlands, the land owned by the central government agency *Bureau beheer landbouwgronden* (BBL) was handed over to the provinces. The value of the land was a compensation for the obligation for provinces to take over the responsibility for the realisation of the nature network. Formally in 2014, the land portfolio was transferred from central government to the provinces and the central government agency was closed. The provinces agreed to take over civil servants that used to work for the central government agency.

In the above-mentioned legislation, land exchange – both enforced land exchange and the land exchange on a voluntary basis - is facilitated by the government. For enforced land exchange, or land consolidation, the province can start a procedure to change the ownership structure in an area by allocating land if necessary to different owners and making land available for public goals. In practice, this procedure however is hardly used anymore. The voluntary land exchange is facilitated by central government in legislation. Land consolidation and voluntary land exchange are exempted from paying transfer tax.

7.3 Narrative of the case

In 2016, the province of Zeeland has published a memorandum on land policy, the '*Nota grondbeleid 2016*' (Provincie Zeeland, 2016b).

The *Nota grondbeleid* is closely related to the policy agenda of the province for the upcoming years (Provincie Zeeland, 2016c). In this policy agenda, for different fields of attention land is a crucial factor. Land is needed related to the nature protection policy, the improvement of the water quality in the province and the improvement of road infrastructure in the province. But land is, furthermore, needed for helping farmers and landowners with the improvement of the agrarian structure in the province.

The province is responsible for the protection of areas which are of importance with regard to the European Habitats Directive. Besides the preservation of existing habitats in designated areas, the province wants to extent the nature network within the province (Provincie Zeeland, 2016a). For the protection of the areas, the land is often acquired by the province and handed over to an organisation capable of the conservation and the development of the nature quality of the area involved, e.g., *Staatsbosbeheer*, a public body commissioned by the Dutch government to strengthen the position of nature in the Netherlands, *Vereniging Natuurmonumenten*, a Society for the Preservation of Nature in the Netherlands or the *Stichting Zeeuws Landschap*, a foundation for preservation of nature in province. For the period from 2016 – 2027 the estimation is that 1000 ha of land is needed for the further realisation of the nature network in the province.

For the improvement of the quality of the open water in the province, which is necessary according to the European Water Framework Directive (WFD, 2014), the policy of the province is amongst others the realisation of nature friendly banks along watercourses, this is an often used and successful strategy in the Netherlands (Verhofstad *et al.*, 2021). The nature friendly banks make the water system more natural by which the water quality can improve, but

improve also the ecological quality of the water and the quality of the environment. The intention of the province is to realise 150 kilometre of nature friendly banks until 2027; the estimation is that 150 ha of land is needed for this task.

The network of provincial roads in the province, needs some adjustments in relation to the enlargement of the accessibility of parts of the province and the improvement of the road safety. Based on the intended interventions, for the period from 2016-2027 125 ha of land is needed (Table 3).

Aim	Extra area needed
nature network	1000 ha
nature friendly banks	150 ha
adjustments to provincial road infrastructure	125 ha
Total	1275 ha

Table 3 Estimation of land needed for public goals 2016-2027 (based on Provincie Zeeland, 2016b)

Besides these public goals for which land is needed, the province also aims to improve the agrarian structure of the rural areas in the province. The province concludes based on research done by Kadaster and LEI (van Rheenen *et al.*, 2016), that the allotment structure in all areas in the province needs improvement and that also on the long run attention is needed. Sometimes the amount of land close to the farmhouse is relatively low, and parcels are spread out over a larger area. Concentrating the land, and allocating the land close to the farmhouse can reduce the travel costs and travel time for the farmer, and has as a side effect for other provincial goals: less traffic with a positive effect on road safety in the province: less agrarian traffic reduces the risks on accidents.

To be able to reach these policy goals, the availability of land is a precondition. And land is needed on the right location, the location necessary for improvement of the infrastructure, the bank of a watercourse, an area within the intended nature network or a plot located closer to a farmhouse. Often this land is not owned by the government, but privately owned.

In the provincial land policy, two strategies are distinguished to make land available for the government.

The first one is the use of **active land policy and trying to buy the land needed for the specific policy goal**. However, very often the present owner of the land is not directly prepared to sell the land. And selling land can also cause problems for the viability of a farm, if the amount of land the farmer has for farming is reduced and he is not able to buy land elsewhere. So, the provincial goal of a viable agrarian structure can also be at risk.

In case of a stalemate, caused by a landowner unwilling to sell his land, the province can use expropriation. The use of expropriation is possible based on the Expropriation Act in combination with the Act on rural development and the Spatial Planning Act (*Wet ruimtelijke ordening*) if it is in the public interest, following certain procedures in which Provinciale Staten, the provincial council, has to make a formal decision to use expropriation (see also Van Straalen and Korthals Altes, 2014). However, the province has decided that the use of expropriation in the provincial land policy should be avoided; the use of expropriation should

be limited to situations in which there is no other option. In practice, that means that only for measures related to the road infrastructure expropriation might be an option and even in those cases will be used a very restrictively. The central policy principle is that land that is necessary for public goals, is obtained on a voluntary basis.

The second strategy is based on the **exchange of land** (*kavelruil*) (Provincie Zeeland, 2016b). If land is needed for a policy goal, the province tries to reach an agreement with the present landowner to exchange the land needed with land elsewhere in province. And if that land is for example located closer to the farmhouse, or if the land is located closer to other parcels the farmer owns in the area, the exchange can also result in an improvement of the agrarian structure. And if more landowners can be included in such a voluntary land exchange project, even for more people the situation can be improved and an optimum can be reached. To be able to offer land in exchange, it helps if the province owns suitable land, and therefore the province has a landbank.

In the provincial practice, the success of getting the land on a voluntary basis in the first strategy is enlarged by the combination with the second strategy: the possibility of land exchange and to offer land for land, and often even more suitable land, on a voluntary basis make it easier to negotiate.

For the strategy **land exchange agreements** are used. Different people can be involved in these agreements: land exchange is not limited to two people, but much more people can be involved. Sometimes only farmers are involved, making agreements with other farmers on exchanging land to improve the agrarian structure of the farms involved in the exchange project. But often also the government is involved as a party who tries to get land for a specific public goal. Besides the province, also other governmental organisations sometimes participate in these land exchange projects, for example the municipalities or the waterboard.

Obtaining land as part of a land exchange is attractive for the land owners involved. For land exchange in rural areas a tax exemption exists: land owners do not have to pay land transfer tax. Also, the other transactions costs (the work of the land exchange agency) are mostly paid by the provincial government; only a small contribution of 200 euro for every ha of new land that is part of the exchange agreement. In specific areas, there is also the possibility to receive subsidy for some improvement measures to make the soil more useful (for example the realisation of drainage).

In a land exchange project, it is possible one of the parties involved ends up with more land of land of a different value, than the land handed in in the exchange. In such as case, a financial contribution is asked, which is part of the negotiation process about the land exchange project.

To enhance the potential of these land exchanges projects, the province has set up a **provincial landbank**. The land owned by the land bank can be used in land exchange projects, to smoothen the process of reaching an agreement.

In 2012, as part of the decentralisation with regard to the development of rural areas and the realisation of nature areas, the provinces and central government came to an agreement that

land owned by central government land agency (bureau beheer landbouwgronden) was handed over to the provinces; in Zeeland this land is now available as exchange land in the landbank.

In one of the interviews, it turns out that the former BBL land is not always that attractive to be used in a land exchange project.

In the policy development of the Nota grondbeleid (Provincie Zeeland, 2016b), the province has investigated how much land is needed in the landbank, on an ideal basis. If the landbank facilitates projects to improve the agrarian structure, about 2% of the surface of the total amount of agricultural land in the province is needed for the landbank, that means 2% of 119,000 ha = 2,380 ha. However, if land is also needed for the other policy goals of the province mentioned before, the assumption is that the landbank should be filled with 3% of the surface of the land (which means 3,570 ha). In 2016 only in a few areas, the land position of the land bank exceeds the 3%; the total amount of land available is 777 ha.

Therefore, the province decided in 2016 to make an extra budget available for the land bank, to enlarge the amount of land in the land bank to 1,200 ha (Provincie Zeeland, 2016b). The total budget for the land bank is 96 million euro.

New land for the landbank, can be obtained by the province by using the land dynamics in an area: every year a certain number of farmers stops or wants to sell the farm to someone else. The enlargement of the land takes place by strategic land acquisition; in the decision to acquire land or a farm that is for sale, the province takes into account if the land is suitable as exchange land, for example because of the location close to areas in which a public goal is going to be realised and the amount of exchange land already owned in the region.

New land for the landbank is not only necessary to enlarge the amount of land to improve the possibilities for land exchange, but also because land also leaves the landbank: if in a land exchange project land is obtained on a location which is needed for one of the policy goals (for example: for the realisation of the nature network), the land is handed over to the organisation that is going to realise and manage the area on the long term; the money that comes available is used for new acquisitions. Sometimes land of the landbank is sold, because it is not necessary anymore as exchange land, for example because of the location.

Temporary use of land in the landbank. To prevent that the land in the land bank that is owned by the government is unused, every year the is leased for a period of 1 year. In the summer, farmers that are interested in provincial land can apply for land. The provinces decide who may use the land, taking into account the distance to the farmhouse, the type of crop and an equal division of the land between farmers interested in using the land. The idea is that the income out of temporary leasing the land, covers the costs from the province related to the land bank.

Land exchange agency. For implementing the strategy of voluntary land exchange, to reach public goals of the province and other governments participating in land exchanges projects and to improve the agrarian structure, the province established a land exchange agency,

kavelruilbureau. On a yearly basis, 300.000 euro is reserved to cover the costs of this land exchange agency.

Although the land exchange agency is an agency of the province, the people who work for the agency, the land exchange coordinators, are independent.

A land exchange coordinator coordinates the land exchange and more precisely has the following tasks in a possible land exchange project:

- Explaining the process to the people involved
- Support the people involved in investigating the opportunities and the bottle necks
- Investigating the possibilities for land exchange in the direct environment
- Making an exchange plan and illustrating the proposed land exchange with maps in which land that is handed in (old ownership situation) and maps with the new ownership situation
- Discuss the financial arrangements between parties involved
- Prepare that the exchange is legally taken care including the registration in the cadastral office by the notary

In the province of Zeeland, there are 6 land exchange coordinators; for 6 different regions in Zeeland.:

- Tholen, St. Philipsland and Schouwen-Duiveland
- Bevelanden
- Walcheren
- Oost Zeeuwsvlaanderen
- Kanaalzone
- Westzeeuwvlaanderen

Because of the structure of the provinces, with a lot of water between the different parts, is not only the land market segmented between the different parts, but has the different parts also inhabitants with different characters and a different culture.

A land exchange coordinator is a parttime job; in practice all land exchange coordinators are also farmers, and sometimes they have – besides the role as a land exchange coordinator – also a job as an agrarian advisor. The reason that for every region a separate land exchange coordinator has been appointed, is the importance of local knowledge for the job.

Local knowledge means knowledge of:

- the land market included knowledge of the quality of the soil
- the local farmers: their ambitions, plans, wishes and limitations
- the public goals in the area for which land is needed, not only these from the province, but also from the municipalities, the waterboard
- the land that is available as exchange land, in the provincial land bank but sometimes also by other governments in the area or larger land owners (municipalities, waterboard, churches)
- expected land mobility

Firstly, a land exchange coordinator uses this knowledge for helping to make a proposal for a land exchange, but the knowledge can also be used to suggest the province to acquire land if a farmer retires or wants to dispose of land that is on the longer-term suitable land for the land bank.

In the yearly reports of the province (Provincie Zeeland, 2020b), also a report is given on the activities of the land exchange agency and the provincial landbank. In 2019, the size of the land bank is 1,174 hectares. For this land, € 59.5 million is invested (the value of the land). In 2019, 91 ha of new land has been acquired (value € 7.1 million), and 56 ha of land has been sold (€ 3.8 million). In 2019, 17 land exchanges projects have been realized with 101 participants; 8 land exchanges with 38 participants legally finalized. The result of the temporary exploitation of the land in the landbank is 244,000 euro

7.4 Discussion on access to land: Some results of the approach in 2019

The strategy to combine land ownership using a land bank with land exchange is a strategy that facilitates the development of rural areas taking into account the land mobility in an area. By choosing this strategy it is possible to make land available for public goals, without harming the existing farmers who want to keep on farming. And it is still possible to keep these areas attractive, not only for farmers but also for other people living in Zeeland. The improvement of the infrastructure, investments in the quality of the landscape is also of importance for these people.

For the existing farmers, the possibility to improve the viability of agricultural businesses by reducing distances between the farmhouse and land, is important to keep on going. This is not only of importance for the present farmers, but also for possible successors. Farmers that want to improve the agrarian structure

Within the system, the land within land bank is every year leased on a temporary basis. Land within the land bank that is not suitable as exchange land, is disposed of. In this process, there is not yet a specific goal to help new generations to improve access to land.

At present, the land policy report of the province is in revision; it is expected that a new land policy is going to be decided upon in 2022. The idea is that the policy aims are formulated in

the new environmental and planning vision and that the land policy report provides one of the means to implement this. In the draft vision an ambition is formulated to have a sustainable ('*volhoudbaar*') (Provincie Zeeland, 2020a, 28) system of agriculture. This includes attractiveness of farming for new generations. Next to this, the attractiveness of the province for young people is also part of the vision in general (Provincie Zeeland, 2020a, 84). So, a debate is going on about the difficulties for young people that want to stay in the rural areas of the province, to be able to get land for housing and to compete with for example people from abroad that buy houses for recreational purposes.

7.5 Conclusion

Due to decentralisation of government powers, provinces have got a central role in the planning of rural areas in the Netherlands. As part of this process, the national land bank, BBL, has been dissolved and provinces got each a share of this portfolio, that is, the land that was located in their province. The province of Zeeland is using this land to pursue public policies as are formulated in the provincial vision for environment and planning. The province is not only using the bank, but also feeds it by purchasing land.

In this policy, the province does not use this land directly, but is aiming to multiply the effects of this portfolio by contribution to voluntary land exchanges between landowners, such as farmers and owners of biodiversity reserves. In this process regional actors outside the provincial bureaucracy are hired to function as reticulist to bring landowners together to allow for exchanges to the benefit of rural development. Currently providing access to land to new generations of farmers, outside the ambition to improve the farm structure of farm successors is not explicitly on the policy aims of the provincial land policy.

Currently a new vision is in preparation, which vision will be followed by a new land policy report, which serves as tool to implement the vision. In this vision sustainable agriculture and the attractiveness of the province for young people and families are on the agenda, which may result in that the current instrumental set-up of a land bank, plus voluntary exchanges, including a reticulist role of bringing landowners and new entrants together, may be used for these aims as well.

8 Analysis of the structures' policy (SDREA and CDOA), Case studies: Nord and Côte d'Or (William Loveluck, Terre de Liens)

8.1 Introduction

In France, regulation of transfer of use rights over agricultural land is based on two different and complementary regulatory tools: the SAFER (*Société d'Aménagement Foncier et d'Établissement Rural* – French land agency) which regulates transfer of land ownership, and the CDOA (*Commission départementale d'orientation agricole* – French departmental agricultural guidance committee), which regulates, inter alia, the right to farm for certain rural lease transfers and farmland purchases. More specifically, it is the prefect of the department, the representative of the State at this level, who arbitrates decisions on authorisations to farm, as the CDOA has no decision-making power and is only consultative. In practice, the decisions taken by the CDOA are generally followed. A particularity of the French system is that becoming the owner or tenant of land does not necessarily entitle a farmer to farm it. In certain cases, farmers must request an *authorisation to farm* to give effect to their ownership or tenant rights (this authorisation making the lease valid in the case of tenancies).

The CDOA's arbitration is carried out in line with an SDREA (*Schéma Régional des Exploitations Agricoles* – regional plan for agricultural holdings), which determines both the situations in which control is necessary (which can lead to an authorisation being either granted or refused) and the priorities to be applied for authorisation requests, for example in the case of competing applications concerning the same plots.

8.2 Context

8.2.1 Case studies

The analyses led in the French case study focus on the application of structures' policy in two departments: the Nord department in the Hauts-de-France region, and the Côte-d'Or department in the Bourgogne-Franche-Comté region. These two departments were chosen because the SDREA applied in the Nord department is rather 'minimalist' (meaning that definitions, guidance and prioritisation are not very detailed, with no distinction among the different agricultural regions and little distinction among production systems) whereas the SDREA applying for the Côte-d'Or department is rather detailed, with:

- Small agricultural regions with their own thresholds for control and for excessive expansion in the different areas and very precise area equivalences, based on the different designations of origin linked to the specific nature of the region as a vine-growing area.
- Precise criteria, in order of priority, on evaluation of the economic and environmental benefit of an operation, for deciding between applications with the same level of

priority, for example: number of workers, continuation of organic farming practices, continued protection of water catchment areas, etc.

- Additional calculation forms to choose between applications with the same level of priority: distinction between different types of establishments or re-establishment, and between types of expansion.

Studying these two departments, thus, made it possible to analyse the implementation of SDREAs with very different formulations. We interviewed individuals involved with the CDOAs: representatives from different farmers' unions for each department and representatives of the administrative authorities (officers from the DDT - *Directions Départementales des Territoires* [Departmental Directorates of Territories] in charge of running the CDOAs). An additional interview was carried out with the director of the Côte d'Or SAFER, as well as a more general interview on the subject of the different situations in the departments with an officer from the National Federation of Farmers' Unions (FNSEA).

8.2.2 Main discussion points on SDREAs

The SDREA determines the order of priority of the different types of operation concerned by a need to request authorisations to farm submitted to the prefect (via the DDT, consulting the CDOA), as well as economic and environmental criteria to be considered when assessing applications. The operations subject to control are linked to establishment of new farms, progressive establishment of new farms, farm expansion, and creation or extension of production facilities. This plan determines:

1. The operations which are subject to administrative control and those which are not: based on the area over which use rights are obtained (or an 'equivalent area' for high intensity or 'soil-free' activities), the distance of these areas from the farm's principal place of business and the identity of the applicant (e.g.: holder of agricultural qualifications or enrolled in a formal farm establishment programme¹¹, if the applicant is just setting up).
2. The priority level of applications: the order of priority of operations, between establishment of farms, compensation, and other types of expansion (according to the thresholds reached).

The plan allows a weighting to be attributed to different aspects to determine the order of priority for granting authorisations to farm, and sets out criteria for evaluating the economic viability of farms concerned by applications. Therefore, the main points for discussion when drawing up SDREAs are as follows:

¹¹ "Formal farm establishment programme" refers here to a programme which, in its current state, has a high degree of institutional recognition: i.e., a programme which at some stage includes completion of a PPP – *plan de professionnalisation personnalisé* (personalised skilling plan), and farm development plans approved by the local Chamber of Agriculture.

- Threshold for the minimum area which needs a request for an authorisation and the distance of these areas from the farm's principal place of business
- Threshold for "excessive expansion"
- Definition of "loss of viability"
- Order of priority for competing applications
- Criteria for deciding between applications of equal rank

The thresholds which give rise to structure control are determined according to an official method, stipulated in a ministerial decree, based on the average utilised agricultural area (UAA) of farms in the region. However, the region may be divided into smaller agricultural sub-regions to account for diverse local situations. The political objective, nonetheless, remains based on the local statistical situation. The SDREA will then determine where the control threshold is set, at an area of between 30% and 100% of this average. A lower percentage leads to more applications being analysed by the CDOA (this is the case in Brittany, with a threshold of 40%), whilst a higher threshold leads to fewer applications being processed by the CDOA. If we consider the SDREA currently in force in the Nord department (before the next SDREA is approved at some point in 2021), the control threshold was calculated based on the 2010 census, which was 60 hectares (ha), and was set at 100% of this average (i.e., 60 ha), whereas the thresholds vary between 79 and 124 ha in the Côte d'Or department depending on the sub-region.

As well as checking the situation of new applicants after completion of the operation (total area which will be used), the CDOAs also examine the situation of farms losing land for which an authorisation to farm is requested. Maintaining the viability of farms losing land is therefore also a criterion for deliberation, if the farm is not terminating its activity.

To this end, the SDREA can adopt definitions with varying degrees of precision of what is known as "loss of viability", i.e., the level at which a farm's functioning will be compromised, if the operation is likely to:

- Bring about loss of infrastructure, means of production, particularly high-value areas, or access routes necessary for the proper functioning of the farm.
- Bring about a significant loss of standard gross production (SGP) on the farm.

To account for the diversity of production systems, equivalences between high-added value production areas (e.g., vineyards) and/or labour-intensive areas per hectare (e.g., vegetable-growing areas) and "average area" are calculated. These equivalences are generally calculated based on accounting data from the FADN (Farm Accountancy Data Network), which allows the SGP to be determined for different types of production. However, not all types of production are included in the FADN, as some use different processing and marketing methods for the same product, which makes it difficult to determine equivalences.

The threshold for "excessive expansion" corresponds to a threshold above which expansion is considered too extensive in comparison with the average size of agricultural holdings in the region. This threshold may cause the CDOA to refuse a request for an authorisation to farm. However, in practice, expansion of a farm above the excessive expansion threshold can still be authorised, particularly where there is no competing application.

To decide among competing requests for an authorisation to farm, prioritisation rules are set with regard to the applicant's situation. These priorities may differ from one region to another, or from one period to another, but are very often classified in the following order:

1. Cases of force majeure corresponding to the following situations aimed at maintaining the farm's structure: a spouse must take over use of land as the other spouse has encountered problems which prevent them from continuing their activities, or a farmer obtains new land as compensation for agricultural area lost (either because of an urban development project or because of land takeovers by its landowner).
2. Farm establishment or progressive establishment (i.e., over a maximum of five years).
3. Farm restructuring: i.e., means of improving fragmented land to optimise agricultural activity (creating plots which fit together better, etc.) which may potentially be offset by transfer of other parcels.
4. Classic expansions, with different priorities depending on the threshold reached after authorisation.

With regard to establishment of farms, farmers setting up who receive the Young Farmers' Grant (YFG) or meet the criteria which would allow them to receive this support are generally placed at a higher priority level than those who are not eligible for this. In the case of competition between two farmers setting up on the same land, having an agricultural qualification and being enrolled in a farm establishment programme are often conditions for obtaining an authorisation, although this aspect varies in strictness in different regions. An example is that, although article L331-1 of the rural code specifies that the establishment of farm is the main objective of the SDREA, some SDREAs give priority to other reasons or they put the setting up of farms which are not eligible for the Young Farmer Grant (YFG) to the bottom of the list of priorities, whereas the rural code does not make this distinction between establishment of farm eligible for YFG and those not eligible for YFG

8.3 Narrative: How CDOAs work

8.3.1 Main principles of the CDOA

Applications for authorisations to farm are sent to the DDT responsible for managing CDOAs. The final approval of decisions made by the committees is given by the prefect, who in practice very rarely opposes their decisions. Each CDOA is composed of representatives from the different agricultural unions, the Chamber of Agriculture, the agri-food sector, agricultural financing, rural landowners, and rural councillors, with the recent addition of consumer representatives and associations accredited for environmental protection.

The file sent to the DDT by the applicant is relatively exhaustive and requires, as a minimum, prior notification of the landowner of the application. Consequently, authorisations to farm requests are, from the very beginning, part of the local social panorama involving landowners, local farmers, and other potential applicants (historical links, shared interests, feuds, etc.). As we will see, however, the CDOA's opinion can go against the initial preference of the landowner. Nonetheless, the landowner remains free to decide whether or not to sign the lease with the person who gets an authorisation, which limits the CDOA's ability to push land

use in a direction contrary to local arrangements. Upon receipt, applications for authorisations to farm are published within the municipality and on the DDT website for a minimum period of two months, in order to facilitate competition. The administration has low means to check that their decisions are well applied and respected in the long term, most ex-post checks therefore take the form of social controls by individuals involved in the decision on a local level, rather than administrative control. Based on the information contained in the applications, different procedures can be followed:

- Either the application is not subject to any type of control (for example, because the area is below the control threshold and the identity of the applicant does not require control to be carried out): the DDT therefore simply states that the operation does not require control. In theory, the application for an authorization to farm is not necessary in these situations, but in practice, some transferees still find themselves obliged to take steps to obtain a document from the administration stating that the operation is not subject to control (particularly in the context of other administrative procedures underway: loans, grant applications, etc.).
- Or the application is subject to control, but without competition, in which case the DDT presents the file 'for information only' to the committee.
- Or the application is subject to control and there are several competing applications, but the priority assessment grid of the SDREA clearly shows that one file has priority over the others (which will be refused).
- Or the application is subject to control and the competing applications are found to be on the same level of priority, which leads to discussions between CDOA members to decide between them.

The last case, which is fairly uncommon in the two departments studied, gives rise to several possibilities: either an authorisation to farm is granted to several or all applicants and the final decision is left up to the landowner (particularly in the case where there are no criteria which allow a choice to be made between the applicants); or an authorisation to farm is granted to only one of the applicants. In these cases (competing applications with the same level of priority), the administration and committee members tend to use criteria from the SDREA general guidelines: consideration of certain types of production (livestock farming or other regional sectors deemed priority, high-added value production types, organic farming, etc.), consideration of certain structure types (e.g., family farms rather than corporate farms), etc. In practice, this type of criteria will therefore only be considered when the administration arbitrates between operations of the *same* priority level (for example, two establishment projects). Due to this, applicants on the same priority level often seek to "regulate" competition on land locally, among stakeholders and before the CDOA's decision, to limit the risk of a decision being made based on this type of criteria and particularly, to gain tacit authorisation if there is no competition for the land concerned.

The reasons for the different types of refusal must be clearly explained by the prefect (generally on the basis of the CDOA's opinion) and can be contested if the applicant does not agree. These disputes are taken to the administrative court, which determines whether the refusal complies with the objectives and criteria set by the SDREA. When there is no

competition on land for which an application for authorisation has been made, excessive enlargement cannot be put forward to justify a refusal by the DDT. This aspect is of major importance to grasp the challenge that actors may have, upstream of the request made to the DDT, to ensure that no competition takes place on a given land.

8.3.2 What does the CDOA concretely control?

From a legal perspective, one of the main limits to structures' policy, regarding the number of use rights transfers which it can concretely regulate, is the growing number of corporate agricultural holdings. The owners of these structures can legally evade control by the CDOA when use rights are transferred to them in numerous cases. Not only has the number of corporate farms risen (particularly large corporate farms) in comparison with the number of individual farms, but the share of the agricultural area managed by these corporate farms has also increased.

Indeed, three different ways of transferring farmland coexist: transfer of ownership, transfer of rural leases and transfer of different types of shares in corporate farms, which the SAFER observes but can only regulate in cases where all shares (100%) in a farm holding are transferred. In the latter case, the farming corporation can hold the use rights over the land through different ways: because it owns land as part of its capital; because one of the partners owns or has tenancy of the land, and makes it available to the corporation (this situation provides an exemption from the status of tenant farming); or because the corporation has set up rural leases in its name (as a legal entity) with landowners who are not part of the farming corporation. In the Rural Code, the partner of an agricultural company who participates in agricultural work is considered as personally farming the land and is controlled as such. Only the acquisition of shares by simple investors is not subject to structures' policy. The situations controlled by the DDT in the case of share transfers therefore generally correspond to transfers of land for which an outgoing partner had leases (which they made available to the company) that they wish to transfer to an incoming partner. As these land transfers are part of a wider transfer of shares (including the transfer of the farm's capital), this is a situation where competition from other applicants is almost never observed. In all cases, there is no possibility of pre-emption by the SAFER if less than 100% of the company is transferred. Due to this, a common way of escaping the intervention of the CDOA or the SAFER is for farmers nearing retirement to set up a company, although their structure may have originally been an individual farm. In this way, the transferee(s) become part of the new company, in which the transferring farmer is temporarily a partner before leaving for retirement. The transferee(s) take(s) over the land by buying shares in the company, limiting the possibilities of competition and administrative control. This type of arrangement is fairly widespread, to a greater or lesser degree in different production systems and regions.

The increasing trend for using hired labour, which involves agricultural contractors carrying out all work on farm holdings, can also be considered as another type of use transfer via the service market when this kind of work is carried out over the long term or systematically. This kind of land use transfer also falls outside all regulation frameworks governing ownership, lease or share transfers. In certain areas of the Nord department, another phenomenon is also affecting the rationale governing transfers of land use, on a scale which is difficult to clearly assess in terms of agricultural area: sublease of farmland, particularly in potato-growing areas.

This type of production is often carried out by large, specialised farms which, to avoid pressure from pests and disease, organise crop rotation by renting land via sublease on different plots every year from other farmers. Potatoes are a product which can generate substantial margins, and so large amounts can be paid for these subleases, much higher than the rent paid by tenant farmers. However, not only is sublease forbidden by the Rural Code, but it is also an arrangement which escapes all CDOA control. Even if the structures' policy is supposed to control all forms of transfers of land use. But subleases, which are generally one-off and do not involve any negotiation with the landowner, are generally not known to the administration, unless local denunciations are made, which are rare as many farmers benefit from this practice.

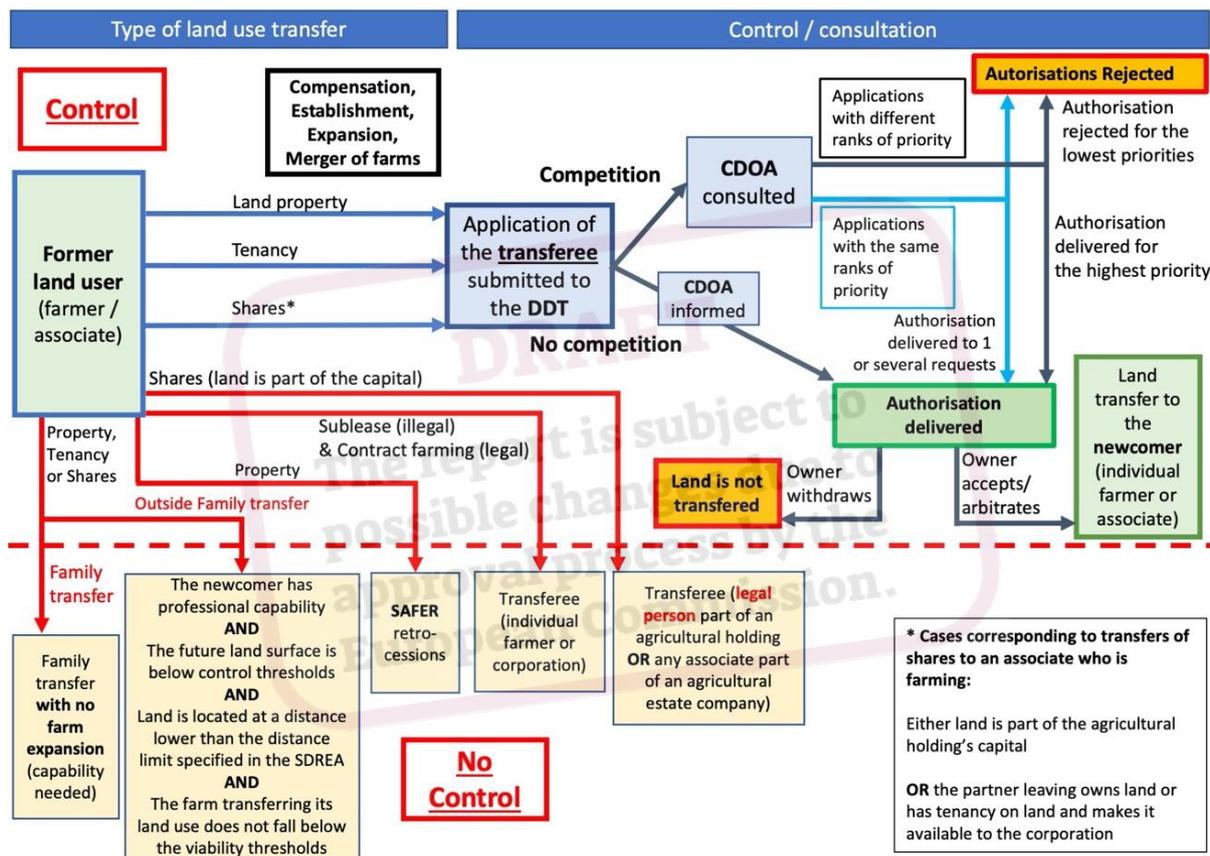


Figure 8 Cases that the CDOA controls and cases not submitted to the structures' policy

Figure 8 summarises the different cases in which controls are applied and those in which there are none. Certain operations (see Figure 8), are not subject to any type of control. This is the case for all operations concerning farms which have an area smaller than the control threshold, except if the plots concerned by the operation are located at a distance from the farm's principal place of business greater than the distance limit specified in the SDREA, if the applicant does not have the professional capability or if the farm transferring its land use falls below the viability thresholds. Consequently, most of the so-called 'atypical' establishment projects on small plots of land, made possible by high-added value product (short supply chains, on-farm processing, etc.) and/or low running costs (low input, low expenses linked to mechanisation, etc.) are not subject to structures' policy control. Since the 2006 law on

structures' policy, operations concerning the transfer of family assets (with no farm expansion) are also excluded from any control. In this latter case, however, a number of conditions are required in order not to have any control: the newcomer must have the professional capability, the parent must have owned the property or lease for at least 9 years, the purpose of the transaction must be the establishment of a new farmer or the consolidation of a farm.

8.4 Discussion on the practical effects of structures' policy and its limits

8.4.1 The different attitudes of farmers' unions towards structures' policy depending on the region

The agricultural profession's appetite for structures' policy with a high level of control (e.g., via fairly low control thresholds) and concrete ways of steering land use varies widely between regions. Similarly, the degree of alignment or antagonism between the different unions and representatives within the committee differs from one area to another. Various explanations can help to understand these situations, but the issue of predominant production systems, historically linked to regional specialisations, seems to be one of the key factors (Bernardi and Boinon, 2009). In cereal-producing areas, for example, where farms tend to be more structurally inclined towards expansion, agricultural representatives mostly tend to take a more liberal and permissive approach towards structures' policy. In contrast, in an area such as Franche-Comté in which dairy farmers involved in the Comté registered designation of origin have strong influence over local land and agricultural policies, farmers try to maintain a certain number of medium-sized structures and push for relatively strong structures' policy. In this particular case, apart from the fact that food supply chains are part of a specific economic dynamic based on the differentiation and the protection of production, the region has a history of dialogue and cooperation which seems to translate into the ways land policy is apprehended.

In addition, the other major factor which explains the relationship of the agricultural sector with structures' policy is the way the land market is structured. The predominance of land farmed by tenants, rather than by landowners, as is notably the case in northern France, places more emphasis on structures' policy in managing transfers of land use, as decisions made by the CDOA hold particular importance compared with areas where owner occupation is prevalent. This aspect might be the reason why the main union in the Nord department attempts to increase the union's sovereignty in CDOA decisions through limiting the level of details provided in the SDREA. Moreover, the financial issues surrounding transfers of land use are also particularly acute, as farmers request money to the transferee for lease transfers in the form of key money (see below, section 8.4.2), a phenomenon that further entails the union's willingness to have influence over the CDOA.

8.4.2 Social and legal regulation before and after DDT decisions

As mentioned, structures' policy comes into conflict with property rights: it can prevent leases being signed, but it is however impossible to force a landowner to sign a lease with a certain

transferee against their will. The issue of relations with landowners is therefore key. There are many different cases which may arise: the landowner may be the farmer who is transferring ownership of land (for which an authorisation to farm may also be requested) or the use of land via a lease to a new user; or the landowner may not be a farmer and the operation concerned may be a change of lessee. In all cases, many financial issues play out between the different stakeholders. If we focus on lease transfers, we can illustrate the stakes at place before and after DDT decisions as is indicated in Figure 9.

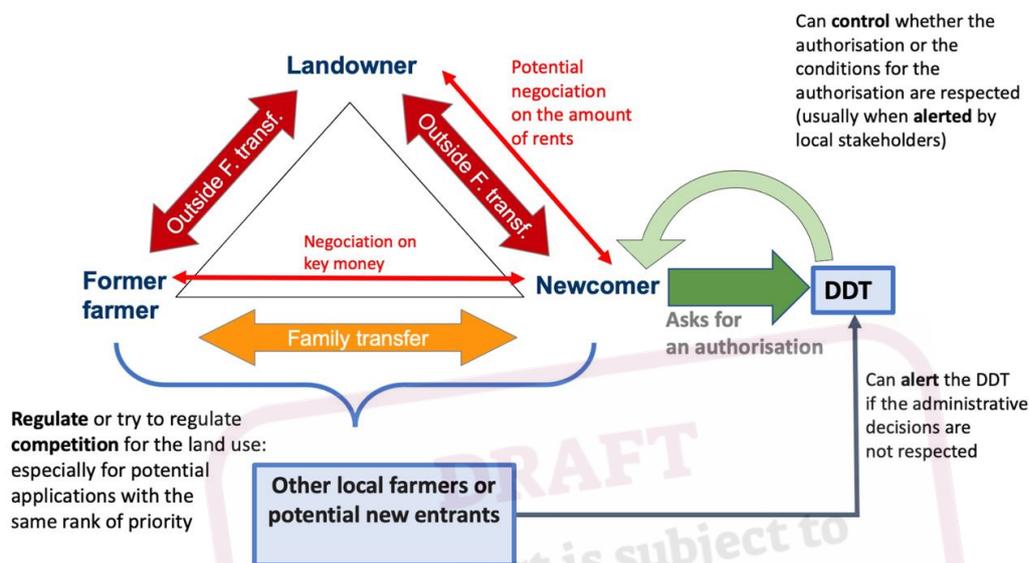


Figure 9 Interactions between stakeholders upstream and downstream of the DDT's decisions

In Figure 9, we can distinguish two cases: **family transfers**, where the landowner will not be consulted as leases are automatically transferred to the farmer's children (without needing the landowner's approval) in the frame of the tenant farming statute; and **outside family transfers**, involving negotiations among the former farmer and the newcomer and negotiations of both farmers with the landowner. The rationale of the former farmer is to look for a buyer who will perpetuate the farm, who can pay the "key money" and who will not sue the transferor for the recovery of sums paid. Indeed, key money corresponds to the negotiated payment of a fee for transfer of the land to the new lessee, even though this is forbidden by the Rural Code¹². This practice is relatively common in the Nord department, and even systematic in some areas of the department, and sometimes reaches several thousand euros per hectare. There are also some examples of this practice in the Côte d'Or department, although for lesser amounts of money.

The landowner, in the case of transfers happening outside the family, is looking for a newcomer who is able to pay the rent. In some cases, he might even negotiate the amount of the rent, even if this is not legal (as the amounts of land rents are regulated in France). In all cases, a high level of trust among the actors is required for the transfer to take place, and stakeholders might try to discourage other competitors from applying to preserve their financial stakes. The level of social regulation on competition may depend on the financial cost

¹² This offence is punishable by two years' imprisonment and a fine of 30,000 euros.

of the operation, the size of the plot or the identity of the newcomer (Piet *et al.*, 2021). All these socio-economic factors strongly influence the forms of social regulation before involvement of the CDOA (the amount concerned by financial negotiations excludes certain potential lessees, etc.) and the level of acceptance of CDOA decisions. They contribute to an increase in disputes over the CDOA's refusals, or, as expressed in some interviews, a sort of 'judicialization' of the relationships between the CDOA and applicants. They also explain the absence of competition for many expansion applications. In general, competition has become the exception rather than the rule in certain regions, in spite of the publication of applications, as arrangements are made between the parties well before the decision-making process begins.

For farmers who want to set up a farming project on smaller areas (e.g., market gardening projects) the administrative aspect does not represent an obstacle, as in most cases these applicants are not subject to structures' policy. They are, however, involved in the negotiations between landowners and potential lessees which take place ahead of CDOA decisions.

The possibility of refusing an application, even when there is no competition (particularly for excessive expansion) could potentially curb the negotiating practices surrounding lease transfers which take place before CDOA decisions. However, the trend within the administration is rather to limit the number of refusals. Indeed, the general trend for reduction of staff numbers in the services in charge of carrying out structures' policy leads to limitations in several dimensions. To avoid having to recruit staff to settle the numerous disputes, the administration may tend to limit the number of applications refused and grant authorisations to farm to several applicants (when applications are on the same priority level), leaving the landowner to make the final decision. This diminution in human resources also lead the administration to explicitly state that it wishes to see a reduction in the number of applications requiring control and to have more decisions to be made automatically without the need for discussion with the committee. A representative of the Côte d'Or CDOA also explained that during the 1980s and 1990s, CDOAs could more concretely steer land use by refusing a landowner's initial project and ensuring that the landowner allocated half the land to another tenant. Some landowners were then consulted by CDOA members to work on creating scenarios for equitable sharing of land. Carrying out these consultations requires sufficient resources for maintaining a form of "local dialogue around land sharing". As stated, this trend for reduction in human resources for structures' policy also severely limits the administration's capacity to follow up on enforcement of decisions.

8.4.3 Legislative and legal limits of structures' policy

Although some improvements have been made to the structures' policy, such as publication of applications to get an authorisation to farm on both the website of the DDT and the notice-board of the town hall, which has allowed often-unknown operations to come to light, structures' policy has lost much of its capacity to practically influence developments in farm size compared with when it was implemented in the 1960s. This is partly due to legal scope; the laws of 2005 and 2006 particularly relaxed this control. These laws raised the control threshold and removed the need for an authorisation to farm in certain cases (e.g., when reducing the number of associates in a farm, or when an associate exceeds the threshold of

50% of a farm holding's capital) and transferred others to a simple declaration procedure (operations concerning family assets). Some mechanisms were also removed, including forms of regulation such as temporary authorisations to farm, which meant that a full authorisation could be granted at a later date after checking if the project was still functioning, and conditional authorisations to farm, allowing a definitive authorisation to be granted subject to compliance with certain conditions following the decision (such as recruiting workers or transferring certain plots of land in exchange for access to others in the case of restructuring of fragmented land).

Concerning the establishment of young farmers in agriculture: Boinon (2013) underlines the ambiguity, in its potential interpretation, of the priority objective of farm setting up, which according to him "has often been an open path to circumvent the structures' policy". Indeed, a young farmer can easily set up on the farm of a neighbouring farmer and then merge this farm with the family farm by creating a farming company. The operation thus leads to the expansion of the initial farm, based on a legal situation aimed at prioritising farm setting up.

In view of the limitations mentioned concerning the structures' policy and the inability of SAFER to act on share transfer, a proposal is currently being debated in Parliament within the framework of the 'Sempastous' draft law (named after the MP tabling it), to establish administrative control of transfer of shares of an agricultural holding which rents or owns agricultural land, setting a limit on what has become an important way of bypassing structures' policy, extending administrative control to purely financial entries into the capital of agricultural holdings (i.e., entry of an associate which is not farming) and entries into the capital of purely land-based holdings (holdings which are not farming but holding land in ownership, such as GFAs¹³ for example). As the project stands, only a limited number of operations may actually be controlled in comparison with the total number of share transfers carried out. Therefore, alignment with the control levels set out in the SDREAs would seem more appropriate.

8.5 Conclusion regarding structures' policy in France

In conclusion, although structures' policy accompanied a relatively homogeneous development of farms in the 1960s by limiting excessive enlargement and, in many cases, encouraging the maintenance of medium-sized structures, its capacity to play this role today is compromised by many aspects, in particular:

- The numerous cases in which the structures' policy does not apply and the tendency to see the scope of this control diminish with successive reforms.
- The trend towards a reduction in the resources allocated to the DDT services to ensure this control, limiting the possibilities for dialogue between local stakeholders as they

¹³ GFA (Groupement Foncier Agricole) are "agricultural land groups", consisting in partners gathering money to buy and manage collectively agricultural buildings or land. They can only gather private persons (except the SAFER).

may have existed previously and severely limiting the capacity for *a posteriori* control of decisions taken by the prefect.

- The impossibility of refusing authorisations to farm when there are no competing applications in a context of strong social regulation at the upstream of DDT decisions (limiting precisely this competition).

Furthermore, in the law on the SDREA, as in their construction at regional level, the self-referential nature of the method for setting thresholds can be seen as an initial limit, as the calculation method is based on the latest set of statistics on the size of farms, the SDREA can only follow the trend for expansion of farm holdings, as they use the constantly increasing average size of farms as a reference. The issues linked to the maintenance or development of high value-added supply chains and production systems, maintaining or reinforcing agricultural employment and more virtuous from an environmental point of view, remain relatively unambitious in the structures' policy because these issues are non-mandatory and given low priority within SDREAs and are only taken into account as selection criteria in the case of competing applications with the same priority rank. Moreover, social regulation upstream of applications, partly linked to the amounts required in the context of lease transfers in certain contexts and/or to the logic of social control over land transfers in general, contributes to strongly limiting the possibility of certain applicants likely to implement projects responding to these issues to position themselves on land opportunities.

The comparative approach between two departmental situations makes it possible to grasp how the limitation of decision criteria and objectives within the SDREA can be the result of a desire to maintain a form of sovereignty of the leading farm union over the decisions taken in the CDOA, especially in a farming area such as the Nord department. In the case of the Côte d'Or department, even though the SDREA sets out more precise objectives and criteria, the representatives at the head of the largest farms do not even feel the need to take part in consultations on changes to the SDREA, given that potential farm expansion is based on legal arrangements that limit the impact of the structures' policy on the development of their farms.

In view of all these observations, however, the structures' policy appears to be a legislative framework which is far too complex in relation to the concrete effects it can have on the evolution of farm and value chains. Harmonisation of the four main forms of access to land use (purchase, rental, shares and delegation of work) within a more legible framework could help to limit the many ways in which structures policy is circumvented, while democratisation of the arrangement, opening up the governance of decision-making bodies that arbitrate on transfers of land use with balanced consideration of the points of view, would strengthen its legitimacy and applicability.

9 Territorial food plans in France: Do they facilitate access to land for new generations? (Nicole Mathieu and Blandine Veith, CNRS)

9.1 Introduction

In the 1960s, the 1960-1962 orientation laws established a strong re-foundation of French agricultural policy. One could almost say that the objective of these laws was a renewal of access to land for the young generation. New instruments were created to promote a family farm model (2 labor units) adopting modern techniques to obtain a socially correct income from their work. **Access to land is largely dealt with**, for example, the regulation on the accumulation of land (cf. SAFER) and the life-long departure indemnity encouraging farmers to retire.

Since this 'glorious' period, this orientation and the tools that were linked to it, have, undoubtedly, lost their effectiveness for reasons internal to the French agricultural sector (in reference to the power of majoritarian Unions and the so called 'co-management' policy), but above all because of the development and enlargement of the CAP, which has become the main institution regulating countries as they integrate into the EU: a policy of quotas to regulate surpluses, agri-environmental measures, etc. In France, this, more globalized vision of the agriculture functions, has led to the development of intensive farming methods and a race to expand farms and livestock. The question of food is not at the forefront, neither in 1960 when it should seem obvious, nor 20 years later, when foreign trade indicators are valued.

Faced with this transformation, which is increasingly difficult to control, and with protest movements by both agricultural and consumer activists defending a peasant production method, a 'sustainable agriculture', and marked by growing environmental and health concerns, successive Ministries of Agriculture have, on several occasions, attempted to renew their 'instruments' of political action. These efforts can be read in the changes of titles where 'sector words' that the ministry would like to reclaim appear or reappear: 'rural affairs', 'agri-food' and even 'rurality and territorial planning' (*aménagement du territoire*). Since 2017, under President E. Macron, the Ministry took the name 'Ministry of Agriculture and Food'.

In response to the question asked by this report, i.e., 'what are the policies and legal arrangements that promote access to land for new generations?', we have identified a relevant legal arrangement as is presented in the latest *Loi d'orientation agricole* (2014), which aims to renew French agricultural policy to face novel challenges (as is the case for several European countries). This arrangement is the Territorial Food Project (TFP), which aims to relocate agriculture and food in the 'territories' through supporting starting farmers, short chains or local products in schools' canteens. This policy tool is innovative as it aims to realize the needed reorientation of French agriculture towards 'alternative agriculture' by combining the concept of 'territory' (already experimented by the Territorial Farm Contract) with the emerging one of 'food' (new food system). These two terms are part of the 'new political

ideology' that leads a part of the young generation, most often without agricultural background, to implement a 'return to the land' or a 'return to the countryside'.

But once this choice has been made, there remains the question of evaluating the real scope of this new legal arrangement with regard to the objectives of access to land and generation renewal. Do the TFPs promote that new entrants start farming and the succession of young people? Do they promote access to small plots of land and to small farms that are not considered 'professional' and that are not eligible for the DJA (*Dotation Jeunes Agriculteurs* in French)? What role does the 'territory' and the territorialization of agricultural policy play in relation to the expected change? Do the TFPs differ according to the types of rural areas and urban/rural relations? Does the focus on the food system and sustainable development influence land regulation? What is its scope in rural regeneration?

These questions are answered as follows: firstly, by taking stock of the characteristics of this legal arrangement through an already abundant bibliography (academic articles and in newspapers, local and national TFP sites, etc.) and by expert opinion, all this in order to select two case studies, one in a metropolitan area, the second in an intermediate rural area around a medium-sized town; secondly, by presenting the analysis of these two case studies, which were the subject of a two-week survey (cf. appendix) and, finally, by discussing our results in response to the initial questions and attempting to propose perspectives on the future of this tool and its potential for replication.

9.2 Context for the emergence of TFPs

9.2.1 From 'producing more' to 'producing better'

Health crises (bovine spongiform encephalitis (BSE) in 1996, avian flu in 1999, foot-and-mouth disease in 2001, etc.) have raised issues of health and confidence. Environmental issues are stirring up public opinion and national decision-makers. The power of the Ministry of Agriculture has been affected, which has led it to develop new regulations with the Ministry of Health and the Ministry of the Environment (*Ministère de la Transition Écologique*).

The "Future Law for Agriculture, Food and Forestry" of October 13, 2014 defines the new orientations of the National Food Plan (NFP) through four major national priorities: social justice, food education for young people, fight against food waste, the territorial anchoring of actions and the enhancement of heritage. In this context, it has created a tool: the "Territorial Food Project" (TFP) (in French '*projets alimentaires territoriaux*' as defined in article L.1-III *Code rural et de la pêche maritime* [Act on rural areas and sea fishing]), which meets both the objectives of the NFP and those of the Regional Plan for Sustainable Agriculture (PRAD). **The aim is to relocate agriculture and food in the territories by supporting starting farmers, short chains and local products.** The TFPs must be developed collectively at the initiative of territorial actors (communities, agricultural and food companies, craftsmen, citizens, etc.). Their main purpose being food, they include health, food autonomy and nature protection concerns. Above all, it generates an **integrated and systemic political vision of food**. As a result, local authorities intervene on the agricultural land preservation, the urbanization limitation, education on food hygiene, the orientation of production towards market gardening and organic farming, and the reconsideration of supply chains through short chains.

to deduce an action plan implemented under the responsibility of a project leader. **Adaptation to the territory is based on these two aspects: diagnosis and partnership.** To facilitate the employment of a project manager and the launch of his activities, the initial budget is set at 70 000 €, half of which is financed by the State. Then, the actions can be financed by the answer to national or European calls for projects or by private funds. The project leader can be an elected local authority (municipality, department or inter-municipality) but also an association of the civil society, an agriculture chamber, a territory of Country (example: a regional natural park). In December 2020, there were 191 TFPs, 110 of which were led by a community of communes, 7 by a municipality and 11 by a department (RnPAT, 2021b). It is most often a local authority, which has the legitimacy of being elected and of having human and logistical resources. They are the most likely getting involved, even if the food field, and even more the agriculture field, are not their main areas of competence.

To answer the questions asked in the introduction, we must therefore conduct a field investigation. We need to understand why a territory engages in the creation of a TFP and to what extent the ambitions of this policy serve those of access to land. Because it is systemic and territorial, does this policy contribute to the reconciliation of non-farmers and farmers? Does it make it possible to link policies together by taking agricultural policy out of its "sectoral" mode of operation and linking it, through food, to urban and rural development policies?

9.3 Narrative of the case

9.3.1 Methodology

As TFPs are relatively new, we turned to several types of sources: e.g., professionals, elected officials, researchers, and we gathered information from several types of sources (interviews with actors experiencing this change, official documents, articles by researchers and experts). As it is a territorialization of national public policy, we rely on both national and local sources. We investigated on site in Redon and remotely for Toulouse and interviewed experts online (Box 6).

The literature study included national documents concerning the national context (including, Guillemin *et al.*, 2018; Darrot *et al.*, 2019; RnPAT, 2021a), but also diagnostic or survey reports on each of the territories as well as the writings of the two projects. There are a number of articles published in scientific journals (such as, Maréchal *et al.*, 2019; Chiffolleau *et al.*, 2020; Gasselin *et al.*, 2020; Perrin and Baysse-Lainé, 2020), but most research is work in progress.

A total of 13 interviews have been conducted:

- In both regions: the elected official responsible for local policy
- In both regions: the administrative official(s) responsible for the implementation of TFP
- In Redon, 3 representatives of the 'consortium' and the regional person in charge of Terre de Liens
- In Toulouse, 2 experts who participated in the preliminary studies, as well as 2 researchers.

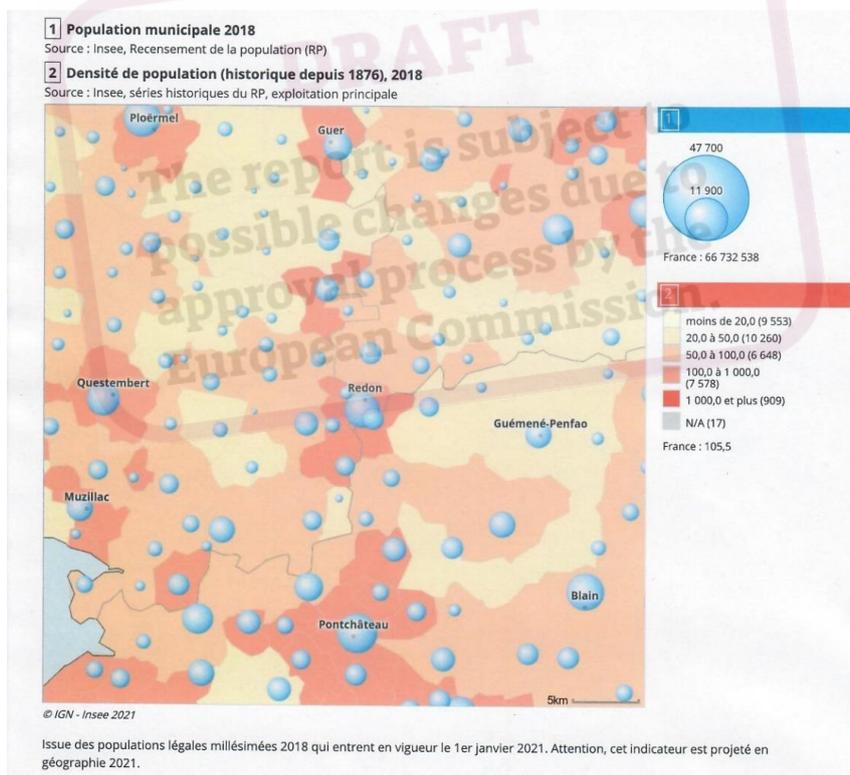
Box 6 Methodology

National sources, including the national network of TFPs, provided us with evidence for comparison across various TFPs of which two have been selected for further investigation. The

hypothesis is that what influences the local concretization of the TFP depends on the configuration of 'city-countryside relations' and the place of the peasant agriculture question, of the solidarity countryside, of proximity agriculture in the region. The Redon agglomeration, with a small town in the middle of a rural area, has a long-standing and important relationship of proximity and interaction. But what can be said about the city-countryside relationship when the territory is highly urbanized and farmers represent a very small minority? It appears from our exploratory study that the Toulouse agglomeration is attempting to provide an original response by supplementing its TFP with a reciprocity contract with a neighbouring territory.

9.3.2 The TFP of the Redon agglomeration

Located in the department of Morbihan in Brittany, the Redon agglomeration is made up of villages around a small town of 9000 inhabitants (Figure 11). It is a region where agricultural movements, unions and associations have been very active since the 1970s. Some of the elected officials of the community are farmers and militate for a family and sustainable agriculture. The NFP national guidelines provide them with a reason to engage the community in a proactive action.



Source: IGN-Insee, <https://statistiques-locales.insee.fr/>

Figure 11 Population density around Redon (Brittany-France) in 2018

In 2015, the community acquired a certified organic farm in order to install 2 horticulturalists, a beekeeper and to create an agricultural 'test area', which allows newcomers to test their activity for 3 years on technical, economic and administrative levels, and to prepare themselves to become an independent farmer while benefiting from support and adapted

equipment. It also supports producers' and consumers' associations and environmental actions. In 2016, the inter-municipality brought together some twenty local organizations to write a TFP. This participatory method brings together producers, processors, distributors, local authorities and consumers whose interests are often different: the aim is to seek convergence and to put contradictions into perspective. These meetings lead to the creation of a local intersectoral body, the 'Territorial Food Governance', which steers the implementation of the TFP and evaluates its actions. In September 2017, the commission validated the TFP Charter composed of 3 major approaches:

- Agriculture on a human scale, preserving natural resources and ensuring the respect of men and women.
- Local, healthy, quality food products, accessible to all and vectors of health.
- A commitment of all in a partnership approach of sustainable development.

Each approach is broken down into 16 objectives that serve as the basis for the action plan. In 2020, several actions have been implemented:

- Support for collective catering: setting up a network of cooks, training in the drafting of public procurement contracts, experimentation with group purchases, etc.
- Implementation of the 'Positive Food Challenge' (assistance to 50 families during 6 months for organic and local meals without spending more than for conventional meals).
- Raising awareness among children in 10 schools about the role of natural resources in food production, the impact of transport, seasonality, food waste.

Thus, the old participative and militant dynamics of the territory were used and organized by the TFP method and hopes were born to be able to influence the agricultural policy in its local effects. Actors who were previously ignored participate in local choices, including, consumers, farmers, shopkeepers and cooks.

Nevertheless, some criticize the slowness of the process and the compromises made with the powerful agri-business powers, and point out the powerlessness of the TFP in front of land speculation. This is why they have created a 'consortium', a working group in which the representative of the agglomeration participates, to define a more ambitious program. They warn for the exhaustion of farmers who are currently being encouraged to produce organically, to process and to sell. They call for long-term support, logistical means for short chains, and income support. The consortium proposes to mobilize the actors, to put them in network, to initiate research-action, to disseminate their needs to professional high schools and training organizations, to work on the professional insertion. It plays the role of activist spur in front of the necessarily heavier and more negotiating organization of the TFP governance.

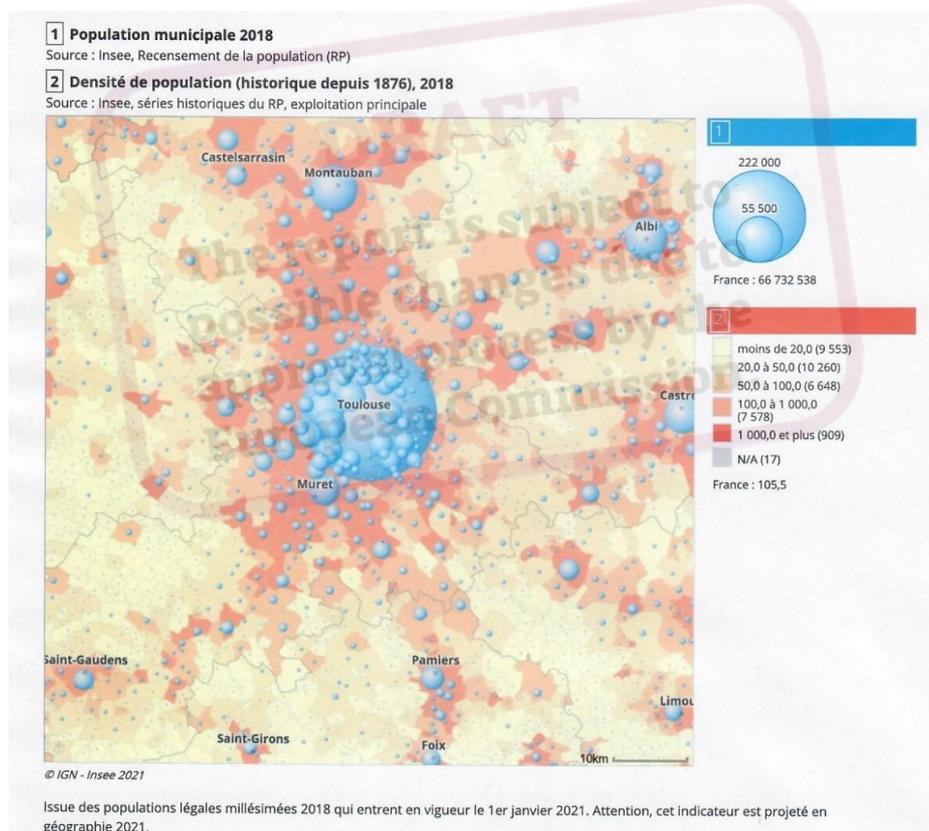
Although the territory as a potential subsistence agriculture, it is the mobilization of professionals to maintain family farming that leads to a TFP. Although the TFP has low ambitions in terms of land, it is through its support for a human-sized agrobiography and a direct relationship between producers and consumers that family structures are favored. Thus, we

studied the 3 members of a 65 ha GAEC producing all the feed for 50 dairy cows whose milk is processed and sold on site and which supports 3 households and one employee.

9.3.3 The TFP of the metropolis of Toulouse

Toulouse has a more urban influences (Figure 12). In the early 2000s, farmers, represented by the Agriculture Chamber, were concerned about the rapid urbanization of land and in 2004 participated in a working group with the metropolis to develop a peri-urban agricultural policy. Between 2009 and 2012 they developed an agricultural charter that set 5 major challenges:

- to act on land and property;
- to affirm agriculture as an economic and food activity for the inhabitants (and not only as a producer for export);
- to give priority to market gardening, local products and organic products;
- to diversify production (essentially cereal production);
- to develop quality and innovative approaches.



Source: IGN-Insee site, <https://statistiques-locales.insee.fr/>

Figure 12 Population density around Toulouse in 2018

One of the fundamentals of this strategic vision is the inversion of the view on territories: **Instead of considering urban sprawl as inevitable and a priority, the attention is first focused on agricultural land to think about how land is used.**

"It is necessary to control urban development through the development of natural and agricultural capital" (Terre en Villes, 2017, 2).

In 2017 the socio-economic diagnosis of the PLUi-H (Intercommunity Local Urbanism Plan - Habitat) produces a precise location of cultivated areas (Toulouse Métropole, 2019). The objective is to ascertain short distances to necessary services and to move towards food self-sufficiency. Currently only 33% of the food demand is covered by the territory (Solagro, 2016, 8; Terre en Villes, 2017). The analyses are driving the development of a TFP to be signed in 2018. It provides for the stabilization of the UAA and the development of 1,000 ha of urban agriculture areas, the creation of a 135 ha "green belt" for market gardening, and a natural area with an educational farm. These land objectives are achievable thanks to the mobilization of the land and urban planning departments of the Metropolis to ensure that the TFP is consistent with urban planning documents. The help of Terre de liens is requested to put together the candidates files for new farmers so that the SAFER can trust them when allocating land that has become free. It is also asked to think about a long-term land strategy.

Despite its efforts, the metropolis (which expects to have 950,000 inhabitants in 2050) will never be self-sufficient from a food point of view, since it has only 11,000 ha of UAA left. This is why the TFP is associated with a "city-countryside reciprocity contract" (Gouvernement.fr, 2015) with a very rural neighboring territory, the Pays des portes de Gascogne (an inter-municipal organisation of predominantly rural municipalities). The latter encourages its farmers to develop their production towards organic market gardening to meet the needs of the Metropolis, which provides services in exchange (including, health, training, waste treatment, logistics of short chains, guaranteed supply of collective catering). One of the most important means to develop cooperation between the two territories is the national market (MIN) managed by the Metropolis, which is the main operator for supplying the local population.

Although **the direct impacts of this strategy are relatively small, the medium term indirect impacts can be significant** (Box 7). The TFP is therefore one of the tools of a local political body that is aware of food risks and is preparing to face a strong demographic expansion. The Metropolis plays a leading role and relies on influential partners in the field of marketing and short chains. To compensate for its agricultural weakness, it has built a positive cooperation with a producing territory. The city-countryside cooperation takes the form of a relationship between farmers and consumers. In the case of the Toulouse metropolis, the TFP becomes the means by which an urbanized area where only a few cereal crops remain intervenes in the subsistence farming of the neighboring rural territory.

Direct impacts:

- 10,840 hectare classified as protected agricultural land,
- 39 organic farms on 1,380 hectare (12.7% of the area versus a national average of 8.5%).
- 13 new market gardeners
- 220 hectare are organically cultivated at the Toulouse Agricultural Management (*Régie Agricole de la Ville de Toulouse*): field crops and vineyards + orchards open to residents.

Medium-term indirect impacts:

- The neighboring agricultural territory that signs the reciprocity contract can engage in an ecological transition by being assured of having outlets. Farmers in the metropolitan area are also encouraged to develop their production and are certain to keep their land. The decrease of agricultural land is stopped by the land and housing policy.
- The demand for food is encouraged to evolve towards organic products and animal proteins, both by the menus of collective catering and by educational actions.
- The access of consumers to this type of food is made easy by the organization of short food chains

Box 7 Direct versus indirect impacts

9.4 Discussion

9.4.1 Contribution of TFPs as a legal arrangement to access to land and generational renewal

While the SAFERs and CDOAs have their limits in the current agricultural land market, because of the many ways in which the rules are circumvented, the cases studied show that the local level has certain possibilities for action in favour of maintaining land in agriculture and farmers' establishment.

These actions are no longer exclusively based on national laws and constraints aimed directly at the land market, but on the creation of a new balance of power between a 'general interest' organized around the food issue and the functioning of the land market as it exists in the territory. This general interest is legitimized by the State, which favors local initiatives, which provides advocacy through its orientations, and which helps financially to start the process. It uses a **method of seeking agreement** between the representatives of local authorities, and a **local contract allows the implementation of the orientations**. It balances the industrial and land lobbies by the presence of new actors carried by the public opinion and by the alliance of several fields (i.e., health, environment, town planning). It convinces by creating experimental examples. Everything happens as if the national and imperious direct action gave way to a process using the complexity of the agri-food system to make it evolve. While this system is blocked at the national level, it is possible to organize it in a new way at the local level, notably by facilitating coalitions of actors who were previously dispersed and without means of action. In Toulouse, where the risk of food insecurity is the greatest, land-related actions are the clearest. In Redon, it is the place given to civil society and activism that allows for awareness in a less-degraded context.

The result in the two territories studied (Table 4), although different, is the promotion of small or medium-sized areas for crops with high local added value that allow for a decent

agricultural income thanks to short chains, income from public deliveries and the promotion of organic products. Land and profitability are accessible at lower cost.

Theme objectives	National level	Toulouse Metropolis TFP	Redon agglomeration TFP
Land	-maintenance of agricultural land: SAFER + CDOA + SDRE -preservation of the environment: zoning -housing/urbanism: a full stop on artificialization	- Land reserve (less than 200 ha) -SCOT and PLUi-H: protected areas (200ha) - relies on Terre de liens to set up new farm start-ups with the SAFER	-Experimental farm for new entrants in farming -organic food
Agricultural regeneration	-rural newcomers -rural/urban migration balance: relocation of services + mobility + telework	-Retention of farmers in the neighbouring rural territory (reciprocity contract) -setting up of market gardening on part of the land reserve: 4 -maintenance of 8 farms	-2 new market gardeners and a beekeeper
Farming activity	-conversion of existing farms (to increase income); -new farmers: CDOA and SDREA	-conversion (organic + short chains) encouraged in the PPG: 39 farms in conversion (12% of UAA) + 13 in the metropolis -Little direct influence on new farmers	-Organizing local channels for collective food and individuals
Rural life	health, education, trade, jobs, culture, liveliness, territorial equality	-with the PPG in the reciprocity contract (3 axes implemented out of the 7 planned)	-the consortium wants to maintain a family agriculture
Economy and food		-TFP and MIN and reciprocity contract - food distribution to precarious urban dwellers	-TFP : educational action

Table 4 The 2 TFPs in a national context

9.4.2 Can TFPs be transferred to other national contexts? What are the conditions for their effectiveness?

Firstly, TFPs imply and generate important changes in political thinking in order to value an agroecological and human-sized production mode.

In the Redon agglomeration, political awareness is carried by motivated activists and elected officials and comes up against the established powers and speculators. The activists are tired of running up against a kind of "glass ceiling" of what is tolerable by the agri-food industry: a few short chains reserved for conscious consumers. **The TFP gives them an opportunity to better defend their vision of the agricultural and rural world by relying on arguments related to food autonomy, environment and health. It is by going beyond the strictly agricultural "framework" that they find points of support supported by the populations and by national legislations** in order to change the balance of power.

In Toulouse, it took ten years of warnings from farmers in the area for the city to realize that farmland was disappearing. It was then a diagnosis of food autonomy that triggered the

decision to develop an action plan to restore a market garden belt of 135 ha and a supply circuit from a neighbouring agricultural territory. **The problems of urban development lead the community to a voluntary commitment to food production methods and to the preservation of agricultural land, even if it is outside its own jurisdiction.**

What is observed in these two types of territories is that the diversity of possible interventions within the TFP allows for actions in favour of agricultural land: food is no longer the privileged domain of agri-food professionals, it concerns the entire population and an important part of economic dynamism. Agricultural land is not only to be preserved for family farming, it is also precious to fight against soil sealing, to maintain biodiversity, to allow young people to carry out their projects, to improve the carbon balance and food autonomy. It is a general interest issue that makes agricultural policy more complex and closer to the representations of the individuals who live in the French "territories".

The last few decades have been devoted to the race towards enlargement, thought to be the main factor of economic soundness, profitability and viability, both in industry and in agriculture. However, the conclusions of the dialogues, diagnoses and reflections carried out in preparation for the TFP tend to call this postulate into question. Are we in the process of changing our criteria in favour of a company size that favours employment and cultivation methods that require more labour?

Secondly, TFPs help to overcome the usual professional and economic conflicts by linking the role of farmers in the territory to issues that concern many actors. One of the keys to the innovative function of TFPs is the building of new coalitions to access decision-making in order to balance the weight of lobbies. The mixing of new actors is important, including consumers, environmental associations and peasant farming movements. The goal is to obtain an acceptable arrangement that gives development possibilities to the two levers of land change: short chains and organic farming. Short chains are the most promising factor for human-scale agriculture. Indeed, organic agriculture can be produced industrially on large farms, therefore cannot prevent the concentration of land alone. On the other hand, local sales allow a better family income. The responsibility for finding an agreement between these interests is given to the local level. There can therefore be several types of arrangement depending on the place and the power relations that are expressed there. The effectiveness of the TFPs lies in this capacity to organize the interests involved. In Toulouse, a powerful metropolis has the capacity to modify marketing channels, to reorganize the sectors so that they serve the local population and not the raw material markets. In Redon, it is above all the vitality of the local agricultural fabric that can obtain results.

Thirdly, TFPs mobilize various local government competencies to act on land. The partnership approach gives local authorities the role of 'designer', of conductor. And it is at the local level that previously marginalized actors (consumers, farmers, craftsmen, shopkeepers, etc.) can participate. This is also where we can try to encourage inter-professional agreements based on concrete actions, which is difficult at the national level.

The issue of food autonomy and ecological transition quickly becomes apparent during the reflections and diagnoses: they are mandatory and make the changes and needs visible. The field competences of local authority take into account what was underestimated until then

and their sectoral policies function as relays between food and ecological issues and agricultural land: the objectives of urban planning, housing, school canteens, supply, carbon footprint, etc. have a retroactive effect on agricultural land. Thus, within local governance, it is no longer only the elected official in charge of food that is concerned, but several elected officials and several professions that contribute to the territorial "system" that is being built, a system that **integrates the land and its uses as an important factor of the general interest.**

This positions agricultural land as a common good whose value does not depend on a market dominated by urban pressure but on its capacity to provide functions that the inhabitants need. Access to local food and the preservation of biodiversity and climate are functions that Toulouse considers to be essential to urban sprawl. Urban planning and housing on the one hand, and food production on the other, are the two sides of the same resource: the soil. The TFP allows local authorities to treat them in relation to each other. The municipalities are committed to this logic with the help of the State to begin with (35 to 40,000 €), then by modifying the allocation of some of their credits, and finally by using national or European calls for projects: the TFP label has, for the investors, an image of seriousness and makes it easier to access the funds of the post-Covid stimulus plan.

9.5 Conclusion

Soil is threatened by various pressures and risks. Its uses as agricultural land are closely linked to choices of allocation, production practices and the content of property rights. Demographic, economic and ecological changes place it at the center of important issues. The national land policies conducted until recently sought to act directly on the market for sales and the establishment of new farmers by laws and regulations. Their effects are limited by circumventions and speculation. TFPs appear to be an attempt to act in a systemic and territorialized manner by activating a system of local actors and mobilizing multidimensional levers of action. They do not lead to regulation (which is why an association can carry out a TFP) but to criteria of choice concerning the decisions that a local authority can take according to the needs of the territory. Nowadays, these needs lead to favoring uses intended for healthy and local food, and consequently they go in the direction of allocating agricultural land to farmers in agrobiological, practicing artisanal transformation and direct sales, on relatively small farm areas.

In conclusion, we observe that the TFPs induce important changes and that they spread throughout the territory, taking different forms depending on local diagnoses. They do not **directly** respond to the needs of access to land for the younger generations, but only in a marginal way. On the other hand, they actively create **favourable conditions** for this access:

- Despite the strength of private property rights, we can observe the mobilization of land by the community in the name of the general interest, whether it be food, environmental or heritage.
- The contractual dimension between territories (Toulouse) or within the same territory (Redon) secures production methods that do not require significant investments but rather labour (organic and short chains). The profitability of a starting farmer is accessible to newcomers on small farm areas.

- The integration of new actors in local governance coalitions gives a voice to innovators who can rely on consumer demand.

In light of the powerful interests at stake in access to land for the younger generations, we believe that the legal arrangement of TFPs can have an essential role in a process towards a genuine renewal of the way land issues are perceived and managed.

DRAFT

The report is subject to possible changes due to approval process by the European Commission.

10 Discussion and Conclusion

In all case studies the context provides considerable challenges to access to land for new entrants. These challenges, as already have been recognised by earlier reports in the RURALIZATION project on access to land (Korthals Altes, 2021; Korthals Altes and de Wolff, 2021; Loveluck *et al.*, 2021) or other matters (Kinsella *et al.*, 2021), reflect the situation that new generations are usually not the most powerful actors facing market competition or political and institutional processes led by national and regional elites. Furthermore, agriculture land is under pressure for transformation towards more profitable, that is, urban, uses. Next to a direct effect, there is also an indirect effect of landholders who are not willing to transfer the land to new owners for an agricultural land price as they anticipate, irrespective of the formal current land use designation, on a more profitable use in the future.

Here it emerges that land governance is not the most dynamic context of governance. Land is durable by nature and systems of land governance reflect this durability. An extreme example is that the golden crown is still the standard for soil fertility in Hungary, although the golden crown lost its role as monetary standard back in 1914 (Flandreau and Komlos, 2002). This durability can also be seen in the working of policy tools and instruments. Many governance instruments are based on guiding a moderate process of scale enlargement in agriculture; a process which has taken place in almost all agricultural contexts in the EU throughout many decades. Every new generation of farmers is much smaller than the previous one. However, policy aims are shifting. There are currently novel challenges for agriculture and rural areas as is indicated in the Green Deal (EC, 2019) and the European Commission's Vision for rural areas (EC, 2021). Policies, including the EU's own CAP (Pe'er *et al.*, 2020), are slow to adopt to these novel challenges

Land tools are generally not yet geared towards facilitating these new challenges, especially not in achieving the results timely. It is so essential that new methods will be developed. Here there is a tension between many different interests. These interests include issues like the protection of the position of local elites who though the accumulation of land may ensure a durable income, secondly, the freedoms of the single market, which do not only allow people, including new entrants into farming, to establish themselves throughout the single market, but also ensure a free flow of capital through EU's land markets allowing the accumulation of land by those who have access to these capital markets, thirdly, the position of family farms in this context, the need of new generations and the issue of generational renewal of rural areas and grand challenges including addressing climate change and biodiversity loss. In this complex web of interests the position of new entrants into farming is sometimes used as argument for policies that eventually have been beneficial to promote other interests. The case studies in Poland, Hungary and Romania show each in their own ways a difference between the rhetoric of protection of farming communities and reality of farmland concentration. Here, the Polish case seems to be evaluated more positively than the Hungarian and Romanian counterparts. Comparatively a few aspects may contribute to this:

- The starting point has been different as in Poland land of small landowners has not been nationalised during communist times and so privatisation happened to a much smaller extent, there was also a clear ownership situation of the land as landownership

has been passed through the generations of family farms throughout communist rule. This involved that holders of land rights were the people working on the land itself, which was not always the case in countries where land has been nationalised. Over decades of communist rule and policies of industrialisation a gap has been developed between those with rights on the land based on previous ownership (and who for a part lived in the city as workers in industry, public sector, etc.) and those who worked on the land in the rural communities, that is, workers in state farms who were sometimes descendants of landless farmers, and had consequently no rights based on previous ownership (Sabates-Wheeler, 2002). The Polish case so was more favourable for developing a structure of family farms, as this structure has never been dissolved.

- The quality of government in Poland is reviewed more positively than in Romania, which includes the activities of the KOWR in Poland, the agency responsible for exercising the powers in the law. The solution to this in Romania has been to build a bureaucracy with higher fines for those who do not follow the rules, which, as the case study shows, has impacted new entrants willing to follow the rules. The question is whether this has the same structuring effect on actors who may opt for a 'special position' allowing them to bend the rules.
- To the negative side, it may be noted that in many cases of farmland protection new entrants into farming may not qualify as potential new landholders due to the stringency of the act. Furthermore, it is reported that actors who aim to buy land for other purposes may find a way to do so. So, it may be necessary to review and renew these policies in order to assure that policy aims are being assured. Experience in other countries has learned that loopholes in the way tend to erode the effectiveness of the entire law over time.

The issue that new entrants into farming or rural newcomers to a region aiming to provide a contribution to the community starting farming there, may not qualify for access to land by having such regulations that aim to protect farmland for 'real farmers' who are locally embedded is also a point for discussion mentioned in Romania (section 5.4). The situation that exceptions can be used as loopholes is known in Poland (section 3.4) and France (section 8.4.3). It is complex to draft objective and transparent rules that make these differences clear.

In all cases in which protection of real farmers is the aim of specific land tools, the loopholes in the regulation may eventually have the effect that players following the book, i.e., traditional family farms, face more restrictive regulation than commercial-farming enterprises who are evading rule making. The German case study shows that non-agricultural capital investors use share deals to evade regulations. This practice has also been seen in the country reports presented in the report on national laws and policies (Korthals Altes and de Wolff, 2021), and is reflected by the study on land markets and landholdings (Korthals Altes, 2021) in which it is shown that the French system of pre-emptions is being evaded by using a larger share of shareholdings in farms. By only regulating transactions in family farms and not in commodified farms with shareholdings, a transfer from family farming towards company farming is stimulated. The draft bill in Thuringia proposes to regulate deals with shares more stringently, which may provide a way to regulate the commodification of land to enable to promote generational renewal by facilitating access to land for new generations.

This need for renewal of rural land governance can also be seen in the French cases. The agricultural system to protect farmers and farmland which was set up decades ago is losing relevance as it is eroded by using possibilities to circumvent the law. Solutions can both come from within (as the chapter on CDOA shows), but also from outside the system by developing alternative ways of addressing food production. Such a system addresses people that are willing to organise themselves around the theme of food production, but such a policy does not provide an answer to genuine land speculation (section 9.3.2). So, on the one hand, it helps to form territorial and organise different institutions, but, on the other hand, it cannot replace direct land governance instruments.

In the French case on structures 'policies (Chapter 8) is a case in-point. Policies drawn-up to provide solutions for problems in the 1960s, such as, to limit excessive farm enlargements, are eroded today by, firstly, a movement of farm structures towards legal forms in which the policies do not apply, secondly, a reduction of government resources to manage the system and, thirdly, by some limits in the system of authorisations themselves. Notwithstanding these issues, regional differences in application can be witnessed, showing that within the system better contexts of application (using more precise criteria) are possible, which in practice may mean that improvement of the system itself may be a feasible solution, which involves more than a few local adaptations. After all, rural society has changed over the past 60 years, which includes the development of different types of landholders and societal challenges. The changing societal context involves that legitimacy is in need of higher levels of democratisation and transparency; the instruments may develop towards the needs of new generations and the current challenges of rural development.

The issue of high prices based on non-agricultural land uses is most clear from the Flanders case context in which ample re-use of agricultural properties for non-agricultural uses results in prices unaffordable to farmers. Here a mechanism has developed in which farmers, aiming to invest in renewal of farm buildings, sell their farm buildings to a non-farmer for an urban price and re-invest this money in new premises on a greenfield location in the agricultural zone. Next to this issue that in this way farmland is lost by building of new farm buildings, the challenge is currently that, due to the recurrent urban sprawl in the area, it is very difficult to get environmental permits to develop new productive farm buildings in the agricultural zone as non-farm users may successfully object against farm activities next to their homes. There are potential solutions to this issue, which range from limiting the re-use of agricultural buildings, better enforcement of these rules, making a difference in environmental regulations between normal homes and houses in the agricultural zone reserved for farmers who have the benefit of living close to their activities, which means that other dwellers in the houses must also accept higher levels of farm related environmental stress, and, finally by limiting construction in the agricultural zone to specific building blocks at current farms. After all, the number of farms is in a 'steep decline' (EUROSTAT, 2020a, 18) in the EU. So, there is no need for new locations to develop farm buildings, and farmland can be saved by reconstruction on current sites. These kinds of solutions, probably work best as they are employed in a concerted way.

Although the Flemish case was focused on the unsealing of land, it became clear that putting a halt on current process of the sealing of land is the most effective way to do so. A programming approach, can, however, be helpful to mobilize local communities and may help

to focus the opinion on the quality of green areas and joint initiatives to support these. Furthermore, the case showed that unsealing of road networks was a more promising approach as many roads are owned by governments and that maintenance costs can be cut if roads are narrowed or are downgraded to tracks for the use by slow traffic, including specific use for agriculture and forestry.

In other contexts, there have been measures to prevent that urban land prices make rural land unavailable to farmers, as is in the German case where there are rules in place that prevent government parties to sell agricultural land for a level far above agricultural land price. These measures have been upheld, in a state aid case, by the European Court of Justice (ECJ, 2015; Giraud and Petit, 2016) in a relation of the sale of agricultural land by the BVVG.

Overall, it seems to be that novel land tools are needed for the new context and new challenges rural areas face. Here it seems that these new tools need to be found in a combination of measures that help to organise new coalitions, visioning and programming new projects and ways of working in the region. However, such novel ways of working are in need of a backed up by instruments of planning and governance of land as next to the parties united in a coalition there will be parties that may aim to pursue other solutions using rent seeking approaches. Furthermore, new entrants and rural newcomers are often no part of traditional coalitions and it is beneficial for them as there are ways open to them as well. In this line it is relevant to point out to the province of Zeeland (Chapter 7) in which a land bank is combined with voluntary land exchanges to implement a vision for the region. Combining own land of the province with land from private landowners ascertains that both public and private aims are promoted, which may help to use it as part of the implementation of a common territorial vision.

Some final points of discussion based on the study include the following:

Land regulations that shield land from international competition without measures to prevent accumulation by national landowners do not result in access to land for new farmers. After all, there is one capital market in the EU and national companies can be land holders using international capital to finance it. This may result in a situation in which powerful national actors accumulate land. Moreover, next to legal ownership, there are other ways to have an economic state in land values. These powerful national actors may have also relationships with ruling political class. Land accumulation was not halted during the transition period of new member states. The more focused approach to link land tools directly to public aims may result in better effects. However, it is not only legislation that make a difference, it is also the context of application of land tools that may ensure that instruments may have a positive effect on rural development.

Privatisation of land using auctions result in that the economically most powerful actors get the land; these are not the new entrants. Even within the agricultural sector the marginal costs and benefits of buying an extra hectare of land, especially as CAP decoupled payments are allocated per hectare, exceed that of a setting up a farm from scratch.

Pre-emption regulations are a way to reserve land for local actors or new generations of farmers. Parties may however find ways to get around it and if so, the measure may lose its

relevance or even may result in a strong commodification of the land if transfer of shares in land is not affected by the pre-emption.

It is therefore essential to review policies regularly to prevent that evading manoeuvres become standard ways of working in the land market. One way to do so is to limit the application of these instruments in time and place, based on specific policy assessment of a specific situation, but not in types of land holdings (so, direct and indirect holdings) it addresses. For this it is necessary to develop policies that fit to a specific territorial setting; the Territorial Food Projects are examples of such a territorial policy. Although there are linkages with actors operating in the land market supporting the programmes, these policies are not yet fully linked to land policy tools. Combining these two kinds of instruments may potentially result in more effective policy tools and instruments, especially if there is an alignment resulting in extra means for intervention. Programming instruments result in territorial visions and programmes for action, specific land policy tools can be used as instruments for action in the land market as part of a portfolio of actions taken by the different agents supporting the territorial programmes. For new farmers, such a combination of policy tools, may only provide a solution if the issue of access to land for new generations has a prominent position on the policy agenda, which is, as the review of legal and policy arrangements (Korthals Altes and de Wolff, 2021) has shown, very rarely the case.

Development of policy tools is, especially when they relate to land and property ownership, a complex and lengthy undertaking. More short time effects can be expected to result from ways of using and combining different policy instruments, which results may, however, not be enough to meet timely the challenges as put forward in the Green Deal (EC, 2019) and the European Commission's Vision for rural areas (EC, 2021).

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