



**Access to Land and Politics of Scale in Land Ownership and Management:
Potential Implications for Property Rights and Free Markets, Agricultural Policy and the
Rural Economy in Europe**

Executive Summary, February 2020

Since 1989, a period of change unprecedented in eastern Europe since 1945 has combined with globalisation (to which the Communist bloc had in large measure been the major obstacle) and a major shift in the economies of scale in farming. Not only has this proved challenging to manage, but it has often acted as a catalyst for latent insecurities in the countryside, where the problems of small farms and new entrants to farming are on a significantly different scale to those of the past.

At the same time, restitution and privatisation policies, themselves often implemented only on a restricted scale, have left large areas of land under state control or management, which have then become the subject of policies and decisions whose even-handedness and transparency is frequently called into question.

In reaction, a public debate, often conducted in emotive terms, has begun on a politics of scale, typically using ill-defined umbrella phrases such as 'land grabbing', which calls into question both the shape of future Agricultural Policy and the functioning of markets (and particularly the European Union Internal Market). This debate, which is loudest in the new Member States, who undertook to privatise state assets and open markets over varying transition periods in their Treaties of Accession to the European Union, has nevertheless sought to develop arguments based on discrete situations in western Europe and, in some cases (notably France), intervention policies based on the introduction of pre-emption rights.

It is currently possible to discern two trends, the emergence in some new Member States of state reserves of agricultural land which then become the subject of political demands and favours, and a politics of micro-agriculture which is pursued in preference to diversification of the rural economy and can be used in some Member States to shield the state reserve. At a fundamental level, this calls into question the intention, and perhaps even the capacity, of some new Member States to complete the process of transition.

Yet there is a serious danger that the problems of today are being addressed in the context of the world of yesterday, whereas the need is to develop a vibrant, sustainable and resilient rural economy in which the actors of the past will still have a valid, and validating, role in the future.

Problems of smaller farms are a function of changing economies of scale, the need either to expand the size of the farm or find other ways to spread costs, and the need to reduce GHG emissions from livestock.

Moreover, there is no longer a simple choice between ownership (perhaps financed by borrowing) and tenancy, or sole and cooperative trading, since farm partnerships and (particularly in response to changes in the size and cost of machinery), farm contracting agreements (where the owner bears the variable costs and profits are divisible with the contractor according to an agreed formula) are now widespread and offer much greater flexibility than tenancy or cooperative structures. In some countries, precarious free contracts or share farming agreements between co-owners have come into use.

I. The Politics of Land Ownership, Agricultural Policy and Forestry

A number of fundamental questions have been reached in Agricultural Policy:

What should be the structure of Agricultural Policy and what should be its objectives?

Is the concept of ‘working farmer’ relevant and how might it be defined?

Would such a concept simply introduce a ‘tie to the land’?

What is the landowner’s role in the capitalisation of agriculture?

What is the role of tenancy and contract farming in land consolidation, and why would Agricultural Policy wish to distinguish between them?

Is land consolidation primarily a question of ownership or management?

What is the role of multi-functionality in the rural economy and environment?

Should the role of Agricultural Policy be to provide a cushion against price and weather fluctuations through Pillar 1, and to promote high environmental standards (biodiversity gain) and encourage the diversification of the rural economy through Pillar 2, with a third, climate, pillar?

Thus, there is a need for restructuring of farm businesses which also allows the small owner to retain ownership of their land. This is impeded where confidence in the transparent function of a normal or normalised land market has been lost.

Although there is no common forest policy, in some Member States the future role of the forest and silvicultural systems is affected by incomplete or contested restitution and illegal logging,

This debate needs careful analysis and an element of deconstruction.

II. Land Law, the Land Market and Capitalisation of the Rural Economy

The system of property ownership is a Member State competence, as acknowledged in Article 345 of the Treaty on the Functioning of the European Union (TFEU). However, the right to acquire, use or dispose of agricultural land is governed by the free movement of capital principles in Articles 63 et seq. The European Union's **Four Freedoms** do not exclude national intervention. However, it is important that policy interventions accept as normal a wide range of differing structures of ownership.

Restrictive mechanisms affecting land transactions. The paper *Acquisition of Farmland and European Union Law* (Commission Interpretative Communication, Brussels, 12 Oct 2017) considers in the light of CJEU jurisprudence the extent to which a range of restrictive measures may be applicable within the terms of TFEU.

However, it is important to remember that pre-emption rights require prior assumptions to be made as to the size at which any particular type of farm is viable at a given moment and in a given context and as to the appropriate structure of the farm business (hence the likelihood that in some cases, these assumptions will be unrealistic or outdated), while pre-emption rights when applied to tenancies act as a significant restriction on the landowner's ability and freedom to conduct his own business.

Current restrictions or closure of the land market exist in a number of countries (esp. in Poland, but to a lesser extent in Hungary and (potentially) Romania, together with ownership ceilings (Hungary, in practice in Poland, more recently Lithuania, potentially in Romania) and the imposition of pre-emption rights in favour of specified but loosely defined classes of persons, typically resulting in loss of transparency (for example in France but also in Hungary, Poland, Bulgaria and prospectively Romania). This contrasts with an open market approach (e.g. UK, or, in eastern Europe, in Czech Republic and, hitherto, Romania). Fundamentally, the issue of freedom of contract is central both for ownership and management (including tenancy and farm contracting arrangements).

III. A Problematic History: Principles, Politics and Progress of Restitution

Restitution, privatisation and the normalisation of land law have since 1989 been of particular importance in the countries of the former Communist bloc, and in several cases unresolved issues continue to give rise to distortions. This paper considers the position in the Czech Republic, Slovakia, East Germany, Hungary, Romania, Bulgaria, Lithuania, Latvia, Poland, Croatia and Slovenia, before giving some exemplary cases of individual restitutions.

IV. The Politics of Scale: ‘family’ farms, a tie to the land or multi-functionality?

The scale of privatisation has created a need, and opportunity, for both foreign and non-EU capital. However, at a different level, this need for capitalisation by new ownership is found throughout Europe, within which marginal areas form a special category. In the unusual circumstances prevailing in some eastern European countries, the process has nevertheless proved controversial. Large areas of unrestituted land have often been left in the ownership or under the control of the State, and have become a contested area for policy and its detailed application. Accusations have been made (inter alia) of ‘marginalisation of family farming’, ‘entry denial’ and ‘large-scale land appropriations, through the control, privatisation and/or dispossession of natural resources’. The paper examines the situation in Poland, Hungary, Romania, Bulgaria, Estonia, Latvia, Lithuania and East Germany before considering marginal areas in Scotland and the Spanish sierras.

In France, there has been a history of comprehensive intervention in the land and tenancy market since 1960 through the SAFER, based on the introduction of rights of pre-emption. The paper discusses why this has proved increasingly controversial.

V. Diversification and multi-functionality

Ownership enables the estate to act as a platform for agriculture, forestry and conservation, and climate policy, and, at the same time, as a platform for smaller businesses in the rural economy. These businesses may be traditional tenanted farms but, as diversification proceeds, they typically depend on the re-use of former farm buildings and cottages. Thus, the estate shifts from a purely agricultural or forestry focus to a wider role in a broader rural economy. The paper offers a number of examples.

VI. The integration of economy, environment and society

While it is entirely understandable that the problem of the small farmer in rural areas and the wider future of rural communities should cause concern, the diagnosis is fundamentally retrogressive. The question is not one of using pre-emption rights to make small farms a little bigger, while leaving the small farmers tied to the land. It is a question of redeploing small farmers within a much broader rural economy, while enabling them to retain ownership when they wish, but on terms that enable the land to be managed more effectively.

Through most of eastern and central Europe, restitution and privatisation have not been achieved within the transition periods negotiated in the Treaties of Accession. The process of normalisation now needs to be completed over a realistic time-frame.

Meanwhile, CAP payments in the new Member States remain at a lower level for budgetary and broader economic reasons. Without completion of restitution and privatisation, it remains difficult to envisage on what basis convergence could be achieved.

At the same time, it is recognised that big farming companies concentrating on agriculture lack the degree of diversification often found on larger traditional family-owned estates in (for example) the UK, Germany and Scandinavia.

The objectives of Agricultural Policy need to include a broader range of actions, including:

Climate policy: Sequestration, substitution and building resilience

Forestry

Biodiversity

Landscape

Diversification of the rural economy

It is in this way that social objectives can also be met.

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