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CONTENT 4

Land protection: access to land (in Europe)

What is access to land? Framing the issue: land tenure systems, rights to land.

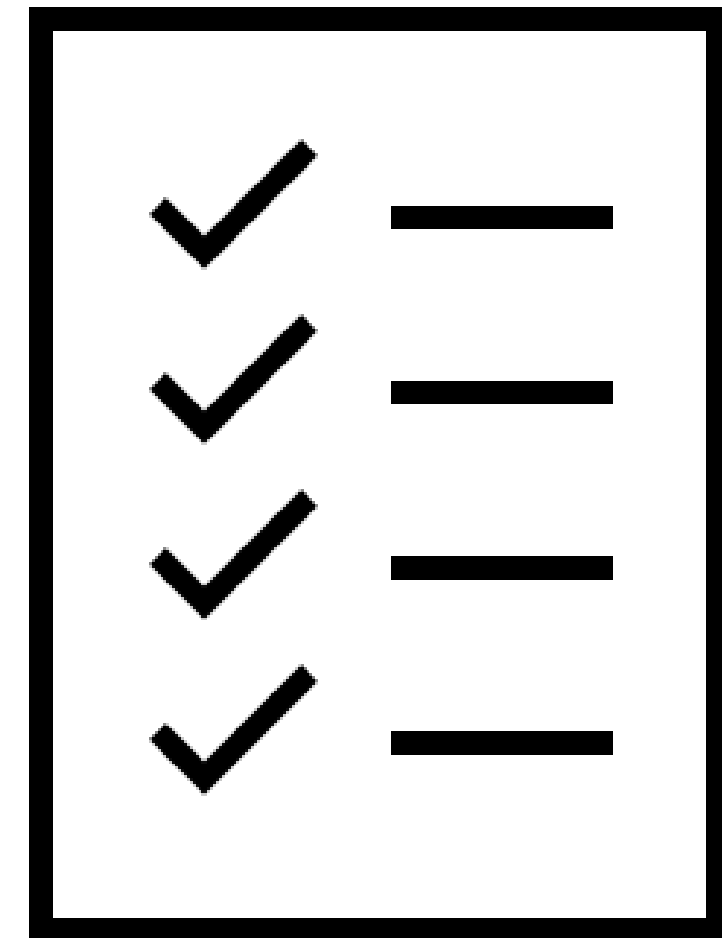
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1. Access to land - definition
2. Land tenure systems
3. Rights to land
4. Restrictions on the marketing of agricultural land in selected European countries



Access to land – general definition



The permission or freedom to buy, use, enter, approach or pass to and from a tract of land, which often consists of real estate property.

(Source:GEMET/BLD- <https://www.eea.europa.eu/help/glossary/gemet-environmental-thesaurus>)

Importance of access to land for economic and social development



Access to land forms the basis of economic and social life. Land policies define the rights and conditions of access and/or ownership to this intrinsic resource and regulate its distribution to multiple stakeholders.

- It is an environmental resource essential for food production and a key factor for shelter and community development.
- Land has a direct impact on people's livelihoods and security not only in rural areas, but also in urban and peri-urban settings.

Land as an asset

Agricultural land is a resource of the highest importance in many parts of Europe. It represents an asset and a source of income for families and rural communities, as well as a source of strong cultural and spiritual values. Ownership and control of land gives very significant political power, especially in regions where land is becoming scarce.



- Land was considered a primary source of wealth and social status.
- It forms the basis of agricultural activity.
- It is the most important source of employment opportunities.

Land is not just a commodity



Land is never just a commodity. It combines its productive power with its role as family or community property, a component of capital and a source of identity.

- It is a factor in the elimination of food insecurity and rural poverty.
- It is a source of shelter, food and income in difficult times.
- Land can have an importance of solving social problems.

Land policy

It defines the principles and rules governing property rights to land and related natural resources, as well as the legal methods of access and use, and the receipt and transfer of these rights.

Land policy aims to achieve objectives related to :

- security and distribution of land rights
- the use of land
- land management
- access to land, including different forms of tenure.



The importance of a coherent land policy

POLICY COHERENCE

Integration



Safety



Security



Service



Support



Insurance



Land policy is embodied in acts and texts issued by intergovernmental bodies and governments and further developed through legislation, decrees, rules and regulations governing the operation of institutions set up for land administration, land rights management and land use planning.

International policy



There is currently one main instrument regulating land policy at the international level: the Tenure Guidelines, adopted by the UN Committee on Food Security in 2012. These guidelines promote a human rights-based approach to access to land and other resources and are the main reference for improving policies governing land use and management.

European Union policy



Access to land is directly and indirectly influenced by many European policies, among them the Common Agricultural Policy, competition and investment law, environmental policy or cohesion policy.

However, it is only in the last few years that some EU institutions have started to debate the importance of land issues, from land grabbing to land concentration and access.

National policy



Land policies and regulations are mostly adopted and implemented at national level.

Each country conducts its own politics in this area taking into account current demand, but also historical considerations, including land tenure systems. Not insignificant are the issues of individual shaping of the agricultural system.

Land tenure systems

Access to land is governed by land tenure systems. Land tenure is the relationship, legally or customarily defined, between people, as individuals or groups, in relation to land.

Land is often defined broadly together with the components of land - to include other natural resources such as water and trees.



What do land tenure systems define?

The tenure systems indicates:

- who can use which resources, for how long and under what conditions?
- how land rights are actually distributed and used?

Land tenure is often described as:

- private,
- communal,
- open access,
- state-owned.

Private right to land

A transfer of rights to a private individual, which can be an individual, a married couple, a group of individuals or a legal entity such as a business entity or a non-profit organisation.

For example, within a community, individual families may have exclusive rights to residential plots, agricultural plots and some trees. Other members of the community may be excluded from using these resources without the consent of those with rights.

Communal land rights

A communal land right may exist within a community, where each member has the right to use the community's holdings independently.

For example, community members may have the right to graze cattle on a common pasture.

Open access to land

Specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all.

An important difference between open access and communal systems is that under a communal system non-members of the community are excluded from using the common areas.

State land rights

Property rights are assigned to some authority in the public sector. For example, in some countries, forest land may fall under the mandate of the state, whether at the central or decentralised level of government.

Rights to land

Land rights are diverse and, in practice, many rights to a particular property may be held by several individuals or groups. This has given rise to the concept of a 'bundle of rights'.

Different rights to the same parcel of land, such as the right to sell the land, the right to use the land by way of a lease or the right to move on the land, can be represented as 'sticks in a bundle', each of which may be held by a different party.

The forms of land rights

Rights to land can take the form of:

- use rights
- control rights
- transfer rights



A detailed treatment of land rights

Access rights to land can take the form of:

- usufruct rights: the right to use the land for grazing, subsistence farming
- collection the crops, collection of minor forest products, etc.
- transfer rights: the right to sell or mortgage land, to transfer land to other persons through intracommunity distributions or to heirs, and to reallocate use and control rights
- control rights: the right to make decisions on how to use the land and to benefit financially from the sale of crops, etc.

Ownership of agricultural property



The right of ownership is the most significant subjective right in the sphere of authority over a thing. It results from the owner's rights to dispose of the thing, to derive benefits from it and to use it.

The limits of this right are determined by national law, but also by the socio-economic use of the land and the principles of social co-existence.

Restriction of the right of ownership I

Consisting in the abolition of the action of other subjects relating to agricultural property:

- abolition of access to the property,
- the abolition of the performance of certain acts,
- the abolition of the placement of various devices (objects) on it,
- abolition of the occupation of the real estate (the most far-reaching interference with the owner's subjective right).

Restriction of the right of ownership II

Concerning the owner's freedom of action in relation to agricultural property (non facere, facere).

- concerning private law acts (they diminish the freedom of private law dispositions that have the property as their object),
- concerning the performance of any other acts (they refer to the owner's actions with respect to a thing which become the subject of a prohibition, injunction or determination by the legislature of the use of the property).

Land administration

The principles of land ownership are applied and implemented by land administration.

Land administration, whether formal or informal, involves a wide range of systems and processes of administration:

- land rights: the allocation of land rights; the delimitation of the boundaries of the parcels of land for which these rights are allocated; the transfer from one party to another by sale, lease, loan, gift or inheritance;
- the registration of land rights; and the settlement of doubts and disputes over rights and plot boundaries
- land use regulation: planning and enforcement of land use
- resolving land use conflicts
- forms of land valuation and taxation
- land valuation and taxation disputes

National law versus customary law

In many communities, access to land resources is regulated by both statutory and customary.

There may be conflicts between traditional norms and national law, as is often the case with land rights considered.

Local norms enforced by community members are most common, particularly in rural areas. National constitutions and laws granting equal access to productive resources are key.

Risk of losing agricultural land



As non-traditional household arrangements emerge and rural areas are absorbed by the urban fringe - agricultural land is being taken over for infrastructure or investment purposes. The following problems arise:

- land resources are shrinking therefore land allocation has to be adapted to changing requirements and opportunities at local level,
- households are at increased risk when relationships change due to, for example, death, divorce, abandonment or disability,
- here is a trend towards an exodus of young people to cities from rural areas.

Restrictions on the marketing of agricultural land in selected European countries - Germany



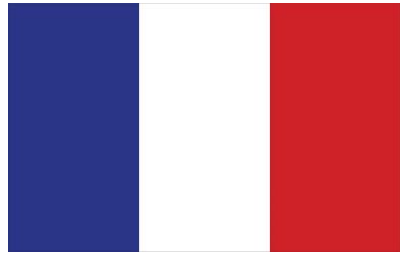
In Germany, land transactions are subject to strict administrative control. In Germany, land transactions are regulated by the Bodenverwertungs - und -verwaltungs GmbH (BVVG), supervised by the Federal Ministry of Finance.

The authorities may refuse to approve the sale of land if it is speculative, undervalued or if the new owner has no intention of using it agriculturally.

They can also block a transaction that results in an excessive concentration of land in the hands of one owner.

The buyer is obliged to submit a farm development plan.

Restrictions on the marketing of agricultural land in selected European countries - France



Property marketing is controlled by state-owned local companies - Sociétés d'Aménagement Foncier et d'Etablissement Rural (SAFER). They ensure that there is no significant depletion of the agricultural land stock and a further reduction in the number of family farms.

SAFER has the right of first refusal to repurchase the land, but can also prevent the transaction from taking place. SAFER blocks a sale when it is speculative, takes place at an undervalued price, could lead to the break-up of a farm, or make it difficult for younger farmers to operate in the area. The circulation of land in France is heavily regulated. Not only is there a right of first refusal for neighbouring landowners, but there are also requirements to personally use the land purchased for 15 years with a ban on leasing it. The country protects its land so effectively from purchase by foreigners that practically only a genuine French farmer can buy it.

Restrictions on the marketing of agricultural land in selected European countries - Poland



Poland also has restrictions on the sale of agricultural land. Under the law, agricultural land can only be purchased by the state, religious associations and a farmer.

The purchaser of the land must not only be agriculturally qualified, but must also own up to 300 hectares of agricultural land and live in the municipality where he wants to buy the farm. He or she is also obliged to farm the land for at least 10 years, and may neither sell nor lease it without court approval. Agricultural properties of less than 0.3 hectares (30 acres) are excluded from these regulations.

Restrictions on the marketing of agricultural land in selected European countries - Slovakia



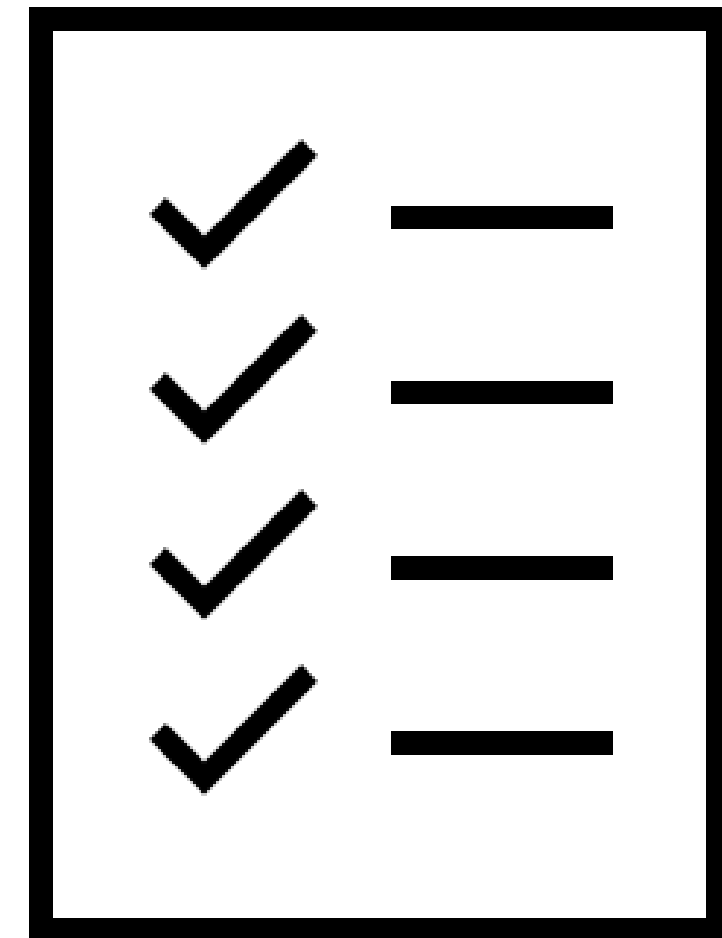
In Slovakia natural person who has already carried out agricultural economic activity or worked in agriculture for at least three years can become an owner of agricultural land.

Legal entities, on the other hand, must demonstrate at least three years of economic activity. In addition, natural persons who have been resident in the country for at least 10 years or legal persons with their registered office here for 10 years as well can be buyers of a farm. Priority for the purchase of land is given to persons residing in the municipality where they wish to buy a farm.

Donations, transfers of land among close relatives, land in the urban zone and agricultural plots outside the zone up to 20 acres (0.2 hectares) are excluded from this regulation.

Short Summary / key messages of the lecture

1. What is access to land?
2. Describe land policy objectives.
3. What are examples of specific land rights ?
4. What does land administration cover?



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Thank you for your attention

Any question? Doubts?

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