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# European good practices on land banking

FAO study and recommendations



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## FOREWORD

Many countries in Western Europe have a long tradition of applying land banking as part of the integrated toolbox of land management instruments. As with land consolidation, the traditional purpose of land banking has been to support agriculture and rural development by reducing land fragmentation and facilitating the enlargement of farms. In Western Europe, the objectives of land banking have developed over the last decades, and today, in several countries, the instrument is applied in a multi-purpose approach together with land consolidation. In most countries, land banking shares the objectives of land consolidation, which in addition to continued agricultural development, supports the implementation of public projects in rural areas where private landowners and farmers are requested to give up agricultural land, for example, in connection with the construction of infrastructure projects such as highways and railways or for the implementation of public projects related to nature restoration, afforestation or climate change adaptation and mitigation.

In a few Western European countries, land banking is also applied on use rights, where a lease facilitation approach connects owners of agricultural land not using their land and often leaving it abandoned, with local farmers interested in farming more land.

This study first analyses and identifies good European practices on land banking, discusses experiences from the introduction of land banking instruments in countries in Central Europe. Finally, it provides policy recommendations for the introduction of land banking, with a focus on countries in Eastern Europe and Central Asia.

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Contributions related to land banking in specific jurisdictions were made by selected key experts from each of the countries analysed (in alphabetical order by country name): Ana Budanko Penavic from Croatia, Jaroslava Kosejková and Martin Vrba from the Czech Republic, Niels Haldrup from Denmark, Loïc Jegouzo from France, Volker Bruns, Katja Dells and Joachim Thomas from Germany, Velta Parsova, Ivars Rubenis and Mārtiņš Turks from Latvia, Gintautas Vasiliauskas from Lithuania, Jan Spijkerboer and Frank van Holst from the Netherlands, Bogdan Podgórski and Magdalena Zawadzka from Poland, Anka Lisec from Slovenia and Miguel Ángel Pérez Dubois and Cristina Zolle Fernández from Spain (Galicia).

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The study's key findings were presented during an FAO organized LANDNET<sup>1</sup> webinar on 11 December 2020, and feedback was collected from the webinar participants.

The full review of the draft study report was carried out by Aurelie Bres, Andrew Cartwright, David Egiashvili, Vladimir Evtimov, Niels Haldrup, Evelin Jürgenson, Kalle Konttinen, Kristina Mitic Arsova, Jan Spijkerboer, Joachim Thomas, Frank van Holst and Margret Vidar. Andrew Cartwright and Bradley Paterson supported the technical and language editing of the report.

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<sup>1</sup> LANDNET is a European-wide informal technical network of land tenure professionals from more than 30 countries and different organizations under guidance of the FAO Regional Office for Europe and Central Asia. The main objective of LANDNET is to stimulate proper and timely responses to (changing) needs of society regarding land management and land tenure in rural areas and to ensure dissemination and exchange of experiences on technical topics such as land consolidation, land banking and land market development.

## ACRONYMS

AGADER	<i>Axencia Galega de Desenvolvemento Rural</i> (Galician Agency of Rural Development)
BBL	<i>Bureau Beheer Landbouwgronden</i> (Dutch Agricultural Land Management Office)
BVVG	<i>Bodenverwertungs- und -verwaltungs GmbH</i>
CEE	Central and Eastern Europe
CIS	Commonwealth of Independent States
DLG	<i>Dienst Landelijk Gebied</i> (former Dutch Government Service for Land and Water Management)
ECA	Europe and Central Asia
FAO	Food and Agriculture Organization of the United Nations
FIG	International Federation of Surveyors
GIS	Geographic Information System
REU	FAO Regional Office for Europe and Central Asia
RVO	<i>Rijksdienst voor Ondernemend Nederland</i> (Netherlands Enterprise Agency)
SAFER	<i>Société d'aménagement foncier et d'établissement rural</i>
UN	United Nations
UNECE	Working Party on Land Administration of the United Nations Economic Commission for Europe
WPLA	
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security



## EXECUTIVE SUMMARY

Many countries in Western Europe have a long tradition of applying land banking either alone or integrated with other land management instruments such as land consolidation. The importance of a comprehensive analysis and overview of good European land banking practices is strongly felt in several FAO programme countries in Europe and Central Asia (ECA).

This study aims to provide policy recommendations on land banking based on the identified good country practices from Western Europe. The study assessed land banking practices in Denmark, France, Germany, the Netherlands and Spain (Galicia) and reviewed land banking experiences in Central Europe, including in Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia. In certain cases, the study also refers to selected land banking practices from other European countries.

The study pays close attention to the guidance laid out in the *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security* (VGGT), endorsed by the Committee on World Food Security (CFS) in May 2012. There is a specific section on land consolidation, land banking and other readjustment approaches in the VGGT (Paragraphs 13.2-13.4).

The analysis of the selected European countries has revealed that the major land banking approach applied in Western and Central Europe relates to the acquisition of private agricultural land by a public purpose entity (land bank), its interim management in the form of a short-term lease, and the subsequent sale or exchange of land. This activity is performed to meet various public purpose objectives such as the development of farm structures, address land abandonment and support development of infrastructure or implementation of environmental measures.

The facilitation of lease was identified as a second major approach to land banking applied in a number of European countries (France, Italy, Portugal and Spain). While lease facilitation and its objectives vary from country to country, the main aspect is that the public purpose entity (land bank) facilitates the conclusion of lease contracts between landowners not using their agricultural land and active farmers interested in farming more land.

Furthermore, the analysis has demonstrated that land banks may have a range of additional functions, such as the management of state-owned agricultural land and privatization of state-owned agricultural land.

The study has demonstrated that the land banking approach based on the acquisition, interim management and sale/exchange of land is prevailing in the studied Western European countries, often in support of land consolidation projects, and is also applied in some of the Central European countries like the Czech Republic, Latvia and Slovenia. The introduction of land banking in Central Europe was successful only in a few of the aforementioned countries and the instrument is yet in an evolutionary stage.

The study recommends that ECA countries assess the possibility of introducing land banking in their land management systems and underlines the importance of linking it with other land management instruments, such as land consolidation. It assesses the potential benefits of introducing land banking in Eastern Europe and Central Asia and identifies the related risks.

The study recommends introducing the two major approaches of land banking (based on transfer of ownership rights or facilitation of lease agreements) and provides for additional functions that could be assigned to the land banks. It recommends establishing the relevant institutional and legal framework based on clear land banking objectives and its integration into the national land policy.

The study recommends combining land banking with land consolidation where feasible, and suggests that land banks would have the right to perform land banking operations with the state-owned agricultural land, when this is feasible in the country-specific context, including through its privatization to implement broader agricultural policy and development objectives. The study also recommends a set of safeguards, aiming to ensure that the land banking process is fully transparent, not misused and best serves the interests of the society.

# 1. INTRODUCTION

## 1.1 CONCEPT AND DEFINITION OF LAND BANKING

There is no universally accepted definition of land banking. Moreover, the notion encapsulates different types of activities that may be performed by land banks or land funds, established at the national, regional or even local level. Therefore, one of the aims of this study is to propose a working definition of land banking based upon the practical application of the instrument in different European countries.

Taking into account the definition of a *land bank* provided for in the FAO Legal Guide on Land Consolidation (Veršinskas *et al.*, 2020, p. 18) and the results of this study (see Chapter 5), *land banking* shall be defined as follows:

Land banking is a set of systematic activities implemented by an institution with public purpose, performing the intermediate purchase, sale, exchange or lease of land in rural areas in order to increase land mobility, to facilitate development of agricultural land markets, and to pursue public policy objectives related to agricultural and rural development, sustainable land use and implementation of public projects related to nature restoration, environmental protection, climate change and construction of large-scale infrastructure.

Thus, the core of land banking activities consists of buying, selling and/or leasing land from and to landowners by the public institution (land bank or land fund). This activity must be carried out according to a clear public purpose. The management of state-owned<sup>2</sup> agricultural land by the land bank could also be considered as one of the additional land banking activities. Such activities are guided by the need to increase land mobility, facilitate rural land market development, reduce land abandonment and attain other public objectives.

For the purposes of this study, land banking should not be understood as a private interest-driven commercial activity. Land banks or land funds are not the institutions dealing with the provision of credit or any other types of commercial or investment banking services. If the contents of land banking are not clearly explained and understood by the farmers, it may raise negative connotations, such as being an instrument for speculation or limiting access to land for the farmers. It may be the case that “land banking” only remains a term used among professionals, while in other communications, more complex and explicative terms, such as the acquisition and sale of agricultural land for public purposes, are used. Furthermore, the notion of a land bank or land fund may vary in different countries and regions, like in Latin America, where land banks (*banco de tierras*) were used as instruments to implement market-based agrarian reforms.

In this study, land banks or land funds (the two terms are sometimes used as synonyms) will be understood as public entities implementing land banking activities to attain public purpose objectives. Although the precise legal form of land banks may vary and their activities may also be of benefit to private stakeholders, this study does not include privately owned land banks set up for private purposes.

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<sup>2</sup> Depending on the national legal framework, the agricultural land may be held on different levels, like the state, regions or municipalities. There should be a possibility to include such land into projects organized by the land bank(s).

The diversity of the activities presupposes that there are different kinds of land banking. For example, some land banks primarily engage in buying and/or selling land for public purposes, whereas others concentrate on lease facilitation instruments. Others again combine all or parts of these functions. Land banks may also perform activities that cannot as such be considered as core land banking activities but are closely related to their mandate. For example, a land bank may monitor the use of agricultural land, be charged with the management of state-owned land reserves, or act as a lead agency in land consolidation projects (Veršinskas *et al.*, 2020). This study will also consider such additional land banking functions. They are of particular importance in countries that retain a substantial share of the agricultural land in state ownership.

As indicated in the FAO Legal Guide on Land Consolidation, land banks:

could be responsible for managing all or part of the state land and therefore, use it for land consolidation or other public objectives. Land banking can also be used actively to support development of smallholders or farms of young farmers into commercial family farms and hence give priority to such groups when state land is leased out or privatized. The Land bank may also acquire land from private owners in areas where respective future projects are being planned or in areas where agricultural land suitable for production is abandoned. (Veršinskas *et al.*, 2020, p. 162)

This study focuses exclusively on land banking activities related to agricultural land in rural areas. However, it also considers the possibility of conversion from agricultural land into other usage types of land, such as forest or urban residential land, as a result of land banking and other related activities. The outbreak of COVID-19 in 2020 has reinforced the importance of local food production and the sustainable use of agricultural land, which requires, amongst other things, the improvement of farm structures and the need to return unutilized but suitable agricultural land back into production, and land banking has an important role to play.

## 1.2 TENURE GUIDELINES AND LAND BANKING

The VGGT suggest that land banking can be a useful instrument to facilitate land consolidation and be applied for other land management purposes. Paragraph 13.2 of the VGGT provide that “Where appropriate, States may consider the establishment of land banks as a part of land consolidation programmes to acquire and temporarily hold land parcels until they are allocated to beneficiaries”.

The VGGT also emphasize the importance of this instrument in environmental protection and infrastructure development projects. Paragraph 13.3 states that:

Where appropriate, States may consider encouraging and facilitating land consolidation and land banks in environmental protection and infrastructure projects to facilitate the acquisition of private land for such public projects, and to provide affected owners, farmers and small-scale food producers with land in compensation that will allow them to continue, and even increase, production.

Paragraph 13.4 of the VGGT suggests that land banking can improve the structure of land and forest ownership and use, where the area suffers from excessive fragmentation, hindering its sustainable development. Paragraph 13.4 states that:

Where fragmentation of smallholder family farms and forests into many parcels increases production costs, States may consider land consolidation and land banks to improve the structure of those farms and forests. States should refrain from using land consolidation where fragmentation provides benefits, such as risk reduction or crop diversification. Land consolidation



projects to restructure farms should be integrated with support programmes for farmers, such as the rehabilitation of irrigation systems and local roads. Measures should be developed to protect the investment of land consolidation by restricting the future subdivision of consolidated parcels.

### **1.3 LAND BANKING AS AN INTEGRATED LAND MANAGEMENT INSTRUMENT IN WESTERN EUROPE**

In many Western European countries, land banking is well-known and enjoys a long tradition. In some countries, the focus might be on specific functions, for example, in Spain (Galicia), lease facilitation is at the heart of the activities of the Galician Land Bank. By contrast, in Denmark, the emphasis is mainly on supporting the implementation of land consolidation projects. Others might prefer a combination of approaches, as in France, where acquisition, sale and lease facilitation are all within the remit of the land banks (SAFERs).

The competences related to land banking also evolve with the objectives of land management. For example, until 2015, the Netherlands had a centralized land banking system (see Section 2.4) performing activities throughout the country. Now, these functions are delegated to the provincial governments, alongside the competencies related to the implementation of land development projects.

The practice in Western European countries shows that land banking is a useful land management tool, facilitating agricultural and rural development, infrastructure, environmental and other public policy objectives. However, the necessary preconditions must exist to safeguard land banking from abuse of the process, like corruption and conflicts of interests.

In order to identify good European practices of land banking, this study analyses the application of the instrument in Western European countries: Denmark, France, Germany, the Netherlands, and Spain (Galicia). Each country offers its own unique experience in the matter, which may provide different points of relevance for the countries currently introducing land banking. This study also provides a brief overview of the situation in Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia to illustrate the land banking status in Central Europe.

### **1.4 OBJECTIVES OF THE STUDY**

FAO's experience from many countries in Europe and Central Asia (ECA) demonstrates that land banking instruments can be both valuable and relevant for many countries. However, so far, there has been no comprehensive document that provides practical guidance and recommendations to policy and decision-makers, lawyers and land tenure professionals. During FAO projects in the ECA countries, it was clear that professional understanding of land banking, its mechanisms and benefits was low, and there is a need for guidance on the matter. This study is intended to contribute to closing this gap by providing comprehensive information.

FAO already has practical experience with land banking in several CEE countries. Therefore, the combination of analysis of land banking in Western Europe, the lessons learned in CEE countries and the experiences from countries where land banking is under introduction will help transfer land banking related good practices and know-how in a more efficient manner.

This study provides key recommendations on land banking with special attention to its application in countries wishing to introduce land banking. All recommendations are in line with the VGGT guidance (see Section 1.2) and relevant international laws on human rights.

## 1.5 SCOPE OF THE STUDY

As mentioned in Section 1.1, land banks may perform a variety of activities related to land management which largely depend on the specific conditions and policy objectives in a concrete country. Also, the understanding of land banking systems is not limited to legal and institutional frameworks, where the land bank is a separate entity. It may be the case that the functions of a land bank are performed by a relevant ministry or its agency, like in Denmark.

This study focuses mainly on the following land banking functions which are of particular relevance for the countries in Eastern Europe and Central Asia:

- acquisition and sale of agricultural land on the land market;
- facilitation of lease of agricultural land; and
- management and privatization of publicly owned agricultural land as part of an active land policy.

This study does not cover other functions that land banks may also perform, such as monitoring agricultural land use, maintaining state land records (except for the records related to the performance of the core land banking activities), or acting as the lead agency for land consolidation projects.

## 1.6 TARGET AUDIENCE

This study is for national policy and decision-makers, lawyers and land tenure professionals working with land management and implementation of land policy. The particular focus is on policy makers and professionals from countries introducing land banking or wishing to further develop the instrument. The study will also be of use for decision-makers involved in legislative processes, to support them in developing respective legal frameworks and promoting land banking among relevant public institutions and stakeholders.

This study also aims to serve technical assistance projects in the field of land policy, implemented by FAO and other development organizations, facilitating the transfer of good practice and experience between professionals engaged with land banking and land management issues. Therefore, it can be used by government staff and FAO international and national professionals both for capacity development within teams as well as within the relevant national and local institutions and professional communities.

This study can also be used as teaching and learning material for students studying land management and land administration, as well as for researchers specializing in land management issues. Civil society organizations involved in issues related to land policy, land management, providing access to land and rural development can also benefit from this study.

While the study focuses on good European land banking practices, it is hoped and expected that it could also be of interest to decision-makers and professionals in other regions of the world.

## 1.7 METHODOLOGY

The study was prepared based on desk research, involving consultations via email and online interviews with key experts in all analysed countries. Five Western European countries, namely, Denmark, France, Germany, the Netherlands and Spain (Galicia), were selected for a detailed study of their applied land banking practices. The five countries were selected based on two key criteria:

- i) presence of and experience with land banking, and
- ii) presence of land banking tools that could be relevant for countries in Eastern Europe and Central Asia.

The study of land banking practices in Western Europe was complemented by a less detailed study of initial land banking experiences in Central European countries, including Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia. The experiences from these countries are seen as very relevant for the countries in Eastern Europe and Central Asia.

The study's key findings were presented during a webinar organized by FAO on 11 December 2020 with partners from LANDNET. Feedback from the webinar participants was collected and integrated into the final draft of the study.

Key experts from the analysed countries reviewed the sections on the relevant country practice, and a group of international land management experts carried out the full review of the final draft study (see Acknowledgements). The comments provided by the external reviewers were duly considered and integrated into the study.

The good practices identified from the five analysed Western European countries, as well as from the studied CEE countries, were used to formulate the policy recommendations presented in Chapter 5 of the study.

The FAO Regional Office supervised the whole process for Europe and Central Asia (REU).

## 1.8 OUTLINE AND USE OF THE STUDY

This study first presents the context of land banking in Europe, followed by an analysis of good European practices before drawing relevant conclusions. The final section includes policy and practical recommendations, which may be applicable in countries embarking on or considering land banking. Chapter 1 offers an overview of land banking and provides its definition. It presents the key guidance from the VGGT related to land banking and demonstrates how land banking is an integral part of land management systems in many Western European countries. Also, it presents the objectives, scope, target audience methodology and the outline of the study. Chapter 2 analyses national land banking experiences in the selected countries of Western Europe, namely, Denmark, France, Germany, the Netherlands and Spain (Galicia). Chapter 3 presents the experiences with land banking in CEE and argues for the usefulness of the instrument in Eastern Europe and Central Asia, building on recent FAO project experiences. Drawing on the analysis in Chapters 2 and 3, Chapter 4 identifies the good European land banking practices. Finally, based on the identified good practices, Chapter 5 provides policy recommendations for introducing and applying land banking instruments in Eastern Europe and Central Asia.

Although the study draws on land banking experiences in Western European countries, it goes without saying that the recommendations provided in this study should be adapted to the specifics of each country. A land banking practice's efficiency and suitability in one country does not necessarily translate as a good fit for another. Therefore, the study provides generic policy recommendations, which are adaptable to the specifics of the local context.

## 2. LAND BANKING IN SELECTED WESTERN EUROPEAN COUNTRIES

This chapter analyses land banking practices in several Western European countries, either with a long land banking tradition or land banking experiences, which may be relevant to countries in Eastern Europe and Central Asia. The countries analysed in detail and presented in this chapter are Denmark, France, Germany, the Netherlands and Spain (Galicia).

### 2.1 LAND BANKING IN DENMARK

The Danish land banking model is closely linked with the land consolidation instrument, and land banking is almost always applied in support of the implementation of land consolidation projects. The key legal act regulating land banking is the *Law on Land Consolidation and Public Purchase and Sale of Real Property for Agricultural Purposes, etc. (Law on Land Consolidation)*.<sup>3</sup> In accordance with this law, the functions of the land bank are performed in a centralized manner by the Land Consolidation and Land Banking Unit of the Danish Agricultural Agency (*Landbrugsstyrelsen*) under the Ministry of Food, Agriculture and Fisheries (*Ministeriet for Fødevarer, Landbrug og Fiskeri*).

Danish land banking consists of the acquisition of agricultural land, its intermediate management and subsequent sale or exchange, usually in the frame of land consolidation projects. The primary objective is to increase land mobility in land consolidation projects (see Hartvigsen, 2014a). Land owned by the land bank (the Ministry) is state-owned land, and therefore, the land bank is in charge of its active management, facilitating those public projects that the land consolidation projects contribute to. Thus, land banking is only applied together with those public programmes (e.g., wetlands programme and new multi-purpose land consolidation programme) where there is earmarked funding for it to the Ministry (land bank) in the state budget. However, in very small projects involving few landowners, like the restoration of wetlands, land may be exchanged directly between the land bank and the owners without involving land consolidation. Land banking in Denmark does not include a lease facilitation function.

The land banking functions conferred on the Ministry of Food, Agriculture and Fisheries by the regulatory framework (*Executive Order on Land Funds, No. 1220, dated 18 October 2007*) provide for the right to establish land funds as independent public administrative bodies at the municipal and/or inter-municipal levels. However, such land funds have only been established in 2 of the 98 municipalities in Denmark, and the application of municipal land banks has, in practice, been very limited. Recent Government programmes such as land consolidation in connection with wetlands and climate change adaptation projects, where arable lowlands are 'given back to nature' and also the new programme for multi-purpose land consolidation (see below) are all implemented through land consolidation combined with land banking (Hartvigsen, 2020).

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<sup>3</sup> *Law on Land Consolidation and Public Purchase and Sale of Real Property for Agricultural Purposes, etc. (Law on Land Consolidation) (Bekendtgørelse af lov om jordfordeling og offentligt køb og salg af fast ejendom til jordbrugsmæssige formål m.m. (jordfordelingsloven), No. 31, dated 4 January 2017.*

The objectives of land banking in Denmark have evolved over time. In 1919, land banking was introduced alongside land consolidation, and the main objective of this new active land policy was the development of commercial family farms. The support for the establishment of new family farms through land banking continued until the 1960s (Hartvigsen, 2014a, p. 53). Between 1941 and 1995, these instruments were also used to improve farm structures (Blaabjerg, 2008, slides 3-4). In 1990, the objective of using land consolidation (and land banking) for public purpose projects was established by amending the *Law on Land Consolidation* preamble and remains one of the key objectives (Hartvigsen, 2020). This includes such projects as highway construction, afforestation, nature restoration, protection of water resources and implementation of the *European Union (EU) Water Framework Directive of 2000*, the EU Natura 2000 directives (see Blaabjerg, 2008, slides 3-4) and most recently also climate change adaptation and mitigation.

The link between land banking and land consolidation is direct and well established in Denmark. In the projects related to nature restoration and similar programmes, when combined with voluntary land consolidation, experience has shown that land consolidation and land banking “are absolutely essential for reaching voluntary agreements with the affected landowners” (Hartvigsen, 2014a, p. 69) and that farmers are often not able to cede their land, “unless they are offered other land in compensation of at least the same soil quality and location” (Hartvigsen, 2014a, p. 69). This combination of the two instruments often allows a sufficient level of land mobility in the project area to ensure broader re-allotment options, including in the same project allowing to take privately owned agricultural land out of production and improving the local farm structure.

As regards the acquisition of land, the *Law on Land Consolidation* authorizes the Minister of Food, Agriculture and Fisheries or the person authorized by the Minister (currently the Head of the Land Consolidation and Land Banking Unit of the Danish Agricultural Agency under the Ministry) to purchase privately owned land in rural areas in order to attain the objectives defined in the preamble of the *Law on Land Consolidation*.

The Ministry’s Land Consolidation and Land Banking Unit acquires land on the market at normal market conditions. This is usually done once the feasibility study is complete and at the beginning of the re-allotment phase (see Veršinskas *et al.*, 2020, Chapters 5-7). The feasibility study identifies agricultural land that could be purchased for the benefit of a specific land consolidation project. Then the Land Consolidation and Land Banking Unit (land bank) carry out negotiations with the interested potential sellers. Once the Head of the Land Consolidation and Land Banking Unit approves the upcoming purchase, the contracts are concluded. This is a fast procedure when compared to the standard procedures of acquisition of private agricultural land by public authorities where specific political approval, for example, by the municipal council, is usually required. (Hartvigsen, 2014a). If funding is available in the budget of the relevant programme, using the land bank to acquire land is advantageous.

If a specific ministry wishes to acquire private land, for example, for afforestation without the involvement of the land bank and land consolidation, then all purchases above a defined amount require the approval of the Finance Committee of the Parliament at the request of the responsible minister. Also, such ministry would need to have the land purchase price approved by the Ministry of Taxation (*Skatteministeriet*). This takes a longer time and includes the political risk of non-approval. On the other hand, if a public authority wishes to acquire land within the land consolidation project, it can do so without approvals and sell land within the frame of the land consolidation project without an auction. The approvals are waived since a land valuation

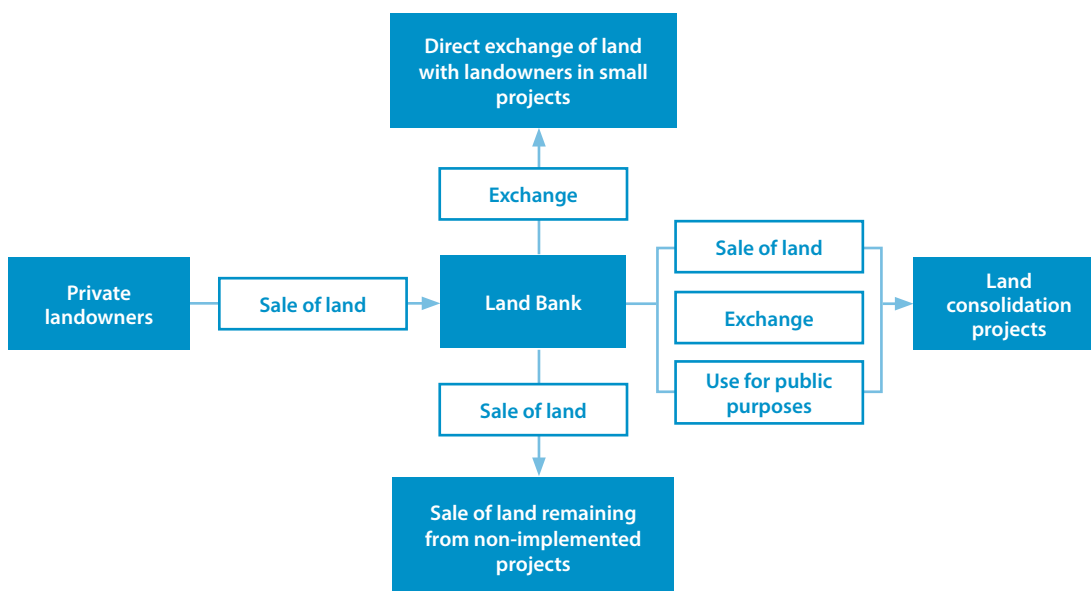
process is integrated into the land consolidation process, which serves as a safeguard. An additional safeguard is that the land consolidation plan is adopted by the Land Consolidation Commission, chaired by a judge.

If the Land Consolidation and Land Banking Unit is offered agricultural land for sale, they may purchase land before the land consolidation project is started, thus even before the launching of the feasibility study. However, the land bank usually only purchases agricultural land after conducting a feasibility study with interviews of all landowners in the potential land consolidation project area. This is the only way to assess the actual need for land to compensate farmers that must give up part of their lands to public projects and/or allow the enlargement of the existing agricultural holdings. The land bank can also purchase land with short notice after the land consolidation (re-allotment) planning has been launched and before it is finished. This is relevant if the seller wishes to have a fast decision and not wait for the date of implementation in the land consolidation project (Hartvigsen, 2020).

The land acquired by the land bank is often temporarily leased out for a short term – from one to two seasons until the land consolidation project is finalized (Hartvigsen, 2014a). Also, within the land consolidation project area, the land bank may acquire parcels that are important for the re-allotment of the area but which were not subject of interest for the farmers. Subsequently, the land bank may use such parcels in re-allotment efforts, change their use type or sell in auctions after the completion of the land consolidation project. Such possibility to acquire land increases the options of the land consolidation planner and strengthens their position during the negotiations with the landowners.

In accordance with Article 12 of the *Law on Land Consolidation*, the Ministry of Food, Agriculture and Fisheries may apply a pre-emption right to acquire agricultural holdings (sometimes with farm buildings) and agricultural land parcels. The minister or their representative takes the decision to impose this right and is then registered as a servitude right in the land registry. However, it is rarely applied in practice, and it is not found to be operational in connection with the implementation of specific projects as it, like all other pre-emption rights, does not force the owner to sell. In the case of nature restoration and similar projects, the Minister of Environment may decide to apply the pre-emption right to specific agricultural holdings and parcels of interest for specific nature projects. This is performed in accordance with Article 57 of the *Law on Nature Protection (Bekendtgørelse af lov om naturbeskyttelse)* No. 933, dated 24 September 2009, and the procedures are similar to those in Article 12 of the *Law on Land Consolidation*. Also, Article 60 of the same law allows for expropriation when one or few of the involved landowners are against the implementation of the project. Although the expropriation is rarely used, it remains an option if there are no others left.

Subsequently, the land acquired by the land bank is used for the public project, for example, a nature project, or used to compensate farmers or provide possibilities for the enlargement of holdings. In some very small projects, for example, nature restoration projects involving only a few landowners, exchanges are made bilaterally between the owner and the land bank without the need for a land consolidation project. However, if more than three to four landowners wish to receive land in compensation, it is more cost-efficient to implement a small land consolidation project. Figure 1 illustrates the land banking process in Denmark.

**Figure 1: Land banking process in Denmark**

The Land Consolidation and Land Banking Unit revenues received from the sale of land are used to purchase land, which may then be sold or exchanged in other land consolidation projects (Hartvigsen, 2014a). In this way, the land bank funding is revolving.

In the Danish state budget of 2019, DKK 150 million (about EUR 20.3 million) was assigned to multi-purpose land consolidation from 2018 to 2022. Of this amount, DKK 104 million (about EUR 14.1 million) was allocated for the purchase of land (land banking), aiming to facilitate the implementation of the land consolidation projects under the new programme for multi-purpose land consolidation.

The multi-purpose land consolidation programme and the connected land banking is so far a pilot initiative. The aim is to gain experience which may eventually be scaled up as part of a larger future “multi-purpose land reform”. Different purposes of the specific land consolidation projects are foreseen in the political agreement about the programme (Ministry of Environment and Food, 2019c), including i) a better water environment, ii) drinking water (groundwater) protection, iii) implementation of Natura 2000 projects and protection of endangered species, iv) climate change mitigation and adaptation, v) improved nature values and increased biodiversity, vi) afforestation, vii) increased recreational values, viii) rural development, and ix) improvement of farm structures by reduction of land fragmentation and facilitation of enlargement of agricultural holdings. The project formulation must include at least three of the nine purposes. It is expected that improvement of local farm structures will always be pursued.

The new programme is similar to previous land consolidation and land banking programmes managed by the Danish Agricultural Agency (*Landbrugsstyrelsen*) (Ministry of Environment and Food, 2019c). The new programme is largely based on the experiences of four pilots with multi-purpose land consolidation funded by a private non-profit foundation called “Collective Impact” during 2014-2022 (Hartvigsen, 2020).

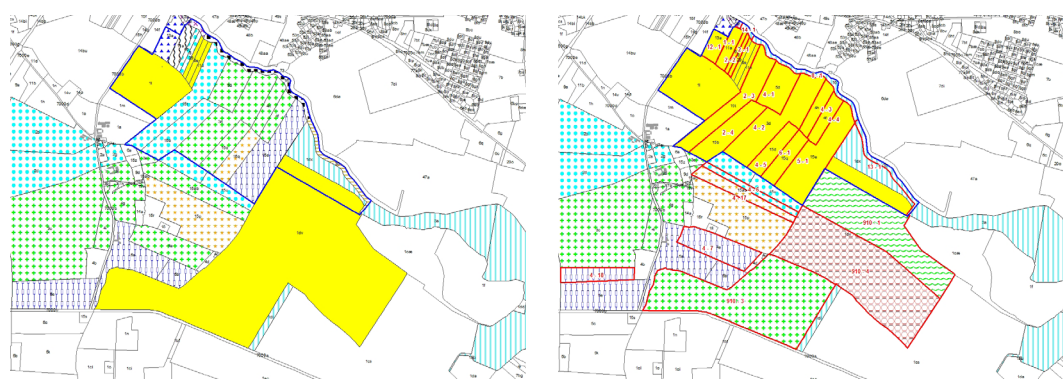


The land consolidation projects supported under the new programme for multi-purpose land consolidation must address current policy priorities (Ministry of Environment and Food, 2019c). Based on previous land banking experiences with the purchase/sale of land and land consolidation in the mentioned four multi-purpose pilot projects, it was estimated that with the new programme, around 6 000-7 000 hectares of land would be consolidated and around 1 700 hectares of agricultural land would be acquired and subsequently resold in the land consolidation projects. It was also estimated that the individual land consolidation projects would include consolidation of between 100 and 1 000 hectares. It is expected that the land consolidation process alone will cost an average of EUR 660/hectare with the public and private investments and that during 2019-2022 a total of 6 800 hectares will change ownership (Ministry of Environment and Food, 2019c; Hartvigsen, 2020).

Rather than replacing it, this funding supplements the existing funding of land banking and land consolidation. The practical land banking procedures remain the same under the new programme.

For the purposes of the new multi-purpose land consolidation programme, an Advisory Board on Multi-purpose Land Consolidation was established in 2020. Besides monitoring project progress and impact, the Board discusses and evaluates the implementation of the programme. It advises on solutions and will also provide the final evaluation of the activities related to the programme and provide recommendations as to further up-scale to the politically planned upcoming land reform. The Advisory Board includes a wide range of stakeholders, such as farmers and hunters associations, nature conservation NGOs and other line ministries (Ministry of Environment and Food, 2019c).

**Figure 2: Land banking within the frame of the land consolidation project in Denmark**



Situation before the project

Situation after the project

Wetland restoration project, Drammelstrup, East Jutland, Denmark. The total area of the wetland project is 91 hectares. 196 hectares were relocated as part of the respective land consolidation project. 10 landowners with 12 properties have participated in the re-allotment. Two years before the land consolidation project started, 117 hectares of land were acquired. 15 hectares of acquired land were used for wetland restoration and 102 hectares for land consolidation.

Source: Ministry of Food, Agriculture and Fisheries, Danish Agricultural Agency.

## 2.2 LAND BANKING IN FRANCE

In France, land banking is decentralized with its functions carried out by the Land Development and Rural Establishment Companies (*Sociétés d'aménagement foncier et d'établissement rural*, SAFER), non-profit public purpose limited liability companies, based in each region.<sup>4</sup> The SAFERs involve a wide range of public and private stakeholders from rural areas, like farmers unions, representatives of the regions and departments, the state, banks and nature protection associations. They are also supervised by the ministries responsible for agriculture and finance. There are 13 SAFERs in metropolitan France and three in overseas departments. The SAFERs have established the National Federation of SAFER (*La Fédération Nationale des Safer*, FNSafer).<sup>5</sup>

The SAFERs were founded by the *Agricultural orientation law* (No. 60-808, dated 5 August 1960), and with the *Agricultural orientation law* (No. 62-933, dated 8 August 1962) they were granted pre-emption rights to acquire land. Currently, the key legal act regulating the activities of the SAFERs is the *Rural and Maritime Fisheries Code*, adopted in 2000, namely its Articles L141-1 to L143-15.

The initial key objectives of SAFERs were to reorganize agricultural holdings, ensure a more efficient agricultural production and provide access to land for young farmers. The purpose was subsequently widened to include sustainable agriculture development, supervision of agricultural land use and protection of agricultural land in the context of increased urbanization of the agricultural areas. In the 1970s, SAFERs were also actively facilitating large infrastructure projects such as highway and railway constructions. Since the 1990s, they were authorized to sell agricultural land for non-agricultural purposes to facilitate the economic development of the respective areas. Since 1999, SAFERs can apply their pre-emption right not only for agricultural but also for environmental purposes (Jégouzo, 2020). At present, SAFERs are still mainly involved in the development of agriculture, but they also contribute to the protection of the environment, landscapes, and management of natural resources (e.g., water). Another key role of SAFERs is to support local authorities, like municipalities, in their land-related projects.<sup>6</sup>

The current objectives of SAFERs are enumerated in Article L141-1 of the *Rural and Maritime Fisheries Code* and can be summarized as follows:

- Protection of the agricultural, nature and forest areas. SAFERs actions should promote the installation, maintenance and consolidation of agricultural or forestry holdings so that they reach a viable economic size in conformity with the criteria of the Regional Master Plan for Agricultural Holdings (*Schéma directeur régional des exploitations agricoles*), as well as to promote the improvement of the parcel structure. These activities should contribute to the diversity of production systems, in particular, those allowing the combination of economic, social and environmental performance and those relating to organic farming;
- Contribution to the diversity of landscapes, the protection of natural resources and the maintenance of biodiversity;
- Contribution to the sustainable development of rural areas; and
- Ensuring the transparency of the rural land market.

<sup>4</sup> France is divided into regions, departments and municipalities.

<sup>5</sup> [www.safer.fr](http://www.safer.fr)

<sup>6</sup> [www.safer.fr](http://www.safer.fr)

To attain these objectives, SAFERs may perform actions enumerated in Article L141-2 of the same code. They may, *inter alia*, acquire rural property, land, agricultural or forestry holdings with the purpose of their subsequent resale and transfer to the relevant beneficiaries. The SAFERs are also conferred the right to acquire the shares of companies or parts of entities whose main purpose is to use or hold agricultural properties. The SAFERs can engage in or facilitate lease (*location*) of agricultural properties of third parties.

In practical terms, SAFERs perform the following functions (based on SAFER, 2017b):

- purchase agricultural, forestry and rural property on the market (including shares of the companies);
- acquire agricultural land, shares of agricultural companies and other defined property applying pre-emption right;
- temporarily hold and manage the properties owned by SAFER;
- lease out properties held by SAFER for a maximum of 5 years (renewable once based on separate agreement);
- resell the properties to the selected candidates (based on the procedures of the public call for applications);
- facilitate lease of agricultural land, organizing the transfer of lease rights related to all the parcels within the farm to the farmer taking over the existing farm;
- upon the request of the landowners (private or public), temporarily lease out their land to the potential users (maximum duration of the lease is 6 years, renewable once);
- provide support to the local authorities (perform studies and provide information on concluded preliminary private land sales agreements so that the local authorities can request SAFER to apply the pre-emption right and acquire the parcel if necessary (e.g., see <https://vigifoncier.fr/>); and
- contribute to the transparency of the rural land market by publishing the reference land prices by regions (in coordination with the French Ministry of Agriculture and Food).

The SAFERs play an important role in ensuring the implementation of the relevant public policies and facilitate the conciliation of different land uses (e.g., agricultural, environmental, local development). The SAFER decision-making process involves the following stakeholders:

- Technical committee (*le comité technique*) of SAFER,
- Administrative board (*le conseil d'administration*) of SAFER, and
- Government commissioners (*les commissaires du Gouvernement*).

The Technical committee is composed of representatives from:<sup>7</sup>

- the agricultural organizations (representatives of agricultural unions, chambers of agriculture, agricultural mutual banks and insurance companies),
- the local authorities (general council and associations of mayors),
- the French state (the director of agriculture and the director of public finances of the department), and
- in some SAFERs – the regional council representatives, notaries, environmental associations or organizations, forest owners' unions, rural property unions.

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<sup>7</sup> [www.safefr.fr](http://www.safefr.fr)

The Technical committee examines, *inter alia*, the applications submitted by the candidates for the purchase of agricultural land sold or leased out by SAFER or the temporary renting of land. The committee issues its opinion on the submitted applications. This procedure does not apply to land sale transactions between third parties. In some SAFERs, an optional Local commission (*la commission locale*) is involved. It pre-examines the applications and issues pre-opinions, which the Technical committees later consider.

The Administrative board of each SAFER makes decisions upon consultations with the Technical committee. This board is composed of representatives of SAFER's shareholders such as farmers unions, local authorities, the state, banks, environmental organizations, etc. (see [www.safefr.fr](http://www.safefr.fr); Jégouzo, 2019).

The Government commissioners validate the decisions of the Administrative board. They represent the Ministry of Agriculture and Food and the Ministry of Economy and Finance and ensure, *inter alia*, that decisions taken by SAFER comply with their legal scope of action and their objectives, as well as with the regional development policy priorities.

The SAFERs regulate the entire rural land market and acquire land either through negotiations (89 percent of purchase cases) or using their pre-emption right to fulfil the general interest objectives defined by law. In 2019, SAFERs purchased 101 700 hectares of land and sold 100 000 hectares (Jégouzo, 2020). However, this does not mean that all the land transactions involve SAFERs and, in practice, most of the nearly 700 000 hectares of agricultural land that changed hands in 2019 was concluded between third parties.

In accordance with Article L.143 of the *Rural and Maritime Fisheries Code*, SAFERs have a pre-emption right to acquire immovable property used for agriculture, the movable property attached to such immovable property, as well as the agricultural land which are put on sale or otherwise alienated. This pre-emption right may be used for the purposes defined in Article L-143-2 of the *Rural and Maritime Fisheries Code*.

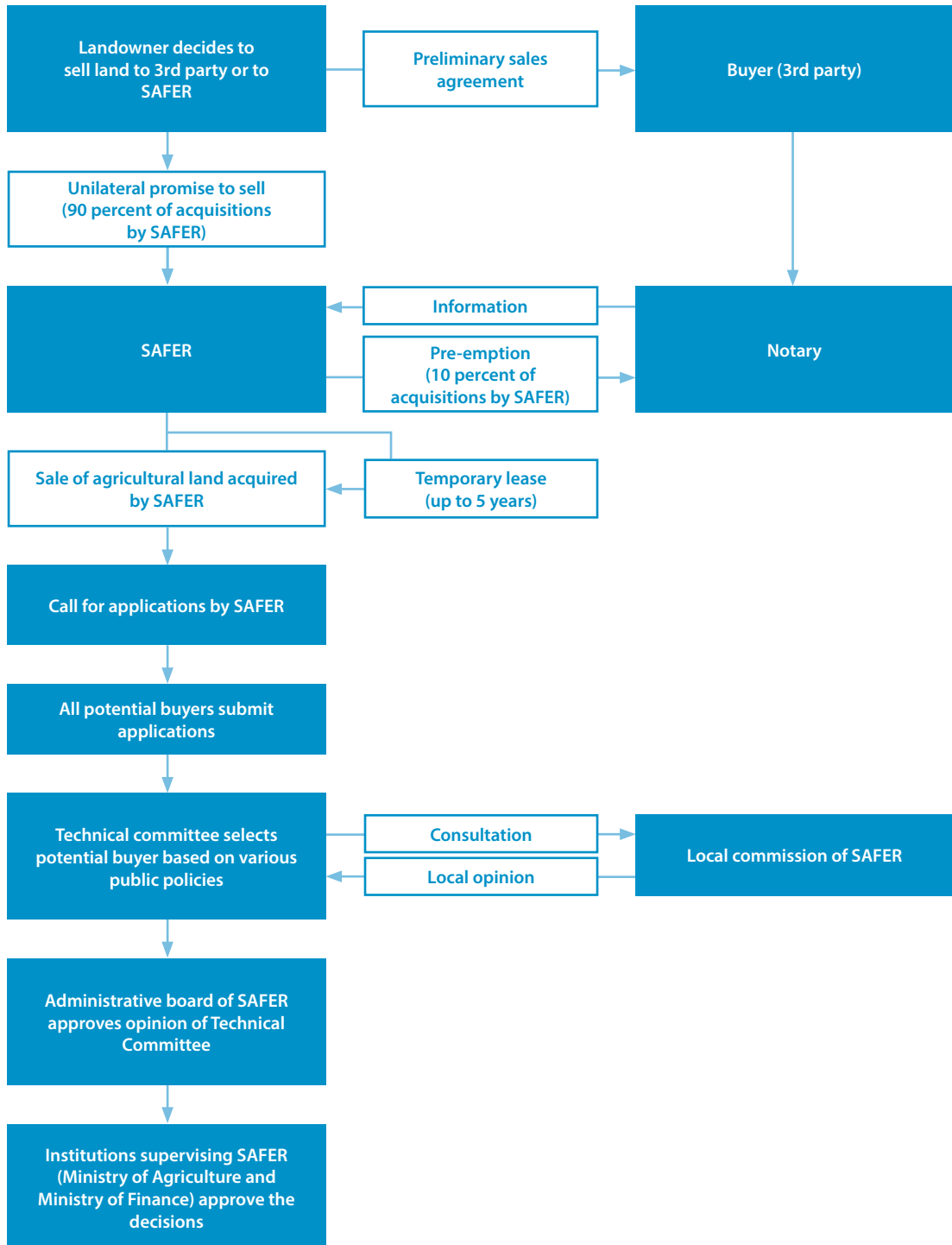
The pre-emption right may be applied to attain the legally defined objectives, such as the installation, relocation or ensuring continuity of the activities of the farmers, consolidation of farm holdings, conservation of existing viable farms in case of their transfer, fighting against land speculation, and ensuring environmental protection. The pre-emption right is not applicable in a number of cases, like in transactions between the coheirs and close relatives, in case a farmer acquires the land they already use, or in case of transactions involving the state or public authorities (see SAFER, 2017b, slides 34-36). If the buyer of the agricultural land is another farmer, the pre-emption rights of SAFER are very limited and may be applied only in defined specific circumstances.

In order to decide whether or not to use their pre-emption right and in conformity with Article L141-1-1 of the *Rural and Maritime Fisheries Code*, SAFERs are informed by the notaries about all transfers of rural property, land, farms or forest holdings in the country. In case of transfer of the shares or parts in the companies whose main purpose is farming or holding agricultural assets, such information is provided by the transferors of the said securities (SAFER, 2017b).

When SAFER wishes to sell or lease land, it makes a public call for potential buyers or tenants. This information is posted in the town hall for 15 days and published in two local newspapers as well as published during 15 days on the websites of the prefecture of the department,

the region and SAFER. During this period, potential buyers or tenants must submit their applications to acquire or lease the land and present the activities they intend to perform on the land. The SAFERs Technical committee of the relevant department (administrative division in France) analyses these applications and may (optionally) consult with the Local commission of SAFER (if established). The Technical committee covers the whole territory of the department, while there might be several local commissions representing only a part of the department's territory. The Local commission provides an opinion on the proposed candidates, and the Technical committee takes such opinion into account while making the final decision. The Technical committee makes a proposal about which buyer or tenant should be selected. The potential buyer or tenant is selected based on the priorities of various public policies applicable in the respective area. The final decision is made by the Administrative board of SAFER and approved by the Ministry of Agriculture and Food and the Ministry of Economy and Finance (SAFER, 2017b). When SAFER subsequently sells or leases the parcel to the farmer, a respective contract requiring agricultural activities to be performed for at least ten years is signed (up to 30 years in the case of environmental projects) (Jégouzo, 2019). Figure 3 depicts the process of acquisition and sale of agricultural land by SAFER.

**Figure 3: Acquisition and sale of agricultural land by SAFER**



*Based on SAFER, 2017b, slide 33.*

The SAFERs also facilitate the lease of the agricultural land. If a person or an entity wishes to lease out agricultural land temporarily they may seek the support from SAFER. For instance, when a retiring landowner wishes that their family land was farmed until a descendant could take over the farm or when a local authority has a stock of land aimed for housing construction and wishes that the land was farmed until the beginning of the project, the landowner addresses SAFER and chooses the rental period. The latter may go up to six years, renewable once, regardless of the surface. The lease term is short since this instrument is designed to serve only as a temporary solution for the landowner. The SAFER guarantees the landowner the rent payment and takes care of the management issues – SAFER carries out an inventory and finds a tenant for the duration agreed with the landowner. The landowner is guaranteed to recover free and maintained property at the end of the lease agreement. These services of SAFERs are remunerated. In the frame of this instrument, two contracts are concluded. The landowner and SAFER signed an agreement on the transfer into disposition (*la convention de mise à disposition*). Also, a temporary SAFER lease agreement (*le bail SAFER*) is signed between SAFER and the leaseholder. In 2019, there were 8 000 pending contracts between SAFERs and landowners and 12 000 leases for 103 000 hectares (Jégouzo, 2020).

Another form of lease facilitation is called “lease intermediation” (*l’intermédiation locative*). It is used to facilitate the transfer of farms in cases where the existing farmer wishes to terminate their activities or retire. In many cases, at least a part of the farm’s land is leased in, and SAFER may undertake to contact all the lessors of the respective farmer and collect the promises to lease out land to a farmer taking over the whole farm and whose farming project is approved by SAFER. The farmer to take over the farm may be selected in advance by SAFER, or they may be selected after SAFER has collected the lease promises. In both cases, SAFER makes a public call for applications. It may be the case that some parcels would be attributed to other farmer(s) than the preselected one if this ensures better exploitation sustainability of the land. Such a mechanism allows for transfer to the new farmer of both the land owned by the existing farmer and the land leased in by the latter. In 2019, nearly 1 400 lease facilitation operations were performed by SAFERs, covering the area of nearly 14 000 hectares.

During a lease intermediation process, a lessor of the agricultural land making part of a farm can decide to sell the land. In this case, SAFER makes a public call for applications and may find a person to acquire the land and commit to continue to lease it out to the existing farmer. Therefore, even if the lessor changes, the tenant may further lease the land. This action by SAFER, who look for a new landowner to secure the tenant, can also take place outside lease facilitation operations.

As to the lease prices, SAFER ensures that the prices are within the range provided for by the prefect (state representative in a respective department of France) (Jégouzo, 2020).

Besides the land banking functions mentioned above, SAFERs provide technical assistance to the state and local authorities (municipalities, departments, regions). The SAFER’s assistance is related to the implementation of the pre-emption right of such authorities, the establishment of their land reserves, management of their agricultural land, provision of land market-related information on the land market as well as assistance in the implementation of their land policies in rural areas (SAFER, 2017b, slide 40).

Originally funded by the State, as well as EU funds from the Rural Development Programme during a short period (2000-2006), the extent of public subsidies has progressively declined, and SAFERs have not received funding from public sources since 2018, with the exception

of SAFERs in Corsica and overseas departments. SAFERs finance all their activities from the revenues received from their transactions or services. Thus, the majority of SAFERs perform their activities on a purely self-financing basis, even if they ensure the provision of public services.

The SAFERs are supervised by two ministries – the Ministry of Agriculture and Food (*le Ministère de l'Agriculture et de l'Alimentation*) and the Ministry of the Economy, Finance and Recovery (*Le Ministère de l'Économie, des Finances et de la Relance*). At the national level, the Ministry of Agriculture and Food supervises the agricultural aspects of the activities of SAFERs as well as their multi-annual activity programmes and receives respective reports from the National Federation of SAFERs (FNSafer) (*La Fédération Nationale des Safer*). Furthermore, the Ministry of the Economy, Finance and Recovery receives all the financial data from the FNSafer. Locally, for instance, in each SAFER, the representative of the Ministry of Agriculture ensures the compliance of the activities of SAFER with the rural policies; and the representative of the Ministry of the Economy, Finance and Recovery delivers their approval regarding transaction prices and even has a right to veto certain transactions of SAFERs (Jégouzo, 2020). Also, since the decision-making mechanism of SAFER involves a wide range of stakeholders, this also contributes to the overall safeguarding of the land banking system.

As regards the linkage between land banking and land consolidation in France, SAFERs may be among the stakeholders of this process. Land consolidation in France is regulated by Articles L121-1 to L128-3 of the *Rural and Maritime Fisheries Code*. In accordance with paragraph 3 of Article L121-1 of the *Rural and Maritime Fisheries Code*, if the project is implemented on the municipality level, the key authority responsible for the implementation of the land consolidation project is the Municipal land consolidation commission (*la commission communale d'aménagement foncier*, CCAF). If the project is implemented in more than one municipality, an Inter-municipal land consolidation commission (*la commission intercommunale d'aménagement foncier*, CIAF) is responsible for its implementation.

Besides the landowners and land users, the key stakeholders involved in the land consolidation process in France are the following entities and persons<sup>8</sup> (see also Morel, 2003):

- The Municipal land consolidation commission (*la commission communale d'aménagement foncier*, CCAF) – an administrative body responsible for, *inter alia*, the definition of the project area, establishment of the rules of the process and establishment of the programme and implementation of the project related works; it takes decisions via the General council and is controlled by the Departmental land consolidation commission.
- The Inter-municipal land consolidation commission (*la commission intercommunale d'aménagement foncier*, CIAF) – established instead of CCAF in case of projects implemented within the limits of more than one municipality.
- The Departmental land consolidation commission (*la commission départementale d'aménagement foncier*) – an administrative body, to which the CCAFs and CIAFs of the Department are subordinated; it rules on complaints and disputes, emanating from the decisions of the CCAFs or CIAFs. The decisions of the Departmental land consolidation commission can be appealed to the Court.
- The Land association for agricultural and forestry land development (*les associations foncières d'aménagement foncier agricole et forestier*) – established to implement

<sup>8</sup> Based on CAD - *Rural Land Consolidation - Consolidation of agricultural and forest land*, BOI-CAD-AFR-10-10-10, 12/09/2012, [https://bofip.impots.gouv.fr/bofip/5187-PGP/html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement\\_de\\_la\\_procedure\\_13](https://bofip.impots.gouv.fr/bofip/5187-PGP/html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement_de_la_procedure_13)



project related works that are not implemented by the Municipal council; it is also responsible for the maintenance of the implemented infrastructure and works.

- The SAFER – may be part of the aforementioned land association and acquire abandoned land and/or other properties to form a land stock necessary to facilitate the implementation of the land consolidation project; also, based on the agreement with the entities implementing large linear infrastructure projects, e.g., highways and railways, SAFER may acquire private land to be later used for the infrastructure project.
- The Departmental council (*le conseil départemental*) (and its president) plays a key role in the process, deciding on the launching of the land consolidation project, defining institutions responsible for its implementation, designating certain stakeholders of the process, performing several procedural acts, deciding on the termination of the process, ordering the implementation of relevant works, financing the process, etc.
- The Municipal council (*le conseil municipal*) (and its mayor) – besides the landowners and/or land users, has the right to request the launching of the land consolidation project; the mayor and the representatives of the Municipal council make part of the CCAF. It may also take the obligation to implement the works related to the land consolidation project, and it can also designate the representatives to some other stakeholders in the process, for example, to the Land associations and CCAF.
- The Prefect (*préfet*) is entitled to perform a number of procedural acts, like the establishment of rules related to the elaboration of the land consolidation plan, the establishment of the programme of relevant project works and the establishment and liquidation of the aforementioned land associations. The Prefect checks the adequacy between the related planned work and the environmental requirements.
- The surveyor (*le géomètre-expert*) – responsible for practically implementing the land consolidation project; appointed by the president of the Departmental council following public procurement procedures and selected among the approved surveyors registered in the list of the minister responsible for agriculture; in certain cases, alternative requirements may be applied to professionals implementing feasibility studies.
- The Departmental Directorate of Territories (*la Direction départementale des Territoires*) – identifies violations related to the protection of afforested areas and plantations.

As mentioned, the land consolidation projects may be initiated at the request of the Municipal council or at the request of landowners or land users, intending to perform amicable exchanges or transfers of property or when the expropriations for the construction of major works are likely to compromise the farm structure.<sup>9</sup>

The feasibility study provided for in the *Rural and Maritime Fisheries Code* is used to define the common objectives of the process, which would be aimed at by all the stakeholders.

Figure 4 presents the following key stages of the land consolidation process in France.

<sup>9</sup> Based on *CAD - Rural Land Consolidation - Consolidation of agricultural and forest land*, BOI-CAD-AFR-10-10-10, 12/09/2012, [https://bofip.impots.gouv.fr/bofip/5187-PG.html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement\\_de\\_la\\_procedure\\_13](https://bofip.impots.gouv.fr/bofip/5187-PG.html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement_de_la_procedure_13)

**Figure 4: Key stages of land consolidation process in France<sup>10</sup>**



<sup>10</sup> Based on APPENDIX – CAD – Sequence of rural land consolidation works, BOI-ANX-000379, 17/06/2013, <https://bofip.impots.gouv.fr/bofip/5191-PGRhtml/identifiant=BOI-ANX-000379-20130617>

The relevant department finances land consolidation projects. Also, additional funding may be provided by the municipalities, the region, public entities, relevant project developers and individuals. The owners finance the related works, but the Departmental council may decide to contribute by providing a subsidy. If land consolidation is implemented in the frame of a large public infrastructure project, the land consolidation is financed by the developer of the infrastructure project.<sup>11</sup>

In the land consolidation process, the land banking tools of SAFERs may be applied. The defined land consolidation project area aims to include parcels acquired by SAFER applying its pre-emption right, parcels already owned by SAFER and small parcels, which are susceptible to be ceded by their landowners (Ministry of Agriculture, Food, Fisheries, Rural Affairs and Regional Planning and Ministry of Ecology, Sustainable Development, Transport and Housing, 2010a, p. 23). The municipality may also ask CCAF to apply a compensated deduction of land, which may go up to 2 percent of the project area (Ministry of Agriculture, Food, Fisheries, Rural Affairs and Regional Planning and Ministry of Ecology, Sustainable Development, Transport and Housing, 2010a, p. 44).

The Departmental council may conclude contracts of pre-funding with SAFER so that the latter could ensure that there is sufficient land stock for the realization of all works planned in the land consolidation project. Accordingly, SAFER may acquire land for the purposes of agricultural, environmental and landscape development in the respective area (Ministry of Agriculture, Food, Fisheries, Rural Affairs and Regional Planning and Ministry of Ecology, Sustainable Development, Transport and Housing, 2010a, p. 37). The acquired land may be used to facilitate subsequent land exchanges with the landowners within the project area or used for public purposes, such as rural roads and other public infrastructure. As already mentioned, on demand of the entities developing large linear infrastructure projects, SAFERs may acquire land, which is later used for the purposes of such infrastructure projects.

In addition, voluntary land exchanges may also take place with their facilitation carried out by the land professionals from SAFERs.

In conclusion, the land consolidation instrument is used within a concerted and coordinated framework to tackle a multitude of rural issues related to property structure, farming, agriculture, natural resources, water management, public facilities, roads, and large linear infrastructure projects.

### **2.3 LAND BANKING IN GERMANY**

In Germany, land banking is applied in various forms and in a decentralized manner, which is due to the federal structure of the country, existing institutional setup, and the applicable legal framework. This section describes the key features of these various land banking approaches, including land banking performed by the non-profit land development companies based on the example of Mecklenburg-Vorpommern, land banking applied in the frame of land consolidation projects, as well as the local land banking via “land pooling” used as part of ecological compensation measures.

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<sup>11</sup> Based on *CAD - Rural Land Consolidation - Consolidation of agricultural and forest land*, BOI-CAD-AFR-10-10-10, 12/09/2012. [https://bofip.impots.gouv.fr/bofip/5187-PGPh.html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement\\_de\\_la\\_procedure\\_13](https://bofip.impots.gouv.fr/bofip/5187-PGPh.html/identifiant%3DBOI-CAD-AFR-10-10-10-20120912#Deroulement_de_la_procedure_13)

As mentioned, land banking in Germany has various forms and is adapted to the specifics of each land-demanding project. This applies not only to agricultural land and rural areas but also to urban and agglomeration areas, areas of conversion of large former industrial areas, as well as in large nature protection projects. For these purposes, in different German federal states, some two or more public or private entities such as Land Banks, Land Funds, Nature or Environment Foundations or other entities having a specific legal nature are established. They have their own public objectives and their specific financing. Experience shows that the most efficient land banks are those which focus on specific situations (Thomas, 2021b).

### 2.3.1 Land banking through non-profit land development companies

This sub-section overviews the land banking through non-profit land development companies (*Gemeinnützige Landgesellschaften*) with a particular focus on the situation in the Eastern part of Germany, which after the unification of the country underwent a fundamental land reform. These experiences may be of particular relevance to a number of ECA countries that have also implemented land reforms. The particular focus is made on land banking in Mecklenburg-Vorpommern, which is one of the federal states (*Bundesländer*) in the East of the country.

In Germany, the key role in the management of agricultural land is played by the federal states (*Bundesländer*), acting through their relevant public institutions (e.g., the Ministry of Agriculture and the Environment of Mecklenburg-Vorpommern), and the non-profit land development companies (*Gemeinnützigen Landgesellschaften*). The latter are established and act, *inter alia*, as land banks in the specific states. For example, Landgesellschaft Mecklenburg-Vorpommern mbH (LMV)<sup>12</sup> and Landgesellschaft Sachsen-Anhalt mbH<sup>13</sup> perform land banking functions in Mecklenburg-Vorpommern and Sachsen-Anhalt states respectively. In total, there are nine such non-profit companies in Germany,<sup>14</sup> who are also members of their federal association entitled *Bundesverband der gemeinnützigen Landgesellschaften* (BLG).<sup>15</sup> The BLG organizes the exchange of relevant information and experiences (BLG, 2015).

In addition to land management on a level of separate German federal states, the process of land reform and land privatization following the reunification of Germany has involved the Federal Government and the Federal level institutions, where the key role was played by *Bodenverwertungs- und -verwaltungs GmbH* (BVVG).<sup>16</sup> After an analysis of land banking in Mecklenburg-Vorpommern, this sub-section will provide an overview of the activities of BVVG and their relationship with the land banking performed by the LMV.

In most cases, the key shareholders of the land development companies are the specific federal states represented by their Ministries responsible for agriculture, as is the case in Mecklenburg-Vorpommern. Other stakeholders may also own a part of shares of such companies, including the German Settlement and Land Mortgage Bank (*Deutsche Siedlungs- und Landesrentenbank*), the *Landwirtschaftliche Rentenbank*, some regional banks (*Landesbanken*) and other public entities like rural districts, municipalities, regional farmers associations and others (Bruns,

<sup>12</sup> [www.lgm.de](http://www.lgm.de)

<sup>13</sup> [www.lgsa.de](http://www.lgsa.de)

<sup>14</sup> The list of non-profit land development companies established in Germany (see BLG, 2015): BBV LandSiedlung GmbH, Hessische Landgesellschaft mbH, Landgesellschaft Mecklenburg-Vorpommern mbH, Landgesellschaft Sachsen-Anhalt mbH, Landgesellschaft Schleswig-Holstein mbH, Landsiedlung Baden-Württemberg GmbH, Niedersächsische Landgesellschaft mbH, Sächsische Landsiedlung GmbH, Thüringer Landgesellschaft mbH.

<sup>15</sup> [www.blg-berlin.de](http://www.blg-berlin.de)

<sup>16</sup> [www.bvvg.de](http://www.bvvg.de)

2004). In Bavaria, the BBV LandSiedlung GmbH is privately owned by the Bavarian Farmers' Association.<sup>17</sup>

These state companies implement the regional land policies and are responsible for the development of rural areas. Usually, they are supervised by the ministry of agriculture, while other ministries take part in the supervisory bodies. Also, the companies may be audited by the General Accounting Office (*Landesrechnungshof*) (Bruns, 2004).

The total area of agricultural land in Mecklenburg-Vorpommern is 1.35 million hectares. Out of this number, besides private landowners, the state of Mecklenburg-Vorpommern owns 90 000 hectares, 35 000 hectares belong to BVVG (Federal state-owned land) and 7 000 hectares to LMV. Municipalities own between 10 000 to 20 000 hectares and 39 000 hectares of agricultural land is owned by the church (Bruns, 2020).

The key legal acts governing land management activities in general and the activities of LMV, in particular, are the following:

- Reich Settlement Act (*Reichssiedlungsgesetz*), 1919,
- Real Estate Transactions Act (*Grundstücksverkehrsgesetz*), 1961, and
- Land Consolidation Act (*Flurbereinigungsgesetz*), 1976.

The *Reich Settlement Act* provides the legal basis for the functioning of the *Landgesellschaften*, which are responsible for the development of the rural areas in the respective states. This law provides for a particular status, rights and tasks of these non-profit entities, which have the legal form of companies with limited liability. Since the Unification Treaty (*Einigungsvertrag*, 31 August 1990), this law also applies in the new federal states (Bruns, 2020).

The LMV plays the key role in agricultural land management. Its public purpose is set out in its articles of association, and there is no specific policy document guiding its activities. Similar to the *Landgesellschaften* in other federal states, the LMV has its branch offices organized in accordance with the public administrative structure of the state and guarantees the provision of services throughout the whole state. The LMV primarily focuses on improving the quality of life in rural areas and the improvement of the agricultural sector's competitiveness. Also, through the lease of the state-owned land by LMV, land is provided to farmers, who create and preserve jobs in the rural areas. Priority topics are livestock farms (they create more jobs compared to other types of farms), small farms, young farmers and organic farms (Bruns, 2020).

The LMV has a multitude of functions related to rural development, environmental projects, investment support and other objectives. In relation to land management, the key functions are the following (Bruns, 2020):

- management and utilization of the property of LMV and management of agricultural and forestry land owned by the state of Mecklenburg-Vorpommern;
- acquisition, interim management and re-allotment of agricultural properties for agricultural, infrastructure and other purposes;
- application of the pre-emption rights to acquire agricultural land; and
- implementation of land consolidation (acting as a legally entitled contracted service provider).

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<sup>17</sup> See the website of BBV LandSiedlung GmbH, <https://www.bbv-ls.de/historie-351938>

The activities of LMV are controlled and supervised on several levels (Bruns, 2020):

- Shareholders
- Ministry of Agriculture and the Environment
- Supervisory board
- Members of the state parliament
- Representatives of different Ministries of Mecklenburg-Vorpommern.

The reorganization of land in rural areas can be implemented based on the *Land Consolidation Act*, the *Agricultural Adjustment Act (Landwirtschaftsanpassungsgesetz)* (the latter regulates land consolidation and the reorganization of former production cooperatives in Eastern Germany) or through voluntary land swaps. This way, the agricultural, infrastructural, commercial, ecological and social development goals of an area can be coordinated, planned and achieved. It is also a method for resolving land use conflicts. This may also include additional measures, such as village renewal, rural road construction and implementation of the European Water Framework Directive (WFD). On behalf of public authorities and in cooperation with property owners, farmers and other land users, LMV carries out re-allotment of land in accordance with the *Land Consolidation Act* or the *Agricultural Adjustment Act*. During a land re-allotment process, there is the possibility of adapting the ownership of rural properties so that owners or users can better use the land.<sup>18</sup>

Among the land management instruments applied in Mecklenburg-Vorpommern, land consolidation plays an essential role. Since the reunification of Germany in 1990, about 465 land consolidation projects with a total area of around 570 000 hectares have been implemented in the state of Mecklenburg-Vorpommern (Bruns, 2020).

In Germany, the *Land Consolidation Act (LCA)*:

provides for three levels of land consolidation authorities – the supreme land consolidation authority, the higher land consolidation authority, and the lower land consolidation authority. The states define the role of each authority.

In Mecklenburg-Vorpommern, the institutional infrastructure for land consolidation is based only on two levels. The supreme land consolidation authority is the Ministry of Agriculture and the Environment, while the higher land consolidation authority is the State offices of Agriculture and the Environment, which are subordinated authorities of the Ministry of Agriculture and the Environment.<sup>19</sup>

Based on the contract with the Ministry of Agriculture and the Environment of Mecklenburg-Vorpommern,<sup>20</sup> LMV implements land consolidation projects, including, *inter alia*, the management of the whole process of identification of owners, land valuation, interviews and consultations with the landowners, planning the public infrastructure (e.g., rural roads), re-allotment of properties and surveying. While LMV is the most important land consolidation contractor of the Ministry of Agriculture and the Environment, land consolidation projects may also be carried out by the state offices of agriculture and environment as well as several surveying offices. The average size of the land consolidation projects implemented by LMV amounts to 1 000 hectares (Bruns, 2020).

<sup>18</sup> <https://www.lgm.de/>

<sup>19</sup> Website of the State Offices of Agriculture and the Environment: <http://www.stalu-mv.de/>

<sup>20</sup> Website of the Ministry of Agriculture and the Environment of Mecklenburg-Vorpommern (Germany)

It should be noted that the land banking instrument is not used to buy land in future land consolidation project areas, thus aiming to increase the re-allotment options (increase land mobility). In the land consolidation projects where LMV owns land or manages land on behalf of the state, it participates as any other landowner. Also, BVVG acts as any other landowner within the land consolidation project area (Bruns, 2020).

The LMV purchases agricultural land, leases it out for several years and sells it to the farmers or exchanges it to support public purpose projects. As mentioned, LMV owns a 7 000 hectare land fund and also manages 90 000 hectares of land owned by the State of Mecklenburg-Vorpommern. The land owned by the state is only leased out and not privatized since this is the state's general policy. The BVVG performs the privatization of federal land.

The LMV acquires land from private landowners in the market so that it could later use it in public purpose projects. This is one of the main land management functions of LMV, which is mostly applied for the purposes of infrastructure projects, commercial areas (e.g., used for the establishment of new enterprises) and environmental projects. Such acquisition of land in the market is mostly made on demand of the relevant entities. However, when the LMV has information about upcoming projects scheduled for years ahead, it can purchase land without a relevant request from municipalities, state authorities responsible for road construction or other relevant entities. The LMV also exchanges land with private landowners to compensate them for the land they must give up for the public purpose project. In many cases, this helps avoid expropriation and compensation is provided in land rather than money, thereby ensuring the continuity of farming activities.

By using its pre-emption rights, the LMV also supports the acquisition of land, but only for the improvement of agriculture. The pre-emption right may not be used for other purposes such as road construction or environmental projects.<sup>21</sup> The use of the pre-emption right also helps reduce agricultural land speculation (Bruns, 2020).

The LMV also acquires agricultural land on demand of the farmers leasing land from the landowners. This allows the tenant farmers to continue farming on the same land, even if they are financially unable to purchase the land when it comes up for sale on the market. In such cases, the LMV decides whether to acquire a specific parcel. The land bank checks, *inter alia*, the price of the parcel, the future user and the potential for the ultimate sale of the land to the user or other buyers. The LMV may also acquire agricultural land on demand from landowners in difficulty and lease this land back to the same person for up to six years. Upon expiration of the lease contract, the farmer has priority to re-purchase the land from LMV, or the LMV may sell the land to a third party. This mechanism helps farmers overcome hardship periods using the sale and lease-back mechanisms (Bruns, 2020).

The LMV decides what price it is willing to pay for a specific parcel. However, this must be a market price and, for this purpose, the land bank analyses the prices in the specific administrative areas using information from the independent information centres and public valuation boards in the districts. In no case does the LMV need permission from any other institution if it wishes to acquire a parcel of land. However, if the price of the acquired real property is higher than EUR 500 000, such transactions must be approved by the Supervisory Board of LMV. If LMV works as a service provider for some client-entity, for example, when parcels are acquired for a highway or nature protection project, the client makes the final decision on whether to acquire the parcel (Bruns, 2020).

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<sup>21</sup> <https://www.lgm.de/>

The LMV does not engage in lease facilitation, where it would facilitate the conclusion of lease contracts between the owners and users of the land.

The LMV manages all the agricultural land owned by the state of Mecklenburg-Vorpommern. This management is performed based on the contract on the administration of the farmland between LMV and the Ministry of Agriculture and the Environment of Mecklenburg-Vorpommern. The main management modality is to lease land on long-term contracts (6-12 years), since the policy of the state is not to sell the land it holds but rather lease it out (Bruns, 2020).

As regards the funding of land banking activities, upon the establishment of LMV in 1990, its shareholders provided EUR 10 million as start-up capital. Thus, the land banking activities are financed from this start capital, the operating income and loans from the banks (in 2020, the bank loans of LMV amounted to EUR 23 million). The LMV does not receive any further direct funding from the state (Bruns, 2020).

As mentioned, following the reunification of Germany, a land reform and land privatization process was launched at the federal level. The key role in this process was conferred on BVVG, established in 1992 as an affiliate of the Privatization Agency (*Treuhandanstalt*, THA), founded in 1990. The THA transferred all the “agricultural and forest assets” under its management to BVVG, while the latter was conferred a long-term task to manage and privatize these assets (Dells, 2008, p. 4). Thus, BVVG mainly focuses on the privatization of state-owned agricultural and forest land and the restitution and allocation of ownership on land. It is supervised by the Federal Ministry of Finance in cooperation with the Federal Ministry of Food, Agriculture and Consumer Protection (Dells, 2012, slide 3). It operates only in the former East Germany, where “the farm structure (...) is dominated by medium-sized family farms and large-scale corporate farms, often the successors of the cooperative farms” (Hartvigsen, 2015).

The privatization in former East Germany has been implemented in three phases and during a longer period due to the general uncertainty regarding the reorganization of ownership, and perhaps most importantly, the political wish to avoid the potential negative impact the rapid large-scale privatization could have on the land market, i.e. to avoid severe drop in land prices (Hartvigsen, 2013, p. 19).

In the first phase, from 1992 to 1996, land was leased out (for a term of up to 12 years) but not privatized. In the second phase, from 1996 to 2010, the privatization of agricultural and forest land was performed at a reduced price. About 1.2 million hectares were privatized at a reduced price by the end of 2011. From 2005 onwards, privatization of the agricultural and forest land continues at market price via auctions (Hartvigsen, 2013, p. 19). Currently, BVVG mostly sells land in auctions to those who offer the highest price. Even non-farmers may acquire agricultural land from BVVG. However, BVVG also organizes closed tenders reserved exclusively for young farmers, ecologic farmers and livestock farmers (Bruns, 2020).

The LMV works together with BVVG when there is a need to solve land-related problems or conflicts. Also, sometimes the LMV exchanges land with BVVG if it needs specific parcels for the projects under implementation (Bruns, 2020).

As to the municipalities in Mecklenburg-Vorpommern, they do not play a specific role in overall land management. Due to historical reasons, some municipalities own large areas of agricultural land, but such land is most often used simply to provide an income from renting it out or from its price increase (Bruns, 2020).



### 2.3.2 Land banking in the frame of land consolidation projects<sup>22</sup>

In land consolidation projects, land banking is an integral part of the process, and the land is acquired regularly in accordance with the *Land Consolidation Act* (LCA). As explained earlier, the project is implemented by a dedicated land consolidation authority, and only in rare cases is the support from an outside land bank sought. Such outside land banks may be other institutions performing land banking activities in the region or entities indicated in Article 26 c of the LCA, including the Association of Bodies of Participants (see Veršinskas *et al.*, 2020, p. 25-26). If the latter is non-existent, "other appropriate" agencies may be authorized to this matter by the higher land consolidation authority. The acquisition of land may thus be performed in the frame of the preparatory work even before the actual launch of the land consolidation project.

The LCA facilitates the transfer of land ownership between natural and/or legal persons in the frame of a land consolidation project without any notarization. A participant in the project (landowner) may, subject to their consent, be compensated fully or partially with money instead of land (Article 52(1) of LCA). In accordance with Article 52(2), the agreement of transfer of ownership becomes effective, and may not be recalled, once it is submitted in a written form to the land consolidation authority or is included in the minutes of negotiations. From this point, the participant (landowner) concerned may no longer alienate or encumber the parcel for which they are to be compensated with money. Respective restraint on disposal is entered in the land registry. If a participant is compensated with money in whole or in part, and if they agree to the amount of the monetary compensation, the money may be paid to them before implementation of the Land Consolidation Plan, as soon as the restraint on disposal is entered into the land registry. After payment of the monetary compensation, no appeals for a subsequent change of the compensation are permitted. If the parcel in question is encumbered with rights of a third party, the monetary compensation is paid to the landowner less the amount equivalent to the value of such third-party rights.

The monetary compensations must be adequate and are defined based on the valuation procedures implemented in the frame of the land consolidation project. Land, for which the monetary compensation was paid, may be used to compensate other project participants in land or used for re-allotment or other project purposes. Upon consultations with the body representing project participants (Board of Participants), the land consolidation authority decides where to use the acquired land, for example, to improve the land structures, provide space for common facilities and be used for landscaping and environmental purposes. Which public or private beneficiaries the acquired land is transferred to is indicated in the Land Consolidation Plan. The private beneficiaries acquiring land to increase their farms have to pay an adequate price.

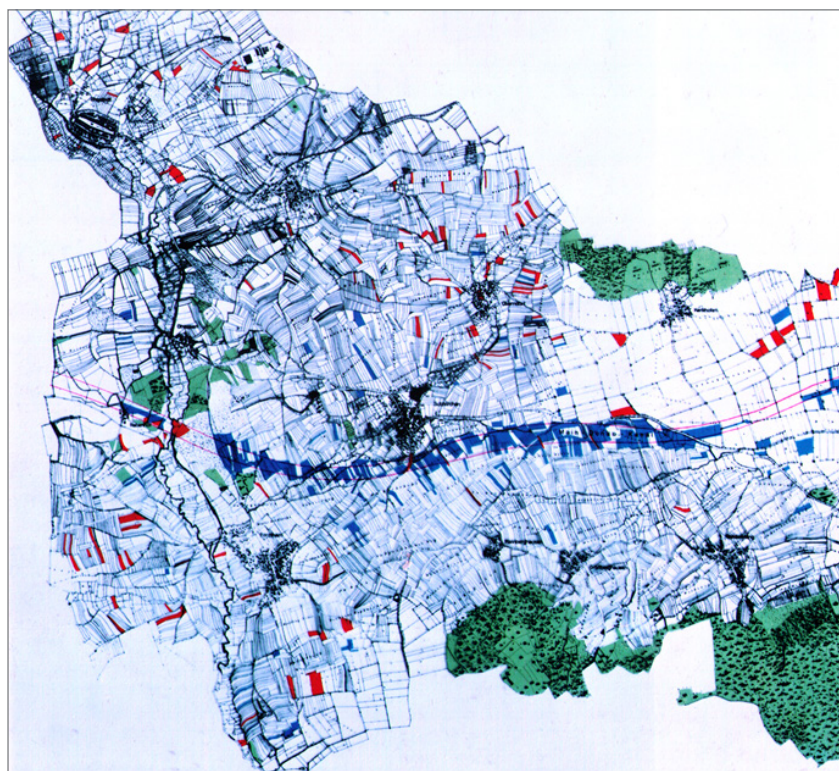
The described method of land banking is likely to be applied in all types of land restructuring projects provided for in LCA, with the exception of voluntary land exchanges (see Veršinskas *et al.*, 2020, p. 26). This land banking approach is the most efficient in achieving the defined land consolidation project objectives and optimizing project funding and costs. More than 95 percent of transactions (sale and use for the intended purpose) with agricultural land, often amounting even to a few hundred hectares, occur in the frame of the land consolidation projects and contribute significantly to the sustainable development of agricultural land structures.

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<sup>22</sup> This section is based on the text provided by Prof. Joachim Thomas.

These transactions are exempted from any taxes and fees, including fees for the registration of rights in the land registry (Article 108 of the LCA). Therefore, contractors favour this method of land acquisition, as compared to other types of land ownership transfer. Confidentiality is another aspect, which makes this type of transaction particularly attractive to the sellers and buyers of land. The information about the transfer of land performed in accordance with Article 52 of the LCA is not made public, which allows avoiding any disclosure of the seller's financial situation and excludes any speculations on the matter by the neighbours or other third parties.

**Figure 5: Illustration of land banking within the land consolidation project in Germany**



Acquisition of land in the frame of construction of the Rhine-Main-Danube canal. Parcels marked in blue were acquired in advance by the project developer; red parcels were acquired by the land consolidation authority during the land consolidation project.

*Source: Bavarian State Ministry of Food, Agriculture and Forestry.*

### 2.3.3 Local land banking via “land pooling” as part of ecological compensation measures<sup>23</sup>

Implementation of the land-demanding public and/or private investments leads to ever-increasing problems since ecological compensation measures related to such projects are implemented wherever agricultural land is available and not in locations best for the environment. To solve this issue at the local level (municipal or county level), a specific land banking approach, the so-called “eco-account with land pooling”, was developed.

Eco-accounts with land pooling are modules of a strategic land management aimed at best organizing the ecological compensation measures related to the implementation of land-demanding projects (see, for example, Kötter and Linke, 2015, p. 675 et sqq.). This approach is regulated by Article 16 of the *German Nature Conservation and Landscape Management Law*,<sup>24</sup> which allows for temporally, spatially and substantially detaching the required ecological compensation measures from the factual implementation of the relevant infrastructure project, and therefore implementing the compensation measures separately.

To this end, the responsible nature protection authority (at municipal or county level) creates an eco-account, where funds are accumulated. From these funds, the land is acquired, and a “land-pool” is created. In the eco-account, the amount and debtor of the required ecological compensation measures are identified. The nature protection authority becomes a trustee of the ecological obligation. The respective ecological obligations are described and determined in the permission/approval of the project itself. The parcels with the environmental potential are collected in the land-pool. To constitute this pool, the parcels may be purchased by the nature protection authority, sometimes with the support of the local land consolidation authority. Thus, a set of environmental needs and opportunities is created and realized over time by the responsible nature protection authority of the region at the expense of the respective debtors (see Thomas, 2021a).

## 2.4 LAND BANKING IN THE NETHERLANDS

In the Netherlands, land banking is a well-established and widely applied tool. In 2015, land banking underwent a decentralization process when its functions were transferred from the national to the provincial level.<sup>25</sup> Since a centrally managed land banking instrument has more potential and is easier to implement in countries just starting the introduction of land banking, this section provides an overview of the current decentralized approach but also focuses on the previous centralized model applied in the Netherlands before 2015. Both centralized and decentralized land banking activities include the acquisition, temporary management and subsequent sale of agricultural land.

### 2.4.1 Decentralized approach after the 2015 reform

Currently, land banking is performed separately by each of the 12 Dutch provinces. The level of the development of land banking varies from province to province, and only a few of them apply land banking in a wide range of areas, such as nature, infrastructure, or outdoor

<sup>23</sup> This section is based on the text provided by Prof. Joachim Thomas.

<sup>24</sup> Nature Conservation and Landscape Management Law (*Gesetz über Naturschutz und Landschaftspflege (Bundesnaturschutzgesetz - BNatSchG)*, 29 July 2009, (BGBl. I S. 2542).

<sup>25</sup> The Netherlands is divided into 12 provinces.

recreation. The respective Council of the Provincial Government performs the role of the land bank, and the acquired agricultural land becomes the property of the province. No guidance is provided from the national level (van Holst and Spijkerboer, 2020).

The key legal act laying the grounds for the current decentralized land banking system is the Law on Development of Rural Areas (*Wet Inrichting Landelijk Gebied*), 7 December 2006 (entered into force on 1 January 2007). The law is planned to be incorporated into a single *Environment and Planning Act (Omgevingswet)* by 2022. Before the decentralization of the land banking system in 2015, the role of the national centralized land bank was carried out by the Agricultural Land Management Office (*Bureau Beheer Landbouwgronden*, BBL). The transfer of lands from BBL to the provinces started in 2014 and was completed by 2018 (BBL, 2018, p. 5).

The BBL worked for various entities, and until the decentralization in 2015, the 12 provinces and the Ministry of Economic Affairs and Climate Policy (*Ministerie van Economische Zaken en Klimaat*) were its most important and largest clients (BBL, 2018, p. 7). Other clients included ministries in charge of housing, spatial planning, environment, transport, public works water management, as well as municipalities, nature conservation organizations and other entities (BBL, 2008, p. 5). As of 1 March 2015, as part of the decentralization of nature policy and liquidation of the Government Service for Land and Water management (*Dienst Landelijk Gebied*, DLG), the provinces started carrying out the basic tasks and activities of the BBL themselves. Since then, BBL ceased all land banking activities and now focuses on the implementation of other government assignments and carries out activities mainly for the Ministry of Agriculture, Nature and Food Quality / Ministry of Economy and Climate (*Ministerie van Economische Zaken en Klimaat*, EZK) (BBL, 2018, p. 7).

Currently, the BBL has no staff, and since the liquidation of DLG, all the BBL work is performed by the employees of the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland*, RVO) and by independent certified valuers. After the termination of some remaining legal disputes, BBL will be abolished once the new Environment and Planning Act (*Omgevingswet*) is introduced in 2022.

In some provinces, specialized land banks were established, like the Green Development Bank in the province of Brabant, which works exclusively in the field of green development (to acquire land for nature conservation or preservation). One of the most advanced provincial land banks is the land bank of Zeeland. In this province, the land banking activities still follow the principles established by the previous national land banking system led by the BBL and the DLG, based on the revolving nature of the budget of the land bank. In general, the provinces are active in the field of environmental projects, where land banking is also applied. Since ongoing political discussions on the national level focus on climate-related actions, it has also been mooted whether a centralized national land bank should be re-established to allow the state to apply land banking for the environmental objectives at the national level. One of the hindrances of the current decentralized land banking system is the requirement that the provinces sell land used for land banking via auctions and, therefore, for the highest price to ensure the possibility for all interested parties to acquire the land. The land to be used for public purposes is sold to municipalities and water boards. This makes it difficult to use land banking to support different targeted policies and groups, such as young farmers (van Holst and Spijkerboer, 2020).

### 2.4.2 Centralized approach before 2015 reform

Until the decentralization in 2015, land banking activities were regulated by the *Law on Development of Rural Areas*, the successor of the Land Development Law of 1985 (*Landinrichtingswet*). Also, certain aspects of land banking were regulated by the Law on Agricultural Land Transactions (*Wet agrarisch grondverkeer*) adopted in 1981.

Before March 2015, the Government Service for Land and Water management (*Dienst Landelijk Gebied*, DLG) was responsible for the preparation and implementation of land consolidation projects (Veršinskas *et al.*, 2020, p. 29). The Agricultural Land Management Office (*Bureau Beheer Landbouwgronden*, BBL) was responsible for land banking. The BBL is a public legal entity under the Ministry of Agriculture, Nature and Food Quality (later the Ministry of Economic Affairs, Agriculture and Innovation) (Hartvigsen *et al.*, 2019, p. 8), which before 2015 conducted real estate transactions for the national government, provinces and other entities. It was established in 1982 and replaced the Agricultural Land Management Foundation (*Stichting Beheer Landbouwgronden*), established in 1946 (see Bos, 1983). Prior to 2015, the core task of BBL was to acquire, temporarily manage and dispose of real estate (land and, where appropriate, buildings) for the realization of government objectives in rural areas, especially with regard to nature, agriculture, recreation, water safety and landscape (BBL, 2018, p. 7).

Even if BBL was a separate legal entity before the decentralization, its operational structure was fully integrated into the DLG. The Director of the two institutions was the same person, thereby ensuring the linkage between land banking, land consolidation and other land-related public purpose activities. Furthermore, staff members of DLG performed a variety of tasks related to land banking. External surveyors were contracted to perform the work in the field (Hartvigsen *et al.*, 2019, p. 8). The BBL worked nationwide through four regional offices (van Holst *et al.*, 2009, p. 38).

The BBL had a broad range of rights, allowing to perform land banking transactions. In some cases, BBL performed the preparatory work for the expropriation of land for nature or outdoor recreation purposes, while the Ministry of Agriculture made the final expropriation decision based on the *Law on Expropriation*. (van Holst *et al.*, 2009, p. 37-38). In certain areas, defined by the government, BBL had an obligation to buy if land was offered for sale by the landowners. For example, such areas included land necessary for the establishment of the Ecological Network (EHS) (areas decided to be used for environmental purposes by the provincial governments) (BBL, 2008, p. 5).

In the Netherlands, land was acquired on the market beginning from the early stages of projects. It was then temporarily managed and subsequently sold, exchanged or allocated for its new purposes in the frame of the specific project. The accumulated land pool was used to compensate farmers for land taken out of production for the implementation of the public initiated projects, for example, related to the environment (Hartvigsen *et al.*, 2019), or used directly for public purposes, for example, the installation of public infrastructure. As regards the pre-emption right, the law did confer this power on DLG, but in practice, it was seldom used (van Holst and Spijkerboer, 2020).

Since the objectives of the entities for whom the land was acquired differed, BBL used a broad range of acquisition instruments: amicable acquisitions, voluntary and mandatory land consolidation, full compensation to prevent expropriation through acquisition based on mutual consent or through the adoption of an official decree for expropriation (practised only in a very few cases) (BBL, 2008, p. 6).

The land bank's work in the field was performed by private land surveyors hired by BBL, who conducted the land valuation, negotiated with landowners, and prepared sale contracts. The latter were verified and signed by the respective employee of BBL (van Holst *et al.*, 2009, p. 38). In most cases, land was acquired based on mutual consent. Expropriation was only applied in rare cases. An important aspect was that BBL acquired land not only within the limits of an upcoming public purpose project (e.g., highway construction) but also purchased land in the vicinity of the public project area. In other words, the area in which land management instruments, such as land banking and/or land consolidation, were applied was larger than the area needed exclusively for the attainment of the public purpose objectives (e.g., installation of infrastructure, establishment of nature protection areas). Such acquired land was "brought" into the public project area (e.g., highway project area) through sale and purchase transactions or was exchanged for and offered as compensation for landowners whose land lay within the project area (see BBL, 2008).

As regards the expenditure of BBL (excluding the Green Space Development Company), for example, in 2008, it was approximately EUR 326 million. EUR 275 million was spent on purchasing land on behalf of the provinces. For the Ministry of Agriculture, BBL purchased land for about EUR 7 million and for the other entities, the total worth of the land acquired by BBL was EUR 22 million. These acquisitions were funded by the respective public bodies and entities (van Holst *et al.*, 2009, p. 39; BBL, 2008, p. 6). The year resulted in a positive operating balance of about EUR 0.8 million. In 2008, BBL acquired a total of 7 481 hectares of land and disposed of 8 635 hectares. The total size of land held by BBL in 2008 was 36 417 hectares. BBL delivered 1 473 hectares of land to future owners and nature organizations (149 transactions in total) (BBL, 2008, p. 6).

Usually, acquired land was leased out on a one-year basis, and such contracts were concluded without the need for approval from the supervisory institution. Information on the land available for lease was published via local newspapers and/or the internet, thus all interested farmers could apply (van Holst *et al.*, 2009, p. 38). As the relevant public purpose project progressed, and it became possible to use the acquired land for the specific purposes it was purchased for, such land was transferred to its ultimate managers, either private individuals or entities such as the 12 provinces or nature protection organizations. Usually, BBL launched the acquisition operations once the objectives for such acquisition were defined and the specific areas where these objectives had to be achieved were delimited (BBL, 2008).

The BBL sold land to a variety of buyers, ranging from farmers to the State Forestry Service and nature preservation NGOs, like *Natuurmonumenten*. For example, in 2008, the total value of the land sold was EUR 86 million (van Holst *et al.*, 2009, p. 39).

Before decentralization, BBL held about 40 000 hectares of land, with approximately 8 000 hectares of land bought and sold every year. As with other land banks, financing of activities was based on a revolving fund mechanism, which meant that revenues from the sale of land were reinvested in new land acquisitions (Hartvigsen *et al.*, 2019, p. 8). The majority of the budget of BBL came from the state budget via provincial governments, while other key contributors were the Ministry of Agriculture, Nature and Food Quality, the Ministry of Transport and Water Management and some specialized organizations, such as water boards. Some sales were profitable due to the increase in market prices or the fact that, in certain cases, land was acquired as agricultural land and later sold for urban development. The salaries of those working for DLG were covered by the Ministry of Agriculture, Nature and Food Quality. Revenues from leasing out land held by BBL were also used to pay employees, ensuring the conclusion of such lease contracts (van Holst *et al.*, 2009, p. 38; van Holst and Spijkerboer, 2020).

As to the supervision of BBL, it was carried out by the Ministry of Agriculture, Nature and Food Quality and a Supervisory Board consisting of a wide range of stakeholders (Hartvigsen *et al.*, 2019, p. 8). The Supervisory Board included the Director General of the Ministry of Agriculture (chairperson) (civil servant from the Ministry, responsible for land management), representatives of four ministries (Agriculture, Environment, Transport, Finance), representatives of provincial governments, municipalities, civic and professional associations and other entities (van Holst *et al.*, 2009, p. 37).

As to its accountability, BBL provided yearly reports on its activities and the development of the rural land market. It evaluated its role in the market by comparing the share of BBL in the total land turnover in each province. It also compared prices offered by BBL against general average prices per province. (Hartvigsen *et al.*, 2019, p. 8) These reports were submitted to the National Parliament. From 2005 to 2011, the yearly share of BBL in the total number of transactions on the agricultural land market ranged from 13 to 26 percent (van Holst and Spijkerboer, 2020).

A safeguarding threshold was established regarding the right to sign land acquisition agreements by BBL. All transactions exceeding EUR 1 million had to be approved by the Director General of the Ministry of Agriculture (van Holst *et al.*, 2009, p. 38).

In the Netherlands, land banking is combined with land consolidation. This helps restructuring of public infrastructure through exchanges of land and creation of dedicated areas for, *inter alia*, "new or improved access roads, drainage or irrigation facilities, landscape elements, nature preservation areas, nature friendly zones along canals, cycling and hiking trails, recreational areas, cultural heritage and landscape art" (Hartvigsen *et al.*, 2019, p. 8). If the land consolidation was applied within the public projects related to water management, like flood protection, BBL acquired land from private landowners and used it as compensation for land taken out of agricultural production as a result of the re-allotment process. The water authorities acquired the land from BBL through the re-allotment procedure.

Between 1983 and 2002, land banking was also used to support farmers via the conclusion of long-term leases between BBL and farmers. The farmers could apply for such support in three cases. First, in case of succession of agricultural land, the children or grandchildren could request BBL to buy and lease-back the inherited land for a long-term period. Second, leaseholders with pre-emption rights to acquire leased land could request that BBL acquire such land on their behalf and then lease it to the initial leaseholder. Third, long-term lease contracts could be requested from BBL when a farmer wished to expand their landholding and thus, BBL could acquire the land and then lease the land to the farmer. Such actions were applied in the frame of land consolidation and land development projects. They existed for about 15 years in parallel with the more traditional land banking activities involving the acquisition and sale of land (van Holst and Spijkerboer, 2020).

## 2.5 LAND BANKING IN SPAIN (GALICIA)

The situation with agricultural land in Spain (Galicia) is characterized by the continuous loss of agricultural areas. From 1985 to 2005, some 145 000 hectares of meadows and farmland were abandoned (Corbelle Rico and Crecente Maseda, 2014). One of the principal reasons for this situation is that the ownership of agricultural land is highly fragmented and is a process that

continues to increase.<sup>26</sup> The total of 2 839 362 hectares of the rural area in Galicia is divided into 11 117 033 parcels with 1 711 879 landowners. Thus, the average parcel size is 0.26 hectares, where one landowner has about 1.66 hectares and 6.49 parcels on average. Currently, about 27 percent of the total area of agricultural land in Galicia is abandoned, constituting a considerable threat to agriculture and risks related to wildfires (Fernández, 2019c, slides 4-7).

To deal with these issues, the Ministry of Rural Affairs of Galicia applies the following instruments (Fernández, 2019b, slide 3):

- land consolidation,
- support of common management of forest areas,
- promotion of land exchanges, and
- land banking.

Land banking is performed by the Galician Agency of Rural Development (AGADER),<sup>27</sup> which manages the land bank of Galicia (*Banco de Tierras de Galicia*), which is the administrative instrument, established by Law No. 6/2011 on Land Mobility (*Ley 6/2011, de 13 de octubre, de movilidad de tierras*), adopted in 2011. The AGADER is an administrative body under the Ministry of Rural Affairs of Galicia (*Consellería del Medio Rural*), and the Minister of Rural Affairs is also the President of AGADER. The AGADER also has a Steering committee consisting of representatives of different bodies of the Government of Galicia responsible for spatial planning, nature conservation and forestry. The Steering committee is responsible for the strategy of AGADER and applicable procedures. The AGADER has a Director General as well as three deputy directors, who are responsible for its management. One of the deputy directors is responsible for the land bank. The AGADER has one central office and co-operates with the county offices of the Ministry of Rural Affairs of Galicia and those of the Department of Rural Infrastructure (see Fernández, 2019a, slides 2-3).

The funding of land banking and other related activities of AGADER comes from the budget of the Ministry of Rural Affairs of Galicia. The budget covers expenses like staff remuneration (both in-house and contracted), land improvement works in the project areas (e.g., cleaning shrubs), project implementation costs, marketing costs and other costs (see Fernández, 2019a, slides 3).

Since its establishment in 2007, the land bank (known as *Bantegal*) had a legal form of a stock company, where the sole shareholder was the Ministry of Rural Affairs of Galicia. *Bantegal* was dissolved as a separate legal entity in 2011, based on the Law on the fiscal and administrative measures (*Ley 15/2010, de 28 de diciembre, de medidas fiscales y administrativas*), adopted in December 2010. The Law on Land Mobility re-introduced the land bank as an administrative public purpose instrument covering the whole territory of Galicia and managed by AGADER.

<sup>26</sup> Data from the General Directorate of the Land Registry, <http://www.catastro.meh.es/esp/estadisticas.asp>, cited on the website of the Land Bank of Galicia at <https://agader.xunta.gal/es/banco-de-tierras/documentacion-y-referencias-tecnicas/>

<sup>27</sup> <http://agader.xunta.gal>



**Figure 6: Land parcel owned by the land bank of Galicia (Spain)**

Source: © AGADER

According to AGADER, the development of the agricultural sector is hindered by the malfunctioning agricultural land markets, both sales and rental markets. In Spain (Galicia), the average annual agricultural land turnover is around 0.10 percent/year, about ten times lower than France or Italy. The price of agricultural land is around EUR 15 000 per hectare, slightly higher than the Spanish average and comparable to that of Denmark or the United Kingdom of Great Britain and Northern Ireland.<sup>28</sup>

The following key factors were identified as driving land abandonment in Spain (Galicia) (Pérez Dubois, 2017):

- out-migration from rural areas and cessation of agricultural activities;
- ageing of the rural population: retirement from agricultural activities without continuance of activities by the younger generation;
- inactive land market, with high land prices;
- lack of trust in the lease of land;
- absence of control of land abandonment: tools based on sanctions are not applied in practice; and
- land is considered as a safety net to be held in ownership rather than sold.

<sup>28</sup> Information about the land bank of Galicia (Xunta de Galicia, n.d).

As indicated in paragraph 4 of the preamble of the *Law on Land Mobility*, since the situation with the Galician agricultural land may be characterized by high fragmentation of the parcel structure, the result is that a multitude of landowners take different decisions concerning very small parcels. Therefore, different land uses are combined within very small areas. Many agricultural landowners no longer live in the rural areas, and their rural properties are abandoned.

Using the land bank, AGADER has two key objectives:

- reduce land abandonment, and
- ensure the availability of agricultural land to those who need access to more agricultural land for agricultural, forestry, nature conservation and heritage purposes or other purposes of public interest.<sup>29</sup>

These objectives are listed in the Law on land mobility, which is the main legal act specifically regulating land banking activities in Spain (Galicia) and repealing the previous Law 7/2007 of 21 May 2007 on administrative and tax measures for the conservation of productive agricultural land and the Land Bank of Galicia (*Ley 7/2007, de 21 de mayo, de medidas administrativas y tributarias para la conservación de la superficie agraria útil y del Banco de Tierras de Galicia*).

The measures to attain the objectives of the Law on land mobility relate to:

- establishment of the land bank of Galicia;
- establishment of the legal regime for the management of the land bank of Galicia;
- regulation of the different procedures for the inclusion of properties into the land bank of Galicia;
- regulation of the procedure of declaring the land as abandoned;
- establishment of sanctions related to the violation of the law; and
- declaration of priority agricultural action areas aiming to revive the rural agricultural economic activities.

The framework legal act, which regulates the overall policy of the management of agricultural land in Spain (Galicia), is the Law on the Improvement of Agrarian Land Structures of Galicia (*Ley 4/2015, de 17 de junio, de mejora de la estructura territorial agraria de Galicia*), dated 17 June 2015. The law establishes the mechanisms and resources for the improvement of the territorial structure of the agricultural holdings of Galicia. Also, land banking and other land management tools and measures are set out in the Guidelines for spatial planning in Spain (Galicia), adopted in 2011.

The Land Bank of Galicia uses the following key instruments to attain its objectives:

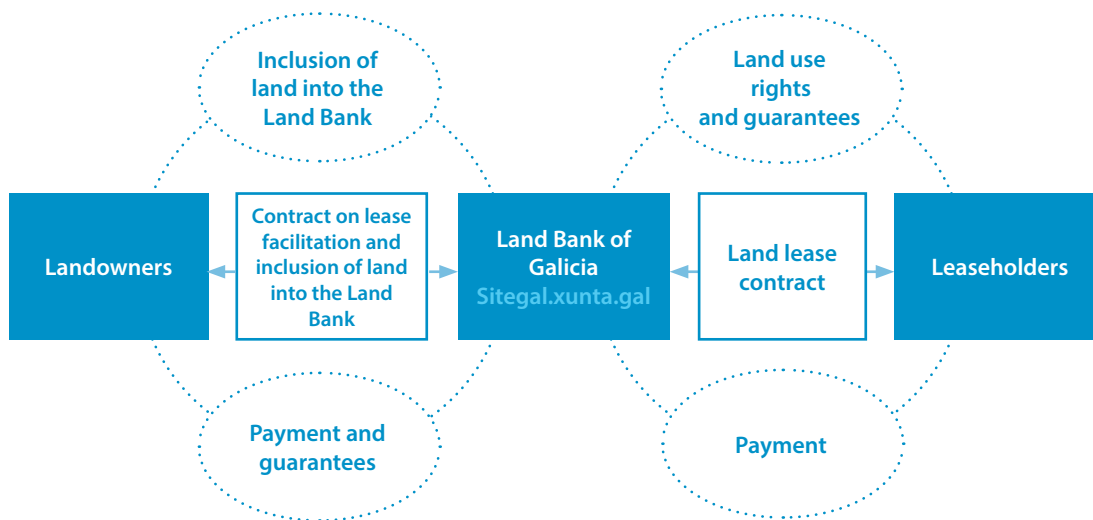
- lease facilitation
- land mobilization (*movilidad de tierras*)
- land consolidation.

One of the features which distinguishes the land bank of Galicia is the focus on lease rights related to agricultural land. Since its establishment in 2007, the land bank has facilitated lease transactions between landowners and land users (farmers). The landowners (both private

<sup>29</sup> See: the website of the Galician Agency of Rural Development (Agader), <https://agaderxunta.gal/es/banco-de-tierras>

and public) willing to lease out their land may incorporate it into the land bank, and the latter searches for potential tenants and concludes lease contracts in the name of the landowner. This facilitates the connection between the agricultural landowners often absent from the village and local farmers interested in enlarging their activities. The information on the available land parcels is made publicly available through a dedicated website (<https://sitegal.xunta.gal>). Since 2007, 2 994 lease contracts have been signed (Fernández, 2019b, slides 24).

**Figure 7: Lease facilitation mechanism in Spain (Galicia)**



Besides matching landowners and farmers, the land bank provides guarantees related to the lease contracts. Landowners are guaranteed that the land will be used properly and returned to the landowner upon the expiration of the lease in good condition. Also, landowners are guaranteed that the lease payments will be made in full and on time. The lease payment is paid by AGADER (in consideration of a 1 percent commission fee). Thus, the landowner does not have to deal directly with the leaseholder. On the other hand, the land bank guarantees the leaseholders that they will be able to use the land without any hindrances until the expiration of the lease contract. In the event that any of the parties violate the terms of the lease, they do not need to deal among themselves directly as it is AGADER who intervenes. This creates security and trust for the parties of the lease relationships (see Fernández, 2019b, slides 19-24).

As regards the lease prices, reference prices are approved by the Government of Galicia upon the Commission of Values and Prices' proposal. Every year this Commission provides information on the current prices of land leases and suggests whether or not reference prices applied by AGADER should be changed. The Commission includes a wide range of stakeholders, such as the representatives of the agricultural unions, expropriation boards, experts from the Ministries of Galicia in charge of spatial planning, nature and rural affairs. The reference prices are published online and vary depending on the type (e.g., farmland, forest land, abandoned land) and location of the land. The reference prices are directly applied for agricultural land owned and leased out by AGADER. As regards the land of private landowners, the prices serve

only as reference purposes and are ultimately defined by the landowners (see Fernández, 2019a, slide 4). In their contracts with AGADER, the owners of land to be used for agricultural and/or livestock purposes authorize the lease for at least five years. Land to be used for forestry purposes is authorized to be leased out for at least 20 years. The decision of AGADER on whether to lease out the parcel to the applicant may be appealed administratively to the Director of AGADER and subsequently to the court (see Fernández, 2019b, slides 13 and 17).

The AGADER actively promotes this tool among the landowners and farmers. In the case of land abandonment, AGADER has the power to impose fines on the landowners unless the land is put in proper condition or is included in the land bank. This sanction serves as an additional motivation to the landowners to include their land in the land bank.

The facilitation of lease applied to separate and scattered parcels is a comparatively expensive and slow process. Also, it is often the case that the supply of agricultural land leases does not match the demand for such land. Focusing the application of the lease facilitation instrument in larger, more concentrated areas has a stronger impact in reducing land abandonment. Since 2018, AGADER implements the so-called land mobilization projects (*actuaciones en movilidad de terras*). The projects are implemented only in specific intervention areas, and if sufficient interest for leasing of the agricultural land in the defined area is identified beforehand. The practice has shown that such a “demand driven” approach is much more efficient and sustainable compared to measures that are implemented based only on the “supply” side, often in cases where there is land for lease, but no farmers to work it (see Fernández, 2019, slide 4).

Pilot land mobilization projects were implemented during 2017-2018 (e.g., projects in Sober and Cualedro (Ourense)), and in 2018 this concept was included into the *Law on Land Mobility*. Besides lease facilitation, such projects also include relevant works funded from the budget of the Autonomous Community<sup>30</sup> of Galicia (Spain), such as clearing the land from bushes and restoring and improving the paths and field roads of access to the parcels. The minimum area of such projects is 10 hectares (3 hectares in exceptional cases). The parcels within the project area are voluntarily included into the land bank. If the landowner does not wish to include their land into the land bank, they must maintain the land as non-abandoned and conforming with the requirements applicable to agricultural and/or forest land. The land included into the land bank is then leased out to agricultural enterprises, associations or individual farmers.

Another tool called “the preventive inclusion of land into the land bank” is used in the projects mentioned. This happens where the owner of the parcel is not known or where the land parcel is co-owned and managed without a land management agreement (see Fernández, 2019, slide 5).

The implementation of the land mobilization projects consists of the following phases (see Fernández, 2019, slide 9):

- identification of the project area;
- inclusion of land parcels into the land bank (conclusion of contracts between AGADER and the landowners);
- implementation of the project field works (e.g., cleaning of the territory and improving field roads); and
- conclusion of lease agreements between AGADER and the leaseholders.

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<sup>30</sup> Autonomous Communities in Spain were created in 1978. There are 17 Autonomous Communities in Spain.

Besides the lease facilitation function, AGADER also manages state-owned land (see Xunta de Galicia, 2021). It may either lease such land out applying the aforementioned reference prices, sell it or in specific cases, alienate it through donation (see Fernández, 2019b, slide 8).

Land consolidation is one of the land management instruments applied in Spain (Galicia). By June 2018, 787 land consolidation projects had been completed in Spain (Galicia) (total area of 370 000 hectares), and 128 projects were still ongoing (total area of 115 000 hectares) (Fernández, 2019b, slide 4). The AGADER does not acquire land in the market in order to later use this for land consolidation projects. However, the land owned by the Galician Government within the project area may be used for public purposes (e.g., agricultural infrastructure) or sold through auctions to project participants. In certain defined cases, public land may also be sold to project participants without an auction. Upon the accomplishment of the land consolidation project, all land remaining in public ownership is included into the land bank for its subsequent leasing out or alienation through sale or donation (see Fernández, 2019b, slides 9-11).

The implementation of the Law on the recovery of agricultural land in Galicia, which was adopted on 14 May 2021 (Law 11/2021),<sup>31</sup> will introduce important changes into the system of agricultural land management in Spain (Galicia). This Law provides for two instruments designed to improve the agricultural land structures in Spain (Galicia). The first one is the traditional Land Bank, engaged in lease facilitation and in the facilitation of transfer of land ownership in certain specific areas. The second one is the Farm Bank, which is a new instrument facilitating the transfer of farms with ceased or ceasing activities. The Law also provides for linkages between the aforementioned instruments and the ones designed to reduce land abandonment, such as smart villages or instruments allowing for the joint management of land resources.

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<sup>31</sup> Law No. 11/2021 on the recovery of agricultural land in Galicia, dated 14 May 2021.



## 3. NEED FOR AND EXPERIENCES WITH LAND BANKING IN CENTRAL AND EASTERN EUROPE AND CENTRAL ASIA

Over the past three decades, the professional and policy understanding of land banking and its potential benefits has steadily evolved in Central and Eastern Europe (CEE). Section 3.1 outlines some of the recent experiences of several CEE countries, which have made significant steps towards having operational land banking instruments, even if in certain cases such steps have failed or setbacks have occurred. Section 3.2 analyses the existing needs for land banking in countries in Eastern Europe and Central Asia, taking into consideration FAO project work and experience.

### 3.1 EXPERIENCES WITH LAND BANKING IN CENTRAL AND EASTERN EUROPE

Land banking is not a completely new instrument in CEE. A number of countries have taken steps towards introducing and developing it in support of land management tools such as land consolidation. This section describes the land banking experiences from Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia.

#### 3.1.1 Croatia

The establishment of the Agricultural Land Agency in Croatia in 2008 began via the support of two international projects. The first project was implemented by Nordic Consulting Group in cooperation with the Ministry of Agriculture, Fisheries and Rural Development from 2006 to 2009 with funding from the Swedish International Development Agency (SIDA) (Hartvigsen, 2015). The central components included supporting the establishment of the Agricultural Land Agency and implementing five land consolidation pilot projects in different regions of the country. Subsequently, in 2009-2010, additional support for establishing the Agricultural Land Agency was provided by the Dutch Government Service for Land and Water Management (DLG). The Agricultural Land Agency was set up following the adoption of the new *Law on Agricultural Land* in 2008, which inaugurated the Land Fund. The Agency was given the right to acquire private agricultural land for the purpose of improving agricultural structures (Hartvigsen, 2015, p. 66-67). It was also conferred a pre-emption right to acquire private agricultural land on the land market and expected to perform land banking activities related to the planned national land consolidation programme.

Croatia demonstrated the political willingness to introduce land banking as part of its land management and created the fundamental preconditions. As a result, the Agricultural Land Agency was theoretically allowed to perform land banking functions, even if they were primarily intended to support the planned land consolidation instrument recommended by the mentioned earlier Swedish-funded technical assistance project.

However, it turned out that there was insufficient policy stability and support in respect of agricultural land management in Croatia and land banking was never fully launched in practice. Since 2001, the entities responsible for implementing the *Law on Agricultural Land* have changed several times. Between 2001-2013, responsibility for the law's implementation was conferred to the municipalities (548 towns and municipalities in Croatia) under the supervision of the Ministry of Agriculture. As to the Agricultural Land Agency, from 2008 to 2013, it was

responsible for the land banking activities related only to private land (acquisition of land from private landowners). It was foreseen that the Agency would also be responsible for the land consolidation programme in the future. Between 2013 and 2018, the responsibility for implementing the *Law on Agricultural Land* was centralized and transferred to the Agricultural Land Agency. Since 2018 the responsibility has reverted to the municipal level, and as a consequence, in 2018, the Agricultural Land Agency was liquidated. In effect, this has meant the practical end of land banking in Croatia (Budanko, 2020).

As to the regulation of land consolidation, to which the land banking activities of the Agricultural Land Agency were supposed to support, in 2015, a Law on land consolidation was adopted. However, this law has not yet been implemented in practice, and a land consolidation instrument in Croatia is far from being operational. Since land banking and land consolidation instruments in Croatia were never made operational, the activities of the Agricultural Land Agency basically remained limited to the privatization and leasing out of the state-owned agricultural land. The privatization was carried out via auctions, with the exception of small parcels (Budanko, 2020).

The Croatian example illustrates the importance of sustained political support and the need for policy stability towards land management. Despite the failed attempts to launch land banking and land consolidation, there remains a huge potential for both instruments in Croatia because of weak farm structures and widespread land abandonment, should there be strong political support and clear and sustainable land management policy.

### 3.1.2 Czech Republic

The role of the land bank in the Czech Republic is played by the State Land Office (*Státní pozemkový úřad*) (SLO)<sup>32</sup>, established 1 January 2013. Among other functions, it also manages the state-owned agricultural land and the land consolidation programme of the country. The same legal act *No. 503/2012 Coll. on the State Land Office*, and other legal acts (*No. 229/1991 Coll.*, *139/2002 Coll.* and *92/1991 Coll.*), govern land consolidation as well as the management, restitution and privatization of state-owned land. Among other aspects, they regulate the sale and lease of state-owned land. As the restitution of land (see Hartvigsen, 2013, p. 10-11) is almost completed, the state-owned land remaining after the privatization and restitution processes serves as a reserve for public purposes and is mainly used in the frame for the land consolidation programme. The land ownership structures in the Czech Republic are highly fragmented, and in 2017 there were around 3.25 million private owners of agricultural land out of which 3.20 million were natural persons possessing "on average just a bit less than 1 hectare. Half of them possessed less than 0.24 hectare" (European Commission, 2021, p. 65-71). Despite the high land ownership fragmentation, land use is not fragmented (Hartvigsen, 2015, p. 25-26; Hartvigsen, 2013, p. 10-11). Thus, land consolidation remains an important tool for the consolidation of land ownership.

The SLO manages the land consolidation programme and is funded from both national and European Union public funds (the Rural Development Programme), with an annual spending of around EUR 80 million. Since the launch of land consolidation in 1992, it has been implemented on around 37 percent of the total land fund or in 5 938 cadastral units out of a total of 13 076. In 2021, about 12 percent of the country's agricultural land was under land consolidation procedures (European Commission, 2021, p. 67; Kosejková, 2021).

<sup>32</sup> [www.spucr.cz](http://www.spucr.cz)



The SLO is managing the state-owned land fund to actively contribute to the implementation of different state development programmes, in particular through active exchange and purchase. As of March 2021, SLO managed around 115 000 hectares of state-owned land. Through exchange and/or purchase, SLO creates and manages the legal reserve of state land, including the reserve for government-approved development programs.<sup>33</sup> In the Czech Republic, there is a high level of integration between land consolidation and land banking. In connection with land consolidation projects, SLO can purchase land from private landowners to achieve project goals. If the statutory deadlines are met, SLO can also acquire ownership rights to abandoned land parcels (or shares thereof) or land parcels of unknown owners.

### 3.1.3 Hungary

The Hungarian National Land Fund was established by *Act CXVI. on the National Land Fund* in 2002 (Sebestyén, 2012), which included, *inter alia*, the state-owned agricultural and forest land. The Fund was then owned by the Ministry of Agriculture. The key objective of the National Land Fund was to provide agricultural land for voluntary land exchanges, with the aim of developing a sustainable ownership and farm structure but also providing for the exchange of state land with private land in flood-protected areas (Hartvigsen, 2015).

Initially, the National Land Fund was granted a range of tools, which would have supported land banking as an instrument integrated with a land consolidation instrument (Sebestyén, 2012). However, Hungary has never adopted land consolidation legislation, and a land consolidation instrument has never been operational. Between 1993 and 2007, several land consolidation pilot projects were implemented with German and Dutch technical assistance. Political support to land consolidation in Hungary was lost in 2006 during the preparation process (Hartvigsen, 2015, p. 58). For this reason, land banking was never combined with land consolidation, as was the initial intention.

The National Land Fund has undergone numerous regulatory changes since its establishment. In 2019, it was replaced by the National Land Centre (*Nemzeti Földügyi Központ*), which is regulated by two government decrees, namely, the *Government decree No. 158 on the responsibilities of the National Land Centre*<sup>34</sup> and *Government decree No. 159 on the amendment of certain government decrees related to the utilization of land parcels belonging to the National Land Fund and the establishment of the National Land Centre*.<sup>35</sup> The National Land Centre is supervised by the Ministry of Agriculture.

Currently, a key role of the National Land Centre is to manage and control the state-owned agricultural and forest land. It is involved in the privatization of state-owned land, implementing an active land policy. In accordance with the *Government decree No. 158*, its key areas of work are related to (i) the abolition of undivided common property, (ii) the administration of irrigation, (iii) administration of forests, and (iv) land surveying and GIS.

In relation to the active land policy, the National Land Centre is involved in the implementation of public purpose projects such as the construction of highways or railways, where the staff

<sup>33</sup> [www.spucr.cz](http://www.spucr.cz)

<sup>34</sup> 158/2019. (VI. 28.) Government Decree on the tasks of the National Agricultural Center, dated 28 June 2019 ((158/2019. (VI. 28.) Korm. rendelet a Nemzeti Földügyi Központ feladatairól)).

<sup>35</sup> 159/2019. (VI. 28.) Government Decree amending certain government decrees related to the utilization of land plots belonging to the National Land Fund and the establishment of the National Agricultural Center, dated 28 June 2019. (159/2019. (VI. 28.) Korm. rendelet a Nemzeti Földalapba tartozó földrészeket hasznosításával, valamint a Nemzeti Földügyi Központ létrehozásával összefüggő egyes kormányrendeletek módosításáról)

of the Centre is trying to find voluntary solutions with landowners and farmers affected by the projects. The state land, managed by the Centre, is actively used to exchange with the private land the state needs for the project. The Centre is also purchasing private land for the project purpose on behalf of the state. The land exchange and land purchase is an alternative to expropriation and an opportunity to alleviate the damages made by the infrastructure construction on the farms and farm structures. The National Land Centre needs to rely on existing available state land as it does not have the authority to purchase private agricultural land in the market with the purpose of using it to compensate landowners and farmers.

### 3.1.4 Latvia

Upon restoration of independence in the 1990s, Latvia implemented land reform, including restitution to pre-war landowners or their heirs. It resulted in a medium fragmentation of land ownership and land use (Hartvigsen, 2015, p. 53). Latvia is now part of the Central European countries applying land banking, one of the many functions of the JSC Development Finance Institution ALTUM.<sup>36</sup> The latter is a state-owned development finance institution, offering state aid for various target groups with the help of financial tools (such as loans, credit guarantees, investing in venture capital funds, etc.) (ALTUM, n.d-a). The ALTUM develops and implements state support programmes to compensate for the market's shortcomings that private financial institutions cannot solve.<sup>37</sup> The shareholders of ALTUM are the Ministry of Finance, the Ministry of Economics and the Ministry of Agriculture.

One of the functions of ALTUM is the management of the Land Fund of Latvia (*Latvijas zemes fonds*), which launched its activities in July 2015 (European Commission, 2021, p. 211). While some of the state-owned land is managed by other institutions, like municipalities and the state-owned Joint Stock Company "Latvia's State Forests", only the Land Fund of Latvia has an objective to buy land and ensure its further use for agriculture purposes. It aims to promote the protection of agricultural land, ensure its availability and preservation, as well as its efficient and sustainable use at a national level.<sup>38</sup>

In 2017, within the Land Fund of Latvia, ALTUM held 760 properties with a total area of 15 600 hectares. Most of this area was leased out to farmers facilitating the development or the launch of their activities. On 31 December 2018, ALTUM managed 429 properties with a total area of 7 818 hectares (European Commission, 2021, p. 211).

**Table 1: Number of agricultural land parcels and hectares acquired by ALTUM**

Year	Number	Hectares
2015	39	519
2016	73	1 474
2017	139	2 044
2018	173	3 517
2019	242	5 485
2020	345	6 894
2021	89	1 853
<b>Total</b>	<b>1 100</b>	<b>21 786</b>

Source: ALTUM, 2021

<sup>36</sup> www.altum.lv

<sup>37</sup> www.altum.lv

<sup>38</sup> www.altum.lv

**Table 2. Number of sold or exchanged agricultural land parcels by ALTUM**

Year	Number	Hectares
2015	0	0
2016	3	75
2017	3	50
2018	3	46
2019	1	56
2020	0	0
2021	1	9
<b>Total</b>	<b>11</b>	<b>236</b>

Source: ALTUM, 2021

The ALTUM performs the acquisitions based on market conditions. The acquired land is further leased to entrepreneurs specializing in agriculture, including individual farmers and agricultural companies. The rental period goes for no less than five years. At the end of the rental period, the tenant has a right to buy out the land or continue leasing it. Sale and/or rent prices are set through the public tender. The user of the land has the priority to buy or rent the land for the highest price set by the public tender. Such pre-emption right is entitled to the user of the land if they participate in the public tender.

In 2017, the Land Fund of Latvia launched a purchase and lease-back service (European Commission, 2021, p. 211). It performs acquisitions of agricultural land with the aim of subsequently leasing it back to the seller, also providing for a buy-back option. Land sale, lease-back and buy-back option agreements are concluded at the same time. This way, the land bank supports farmers necessitating the stabilization of their cash flows and/or further development of their activities. The farmer leases back the land and also has the option to exercise the buy-back right after five years. The lease prices are market-based, and they also include the annual real estate tax, cost of the financing of the sales transaction and administrative costs to monitor compliance with the conditions of the contract (ALTUM, n.d-b). Specific rules regulate the definition of sales, lease-back and buy-back prices, which are basically market-based, including amounts meant to cover the risks and costs related to the buy-back transaction and a service fee charged for the evaluation of the rental transaction (ALTUM, n.d-b).

In Latvia, land banking is not combined with land consolidation, as there is no operational land consolidation program.

### 3.1.5 Lithuania

The potential for land banking in Lithuania via state-owned land reserve was one of the policy recommendations during the second Danish-Lithuanian bilateral project implemented from 2002 to 2004 (Hartvigsen, 2015, p. 36-37). The Land consolidation strategy adopted in 2008 underlined the importance of integrating land consolidation with state-owned land privatization.<sup>39</sup> In 2009, a study on the establishment of a land fund and its role in supporting land consolidation was conducted with Dutch support (Van Holst *et al.*, 2009). The State Land Fund (*Valstybės įmonė Valstybės žemės fondas*) was created in 2010. The only shareholder of the State Land Fund is the Ministry of Agriculture of Lithuania, with its activities closely monitored by the National Land Service under the responsibility of the Ministry.

<sup>39</sup> Government Resolution No. 81 on the Approval of the National Land Consolidation Strategy (*Lietuvos Respublikos Vyriausybės nutarimas Nr. 81 Dėl Nacionalinės žemės konsolidacijos strategijos patvirtinimo*), dated 23 January 2008.

The initial idea of the State Land Fund was that it would become an entity to engage in land consolidation and land banking activities. In 2000 and 2002, the two first land consolidation projects were implemented in Lithuania, and the regulatory framework for land consolidation was adopted in 2004 (Veršinskas *et al.*, 2020, p. 26). In accordance with Article 32 of the *Law on Land*, the State Land Fund implements measures financed from the state budget and the European Union aiming to improve land tenure structures and reduce the extent of land abandonment. As a result of the market forces and impact of the subsidies, diversified taxation measures and administrative sanctions, Lithuania has successfully managed to bring land abandonment down. On 1 July 2021, only 1.1 percent of agricultural land in the country was abandoned.<sup>40</sup>

The State Land Fund is the lead agency for the national land consolidation program. With the permission of the National Land Service, it can include state-owned agricultural land into land consolidation projects. However, it may only exchange it with private land but not privatize it. In land consolidation projects, the State Land Fund also acts as a trustee of state-owned land.

In 2016, there were significant policy and regulatory efforts to introduce certain land banking functions into the State Land Fund to improve the farm structures and reduce land abandonment. However, although some related regulatory measures were adopted, the initiative failed (Vasiliauskas, 2020). In October 2016, the Minister of Agriculture approved the programme for the improvement of landholding structures and the reduction of abandoned land for 2016–2020.<sup>41</sup> Article 4, paragraph 6, point 1 of the *Law on the Acquisition of Agricultural Land* provides the funding source for the programme. Accordingly, 20 percent of the funds received from the sale of state-owned agricultural land (allowed only in prescribed and exceptional cases) must be assigned to the State Land Fund's budget. These funds may only be used to improve farm structures and reduce abandoned land, including, for example, the acquisition of private land by the State Land Fund via its pre-emption right defined in Article 5, paragraph 2 of the *Law on the Acquisition of Agricultural Land*.

The objective of the Programme for 2016–2020 was to improve farm structures and reduce land abandonment of state-owned land and private land acquired by the state. The following measures were envisaged for the implementation of the programme:

- restructuring landholdings;
- enlargement of land parcels by reducing fragmentation and improving farm structure;
- implementing the following task of the National Livestock Sector Development Program for 2014–2020:<sup>42</sup> to ensure the continuity and development of livestock farms, which are not permitted to acquire more land according to legal acts;
- restore good agricultural condition of the high-productivity abandoned land, including actions to support land reclamation; and
- preparation of the low-productivity non-agricultural areas for afforestation, including the formation of the natural framework and the creation of an ecologically stable landscape.

<sup>40</sup> Information from the website of the State enterprise State Land Fund (*Valstybės įmonė Valstybės žemės fondas*), <https://www.vzf.lt/apeleistos-zemes/apeleistu-zemiu-statistika/2021-metu-statistika/>

<sup>41</sup> Order of the Minister of Agriculture of the Republic of Lithuania "On the approval of the program for the improvement of land tenure structures and reduction of land abandonment for 2016–2020" (*Lietuvos Respublikos žemės ūkio ministro 2016 m. spalio 31 d. įsakymas Nr. 3D-645, Dėl žemės valdų struktūrų gerinimo ir apeleistų žemės plotų mažinimo 2016–2020 metų programos patvirtinimo*), No. 3D-645, 31 October 2016.

<sup>42</sup> Government Resolution No. 1162 on the Approval of the National Livestock Sector Development Program for 2014–2020 (*Lietuvos Respublikos Vyriausybės nutarimas Nr. 1162 Dėl Nacionalinės 2014–2020 metų gyvulininkystės sektoriaus plėtros programos patvirtinimo*), dated 4 December 2013.

In accordance with the programme, the following works to improve farm structures were planned:

- formation and restructuring of land parcels, forming rationally managed landholdings,
- formation and restructuring of scattered state-owned land, and
- planning of access roads.

Based on Article 5, paragraph 2 of the *Law on the Acquisition of Agricultural Land*, the State Land Fund is granted a pre-emption right to acquire agricultural land sold on the land market. This right is subordinate to the pre-emption rights of the co-owners of the land. It was suggested that the State Land Fund use this pre-emption right to acquire the agricultural land from private owners and implement the said Program for 2016-2020. A landowner who sells a parcel of agricultural land applies to a notary or the National Land Service under the Ministry of Agriculture. The latter, among other persons, informs the State Land Fund about the possibility of exercising the pre-emptive right and acquiring the land offered for sale.

The offers to sell agricultural land to the State Land Fund were published (State Land Fund of Lithuania, 2016), and more than 4 000 proposals from private owners were received following the launch of the Programme. However, due to limitations in the definition of the acquisition price of the offered land, no transactions were concluded. This has constituted the main bottleneck for the implementation of this measure, and since then, there has been no further development (Vasiliauskas, 2020).

Another problem that has hindered the State Land Fund's implementation of land banking activities was that it was not conferred the right to sell the acquired land at a later stage, for example, in land consolidation projects or following the merger of a parcel with a neighbouring one. In such cases, the State Land Fund could only lease this land out. As a consequence, and the change in the policy of the 2016-2020 government towards the State Land Fund's activities, in practice, the measure was not implemented at all.

Considering the existing regulatory and institutional framework, Lithuania has many preconditions for launching full-scale land banking activities involving acquisition, improvement and sale of the agricultural land and harvest synergies with the land consolidation programme. It would not require substantial regulatory efforts but rather a change in the policy approach, allowing the State Land Fund to purchase land from private owners at a competitive market price and confer the right to sell such land, for example, to private farmers.

### 3.1.6 Poland

The management of agricultural land in Poland is regulated by the *Act on the Management of Agricultural Property of the State Treasury* of 1991 (applicable to the agricultural land owned by the State Treasury) and the *Act on the Formation of Agricultural System* of 2003 (applicable to both state-owned and private agricultural land). On 1 September 2017, the National Support Centre for Agriculture (*Krajowy Ośrodek Wsparcia Rolnictwa*, KOWR) was established,<sup>43</sup> replacing the Agricultural Market Agency (*Agencja Rynku Rolnego*) and the Agricultural Property Agency (*Agencja Nieruchomości Rolnych*, APA), whose tasks were largely taken over by KOWR. The KOWR performs several functions, which are directly related to the management of agricultural land:<sup>44</sup>

- create and improve the land structure of family farms;

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<sup>43</sup> See Krajowy Ośrodek Wsparcia Rolnictwa: <http://www.kowr.gov.pl/>

<sup>44</sup> See Krajowy Ośrodek Wsparcia Rolnictwa: <http://www.kowr.gov.pl/>

- create the conditions leading to the rational use of the production potential of the Agricultural Property Stock of the State Treasury;
- restructure and privatize the property of the State Treasury used for agricultural purposes;
- perform the sale of the real properties and other assets of the State Treasury used for agricultural purposes;
- manage the property of the State Treasury intended for agricultural purposes;
- safeguard the property of the State Treasury;
- initiate agricultural works;
- support the organization of farms on the State Treasury land; and
- exercise the rights related to shares of companies holding agricultural land (see below).

Before its inclusion into KOWR, the APA was the key entity responsible for state-owned land management. It implemented the privatization of state-owned agricultural land and participated in land consolidation projects as a landowner (Hartvigsen, M. 2015, p. 20). The KOWR also participates in land consolidation projects only if it holds land within the respective project territory. The responsibility for the implementation of land consolidation projects lies with Communities (*gminy*) under the supervision of the Ministry of Agriculture.<sup>45</sup> In Poland, land consolidation is rarely used as a tool to privatize state-owned agricultural land. The potential to use land consolidation to facilitate a voluntary structural development by promoting the option to sell and buy additional land as an integrated part of the land consolidation process is not fully reached (Hartvigsen, 2015, pp. 17-20).

The KOWR does not facilitate the lease of private agricultural land. It only leases state-owned agricultural land under its management. Before the adoption of the Law suspending the sale of the agricultural real properties held by the State Treasury (*Ustawa o wstrzymaniu sprzedaży nieruchomości Zasobu Własności Rolnej Skarbu Państwa oraz o zmianie niektórych ustaw*) on 14 April 2016, APA was actively implementing large-scale privatization of state-owned agricultural land. The APA aimed “to use the privatization process to improve the local farm structures by giving preference for purchase to specific groups, mainly commercial family farms” (Hartvigsen, 2013, p. 16). As a result of the said regulatory changes, the state’s current policy is to lease out the agricultural land it owns rather than privatize it. By 2020, KOWR had about 1 million hectares of state-owned agricultural land under lease (Podgórski, 2020).

The KOWR has two different types of pre-emption rights related to agricultural land. First, it has a pre-emption right to acquire agricultural land put on sale on the market. Second, it can buy out shares of companies holding at least 5 hectares of agricultural land (Podgórski, 2020).

Thus, Poland performs some land banking functions related to the management and privatization of state-owned land. However, it does not actively acquire and sell agricultural land or engage in private lease facilitation activities. Also, it does not use land banking (acquisition of agricultural land) to support the implementation of the land consolidation projects, which could increase land mobility and make land available for farm enlargement.

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<sup>45</sup> Based on Podgórski, 2020.

### 3.1.7 Slovenia

Slovenia is one of the few Central European countries implementing an active land banking policy. The functions of a land bank are performed by the Farmland and Forest Fund of the Republic of Slovenia<sup>46</sup> (*Sklad kmetijskih zemljišč in gozdov Republike Slovenije*, FFF), based on the National Farm Land and Forest Fund Act (*Zakon o Skladu kmetijskih zemljišč in gozdov Republike Slovenije*) and established in 1993 by the Republic of Slovenia.<sup>47</sup> All state-owned forest, agricultural land and farms not privatized during the land reform period in the 1990s were assigned to the FFF (Anka Lisec, 2021). The legal form is the public institute, managed by the Director and the FFF Council. They are appointed for the four-year mandate by the government upon the proposal of the Minister of Agriculture. All crucial documents, for example, annual programmes and reports, changes of provisions in the FFF statute etc., are adopted by the FFF Council, with the prior agreement of the government.

The Department of Agriculture of FFF<sup>48</sup> manages all state-owned agricultural land, focusing mainly on its lease to farmers, facilitating their access to land and ensuring its rational use and cultivation. This Department also ensures proper maintenance of agricultural infrastructure and land redevelopment and amelioration (FFF. n.d). According to the annual report for 2020 (FFF. n.d), the FFF managed 60 182 hectares of agricultural land.

Besides the management of the state-owned land, FFF also performs targeted acquisitions, sales and exchanges of agricultural land. The main objective of this activity is to improve the production capacities, ensure the rational and efficient size of land parcels and improve farm structures (FFF. n.d). The FFF purchases land adjacent to the state-owned parcels, small parcels, which may be merged with existing state-owned parcels, etc. It also acquires land with the subsequent objective of leasing it out to farmers, who do not have the necessary means to purchase the specific parcel(s). Furthermore, FFF performs land acquisitions under a specific legal regime within the nature protected areas or other areas of strategic or state importance (FFF. n.d).

In Slovenia, all offers of sale of private and state-owned agricultural land must be published on the notice board of the competent administrative unit and the state portal of e-administration (FFF. n.d). The FFF monitors these offers and, if necessary, applies the pre-emption right to acquire a specific parcel paying the price offered by the seller and published as indicated above. In most cases, the FFF defines the acquisition price based on market data, considering data from the real property mass valuation system, a market-based valuation system managed by the Surveying and Mapping Authority of Slovenia (cadastre agency) (Anka Lisec, 2021).

Due to the land reform during the transition period in the 1990s, a large number of agricultural land parcels in Slovenia remain co-owned between the private owners and the state. Therefore, besides land transactions, FFF also performs transactions with ownership shares in land with the aim of reducing co-ownership.<sup>49</sup>

Most of the FFF acquisition, sale and exchange transactions are performed in accordance with an annual plan of operations and a financial plan, adopted yearly by the FFF Council and

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<sup>46</sup> <http://www.s-kzg.gov.si/en/>

<sup>47</sup> Official Gazette of the Republic of Slovenia, No. 10/93 of 24 February 1993.

<sup>48</sup> In 2016, a state-owned company, Slovenski državni gozdovi – SiDG, was established for managing state-owned forests. This was reflected also in the activities of FFF, which is nowadays focused on managing state-owned agricultural land and farms.

<sup>49</sup> <http://www.s-kzg.gov.si/en/key-areas-of-work/department-of-agriculture/>

approved by the government. These documents conform to the development policy of the Republic of Slovenia and the state agriculture development framework.<sup>50</sup> In 2020, the FFF acquired 733.28 hectares of agricultural land and sold 26.18 hectares, with a minor share of land exchanged; in 2019, FFF acquired 639.92 hectares and sold 32.52 hectares.<sup>51</sup>

During the last decade, the FFF has also become an active player in land consolidation projects. Even if it does not act as the lead agency, as this is with the Ministry of Agriculture, Forestry and Food, it actively promotes land consolidation among landowners to ensure the support of the majority necessary for project implementation. Since land consolidation improves both private and state-owned land structures, this is one of the major drivers for the FFF to be proactive. The FFF does not acquire land in future or ongoing land consolidation project areas to increase land mobility and acts as a simple landowner. The FFF usually does not sell or privatize land during land consolidation projects. Therefore, the potential of combining land banking and land consolidation is not yet fully realized. However, the policy approach is evolving. In the future, the FFF, which also initiates land consolidation projects, may be expected to become proactive in acquiring private land and aim to increase land mobility in the respective land consolidation project areas (Anka Lisec, 2021; also see Hartvigsen, 2015, p. 25).

### 3.2 THE NEED FOR LAND BANKING IN EASTERN EUROPE AND CENTRAL ASIA

Land banking in Central and Eastern Europe has been promoted just as strongly as land consolidation by FAO, FIG, UNECE, WPLA and the community of Western European land consolidation professionals active in CEE. Land banking has been the specific topic of FAO/LANDNET regional workshops in 2004, 2008 and 2010 (FAO, n.d). A study conducted in 2015 on the introduction of land consolidation and land banking in 25 CEE countries found that most countries have introduced land consolidation (Hartvigsen, 2015). However, with the few exceptions, land banking had failed in CEE, and the potential remained largely unutilized. From the CEE countries analysed in the previous section, only the Czech Republic, Latvia and Slovenia to at least some extent use land banking involving the acquisition of private agricultural land. Among these countries, only the Czech Republic has established linkages between land banking and land consolidation.

Nevertheless, as mentioned in the proceeding paragraphs, several CEE countries have had a renewed interest in land banking in recent years. This renewed interest is driven by the need to support the introduction and/or building up fully operational national land consolidation programmes or by a political wish to improve farm structures, land utilization and combat problems of excessive land abandonment. Some countries have both drivers at the same time. Agricultural land markets are still weak in many countries in the region, and the previously mentioned land management instruments may play a strong role in contributing to their development (Hartvigsen and Gorgan, 2020).

In **North Macedonia**, 95 percent of farms are smaller than 5 hectares, and the average farm size is 1.6 hectares, divided into an average of 7 parcels. During 2014-2017, FAO first supported the preparation of the national land consolidation programme by implementing two pilots to test the 2013 *Law on consolidation of agricultural land*, followed by scaling up activities and additional training and capacity building. From 2017 to 2022, FAO is supporting the first

<sup>50</sup> <http://www.s-kzg.gov.si/en/key-areas-of-work/department-of-agriculture/>

<sup>51</sup> <http://www.s-kzg.gov.si/en/key-areas-of-work/department-of-agriculture/>



round of land consolidation projects under the national programme through the European Union and FAO funded project *Mainstreaming of the National Land Consolidation Programme* (MAINLAND) (Hartvigsen, 2019). In North Macedonia, 240 000 hectares of agricultural land remain in state ownership, which is more than 40 percent of all arable agricultural land in the country. The lessons drawn from the previously mentioned land consolidation pilots were that the fragmented small state-owned land parcels in the project area could catalyse land consolidation re-allotment planning by increasing land mobility (Hartvigsen, 2014). FAO has subsequently supported the preparation of the amendment of the *Law on the sale of state-owned agricultural land* to allow for the privatization of state land through the land consolidation instrument (FAO, 2019). This initial work on state land management and privatization has also paved the way for active use of existing state-owned agricultural land in support of land consolidation. The Government of North Macedonia has recently shown interest in addressing widespread land abandonment, where around one-third of all arable agricultural land is unutilized. Adding this to the list of objectives, the North Macedonian policy objectives of improving farm structures by reducing land fragmentation and facilitating farm enlargement, ensuring better management of state land, opening for privatization of state land and addressing land abandonment all come nicely together with land consolidation and use of state land as the main land management instruments.

In **Armenia**, small family farms are also dominant – according to the 2014 Agricultural Census, 33 percent of the land of family farms and 38 percent of the land of corporate farms is abandoned (FAO, 2017). There are many inter-related drivers of land abandonment, including land fragmentation and small farm sizes making farming unprofitable, dependency on irrigation, problems for small farms to access markets, land degradation and an ageing rural population, all leading to out-migration from rural areas and eventually land abandonment.

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**Figure 8: Abandoned agricultural land in Mayisyan village, Armavir Marz, Armenia**

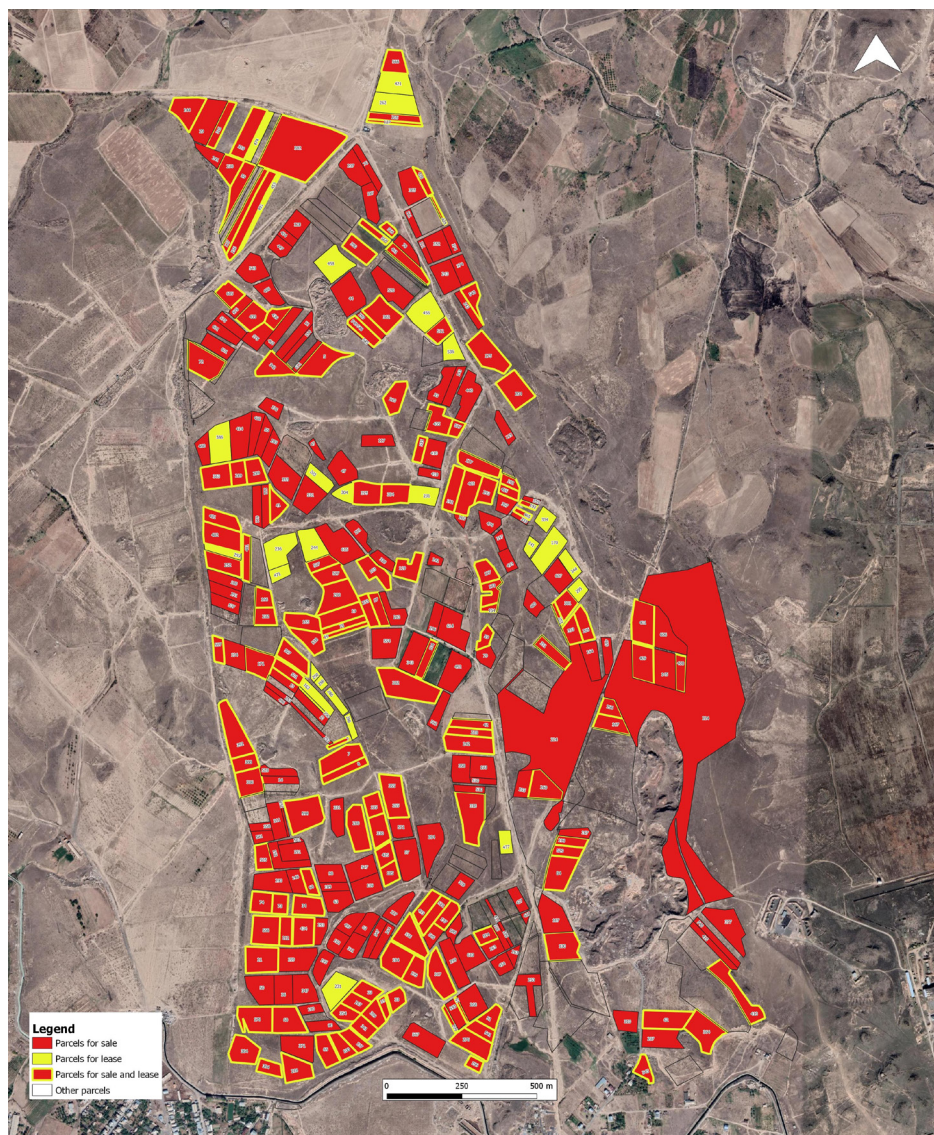


Source: © FAO

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Adopted in 2019, the Programme of the Government states that “the Government believes it is unacceptable that around one-third of agricultural land is left uncultivated” and that “the Government will take proactive steps to ensure targeted use of uncultivated agricultural land” (*Government decree 65-A of the Republic of Armenia, 2019, Section 5.10*). Since 2017, FAO has provided technical assistance to address land abandonment and improve farm structures by developing land management instruments to be applied in an integrated approach by a new land agency in selected intervention areas such as land banking, facilitation of lease and land consolidation (FAO, 2020).

**Figure 9: Land mobility map in the Northern part of Bagramyan village, Armavir Marz, Armenia, 2021**



Source: FAO Project in Armenia - Establishment of land management instruments and institutional framework to address land abandonment (01/11/2019 – 30/10/2021, TCP/ARM/3705).

In **Turkey**, around 2 million hectares of agricultural land are currently abandoned (2020) and has 3 million agricultural holdings with an average size of around 6 hectares and 11 parcels per holding. To address land fragmentation, Turkey is running the largest national land consolidation programme in Europe and Central Asia. However, despite the significant progress made, the negative trend has not been reversed. So far, the enlargement of holdings has not actively been facilitated in the land consolidation process. The Turkish 11th Development Plan (2019-2023) envisages the introduction of arrangements for the establishment of a land banking system to enhance agricultural land markets, bringing unutilized land into agricultural production. During 2021-2024, FAO will provide technical assistance to the development of land management instruments such as land banking and facilitation of lease and provide recommendations for improved land consolidation procedures.

The aforementioned ongoing and planned FAO country-specific project activities will greatly benefit from the identification of good European practices for land banking in this study. Land banking instruments have, together with other land management instruments such as land consolidation, facilitation of lease and management of state agricultural land as part of an active land policy, the potential to strongly contribute to poverty reduction and sustainable agriculture and rural development.

In **Azerbaijan**, the state-owned agricultural land was distributed equally to the rural population in a land reform process in the second part of the 1990s. A total of 869 000 rural families received an average of 1.6 hectares of agricultural land, typically divided into two to four parcels (Hartvigsen, Ismayilov and Gorgan, 2020). During 2016-2019, FAO supported the introduction of land consolidation by implementing a pilot project, drafting a land consolidation strategy, a law on consolidation of agricultural land and a draft state programme on land consolidation. The draft land consolidation law introduced a specific article on land banking. The land banking instrument will have legal grounds for further detailed regulation and actual application if the law is adopted. The next step will be the political adoption of the land consolidation law and the mentioned policy documents.



## 4. GOOD EUROPEAN LAND BANKING PRACTICES

The analysis in Chapters 2 and 3 demonstrated that there exists a variety of European approaches towards land banking and the relevant regulatory and institutional frameworks. Despite these differences, land banking has proven to be an efficient instrument for land management, contributing to a wide array of agricultural, rural development, environmental, infrastructure and other objectives. It must have clear demand-driven objectives, a solid legal framework, and a well-organized and objective-oriented institutional framework. Also, land banking is usually one in a system of instruments, and its efficiency also depends on these related instruments. It is important to take this into account in countries considering introducing such land management tools as land banking and land consolidation.

The diversity of land banking approaches provides for a broader spectrum of objectives. Countries may choose from the land banking models those features that fit the local situation and the relevant government objectives. Given the variety of social, economic and demographic conditions, it would not be feasible to identify one “best” or one-size-fits-all approach to land banking. Different land banking approaches and functions can be applied and/or combined, tailored to solve the local problems and objectives.

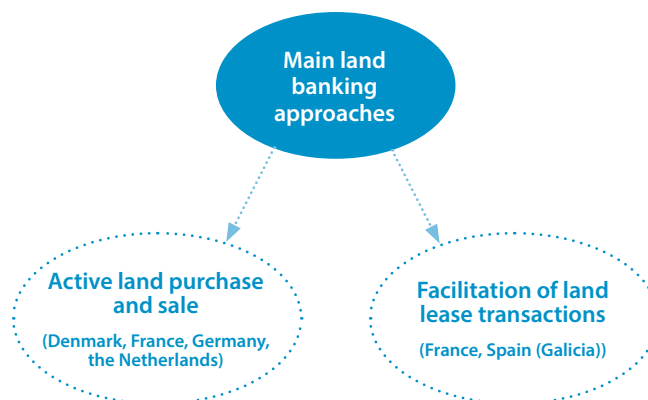
This chapter aims to identify a set of good land banking practices that could be useful in CEE and Central Asia. This information could also be useful to countries that already have land banking instruments but would also like to benefit from the experience of other countries. Even the most developed land banking countries have, over time, seen significant changes in policy. The process is dynamic and evolving.

### 4.1 LAND BANKING APPROACHES

Chapter 2 identified two major approaches in the Western European countries analysed. First, in Denmark, France, Germany and the Netherlands, land banking is the active purchase of privately owned agricultural land on the agricultural land market and the subsequent transfer via sale, exchange or re-allotment (land consolidation) procedure to defined persons and entities in order to attain the defined public objectives. This approach may either be used to facilitate the implementation of the specific land-demanding public purpose projects or make a more general influence on agriculture and the agricultural land market via the prevention of agricultural land speculation and support of target groups, like young farmers.

Second, in Spain (Galicia) and France, land banking includes the active facilitation of lease transactions between landowners and potential users of agricultural land. France includes an active purchase and sale policy alongside the facilitation of lease approach. Other derivative land banking functions, such as the support of farmers through purchase and lease-back of their land, may also be applied, as discussed further in this chapter.

The approach to be applied depends on the aimed objectives of conducting land banking in the specific country, for example, strong land market regulation and stimulation as in France or as an instrument supporting the implementation of land consolidation projects as in Denmark and the Netherlands. Figure 10 illustrates the main land banking approaches in the studied European countries.

**Figure 10: Main land banking approaches in the studied Western European countries**

#### 4.1.1 Active land purchase and sale

The active purchase of agricultural land, interim management and subsequent transfer aiming to attain the defined public objectives is the most common approach in the Western European countries analysed. It is applied in all studied countries, with the exception of Spain (Galicia). This approach often serves as an accessory tool facilitating the implementation of land demanding public purpose projects, such as the construction of large infrastructure and implementation of environmental projects. It does so by creating a pool of land owned by the land bank in or around areas where public interventions are planned. The land pool increases the land mobility and hence the re-allotment options in the project area; it provides land for public purpose objectives and the enlargement of farms in or around the project area (see Hartvigsen, 2014b, p. 41).

Often there are two different types of project areas. One is the area of the core public project, for example, where nature will be restored, forest planted or a road will be constructed. Another and broader area, which also includes the core public project area, is the area where the land management tools such as land consolidation are applied.

Active land purchase and sale is also used to impact the agricultural land market more generally, for example, by preventing agricultural land speculations, like in France or Germany.

The land bank acquires agricultural land either before or during the implementation of relevant public purpose projects. The land is often leased out for a short term until it may be used for the aimed public objectives. Ultimately such land is transferred to the defined persons or entities (e.g., young farmers, agencies implementing public purpose projects, state).

Although most of the analysed countries apply this approach, their methods vary. For example, in Denmark, and the Netherlands, land banks act as private participants in the land market concluding purchase agreements based on mutual consent. In other cases, land banks may prefer to invoke specifically regulated pre-emption rights with regard to the agricultural land put on sale. These rights may only be applied if a clear public interest for such an intervention exists. The pre-emption right is often applied in France, where it amounts to about 11 percent

of land acquisitions by the SAFERs (see Section 2.2. – France). It is also applied in Germany (Mecklenburg-Vorpommern). Although the land banks in Denmark and the Netherlands have or have had pre-emption rights, they were almost never used. As land banking in Denmark and the Netherlands is mostly project-based, the pre-emption right is seen as non-operational and having little practical value towards increasing the size of the land pool.

Thus, in some analysed countries, land banking can be based primarily on free-market mechanisms when a land bank intervenes as a simple market participant. In other countries, land banking may take more of the regulatory nature, with specific powers to intervene into the land market conferred on the land bank(s). For example, in Mecklenburg-Vorpommern, the land bank may apply the pre-emption right in practice to prevent agricultural land speculation opportunities.

The definition of the role of land banking is one of the key tasks. The experiences of Croatia, Hungary and Lithuania demonstrate (see Section 3.1) how important it is to provide a clear and sustainable role for land banking within the land management system and link it with other instruments.

A market-based active land purchase and sale requires sophisticated knowledge and experience to ensure that activities are sustainable and clearly help reach policy objectives. In the comparatively new agricultural land markets, risks are even higher due to the immaturity of the market and the socio-economic environment. On the other hand, if the whole land banking model is based on the broad powers of the land bank to regulate the land market, there may be a risk that overregulation will hinder the development of the land market as well as agriculture in general. In the developing land markets, additional risks arise, such as an overconcentration of ownership of land resources and their inefficient use. Therefore, countries introducing land banking should clearly link it with the overall policy for agriculture and rural development and then find an efficient balance between the regulation of the land market and the application of market-based land banking approaches.

All land banks must deal with the interim management of the acquired land. On this matter, there seems to be a near-universal approach of offering the land for lease. Often this is a short-term lease, like in Denmark and the Netherlands, where most of the lease contracts are concluded for a duration of one agricultural season and renewed if necessary. Leasing allows income generation, which may cover the costs of the land bank, keep the land in proper condition and make sure it is available to be used for the aimed public objectives.

While the purchase and sale of agricultural land could be considered traditional land banking activities, European experience shows that more and more transactions with land are indirect. Often it is not the land parcels themselves but the companies owning the land that are sold and acquired. For example, in France and Poland, the land banks have been conferred the right to acquire shares in companies holding agricultural land. This relatively recent initiative may be worth considering in countries introducing or implementing land banking.

#### **4.1.2 Facilitation of lease transactions**

The lease facilitation approach is the second key land banking approach identified in the study. Among the analysed countries, it is applied in France and Spain (Galicia), where farm structures and land management challenges differ considerably, showing that a lease facilitation instrument may be applied under different circumstances and with different purposes. Besides

France and Spain, this instrument is also applied in Italy and Portugal (Hartvigsen, Veršinskas and Gorgan, 2021).

Agricultural structures in Spain (Galicia) are characterized by excessive land fragmentation, small land parcel sizes and high rates of land abandonment (see Section 2.5 – Spain (Galicia)). In France, parcel and farm holding structures and sizes are generally of a more efficient size. Yet, in both countries, lease facilitation can help solve different problems. In Spain (Galicia), the key objective is to combat land abandonment, while in France, it is mostly used to deal with issues relating to farm succession and regulation of the agricultural land market.

Two major methods of lease facilitation were distinguished:

- facilitation of the conclusion of agricultural land lease agreements, and
- facilitation of the full transfer of a farm consisting both of owned and leased agricultural land.

In both types of lease facilitation, the land banks play an active role. In the first method, the land bank aims to facilitate the conclusion of lease contracts between the landowners and potential tenants. In general terms, the land bank receives applications from landowners and searches for potential tenants (usually local farmers). However, it can also be the opposite when the land bank identifies potential demand before searching for land. This may be done through various means, such as publication of the information on parcels available and more active searches through the contacts of the land bank with local authorities, farmers and other stakeholders.

According to the Galician (Spain) practice, this method presupposes two contracts. One is concluded between the landowner and the land bank, while another one is signed between the land bank and the leaseholder (tenant). In the first contract, the landowner agrees to include the land parcel(s) into the land bank in consideration of the payment by the land bank. Such payment equals the rent paid by the leaseholder minus a small commission fee. The second contract is a lease agreement between the land bank and the leaseholder. The land bank provides guarantees to both the landowner and the leaseholder, ensuring compliance with the terms of the concluded contracts (see Section 2.5 – Spain (Galicia)).

In France, a similar lease facilitation instrument is applied, although with different objectives, aiming to ensure the temporary management of agricultural land until it will be used again by the landowner themselves (see Section 2.2 – France). This mechanism could be structured according to local situations and policy goals, but the key idea is that the land bank supports the conclusion of leases, thereby bringing land out of the abandoned state or ensuring its further exploitation.

Another identified lease facilitation method, which is specific to France, aims to ensure the continuity of the farms when there is a change in their ownership. This mechanism is designed to prevent farms from being dismantled into pieces. The key features are an application from the interested farmer and the active searching by the land bank for potential tenants or future owners. It has a wider scope than the first lease facilitation measure since it aims to ensure the transfer of the whole farm rather than the return of separate abandoned land parcels to production.

The process thus requires sophisticated efforts to locate person or persons to temporarily or fully take over the farm activities. It depends on the presence of successful and interested farmers who could ensure the continuity of the farm. This is not always the case in countries



with fragmented land structures and weak agricultural sectors. This method presupposes that the land bank is satisfied with the existing farm and therefore wants to support its continuation, preventing it from either fragmentation or, on the contrary, preventing undesired overconcentration of farms. Therefore, it presupposes a satisfactory situation and the importance of maintaining it.

However, in CEE and Central Asia, the current objectives are the reduction of farmland abandonment and improvement of farm structures rather than their preservation. In many of the FAO programme countries in Eastern Europe and Central Asia, farms are very small. They need support to develop into commercial family farms, and if a farmer stops working the farm, their land could serve to increase the farm size of other farms (see Section 3.2). Therefore, this type of lease facilitation may be more relevant in countries with well-developed agricultural markets and farm structures rather than those in Eastern Europe and Central Asia.

## **4.2 OBJECTIVES OF LAND BANKING AND INTEGRATION WITH THE LAND MANAGEMENT SYSTEM OF THE COUNTRY**

The country analysis in Chapters 2 and 3 has demonstrated that land banking can be a stand-alone policy instrument that can support public purpose objectives such as the prevention of agricultural land speculations or the support of young farmers. Alternatively, it can be used as an accessory tool, supporting the implementation of land consolidation projects.

In both cases, land banking is part of a wider land management and policy framework, pursuing both regional and/or national objectives. Such goals may be defined separately in legal acts or share the objectives with other land management tools, like land consolidation, which is the case in Denmark (see Section 2.1 – Denmark). It is important that land banking objectives, approaches and methods contribute to broader land management objectives. The country experiences illustrate which issues could be solved through different land banking approaches and methods. These objectives can evolve alongside changes in national and/or regional land management and other related policies. Such changes may have an impact on the whole land banking system, as was demonstrated by the Dutch transition from a centralized to a decentralized land banking model (see Section 2.4 – the Netherlands). This was also the case in Norway, where the land bank was introduced in 1955 and dismantled in 2005, although the debate is ongoing again about the necessity to revive it (Elvestad and Sky, 2020, p. 5-13).

Previous examples demonstrate that the professionals implementing land banking and other land management instruments must constantly work to ensure the continuity of the government support for these instruments. Even if land banking or land consolidation are working smoothly in a country, this does not mean that with the change of the government and its policy, gained positions would not be lost and the instruments put on hold or even abolished. This effort should be supported both by land professionals as well as the beneficiaries of these instruments, like farmers, environmental organizations and others. These instruments must also be adapted to the actual situation and evolve together with the needs of the society, for example, ensuring their multi-purpose nature or stronger environmental orientation.

Table 3 lists the principal land banking objectives and the functions, which may contribute to their attainment.

**Table 3: Identified land banking objectives and functions**

Land banking objectives	Sale/ purchase of land	Lease facilitation
<b>Agriculture</b>		
Development of sustainable agriculture	X	X
Development of small family farms into commercial family farms	X	X
Reduction of land ownership and/or use fragmentation	X	
Enlargement of the size of farms	X	X
Development of agricultural infrastructure	X	
Facilitation of access to land by supported target groups (e.g., small farms, young farmers, organic farms)	X	X
Preservation of agricultural areas	X	X
Contribution to the diversity of agricultural production systems	X	X
Prevention of speculation in agricultural land	X	
Ensuring transparency of agricultural land markets (e.g., publication of land sale and lease prices)	X	X
Reduction of land abandonment	X	X
<b>Environment</b>		
Contribution to the protection of the environment, biological diversity, landscapes, natural resources	X	X
Facilitation of nature related public purpose projects (e.g., afforestation, nature restoration, protection of water resources, implementation of relevant EU Directives related to nature and environment, climate change mitigation and adaptation)	X	X
Prevention of wild-fires	X	X
<b>Infrastructure development</b>		
Facilitation of public purpose infrastructure projects (e.g., highway and railway construction, installation of outdoor recreation infrastructure)	X	
<b>Other</b>		
Sustainable development of rural areas	X	X
Performing tasks related to the urbanization of the agricultural areas	X	
Facilitation of the implementation of land demanding projects of local authorities	X	

This list illustrates the variety of areas where land banking can be used and the necessity to establish linkages between land banking and other relevant instruments. Experiences of some of the Central European countries (see Section 3.1) show that if there is no strong linkage with other land management tools and the relevant policies, land banking will not be efficiently used or used at all. This leads to higher costs, delays, non-desired disputes related to eventual expropriation and a reduction in positive results of the relevant public projects.

### 4.3 LEGAL FRAMEWORK FOR LAND BANKING

The practice of the analysed countries shows that the grounds for land banking activities are usually established in the relevant law-level legal act(s). The necessity for the law-level regulation may emanate from various aspects, such as the public nature of the land bank, its policy objectives, the use of state budget funds and the necessity to deviate from standard budgeting rules, the potential impact on the land market, the need to clearly connect land banking and the state policy, and the necessity to safeguard the integrity of the land banking process.

In all the analysed Western European countries, law-level regulation provides this basis. Land banking may be regulated by more than one law-level legal act since it relates to different areas of intervention, like agriculture, environment and infrastructure. The regulatory framework for land banking largely depends on the land bank's legal nature, which may range from public institutions, like the agencies under the ministry, to other public purpose entities, state enterprises, or public purpose limited liability enterprises. Depending on the legal form of the land bank, various land banking related aspects are regulated differently and in different legal acts or internal documents (see Figure 11). For example, the regulation of the funding sources and the mechanisms of a public institution land bank would differ fundamentally from a land bank acting as a separate legal entity. The selected land banking approach is another element that has an impact on the regulatory framework.

While land banks may differ in their legal nature, in all the analysed countries using land banking, they carry out public purpose objectives aligned with relevant land policies. On the other hand, while aiming at public objectives, they operate in the agricultural land market in most cases as normal land market participants.

Therefore, the regulatory framework combines elements of public regulatory instruments, like the definition of objectives and supervision mechanisms and the instruments of private law, like the conclusion of land acquisition agreements and provision of guarantees related to the implementation of lease contracts. Also, as land banking is an integral part of the land management system, the regulatory framework establishes links between land banking and other instruments.

Based on the practice of the analysed countries, Figure 11 lists the key legal aspects related to land banking and the respective level of legal act or document regulating them.

**Figure 11: Key land banking aspects and the level of their regulation in the studied countries**

Law – Law level legal act Sec. – Secondary legal act Doc. – Document adopted by the land bank or its stakeholders (e.g., articles of association)			
<b>General</b>			
Land banking approaches applied in the country	X		
Grounds for the establishment of the land bank(s)	X		
Objectives of land banking	X		
<b>Land bank (public institution)</b>			
Legal act establishing the land bank as a subject of the administrative system	X	X	
Functions of the land bank	X	X	
Funding of the land bank	X	X	
Revolving budgeting of the land bank	X	X	
Right of the land bank to provide lease facilitation guarantees	X	X	
Right of the land bank to acquire, manage and sell agricultural land	X	X	
Right to re-structure the land and make investments in it	X	X	
Pre-emption right to acquire agricultural land by the land bank	X		
Land bank decision-making mechanism	X	X	
System of supervision of the land bank	X	X	
<b>Land bank (non-governmental entity, e.g., state enterprise)</b>			
Legal act establishing the land bank			X
Functions of the land bank	X		X
Funding of the land bank	X		X
Revolving budgeting of the land bank			X
Right of the land bank to provide lease facilitation guarantees	X		X
Right of the land bank to acquire, manage and sell agricultural land	X		X
Land bank decision-making mechanism		X	X
Pre-emption right to acquire agricultural land by the land bank	X		
System of supervision of the land bank	X	X	X
Right to re-structure the land and make investments in it	X	X	X

Despite differences in approach, the key elements of the regulatory framework remain the same. Every country decides the objectives of land banking, which institution is responsible for its implementation, how activities are funded and the relevant budgeting rules, powers and rights for intervening in the agricultural land market, safeguards, and the connection with other land management instruments.

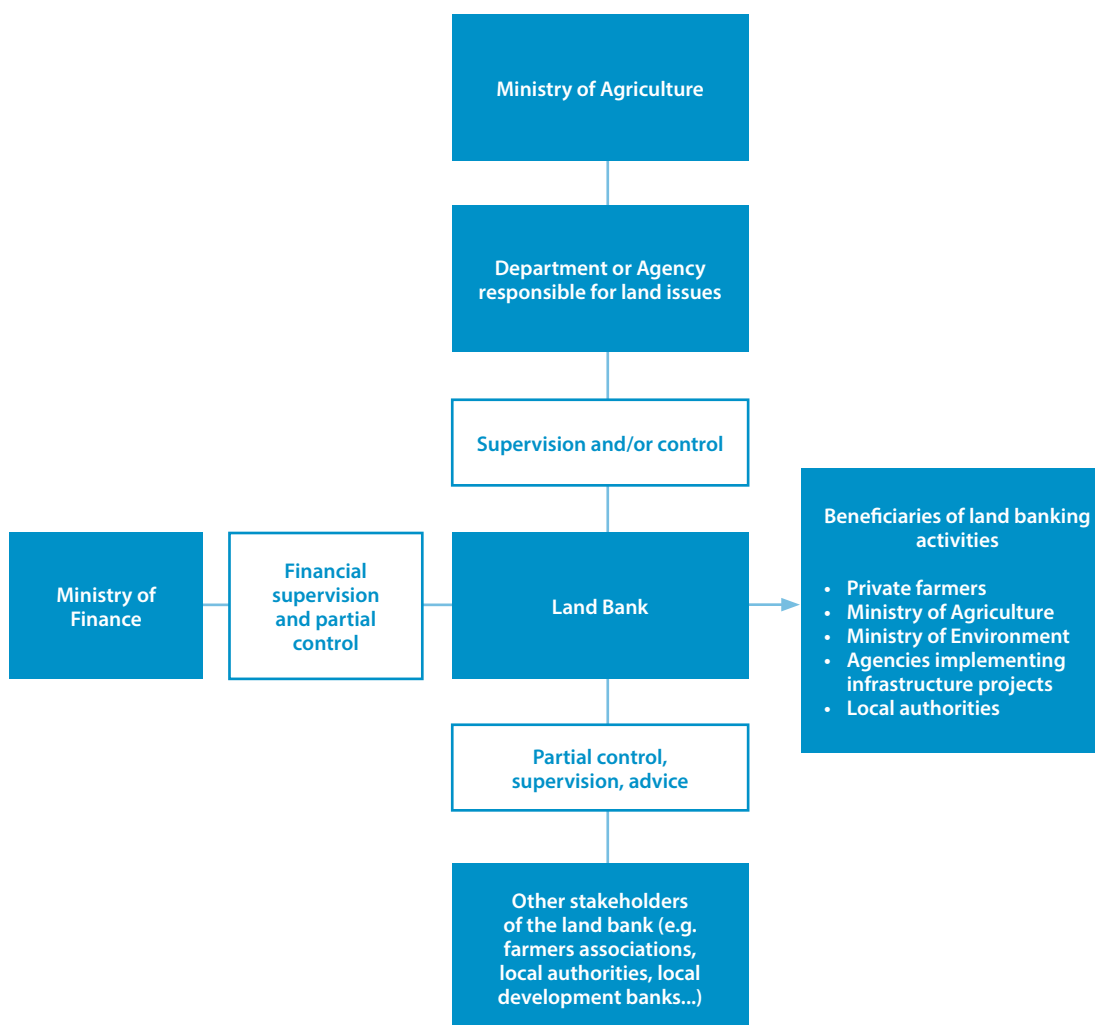
#### 4.4 INSTITUTIONAL FRAMEWORK FOR LAND BANKING

The institutional framework varies with developments of land management systems, administrative frameworks, as well as the objectives to be reached through land banking. Also, different countries chose different options as whether to perform land banking at the national or regional levels. The policy objectives and the country's federal structure may influence the choice between a centralized and decentralized approach (see also Milićević, 2014; Marošán, 2014).

The example of the Netherlands shows how the level of centralization or decentralization of land banking depends on the general political will for centralization or decentralization. The institutional model could be adapted if the agricultural land structure and development does not require national-level approaches, and some questions may be better solved at a sub-national level. However, the discussions are ongoing in the Netherlands concerning the re-introduction of centralized land banking for nature policy goals (see Section 2.4 – the Netherlands).

Despite differences in institutional frameworks, there are also certain fundamental similarities. For example, in all countries applying land banking, the entities acting as land banks are public purpose entities, even if their legal form varies. Despite the differences in their legal forms (e.g., state enterprises or public purpose limited liability enterprises), land banks are controlled and/or supervised by public institutions. The institutional frameworks show a clear chain of hierarchy, starting with the definition of the objectives of land banking by the legislatures, formation of the relevant policies by the government and/or responsible ministry or ministries and concluding with the implementing entity – the land bank. In the case of Denmark, the Land Consolidation and Land Banking Unit of the Danish Agricultural Agency under the Ministry of Food, Agriculture and Fisheries, which is responsible for the land policy and the land consolidation programme, also acts as a land bank. In other words, there is no separate legal entity acting as a land bank (see Section 2.1). Figure 12 provides a generalized illustration of the key elements of the institutional framework for land banking.

**Figure 12: The identified key elements of the institutional framework for land banking in the studied countries**



The regulatory and institutional frameworks ensure that land banks can acquire, sell and exchange land in the market and/or facilitate agricultural land lease transactions as well as provide relevant guarantees to the landowners and tenants. The land banks are also ensured a sufficient level of autonomy to carry out their activities without being hindered by complicated administrative procedures, which is often the case with the sale and/or purchase of state-owned land.

#### 4.5 FUNDING OF LAND BANKING ACTIVITIES

Two main models for funding land banking activities have been identified. In some countries, almost all funding emanates from state or regional budgets, as may be the case with centralized (e.g., Denmark) as well as decentralized land banking systems (e.g., the Netherlands, Spain

(Galicia)). On the other hand, there are land banks where the majority of funds come from their activities (e.g., in France (SAFERs) and Germany (Mecklenburg-Vorpommern) (LMV)).

In addition to the state budget, funding may come from several other sources indicated below:

- payments for the land banking services performed for other institutions and entities, for example, those implementing public purpose projects,
- payments for the services to private land market participants, for example, fees for the facilitation of lease and related guarantees,
- profits from land sales,
- international or supra-national funding,
- funds resulting from the leasing of land owned by the land bank, and
- loans from credit institutions.

Both state and non-state funding have their limitations. In the case of the state budget, the land bank depends on the decisions of the legislatures and/or government. On the other hand, if the land bank is self-funded, like the Landgesellschaft Mecklenburg-Vorpommern mbH in Germany, its freedom of action is also restricted by the own funds available, unless it recurs to external financing mechanisms, like loans from credit institutions.

As regards revenues from land sales, most of the analysed land banks use a “revolving fund mechanism”, which means that these revenues are reinvested into new land acquisitions. This applies both to budget funded (Denmark) as well as to self-funded land banks (Germany (Mecklenburg-Vorpommern)). This means that the land bank has no obligation to transfer its funds to the national budget by the end of the year and may use the funds available whenever the conditions are favourable for the sale and/or acquisition of relevant agricultural land.

#### 4.6 SYNERGIES BETWEEN LAND BANKING AND LAND CONSOLIDATION

Most of the land banks analysed in Section 2, which perform the acquisition and sale of agricultural land on the land market, use land banking to support the implementation of land consolidation projects. As in the Danish case, some act at the same time as the lead agencies for land consolidation (Veršinskas *et al.*, 2020, p. 17). Other land banks perform facilitating functions (France) in land consolidation. The combination of land consolidation with the active acquisition and sale of land or the active management of the state-owned land brings additional benefits, which is not the case in some of the analysed countries having functional land banks.

In the Netherlands, before 2015, the integration of land banking with land consolidation was ensured by the direct link between the lead agency for land consolidation (DLG) and the land bank (BBL). Although these were separate legal entities, BBL was fully linked with DLG, and the director of DLG was also the director of BBL. This allowed for the use of the benefits of different legal forms of the two entities (e.g., the possibility to use a revolving fund mechanism) and at the same time to have integrated and harmonized functioning.

In all cases, land banks facilitate land consolidation projects by increasing land mobility in the project areas, providing land for public infrastructure or other public purpose objectives therein. This increase in land mobility provides a possibility to offer land on a voluntary basis to either enlarge holdings and farms and/or give preference to owners of small farms or to young

farmers. They offer the agricultural land as compensation for the land taken out of production due to the implementation of the land consolidation projects or other projects, where land consolidation makes a constituent part (Veršinskas *et al.*, 2020, p. 161-163).

Approaches to these linkages differ. In some countries, land banking and land consolidation share the same objectives, are regulated by the same law and implemented by the same institution. In others, there is a separation between the two instruments, and their interaction is seen as only one of the functions of the land bank. In the Central European countries using both land banking and land consolidation, i.e., the Czech Republic and Slovenia, the true linkage between the two instruments is yet under development.

The approaches to land acquisition in future land consolidation areas also differ from country to country. In Denmark, a special pool of land is first built by the land bank before launching land consolidation. In Germany (Mecklenburg-Vorpommern), the land bank (LMV) does not perform targeted acquisitions in future land consolidation areas and only uses land it already owns therein. It participates in land consolidation projects only as a landowner. However, if the land banking activities are performed by the land consolidation authorities or entities mandated by the latter, land may be acquired even before the actual launch of the land consolidation project (see Section 2.3.2).

#### 4.7 LAND BANKING SAFEGUARDS

Building trust is key to the successful functioning of land banks. The risks associated must be properly regulated and managed. The land banking activities could entail a range of risks, like the following:

- potential misuse of the process and corruption,
- lack of a systemic approach,
- market distortion,
- management deficiencies, and
- financial instability of the land bank.

In order to prevent the potential misuse and corruption risks in land banking, an efficient supervisory system must be put in place. As in Germany (Mecklenburg-Vorpommern) (LMV) and France (SAFERs), land banks may be supervised by the Ministry of Agriculture and the Ministry of Finance. Such double supervision combines supervisory competences from the fields of agriculture and finance and can reduce the risks of land banking abuse. However, this should not unduly hinder the land bank's operations or create an unnecessary administrative burden.

The land bank should be able to act rapidly if it wishes to purchase or sell agricultural land on the market. Decisions must not entail heavy bureaucratic mechanisms, for example, requiring ministerial or even governmental approval for each individual transaction. To this end, the most efficient method would be to confer the right to decide on the head of the land bank and/or the board of directors. Subsequent retrospect controls could be implemented by the respective ministries. Also, country practice shows that certain thresholds could be fixed, above which the head of the land bank would require the approval of a supervisory institution.

Additional supervision and transparency may be secured by providing access of information to the public and involving relevant stakeholders, like farmers and NGOs. This could also be achieved through the establishment of a supervisory board with representatives from



other line ministries, farmers associations, NGOs and other stakeholders. Transparency and accountability are also ensured through reporting to the supervisory institutions. The respective reporting should be made public and the information on land banking activities published on the internet.

The lack of a systemic approach to land banking is another key risk. As demonstrated in several Central European countries (see Section 3.1), if the land bank is not conferred a sufficient range of rights and functions and is not strategically integrated into the land management system, it is predefined to fail. The land bank must be able to act strategically, identifying those intervention areas with the highest potential, demand or need depending on the aimed objectives. It should constantly monitor information on upcoming public land demanding projects and take a proactive stand in them. If land banking is not involved in relevant planning phases and projects, it could waste public money acquiring land in areas with lower potential and/or necessity for land banking, thus creating mistrust and potential grounds for the misuse of the process. This is one of the major risks for countries introducing land banking but having a low capacity for it. Land may be acquired in the wrong places, emptying the designated budget but never achieving the planned results.

The distortion of the agricultural land market is also a risk. Market impact of land banking must be evaluated beforehand. In case of unjustified interventions into the land market by the state, the latter may even hinder land market mechanisms and the transformation process in general. Land banking activities should not adversely affect land prices or land demand/supply in the country. The approach of BVVG in privatizing state-owned land in unified Germany is a case in point. The BVVG was explicitly prohibited from simultaneously privatizing the entire state-owned land reserve in Eastern Germany so that the market could gradually absorb the increased supply of land (see Section 2.3)

Also, the land bank's share in the market in terms of the acquired land should be assessed to avoid negative impacts, like hindering land acquisition by farmers or increasing land prices on the market.

The financial instability of the land bank may undermine its functioning. This aspect should be considered at the beginning of its activities. One method to ensure the financial stability of the land bank is to provide funding from the state budget to cover operating costs, at least for a reasonable period of time. Also, the initial assets to start the activities should be provided by the state, either in the form of money and/or land, so that the land bank may quickly start to acquire and sell land, thereby creating a revolving fund mechanism and leading towards greater financial autonomy.



## 5. POLICY AND PRACTICAL RECOMMENDATIONS FOR LAND BANKING IN EASTERN EUROPE AND CENTRAL ASIA

This study has demonstrated the need for guidance in the application of land banking in the countries of Eastern Europe and Central Asia. The introduction of land banking in several Central European countries (see Section 3.1) remained either a “dead letter of the law” or turned out to be unsustainable. It was not performed as a fully politically supported, strategically founded process.

In Chapter 4, the analysis identified certain good practices which proved their efficiency and therefore may serve as a basis for the recommendations in this chapter. Some address the overall policy framework, while others are more practical and aimed at ensuring that land banking instruments are operational. Evidently, these recommendations should be adapted to the local situation in the respective country.

Taking into account the definition of a land bank provided for in the FAO Legal Guide on Land Consolidation (Veršinskas *et al.*, 2020, p. 18)<sup>52</sup> and the results of this study, the following definition of land banking can be formulated:

Land banking is a set of systematic activities implemented by an institution with public purpose, performing the intermediate purchase, sale, exchange or lease of land in rural areas in order to increase land mobility, to facilitate development of agricultural land markets, and to pursue public policy objectives related to agricultural and rural development, sustainable land use and implementation of public projects related to nature restoration, environmental protection, climate change and construction of large-scale infrastructure.

Besides this Chapter 5, the main recommendations stemming from the FAO study on land banking were also presented in Hartvigsen, Veršinskas and Gorgan, 2021.

### 5.1 GENERAL RECOMMENDATIONS

The experiences of the Western European countries discussed in Chapter 2 demonstrate how land banking may be applied to an array of policy objectives. Western European countries face land management challenges, which are of importance in Eastern European countries as well as in certain countries in Central Asia. For example, those with increased levels of land fragmentation, smallholders with little financial capacity and experience in land markets, over-concentration of land ownership and the absence of sophisticated land management instruments to optimize state budget funds in public purpose infrastructure projects. Land banking can also play a strong supportive role in the implementation of policies related to agriculture, rural development, environment and infrastructure development.

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<sup>52</sup> In Veršinskas *et al.*, 2020, p. 18 a land bank is defined as “a public institution, performing the intermediate buying, selling or leasing of land in order to increase land mobility, to facilitate the rural land market in general, and to pursue public policy targets related to sustainable rural land use in particular”.

One of the key requirements is a clear definition of objectives. Following the Western European practice and considering the situation in CEE and Central Asia, land banking could usefully support the following objectives:

- agricultural development;
- rural development;
- implementation of nature, environmental, water management and climate change projects,
- improving farm structures;
- addressing land abandonment;
- implementation of public infrastructure projects; and
- development of agricultural land markets.

The Western European practice demonstrates that the active acquisition and sale of land on the market as well as the lease facilitation could be relevant in solving land management issues in Eastern Europe and Central Asia. The mentioned approaches may be applied separately or in combination, and it can be recommended to initially try out a combined approach. As is the case in Armenia, where in the frame of a FAO project,<sup>53</sup> the legal and institutional frameworks encompassing land consolidation, active purchase and sale of agricultural land and lease facilitation are being created. Similarly, in Turkey, a project combining the two land banking approaches and integrated with the existing land consolidation instrument will begin in 2021.

To ensure the greatest efficiency, the land bank should have the right to perform one or both of the following core functions:

- acquisition, intermediary management, eventual improvement and/or restructuring, sale and/or exchange of land on the land market or its use or disposal in the frame of land demanding public purpose projects (e.g., environmental and infrastructure), if feasible, using land consolidation; and
- facilitation of lease of agricultural land through the intermediation between landowners not farming their land and potential leaseholders, and provision of lease-related guarantees to the lease counterparties.

The good practice from Western Europe shows that land banks are to carry out a range of additional functions. The precise functions depend on the specific conditions of each country. However, considering the involvement of the land bank in land management processes, institutional setup and its staff capacity, and the necessity to ensure effective linkages between land management tools, it is recommended to consider conferring the following additional functions to the land banks:

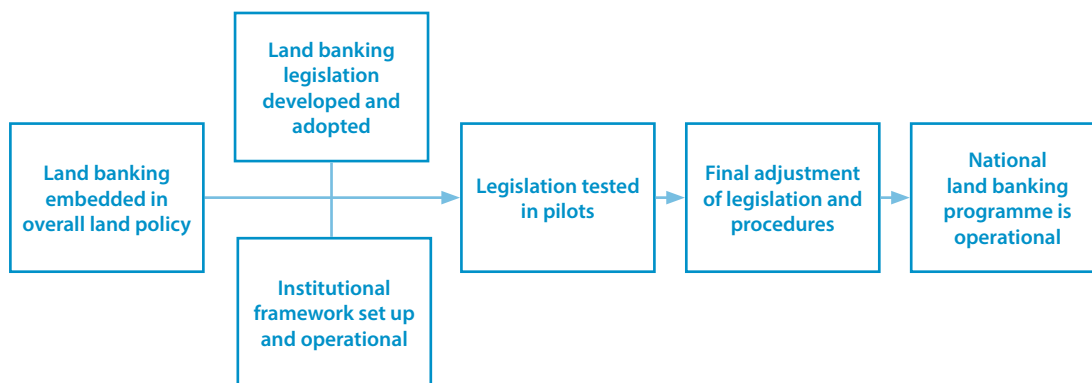
- active management of state-owned agricultural land to support agricultural, rural development and other relevant policy objectives, e.g., providing access to additional land for small family farms and young farmers; and
- privatization of state-owned agricultural land to support agricultural, rural development and other relevant policy objectives, ensuring linkages with other land management instruments such as land consolidation.

<sup>53</sup> FAO Project in Armenia - Establishment of land management instruments and institutional framework to address land abandonment (01/11/2019 – 30/10/2021, TCP/ARM/3705).

While introducing land banking in the country, a two-stage approach is suggested. First, once the legal framework for land banking is adopted, it is recommended to test the instrument in pilot projects before scaling up the land banking programme to the national level. Second, subsequently to such testing, the legal and institutional framework for land banking may be reviewed and, if necessary, amended based on the pilot experiences. Once this work is accomplished, the land banking programme can be upscaled.

This approach is based on FAO experience from different programme countries, where FAO has supported the introduction and/or development of various land management instruments. The two-step approach allows for testing out land banking instruments to make them efficient under the local circumstances. The land banking introduced in a two-step approach may be better adjusted and adapted so that it best fits the country's needs. Figure 13 illustrates the recommended phases of introduction of the land banking instruments into the national policy, institutional and regulatory framework.

**Figure 13: Land banking introduction phases**



This figure illustrates the suggested main stages of the introduction of land banking in a country. Initially, the land banking concept should be embedded into the overall land policy of the country. Subsequently, the regulatory and institutional framework should be put in place. The regulatory framework should then be tested in pilot projects and, if needed, amended based on the lessons learned. Finally, these preconditions allow for the launch of a fully operational land banking programme in the country.

Besides these issues, it is important to decide how to allocate the resources of the land bank. These are limited, and its activities should be performed in the most efficient way in order to reach the defined objectives. As regards acquisition and sale of land, for example, it will have limited effect if it is applied without clear grounds why such land is being acquired, resulting in a waste of public money and eventual policy failure. The greatest risk in this regard is that the wrong land parcels are purchased, and the funds are frozen because projects are not implemented or excessively delayed. This would not only be an unnecessary intervention into the market, but it could also lead to allegations of corruption and conflict of interest. Therefore, it is recommended to apply this land banking approach only in defined project areas and only

after feasibility studies have been conducted (see Veršinskas *et al.*, 2020, Chapter 5) justifying the need and demand for land banking.

Lease facilitation may be implemented by the land bank, both acting proactively or passively. A website detailing parcels available for lease could be easily accessed, and farmers and potential leaseholders could contact the land bank themselves. The information about the activities of the land bank could also be promoted through publications, TV and other media, suggesting the interested landowners and farmers contact the land bank. Therefore, lease facilitation could be implemented in a countrywide approach in a passive way and proactively matching landowners and potential tenants in defined project areas, where more specific interventions are needed.

In all cases, in order to provide guarantees related to lease facilitation, the land bank must follow the required procedures to ensure legal conformity. When combining various instruments, for example, land consolidation and lease facilitation, it is important to work in the right sequence. For example, ownership rights should be consolidated as much as possible before the consolidation of use rights on top. Therefore, when applied within the same project area, land consolidation should be implemented first and lease facilitation should follow. In the areas where there is no need to apply land consolidation or it is not feasible, consolidation of use rights could be done without delay. At least in the project areas, land consolidation and land banking interventions should also contribute to the formalization of legally recognized tenure rights. In countries with sophisticated systems of protection of lease rights, consolidating use rights may play as important a role as the consolidation of ownership rights, as in the Netherlands (see Section 2.4 and Veršinskas *et al.*, 2020, p. 27-29).

The identification of the project areas for specific interventions should be “demand-driven”. Before launching any substantial activities, the land bank should carefully assess the situation in the area, perform feasibility studies and define the extent of demand and need for land banking and related activities in the area. They should ensure that there will be persons and/or entities, which will benefit from the respective projects. Such beneficiaries could be farmers willing to launch or expand their activities or the public agencies implementing land demanding projects. If there is no clear involvement of the future beneficiaries, there is a serious risk that land banking, land consolidation or other relevant resources will be wasted. Even if land banking and/or land consolidation activities produce areas that are consolidated and prepared for agricultural activities (e.g., cleared, drained, field roads installed, etc.), they may remain abandoned if there has been no clear engagement from the potential beneficiaries of the project.

Besides the aforementioned aspects, the introduction of land banking in the country should be accompanied by a broad awareness-raising campaign based on multi-stakeholder consultations. The support for the instrument should be ensured on different levels, starting from decision-makers to landowners and technical staff applying the instrument in the field. The campaign should be designed in a way that political and administrative support to land banking is sustained even when a change in government takes place. If this element is not ensured, the technical efforts to introduce and develop land banking bear a strong risk of failure (Hartvigsen, Veršinskas and Gorgan, 2021, p. 19-20).

✓ **Box 5.1:****Key recommendations – General policy recommendations**

- 5.1.1. It is recommended to consider applying land banking in the country to support the implementation of the following clearly defined objectives:
- i) agricultural development;
  - ii) rural development;
  - iii) implementation of nature, environmental, water management and climate change projects;
  - iv) improving farm structures;
  - v) addressing land abandonment;
  - vi) implementation of public infrastructure projects; and
  - vii) development of agricultural land markets.
- 5.1.2. To support the implementation of the above-mentioned objectives, it is recommended that the land bank has the possibility to perform the following core functions:
- i) acquisition, intermediary management, eventual improvement and/or restructuring, sale and/or exchange of land on the land market or its use or disposal in the frame of land demanding public purpose projects (e.g., environmental and infrastructure projects), and if feasible, using land consolidation; and
  - ii) facilitation of lease of agricultural land through intermediation between landowners not using their land and farmers interested in using more land.
- 5.1.3. It is recommended to consider conferring the following *additional* functions on the land bank:
- i) active management of state-owned agricultural land to support agriculture and rural development as well as other relevant policy objectives; and
  - ii) privatization of state-owned agricultural land to support agriculture and rural development as well as other relevant policy objectives, ensuring linkages with other land management instruments, including land consolidation.
- 5.1.4. After the adoption of the legal framework for land banking, it is recommended to test the instrument in pilot projects. Based on the practical testing results, the legal framework may need to be amended before launching a full-scale land banking programme.
- 5.1.5. Depending on the land banking model, it is recommended to apply either a project-based approach (for the acquisition, intermediary management, sale and/or exchange of land), where the activities would be applied only in selected intervention areas, or a countrywide approach (for lease facilitation). This reflects the fact that a land bank will always have a limited budget, which can easily be wasted if not applied in a coherent and systemic manner. It is also important that the land bank purchases land in areas where there are planned public project interventions and only when land banking is in demand in such areas.
- 5.1.6. A “demand driven” approach is the best way to ensure sustainability and successful results. It is recommended to implement any project-based interventions only where there are clear beneficiaries, such as local farmers or agencies implementing land-demanding public purpose projects.
- 5.1.7. When land banking is introduced, it is recommended to conduct a broad awareness-raising campaign through a multi-stakeholder consultation to ensure the full support for land banking in the country.

## 5.2 OBJECTIVES OF LAND BANKING AND INTEGRATION INTO THE OVERALL LAND POLICY OF THE COUNTRY

Each country chooses its land management instruments according to its own needs. Land banking can address common existing land-related problems such as high land fragmentation and land abandonment as well as provide effective support to implementation of land-demanding public purpose projects (e.g., nature restoration, climate change, large infrastructure development, etc.). Land banking is mostly efficient in combination with other land management instruments. It can be used to increase land mobility in the land consolidation project, and the linkage with land consolidation could be ensured by empowering the same institution to be in charge of both instruments. Land banking can reduce costs of large public purpose projects, ensure the continuity and/or expansion of farming activities in the area and bring other related benefits. As mentioned, it needs clearly defined objectives and to be fully integrated into agricultural, rural development, environment and infrastructure policies. The choice of the best land banking approach depends on the policy objectives that land banking is expected to support. Once land banking becomes operational, professionals implementing the instrument as well as its beneficiaries should constantly work to ensure continuous political support for land banking. The latter should also be adapted to ever-evolving situations and the relevant policies. Country examples have demonstrated how land banking was put on hold or even abolished with the changes of government policies.

Countries introducing land banking should assess the impact of the preferred land banking model on the agricultural land markets. Interventions of the land bank into the land markets may cause controversy among farmers and other stakeholders, suggesting that the state complicates their access to land. Land banking policies should clearly identify circumstances and ways of land bank intervention into the market to avoid such an effect..

The choice of functions conferred on the land bank partly depends on whether the state already possesses reserves of agricultural land. These may be used not only to collect funds through privatization or lease but to support other relevant policies. For example, it is recommended to use at least part of such reserves as an initial asset to help launch land banking. Such land could be privatized and the respective funds reinvested in targeted land acquisitions.

Land banking should be implemented in a systemic way, rather than be limited to scattered actions without clearly defined objectives and targets. Land banking should not be considered a random purchase of agricultural land throughout the country and then reselling it for a higher price. Even if the land bank may generate some profit, this should not be an objective. The acquisition and sale transactions must serve a clear public purpose objective (see Table 3).

While considering the introduction or development of land banking, it should also be taken into account that the effect produced by the land banking activities may go beyond the land management policy and instruments. These activities should facilitate broader goals, such as the improvement of the socio-economic environment in the rural areas contributing in general to agriculture and rural development, for example, reducing outmigration.

Land banking should also contribute to the implementation of gender equality in the country in a number of ways. For example, the regulatory framework should ensure that payments made by the land bank for the acquired parcels reach both joint-owners (spouses). Also, the registration of parcels sold by the land bank should be carried out in the name of both spouses. Gender equality could also be promoted through the management of state-owned land.



For example, privatization or leasing of state-owned land to supported groups could ensure gender-neutral access to land.

Country practice shows how land banking activities are often accompanied by administrative tools and measures applied by the land bank or other relevant institutions. Such tools may involve incentives, sanctions or different taxation regimes. These additional measures may facilitate the attainment of specific policy objectives and increase the effectiveness of applied land management instruments. For example, they may motivate landowners and land users to keep the land in proper condition (discouraging land abandonment) or participate in land banking/land consolidation activities.

✓ **Box 5.2:**  
Key recommendations – Integration of land banking with the overall land policy of the country

- 5.2.1. The land banking instrument should be fully integrated into the overall land policy of the country.
- 5.2.2. The land banking instrument should be integrated with eventual programmes for privatization of state-owned agricultural land, using existing available state-owned agricultural land as an initial asset for the land bank and combining land banking and state-owned land privatization instruments in the frame of public purpose projects.
- 5.2.3. Professionals implementing land banking as well as beneficiaries of this instrument should constantly work to ensure continuous political support for land banking.
- 5.2.4. It is recommended to establish land banking instruments in support of a national land consolidation programme and the implementation of land consolidation projects.
- 5.2.5. Land banking should be performed in a systemic way, securing defined policy objectives. It should not carry out random interventions in the land market.
- 5.2.6. Land banking policy should support specific target groups of stakeholders (e.g., young farmers and owners of small family farms), providing them with access to additional agricultural land.
- 5.2.7. Land banking could be combined with other administrative measures, such as incentives, sanctions and/or taxation measures, to guide the behaviour of stakeholders towards the attainment of specific policy objectives.

### 5.3 DEVELOPING THE LEGAL FRAMEWORK FOR LAND BANKING

While some countries have a specific law for land banking, most often, the provisions regulating land banking are integrated into laws of a more general scope, such as the Law on Land, the Law on Agricultural Land, the Law on Land Consolidation or the Land Code. Therefore, the development of the relevant regulatory framework will depend on the national legal context, the land banking approach chosen, and the selected institutional setup.

Where a land bank takes the form of a state agency, the regulation will differ from situations where the land bank is a state enterprise or other type of public purpose entity held and/or controlled by the relevant stakeholders, like the state and farmers' associations. The key land banking provisions should be regulated by the law-level legal act(s) and the relevant

implementing secondary legal acts. However, if the land bank is established in the form of a non-governmental public purpose entity (e.g., state enterprise), the statutes of such entity as well as its internal documents will play an important role in shaping its activities.

The regulatory framework on land banking should consider at least the following aspects:

- define the objectives of land banking;
- identify the entity (or entities) responsible for land banking activities in the country;
- provide for the legal tools that may be used by the land bank, including acquisition, sale, exchange, leasing out of land, as well as performing lease facilitation;
- clearly establish the linkages between land banking and other land management instruments, such as land consolidation and privatization of the state-owned land;
- provide linkages between land banking and the planning and implementation of land-demanding public projects, such as environmental, climate change and infrastructure projects;
- provide linkages between the activities of the land bank and the relevant incentives, taxation and/or punitive measures designed to motivate landowners to participate in the activities implemented by the land bank;
- establish the funding mechanism of the land bank, which is recommended to be based on a revolving land banking budget;
- define the simplified and fast mechanisms of acquisition and disposal of the land managed by the land bank, including the exceptions from the regulation requiring applying public tender procedures in case of sale of the state-owned land;
- provide for a favourable taxation regime applicable to land bank activities, if feasible, ensuring that the land bank (e.g., non-governmental public purpose entity) is waived from paying taxes on its revenues or transactions. Other costs, such as authentication, registration, cadaster costs, should also be considered in the regulatory framework on land banking;
- consider providing for a pre-emption right of the land bank to acquire agricultural land on the market;
- establish a system of safeguards to prevent corruption, conflict of interests and other potential risks and ways of misconduct;
- define the composition of management and supervisory bodies for land banking;
- provide for the system of monitoring and evaluation of the land banking activities, also including the requirement to publish detailed yearly reports on the activities of the land bank; and
- provide for legal remedies related to land banking.

These aspects would be dealt with by legal acts of different levels (see Section 4.3) depending on the country context.

✓ **Box 5.3:****Key recommendations – Legal framework for land banking**

- 5.3.1. The legal provisions regulating land banking should be integrated into the legal acts of a wider scope, such as a Land Code, Law on Agricultural Land, Law on Land Consolidation and/or other relevant legal acts.
- 5.3.2. The form of legal acts regulating land banking will depend on the land banking model and the relevant institutional framework chosen by the specific country. If it is decided to establish a land bank in the form of a state agency, the regulation will differ as compared to the situation where the land bank is a state enterprise or other type of separate public purpose entity.
- 5.3.3. The regulatory framework for land banking should consider at least the following aspects:
- i) clearly define the objectives of the land banking instrument;
  - ii) identify the entity responsible for land banking activities in the country;
  - iii) provide for the legal and operational tools that may be used by the land bank, including acquisition, sale, exchange, leasing out of the state-owned land, as well as performing lease facilitation;
  - iv) establish the legal and operational linkages between land banking and other land management instruments, such as land consolidation and privatization of the state-owned land;
  - v) provide linkages between land banking and the planning and implementation of land-demanding public projects, such as the environmental and infrastructure projects;
  - vi) provide linkages between the activities of the land bank and the relevant incentives, taxation and/or administrative sanctions designed to combat land abandonment and motivate landowners to take part in the activities implemented by the land bank;
  - vii) establish the funding mechanism of the land bank, which is recommended to be based on a revolving land banking budget;
  - viii) define the simplified and fast mechanisms of acquisition and sale of land by the land bank. Decision making in the land bank must be simple and fast to be able to act in the land market, without heavy administrative procedures such as approval of the ministry or even the government;
  - ix) consider a pre-emption right, allowing the land bank to acquire the agricultural land being sold on the agricultural land market;
  - x) establish safeguards to ensure that land banking is not misused for personal gain or otherwise abused; and
  - xi) provide for the system of regular evaluation and monitoring of the land banking activities.

## 5.4 ESTABLISHING AN INSTITUTIONAL FRAMEWORK FOR LAND BANKING

The experiences of the five Western European countries detailed in Chapter 2 of this study have demonstrated that both centralized and decentralized land banking institutional frameworks can be feasible. However, for the countries in the initial stages of the introduction or development of land banking, several aspects make the centralized model more suitable. If the relevant functions are conferred on one national-level institution, it is easier to build trust in a single national institution charged with implementing strategic land policy goals throughout the whole country. The national-level institution could build capacity throughout the country

and better ensure coherence and work quality than different regional entities. Once the land banking instrument develops into an efficiently applied tool, the country could consider the decentralization of relevant functions. However, to this end, the necessary preconditions related to capacity building, know-how, human and financial resources should be met.

Land banking will not be successful in the country if the involved professionals do not have sufficient knowledge and capability. Therefore, it is recommended to implement a broad capacity development campaign targeting both professionals already in practice and future professionals. A particular focus should be made to sustain the medium and longer-term technical capacity of national experts to perform the work as part of a national programme on land banking (Hartvigsen, Veršinskas and Gorgan, 2021, p. 19-22).

Land banking activities should not be spread throughout the whole country but rather be targeted in areas with the highest priority, need and potential for land management interventions. The criterion for introducing land banking activities should not be the administrative divisions of the country but the necessity for this type of action.

Since the land banks carry out strategic policy tasks, which in most Eastern Europe and Central Asia countries are closely related to the outcomes of the land reforms implemented after the beginning of the transition in 1990, the necessity of a national-level effort stands even stronger. Even if a national-level institution performs the land banking activities, it could have regional offices in order to implement the actual work.

Western European countries have chosen different institutional models with land banking functions performed by a state agency under the ministry responsible for agriculture (or other relevant ministry, depending on the land banking objectives) or implemented by a separate legal entity, such as a state enterprise or a limited liability entity, controlled and/or supervised by the state and/or other relevant stakeholders.

It is recommended to assign or establish a land bank as a separate entity. The choice of the legal form would depend on the local needs for land banking, the existing institutional infrastructure and the national legal framework. In all cases, the legal form of the land bank and the relevant operational arrangements should ensure flexibility and the ability to take rapid decisions concerning the acquisition, leasing out, sale and/or exchange of land between the land bank and private owners.

In this regard, several key aspects should be considered. In addition to the right to acquire private land, land banks should also be able to sell and otherwise dispose of land. Generally, such right would be strongly limited by the rules governing the alienation of the state property. Therefore, if the national legal framework does not provide for flexibility, it might be preferable to confer the land banking functions to a separate legal entity, which would have a right to freely buy, sell and otherwise dispose of the land on the market. The flexibility in decision-making should also be taken into account so that land-related decisions may be made rapidly. The land bank should be able to react at short notice to the market conditions and acquire and/or sell the relevant land parcels. If the decision-making process involves higher institutions and complicated decision making, the likelihood is a delay, and the land bank would likely miss opportunities in the land market.

Another key aspect is financial independence and the possibility to have a revolving budget, which should not revert to the state budget at the end of each year. The land bank should have

the possibility to act when there is demand and need to be driven by the policy objectives and operational programmes to implement specific projects. To this end, it should always have the necessary flexibility and funds to perform. Such funds should not depend on a yearly budget of the country, which, for example, during the economic downturn (and hence the decline in prices of land) would be reduced.

Land banks often provide services for other public purpose entities. This should be considered while establishing the institutional framework and ensuring linkages between various institutions. Such provision of services would generate additional revenue for land banking activities.

The institutional setup for land banking should also ensure the proper supervisory framework, guaranteeing that the process is efficient, transparent and not subject to misuse. Land banking faces several risks, such as the possibility of corruption or conflicts of interest. Therefore, a robust system of safeguards is of even greater importance in countries battling higher levels of corruption, which may impact both the land banking system as well as the system of safeguards itself, which also includes courts. The supervision should be performed at least by the Ministry of Agriculture (or other relevant Ministry depending on the objectives of land banking) and the Ministry of Finance. It is also recommended to establish supervisory and/or advisory bodies, such as an Advisory Board, comprised of various stakeholders representing the state, civil society, academia and private sector. This would contribute to the transparency and efficiency of the work of the land bank.

To offset these risks, the powers of the head of the land bank (or of a respective collegial body) to acquire or sell land could be limited with pre-defined thresholds. If a transaction is above a certain threshold, prior permission from the main supervisory institution, like the ministry of agriculture, should be required. However, land banks must also be able to act rapidly and flexibly. Such thresholds should not be set so low that they require permissions from the supervisory authorities for the majority of land transactions.

✓ **Box 5.4:****Key recommendations – Institutional framework for land banking**

- 5.4.1. It is recommended to assign or establish a public entity (land bank) to perform specific land banking functions.
- 5.4.2. It is recommended to implement a broad capacity development campaign to ensure the sustainability of land banking knowledge and know-how among current and future national professionals.
- 5.4.3. Depending on the national context, land banks may take various legal forms, for example, a government institution, state agency or state enterprise. The choice of the legal form should ensure that the land bank can fully and efficiently perform its activities.
- 5.4.4. The legal form of the land bank and the relevant operational arrangements should ensure flexibility and the ability to take rapid decisions concerning the acquisition, leasing out, sale and/or exchange of land.
- 5.4.5. The legal form and the relevant operational arrangements should ensure that the land bank can establish and manage a revolving budget independent of the yearly state budget and used to perform relevant land banking activities whenever necessary.
- 5.4.6. The supervision of the land bank should be performed at least by the ministry responsible for agriculture with support from the ministry of finance. It is recommended to establish an advisory board of the land bank with state, civil society, academia and private sector representatives, which would contribute to the transparency and efficiency of the land bank's work and provide advice on new policy directions.
- 5.4.7. The decision powers of the head (or the relevant collegial body) of the land bank to acquire or sell land may be limited by pre-defined thresholds. The thresholds should not be too low and should not require permissions from the supervisory authorities for the majority of the land transactions.
- 5.4.8. In line with the objectives aimed by the land bank, it may also provide services for other institutions and acquire land for defined public needs or perform other land banking activities.

## 5.5 FUNDING AND COSTS OF LAND BANKING ACTIVITIES

The funding models for land banking vary from fully funded from the state budget in Denmark to financially self-sufficient in France (SAFERs) and Germany (Mecklenburg-Vorpommern) (LMV). If the land bank is a state institution, then funding from the state budget plays a major role. Land banks, which are non-governmental entities (e.g., state enterprises or public purpose limited liability entities), usually depend on funds generated from their activities, for example, fees for the provided services or generated profits from the sale or lease of land. However, it should not be forgotten that acquisition and sale of land may also generate losses if market prices go down.

Both types of land banks must be provided by the state with the initial resources, both funds and land, to launch their activities. Subsequently, the financial autonomy of the land bank may increase due to the revenue-generating activities. In the initial phase of operations, support from the state should cover at least basic costs such as staff, equipment, and office costs.

The funding system and the relevant legal framework should ensure a revolving budget, which would allow the land bank to reinvest funds received from the sale of land into new acquisitions. There should be no requirement to transfer funds to the state budget by the end of the year. Furthermore, the funding of the land bank should be based on the land banking programme perspective, for example, five years ahead, and not be dependent on yearly state budget planning. The land bank must have funds to purchase land if and when necessary.

The land bank should also have a right to use other funding sources, such as European Union funds or funds from the international financial institutions. The land bank could also generate funds from the provision of land banking services to various state agencies or other bodies implementing land-demanding public purpose projects, like the construction of highways or railways. Combining funding sources would facilitate the implementation of the land banking activities and harmonize the actions with the international policy objectives.

✓ **Box 5.5:**

**Key recommendations – Funding and costs of land banking**

- 5.5.1. Land banks should initially be provided with assets in the form of land and/or funds to start land banking operations.
- 5.5.2. In the initial stage of operation, basic costs such as staff, equipment, office costs should be funded from the state budget.
- 5.5.3. The land bank should have a revolving budget with the time perspective of the programme, for example, five years ahead, which means that the funds received from the land banking activities would be reinvested in land banking. The land bank would not be required to transfer funds resulting from land banking to the state budget by the end of the year, and its activities would not depend on yearly state budget planning. The land bank should not have the generation of profit among its objectives.
- 5.5.4. If necessary, additional funding for land banking could be provided for from other national and/or international sources such as International Financial Institutions.

## 5.6 COMBINATION OF LAND BANKING WITH LAND CONSOLIDATION

Countries introducing land banking are recommended to combine this instrument with a land consolidation instrument. Land banking facilitates and increases the efficiency of land consolidation projects or even makes them feasible at all. Land banking provides the opportunity to build up a land pool before and, in parallel with the re-allotment process, it increases land mobility and enhances re-allotment options. It also enables land to become available for public purpose objectives, whether it is for infrastructure construction or taking agricultural land out of production for nature restoration or afforestation at the same time as it creates opportunities for the optimization of the farm structures in the project areas. It also allows compensating farmers with land instead of a monetary compensation so that farmers will be able to continue and even expand their farming activities.

In the case of large public infrastructure projects, land banking should be combined with land consolidation. Such a linkage facilitates public purpose infrastructure projects, like

highway construction, and saves budget funds, which may otherwise be used for the expropriation of land.

The states should ensure land banks can use state-owned land within the land consolidation project areas. This should be applicable to both land owned by the land bank as well as land owned by the state if the land bank is not a state institution. It may be the case that there is no separate land bank institution, and the land banking functions are conducted by the ministry of agriculture or an agency under such ministry. In such a case, the ministry should have the necessary powers to use the state-owned land in the land consolidation projects.

The linkages between land banking and land consolidation could be provided within the same institution, which would act both as a land bank as well as the lead agency for the land consolidation programme. Also, within the land consolidation project areas, the legal framework should allow for exceptions to the general legal regulations, for example, requirements to always sell state-owned agricultural land through auctions.

The land banking instrument should also be used to facilitate the implementation of public infrastructure projects, even if they do not involve land consolidation measures. Even without the land consolidation element, the land banks could acquire land for later use in public infrastructure purposes or provide land as compensation to the landowners giving up their land in the public purpose projects. This would save state funds, avoid expropriation and have a lesser impact on farms operating in the area since the acquisition and sales transactions would be implemented on a voluntary basis. Such acquired land could also be used as an exchange instrument to substitute the land still owned by the farmers within the project area with the land owned by the land bank or state outside of the public project area. To this end, the land bank should form a pool of land available for the aforementioned operations once the project implementation is launched.

✓ **Box 5.6:**

**Key recommendations – Combination of land banking with land consolidation**

- 5.6.1. In land consolidation project areas, where there is state-owned land, the land bank should be availed to perform land banking operations with such land to increase the land mobility and catalyse the re-allotment planning.
- 5.6.2. In land consolidation project areas, land banking is recommended to be used to increase land mobility and facilitate the re-allotment process, providing more options for the participants of the projects.
- 5.6.3. In the land consolidation project areas, land banking should be used to acquire land, which would later be used for the development of public infrastructure, like drainage, irrigation and roads and to facilitate enlargement of farms.
- 5.6.4. In the public purpose projects, land banking in combination with land consolidation should be prioritized over expropriation if there is a wish among the affected private farmers to be compensated in land in another location.
- 5.1.8. In land demanding public purpose projects, land banking could be applied to create a pool of agricultural land to be used as compensation for the farmers whose land is being taken out of agricultural production and avoid a negative impact on the farming activities.



## 5.7 USE OF THE LAND BANK TO MANAGE STATE-OWNED AGRICULTURAL LAND

In many Eastern European countries, there is a significant state-owned reserve of agricultural land. If properly used, this resource may support land-related policies for the benefit of various public purpose projects or to support defined groups such as livestock farmers or young farmers. If the land bank (or a state institution playing the role of the land bank) is conferred the right to manage the whole or part of the state-owned agricultural land, it should ensure that this land is used in a most efficient way and not simply privatized for the highest price.

A number of ECA countries implement programmes of privatization of public-owned agricultural land. Instead of simple privatization through auctions for the highest price, land banking could ensure that such privatization would not only provide funds for the state budget but also actively support agricultural, rural development and other relevant policy objectives, ensuring linkages with other land management instruments such as land consolidation.

Therefore, land banks should be attributed the right to privatize the state land in the frame of the implemented land-related projects. Without prejudice to the existing state-owned land lease agreements, the regulatory framework should allow the use of state-owned agricultural land for project purposes, including exchange and sale, at least in areas where specific interventions are ongoing.

Land banking could be interlinked with the state-owned land privatization programme through a variety of instruments, like auctions (not applicable in the land consolidation projects), direct sale or allocation in land consolidation projects or allocation of land to target groups such as small farms and farms owned by young farmers. The sale of land directly to the beneficiaries within the land consolidation projects is feasible because the relevant safeguards are in place, including participatory and transparent processes involving land valuation and the appeal mechanisms.

On the other hand, it may be the case that the land bank is given responsibility for the management of all or part of the state-owned agricultural land. However, countries should carefully evaluate if the necessary preconditions for such a multi-purpose land agency exist, including the necessary human resources, funding and safeguards. The integration of a range of land management functions into one institution does not necessarily ensure the efficiency of the land bank. The assigned functions should correspond to the resources available, including the professionals, who would be capable of implementing the defined policy objectives. A risk that the efficiency and flexibility of the land bank will be impeded if it is assigned too many or too broad functions should be taken into account. Also, the risk of failure is even greater if land banking functions are assigned to an already existent institution, which is not ready to be proactive in the land market and has no qualified and motivated staff to perform these functions.

FAO experience shows that in certain cases, like North Macedonia, the state owns so much fragmented land in each land consolidation area that there is no need to buy additional land. In such cases, even if there is no entity specifically assigned to act as a land bank, it is important that the institutions responsible for the implementation of land consolidation projects have a right to exchange and privatize existing state-owned land in the land consolidation process.

✓ **Box 5.7:**  
Key recommendations – Use of land bank to manage state-owned agricultural land

- 5.7.1. At least in project areas where specific interventions are ongoing (e.g., a land consolidation project), existing state-owned land should be made available for the project, both for exchange and sale.
- 5.7.2. The land bank could be used to privatize state-owned agricultural land through a variety of instruments, like auctions or privatized directly in land consolidation projects, where land could be allocated to target groups such as small farms and farms owned by young farmers.

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## LEGAL INSTRUMENTS

### Non-legally-binding instruments

*Transforming our world: the 2030 Agenda for Sustainable Development*, adopted by 193 countries at the UN General Assembly on 25 September 2015 (UN Resolution 70/1). The Agenda has 92 paragraphs. Paragraph 59 outlines the 17 Sustainable Development Goals and the associated 169 targets and 232 indicators.

*Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests in the context of national food security*. FAO, 2012. Rome. (also available at <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>).

## SUPRANATIONAL LEGISLATION

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### European Union

Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (Nitrate Directive).

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive).

Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy, 23 October 2000 (Water Framework Directive).

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Birds Directive).

## NATIONAL LEGISLATION

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### Denmark

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- Law on Development of Rural Areas (*Wet Inrichting Landelijk Gebied*), adopted 7 December 2006 and entry into force on 1 January 2007. Note: by 2022, this Law will be incorporated into a single Act entitled Environment and Planning Act (*Omgevingswet*). Decree on Environmental Impact Assessment (*Milieueffectrapportage*), adopted 4 July 1994.
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# European good practices on land banking

## FAO study and recommendations

Many countries in Western Europe have a long tradition of applying land banking as part of the integrated toolbox of land management instruments. As with land consolidation, the traditional purpose of land banking has been to support agriculture and rural development by reducing land fragmentation and facilitating the enlargement of farms. In Western Europe, the objectives of land banking have developed over the last decades, and today, in several countries, the instrument is applied in a multi-purpose approach together with land consolidation.

This study defines land banking as a set of systematic activities implemented by an institution with public purpose, performing the intermediate purchase, sale, exchange or lease of land in rural areas in order to increase land mobility, to facilitate development of agricultural land markets, and to pursue public policy objectives related to agricultural and rural development, sustainable land use and implementation of public projects related to nature restoration, environmental protection, climate change and construction of large-scale infrastructure.

This study identifies good European practices on land banking based on the analysis of the experiences of Denmark, France, Germany, the Netherlands and Spain (Galicia). It also discusses experiences from the introduction of land banking instruments in countries in Central Europe, including in Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Poland and Slovenia. Finally, the study provides policy recommendations for the introduction of land banking, with a focus on countries in Eastern Europe and Central Asia.

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