

Comparative quick scan study

Pre-emption rights related to rural land



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Background

Establishment of pre-emption rights is one of the instruments to guide the land market in rural areas. A pre-emption right or 'right of first refusal' prevents or restricts the landowner from entering into a land transaction with parties other than those to whom the right is granted until those people / organisations have declined the offer. The pre-emption right can be granted to either private persons such as farmers from the same area or to organisations that have the role to guide developments that benefit the interest of the broader society. In the Netherlands for example, pre-emption rights can be granted to municipalities, provinces or the state to anticipate on urban developments in specific areas. In France the right of pre-emption is used on a broader scale in rural areas. Farmers (under certain conditions) and the *Société d'Aménagement Foncier et Etablissement Rural* (SAFER - Agricultural Commission) both have a right of pre-emption over land or property to guide developments in rural areas.

Application of pre-emption rights, in general, is a sensitive issue since it touches the individual interest of the land owner and balances it with the interest third parties or the society as a whole. In order to support the reasoning and considerations regarding the use of pre-emption rights, a short comparative study has been carried out. The basic questions are: Are pre-emptive rights a right tool to contribute to improvement of the rural land structure? If yes, in what way can this be balanced so that it does not affect mobility and is considered as a positive measure by farmers (who should be in most cases the main beneficiaries). We want to use the strength of the LANDNET and FARLAND networks, to mobilise quickly the main experiences, to document them and to draw some (preliminary) conclusions in order to feed the discussion among experts and policy makers in Europe.

Objective of the Quick Scan Study

To 'map' different practices in European countries with the establishment and use of pre-emption rights in rural areas and to feed the discussion about relevance and efficiency of this instrument.

Approach

The short study is carried out as a 'quick scan' of practices in different countries. An internet search was held which provided information from France.

Besides this, a questionnaire has been distributed in the LANDNET and FARLAND networks to get a general overview (a list of countries involved is included in the table on page 3).

Preliminary outcome has been discussed in a session in the FAO/FARLAND/LANDNET workshop of 6-9 June 2011. Based on this, a selective number of relevant countries has been approached to get more in depth information about particular subjects.

All findings are documented in this report.

Set up of the report

In chapter 1 an overview will be given of the prevailing definition of pre-emptive rights. Based on the overview of countries the main forms are explained as well as their objectives. Chapter 2 describes a selection of countries in more detail. Some preliminary conclusions and recommendations are given in Chapter 3. This sections also includes recommendations for some more in-depth research.

1. Pre-emption rights: Definitions and main forms in Europe

1.1 General Definition

A **pre-emption right** is a right to acquire certain property in preference to any other person. It comes from the Latin verb *emo, emere, emi, emptum*, to buy or purchase, plus the inseparable preposition *pre*, before. It usually refers to property newly coming into existence. A right to acquire existing property in preference to any other person is usually referred to as a *right of first refusal*. (Source: Wikipedia).

1.2 Key Issues

While collection experiences, the following key issues have been identified related to the use of pre-emptive rights in the rural land market:

What is the **objective**? (i.e. agricultural restructuring, avoiding speculation, avoiding ineffective land use, avoiding land abandonment, facilitating change of land functions from private to public interests etc.)

What is the **scope**? (i.e. are pre-emption rights generally exercised or used in particular situations? if yes, in what situations?)

To whom is the pre-emption right granted? (i.e. municipalities, provinces, state organisations, specific agencies such as SAFER, farmers? if yes, which farmers, what is the order of rights?)

How is the **procedure**? (i.e. who takes initiative? who informs who? How are decisions / evaluation made? How long is the procedure? how are information flows?, who is involved like government agencies, notaries? how is the order like making a preliminary contract and offering it to the organisation holding the rights, or the other way around?)

How is the **legal framework**? (i.e. what law(s) establishes the pre-emption right? What is arranged by law and what can be altered in by-laws, implementation guidelines? Is it linked to specific instruments such as land consolidation, land banking, subsidy schemes? Are legal documents available in English?)

What are **restrictions** after using pre-emptive rights? (i.e. minimum term of holding the land? maximum term of holding the land? obligation to develop the land? etc.)

What are specific **experiences** using pre-emption rights? (i.e. how often is the right exercised (%), what is the average duration of the procedure? does it influence the price setting? Does it lead to 'self regulation'?)

1.3 Outcome of the questionnaire survey

From a total of 22 countries, experts from 14 countries reacted on the request to answer the above mentioned key-questions. An overview is included in the table on page 3. Given the long tradition with pre-emptive rights, France has been added based on a short internet inventory.

Table 1 – outcome of questionnaire survey

	R?	Pre-emptive rights?			Generally / particular applied		To whom is the right granted?			Widely used?			Purpose
		Yes	Limited	No	General	Particular	State	Municip.	Co-owners/ Lease hold.	Yes	No	?	
1 Albania	√		√		√				√			√	Local users
2 Bosnia & Herzegovina													
3 Bulgaria	√		√		√				√			√	Local users
4 Croatia													
5 Cyprus													
6 Denmark	√	√				√	√	√			√		Nature / LC
7 Estonia	√					√							Islands / Nature / Local users
8 Georgia	√		√						√			√	Local users
9 Hungary													
10 Kosovo													
11 Lithuania	√	√			√	√	√		√	√			Nature / LC / Local Users
12 FYROM	√		√		√				√			√	Local users
13 Moldova													
14 Montenegro	√		√		√	√		√	√				Family / building
15 Netherlands	√	√				√	√	√			√		Red / green public goals
16 Portugal	√	√			√	√	√		√		√	√	Local users / LC
17 Romania	√	√					√		√			√	Culture / Forestry / Infrastr / Local users
18 Serbia	√	√			√				√			√	Agricultural structure
19 Galicia/Spain	√	√			√		√				√		Agricultural structure / land abandonment
20 Sweden	√	√			√		√	√		√			Agricultural structure / building
21 Turkey													
22 Ukraine	√			√									
22	14												

Based on the outcome of the survey, the following forms of pre-emptive rights can be distinguished:

1. Co-owners and lease holders have the first right of buying.

The main aim is protection of rights of co-owners and tenants related to continuity of agricultural purpose (e.g. Bulgaria, Albania, Georgia). Usually this form is generally applied.

2. Co-owners, lease holders and neighbours have the first right of buying.

Like in 1. the main aim is protection of rights and continuity / improvement of agricultural production. The addition of neighbours usually is related to intentions to improve the local land structure, for example when farms are small scale and fragmented. This is practised in Macedonia, Serbia, Estonia and Lithuania and is generally applied.

3. Certain (defined) farmers have the first right of buying, followed by a public agency.

The objective of this form is to direct the local land market towards a better structure, to keep land in the hands of farmers and to avoid speculation. In France for example, this form also has the additional objective of regulating prices. The form is generally applied.

4. A government agency has the first right in land consolidation areas.

In this form, pre-emption rights are used to build up a reserve in a land consolidation area. By using the right, land can be purchased to be allocated to public infrastructure (access roads, drainage / irrigation canals) and to smoothen the process of swapping land. This form is only used in designated land consolidation areas, for example in Portugal, Spain (Galicia) and Lithuania.

5. A government agency has the first right for other public objectives.

Pre-emptive rights are used to realise public functions like nature conservation, forestry, preservation of cultural heritage or infrastructure development. Usually this form is used in particular designated areas that are changing the function from agriculture to another function. It is practiced in Denmark, Romania and the Netherlands.

In the following chapter some European examples are described in more detail.

2. Country experiences

2.1 Denmark

Objective

In Denmark pre-emption rights are used in different situations and according to different laws. Thus, the objective depends on the specific law and its objective.

Scope

In Denmark pre-emption rights are always used in particular situations. Decisions about the right must be taken in each individual situation (each property) and is always secured against third parties through a servitude registered in the land register.

Target group

According to the law the right is granted to the Minister of Agriculture (according to the land consolidation law) and to the Minister of Environment (according to the law on nature protection). The Minister of environment can delegate the right to the municipalities which has been done in some cases, recently in connection with a new wetlands programme to be implemented from 2010-2015 (10.000 ha of new wetlands to implement the water frame directive).

Procedure

The initiative is taken by the ministry or municipality (when right is delegated). The Ministry informs the landowner about the decision to register the pre-emption right in the land register with priority to the State in case of sale of the parcel / property. Informed are only ministry (or municipality) and land register (there are no notaries in Denmark).

Legal framework

The two most relevant laws that allow the state to register pre-emption rights are:

Law on Nature protection, article 57: "The Minister of Environment can decide that properties in rural areas, suitable to fulfil the objective of the law, shall accept pre-emptive rights for the State".

Law on land consolidation and land banking, article 12. The Minister of Agriculture can decide to establish a pre-emption right on parcels / properties relevant for land consolidation projects. The procedures are simple and all written in the law itself. As mentioned, the concrete pre-emption right is linked to either implementation of nature projects (e.g. the mentioned wetlands program) or land consolidation projects. Legal documents are not available in English.

Restrictions

It is a pre-emption right, not a right to buy when the State wants. Therefore the instrument is passive and not operational. The State will have to wait until a third party has taken steps to buy the property and then the State can use its pre-emption right to step into the agreement already made with a third party. After buying the land, the State can freely dispose of the land (change land use from arable land to wetlands and even sell it again).

Specific experiences

Pre-emption rights are very seldom used in Denmark even though it is possible according to the laws. The reason is that this instrument is not really operational (the State cannot force the owner to sell before he/she want to do so). There are a few cases where pre-emption rights successfully been used when key parcels / properties in large nature projects were to be sold to another private owner who would not participate in the project voluntarily. Only very few positive examples exist. Frequent use of pre-emption rights is a waste of time and money (creates a lot of bureaucracy with very limited results). The State is not compensating the landowner for the pre-emption rights and the right does not influence the price setting.

2.2 Estonia

Objective

Until January 2002 local governments had pre-emption rights on all transactions. This measure, mainly to avoid fraud, is not longer operational.

A special law gives the pre-emption right on small islands to the respective local government if there is transaction with immovable goods on the island. This pre-emption right gives the possibility to the local government to acquire immovable property if local government needs it for public objects (for example educational, cultural or social purposes) or for traditional habits (joint ownership – grassland in costal areas) etc.

The state also has in some cases pre-emption right but it is connected more with heritage protection and nature conservation.

When the state sells state land, certain owners are prioritised.

Scope

Pre-emption rights are either linked to the status of being a small island or specific zones. For illustration, the Nature Conservation Act established the right of pre-emption 'upon transfer of an immovable located within the boundaries of a shore or bank building exclusion zone, protection site of a species in the protected category I, limited management zone of an individual protected natural object, protected area or special conservation area.'

State land, remaining after the land reform process is sold by auction. There are some prioritized persons who have rights but this activity take place before the contract which is the main difference compared to normal pre-emption regulation.

Target group

The main target groups are the local government (small islands), the state (nature purposes) and individual land owners who border state land for sale. The owner with the longest border to state land has the first right.

Procedure

In case of protected nature areas: Within three days after certifying a transaction for the transfer of an immovable or a part thereof, the notary shall submit the transaction document to the Ministry of the Environment at the transferor's expense.

In case of selling of state land, the Land Board must inform these prioritized persons (both cases) about the auction.

Legal framework

The general set up of pre-emption rights is included in the Law of Obligations Act (Passed 26 September 2001, entered into force 1 July 2002), paragraph 244.

Specific use of pre-emption rights on small islands is arranged in the 'Law about small islands with permanent habitation'.

The Nature Conservation Act (Passed 21 April 2004, entered into force 1 May 2004), paragraph 16 regulates pre-emption rights in protected areas.

Additionally, there is a separate regulation (according to the State Assets Act) on the situation where state sells the state owned property (arable and forest land).

Restrictions

No information available

Specific experiences

No information available

2.3 France

Objective

There are four ways of pre-emption rights in France:

1) for public development

This right is called the *Droit de Prémption Urbain* (DPU). The Mairie's office usually exercises the right where the property or land is required for development purposes including public works, leisure facilities etc.

2) for tenants

This relates to "occupied" premises and gives the tenant a "lot de copropriété" a right of pre-emption when the landlord sells occupied premises for the first time following the division of the property into a condominium. The landlord sends a notification to the tenant who has one month within which to reply.

3) for SAFER in rural areas (see beneath)

4) for co-owners

The fourth right is exercised by the "Coindivisaire" and relates to joint property. If one of them sells his/her share then the other "indivisaires" may purchase the share. The Seller serves a letter by a "Huissier de Justice" on the other indivisaires and they have one month within which to answer. If the other "indivisaires" wish to purchase the share they must do so within two months.

The third form is the most relevant for this study since it aims to support the local farm structure and it aims to regulate land prices.

Scope

This pre-emption right is generally practiced.

Target group

The third right of pre-emption is in relation to rural areas. The farmer and the *Société d'Aménagement Foncier et Etablissement Rural* (SAFER - Agricultural Commission) both have a right of pre-emption over land or property.

Procedure

As far as SAFER is concerned the notification is sent to SAFER by letter. From receipt of the notification SAFER has two months within which to decide whether to purchase.

If SAFER then intends to purchase the property the same rules apply as to the "Droit de Prémption Urbain". The notification of the "Droit de Prémption" is published in a newspaper. The first right of pre-emption is the right of the Commune where the property is situated. The DPU starts by a notification called *Declaration d'intention d'aliéner* (DIA) sent to the Mairie who have two months within which to reply. The DIA is usually drawn up by the Notaire in charge of the sale of the property.

If the Mairie does not intend to "préempter" it can either not reply or send the DIA back with the comment *Droit non exercé* or *Droit n'existe pas*.

Where the Mairie does exercise its pre-emption right it usually purchases at a lower price than the purchase price indicated in the DIA. In the circumstances where the Mairie does exercise its right of pre-emption the Seller has three options:

- To withdraw from the sale and keep the property.
- To accept the Mairie's offer at the lower price
- To maintain the asking price and let a judge fix the price at which the Mairie purchases the property.

Legal framework

The Law of 31st December 1975 and the right granted by the Law of 6th July 1989.

Restrictions

A farmer may purchase the agricultural land where:

- He effectively uses the land.
- He works as a farmer on the land for 3 years.
- The total surface of the land he uses is over 1 hectare 50 Acres.
- The land which the farmer owns has a total surface area of less than the "Surface Minimum d'Insertion".
- He commits himself to use the land continuously for 9 years.

(The right of pre-emption is exercised by the French Tax Administration (the *Trésor Public*) when the purchase price is considered to be insufficient by the Tax Inspector has been repealed).

Specific experiences

Although the 3rd form is generally applied, SAFER makes little use of its right of pre-emption. In 2008 a number of 1.590 contracts were based on the use of pre-emptive rights. This is about 0,7 % of all transactions.

2.4 Lithuania

Objective

Pre-emption rights are used to:

- Avoid fragmentation of land and to improve the land structure
- Improve the functioning and maintenance of local infrastructure (drainage structures, access roads etc.)
- Facilitate restructuring of land parcels and implement other land consolidation goals
- Facilitate the change of land functions from private to public interest. For example the State has the first right in case land is offered for sale which is situated in the areas of state parks having the conservation, ecological protection and recreation priority, also in the state sanctuaries and other protected areas having the status of *Natura 2000*
- Avoid ineffective land use and land abandonment, supporting farmers who want to use the land more efficiently

Scope

Some of the legal measures are applied generally like for example the right for co-owners of the land or the infrastructure. This also counts for the objective to avoid land abandonment and inefficient land use.

Part of the pre-emption rights are practiced only in designated areas, like for example in land consolidation areas or in *Natura 2000* areas.

Target group

In many of the cases private persons (or other legal bodies) are targeted. This counts for co-owners of land and its structures but also for lease holders in case the plot they rent is sold. When the state sells land there is also a group of prioritised persons like for example lease holders (more than 1 year) and young farmers who have land bordering the state land. In land consolidation areas all other farmers have the pre-emption right.

The State (National Land Service as trustee of state land) has the first right in designated nature areas and when dealing with land abandonment.

Procedure

The procedures depend upon the particular case.

For example, land co-owners must inform by a registered mail (by handing over) the other co-owner (co-owners) of this land parcel about the intention to sell the land and the conditions. The co-owner must take a decision to buy this land parcel or refuse to buy it within 30 days after the receipt of notification. If the co-owner refuses to buy the land parcel (informing in writing) or in case he/she fails to take a decision within a specified time limit, the co-owner may transfer the land parcel to other persons.

In land consolidation areas the person who wants to sell a land parcel shall inform the State Land Fund. The State Land Fund sends information to all the persons whose land parcels are allocated in the land consolidation area. These persons and State Land Fund have to take a decision to buy this land parcel within 30 days after the receipt of notification. If there is more than one person who wants to buy the parcel, the land owner decides to whom and in what conditions he wants to sell his land. If nobody wants to buy the land parcel, the State Land Fund gives a certificate to the land owner that nobody wants to use pre-emption rights and he can sell the land parcel to other persons.

In *Natura 2000* areas the land owner must inform by a registered mail (by handing over) the National Land Service (NLS) under the Ministry of Agriculture (NLS) about the intention to sell the land and the conditions. NLS must take a decision to buy this land parcel or refuse to buy it within 30 days after the receipt of notification. If NLS refuses to buy the land parcel or in case they fail to take a decision within a specified time limit, the owner of private land may transfer the land parcel to other persons.

Legal framework

Pre-emption rights related to co-owners of infrastructure and land consolidation areas are established in the Law on Land. The detailed procedure is foreseen in the 'Rules for the preparation and implementation of land consolidation plans', approved by the resolution of Government.

Pre-emption rights related to selling of state land are regulated by the Provisional Law on the Acquisition of Agricultural Land and Law on Land Reform. Detailed procedures are provided in the rules approved by the resolution of Government.

Pre-emption right related to co-ownership is established in the Civil Code and the Provisional Law on the Acquisition of Agricultural Land.

Related to land abandonment the provisional Law on the Acquisition of Agricultural Land provides the legal framework. The detailed procedure are foreseen in the Rules approved by the resolution of Government

Restrictions

In case of using the right for buying state land, the new owner is obliged to use the land for agricultural purpose and not to change agricultural land purpose for at least 5 years.

Specific experiences

There is a lack of data to draw conclusions about the use of pre-emption rights for co-owners of infrastructure. Detailed procedures of private land transactions are not regulated by legal acts. It is the responsibility of the notary to assure that persons who has pre-emption rights were informed about the intention to sell a land parcel.

During the first 14 land consolidation projects some land owners sold land parcels to other participants in the land consolidation projects. Approximately from 5 to 10 percent of all involved land parcels in land consolidation projects, changed ownership by selling these parcels before the end of project.

The pre-emption rights for the state in case of public functions (e.g. Natura 2000 areas) and related to land abandonment have never been used so far.

In case of co-ownership and leasing, the rights are used but no data are available. Again it is the responsibility of the notary to assure that the law is followed.

In case of selling the state land: From 2003 onwards 21.083 persons (870 legal bodies and 20.123 farmers, young farmers and other natural persons) used the pre-emption rights. A total of 269.000 ha of free state agricultural land was sold this way, which is about 7 percent of all agricultural land in Lithuania.

2.5 Macedonia

Objective

Pre-emptive rights are used in order to prevent fragmentation of agricultural plots. The purpose is more rational utilization of agricultural land as well as use of modern agro-technical and agro-meliorative and hydro-meliorative measures.

Scope

Pre-emptive rights are applied generally.

Target group

In the case of selling, the joint owners, co-owner and the neighbors whose land borders the land which is being sold, have a first right. The right is granted to all types of ownership regardless whether the land is private or state owned, including private entities and institutions.

Procedure

Notaries are involved in the procedure. The owner who offered the agricultural land for sale is obliged to conclude a sale agreement with the best bidder. An agreement concluded for a lower price than the one offered by the persons with a right to priority is invalid. The right is exercised by having a written offer, sent by the owner to the prioritised persons/entities. If more than one person or entities accepts the offer, priority is given to the joint owner, then to the co-owner, and then to neighbours whose property borders the land which is being sold.

Legal framework

Pre-emption rights are regulated by the Law on agricultural land, Article 15 (Pre-emption rights).

Restrictions

There is no minimum or maximum term of holding the land.

Specific experiences

There is no clear information of use of pre-emptive rights. Since the land market is very limited there are probably just a few cases of using pre-emption rights.

2.6 Netherlands

Objective

To avoid speculation in the market and bring the land property in the hands of the municipality, province of the State for public purposes like house-building, for nature/recreation areas, landscaping and water management.

Scope

Pre-emption rights are used only under special conditions, in projects where several public purposes are present (urban functions, recreational / nature functions).

Target group

Pre-emption rights are only granted to municipalities, province and the State. Not to farmers or their organisations.

Procedure

The procedure is very difficult and has many steps, to respect the rights of the landowner (Constitution related). The basic principle is recognition of the new function via the various levels of spatial planning. After using pre-emption rights the next step is usually expropriation.

Legal framework

Pre-emption right is arranged by a law called "Law pre-emption right municipalities", and is providing many rules for protection of the landowner.

Restrictions

There are no restrictions in using the land (during the term of the pre-emption period).

Specific experiences

Two examples within the province of North-Holland illustrate the use of pre-emption rights. The projects are Bloemendalerpolder and Wieringerrandmeer. The rights are used for rural and land development in the peri-urban area. In these areas the agricultural land use is changed to functions as nature/recreation, housing, water management, infrastructure and so on. The pre-emption rights help to prevent that the landowner sells his property to property developers and to avoid self-realisation inside the project. Pre-emption rights are not widely used.

2.7 Portugal

Objective

Pre-emption rights (buying / selling non-urban parcels) exist in two different situations: In general: (1) according to the civil code, every neighbouring owner (if he/she owns an area that is smaller than the minimum considered by law to be profitable) has the right to request the pre-emptive right when a parcel is to be sold; within land consolidation projects' area, this right is granted no matter the area that the neighbour owns; (2) also according to the civil code, co-owners have the pre-emptive right to buy the fraction of the parcel at stake; (3) in the law that regulates the renting of rural land, the farmer who rents a parcel for over three years has the pre-emptive right to buy this parcel;

In particular: within land consolidation projects: DGADR has the pre-emptive right to buy a parcel in this area over the neighbouring owner that has an area which is larger than the minimum considered by law to be profitable.

The objectives are (i) to improve ownership structure, (ii) support the goals of land consolidation projects and (iii) support farm stability.

Scope

Pre-emptive rights are both generally applied (see option 1) and particularly in land consolidation projects (as explained above, option 2).

Target group

The general pre-emption right is granted to owners/farmers according to this order: 1^o - co-owners; 2^o - farmer who rents the parcel > 3 years; 3.^o - neighbouring owner

In case there are more than one neighbouring owner, the order is established according to: (1) if the parcel that is to be sold does not have direct access to any kind of road, preference goes to the owner of the parcel that gives access to the parcel to be sold; (2) in any other circumstances, preference is given to the owner that will get the area that is closer to the minimum considered by law to be profitable; (3) being equal, a bidding procedure is established between the owners that have the very same conditions.

Procedure

When buying, by DGADR (as long as the neighbouring owner has an area which is larger than the minimum considered by law to be profitable). When selling (by DGADR, as part of land bank), if there are more candidates than available area, a set of criteria is established to order priorities, according to the Ministry's policy and varying with particular characteristics of each project (they are tailor made); these criteria are established by DGADR (internal procedure).

Legal framework

There is a legal framework, existing in different laws: civil code, law that regulates the renting of rural land and land consolidation law. It can be altered into a certain extent since, for instance, the minimum area that is considered to be profitable could be changed in a by-law. At present, a proposal for a new land consolidation law is considered (a bit broader than land consolidation). A different situation will exist when this new law is approved by the government. The proposed change is that the pre-emptive right of DGADR to buy land within land consolidation projects area will cease to exist; besides, the minimum area that is considered to be profitable has been re-evaluated, different areas are under discussion and these will be included in this same law.

Restrictions

There are no restrictions after using it. The only thing is that the civil code says that this right for neighbours ceases to exist if any of the parcels is urban or is not meant for agriculture – in these cases, there is no pre-emptive right.

Specific experiences

There are no data about the experiences. DGADR has never made use of this right to buy land in any land consolidation project; when selling, DGADR has been frequently used criteria to select candidates; this procedure did not influence the land price because this is fixed (no room for negotiation or biddings) when DGADR is selling land from the land bank in land consolidation projects.

2.8 Serbia

Objective / scope

Pre-emption rights are used to prevent fragmentation of agricultural land and to facilitate enlargement of parcels. Pre-emption rights are generally used.

Target group

Pre-emption rights are granted to a co-owner of real estate or, in case of sale of agricultural land, to an owner of the neighbouring cadastral lot. This is regulated by the Law on transfer of real estate (Official Gazette of RS, No. 42/98 and 111/09).

Pre-emption right can also be contracted in sale purchase agreement, when a seller obliges buyer to offer him real estate in case of subsequent sale. This is regulated by the Law on contracts and torts (Official Gazette of SFRY, No. 29/78, 39/85, 45/89 i 57/89 and Official Gazette of FRY No. 31/93 and Official Gazette of Serbia and Montenegro No. 1/2003 – Constitutional charter).

Procedure

In case one of the co-owners intends to sell his part/share of real-estate, he is obliged to offer it to the co-owner first. If there is more than one co-owner, the preference is given to the co-owner with the biggest share.

The seller has to make an offer to the co-owner in writing. The offer must contain information on number of cadastral lot, culture, class and area of agricultural land, price and other conditions of sale. The co-owner has to reply to an offer in writing within 15 days. If he rejects the offer or does not reply, owner can sell real estate to the third party, under same conditions or at least, not favourable conditions.

If the seller does not get the desired price, he must repeat the procedure, offering the real estate at a lower price.

If seller does not comply with his obligation (i.e. does not send offer to his co-owner or sells real estate to third party under more favourable conditions), the co-owner can request the court to declare the contract with third party null and void. A claim can be submitted to court within 30 days from the date the co-owner becomes aware of sale or within 2 years from the date the sale was made. It is a general rule in Serbian legislation that contract can be null and void if a third party was not acting in good faith. However, if the third party was acting in good faith, co-owner can only request damages and lost profit, if there was any.

The same obligation goes for the seller of agricultural land and owner of the neighbouring lot. In case there are more neighbouring lots, preference is given to the one with predominant border line. If two or more neighbours have a border line of the same length, preference is given to the neighbour with the bigger cadastral lot.

In case pre-emption right was contracted (this obligation can be contracted for maximum period of 5 years), seller has to make an offer to former seller of the real estate in writing. Former seller has to reply in writing within 30 days.

If the seller does not comply with the obligations, the former seller can file a claim within 6 months from the date he become aware of sale or within 5 years from the date the sale was made.

Legal framework

The Law on Transfer of Real Estate is the only law establishing pre-emption right. Contractual pre-emption right is regulated by Law on Contracts and Torts.

Restrictions

There are no restrictions prescribed by Law. There are only general rules prescribing that agricultural land must be used for agricultural production and all owners or beneficiaries must act with care of a diligent owner in accordance with the code of good agricultural practice.

Specific experiences

Since the concept of pre-emption right is not very well developed in Serbia, there are no statistical data regarding this issue. It is a question how often this right is even exercised. If the rules on pre-emption rights are followed, duration of sale procedure is extended for approximately 30 days.

2.9 Spain / Galicia

Objective

The objective is to avoid the loss of agricultural surface, to restructure the agricultural production and to avoid land abandonment.

Scope

The Galician Law 7/2007, of 21 May on administrative and tax measures for the conservation of utilised agricultural areas and on the Land Bank of Galicia 7/2007 remark this rights of the Land Bank of Galicia but at the moment it was never used and it is planned by the new government to eliminate it while proposing the new law.

Target group

For the Land Bank, unless the transaction will be made between relatives or the beneficiaries will be farmers.

Procedure

The Land Bank must be informed by the buyers and sellers of all transaction realised in Galician territory related to agricultural land marked, (in writing).

Legal framework

Act 7/2007, of 21 May on administrative and tax measures for the conservation of utilised agricultural areas and on the Land Bank of Galicia.

Restrictions

At the moment the restrictions are related to the future use of the land

Specific experiences

Although regulated by law, pre-emption rights have never been exercised in Galicia.

3. Preliminary conclusions and recommendations

The Quick scan study demonstrates that pre-emption rights are commonly established in Europe. Besides the rather common use in countries in case of co-ownership and lease holding, some countries have wider objectives of improving the agricultural structure (via Land Consolidation or not), regulating land prices, nature development, preservation of culture heritage, infrastructure development, forestry, recreation and housing.

Depending on the objective the target groups can either be private persons, other legal bodies and government institutions (state, provinces, municipalities). Pre-emption rights granted to government agencies are usually (but not always) linked to spatial planning or other specific policies dealing with land functions. They are usually not applied in general.

Monitoring of the use of pre-emption rights is difficult due to a lack of data. Some forms of pre-emption rights are not often used, raising the question of the manageability of the legal framework. Pre-emption rights, meant to guide the land market can easily have the reverse effect of blocking or slowing down land mobility. A general impression is that the subject is not well researched and that experiences are not well known. Based on this quick scan study therefore only some preliminary conclusions and recommendations can be provided.

As stated before, pre-emptive rights related to rural land is a very sensitive issue touching the basic right of a person to own goods and to have the freedom to buy and sell. Constitutions of modern democracies should protect these basic rights and – as general principle – regulate as little as possible.

Pre-emption rights granted to co-owners are generally perceived as positive measures but in all other forms advantages and disadvantages should be considered carefully. For example, granting the first right to a tenant might be a positive issue for the tenant but it can lead to a situation that owners are afraid to rent out the land. This again can lead to under utilization of the land and abandonment of the production.

Some preliminary conclusions and recommendations therefore are:

- to have a reserved attitude in introducing pre-emption rights related to rural land (except for co-owners), especially in countries that already have low land mobility
- to formulate very clearly the objectives in case pre-emption rights are introduced and to consider whether these objectives can be achieved by other instruments as well. Achieving public objectives should be balanced with the basic principle of respecting and protecting of ownership rights
- to have simple procedures in the case of introduction to make sure that the procedures can be managed with a minimum bureaucratic load
- to combine pre-emptive rights with other positive schemes such as land consolidation and early retirement arrangements
- to carry out more applied research (country studies, case studies etc) to draw conclusions about the above mentioned critical issues (side effects, bureaucratic load, manageability in practice of legal measures)
- to exchange experiences and to study cases in land related networks such as LANDNET and FARLAND, raising knowledge and awareness among policy makers.

The popular credo to **'Think first and then act!'** seems a good attitude for countries / governments that consider to introduce pre-emption rights related to rural land markets.

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