



German Federal Working Group Sustainable Rural Development

Bund-Länder-Arbeitsgemeinschaft ARGE LANDENTWICKLUNG

Land Consolidation Legislation in Germany/Bavaria


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Personal Details

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since 2010
(up to now) **Commissioner for International Affairs
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**German Federal Working Group
Sustainable Rural Development
(ARGE LANDENTWICKLUNG)**


since 2008
(up to now) **Head of the Rural Development Service
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2003 – 2006 **Member of the FIG Council** 

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German Federal Working Group Sustainable Rural Development (ARGE LANDENTWICKLUNG)

Members of the ARGE are the Federal Ministry of Food and Agriculture and the relevant ministries of the individual States.

The **main tasks** are to discuss fundamental issues relating to Rural Development and to prepare appropriate recommendations and guidelines.

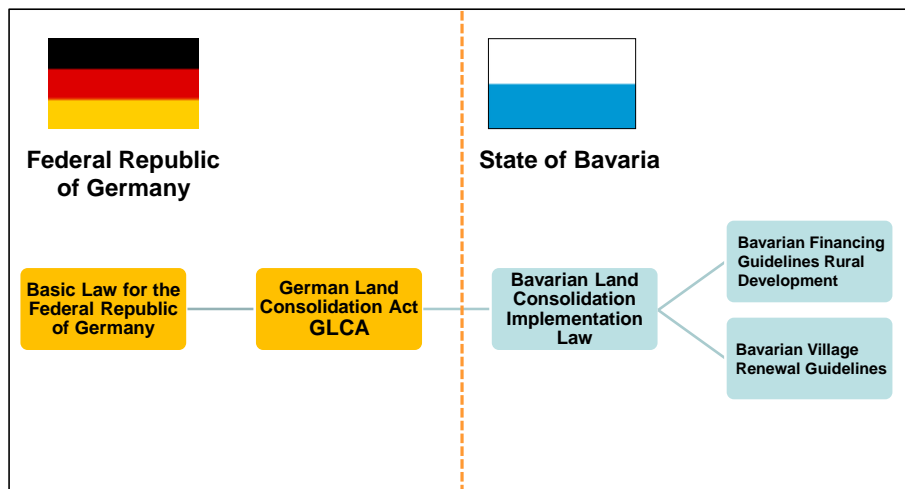


Outline

1. Regulatory framework for LC in Germany/Bavaria
2. Fundamental German case law
3. Protection of third party rights



1. Regulatory framework for LC in Germany



1. Regulatory framework for LC in Germany

- **Basic Law for the Federal Republic of Germany**

Article 14

[Property – Inheritance – Expropriation]

- (1) **Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws.**
- (2) Property entails obligations. Its use shall also serve the public good.
- (3) **Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation.** Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts.



Legal Missions of LC in Germany/Bavaria

Section 1 German Land Consolidation Act

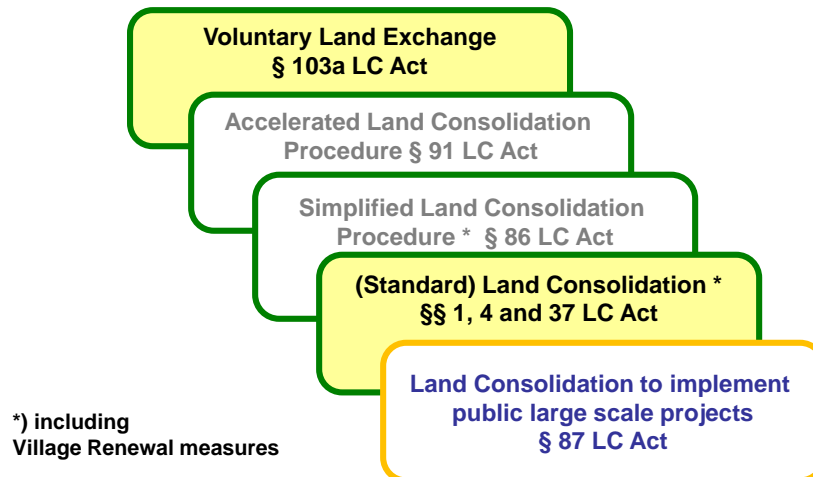
- **Supporting agriculture and forestry**
- **Effectively strengthening communes and securing vital rural areas**
- **Protecting natural living foundations**

Section 87 German Land Consolidation Act

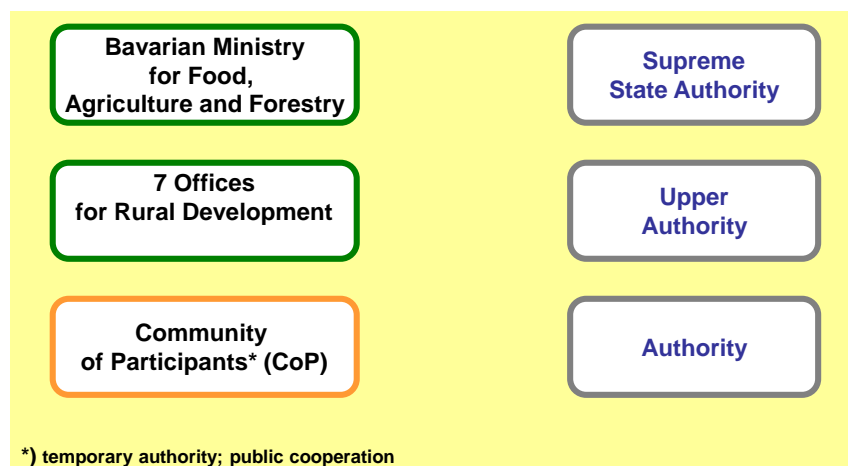
- **Implementing public plans (large scale projects) in a property friendly manner**



Land Consolidation (LC) Procedures according to the LC Act



Community of Participants – temporary authority



The Bavarian Way – Subsidiarity

Local Community of Participants

**The elected board is responsible
for the common affairs of all participants, e.g.**

- Planning, construction and maintenance of the common facilities (e.g. roads, plantings, ditches, water retentions, community centers, village shops, ...)
- Reshaping the land consolidation area
- All decisions concerning the reallocation of the land properties
- Placing the orders for the constructional measures
- Decisions about the cost distribution and the deduction of land for the common facilities
- Responsible for the evaluation of the land (basis for the reallocation)



Outline

1. Regulatory framework for LC in Germany

2. Fundamental German case law

- Section 87 LC to implement public large scale projects
- Precondition for starting a „normal“ LC
- No right to demand a compensation in a certain location
- Principles of equality and solidarity

3. Protection of third party rights



Section 87 GLCA

„Boxberg Case“: LC to implement public large scale projects

Initial situation:

The LC administration started a LC to implement a large test area for the Mercedes Daimler Benz AG.

Ruling of the German Federal Constitutional Court:

- Land consolidation to implement public large scale projects is an expropriation. These procedures mainly pursue not the private benefit of the land owners, but an external good.
- Therefore it may only be ordered by or according to a law (Art. 14 III 2 of the Basic Law for the Federal Republic of Germany)
- Although private companies (Daimler Benz AG) can act for the public good (for example create jobs, improve regional economic structure), a formal law allowing the expropriation for this purpose is the precondition for starting LC according section 87 GLCA
- In this case, such a formal law did not exist, therefore the plaintiffs succeeded



Section 4 GLCA

Precondition for starting a „normal“ LC:

Initial situation:

Individual farmers recognize no or relatively low advantages by participating in a LC.

(BVerwG: March 26th 1974)

Ruling of the German Federal Administrative Court:

- Starting a land consolidation process requires that it is in the interest of the concerned land owners in general.
 - This interest, i.e. possible economic improvements for the participants, has to be assessed objectively and could be reviewed by court.
 - Even if single participants expect no or less improvements, they must take part in order to ensure the success for the community of participants.
- The real possibility to improve the conditions in the LC area **in general** is sufficient to start a LC.



Section 44 GLCA

No right to demand a compensation in a certain location

Initial situation:

A participant demands a previous plot which was reallocated another farmer.

Ruling of the German Federal Administrative Court:

- In principle there is no right to demand compensation in a certain location.
 - This applies even if the plot belonged to the participant beforehand.
- to consider such claims would inhibit the main purpose of LC to reallocate generously.
- Exception: Section 45 GLCA
Specific plots are protected by law, that are sites with e.g. houses, mines, lakes, front gardens, public facilities, sport facilities etc
- changes could be made voluntarily or if it's required by the purpose of the land consolidation



Sections 19, 44, 47 GLCA

Principles of equality and solidarity:

Initial situation:

A participant complains that his LC advantage is smaller than by others, therefore he demands a better reallocation or an individual rating of his contribution to the costs and the land deduction.

Ruling of the German Federal Administrative Court:

- Relevant for the legal assessment of the compensation of a specific participant is not the comparison with other participants. The only yardstick is the equality of former and new property in the sense of the LC law. The compensation has only to comply with (or exceed) the previous property.
- A participant cannot demand an "optimal" compensation, if he is equivalent compensated.
- The individual contributions to the deduction of land and to the costs are raised according to a uniform key, which is procedure-specific. The individual advantage of a participant is irrelevant.



Outline

1. Regulatory framework for LC in Germany/Bavaria
2. Fundamental German case law
3. **Protection of third party rights**
 - **stationary**
 - **non-stationary**

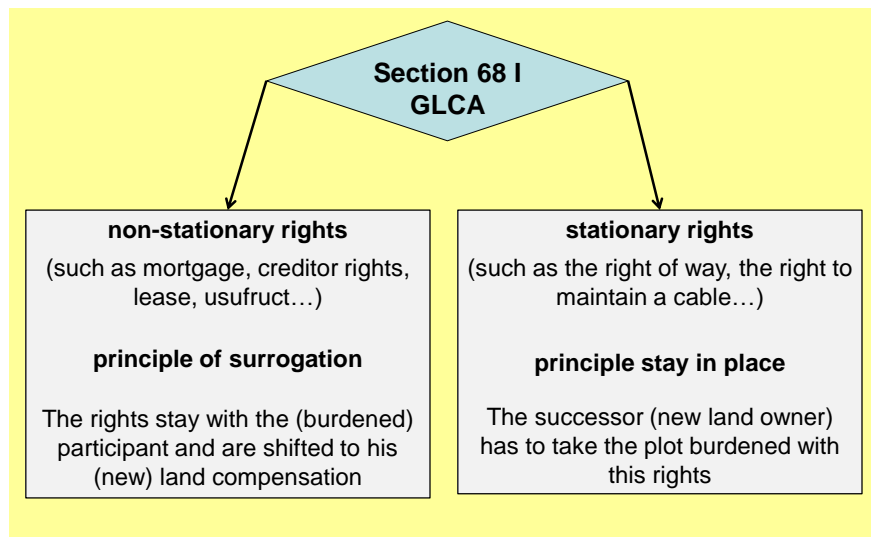


3. Protection of third party rights

General outline:

- **Section 10 GLCA:** 3rd parties are by-participants, they are protected by law
→ 3rd parties could complain (take legal action)
→ 3rd parties must be identified by the authority
- **Section 12 GLCA:** 3rd party rights are proven by entries in the land register or public documents
- **Section 49 GLCA:** 3rd party rights could be abolished (changed) if necessary due to the purpose of LC. If they become expendable by measurements (e.g. reallocation, new roads ..) of the land consolidation, there is no compensation. Otherwise, right owners must be compensated with land or money (voluntarily) or equal rights.
- Main regulations are determined in chapter 6 GLCA „Protection of Third Party Rights“ sections 68 – 78



General outline:**Non-stationary rights**

- Creditor rights, mortgage, usufruct, lease
- The (monetary) value of third party rights stays unchanged because the participant is compensated with land of equal value
- Special case; The participant applies for monetary compensation instead of land
 - section 53 II, 54 I: the monetary compensation has to be sufficient; the right owner must be compensated first
- Special case: Lease: contracts could be adjusted by the LC authority if necessary, significant disadvantages for the tenant must be balanced

Stationary rights

- Right of way, right to maintain cables or pipes, membership fees for unions for water and soil management
- The right stays in place, that means no change for the right owner
- The successor (new land owner) has to take the plot, burdened with this right
- Those rights are to be considered in the evaluation
→ decreased value is the basis of the compensation with land



German Land Consolidation Act

GLCA

www.landentwicklung.de/international/



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