



DRAFT KEY RECOMMENDATIONS on DRAFTING LAND CONSOLIDATION LAW

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Regional Consultation on Land Consolidation Legislation*

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DRAFT KEY RECOMMENDATIONS

The key recommendations are organized in chapters
in accordance with:

- Accepted practices in structuring of laws
- Following the key sequences of the land consolidation process



DRAFT KEY RECOMMENDATIONS

The technical and legal team working on the study is committed to identify, aggregate and recommend the best approach towards LC regulation based on examples from the European countries and

We agree to disagree on some issues

We struggle to choose the best among many legitimate legal approaches to some aspects of LC

We seek for the opinion of the LANDNET professionals

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General recommendations on key features of land consolidation legislation

- Respecting basic human rights
 - In line with the 2030 Agenda, SDGs
 - In line with the VGGT
 - Drafted in a comprehensive balanced way, avoiding over-regulation
 - Based on a strategic approach
 - Adjustments to the broader legal framework are considered necessary
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Objectives and principles of land consolidation

LC law should:

- Provide for broad land consolidation objectives, reflecting balanced multipurpose approach adapted to the local situation
 - Guarantee legitimate rights and interests of all land consolidation stakeholders
 - Ensure the implementation of the “at least as well off” principle
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Objectives and principles of land consolidation

LC law should:

- Contribute to the sustainable development and environmental protection
 - Promote inclusiveness and participation
 - Promote gender equality
 - Promote transparency of the LC process
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Institutions involved in the land consolidation process

LC law should:

- Establish public lead agency with delegated authority to other entities where necessary
- Grant legal capacity of the lead agency for implementation of all phases of the LC process / but also possibility for sub contracting specific works

Issues for discussion:

The need for establishment of Land Consolidation Commission!

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Persons/stakeholders involved in the land consolidation process

LC law should provide for:

- Recognition of all legitimate tenure right holders and ensure their right to vote
 - Facilitation in the process of regularization of legitimate land tenure rights during the LC project
 - Inclusion of other formal and informal stakeholders in the land consolidation project and respect their positions towards the LC project
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Persons/stakeholders involved in the land consolidation process

LC law should provide for:

- Possibility to elect a body (Local Stakeholder Committee), which would represent interests of the tenure right holders in the land consolidation process
- At least three public stakeholder meetings during the implementation of LC project: at launching, approval of the LC plan and at final phase

Issue for discussion: Who should have the right to vote on the stake holders meeting?

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Financing of land consolidation

LC law should stipulate:

- Financing of land consolidation projects based on priorities, directly linked with the overall objectives of land consolidation programme
 - Specific regulation allowing to prioritize projects
 - Flexibility in adjusting project budgets during the implementation of the land consolidation projects
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Financing of land consolidation

LC law should allow to:

- Plan budget of specific land consolidation projects for at least 2-4 years ahead
- Fund all costs of land consolidation projects from public budget or other public sources

Issues for discussion: Financial contribution by the participants

- Financing of land consolidation from the EU co-financed Rural Development Programmes, other supranational sources and donor organizations
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Feasibility Phase

LC Law should:

- provide for a wide list of persons and entities, having a right to submit an application for initiation of LC project
 - Authorize the lead public agency to evaluate proposed LC project merits against the defined LC objectives and priorities through a Feasibility study as a first phase of the LC project
 - LC law should define the project area in a manner, which optimally includes the widest group of participants interested in the project and a possibility to timely adjust the land consolidation project area, if necessary.
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Feasibility Phase

LC Law should provide for possibility to:

- Perform multi-criteria ex-ante assessments, including cost benefit analyses, in order to determine whether a given investment is likely to achieve its intended outcome and impact
 - Interview all legitimate landowners and other relevant stakeholders and assess the land rights, farm activities / agricultural production, needs for improved agricultural infrastructure and interest in participation in the project
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Re-allotment phase/consultations

Land consolidation law should establish procedure for:

- Consultations with landowners and other stakeholders facilitated by the public lead agency (or its service providers)
 - Facilitation of negotiations between all the involved stakeholders in the process of preparation of the draft land consolidation plan
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Re-allotment/valuation

LC Law should ensure that:

- Valuation of properties is carried out in all land consolidation projects
 - While the determined specific method of valuation could differ from country to country, the same valuation method is used for all property in the LC project.
 - Valuation is carried out not only by professionals, but it also involves participants in the LC and inclusion of additional experts, if needed, is stipulated
 - Added value to the parcel to be considered and valued separately from the land and its market price to be determined.
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Re-allotment/ “at least as well off”

LC Law should determine:

- “At least as well off as” principle as a key principle in the re-allotment. According to this principle landowners and other right holders should receive property and/or rights with at least the same value after the project as before.
 - % of adjustment to the above principle in order to ensure land for infrastructure purposes without compensation to the owners and equally applied to all participants in the LC project
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Re-allotment/ rights other than ownership

LC Law should:

- Assert the right to establish, maintain or cancel servitudes in accordance with the re-allotment plan to the lead public agency.
 - Allow the tenant to use land under short-term lease till the expiration of a short term lease agreement.
 - Stipulate a mutual consent from the respective landowner and the tenant with regard to the re-allocation of the parcel in cases of long-term lease
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Re-allotment/ rights other than ownership

- Define that mortgages follow the landowner and will be transferred to the newly formed parcels without consent of the mortgagee.
 - Define a legal regime in cases where there is a decrease or increase in the value of mortgaged property as a result of LC project
 - Regulate situations, when the mortgagor is compensated in money as a result of the land consolidation project
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Re-allotment/ the Plan

LC Law should specify:

- The components of the land consolidation plan, including all major documents and information, which would allow the implementation of land re-allotment
 - Public access to the LC plan
 - Procedures for review and logging of proposals and objections to the draft re-allotment plan by all project stakeholders
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Re-allotment/the Plan

LC Law should specify:

- Consensus from all participants in voluntary LC projects
 - Majority vote by the participants for approval of the re-allotment plan for the majority based LC project plan
 - Procedure for validation of the approved (through voting) LC plan by a competent public entity involved in the land consolidation process
 - Provide for stakeholder voting majority needed to approve the plan in majority based LC (including adding the area owned as additional condition to majority vote). Issue for discussion!
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Re-allotment /EIA

LC Law should lay down procedure for:

- Environmental impact screening performed for each land consolidation project

Followed by the Environmental Impact Assessment (EIA) if it appears relevant in the specific project and according to the general regulation per specific country

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Registration phase

LC Law should provide for:

- Procedures ensuring the simultaneous and cost-effective registration the LC plan through a single legal deed
 - Procedures enabling competent public entities involved in the LC process to conduct the registration process without involving the LC participants.
 - Mechanisms conferring the right to the competent public entity to solve issues related to outdated registration, technical errors etc
 - Possibility to jointly register both spouses property rights on the re-allocated parcels in cases where the property is considered joint under the default marital regime
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Implementation phase

Land consolidation law should provide for:

- Procedures ensuring that the newly formed parcels are taken into actual possession by the new owners only after the first coming harvesting
or
 - Respective compensations for the loss of the harvest
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Implementation phase/compensations

LC Law should stipulate:

- Monetary settlements in cases of under or over allocation between the participants under supervision of the competent public entity involved in the land consolidation process
 - Project participants, which have an obligation to pay monetary compensations as a result of land consolidation process, could be obliged to submit guarantees of their respective payments. Issue for discussion
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Implementation phase/compensations

- In voluntary land consolidation it is recommended not to fix a range of over and under compensation for the respective parcels so the landowners could decide individually if they accept the difference between their old and their new parcel.
- In majority based land consolidation, a range of over and under compensation should be fixed.



Combining land consolidation with other instruments

- It is strongly recommended to combine land consolidation with the land banking instrument, which increases the mobility and facilitates the implementation of land consolidation projects
- It is recommended to use land consolidation instrument as an alternative to expropriation or in combination with it, if necessary, for major infrastructure projects



Taxes and incentives

- It is recommended not to apply general land transaction taxation regime to land consolidation projects.
 - It is recommended not to apply registration fees to land consolidation process.
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Legal remedies

- Decisions and actions of the competent public entities involved in the land consolidation process should be subject to review by higher administrative authorities
 - Upon exhaustion of administrative remedies, all land consolidation project stakeholders should have a possibility to protect their rights in front of a competent court
 - Land consolidation law should provide for mechanisms, ensuring that appeals related to isolated issues, which may be separated from the whole implementation of the project, do not hinder the smooth finalization of the project
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Monitoring and evaluation

LC Law should establish mechanisms for:

- Regular monitoring of individual projects
 - Evaluation of each project after its completion
 - Periodic evaluation of the whole land consolidation programme, to be used as basis for informed decision making for adjustments
 - Systematic ex-post impact assessments of land consolidation projects and programmes
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Thank you for your attention

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