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Acquisition and inheritance of agricultural land in Bulgaria - from
fragmentation towards consolidation***

Abstract

The theory of agricultural land mobility tries to answer the question whether or not it is possible to produce more and cheaper agricultural goods through land consolidation. Acquisition, inheritance, and in the Bulgarian case also the use of property of agricultural lands, are an instrument for the vertical and real/literal integration of the farmers. However, they indirectly affect the access to agricultural land.

Keywords: agricultural land, acquisition, inheritance, fragmentation, consolidation, legal entities

1. Introduction

With the establishment of the Third Bulgarian State in 1878 legislation in relation to agricultural lands in the country was developed and the continental – pandect system was chosen. For the development of public relations, the purchase, selling and inheritance of land were most important. At a later stage, lease/rent agreements were added to the ways of using the land since 1989.

Inheritance is the primary way to acquire property. In this part, the Bulgarian doctrine copies the classical Roman law. The inheritances are normally transferred to one or more inheritors. This leads to high fragmentation of the property. The classical theories consider that the fragmentation of agricultural land leads to inefficient management of the resources. Thus, Bulgarian legislation always focussed to reduce the fragmentation of the agricultural land. After 1989 and during the transitional period thereafter agricultural land was restituted in real terms and more than 2 million properties were fragmented, some with 10-20 or more co-owners. The costs related to the administrative procedures for the succession of agricultural land by restitution grew and therefore access to land became an important negative external factor. In the early 90's, this led to low liquidity of agricultural land. The tendencies of the connected markets – those of goods and labour – respectively of the whole agriculture of Bulgaria were also negative.

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Attempts to consolidation of agricultural land based on buying and selling proved unsuitable. For this reason, two new approaches have been created after 2007. The first one was creating specially purpose entities (legal entities). These players (legal entities) moved the market spurred consolidation together with the big agricultural producers. Their vertical integration was not allowed. The second approach was developing a mechanism for literal integration. Agricultural lands were to be consolidated on the basis of ‘their use.’ Some of the effects of fragmentation due to successions were reduced gradually.

In a study to assess the methods related to the acquisition of agricultural land the position and the negative effects should be analyzed: (1) distribution of the resources – how the adverse effects ensue from concentration; (2) non-market benefits – how certain players recipe opportunities, including by limiting the access to the resource for others; (3) interaction in organizations – how integration can deform so common objectives; (4) internal redistribution of weights – how double marginalization acts, respectively, how to transfer costs indirectly from one entity to another one.

2. The theoretical ‘clash’ and agricultural land

The theory for land mobility is linking the possible consolidation of the primary production factor with other non-productive external effects: drought, urbanization and others.¹ The term ‘land grabbing’ is used in the context of the monopoly acquisition of resources, in this case agricultural land.² At the same time, it does not offer a reliable explanation for the dual effects of economic efficiency. It is analysed as a coordination problem³.

The decisions of the positive/statutory law are only used to justify a ‘mistake’⁴ in order not to enter into the depth of the problem and the integration of the organization and structures of group discrimination.⁵ There is a lack of uniquely decisions for jointly use of exhaustible these resources. It is considered that the classic approach⁶ to introduce a quota and restrictions or tax negative external effects⁷ can solve the problem. No one benefits from the fragmented resource.⁸ At the same time the benefits to consolidate the agricultural land are becoming increasingly controversial, extra fuzzy and not well analyzed effects of double marginalization.⁹

¹ Hartvigsen 2014, 6–8.

² Kay 2016, 26–30.

³ Bachev, Ivanov & Sarov 2020, 106–137.

⁴ Hovenkamp 1990, 823–828.

⁵ Hovenkamp 2010a, 616–644.

⁶ See Hardin 1968, 1243–1248.

⁷ See ‘The Tax of Pigou.’ Pigou 1920.

⁸ See Kopeva, Noev & Evtimov 2002, 63–65 and Boliairi 2013, 273–302.

⁹ Hovenkamp 2010b, 2–10.

It is assumed that especially small contractual agreements defined by rural communities, have enough forces¹⁰ to settle fairly most of the effects, while at the same time it is clear that legal entities, owners and producers; farmers and their families are very different in the representation of character. They are different, even in small contractual agreements, some with more pronounced economic strategies whilst others are socially oriented. Their analysis, especially in recent years, does not take into account which of the ways of acquiring property helps some and harms others. It is further noted that all of them have rather polarized targets.¹¹

At the local level, discrimination is allowed through the levels of the resource-product chain.¹² It should be clarified why, despite the high degree of integration, consumers of agricultural products do not receive a higher value than consolidated resources – agricultural land.¹³

Agricultural land has a new meaning. For large legal entities it has become in opportunities for new forms of profit sustainable rents¹⁴ in order to imminent for indirect cost reduction by transferring them to other entities.

3. Methods

Through historical analysis, the development of some of the legal institutions of property is presented. The positively legal analysis was used for the purpose of explaining these legal provisions, as well as definitions such as ‘conversion in deals with agricultural lands.’

The Discrete Structural Analysis (DSA)¹⁵ should explain the effects of double marginalization. Empirical data were collected from the lands of two settlements in the Plovdiv region. Measurement of transaction costs should be done at two levels: through the costs of protection of property rights in agricultural contracts and added losses (L) due to the lack of access to the resource. In practice, costs are measured as a function $f(x_1) + f(x_2) = Y$,

¹⁰ See Ostrom 1990, that in competition for resources, successful self-regulation is possible, but in very small larger groups only.

¹¹ Van Dijk & Kopeva 2006, it is about the operational problems of agricultural land, banking in the context of fragmentation. A few years later, it is of importance the distortions in the consolidation process of resources – the concentration of agricultural land. See Medarov 2013, 168–193.

¹² Kaysen & Turner 1959, as well as Bain 2013, have set the beginning of the paradigm of discrimination across the levels of the resource-product chain (structure-conduct-performance (S-C-P)). Although that it was developed for the needs of the industrial organization, it is considered that it fully applies to our case.

¹³ Theorists of the ‘antitrust paradox’ believe that integration, which leads to a monopoly position, should not be considered a problem when, even in the case of price discrimination, consumers receive a product with a higher value. A central question is whether, with a monopoly on agricultural land, it is possible not to pass on discrimination through the levels of the product chain. See Bork 1993.

¹⁴ See Van Dijk 2003, 149–158.

¹⁵ See Williamson 1991, 271–286 for further detailed explanation of the nature of DSA.

where by:

$$TTrC = TrCC + L = Y,$$

and where by:

TTrC – total transaction costs – Y,

TrCC – transaction costs in the contract - transfer of rights from transactions
and other means – (x_1) ,¹⁶

L – Losses due to lack of access to the resource – (x_2) ¹⁷

The comparison between internal redistribution should explain how specific ways of acquiring or using property affect the groups of persons involved in agricultural land. The graphical method illustrates the comparison between long lines of information and clarifies the trends in the studied system.

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4. Historical review

4.1. First period (1878-1947)

Codification of legislation, hereditary legal relationship as a reason for fragmentation and consolidation strategy. By the Articles 67 and 68 of the Constitution of Tarnovo (1879) ownership and inheritance are legitimized in Bulgaria. Inheritance law (IL) was adopted by the Bulgarian state firstly after the acquisition of Independency of Bulgaria in 1879. For the first time, it also defines masculine relationships. Codification determined the course of legal links with agricultural property, including workshops, their factories and understood what is happening with their farm land. Since 1890 stability of the institute on the operation of general inheritance of properties was granted. Agricultural lands were inherited as part of the general patrimonium, in gender equality. However, this was the reason for the permanent fragmentation of agricultural land.

The period 1897-1908 is marked by the increased crushing the inheritance rule on the line: – plenty of it inherited partitions existed. The attempts were to reduce the fragmentation formalized by special rules laid down by Articles 240 and 241 of the Law by placing on the agricultural lands in the share of only one of the male heirs. The partition of farmland was limited, and in case of failing to split – the agricultural land was put on an auction to sell it as whole.

With an amendment to the Law (Article 104) in 1906 rights were introduced to empower male heirs to purchase of shares of ownership of agricultural lands. Pursuant to Article 242 of the Law heirs, who have participated with their own funds and labour

¹⁶ Costs are measured without including the price of the resource (agricultural land). See Benham & Benham 2000; 369–374; Djankov, La Porta, Lopez-de-Silanes F & Shleifer, 8–14.

¹⁷ The loss function L is calculated as an alternative income from agricultural land. See McChesney 2003, 2–10 on the negative effects of ownership and the relationship to the cost of accessing it.

in the farm, could claim a contribution as a basis for a larger share of land. However, the number of small properties in this period (1908-1934) continued to grow. Only during the period of First World War Delay there was a delay of this form of “natural division” and from there to the fragmentation.

A first strategy for consolidation the consolidation of land in Bulgaria started actually from 1911. A new administrative structure ‘Land consolidation Service’ as a subordinated body to the Ministry of Agriculture and State Property was created which however, managed to unite farmers’ estates in only 57 settlements up to 1928. The economic growth in the 1930s was the reason for the increase of the consolidated ownership of agricultural lands.

4.2. Second period (1947-1989)

Change of property, consolidation, lack of a real market for the agricultural land. Consolidation in Bulgaria lasted until 1945. About 10% of the ownership of agricultural land was consolidated. 6455 existing cooperatives merged into 15 industry alliances with 993 thousand members around 1945, producing 70% of the national turnover. The members were more than 1 million and 200 thousand. With ‘collectivization’¹⁸ after 1951, a large share of arable agricultural land has become part of the state centralized agricultural cooperatives (SCAC). In practice the existence of private plots are very limited and only for personal needs mainly located near or in the settlements.

In practice the Constitution of 1971 imposes the cooperative ownership as a base, but it is in a regime of planned management and state control (*sui generis*). Although the agricultural cooperatives have increased the efficiency in agriculture, they did not sell and did not lease agricultural land. Due to this fact it can be considered that the agricultural land market, during this period did not exist.

During the period of the last 50 years of the twentieth century, Bulgaria had a modern regulations for property, are suitable for the production relations in the agriculture. Some of them, still in force today, are applied subsidiary according to the special legislation related to agricultural land¹⁹. This legal framework suggests a relatively easy adaptation and legal security. However, it was not suitable for new relations in agriculture and especially those conditioned by markets.

¹⁸ Collectivization – the process of including assets / agricultural land in cooperatives. Cooperatives – labour cooperative farms, some of which were transformed into agro-industrial complexes in the 80s, and which were liquidated in the period after 1992.

¹⁹ Law on the Purchase of Large Agricultural Machinery – 1948; Law on Cooperative Organizations – 1948(1953); The Law for protection of the arable land – 1967; Decree 922 (on accords and rents in agriculture), Citizens' Property Act – 1973, as well as general legislation: Law on Obligations and Contracts (LOC) – 1951; Inheritance Law (IL) – 1950 and Property Act(PA)-1950.

5. Forward to the consolidation of agricultural land

5.1. Third period (1989-2020)

Private property and restitution, legal entities and agricultural land, new conditions for vertical and literal integration. The period of Restitution (1992) was characterized by the return of previous ownership of property of agricultural lands. In 1991, the current Constitution of the Republic of Bulgaria (CRB) entered into force. In accordance with the principle of inviolability of private property Article 17(3) of the CRB restoring the farmland in real their borders started in 1992. The Agricultural Land Ownership and Use Act (ALOUA) were created.²⁰ The processes of land restitution run in parallel with the liquidation of the cooperatives. As a result, over 2 million plots distributed in 4-5 parcels and thus with an average parcel size of 0.4-0.5 ha were generated up to the year 2010. Under these conditions, the legislator tried to recover the market relations. In 1997 'rents' in agriculture were settled.²¹ This change 'helped' the properties to become part of a long-term production relationship.²² However, the effects of the division of land have not been reduced. There is no 'predestined' issue of fragmented property rights; inheritance of a succession creates property and with more than one number heirs. Because of the new mode of manufacture and trade in Bulgaria legislation has been adopted that serves only the legal entities. The entrepreneurs which acquired or managed agricultural land, as well as those who have business related to fruits harvested from agricultural land can acquire the status of legal entities: so called "trader" under the new legal framework in 1991.²³

Since 1999, the issue of legal entities in agricultural and production cooperatives has been formally resolved. Initially their number increases.²⁴

²⁰ Agricultural land ownership and use act - the texts in the beginning of the period regulate the return of the property, including the heirs, the administrative procedure, protection of the property – (art. 3–14); the liquidation of the old state agricultural cooperative and structures – (§12 and §13 (1)). See also (§7) of the Transitional and Final Provisions of the Agricultural Cooperatives Act (ACA).

²¹ Law on the rent of agricultural land (LRAL). In the period after 1950 in Bulgaria there is a LOC only - chapter IV 'Rental of things' art. 228–239. The lease lasts no more than 10 years, unless it is a commercial transaction art. 229 of the CPA. It is not suitable for agricultural land, on which the relationship should be long-term - for example, with a high payback period, as for perennials.

²² In (IL), in the period of transition are included the legal novelties of: art. 9a – the figure of the 'subsequent spouse;' art. 90a – 'wills of agricultural land included in cooperatives;' art. 91a 'renunciations of inheritance in the case of property that was part of a cooperative.'

²³ Commercial Act (CA). See Art. 1 of the CA. Traders are the persons performing certain transactions by occupation. It should be mentioned that in the period immediately after the beginning of the transition – private persons could carry out economic activity under Decree 56. (The Decree belongs to the State Council of the People's Republic of Bulgaria of 25.02.1989).

²⁴ Law on Agricultural Cooperatives (LAC). This law is special in relation to the CA, according to which the cooperatives after 1991 are registered and operate until 1998. The cooperative is a legal entity, where the members manage as compliments and distribute the profits, like limited partners. At the same time, they can participate with personal work in the cooperative.

It has been shown that up to 1999 they have 43% of the arable land at their disposal.²⁵ Since 2000, however, this trend is turned. The number of ‘passive’ members is increasing – those who inherited land but ‘left’ it in cooperatives and who usually live in cities. The thesis confirmed that the “broken relation with agricultural land between the owners of the resource (in this case the agricultural land) and the organizations which managed it” does not deal with imbalances of distribution of property rights. Consolidation is carried out in short-term strategies. It was believed that the conditions in Bulgarian productive agricultural cooperatives were not considered as success of the model of integration. Competitors with greater market power continue to expulse of the market resource ‘agricultural land.’ In the period 2002-2003, there was an acute need of consolidation. For this reason, new organizational forms and models of consolidation have been created in 2003.²⁶ A Law on Legal Entities entered into force in the country, aimed solely at the acquisition and management of agricultural land.²⁷

5.2. EU accession (2007)

During the pre-accession period, the support of agricultural producers became a fact in Bulgaria since 1998.²⁸ With the accession to the EU Common Agriculture policy (CAP) a stimulation of production through consolidated agricultural land was adopted. Funding become an important stimulus for efficiency, and thus to consolidate the assets.

It was only in 2008 that the country's legislation gave legitimate definitions of ‘dominance,’ ‘monopoly’ as forms of unfair competition. Like the European legislation, the legal framework of Bulgaria does also not solve the issue of competition for the resource.²⁹

²⁵ Draganova 2002, 99–100.

²⁶ First, FAO commissioned a case study of land fragmentation and land consolidation during 2001-2002. Project second, during 2003-2005: ‘Land consolidation by agreement in Bulgaria’ was implemented with technical and financial support from the Dutch Cadastre and Dutch development funds. Also during 2003-2005, the project ‘Consultation services for implementation of pilot land consolidation’ was implemented by CMS Bruno Morel of France and Geokonsult of Bulgaria. During 2006-2007, a second Dutch-supported land consolidation project ‘Land consolidation strategy and program for Bulgaria’ was implemented with technical and financial support from DLG and Dutch development funds. Finally, the project ‘Integrated land consolidation project village of Katunets, Lovech region’ was implemented in 2009-2010, also whit support by DLG and Dutch funding.

²⁷ Law on Special Investment Purpose Companies (LSIPC). At the beginning of the period there were 67 companies under this law. Currently there are only 5.

²⁸ Law on Support of Agricultural Producers (LPA). The LPA does not even ‘try’ to resolve the theoretical disagreement over the ‘inclusion’ of subsidies in their production functions. In practice, the law is an indulgence for producers to increase the area, hence the profits by reducing production.

²⁹ Law on Protection of Competition (LPC). Chapter 4 of the LPC is on the abuse of ‘monopoly’ and ‘dominant position,’ Chapter 5 – defines ‘concentrations.’ There are no special legal rules protecting against unfair competition in ‘natural resources,’ including agricultural land. A state monopoly is established only by law (Art. 18 para. 4 of the CRB) and Art. 19 para 2 of the LPC, but there are no restrictions for private monopolies at the local, local level.

Legal definitions for domestic / local market for land are lacking at this stage. Individuals with greater market power can acquire indefinite resources in a given land. In this way, they indirectly restrict access to agricultural land to other, more difficult-to-adapt players.³⁰ ‘Cartels’ are considered to be agreements between producers, but only if it is established that the latter have agreed on the prices of the products produced or access to membership in professional organizations. Transparency in administrative procedures is low. It is not considered as a form of unfair competition that the information barriers created within the literal and hybrid organizations are not respected.

Since 2008, new formats related to the protection of the various methods of acquisition and transfers of ownership have been launched. A new format is for commercial activities.³¹ The Physical actions previously related to the acquisition and transfer of ownership are replaced with electronic ones; this leads to accelerate the speed and the security of the processes slightly. The integration of property into the registration systems is not significant for a better protection but especially available for legal entities. Still under the discussion is the question to what extent size of public spending is reduced.

In accordance with the Treaty of Bulgaria’s accession to the EU and in accordance with amendments of the Bulgarian Constitution foreign physical persons and foreign legal entities may acquire ownership of agricultural land since 2014. As laid by Article 22 (2) of the Bulgarian Constitution foreigners and foreign legal entities may acquire land ownership under the conditions arising from the Treaty of Accession of Bulgaria to the EU or under an international treaty ratified, promulgated and entered into force for the Republic of Bulgaria or by inheritance according to the Law³². Legal entities registered in accordance with the Bulgarian law are considered Bulgarian legal entities even if they are established by foreigners. The latter have never been restricted in the acquisition of agricultural land. At present 82% of the arable land in Bulgaria is under the control of 19 legal entities, and 50% under the control of only one legal entity.³³

6. The mechanism of integration - local concentration of ownership

By Bulgarian legislation a cascade of legal mechanisms has been developed, supporting the consolidation of the agricultural land.

³⁰ We are already trying to develop the doctrine of competition for the ‘indirect discrimination’ in contracts. See Rushev 1999.

³¹ The Law on Cadastre and Property Register (LCPR) by 2020 has been introduced in almost the entire country. The Law on the Property Register is the only one in the country that has an entirely electronic format.

³² In 2014, the Parliament ‘tried’ to extend the ‘moratorium’ on the acquisition of property by foreigners (the Decision of the National Assembly of November 2013/promulgated, SG, issue 93/25.10.2013/). Decision № 1 of 28.01.2014 on constitutional case №22 of 2013 - Parliament's decision on a ‘moratorium’ was declared unconstitutional.

³³ See study by Georgiev & Roycheva 2018, 552.

6.1. Inheritance and farmers in the light of the Heritage Act

Inheritance by law leads to the fragmentation of both, agriculture lands and subjective rights associated with them.³⁴ Concurrently, legal amendments of Articles 9a; 90a and 91 of the Heritage Act should reduce the fragmentation by the distribution of agricultural land in favour of heirs operating as agriculture producers. However, the general norms of the Heritage Act and the cited legal novelties work in the opposite direction. Currently, they create local fragmentation³⁵ of property rights and very little of agricultural property. This type of fragmentation is particularly strong at the local level.

6.2. The rules for subsidies per unit area

Subsidies for processing of the agricultural land have long lasting and deep impact on incentives for local consolidation. Payments per unit size add effects in addition to the subsidy received for the production produced. Accordingly, when the first stimulus of the subsidy per unit area prevails, the aims of the farmer as regards the structure of his profits are distorted. The agricultural producer can be seen to be converted to ‘rent seeker’.³⁶ Aimed to circumvent the law local practices have been developed, for example, the land is ploughed, there after not planted and despite the lack of yield gained the profit is simply formed on the basis of the resulting subsidy per unit area.³⁷

6.3. Procedure for land cultivation under Article 37(c) ALOUA

Upon the submission of a declaration under Articles 69 and 70 of the Regulation for application of ALOUA farmers declare annually the form of management and manner of permanent use of agricultural land. In cases where owners or producer do not declare certain processing or use of their agricultural land or have lost the access to it – the other major agricultural tenants in the village agree on the grounds of Article 37(c) ALOUA having the right to manage that land. It is assumed that the lack of transparency³⁸ is the basis for the deformations in the described mechanism. New negative practices invented by big producers’ e.g. legal entities having agricultural land are to ‘send’ another producer ‘generally called re-tenant’ to maintain

³⁴ Boliari 2017, 275–280 for the relationship between inheritance and fragmentation in Bulgaria.

³⁵ Any new inheritance prevents the property from being sold. Because many of the heirs are living far from the land, which can only be sold through a local notary. Sales, through authorization, through consular offices outside Bulgaria are expensive and difficult.

³⁶ Many studies have outlined the link between subsidies and land grabbing. See Land concentration, land grabbing and people's struggles in Europe, TNI, Final Report 2013. We consider it necessary to outline the connection between: ‘land grabbing’ and ‘rent seeking.’ See also Tullock G 1980.

³⁷ According to the data of the Regional Agricultural Services, a decrease in these practices is reported only after 2017.

³⁸ We believe that the lack of transparency is at the root of the problem ‘land grabbing’ a level EU. See a report by Hungarian researchers Szilágyi, Raisz & Kocsis 2017, 162 on the same.

the agricultural land and to use it. There have been isopolistic relations,³⁹ which create conditions for ‘denial of entry.’⁴⁰ Indirectly, this is supporting the acquisition of agricultural land by large legal entities operating in the area.

6.4. Rule for ‘rent’ without the consent of all co-owners of the land under Article 4(a) ALOUA⁴¹

We consider that the provision on ‘rental of property by co-owners of ideal parts’ is in conflict with a decision of the Constitutional Court(CC)⁴² since 1995 and indirectly supports large legal entities. As described in the previous paragraph, the refusal to participate in the production of agricultural land – leads to the fact that at a later stage the land becomes the property of one of the legal entities operating in the land. There are also new vicious practices – the one, the co-owner, who manages to conclude a land lease agreement, concludes fictitious agreements by announcing a lower rental price. Thus, despite the obligation – the other co-owners to be reimbursed according to the inheritance quotas, they will receive a lower rent than actually agreed.

6.5. The rule ‘stocking density on pastures’ under Article 98 Regulation 74/1991 (last amended 2019)

The rules on ‘stocking density of pasture animals’ give preference only to larger entities in agriculture. The amendment was applied (*ex tunc*), which eliminated smaller farmers who did not have enough animals in a certain area.⁴³ This mechanism creates conditions for consolidation and polarization of the different types of production.

6.6. Decision of the Bulgarian Supreme Court of Cassation(SCC) on the institute of conversion of ‘lease to rent’

According to the Bulgarian legal system it is possible to conclude two types of transactions related to the ‘use’ of agricultural land by ‘lease or rent.’ The first type ‘lease’ derives from LOC-1951. The general norm was created for the purpose of the short-term use of movables property and estates different from agricultural land.

³⁹ Stiglitz 1974 , 219 on the issue of agricultural policies.

⁴⁰ See Ploeg, Franco & Borrás 2015, 157 for the way in which it should be used ‘denial of entry.’

⁴¹ Art. 4a of ALOUA entitles the owner holding more than 25% shares of agricultural land to enter into a lease with a third party, without agreed here the other co-owners. The other co-owners must receive compensation according to their share – Art. 31 of PA.

⁴² In Constitutional case № 8 of 19 June 1995, the (CC) of the Republic of Bulgaria ruled by resolution № 12 of 1995, declare unconstitutional ‘dispositions’ of foreign private property in any form.

⁴³ Decision of the SCC of 2017 – confirmed the absence of contradictions with the CRB of the provision. Farmers to use land from the State Land Fund are not eligible for density should be removed. The SCC considered that it was not competent to rule on the contradiction with the principle of legitimate legal expectations.

The legislation of 1951 is still in force today. These transactions, however, have a maximum term of 10 years. This is unsuitable for long term investments with long payback periods, such as growing perennial fruits. By LRAL-1997 a special legal framework was created accordingly to the alternative type ‘rent’ only for agricultural land. In general, both types of transactions can be applied for agricultural land. However, the transaction according to LRAL-1997 is presenting a significant difference in respect of the way of the form of termination and other conditions to the hiring conditions according to LOC-1951. The rent protects the production relations and the sustainable investments in agriculture in greater extent.

By an Interpretative Decision of the (SCC)⁴⁴ in 2016 an opportunity was created for the conversion of the ‘rent of agricultural land’ under the LRAL into the ‘lease’ under the LOC. An economic incentive for imposing cheaper deals on transactions of agricultural land was the objective of the decision of the Court. If the individual tenant is in a stronger position, rents always being converted into lease. The latter is a prerequisite for increasing the levels of consolidation and moving to productions with high intensity, but with lower added value in some places. Short-term legal relations create conditions for easier acquisition of such land by legal entities in future.

7. The mechanism of integration - local concentration of ownership

7.1. Exemption from corporate taxation of collective investment schemes

Trusts registered under the Law on Special Investment Purposes Companies (SIPC) are entitled to tax relief.⁴⁵ Legal entities in agriculture may register under this law and gain from this tax advantage. Taking this into consideration legal entities managing large amounts of lands as owners or renters under the objective of land consolidation prefer to work with large legal entities of producers. This relation between the two legal entities generates a financial stimulus for vertical integration at the end of the resource-product chain.

7.2. Influence of the infringement procedure of the European Commission against Bulgaria and other Member States concerning the acquisition of agricultural land

The European Commission started an infringement procedure against Bulgaria in accordance with Article 258 of the Treaty of Functioning of EU (TFEU) for breaching the EU legislation⁴⁶ arguing that Bulgaria’s legislation requires a long-term residency of a buyer of agricultural land in Bulgaria, which discriminates against other EU nationals.

⁴⁴ The interpretative decisions of the SCC are not a source of law, but are binding on the courts of the country.

⁴⁵ The tax preference is regulated in art. 174 and art. 175 of the Corporate Income Tax Act.

⁴⁶ See the Markets in Financial Instruments Act (MFIA) and Economic and Financial Relations Act with Companies Registered in Preferential Tax Jurisdictions, the Persons Controlled by Them and Their Beneficial Owners (FRACRPT)).

Points of consideration are related to changes in Articles 3 to 5 of ALOUA introducing the terms ‘residency’ and rules for the ‘origin of capital’ as regards the legal entities. At this point the procedure reflects only slightly on local consolidation of agricultural land. Cross-border vertical mergers, in case of legal entities operating with agricultural land, will be accelerated in case of an infringement decision of the EU Court against Bulgaria.

8. The empirical evidences of indirect discrimination. ‘Transfer of burden’ from large legal entities to the other groups



Figure 1: Inheritances /Sales

On Figure 1 shows the trends of ‘distributions’ related to agricultural land.

The secondary ways of acquiring agricultural land purchase – sales are having an upward trend. In comparison the primary way of acquiring – the inheritance is showing the descending trend. Less and less agricultural land is distributed among the families (family farms) which are the main source of inheritance. Legal entities are major players – as buyers of the agricultural land. The trend becomes more significant after 2016.

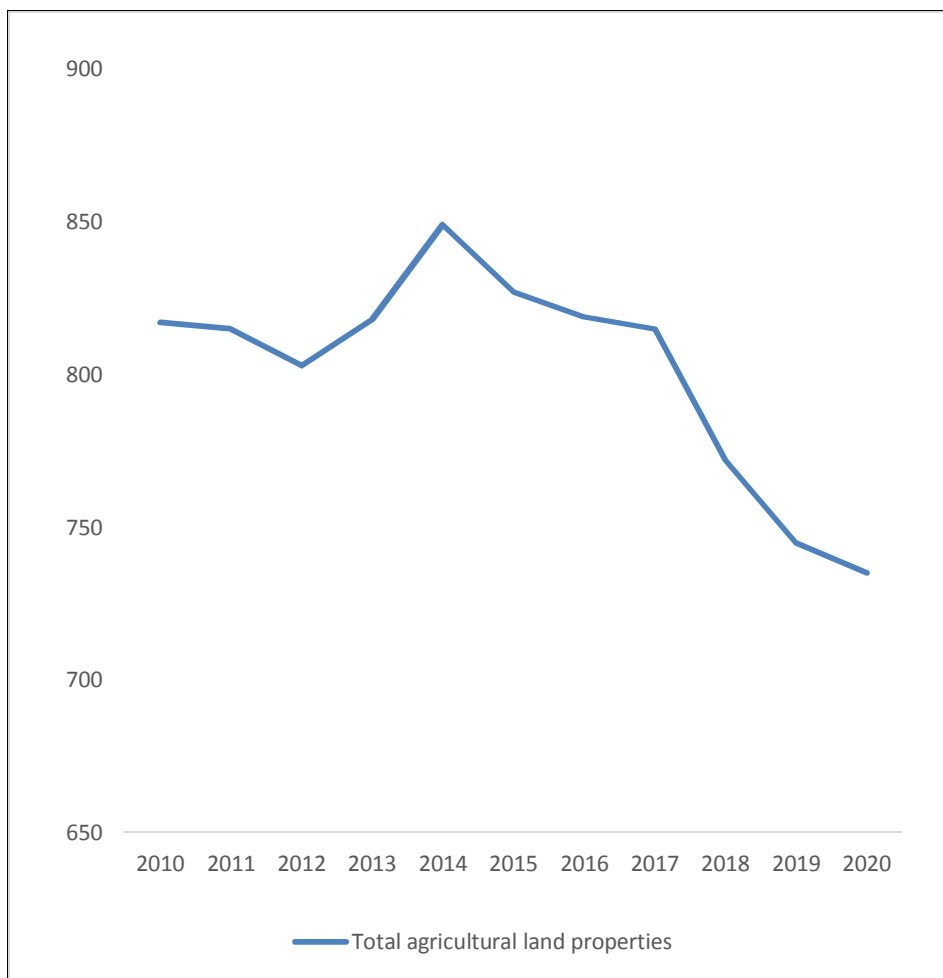


Figure 2: Land properties

The total number of agricultural lands in the settlements are analyzed in Figure 2. The tendency is that the number of agricultural properties is decreasing, despite the high number of co-owners. The fragmentation continues to have an effect, but less and less owners owned larger areas. The local concentrations increased.

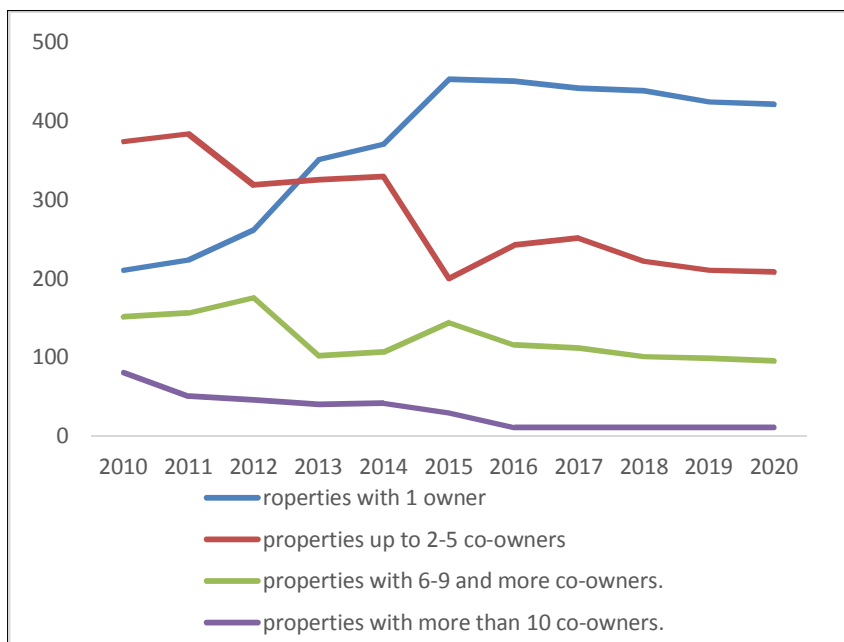


Figure 3: Co-owners

In Figure 3 shows how the number of co-owners has moved over the years. Co-ownership cases (number of co-owners on one property) decreases. This is due to the reason that some of the properties because of inheritance falls into a new group with a higher number of co-owners or because they have been bought in 97% by the legal entities.

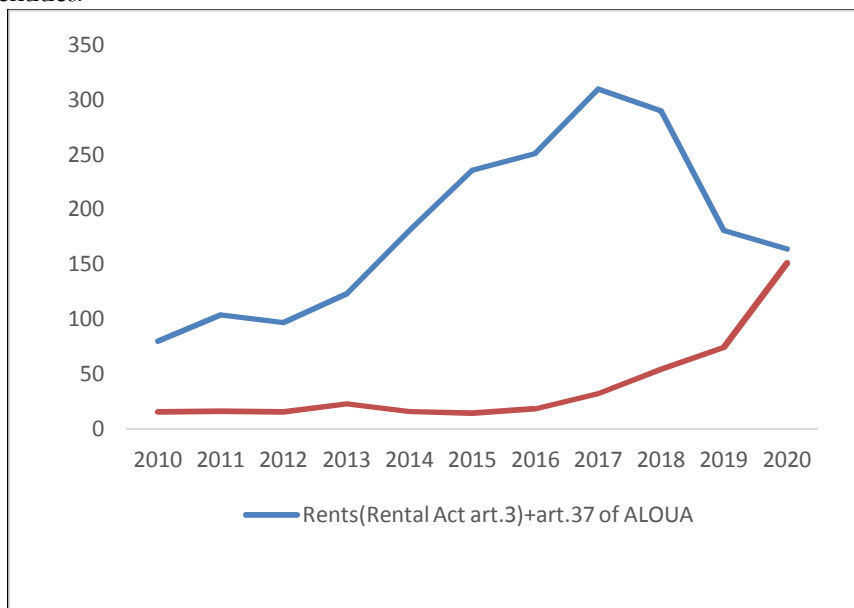


Figure 4: Land use contracts

On Figure 4 it is compared the two types of acquiring land by ‘lease’ according to LOC or ‘rent’ according to LRAL. The rents increased until 2018, when the rule of Article (4a) of ALOUA entered into force and when the conversion is possible. The co-owners are gradually reorienting themselves to consolidate agricultural land through ‘rent.’ It is considered that these are mainly small landowners, sellers of land or landlords under Article 37c of ALOUA.

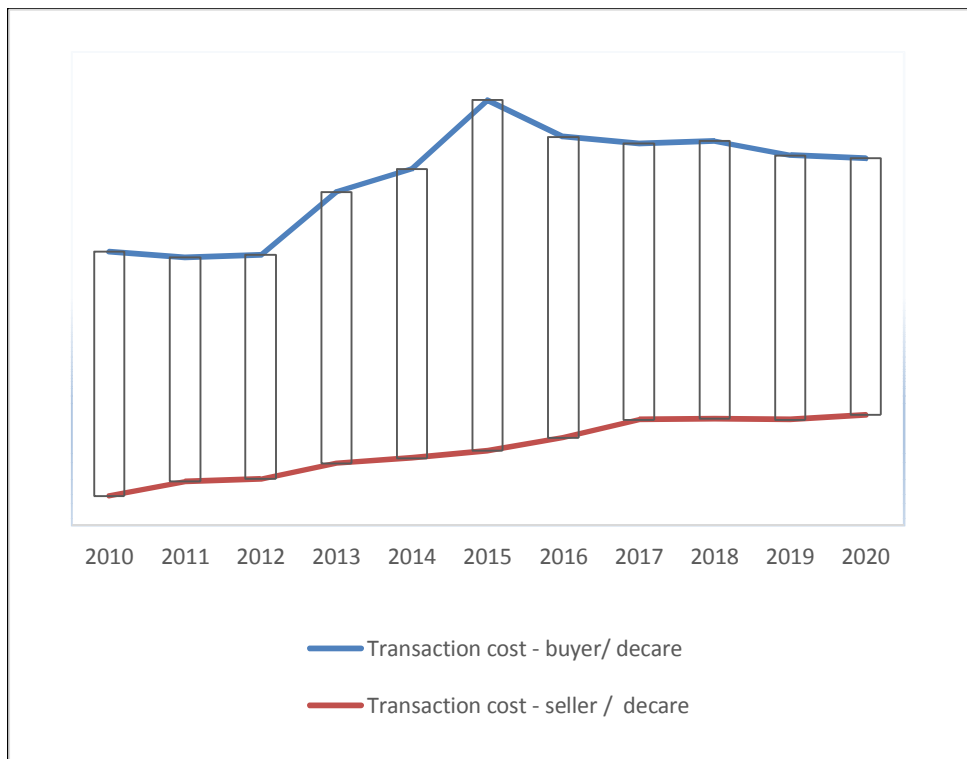


Figure 5: Allocation of the transaction costs

Figure 5: The electronic formats of the registers are showing a kind of ‘shrinking of the scissors’ of the transaction costs. But the average transaction costs increase faster for small owners, sellers and other individuals, than those for buyers being usually legal entities.

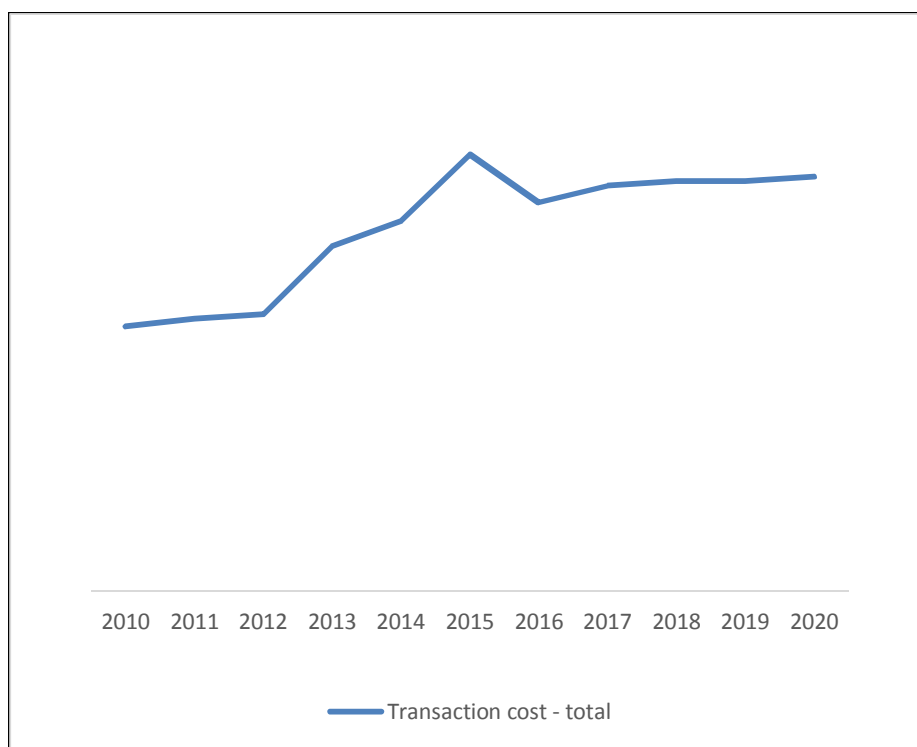


Figure 6: Total transaction costs

Figure 6: The total amount of transaction costs also increases supposing that this could be an empirical proof of an indirectly transferred burden⁴⁷ through access to agricultural land at the local level.

9. Conclusion

The inheritances have less and less overall effect on the distribution of ownership of agricultural land in contrast to secondary means of acquisition – sales. Consolidation based on land use has a pre-emptive effect over those in which property is acquired through purchase and sale or other means of acquiring property. The effects of consolidation outpaced those associated with fragmentation.

Consolidation in Bulgaria is related to land grabbing at the local level. The subsidy for legal entities should be considered as rent seeking. Transparency in the methods of acquiring agricultural land is low. Some legal possibilities, which we have called ‘mechanisms,’ create an advantage for some groups of subjects over the other subjects which are more difficult subjects to adapt. The coordination goals set in the strategic document VGGT (FAO) – are not achieved.⁴⁸

⁴⁷ Beluhova-Uzunova, Hristov & Shishkova 2020, 60–62. describe this burden as a kind of imbalance between small and large farms.

⁴⁸ Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) of the Food and Agriculture Organization (FAO) of the United Nations (UN).

Due to the organizational economies of scale – legal entities in the country's agriculture, gradually 'readjust' their activities to work only with other legal entities. Using ownership consolidation mechanisms, legal entities are integrated vertically. Thus, discrimination is transferred across the levels of the resource product chain.

De lege fareda: The CAP objectives 'efficiency and that of market stability' set out in Article 39 'a' and 'c' laid down by the TFEU⁴⁹ should also be reconsidered in the context of land consolidation. The demand for rent through subsidies should be stopped. Balance between efficiency of the consolidated production factor agricultural land and market stability will provide a higher value for consumers of agricultural products.

A concept for the 'indirect discrimination' or a hybrid organization concerning the access to agriculture land should be created. The latter is possible if changes are made to secondary legislation, e.g. EU Regulation 1308/2013, in which an anti-competitive provision related to the agreements on access to agricultural land should be incorporated. Horizontal legislation should define 'local markets.' The legislative framework for the protection of competition must analyze market distortions at the local level.

⁴⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, Official Journal of the European Union, Volume 51, 9 May 2008, 2008 / C 115/01 (TFEU).

Bibliography

1. Bachev Hr, Ivanov B & Sarov A (2020) *Why and How to Assess the “Governance” Aspect of Agrarian Sustainability Case of Bulgaria*, Chapters 2 in: Gorawala P, Mandhatri S (eds.) *Agricultural Research Updates* 30, Nova Science Publisher, New York, pp. 106–139.
2. Bain J S (2013) *Barriers to New Competition: Their Character and Consequences in Manufacturing Industries*, t.3 Harvard University Series on Competition in American Industry Series, Harvard University Press.
3. Beluhova-Uzunova R, Hristov K & Shishkova M (2020) Small Farms in Bulgaria – Trends and Perspectives, *Agricultural Sciences*, 11(25), pp. 59–66. doi: 10.22620/agrisci.2019.25.008
4. Benham Al & Benham L (2000) *Measuring the costs of exchange*, Chapters 24 in: Claude Ménard (ed.), *Institutions, Contracts and Organizations*, Edward Elgar Publishing. pp. 367–375, doi:<https://doi.org/10.4337/9781781952764.00039>
5. Boliari N (2013) Does Land Fragmentation Affect Land Productivity? Empirical Evidence from Bulgaria, *Review of Agricultural and Environmental Studies* 94 (3), pp. 273–302, doi: 10.4074/S1966960713003019
6. Boliari N (2017) Can Partible Inheritance Explain Land Fragmentation? The Case of Bulgaria, *Agrarian South: Journal of Political Economy*, 6(3) pp. 334–353, <https://doi.org/10.1177/2277976017745194>
7. Bork R (1993) *The Antitrust Paradox* (s.ed.), New York: Free Press.
8. Djankov S, La Porta R, Lopez-de-Silanes F & Shleifer A (2002) The Regulation of Entry, *The Quarterly Journal of Economics*, 117(1) pp. 1–37.
9. Draganova M (2002) *Collisions in the Transformations of Rural Life*, Lik Publishing House.
10. Georgiev M & Roycheva A (2018) Rules on integration of organizations using agricultural land – an obstacle for competition, *Book of proceedings International May Conference on Strategic Management – IMCSM18 May 25–27, 2018, Bor, Serbia*, pp. 548-559., doi:10.2139/ssrn.3275647
11. Gray H M (1960) *Carl Kaysen and Donald F. Turner. Antitrust Policy: An Economic and Legal Analysis*. pp. 23, 345. Cambridge, Mass.: Harvard University Press, 1959, *The Annals of the American Academy of Political and Social Science*, 330(1), pp. 199–199, doi: 10.1177/000271626033000183
12. Hardin G (1968) *The Tragedy of the Commons*, 162(3859), pp. 1243–1248, doi:10.1126/science.162.3859.1243
13. Hartvigsen M (2014) Land Mobility in a Central and Eastern European Land Consolidation Context. *Nordic Journal of Surveying and Real Estate Research*, 10(1), pp. 1-24., <https://journal.fi/njs/article/view/41460>
14. Hovenkamp H (1990) Positivism in Law & Economics, *California Law Review*, 78(4), pp. 815–852.
15. Hovenkamp H (2010b) Antitrust and the Close Look: Transaction Cost Economics in Competition, Policy. pp. 1–14, <http://dx.doi.org/10.2139/ssrn.1661993>

16. Hovenkamp H. (2010a) Harvard, Chicago, and Transaction Cost Economics in Antitrust Analysis, *The Antitrust Bulletin*, 55(3), pp. 613–662, doi: 10.1177/0003603X1005500305
17. Kay S (2016) Land Grabbing and Land Concentration in Europe. A Research Brief. *Transnational Institute for HOTL, Amsterdam, December 2016*, <https://tinyurl.com/y59usb8d> [04.11.2020]
18. Kopeva D, Noev N & Evtimov V (2002) Land fragmentation and land consolidation in the agricultural sector – A case study from Bulgaria. *FAO*. <https://tinyurl.com/y3jpbabp> [04.11.2020]
19. McChesney F (2004). What'd I Say?: Coase, Demsetz and the Unending Externality Debate, pp.1-32, <http://dx.doi.org/10.2139/ssrn.491182>
20. Medarov G (2013) Land concentration, land grabbing and land conflicts in Europe: The case of Boynitsa in Bulgaria. 10 Bulgaria in Franco J & Borrás S (eds.) In *Land Concentration, Land Grabbing and People's Struggles in Europe*, *Transnational Institute: Amsterdam, The Netherlands*, pp. 5–236.
21. Ostrom E (1990) *Governing the Commons. The Evolution of Institutions for Collective Action*. Cambridge University Press.
22. Pigou A (1920) *The economics of welfare*. London, Macmillan and Co.
23. Ploeg J VD, Franco JC & Borrás Jr SM (2015) Land concentration and land grabbing in Europe: a preliminary analysis, *Canadian Journal of Development Studies / Revue canadienne d'études du développement*, 36(2) pp. 147–162, doi:10.1080/02255189.2015.1027673
24. Rushev I (1999) Concluding contracts under General Conditions - Problems in the Doctrine and the Practice. *Labor and law* (Available 19.10.2020 e-page).
25. Stiglitz J (1974) The Review of Economic Studies Incentives and Risk Sharing in Sharecropping, *Oxford University Press*, 41(2), pp. 219–255, doi: 10.2307/2296714
26. Szilágyi J E, Raisz A & Kocsis B E (2017) New dimensions of the Hungarian agricultural law in respect of food sovereignty – A magyar agrárjog legújabb fejlődési irányai az élelmiszer-szuverenitás szempontjából. *Agrár- és Környezetjog*, 12 (22), pp. 160–201, <https://doi.org/10.21029/JAEL.2017.22.160>
27. Tullock G (1980) Efficient rent-seeking. Toward a theory of the rent-seeking society. In: Buchanan J & Tollison R & Tullock G (eds.). *College Station: Texas A&M Press*. pp. 97–112.
28. Van Dijk T & Kopeva D (2006) Land banking and Central Europe: Future importance, current initiatives and Western European past experience. *Land use policy*, 23 (3), pp. 286–301, <https://doi.org/10.1016/j.landusepol.2004.07.005>
29. Van Dijk T (2003). Scenarios of Central European Land Fragmentation. *Land Use Policy*, 20(2), pp. 149–158.
30. Williamson O (1991) Comparative Economic Organization: The Analysis of Discrete Structural Alternatives. *Administrative Science Quarterly*, 36(2), pp. 269–296, doi: 10.2307/239335