



**Bulgarian Member of the CEDR (Requested June 2019)**

## **Bulgarian contribution to the CEDR conference Poznan (Poland) September 2019**

### **QUESTIONNAIRE II**

1. Characterise the importance of planning instruments to protect agricultural land resources in your country of origin, taking the following issues into account:

- 1.1. Scope of land-use plans (for the whole territory or only certain areas).
- 1.2. Special instruments for the conservation of cultivated land (especially priority areas).
- 1.3. Permissibility of activities on agricultural land (in particular buildings) according to land-use plans (or outside of them).
- 1.4. Instruments in national planning law aimed at limiting changes to the intended use of agricultural land for purposes not related to agriculture.
- 1.5. Consequences of changing the intended use of agricultural land to purposes not related to agriculture in so far as it may alter classification as agricultural land under any regulations of agricultural property transactions.
- 1.6. Evaluation of the adopted instruments for the protection of agricultural land resources in the light of national academic literature.

#### **1.1. Scope of land-use plans (for the whole territory or only certain areas)**

**Within the meaning of the Constitution of the Republic of Bulgaria "land is a national wealth"**

*Art. 21. (1) Land is a basic national wealth, which benefits from the special protection of the state and society.*

*(2) Arable land shall be used only for agricultural purposes. A change of its purpose is allowed exceptionally upon proven need and under conditions and by a procedure established by law.*

In Bulgaria there is a project for "amendment to the ALOUA" which should change the order in case of: change of the purpose; the way of establishing material rights, the possible substitution of land - in

the realization of projects of socio-economic significance for the municipality; prohibition of construction on grassland, meadows and land designated for pasture.

There is also a *draft law on agricultural land consolidation* developed in accordance with the National Regional Development Strategy 2014-2020 and the National Concept for Spatial Development 2013 - 2025 to outline the main directions for its development - at national, regional and local levels.

The legal basis for this includes:

- Cadastre and Property Register Act (CPRA);
- Agricultural Land Conservation Act (ALCA);
- Territory Development Act (TDA);
- Agricultural Land Ownership and Use Act (ALOUA) and Code for Application of the ALOUA;
- Forestry Act;
- Ordinance № 13 by the Territory Development Act;
- Ordinance № 117 by the Territory Development Act;
- Ordinance № 49 of 5 November 2003 on maintenance of the map of the restored property;
- Ordinance № 7 of 22 December 2003 on rules and regulations for the construction of the different types of territories and development zones;
- Ordinance № 8 of 2001 on the volume and content of the constitutional plans;
- Ordinance № 49 of 2004 on maintenance of the card of the restored property;
- Ordinance № RD-02-20-5 of 2016 on the content, creation and maintenance of the cadastral map and cadastral registers;
- Ordinance № RD-02-20-4 of 2016 for the provision of services from the cadastral map and the cadastral registers;
- Ordinance № 2 of 2010 for definition, implementation and maintenance of the Bulgarian Geodesic System since 2010.

On the other hand, the Agricultural Land Conservation Act (ALCA) is a *general national legal framework* - a legal act regulating general rules for the protection of agricultural land from damage and the restoration of its functions. It also regulates: the conditions for re-cultivation, the restrictions on construction, the special order and the state fees when changing the purpose of agricultural land for non-agricultural utilization.

Bulgaria has harmonized its legislation with regard to the urbanization control requirements referred to in Art. 12 of the Seveso II Directive (96/82/EC). It introduces the European Commission's Guidance on Implementation (1<sup>st</sup> Amendment to the Directive, 2003/105/EC), in relation to the need to define a set of guiding principles to "bridge the gap" resulting from risk assessment of a large-scale accident and land use planning.

Bulgaria introduces management of land planning with the help of plans and maps approved under the ALOUA and the Restoration of Ownership of Agricultural Land and Forestry Fund Act (ROALFFA). Land development plans consist of: a map of the restored property; soil map; map of

soil categories; map of the ownership of land properties; map of the areas to be used; scheme of irrigation systems and irrigation areas; a scheme of the irrigation activities planned within projects aimed at restoring soil fertility.

The maps include:

- a restored property map;
- the cadastral maps of the agricultural territories are compiled on the basis of the information from the map of the restored property in connection with Art. 27, para. 1, item 1 of the CPRA and Art. 29, para. 1 CPRA; they contain information on the boundaries of properties in connection with Art. 41a of the CPRA, in the cases under Art. 36, item 1 and Art. 38, para. 1, item 2 of the CPRA.

On their basis, the following are drawn up:

- general development plans under the TDA, on the basis of which detailed development plans are made - according to Art. 115 TDA and Art. 2 of the Ordinance under Art. 31 of CPRA;
- detailed development plans.

*Source: Own research based on data from the official website  
of the Ministry of Regional Development and Public Welfare,*

*www.mrrb.bg*

## **1.2. Special instruments for the conservation of cultivated land (especially priority areas)**

**Special tools for the protection of agricultural land exist.** In practice, this is the obligation to change their designation only after the entry into force of General Development Plans under Art. 104 of the TDA.

- *in the general case (urbanized territories)* - the draft of a general development plan shall take into account the forecasts of the existing detailed development plans approved up to the date of the issuance of the permits under Art. 124 of the TDA (building permits). Change in the purpose, manner and nature of the construction of the land properties, for which an approved detailed development plan is available, is only allowed for the construction of objects - *public state property or public municipal property*, as well as for the purpose of protecting *public interests* – protection of the environment and human health, protection of agricultural, forest and protected territories and areas (see Art. 103 TDA).

- *for territories close to the Black Sea* - the latest plans were adopted by an expert council comprising of representatives of several state and municipal authorities. For example, the *Black Sea Coast Act* (Art. 162, para. 3). Of course, these tools focus on legal protection of property. They do not always put forward the protection of agricultural needs and food sovereignty. For instance, no change is allowed in the designation within the meaning of the *Cultural Heritage Act*, Art. 162 para. 3.

- the restrictions indirectly affecting the management and disposal with the lands of the State Land Fund and the Municipal Land Fund should also be identified as specific mechanisms for the protection of agricultural land.

- the specific administrative requirements for the change of the purpose of a property could also be defined as a special mechanism. Owners should obtain an average of 23 documents and to pay 12 charges (with certain variations by municipalities). Mechanisms for identifying agricultural land under the Cadastre and Property Register Act (CPRA) can also be defined as elements of the general protection of the property. Claims for recovery "in case of a mistake under Art. 54 of the CPRA". Obligations of the cadastre bodies (Cadastre Agency and Land Commissions in property restoration). Mechanisms for remote "digital access" and "feedback", etc.

### **1.3. Permissibility of activities on agricultural land (in particular buildings) according to land-use plans (or outside of them)**

**Conversion of agricultural land is acceptable.** A *priority change of purpose* only occurs when there is a *particularly important state or public interest* in the change. Such interest is present under the State Property Act (SPA) (Art. 39a of the SPA and Art. 30 in conjunction with Art. 391, para. 3 of the Civil Procedure Code). In these cases the *estrangement* of these lands precedes the conversion. Grounds for admissibility of such a conversion are present in:

- sites of national importance;
- national sites within the meaning of the State Property Act;
- sites of regional importance; municipal sites of paramount importance;
- sites - public property; sites of the technical infrastructure;
- special facilities related to defence and security of the country;
- sites in regions for targeted support by the state under the *Regional Development Act* on the basis of a decision of the municipal council;
- real estate cultural assets.

### **1.4. Consequences of changing the intended use of agricultural land to purposes not related to agriculture in so far as it may alter classification as agricultural land under any regulations of agricultural property transactions.**

**Consequences especially in connection with the Black Sea Coast.** There is no undisputable data for changing the purpose of agricultural land for the years 2018-2019. During the period 2000-2006 they accounted for approximately 4,9% of the total territory of the country. The process is more pronounced for the Black Sea coast and the high mountain resorts due to construction works. Every

year, industry and construction literally "destroy" about 4 000 ha of arable land. Another part of them is transferred to the forestry fund due to degradation or pollution. The perspective for the coming years is that degradation and erosion will cover 30 000 ha of first-class land. Due to infrastructure projects, the trend is extremely unfavourable.

Conversion research in Bulgaria is highly inadequate.

*Source: The Bulgarian Government's Official Portal for Public Consultation,  
www.strategy.bg*

## **2. Characterise the importance of instruments to counteract the degradation and devastation of agricultural land in your country of origin, taking the following issues into account:**

2.1. Degree of agricultural land degradation and devastation; issue of erosion and desertification of agricultural land.

2.2. Legal instruments to counteract the degradation and devastation of agricultural land (administrative orders and prohibitions; creation of protected areas surrounding industrial facilities; other).

2.3. Reclamation of degraded or devastated agricultural land (its methods; entities obliged to perform this task).

2.4. Evaluation of instruments adopted to counteract the degradation and devastation of agricultural land and methods for reclamation in the light of academic research.

*These issues are provided for in the Bulgarian legislation predominantly through the framework of the Agricultural Land Protection Act and the Air Purity Act.*

### **2.1. Degree of agricultural land degradation and devastation; issue of erosion and desertification of agricultural land.**

In terms of desertification, Bulgaria's legal framework, and its actions, should be viewed as a part of what is taking place in this regard within the EU. See the development of the issue on Directive 2004/35/EC (COM (2006) 232 (not adopted), and also Decision № 1386/2013/EU), and the proposal for a Soil Framework Directive (COM (2006) 232). Unfortunately, Bulgaria is cited as a negative case of desertification in the *EC Report on Combating Desertification in the EU (33/2018)*. The factor of rising temperature is pointed out as a main reason for these processes.

It is considered that in the future very negative consequences are to be expected. Thirteen EU member states have declared under the *UN Convention on Combating Desertification* that they are affected by desertification, on the basis of self-assessment Bulgaria is among them. The situation in the regions bordering the Black Sea is particularly grave. According to internal sources, desertification

in Bulgaria is the most dangerous for pastures. Over 40% of them are threatened with plowing or abandonment. Mining and industrial landfills affect 0,29% of the country's territory, industrial and energy sectors affect 0,59%, and 1,86% are the physically destroyed soils for the purposes of construction of transport networks (road, air, water etc.), which also facilitates desertification.

Despite this, Bulgaria has already identified measures through the *National Action Program for Sustainable Land Management and Combating Desertification in the Republic of Bulgaria (updated for the programming period 2014-2020)*, and the *Climate Change Reduction Act (2014)*. Bulgaria fulfills its obligations arising from the Decision to reduce greenhouse gas emissions, necessary to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OB, L 140/136 of 5 June 2009, Decision № 406/2009/EC), as well as its obligations under the Kyoto Protocol.

*Source: See the official website of the Bulgarian Government,  
www.moew.government.bg*

## **2.2. Legal instruments to counteract the degradation and devastation of agricultural land (administrative orders and prohibitions; creation of protected areas surrounding industrial facilities; other).**

As a part of the desertification instruments should be considered all those legal acts creating a specific legal effect limiting desertification through measures aimed at:

- integrating policies and strategies focusing on sustainable development - national and local;
- acts creating incentives for science in the fight against desertification;
- acts creating incentives or barriers to information with the ultimate effect of reducing desertification;
- economic incentives (at a national level - programs) to combat desertification.

Specific tools to combat desertification are:

- *Instruction of the Ministry of Agriculture and Food on determining the type and degree of pollution of agricultural lands by land plots and regimes of their use;*
- *The National Greenhouse Quotas Register System;*
- *Decree № RD 09-431/22.08.2005, through which the Minister of Agriculture and Food established the Rules of Good Agricultural Practices.*
- *Decree № RD 09-4272010 of the Minister of Agriculture and Food for the prevention of soil contamination caused by unbalanced fertilization.*

### **2.3. Reclamation of degraded or devastated agricultural land (its methods; entities obliged to perform this task).**

The reclamation of agricultural land is regulated by Art. 11 to 16 of the ALOUA. Responsible for these processes are:

The Ministry of Agriculture, Food and Forestry maintains a special information system: on the productive, technological, ecological and economic qualities of agricultural land, including their basic prices, as well as on the potential risks of deterioration of these qualities due to erosion, pollution, salinisation, acidification and swamping; the protection of the soil layer and its characteristic environmental functions from damage; the mandatory restrictions on the use of agricultural land; pesticides, fertilizers, industrial or household waste, biologically active substances and other substances that are registered and approved for application and the sanitary standards for their use, as well as for substances banned for application; the quality of irrigation water, the sanitary standards and the maximum permissible technological standards for their use, as well as for the waters banned for irrigation of agricultural land; anti-erosion crop rotation for erosion-threatened territories; suitable soil treatment systems and equipment (Art. 4 (1) of the Agricultural Land Protection Act).

The Ministry of Agriculture, Food and Forestry maintains a special public register on agricultural lands: contaminated with heavy metals and metalloids, radionuclides, petroleum products and other organic pollutants, industrial, construction and household waste; endangered by erosion, pollution, salinisation, acidification and swamping. The registry under para. 2 also contains information on: physical and juridical persons or their successors, contributors to pollution; restrictive and recommended land use regimes and prescriptions to remove breaches; humus landfills; industrial waste suitable for re-cultivation and improvement of agricultural land; short-term and long-term programs to improve the productive qualities of agricultural lands and protect them from erosion, pollution, salinisation, acidification and swamping (Art. 4 (2) and (3) of the Agricultural Land Protection Act).

The Ministry of Agriculture, Food and Forestry has the right to impose restrictive conditions on the use of agricultural lands when it establishes damage to agricultural land; non-compliance of the produced plant or animal products with hygiene standards; deterioration of the ecological functions of the soil cover and the quality of surface and ground water; other cases provided by law. The Ministry of Agriculture, Food and Forestry has the right to prescribe forest-irrigation and hydro-technical measures that protect the soil cover from water and wind erosion (Art. 4 (4) and (5) of the Agricultural Land Protection Act).

In this aspect, the Waste Management Act is also of significance, applying in cases of:

- sediments moved to surface waters to manage water and water objects, or to prevent floods, or to reduce the consequences of floods and drought, or land reclamation, if it is proven that this is not contrary to other laws, and the sediments have no hazardous properties (Art. 2, item 11);
- with the introduction of the basic financial framework - the state budget (Art. 56, para. 1)
- reclamation projects (Art. 69, para. 5);
- governance between local and state structures, with regard to reclamation rules (Art. 112 (2) and Art. 72 (4))

Reclamation is also subject to the following regulations:

- *Ordinance № 26 on reclamation of broken terrains;*
- *Ordinance № 3 of 1 August 2008 on the levels of allowed content of harmful substances in soils, improvement of low-productive lands, removal and utilization of the humus layer;*
- *Ordinance № 4 of 19.02.2013 on the protection of forest areas against erosion and floods and construction of fortification facilities.*

As of June 2019, the implementation of the first project for a complotting installation under the Operational Program "Environment 2014-2020" started near the town of Plovdiv. 18 other municipalities should start building such installations.

*Source: Official website of the Ministry of Environment and Waters,  
<https://www.moew.government.bg/>*

#### **2.4. Evaluation of instruments adopted to counteract the degradation and devastation of agricultural land and methods for reclamation in the light of academic research.**

Serious studies on soil pollution and reclamation are carried out at the Agricultural University – Plovdiv, New Bulgarian University, the University of Forestry, the Institute of Soil Science – Sofia, the University of Rousse Angel Kanchev, etc.

The soil variety in Bulgaria is extremely large. This is due to the varied relief, climatic, plant-geographic and geological conditions - a true soil museum according to (Koinov V., 1964). The share of arable land is 43% of the total territory, with high fertility being 15% and with low - 33% of the arable land. The perspective for the next years points that degradation and erosion will cover 30,000 more ha of first-class land.

It is obvious from the data on the gross nutrient balance of agricultural land in kilograms per hectare that the figures change from -2<sup>°</sup> in 2006 to -6<sup>°</sup> for 2015 (no data is available for the last years).

This means that there may be a permanent deterioration in soil fertility. The balance of soil fertility of agricultural land in Bulgaria is fragile and unstable.

*Source: Eurostat data,  
<https://ec.europa.eu/eurostat>*

The studies of the Institute of Soil Science and the Institute for Analysis of the Environment show that in the Northwest region the pollution of agricultural lands is most pronounced on the territory of the municipalities Boychinovtsi, Montana and Mezdra (factory Eliseina) with zinc, copper and cadmium - from 0.5 to 2 times over the maximum concentration limit, and with lead and arsenic over 2 times over the maximum concentration limit; in the North Central and North-East regions no serious soil contamination has been registered; in the Southwest region, pollution of agricultural lands with zinc, copper and cadmium from 0.5 to 2 times over the maximum concentration limit, and with lead and arsenic over 2 times the maximum concentration limit is established on the territory of Stolichna Municipality. Presence of lead, zinc, cadmium and arsenic from 0.5 to 2 times over the maximum concentration limit and copper - 2 times the maximum concentration limit is found in the valley of Topolnitsa river (on the territory of the municipalities of Zlatitsa, Pirdop, Chavdar, Chelopech, Mirkovo, Koprivshitsa and Ihtiman). In the South Central Region, polluted agricultural lands with zinc, copper, cadmium and arsenic from 0.5 to 2 times the maximum concentration limit, and lead over 2 times the maximum concentration limit has been established in the municipalities Kardzhali and Rudozem. In Madan, the amount of cadmium in some soils is over 2 times the maximum concentration limit. Between 1 and 2 times over the maximum concentration limit are pollution levels in some plots of agricultural land in the municipalities of Plovdiv, Asenovgrad and Topolovgrad.

Research on reclamation shows that:

- *use of natural substrates* - Research on natural and recultivated soils and substrates differ in the origin of the constituent materials as well as in their chemical and physicochemical characteristics, which predetermines different buffer capabilities at external sources of influence (Biser Hristov, Toma Shishkov, Vania Katchova, Emilia Atanassov, Irena Atanassova “Basic chemical and physico-chemical characteristics of soil sand substrates in the region of Pernik coalmine basin” DOI: 10.13140/RG.2.1.2362.5045).

- *treatment* - Study on the treatment of damaged land with Oxalor should be 2:1 to 4:1. Over time (1-2 years), it is advisable to repeatedly deeply turn over the substrate. Industrial crops can be successfully grown on the substrate such as rapeseed, hemp and others. In the substrate there is a possibility of forming gypsum ( $\text{CaSO}_4 \cdot 12\text{H}_2\text{O}$ ), due to reactions between sulphides and alkalis (H.

Harizanov 2011, Recultivation methods of ground, affected by open-pit coal mining, Ecology 2011, NBU).

- *composting* - The first plant for processing of household waste, built in Shishmantsi, Plovdiv District, Bulgaria, demonstrates the advantages of waste treatment on its deposition. These advantages include reducing the volume of waste and reducing the landfill area. It is used to re-cultivate the soil (to restore nutrients and improve the structure), as well as to reduce unpleasant odour and gaseous emissions. Compost can be used to recultivate not only farmland, but also mines and other industrially damaged soils. The experience gained in the municipality of Plovdiv can be multiplied in the planning of waste treatment plants in other major cities. The establishment of waste processing plants at least in regional centres with a capacity meeting the needs of the region, is highly recommended in view of the European Commission's Landfill Directive (Zahariev A, S. Kostadinova, Anna Aladjadjian. Composting Municipal Waste for Soil Recultivation in Bulgaria, January 2014, International Journal of Plant & Soil Science 3(2):178-185).

- *afforestation* - Many of the geological components of Bulgarian coal waste have properties that facilitate their conversion into soils. The results show that afforestation can reduce the erosion of steep slopes by a coefficient of  $> 3$  and create soil with greater fertility and better structure. Afforestation involves the selection of nitrogen-fixing and deep-rooting tree species, aided by soil improvement through mineral fertilization and application of green manure. Nurseries are planted with high density and are managed regularly while organic activity becomes able to generate self-sustaining environmental improvements (Sv. Gentcheva-Kostadinova, E. Zheleva, R. Petrova & Martin J. Haigh (1994) Soil constraints affecting the forest-biological recultivation of coal-mine spoil banks in Bulgaria, International Journal of Surface Mining, Reclamation and Environment, 8:2, 47-53, DOI: 10.1080/09208119408964759).

- *assessment* - "Unfortunately, the content of organic matter (humus) in Bulgarian soils is declining at an alarmingly rapid pace and has already reached values of 1.7%. Research shows that in the next 20-25 years, some areas will not be suitable for growing trellis cultures, and in some cases even sooner. This is mainly due to the degraded physico-mechanical properties of soils and their subsequent compaction and accelerated erosion processes. The main reason for the occurrence of this highly alarming phenomenon is the practices of repeated soil treatment by turning the layer over (deep plowing). The excessive use of heavy machinery, incl. disc ones, leads to destruction of the soil structure, significant compaction of the soil layers and predisposes to water erosion." (Source: Georgi Mitev and Brian Gogin - Project: "Soil Protection in Bulgaria" - University of Rouse Angel Kanchev and Cornell University, USA, <http://cbs.uni-ruse.bg>).

**3. Are there any specific regulations concerning agricultural property transactions in your country?**

If so, characterise them, taking the following issues into account:

3.1. The values and purposes which justify the enactment of the specific regulation which governs agricultural property transactions, for example:

- a. Prevention of excessive concentration of agricultural property
- b. Prevention of unsuitable division of farms (agricultural property)
- c. Assurance that agricultural property is not sold to people without agricultural qualifications
- d. Other (support and protection of family farms, etc.).

3.2. Scope of the specific regulation:

- a. Ownership transactions
- b. Lease transactions.

3.3. Subject of the specific regulation: agricultural property, farms, other specific areas (mountains, coast, etc.), taking their qualifying criteria into account.

3.4. Instruments of the specific regulation concerning *inter vivos* transactions:

- a. Public legal (permits from a public administration body/court; alternatively, the obligation to notify the public administration body/court; competence of authorities; outline of the procedure).
- b. Private legal (rights of pre-emption, repurchase, acquisition, etc.; authorised entities; procedure leading to the execution of these rights).
- c. Entities privileged for the purpose of *inter vivos* transactions; criteria for their individualisation.

3.5. Instruments of the specific regulation concerning *mortis causa* transactions:

- a. At the grant of the legacy (special categories of inheritors, division of inheritance into "agricultural" and "non-agricultural", etc.)
- b. At the distribution of the legacy (preferred beneficiaries in the case of agricultural property, criteria for their individualisation, issue of refunds, etc.).

3.6. Evaluation of the special regulation of agricultural property transactions in the light of agrarian literature:

- a. As regards efficiency
- b. As regards the compliance with EU law.

### **3. Are there any specific regulations concerning agricultural property transactions in your country?**

Such provisions are contained in:

*Agricultural Land Ownership and Use Act*

*Agricultural Lease Act*

*Special Investment Purpose Companies Act - the Act regulates the relations related to the securitization of real estate and receivables through companies licensed to operate as special investment purpose companies, as well as their establishment, activity and termination – Art. 1*

*The act aims to: 1. create conditions for the development of investment through securitization of real estate and receivables and for the development of the capital market;*

*2. protect the interests of investors in special investment purpose companies – Art. 2*

### **3.1. The values and purposes which justify the enactment of the specific regulation which governs agricultural property transactions, for example:**

#### **a. Prevention of excessive concentration of agricultural property**

The authors of this document have difficulty quoting legal acts that prevent excessive concentration in agricultural land.

#### **b. Prevention of unsuitable division of farms (agricultural property)**

In Bulgaria the process of inheritance is by law and by will. The way in which agricultural land is inherited in Bulgaria can be considered as a form of unsuitable division - the *Inheritance Act*, the way of inheritance borrowed from the *classical Roman legal doctrine*, which usually leads to the fragmentation of ownership - including on agricultural land. At the same time, there is a restriction in Bulgaria on the fragmentation of agricultural lands. Art. 72 of the Inheritance Act requires that in the formation of shares, the division of fields into parts smaller than 3 decares, of meadows of parts smaller than 2 decares, and of vineyards and orchards in parts smaller than 1 decare, is not allowed. There are also hypotheses giving the right to claim of the heir over: farm inventory from those co-owners / co-sharers / co-heirs who are farmers, and who took care of the legator, and are engaged in farming – Art. 12 (1) of the Inheritance Act. They may also ask for agricultural land from the heritage to be placed in their share - Art. 12 (2).

In the hypothesis of Art. 69 (3) of the Inheritance Act - the heir who is a farmer, who lives in or near the settlement where the hereditary uncovered real estate is located, in order to supplement the land he owns up to the size of the average type of private labour farm, can buy from the other co-heirs who do not live in or near the same settlement, or are not occupied with farming, their share of uncovered real estate.

#### **c. Assurance that agricultural property is not sold to people without agricultural qualifications**

The Bulgarian law does not introduce explicit prohibitions or guarantees for the land to be sold to people with agricultural education. However, a draft law on ownership, land relations and

conservation of agricultural land, should introduce clauses for agricultural land from the State Land Fund to be provided to young farmers - up to 40 years old with a priority (without auction), with sizes - up to 10 decares for vegetable crops; up to 20 decares for perennials; up to 50 decares for annual field crops. Young farmers should also receive support for the construction of mini dairy factories.

#### **d. Other (support and protection of family farms, etc.).**

Ordinance № 44 of 20 April 2006 on the veterinary requirements to livestock farms, regulates the conditions for development of production by family farms. It regulates: "family farms" - type "A" and type "B"; farm type: "backyard" and herds for "personal needs". Following amendments entering into force in 2020, such farms will have a maximum of up to 9 cows and up to 30 sheep and goats with the offspring; the number of pigs for fattening other than mother sows and uncastrated boars should also be reduced from 5 to 3. In order to meet animal welfare conditions, these farms should be permanently supplied with water from their own and/or a public water source, they should have a fence, silage and forage facilities; have a separate storage and decontamination facility for fertilizers. When breeding pigs, the term "family farm" also introduces "biosecurity" measures - up to 15 adult pigs and their offspring, but not more than 200 pigs in total.

The gradual reduction of the "ceilings" of the number of animals which define family farms is noticeable.

### **3.2. Scope of the specific regulation:**

#### **a. Ownership transactions**

2010	2011	2012	2013	2014	2015	2016	2017	2018
279	398	547	594	684	732	761	872	941

*Data on the average price of agricultural land in Bulgaria – BGN/dka*

*Source: Official website of the National Statistical Institute, <http://www.nsi.bg>*

The basis of the legal regulation is in the Property Act, also applied are the *Obligations and Contracts Act, State Property Act, Municipal Property Act, Cadastre and Property Register Act, Registry Code.*

#### **b. Lease transactions.**

2010	2011	2012	2013	2014	2015	2016	2017	2018
23	30	34	38	41	42	44	46	48

*Data on the average price of agricultural land in Bulgaria – BGN/dka*

*Source: Official website of the National Statistical Institute, <http://www.nsi.bg>*

The number of transactions tends to decrease:

**2015 – 20 503 transactions**

**2016 - 16793 transactions**

**2017 - the number decreases compared to the previous year**

**2018 - the number decreases compared to the previous year**

*Source: Own research based on data from the official website of the National Statistical Institute, <http://www.nsi.bg>*

There are two types of transactions in Bulgaria which allow renting/leasing agricultural land.

The main legislative regulation of rents is within the Obligations and Contracts Act. Other acts applied include: State Property Act, Municipal Property Act, Cadastre and Property Register Act, Registry Code, etc. Rental deals – they are also used for renting real estate - the maximum period is usually up to ten years. In practice, they are very often used in intensive crops with a shorter investment payback period.

The legislative regulation of the lease of these social relations follows from the Agricultural Lease Act. Other acts applied include: State Property Act, Municipal Property Act, Cadastre and Property Register Act, Registry Code, etc. Lease transactions - without limitation in the term of lease and management of agricultural land.

Following a decision by the Supreme Court of Cassation (SCC) of 2017, under certain conditions, rental transactions can be "converted" into a lease. Interpretative Decision № 2/2015 of 20.07.2017, delivered on Interpretative Case № 2/2015, of the General Assembly of the Civil and Commercial Colleges (GACCC) at the SCC.

*Note:* This "conversion" should not be confused with the conversion when changing the purpose of agricultural land in urbanized agricultural land territories.

The Ministry of Agriculture, Food and Forestry is preparing a draft of a new Land Relations Act, which should enter into force at the earliest in 2020.

*Source: Own research based on data from the official website of the SCC and the official website of the Ministry of Agriculture, Food and Forestry,*

*<http://www.vks.bg>*

*<http://www.mzh.government.bg>*

### **3.3. Subject of the specific regulation:**

Agricultural properties, farms, other specific areas (mountains, shores, etc.), taking into account their qualification criteria.

- depending on the size of the property, local taxes and fees are determined (Local Taxes and Fees Act);
- depending on the number of properties, the charges for a number of certificates are established (Tariff on the Charges Collected by Land Authorities);
- some of the municipalities introduce normative ones under Art. 26 ALOUA. Municipal councils can grant citizens free of charge the right to use low-productive lands from the Municipal Land Fund;
- An Ordinance taking into account the size of farms is Ordinance № 44 of 20.04.2006 on the veterinary requirements for livestock farms;
- There are texts linking the economic activity with the criteria of forests and mountains – Ordinance № 17 of 19.08.2015 for the implementation of Measure 20 "Technical Assistance" from the Rural Development Program 2014-2020.

In relation to the implementation of measures 121 "Modernization of agricultural holdings" and/or measure 122 "Improving the economic value of forests", and/or measure 123 "Adding value to agricultural and forestry products" from the Rural Development Program.

### **3.4. Instruments of the specific regulation concerning *inter vivos* transactions:**

The legal criterion defines these as transactions where the parties agree in order to establish rights and obligations for them. These transactions are always bilateral or multilateral in character. They are most often market ones – *buying - selling, lease*, but there are also many cases where they are used as a kind of quasi-market in agriculture - transactions between relatives: donations, loan to serve with property; transfer of property - against maintenance and taking care of a person. An ever smaller part of the agricultural land in Bulgaria is transferred in this way. Establishment of funds with a subject trustee management of assets - agricultural land - almost unused mechanism in Bulgaria.

**a. Public legal (permits from a public administration body/court; alternatively, the obligation to notify the public administration body/court; competence of authorities; outline of the procedure).**

The special rules for the consolidation of agricultural lands create conditions for concluding agreements between 13 types - state, municipal, private actors - after that, under this procedure deals are concluded - lease for a period of one year (Art. 37 c ALOUA).

*Types of participants.* A part of them are directly affected or involved in the processes described in Art. 37 of the ALOUA, including large owners and tenants, large land users in the land area; as well as state and municipal bodies - Municipal Agricultural Office, Regional Agricultural Office, Municipality, Mayor, Director of Regional Agriculture Directorate, Municipality (Town Hall), Municipal Councils, and, of course, the Distribution Commission. Indirectly involved in the procedure are entities providing documents such as: the Registry Agency, Cadastre Agency, State Fund Agriculture and even the Minister of Agriculture, Food and Forestry, etc.

#### *A short description of the procedure under Art. 37 of the ALOUA*

Owners and users until 31 July of the corresponding year submit their applications under Art. 69 and 70 of the Code for Application of the ALOUA, to the Regional Agricultural Agency, the ones – for the use of land, and the others – for their intention to participate in the procedure. The Regional Offices of the Department of Agriculture and the Regional Agricultural Agencies notify owners who have not filed an application, about the consequences. The land users agree on the allocation of land for which no application has been submitted, for its cultivation. Until 15 August cases are established of collisions between applications for declared circumstances and grounds for use. The Commission prepares a project for an official allocation when an agreement has not been reached or it does not cover all lands, by 15 August for the corresponding year (Art. 37c, para. 3 of the ALOUA). The project includes the owners and/or users of agricultural properties who have declared so – Art. 37b, para. 3. ALOUA. By 25 August the Regional Agricultural Agency publishes the register and the usage card in the City Hall and in the Agency building. The same is done by the Municipality and the Regional Office of the Department of Agriculture. The Commission prepares the official agreement by 20 September, and announces it. Changes can be made by 25 September, with the Commission and stakeholders introducing a proposal and a allocation report. The Director of the Regional Office of the Department of Agriculture issues an order under Art. 37c, para. 4 of the ALOUA not later than 1 October, including all estates, as well as the rural roads and irrigation channels distributed within the boundaries of the plots in accordance with the agreement. The institutions described above announce the agreement and the annexes by 10 October. The properties involved in the agreement cannot be the subject of a transaction with a material legal, transferring effect. Territories belonging to the State Land Fund and the District Land Fund, which are a part of the allocation but cannot be separated into individual plots, may be granted following an order by the Minister of Agriculture, Food and Forestry of the Republic of Bulgaria or the Mayor of the Municipality and a subsequent contract concluded for

1 year between them and the users. It is allowed for roads to be included in the land division agreements – Art. 37c, para. 16 of the ALOUA – the grounds for that being the order by the Director of the Regional Office of the Department of Agriculture or of the Mayor of the Municipality, the latter following a decision of the Municipal Council. The payments of the sums from the allocated properties are subject to submission to the account of the Regional Office of the Department of Agriculture within 3 months of the publication of the order by the Director of the Department. The payment is equal to the average annual rent payment for the plot, and it is made not later than 3 months from the receipt of the order by the users. If they fail to meet the deadline, they owe three times the amount of the rent payment.

It is important to note that the failure to comply with the deadline - until 31 July (failure to submit the application and the declaration under Art. 69-70 of the Code for Application of the ALOUA), deprives farmers of the right to cultivate their land within the next agricultural year.

**b. Private legal (rights of pre-emption, repurchase, acquisition, etc.; authorised entities; procedure leading to the execution of these rights).**

The bodies involved in the process of transferring ownership of agricultural land are the Registry Agency, Cadastre Agency, the Agriculture and Forests Office, Municipal Office - local taxes and fees; Municipal Office of Civil Status, Notary, Banks. The participation of an attorney is optional.

Transactions with subject agricultural land, as in the case of sale, donation, establishment of property rights related to the use of the property, etc., as well as in the case of lease, rents, are always *inter vivos*. The conclusion is made after the consent of the parties - only the transferor and the alienator of the property. In order to have a translative effect, it is mandatory to provide documents proving "ownership".

Usually this is done by the owner/co-owners of the property. These are a notary act (or a decision of the Agricultural Office for property recovery, sometimes a *constitutional* court ruling after a legal dispute. Other documents include: scheme of the property, tax assessment of the property, certificate of inheritance, etc. Circumstances are declared: for a lack of public obligations under Art. 264 of the Tax Insurance Procedure Code (only by the transferor of the property), and declarations of family status under Art. 25 para. 8 of the Notaries and Notary Activities Act (by all parties).

The procedure starts after a request to the Notary, who, after checking the circumstances, confesses the deal (where there is no notary, the registry judge performs these functions). The new property act is entered into the Registry Agency (Property Register). An attorney may be involved in the proceedings. Authorization is always explicit and the form is notary. Lease and rents are transactions without the effect of ownership being translated. The form is different from those of the sale, donation, etc. Bulgarian law does not allow a clause in a lease or rent contract, through which to

acquire ownership. In leasing, this is possible. Administrative bodies are the same as in cases of buying and selling and rent.

The following charges are paid:

- *Notary fee under the Tariff, determined by the Notaries and Notary Activities Act;*
- *Fee for registration of the act - under the Tariff on State Fees of the Registry Agency;*
- *Attorney fees (when an attorney is involved) - under the Minimum Attorney Fees Tariff under the Attorney Act.*

**c. Entities privileged for the purpose of *inter vivos* transactions; criteria for their individualisation.**

Other advantages should also be referred to. They are rather indirect and follow not from the transaction itself but are related to the conclusion of lease of agricultural land. In practice, in lease deals there is no advantage at first glance in favour of the producer at the expense of the owner of the property. We believe that the advantages derive predominantly not only from the ability of certain entities to be more adaptable due to their "market power", but also from the "procedural mechanisms". The texts in the procedure under art. 37c of the ALOUA and Art. 69-72 can also be interpreted as an advantage for a certain very narrow circle of legal entities. This procedure, despite its compliance with the concept of agricultural efficiency (Art. 39 (A) TFEU), creates conditions both for the consolidation of the agricultural resource, and for a number of advantages for a part of the large agricultural producers and owners of agricultural land, as opposed to small landowners and land users. Advantages in terms of:

- Benefits related to deadlines - some of the deadlines are short and cannot be observed by all farmers - the question arises, even if they are reasonable in accordance with the principle of legal efficiency. Failure to observe any of the terms leads to a loss of the opportunity to use personal property for one year.
- Benefits in connection with the way of obtaining information regarding the use of properties. The question is posed whether it is accurate for the notification system (for the declared circumstances under Art. 69-72 of the Code for Application of the ALOUA) for participation in the procedure, to be localized and bound to the settlement. A notification procedure linked to one of the registers would be much more adequate for all co-owners (many of whom are no longer living in the settlement). An improvement of this procedure would be consistent with the principle of legal security.
- Art. 4a (2) of the ALOUA provides for the possibility for a contract for rent of agricultural land with a term of more than one year to be concluded by a co-owner or co-owners of agricultural land, owning more than 25% ideal parts of the joint-ownership property, or by a

person authorized by them. In such cases the relations between co-owners are settled according to Art. 30, para. 3 of the Property Act. The latter creates an opportunity for persons holding less than one third of the property, to manage agricultural land. We believe this offers advantage in negotiating to large companies, which can reach agreements even to the detriment of co-owners of agricultural land.

### **3.5. Instruments of the specific regulation concerning *mortis causa* transactions:**

#### **a. At the grant of the legacy (special categories of inheritors, division of inheritance into "agricultural" and "non-agricultural", etc.)**

Under the original method - following inheritance under a law - the Bulgarian legislator has provided for advantages in favour of property owners who are engaged in agricultural activities, which can be interpreted as follows:

- The heirs who lived with and took care of the legator, receive as an inheritance the ordinary household objects, and if they are engaged in agriculture and are not correspondingly rewarded in another way - also the farmer's inventory of the legator (Art. 12 (1) of the Inheritance Act);
- Co-heirs who, during the life of the legator, have helped to increase the inheritance, may, if they have not been rewarded otherwise, require that, in the course of division, that increase be calculated in their favour; the increase can be granted in the form of property or in cash (Art. 12, para. 2 of the Inheritance Act).

#### **b. At the distribution of the legacy (preferred beneficiaries in the case of agricultural property, criteria for their individualisation, issue of refunds, etc.).**

In inheritance transactions, such as inheritance division:

- The heir farmer who lives in or near the settlement where the hereditary uncovered real estate is located, in order to supplement the land he owns up to the size of the average type of private agricultural labour holding, can buy from the other co-heirs who do not live in or near the same settlement, or are not engaged in farming, their shares of uncovered real estate (Art. 69, para. 3 of the Inheritance Act).

### **3.6. Evaluation of the special regulation of agricultural property transactions in the light of agrarian literature:**

### a. As regards efficiency

As I have already been able to explain - agrarian law represents a new doctrine for Bulgaria. Bulgarian legal science rather uses *material and obligation law* as legal branches dealing with the social relations on agricultural land and property. Even though, the special legal regime for agricultural land should be distinguished in terms of land arability - agricultural land is divided into arable, unarable, respectively meadows (Kourteva St., Stoykova U., 2012. Analysis of the Legislation in Bulgaria - Legal Framework of Municipal Meadows and Pastures).

On the other hand, the literature on agricultural land reviews the types of transactions also in terms of the possibilities for translating property. Such is the research on market transactions - purchase, lease, rent<sup>1</sup>.

Research is also carried out with regard to: "*Analysis of the normative regulation of the public relations in land use regarding ownership, use, conservation and management of the agricultural land in Bulgaria*", Working group under Order № RD 09-771 of 3 October 2017, Ministry of Agriculture, Food and Forestry. The latter not only outlines the Bulgarian legislation on agricultural land since the beginning of the third Bulgarian State until now (1878-2017), but also makes some interesting conclusions about the possibilities and mistakes in the attempt for integration through the consolidation of resources (land ownership). Legal, but also social effects related to the "substitution" of property acquisition transactions with property utilization.

A lot has been written on the influence of fragmentation on ownership and market relations related to agricultural land<sup>2</sup>.

On the political, social and other conflicts resulting from the transformation of agricultural property, problems with the distribution of agricultural land, see *Yovchevska* (monograph), on the institutional nature of agricultural land - the deformation of legislation following from non-market procedures, the problems of integration of agricultural producers, the subsequent restrictions on access to rights and their assessment as economic effects, see *Georgiev, Roycheva, 2018*).

---

<sup>1</sup> Nikolova G. "Agricultural lease contract", Sofia, New Star, 2016, Zlatev, Br. The Nature of the Land Lease Agreement and its Comparison with the Rental Agreement of Agricultural Land Journal: Professional Education, Issue Year: 20/2018 Issue No: 4 Page Range: 391-398, Registration of the termination of the lease contract on agricultural land. - Contemporary Law, 2016, № 1, 19-40.

<sup>2</sup> Dirimanova, V., 2008, "Economic Effect Of Land Fragmentation-Property Rights, Land Market And Contracts In Bulgaria" – Icar, Shaker Verlag, Aachen, 2008, p. 167; Boliari, N., Does Land Fragmentation Affect Land Productivity? Empirical Evidence from Bulgaria. Review of Agricultural and Environmental Studies, 94-3, 273 – 302, 2013; 14. Natalia Boliari, 2017, Can Partible Inheritance Explain Land Fragmentation? The Case of Bulgaria, Agrarian South: Journal of Political Economy: A tri-annual Journal of CARES.

#### **4. Are there any restrictions as to the acquisition of agricultural property by foreigners in your country?**

If so, characterise these rules, taking for example the following issues into account:

4.1. The values and purposes which justify the restriction on foreigners' acquiring agricultural property.

4.2. Objective and subjective scope of the restrictions (definition of foreigner, alternatively various classes of foreigners, taking the prohibition on discrimination provided for in EU law into account; definition of agricultural property, farms, etc. taking criteria for their individualisation into account).

4.3. Instruments for the control of foreigners' acquiring agricultural property:

a. Public legal (permits, etc.)

b. Private legal (pre-emption, repurchase, etc.).

4.4. Evaluation of restrictions on foreigners' acquiring agricultural property in the light of academic discussion of farm law:

a. As regards efficiency

b. As regards the compliance with EU law.

#### **4. Are there any restrictions as to the acquisition of agricultural property by foreigners in your country?**

The legal framework for the acquisition of agricultural land in Bulgaria by foreign natural and legal persons currently results from:

Norms of the *Constitution of the Republic of Bulgaria (CRB)* (Art. 22):

- arising from the conditions of accession of the Republic of Bulgaria to the European Union;
- established under the force of an international treaty ratified, promulgated and entered into force for the Republic of Bulgaria - Art. 5 para. 4 of the CRB;
- deriving from inheritance by law - *Inheritance Act*;
- by virtue of a legal transaction binding a cascade of normative acts;
- resulting from the possibility to acquire limited material rights on agricultural land under the conditions and by a procedure established by law - *Agricultural Land Ownership and Use Act (ALOUA)* (Art. 3, para. 7).

#### **4.2. Objective and subjective scope of the restrictions (definition of foreigner, alternatively various classes of foreigners, taking the prohibition on discrimination provided for in EU law**

**into account; definition of agricultural property, farms, etc. taking criteria for their individualisation into account).**

#### **A. Objective criteria and restrictions resulting from the concept of a “foreigner”.**

A foreigner - refers to a citizen of a foreign country who does not have Bulgarian citizenship. Here, the concept of foreign legal entities - entities registered and acquired legal power under the legal order of another country - should also be considered. States and political parties are excluded from this definition.

The limitations are:

Art. 3a (1) The citizens of the Member States of the European Union - self-employed farmers wishing to establish themselves and permanently reside in the Republic of Bulgaria, and are registered as such under the BULSTAT Register Act, may acquire the right to ownership over agricultural and forest properties for agricultural use since the day of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union.

A detailed legal analysis of these legal definitions should also include the status of "European companies" registered in Bulgaria under the terms of the *Trade Act* and the *Trade Register Act*.

#### **B. Restrictions depending on whether or not legal entities are a part of the European Economic Area.**

Their limitations result from Art. 3 of the ALOUA:

(7) 1. commercial companies in which the partners or shareholders are directly or indirectly companies registered in jurisdictions with preferential tax treatment;

2. commercial companies in which partners or shareholders are foreigners, outside the natural persons under para. 4 and 5, or foreign legal entities other than those under para. 4 and 6, as well as sole proprietorships established by such natural or legal persons;

3. joint-stock companies which have issued bearer shares.

(8) Foreign legal entities and foreign citizens may acquire the right to use agricultural land or other limited material rights over land under conditions and by a procedure established by law.

### **4.3. Instruments for the control of foreigners' acquiring agricultural property:**

#### **a. Public legal (permits, etc.)**

The Bulgarian report<sup>3</sup> from Brussels 2017 - CEDR conference reviews retrospectively the development of the legal framework related to the acquisition of agricultural land by foreigners.

The legal framework implementing restrictions on foreign nationals in the meaning of Bulgarian legislation is in the provisions of Art. 3 - 3c of the ALOUA.

The legally significant facts are:

*Amendment of the Constitution of 2005, in force since 01.01.2007, entitling foreigners to own land in Bulgaria under the EU accession treaty. A moratorium is also adopted that expires on 1 January 2014;*

*Parliament's decision of 22/10/2013 to extend the moratorium by 2020;*

*Decision of the Constitutional Court - 28.1.2014 – on announcement of unconstitutionality of the decision of the Parliament of the Republic of Bulgaria to continue the moratorium on the purchase of agricultural lands by foreigners up to 2020;*

*Amendment to the ALOUA of 04.04.2014 and veto of the President of 11.04.2014;*

*Amendment to the ALOUA and introduction of the principle of settlement (not only for foreigners and foreign companies);*

*European Commission Decision of 2015 to initiate an infringement procedure for non-compliance with EU law - free movement of people, goods, capital.*

Under the agreement on the European Economic Area, citizens/nationals of Iceland, Liechtenstein and Norway can acquire agricultural land.

A draft law is developed to amend legislation in order to remove the prohibition for foreigners to buy Bulgarian land. Restrictions remain in effect for:

- citizens and companies from countries outside the EU, such as Turkey, Macedonia, Russia, Ukraine, etc.;

---

<sup>3</sup> Christina Yancheva, Minko Georgiev, Dimitar Grekov, Dimo Atanasov, Marin Todorov, Dafinka Grozdanova, Hinrich Meyer-Gerbaulet / Agri-Land Management in Bulgaria – Current Legal State of Play Regarding Tenure, CEDR Journal of Rural Law, CEDR Journal de Droit Rural, V.3, №1, pp.26-32, 2017 – the subject has been broadly discussed.

- land cannot be acquired by companies whose partners or shareholders are foreigners or companies outside the EU.

Sources: Official websites of the Presidency of the Republic of Bulgaria, the National Assembly of the Republic of Bulgaria, the Constitutional Court of the Republic of Bulgaria and the European Commission, [www.president.bg](http://www.president.bg); [www.parliament.bg](http://www.parliament.bg); <http://www.constcourt.bg>; <http://ec.europa.eu>

#### **b. Private legal (pre-emption, repurchase, etc.).**

Mechanisms for repurchase of agricultural land currently exist.

According to Art. 3b., foreigners who acquire the right to property over agricultural land by inheritance by law but do not meet the requirements provided for in the Treaty of Accession of the Republic of Bulgaria to the European Union, or otherwise not provided for in an international treaty ratified by the order of Art. 22, para. 2 of the Constitution of the Republic of Bulgaria, shall be obliged within three years from the opening of the inheritance to transfer the ownership to persons entitled to acquire such properties.

(2) For persons under para. 1, to whom the right to property over agricultural land has been restored, the three-year period for the transfer of property shall run from the moment of its restoration.

(3) In case of non-observance of the term under para. 1, the state may repurchase the agricultural land at prices determined by an ordinance of the Council of Ministers.

Here, persons from the EU for whom formally the deadline expired in 2007, should be separated.

#### **4.4. Evaluation of restrictions on foreigners' acquiring agricultural property in the light of academic discussion of farm law:**

##### **a. As regards efficiency**

It is hard to estimate how many foreign farmers have failed to acquire agricultural land due to these limitations. It is a fact that until the entry into force of the TFEU, foreigners in the country suffered a limitation on the acquisition but it cannot be stated that this situation seriously affected their activities. It is for this reason that many of the foreign citizens still continue to be owners of

agricultural lands, through the ownership and management of Bulgarian companies, or through their participation in “funds for the purchase of agricultural land”. It is a fact that despite the increased consolidation, the outflow of foreign companies, which buy Bulgarian agricultural land, is ongoing. Foreign direct investment in agriculture is also decreasing.

**b. As regards the compliance with EU law.**

There is still an infringement procedure against Bulgaria initiated by the EC to establish non-compliance with EU law.

**5. Given the data available to you, does the issue of the so-called land grabbing exist in your country and are there any regulations concerning it, to counteract this phenomenon?**

If so, characterise them, taking following issues into account:

5.1. Scope for land grabbing.

5.2. Instruments to counteract this phenomenon.

5.3. Evaluation of the efficiency of adopted instruments to counteract land grabbing as regards their efficiency.

**5. Given the data available to you, does the issue of the so-called land grabbing exist in your country and are there any regulations concerning it, to counteract this phenomenon?**

Such is the right of young agricultural producers to use land from the State Land Fund without an auction (up to 50 dka, up to 30 years of agricultural land use) - *Draft Law on Land Relations*.

**5.1. Scope for land grabbing.**

It is believed that most of the arable land is under the power of land funds - 6 in number, over half of it belonging to only one company.

We would like to comment on land grabbing in a different perspective. More than 85% of arable land is in the hands of a few large legal entities. We are more concerned about the *local* conquest of agricultural land. In most of the small settlements, the greater share of the arable land -

between 70 and 90%, is practically processed by three to no more than five large farmers. In some places this number is smaller. Local grabbing of agricultural land also leads to a restriction of the access of small farmers to it. Eventually, they leave agricultural markets and turnover because of the inability to consolidate resources. This leads in practice to a "denial of ownership" and has a particularly negative impact on the demographics of rural communities.

On the other hand, dualism itself in theory has been transferred to the CAP, on the one hand, in the fulfilment of some goals at the expense of others, Art. 39 of the TFEU, and in particular the objectives under point 1 "efficiency" and point 3 "market stability". Secondary EU law has embraced the integration of producers, which in turn may even be the basis for resource conquest, Regulation 1308/2013. These measures are transposed into the legislation of the Member States - in Bulgaria - including at a horizontal level, Art. 37 of the ALOUA. Finally, subsidies per unit area as an opportunity to "maximize" profits based on sustainable rents – and not the production of new goods - Regulation 1307/2013 transposed with the help of The Farmers' Support Act.

## **5.2. Instruments to counteract this phenomenon.**

In practice, such tools to prevent "land grabbing" are not present. The report clearly recognizes that it is easier to refer to instruments that, in the form of support for property consolidation, actually support agricultural land grabbing. Such are found in:

- the consolidation procedure - Art. 37c of the ALOUA (and Art. 69-72 of the Code for Application of the ALOUA) create an advantage for large producers on a given land area. Due to a set of rules creating the basis for better adaptability of these farmers at a local level, the process of "land grabbing" is enhanced - subject to the exercise of the constitutional right under Art. 17 (3) of the Constitution of the Republic of Bulgaria.
- a number of provisions creating possibilities for advantages and hence unlimited acquisition by large companies registered under the Special Investment Purpose Companies Act. See Art. 27 para. 1 and para. 2 item 1; Art. 47a para. 1 and para. 4; Art. 175 and § 63 para. 1 to 3 of the Corporate Income Taxation Act.
- the provision of Art. 4a of the ALOUA, which entered into force in May 2018, giving the right to rent for a period of 10 years to the co-owner who has more than 25% of the ownership over the agricultural land - casting doubt on compliance with basic legal principles, namely those for the protection of the property institute. The *Resolution on a constitutional case № 8/19 June 1995 of the Constitutional Court (CC) № 12/1995: "The inviolability of private property*

also includes a lack of limitation of the right of disposition“ on property management, is not observed.

- the provision of § 15 of the ALOUA from the Amendment and Supplement Act of the ALOUA, which introduces a rule on "density" of animals in lease contracts concluded for lands from the State Land Fund with the purpose of introducing retroactively (*ex tunc*).
- after the amendment of the State Property Act, a presidential veto was subsequently imposed - Decree № 124 on the return to the National Assembly for new discussion of provisions of the Amendment and Supplement Act to the State Property Act adopted by the 44<sup>th</sup> National Assembly on May 15, 2019 – in order to stop the functioning of provisions creating imbalance between public and private interest. The Head of State believes that this creates inequality between small and large owners of agricultural land and forest areas who will be compensated in a different way. The amendment to § 3, point 1 of the Amendment and Supplement Act to the State Property Act (concerning Art. 39b (2) of the State Property Act), *Constitutional Court Decision № 6 of 2013* is not observed.
- § 4 creates para. 3 in Art. 42a of the State Property Act, which provides for a special regime for the compensation for the expropriation of agricultural land and forest areas where a natural person, a legal entity or the same co-owners have such properties with a total area of over 50 decares. *Decision № 14 of 1992 of the Constitutional Court of the Republic of Bulgaria* for the interpretation of Art. 6, para. 2 of the CRB (the principle of the rule of law - "everyone is equal before the law"), is not observed.

Subsequently, the Parliament of the Republic of Bulgaria rejected the presidential veto.

*Sources: Official website of the Supreme Court of Cassation;*

*Official website of the Presidency,*

*<http://www.vks.bg>; [www.president.bg](http://www.president.bg)*

### **5.3. Evaluation of the efficiency of adopted instruments to counteract land grabbing as regards their efficiency.**

The processes of land grabbing have been described in detail in the reports<sup>4</sup>:

---

<sup>4</sup> Medarov, G. (2013), 'Land concentration, land grabbing and land conflicts in Europe: The case of Boynitsa in Bulgaria', in Franco, J.C. and Borrás, S.M. (eds.), Land concentration, land grabbing and people's struggles in Europe, Amsterdam, Transnational Institute, pp. 182-210.; Sylvia Kay, Jonathan Peuch, Jennifer Franco. 2015 Directorate-General For Internal Policies Policy Department B: Structural And Cohesion Policies Agriculture And Rural Development Extent Of Farmland Grabbing, European Union In The EU, 2015.; S. Kay 2016 Land grabbing and land concentration in Europe A Research Brief, Published by Transnational Institute for HOTL Amsterdam, December 2016; Georgiev, M. and Roycheva, A. 2018 Rules on Integration of Organizations Using Agricultural Land—An Obstacle for Competition, Book of Proceedings, V.14, Iss. 2, pp.543-554 Available at SSRN 3275647, 2018; Roycheva, A and Georgiev, M.. 2018 Consolidation of property rights or competition in

Following the European Parliament decision on annual restrictions on direct payments to farmers to the level of EUR 100 000, a deduction (normative recognition of wage costs) of agricultural producers up to 50% of wages and at least 5% of the national direct payments to small and medium-sized farmers with extra payment per hectare - we believe that the tools for counteraction have not yet manifested any effect on the territory of Bulgaria.

There are indeed measures such as those from the Rural Development Program of the Republic of Bulgaria 2014-2020 (RDP). For example, measure 13 and sub-measures 13.1 and 13.2 - for payment in areas with natural constraints. In the description of the measure in the RDP project, it is explicitly stated that in the Republic of Bulgaria the scheme for areas with natural constraints under the First Pillar shall not be applied.