

## BRIEF ON LAND BANKING STUDY

This brief is prepared for the purposes of the consultation with the participants in the FAO webinar “Application of land banking instruments in Europe and Central Asia - Consultation on land banking study”. The webinar is held on 11 December 2020. The consultation will relate to the main findings and key recommendations of the FAO exploratory study “European Good Practices on Land Policy Instruments Focus on Land Banking”. The Study is being prepared by VŠĮ Finansų teisės institutas (Institute of Financial Law) as service provider for FAO and in close collaboration with FAO REU.

This brief overviews the main elements and findings of the Study and provides for the key recommendations resulting from the Study. The Study will be finalized taking into account the feedback collected during the webinar. The participants of the webinar and other stakeholders are invited to provide their comments regarding the key recommendations of the Study during the Webinar or via email latest on 11 December 2020 to Tomas Versinskas ([tomas@finlaw.lt](mailto:tomas@finlaw.lt)).

### 1. OBJECTIVES OF THE STUDY

Many countries in Western Europe have a long tradition for applying land banking instruments as part of an active land policy. The FAO experiences in programme countries in Europe and Central Asia (ECA) clearly demonstrate that land banking instruments can also be relevant in countries in the Western Balkans, Eastern Europe, Caucasus and Central Asia. However, there has so far been no comprehensive document, which could provide practical guidance and recommendations to policy and decision makers, lawyers and land tenure professionals in the countries. During FAO projects in the region, it was identified that the understanding of land banking, its mechanisms and benefits often remain low and there is a clear need for guidance on the matter.

The Study intends to contribute to closing this gap by providing comprehensive information and will be useful as a tool for professionals and policy-makers as well as for FAO teams working with land management instruments and their development in the respective countries. The Study provides key recommendations on land banking, taking into account their potential application in the countries introducing land banking. All these recommendations are provided, taking into account the general VGGT guidance and the relevant international law on human rights.

### 2. METHODOLOGY

The initial draft of the Study was prepared based on desk research, involving consultations via email and online interviews with key persons in the analyzed countries. The countries analyzed as examples of good land banking practice were selected based on two key criteria: (i) presence of and experience with land banking in the country; (ii) presence of land banking functions that could be relevant for the countries interested in introducing land banking. This group of Western European countries consisted of Denmark, France, Germany (Mecklenburg-Vorpommern), the Netherlands and Spain (Galicia). A separate analysis of the situation with land banking in Central Europe was conducted, including countries, which have taken concrete steps to introduce land banking into their land management systems. This group of countries included Croatia, Hungary, Lithuania and Poland. The Study will be finalized taking into account the comments from the identified key persons in the analyzed countries, review comments from FAO land tenure, legal staff and international consultants, as well as comments from the participants of the Webinar. The process is supervised by the FAO Regional Office for Europe and Central Asia (REU).

### 3. OUTLINE OF THE STUDY

The draft study report first presents the context of land banking in Europe, analyses the good European practice and then draws relevant conclusions and provides policy and operational recommendations, which may be applicable in countries introducing land banking. The study report consists of five chapters, where:

- Chapter 1 offers an overview of the concept of land banking and provides an initial definition of a land bank. It also presents the key provisions of VGGT related to land banking. It further elaborates land banking as an integral part of land management systems in many countries in Western Europe. The objectives, the scope, the target audience and the methodology of the study are presented. The chapter concludes with the presentation of the outline of the study and its application in practice.
- Chapter 2 presents the experiences with land banking in Central and Eastern Europe, with the particular focus on Croatia, Hungary, Lithuania and Poland. It underlines the need for this instrument in Eastern Europe and Central Asia building on recent FAO project experiences and work.
- Chapter 3 concentrates on the analysis of the national land banking experiences in the selected countries in Western Europe, namely Denmark, France, Germany (Mecklenburg-Vorpommern), the Netherlands and Spain (Galicia).
- Chapter 4, based on the analysis performed in Chapter 3, focuses on the identification of good European land banking practices and their applicability in Eastern Europe and Central Asia.
- Based on the identified good practice, Chapter 5 provides the recommendations and perspectives for land banking in Eastern Europe and Central Asia. The Chapter also provides for a land banking definition resulting from the Study.

### 4. LAND BANKING EXPERIENCES IN EUROPE

While land banking is a widely applied land management instrument in Western Europe (e.g. in Belgium, Denmark, France, Germany, the Netherlands, Portugal, Spain) the analysis clearly identified that efforts to introduce full scale land banking instruments in Central and Eastern Europe have until recently largely failed. The examples of Western European countries, which apply different types of land banking functions (e.g. acquisition and sale and lease facilitation) show that land banking may be efficiently used in different conditions and adapted accordingly. Different countries apply different combinations of land banking functions. Some of the Central European countries (e.g. Croatia, Hungary, Lithuania) have made efforts to apply some of these land banking functions in their national context, assigned responsible institutions and conferred them some of the necessary rights to operate. However, mainly due to the lack of a clear and sustainable policy on land banking these efforts have so far failed. The experiences show that clear policy decisions must be made to start a successful implementation of the instrument and a long-term policy vision established to make land banking sustainable.

### 5. NEED FOR LAND BANKING IN EASTERN EUROPE AND CENTRAL ASIA

As seen in recent FAO projects related to land management in Eastern Europe and Central Asia, there is in a number of CEE countries (e.g. Armenia, Azerbaijan, North Macedonia, Montenegro and Turkey) clearly a renewed interest to explore the options to develop land management instruments such as land banking (including the lease facilitation) and related instruments like an active management and privatization of state-owned agricultural land. The interest and need for such instruments is driven either by the need to support the introduction of land consolidation and building up fully operational national land consolidation programmes or by a political wish to combat excessive land abandonment. Some countries have both drivers at the same time. Agricultural land markets are in general still weak in many countries in Eastern Europe and Central Asia and the above mentioned land management instruments including land banking are strongly contributing to their development. The ongoing and planned FAO project activities at country level will greatly benefit from the identification of good European practice for land banking.

## 6. KEY RECOMMENDATIONS OF THE STUDY

While the situation and the targeted objectives differ in specific countries, the performed analysis identifies practices related to land banking, which proved their efficiency and therefore may serve as a basis for the formulation of the recommendations provided for in Chapter 5 of the Study. The selected key recommendations of the Study are presented below for the consultations with the participants of the Webinar. Evidently, the recommendations should be adapted to the situation in each specific country.

### General recommendations

1. Taking into account the definition of a land bank provided in the FAO Legal Guide on Land Consolidation<sup>1</sup> and the results of this Study, the following definition has been formulated:

*Land banking is a set of systematic activities implemented by a public institution, performing the intermediate purchase, sale or lease of land in rural areas in order to increase land mobility, to facilitate development of agricultural land markets, and to pursue public policy objectives related to agricultural and rural development, sustainable land use and/or implementation of public projects related to nature restoration, climate change adaptation and mitigation, large-scale infrastructure etc.*

2. It is recommended to consider applying land banking in the country to support the implementation of the following objectives:

- Agricultural development
- Rural development
- Implementation of nature, environmental and climate change projects
- Implementation of public infrastructure projects

3. To support the implementation of the aforementioned objectives it is recommended to avail the land bank to perform the following core functions:

- Acquisition, intermediary management, eventual improvement and/or restructuring, sale and/or exchange of land on the land market or its use or disposal in the frame of land demanding public purpose projects (e.g. environmental and infrastructure projects), if feasible implemented using land consolidation.
- Facilitation of lease of agricultural land through intermediation between landowners not using their land and local farmers interested in additional land.

4. Besides the aforementioned core functions it is recommended to consider conferring to the land bank the following accessory functions:

- Active management of state-owned land to support the attainment of the overall agricultural, rural development and other relevant policy objectives of the state, e.g. providing access to land of small family farms and young farmers or other target groups.
- Privatization of the state-owned land to support the attainment of the overall agricultural, rural development and other relevant policy objectives of the state, e.g. providing access to land of small family farms and young farmers other target groups.
- Temporary acquisition of land from the farmers in economic distress and subsequent lease-back and sale-back of land.

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<sup>1</sup> In Veršinskas, T., Vidar, M., Hartvigsen, M., Mitic Arsova, K., van Holst, F. and Gorgan, M. 2020. *Legal guide on land consolidation: Based on regulatory practices in Europe*. FAO Legal Guide, No. 3. Rome, FAO. <https://doi.org/10.4060/ca9520en>, p. 18 a land bank is defined as “a public institution, performing the intermediate buying, selling or leasing of land in order to increase land mobility, to facilitate the rural land market in general, and to pursue public policy targets related to sustainable rural land use in particular”.

5. Depending on the land banking instrument, it is recommended to apply either a project based approach (e.g. for the acquisition, intermediary management, sale and/or exchange of land), where the relevant function would be applied only in selected intervention areas or in a countrywide approach (e.g. for lease facilitation), where the relevant instrument would be applied throughout the whole country. This approach reflects the fact that the land bank will always have limited budget available, which may be wasted if not applied in a coherent and systemic manner. In particular, it is important that the land bank does only purchase land in areas planned for future project interventions.

6. In land banking activities, it is recommended to apply a “demand driven” approach, ensuring the sustainability of the results achieved, and it is recommended to implement any project-based land banking interventions only in the areas, where there are local farmers interested in the use of additional agricultural land or it is politically decided to implement public purpose projects taking private owned agricultural land out of production.

### **Integration of land banking with the overall land policy of the country**

7. The land banking instrument should be fully integrated into the overall land policy of the country with clear objectives within the overall policy.

8. The land banking instrument should be integrated with eventual programmes for privatization of state-owned agricultural land, using the existing available state-owned agricultural land as an initial asset for the land bank and combining land banking and state-owned land privatization instruments in the frame of public purpose projects.

9. It is recommended to establish land banking instruments in support of a national land consolidation programme and the implementation of land consolidation projects.

10. Land banking should be performed in a systemic way, ensuring the attainment of the defined land policy objectives, rather than performing random interventions into the land market.

11. Land banking should, when feasible, be performed in combination with other land management instruments, like land consolidation and land privatization.

12. Land banking should be used to support specific target groups of stakeholders (e.g. young farmers and owners of small farms) providing access to additional agricultural land.

13. Land banking could be integrated with early retirement schemes, e.g. funded from Rural Development Programmes (RDP).

14. Land banking could be combined with the relevant existing administrative measures, such as incentives, sanctions and/or taxation measures (e.g. sanctions and/or higher taxation for the abandoned land), encouraging landowners and/or land users to participate in the activities implemented by the land bank (e.g. lease facilitation).

### **Developing the legal framework for land banking**

15. The legal provisions regulating land banking should be integrated into the legal acts of a wider scope, such as a Land Code, Law on Agricultural Land, Law on Land Consolidation and/or other relevant legal acts.

16. The form of legal acts regulating land banking will depend on the land banking model and the relevant institutional framework chosen by the specific country. For example, if it is decided to establish a land bank in the form of a state agency, the regulation will differ as compared to the situation where the land bank is a state enterprise or other type of public purpose entity.

17. The regulatory framework on land banking should consider at least the following aspects:

- Define the objectives of the land banking instrument.
- Identify the entity responsible for the land banking activities in the country.
- Provide for the legal and operational tools that may be used by the land bank, including acquisition, sale, exchange, leasing out of the state-owned land, lease intermediation.
- Establish the legal and operational linkages between land banking and other land management instruments, such as land consolidation and privatization of the state-owned land.
- Provide linkages between land banking and the planning and implementation of land-demanding public projects, such as environmental and infrastructure projects.
- Provide linkages between the activities of the land bank and the relevant incentives, taxation and/or administrative sanctions designed to combat land abandonment.
- Establish the funding mechanism of the land bank, which is recommended to be based on a revolving land banking budget.
- Define the mechanisms of acquisition and sale of the land by the land bank.
- Consider to provide for a pre-emption right, allowing the land bank to acquire the agricultural land being sold on the land market.
- Establish a system of safeguards ensuring that the land banking instrument is not misused for personal gain or otherwise abused.
- Provide for the system of regular evaluation and monitoring of the land banking activities.

#### **Establishing an institutional framework for land banking**

18. It is recommended to assign or establish a public entity (land bank) to perform specific land banking functions.

19. Depending on the national legal system, the land bank may be of various legal forms. For example, the land bank could be established in the form of a government institution, state agency or state enterprise. The choice of the legal form should ensure that the land bank is able to fully and efficiently perform its activities.

20. The legal form of the land bank and the relevant operational arrangements should ensure that the land bank is availed to take rapid decisions on the land market with regard to the acquisition, leasing out, sale and/or exchange of land.

21. The legal form and the relevant operational arrangements of the land bank should ensure that the land bank is able to establish and manage a revolving budget, which would not depend on the yearly state budget and could be used whenever necessary to perform relevant land banking activities.

22. The supervision of the land bank should be performed at least by the Ministry responsible for agriculture. It is recommended to establish an Advisory Board to the land bank with state, civil society, academia and private sector representatives, which would contribute to the transparency and efficiency of the work of the land bank.

23. The decision powers of the head of the land bank to acquire or sell land should be limited by pre-defined thresholds. If the amount of the respective transactions is above the defined threshold, a prior permission to implement the transaction should be required from the supervisory institution. The amount should not be so low as to force all or most transactions into that category.

24. In line with the objectives aimed by the land bank it may also provide services for other institutions and acquire land for the defined public needs or perform other land banking activities.

### **Definition of the most efficient mechanism of land banking in the country**

25. After the adoption of the legal framework for land banking it is recommended to test in the pilot projects, involving different land banking functions. During the pilot projects, the land banking tools most relevant to the national situation should be identified. Based on the results of practical testing of the respective legal acts, if necessary the legal framework should be amended accordingly, before launching a full-scale land banking programme.

### **Funding of land banking**

26. In the beginning of the land banking activities the land bank should be provided with the assets in the form of (state) land or funds (or both), to start land banking operations.

27. It is recommended that at least in the beginning of the activities of the land bank the basic costs such as staff, equipment, office costs are funded from the state budget. However, the usual course of land banking should be carried out based on self-financing of the land bank, as a result of its activities.

28. The land bank should have a revolving budget with the perspective of time perspective of the programme, e.g. five years ahead, which means that the funds received from the land banking activities would be reinvested in land banking and the land bank would not be required to transfer funds resulting from land banking to the state budget.

29. If necessary, additional funding for land banking could be provided for from the state budget or other national and/or international sources such as International Financial Institutions.

### **Combination of land banking with land consolidation**

30. In land consolidation project areas, where there is a large number of state-owned land, the land bank should be availed to perform land banking operations with such land to increase the land mobility and catalyze the re-allotment planning.

31. In land consolidation project areas where there are no or little state-owned land, land banking is recommended to be used to increase the land mobility and facilitate the re-allotment process, providing more options for the participants of the projects.

32. In the land consolidation project areas, where there are no or little state-owned land, land banking should be used to acquire land, which would later be used for the development of public infrastructure, like drainage, irrigation and roads and to facilitate enlargement of farms.

### **Combination of land banking with public infrastructure projects and expropriation**

33. In public purpose projects, land banking in combination with land consolidation should be prioritized over expropriation if there is a wish among the affected private farmers to be compensated in other land.

34. In land demanding public purpose projects, land banking could be used to create a pool of agricultural land to be used as a compensation for the farmers whose land is being taken out of agricultural production, thus avoiding damaging the farms structures.

### **Use of land banking to manage state-owned agricultural land**

35. The land bank could be conferred the management of a part or all of the agricultural land owned by the state. One institution could also be responsible for managing of all state land and for land banking.

36. It is recommended that at least in project areas where specific interventions are ongoing (e.g. a land consolidation project) that the existing state-owned land should be made available for the project, both for exchange and sale.

**Use of land banking in state-owned agricultural land privatization**

37. Land bank could be used to privatize state-owned agricultural land through a variety of instruments, like auctions and directly in land consolidation projects, allocating land to target groups such as small farms and farms owned by young farmers.