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# Private Sector Agricultural Tenancy Arrangements in Europe: Themes and Dimensions – A Critical Review of Current Literature

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All views, interpretations, recommendations, and conclusions expressed in this publication are those of the author and do not necessarily those of the supporting or cooperating organizations. The Land Tenure Center has formatted this paper to conform with others in the Working Paper Series but has not formally edited the contents.

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**1. INTRODUCTION**

- 1.1 Although there is widespread support for the “ideal model” of agricultural production being based around the owner-occupier farmer (Waedekin 1992), it is recognized that, for a variety of reasons, this ideal is neither always attainable nor desirable. Of particular significance to Europe is the current restitution of former state land in central and eastern Europe and the former Soviet Union. While, at some level, most of the nation-states wish to return agricultural land to the private sector, there is concern about how this is achieved, particularly in to ensuring equity between those originally dispossessed and those who have since worked the land.
- 1.2 In addition, there is also a need to ensure that farming becomes competitive when exposed fully to world markets (Lerman, Brooks, and Csaki 1994). This means that farmers are likely to require the flexibility to expand their businesses in circumstances where they may not have the capital to purchase the additional assets. This is equally a problem throughout Europe, and particularly in countries like Finland, which already has the smallest average size of farms in Europe (Torvela and Siitonen 1992). In these cases, and many others, the land lease may be an equally, or more, appropriate vehicle for agricultural production than outright purchase.
- 1.3 Evidence suggests that the proportion of private land available for letting outside the family is largely a function of the degree to which statutory regulation reduces the freedom of landlords to negotiate the terms of land leases (Kerr 1994; Stockdale, Lang, and Jackson 1996). While such regulation may be necessary to protect the interests of the parties, the long-term outcome can often be to limit access to suitable landholdings, particularly for those young farmers without an agricultural background.
- 1.4 While, in the past, some element of this structural imbalance has been overcome by state intervention in the form of compulsory acquisition and redistribution of land, it is recognized that such systems no longer find either technical or political favor in many countries (Herrera,

Riddell, and Toselli 1997). Yet the need to find suitable systems for agricultural tenancy reform remains paramount as a means both of sustaining rural communities generally and, in the case of the PHARE and TACIS countries in particular, of establishing mechanisms suitable for matching the demand for and supply of private land for rent.

- 1.5 On this basis, the United Nations Food and Agriculture Organization (FAO) has recently commissioned a study of agricultural land tenure systems in order to identify elements of good practice in existing arrangements for the leasing of private sector agricultural land. This report is confined to a consideration of and commentary on the existing literature on tenure and tenancy arrangements as a basis for identifying examples of good practice. For the purposes of establishing good practice, this report concentrates on the market economies of northern and western Europe, predominantly the fifteen current member states of the European Union (EU), while being aware of the principal dimensions of land reform in central and eastern European (CEE) and former Soviet Union (FSU) countries.
- 1.6 As table 1 illustrates, the member states of the EU vary considerably in terms of land use, with agricultural land accounting for less than 10 percent of total land area in Sweden and Finland, and over 60 percent in Denmark, Ireland, and the United Kingdom (UK). Farm holding size displays an equally broad range, with an average of less than 10 hectares in Greece, Italy, and Portugal, to over 30 hectares in Denmark, France, Germany, Luxembourg, and Sweden, and over 70 hectares in the UK. Ownership of land shows rather less variation across the EU, with only Belgium, France, Germany, and Luxembourg having less than half their agricultural land in owner occupation. Of the remainder, Sweden and the UK have 55 percent and 64 percent, respectively, of their agricultural land in owner occupation, while the remainder have over 70 percent. Generally, agriculture contributes approximately 3 percent of national gross domestic product (GDP), although in Belgium, Germany, Luxembourg, and the UK it is less than 2 percent, while in Finland and Ireland it is over 6 percent and in Greece it is nearly 15 percent.
- 1.7 While there is a substantial literature on tenancies and tenure systems in some member states, particularly France, Germany, and the UK, for others, particularly the newer members (Sweden, Finland, and Austria), it has proved extremely difficult to obtain any literature relating to the landlord and tenant system for agricultural land. In addition, there are a number of pan-European sources of information, particularly relating to (and generated by) the EU itself as well as from organizations such as the UN Economic Commission for Europe (ECE) and FAO and from a growing number of comparative texts covering some or all of the EU member states.

**TABLE 1 Land use statistics**

	<b>Austria</b>	<b>Belgium</b>	<b>Denmark</b>	<b>Finland</b>	<b>France</b>	<b>Greece</b>	<b>Germany</b>	<b>Ireland</b>
Total population* (in millions) 1994	8.0m	10.1m	5.2m	5m	57.9m	10.4m	81.4m	3.6m
Land mass* (in square km) 1994	83,860	30,518	43,080	338,150	543,965	131,625	356,718	68,895
Cultivated/farmed area† (in 1,000s ha) 1995	3,425.1	1,337.4	2,726.6	2,191.7	28,267.2	3,464.8	17,156.9	4,325.4
Agricultural land as % of total land area* 1994	41.1%	44.7%	62.5%	7.7%	54.9%	30.1%	48.5%	63.2%
Number of holdings† (in 1,000s) 1995	221.8	71.0	68.8	101	734.8	773.8	566.9	153.4
Average holding size† (in ha) 1995	15.4	18.8	39.6	21.7	38.5	4.5	30.3	28.2
% owner-occupied† (% of agric.land) 1995	78%	33%	77%	78%	37%	74%	38%	88%
% GDP from agriculture* 1994	2.4%	1.7%	3.7%	6.2%	3.3%	14.8%	1.1%	7.5%

SOURCES: †Eurostat- *Statistics in Focus*, no. 12, 1997. \*Key population and vital statistics, *Series VS*, no. 21, 1994.



**TABLE 1 (cont.) Land use statistics**

	<b>Italy</b>	<b>Lux</b>	<b>N'lands</b>	<b>Portugal</b>	<b>Spain</b>	<b>Sweden</b>	<b>UK</b>
Total population* (in millions) 1994	57.2m	0.4m	15.3m	9.9m	39.1m	8.7m	58.4m
Land mass* (in square kms) 1994	301,316	2,586	41,029	91,906	504,790	410,934	242,804
Cultivated/farmed area† (in 1000s ha) 1995	14,685.4	126.9	1,998.9	3,924.6	25,230.3	3,059.7	16,449.4
Agricultural land as % of total land area* 1994	58.3%	49%	47.4%	43.4%	53.4%	7.5%	69.9%
Number of holdings† (in 1,000s) 1995	2482.1	3.2	113.2	450.6	1277.6	88.8	234.6
Average holding size† (in ha) 1995	5.9	39.9	17.7	8.7	19.7	34.4	70.1
% owner-occupied† (% of agric. land) 1995	78%	47%	70%	70%	72%	55%	64%
% GDP from agriculture* 1994	3.6%	1.5%	3.3%	4.3%	3.4%	2.2%	1.9%

SOURCES: †Eurostat- *Statistics in Focus*, no. 12, 1997. \*Key population and vital statistics, *Series VS*, no. 21, 1994.

## **2. GENERAL THEMES AND DIMENSIONS IN LAND TENURE**

- 2.1 A number of key general themes emerge from the literature, largely related to the relationship between landownership, farming, and the state. As Grossman and Brussaard (1992) have found, these commonly center around the extent to which the state attempts to control the ownership and management of agricultural land to achieve both production and socially oriented goals. This is widely reflected in the literature, together with concomitant views about the role of the agricultural tenancy. However, Grossman and Brussaard, in a wide-ranging review, caution that a similarity of emphasis should not mask the extreme differences that have arisen as a result of the “unique social, political and physical construction of each country.”
- 2.2 This same caution is evident in the most comprehensive published work in this area (CEC 1982) which, while now out of date, concludes that most farm tenancy legislation is fragmented, nationalistic and short term. Rather than reflecting coherent, if differing, policy agendas, therefore, the report argues that much legislation fails to achieve its intended goals, thus making comparison and replication highly problematic.
- 2.3 Equally, it is apparent that while most countries have evolved legal and cultural structures for governing private sector tenancy arrangements, the dominant interests have in most cases been about the identity of the farmers rather than the tenure of the land. As Blanc and Perrier-Cornet (1993) reflect, most developed countries with a competitive market still have an agricultural industry dominated by family farming structures, regardless of their approach to land policy. As a result, much policy and legislation reflects a favorable environment for family successions, covering both let and owner-occupied land. Thus, only in countries such as the UK, where there are limited rights of family succession, is there any sustained evidence of new entrants to farming coming from nonagricultural backgrounds (Economic and Social Committee of the EC 1994; Kiely and Reyniers 1996). Even in England and Wales, such entrants are relatively rare (Gibbard and Ravenscroft 1993; Gibbard 1997; Gibbard and Ravenscroft 1997).

## **VIEWS ABOUT THE OWNERSHIP OF AGRICULTURAL LAND**

- 2.4 In general, it is apparent from the literature that there is an inverse relationship between concerns about the identity of landowners and the degree of economic development of agriculture. While there has been much popular concern about the future ownership of agricultural land in England and Wales, particularly concerning institutional investment (Northfield 1979), the point has repeatedly been made that the agricultural land market is driven by farmers (Northfield 1979), although often with capital drawn from outside the industry (Gibbard 1997). As a result, economically and technologically advanced agricultural systems, such as those found in England and Wales, the Netherlands, and Denmark, tend to put far more emphasis on the creation of a suitable business environment for farming than they do on the social or cultural dimensions of agricultural communities.
- 2.5 For England and Wales, and the Netherlands, this has traditionally involved a high degree of protection for farm tenants (Strijker 1993; Winter et al. 1990), predicated on the basis of

ensuring that tenants are in the position to farm efficiently in a competitive environment. The identity of the landowners is, however, very different, with farms in the Netherlands being predominantly family owned and let (Perrier-Cornet et al. 1991; Brussaard 1992), in contrast to England and Wales, where the tenancy is usually at “arm’s length” (Northfield 1979).

- 2.6 In Denmark, on the other hand, policy has concentrated on leasehold enfranchisement, with many former tenants able to purchase their farms at advantageous rates, given state restrictions on ownership (Munro 1997). While this has provided a stable farming structure, recent relaxations in farm ownership have been allowed in order to draw in external capital, particularly through farming corporations (Wulff 1992). Similarly in Italy, former customary arrangements, often associated with feudalism (Porru 1992b; Shearer and Barbero 1996), have largely been replaced by owner occupation with the aid of the statutory CASSA (*Cassa per la formazione della proprieta contadina*), a fund for purchasing farms for the peasantry.
- 2.7 In common with Denmark, the protection afforded to tenant farmers has recently been reduced in England and Wales in order to promote greater activity (and hence value) in the let sector of the agricultural economy (Kerr 1994; Whitehead 1996). There is some evidence that this has begun to draw in new capital, although often for nonagricultural enterprises or for short-term financial gains (Gibbard 1997). The same has not been considered necessary in the Netherlands, however, where the level of farm capitalization is already the highest in Europe (Perrier-Cornet et al. 1991) and is easily passed from one farming generation to the next.
- 2.8 For most other European countries, the family is both the predominant unit of the farming business as well as the predominant owner of farming land. To a large extent this is traditional, as well as being a function of the Napoleonic Code, whereby farm succession has involved an element of fragmentation and intergenerational partnership and cooperation (Lorvellec 1992). However, there are distinctions between the types of structure which have evolved, which are largely dependent upon the wider economic development of the agricultural industry in different countries. At one end of the scale, therefore, are the developed systems in countries like France and Germany, while at the other are the continuing small-scale systems in Greece, Portugal, and, to an extent, Ireland and Italy.
- 2.9 The former are characterized by forms of pluralism in which family-based entrepreneurship is encouraged alongside active state intervention in the land market. This is most developed in France, where 27 regional rural settlement corporations (SAFERs, *Sociétés pour l’amenagement foncier et l’établissement rural*) effectively control the local land markets through their powers to buy, sell, and let (temporarily while appropriate sales are being structured) agricultural land (Lorvellec 1992; CEC 1982; Barthelemy 1997; de Roos 1997). This has resulted in an increase in the size of farms (Winchester and Ilbery 1988) through assisted amalgamation, while also “smoothing” the transfer of land between generations, thus simultaneously protecting existing farming families (Barthelemy 1994). However, while protecting farming families, it is noted that the profitability of French agriculture remains highly influenced by CAP funding and protection (Boinon 1996).
- 2.10 While also committed to the retention of family farming (Agra Europe 1990), policy and tradition have combined in Germany to produce a high concentration of part-time farmers (Fasterding 1994) and an increasing separation between ownership and occupation of agricultural land (Winkler 1992). Landlordism is encouraged, and landlords retain a greater

degree of control and greater repossession rights than in some other European countries. While this liberalization of attitude toward landlordism is more reminiscent of the UK than of elsewhere in Europe, it has led to a long-term decline in farm incomes and new entrants to farming (Klare 1985), which may now be threatening the longer-term viability of family farming (Fasterding 1994).

- 2.11 Elsewhere in Europe, the family remains at the center of the agricultural economy as well as rural society in general. In Italy, for example, the status gained from owning and farming land is still of great significance (Sesti 1997) while, following the land seizures of the mid-1970s (Bermeo 1986), it is also a mark of social class in Portugal (Perrier-Cornet et al. 1991). In these economies, factors other than economic efficiency tend to dominate. In Ireland, for example, the part-time farming of small family units is encouraged as a means of maintaining rural employment (Perrier-Cornet et al. 1991), while in Greece, state intervention has been used to maintain and protect the traditional system of small-scale peasant farming (Damiankos 1997). Alternatively, in Finland, rural development is being encouraged through financial support and subsidy for young farmers to get started (Torvela and Siitonen 1992).

## **ATTITUDES TOWARD THE OWNERSHIP AND CONTROL OF LAND BY THE STATE**

- 2.12 Given the essential predisposition of most European countries toward the social function of agricultural policy, particularly in terms of rural development, it follows that most accept a degree of state intervention in the land market. This is most evident in France, where the regional SAFER committees have the power to buy and sell land, thus effectively preventing nonfarmers from purchasing or farming agricultural land. The SAFER committees also control the level of farm expansion and consolidation by requiring existing farmers to gain an authorization for their expansion plans (Barthelemy 1997). Similarly, the land control boards (*Grondkamer*) in the Netherlands exert considerable influence over the letting, if not directly the ownership, of agricultural land (Brussaard 1992).
- 2.13 An alternative model of state intervention is through direct ownership and letting of land. Although not now common in Europe, the case of County Farms in England and Wales is one example. These are generally small starter holdings owned by local authorities and let to new entrants to farming (Warren et al. 1995). Having originally been seen as a relatively time-limited means of getting new entrants onto the “farming ladder,” it has increasingly been recognized that this ladder hardly exists in England and Wales, effectively denying progression to larger farms for most County Farm tenants (Association of County Councils 1989; Warren et al. 1995).
- 2.14 Following pressure from previous Conservative central administrations to sell public assets such as land, many County Farms have been sold to sitting tenants, or with vacant possession to neighboring farmers for expansion, or for alternative, nonagricultural uses. Discussions are currently continuing about converting the ownership of the remaining County Farm estate into a charitable trust to promote new entrants to farming.
- 2.15 A different history of state landownership currently operates in the five German “New Lander,” which formerly constituted the German Democratic Republic (GDR). While virtually all private land was expropriated by the state following the creation of the GDR in

1949, only holdings originally less than 100 hectares were returned to their former owners after unification in 1990. The larger holdings of over 100 hectares have been retained in state ownership in accordance with the Treaty of Unity with the Russian Government, signed prior to unification in 1990 (Weiers 1997). Although the intention is eventually to privatize this land, the immediate goal has been to let it to working farmers rather than allow large areas to be purchased by absentee landlords or nonfarming interests (Weiers 1997). Where land has been returned to former owners or former collective members, this is often farmed by farming corporations in a form of “reverse-landlordism” similar to that exercised over former peasant holdings in Italy and in the new Large Farm Restructuring Project in the Ukraine.

- 2.16 Elsewhere, the role of the state is generally less interventionist or bureaucratic, with deregulation of controls being more common. In Sweden, for example, restrictions on the ownership of agricultural land were removed in 1988, thus allowing the development of nonagricultural uses, particularly related to leisure and recreation (Marsden, Lowe, and Whatmore 1990). A similar process of deregulation has occurred in Denmark, opening ownership to nonfarming operations and to other EU nationals, although retaining limits on farm size (Munro 1997; Wulff 1992).
- 2.17 These types of deregulation policy tend to reflect current practice in the more commercially oriented agricultural economies, such as England and Wales. Few ownership restrictions apply in England and Wales, with the 35 percent of land not farmed by owner-occupiers being owned by a variety of traditional and nontraditional individuals and institutions and farmed according to a variety of tenancies, leases, and other arrangements (Winter et al. 1990). The common feature of this system is not so much the heterogeneity of ownership, however, as the homogeneity of management. Given that most agreements over land are at arm’s length, as opposed to the family structure operating elsewhere, most owners in the UK retain specialist managers (land agents) to handle their interests (Ravenscroft and Markwell 1997). Not only does this impose a level of consistency in the application of letting agreements, but it also allows owners to be absent from their property for all or part of the time. This system is unique in Europe and has encouraged a number of overseas investors to purchase farmland in England and Wales in the knowledge that professional management is available, as explained by the then Agricultural Attaché at the German Embassy:

Britain is possibly the only country where, if you have the money, you can buy something you like and leave it to other people to manage it, look after it, and guarantee a certain income. Anywhere else you have to look after it yourself (Weiers 1995).

## **VIEWS ABOUT THE SEPARATION OF THE OWNERSHIP AND CONTROL OF AGRICULTURAL LAND**

- 2.18 Regardless of tenure systems and wider agricultural policies, the majority of EU member states have some degree of separation between the ownership and control of agricultural land. In the main, this separation is temporary, during transitional periods between one generation and the next, although it can be highly formalized, as in the case of the *Maatschaps* arrangement in the Netherlands (Brussaard 1992).

- 2.19 In addition, most countries have some form of tenancy system grounded in a mix of law and custom. However, there is little overt support for this form of tenure per se, other than as a further means of supporting family farming, as in the Netherlands, for example (Perrier-Cornet et al. 1991). The lack of commitment to such devices is typified by the inherent ambiguities surrounding tenancies in France. While operating a highly bureaucratic leasing system, with strong protection for tenants, there is simultaneously a general right of pre-emption which, while encouraging efficiency on the part of tenants, also promotes the enfranchisement of leases by sitting tenants (Barthelemy 1997).
- 2.20 The tenancy in France is therefore seen, in effect, as a “ladder” to the goal of owner-occupation, as is also the case in other countries, notably Denmark (Wulff 1992). Similar forms of support can be found elsewhere, particularly tenancies for County Farms in England and Wales, although the policy goal in this case is less about moving toward ownership than it is about securing leases of larger, more commercial units (Warren et al. 1995).
- 2.21 Elsewhere, the overt protection of the farming tenant through the exercise of restrictive controls over landlords is seen as a negative phenomenon. This is particularly the case in England and Wales, where the former entitlement to three generations’ security for tenant farming families has recently been replaced by security for a single generation (Gibbard and Ravenscroft 1997). It is also the case in Belgium, where the number of arm’s length tenancies is declining as a result of restrictions (Gotzen 1992). In both Belgium and England and Wales, there has been a concomitant rise in flexible alternatives to statutory lettings, particularly seasonal licenses, versions of sharefarming, and varieties of partnership (Gotzen 1992; Winter et al. 1990).
- 2.22 Beyond the model of the farm tenancy equating to a single holding, there is evidence that in many countries individual farms are held under a variety of arrangements both within families and externally. This is very much the case in Denmark and Germany, where tenancies of whole farms are rare (Wulff 1992; Weiers 1997), and where the proportion of mixed-tenure farms increases with the size of the holding (Feenstra 1992). It has also tended to be the case in most Civil Law countries, given the succession provisions of the Napoleonic Code. In countries such as France and Germany, this division between heirs is no longer practiced, thus reducing the need for single holdings to comprise multiple forms of occupation (Barthelemy 1994). Nonetheless, just 6 percent of holdings in Germany comprise a full tenancy for the whole of the farm (Agra Europe 1990; Weiers 1997).
- 2.23 In other countries, notably Italy, no single-heir rule applies, leading to the fragmentation of ownership and the consequent need for complex intrafamily rental arrangements and part-time farming (Venzi 1988). In Portugal, which continues to operate a similar system of succession, family “arrangements” are common, with the number of officially designated tenanted or mixed-tenure holdings declining since the 1950s (Black 1992).

## **TAXATION OF FARMING**

- 2.24 It has long been recognized that fiscal policy plays a highly significant role in the operation of the farming economy (Lipinsky 1992; Northfield 1979). Indeed, it is often an integral element of agricultural and rural policy, particularly insofar as tax advantages or penalties are applied

in discriminatory ways. In Ireland, for example, farmers have only been subject to income tax since 1974, and then at rates far below nonfarmers (CEC 1982). Similarly, those letting land on long leases (over 18 years) in France can gain advantageous tax benefits (Barthelemy 1997), while there are tax concessions on the purchase of agricultural land in Italy (Venzi 1988; CEC 1982).

- 2.25 However, while it is generally the case that the incidence of capital taxation on the inheritance of family farms is lower than for other forms of capital transfer, it is also the case that working farmers (either tenants or owner-occupiers) get preferential treatment compared to landlords (CEC 1982). An example of this is in the Netherlands, where landowners pay water rates, but farm tenants do not (CEC 1982). It is also the case that the passing of farms from one generation to another in the Netherlands, supported by the unique “Maatschaps” partnership arrangements, allows the transfer of capital virtually tax-free (Brussaard 1992).
- 2.26 Similar types of discriminatory concession are also very much the case in England and Wales where, for example, rental income is treated for tax purposes as unearned, thus denying landlords the same ability to set off their costs of management against taxable income that is afforded to working farmers (Northfield 1979; Ravenscroft 1988). This has certainly dissuaded some landowners from letting their land, with others opting for an alternative form of agreement, such as a farm partnership, in order to qualify as working farmers (Winter et al. 1990). Capital tax concessions are also denied to many UK landowners on the grounds that landowning is not a business and thus does not qualify for business exemptions (RICS 1983; Fell 1988).
- 2.27 In Denmark, high levels of inheritance tax (up to 35% until recently) have been blamed for damaging the fabric of the countryside. This is due to older farmers’ refusing to invest in their farms in the knowledge that increased capital values will increase their heir’s liability to inheritance taxation (Munro 1997). A similar type of issue has arisen in Germany, where farm valuations for tax purposes are based on assets, while valuation on disposal is based on investment value, thus leading to a significant capital gain, which is subject to taxation. In addition, the preferential rates of income tax enjoyed by working farmers in Germany are not enjoyed by farmers who have retired. This means that, upon retirement, both tax rates and liabilities increase (Hagedorn and Klare 1986).

## **CONCLUSIONS TO SECTION 2**

- 2.28 In overall terms, therefore, it is apparent that, for the majority of European nations, the letting of private land outside the family is of relatively minor importance. The major exception to this is the UK, where most lettings are not intrafamily, and where agricultural policy is overtly commercial, as opposed to being driven by social and rural development motives.
- 2.29 For most of Europe, therefore, the tenancy is predominantly a short-term device used for intergenerational succession. As such, state intervention is predominantly about protecting the institution of the family farm. This generally involves asserting tenants’ rights over those of the landlords, and farmers’ incentives (particularly tax) over those afforded to the rest of the population. While this range of policies appears to be beneficial in sustaining farming families, it is less successful in cases where tenancies are created at arm’s length. In these latter cases

there are widespread concerns about disincentives for landlords to let land, backed up by evidence about the declining availability of land to rent.

- 2.30 In seeking best practice in private-sector tenancy arrangements, therefore, it seems inevitable that a balance will be required. To be successful, this balance will essentially have to address the needs of the parties, reflecting both the advantages of the bureaucratic support processes in countries such as France and the Netherlands as well as the entrepreneurial freedom associated with the systems operating in England and Wales, Sweden, and Denmark. The remainder of this report will thus consider this balance, under the headings of: landownership, land leasing; succession and inheritance, and alternative arrangements.

### **3. OWNERSHIP OF AGRICULTURAL LAND**

- 3.1 The majority of literature concerning the dimensions of landownership concentrates on the restrictions imposed by states on various aspects of landowner power. These aspects include: the right to own agricultural land, which is still subject to restriction in many countries; restrictions on holding sizes; controls over the use of land; controls on the repossession of let land; and restrictions on lifetime disposals.

#### **RIGHT TO OWN AGRICULTURAL LAND**

- 3.2 Few nation-states now openly prohibit the ownership of land by certain types or classes of individual or institution, although examples such as Ukraine and Lithuania continue to exist in Eastern Europe (Aleknaveicius n.d.; Lerman, Brooks, and Csaki 1994; Pabreza 1990). One example of a Western European system that did, until recently, practice some form of control is Denmark. The original policy, designed to protect family farming, restricted the ownership of agricultural land to Danish individuals. This was felt to be increasingly restrictive and has now been modified to extend ownership to farming organizations and EU nationals (Wulff 1992). However, some restrictions remain in force, with purchasers being required to live on the holding for at least eight years and, if the holding exceeds 30 hectares, to be trained in agriculture. They are not permitted to let their land during this period (Wulff 1992). Similar forms of restriction can also be found elsewhere such as in Germany, where landowners must be trained in agriculture (Lipinsky 1992).
- 3.3 A similar shift has also occurred in Sweden, with the revocation in 1988 of a law restricting the ownership of agricultural land to farmers and associated farming interests. The result has been an injection of external capital into the rural economy, but with an accompanying level of competition for land that has resulted in prices, in some cases, rising beyond the reach of many farmers (Marsden, Lowe, and Whatmore 1990).
- 3.4 The potential impact of nonfarming demands for agricultural land on its price and availability have fueled concerns in a number of countries. The lack of control over ownership in Spain, for example, is claimed to be at the root of a high level of landlessness found in some parts of the country. In particular, blame is laid at the door of a significant number of absentee landlords with substantial holdings (*latifundismo*), who effectively force up the price of the remaining land when it comes to the market (Agra Europe 1980; Yruela 1995; Gjeltén 1984).



Elsewhere, nonfarming demands are thought to be responsible for bidding up land prices. Often this is felt most keenly in peri-urban areas (Ciparisse 1997) but, particularly on islands such as Cyprus, can also be caused by alternative industries such as tourism (Karouzis 1993).

- 3.5 In order to counter the impact of nonagricultural speculation in land, the Land Transfer Act in Germany limits the sale price of agricultural land to 150 percent of the average sale price of land of comparable quality (Lipinsky 1992). However, following similar concerns in England and Wales, the Northfield Report (1979) suggested that such fears were unfounded. This was largely on the basis that land prices were predominantly driven by existing farmers, and that the majority of new, nonagricultural land purchasers were interested in investment rather than occupation and would therefore create a suitable letting environment for farmers. It was thus concluded that controls on ownership were unnecessary in the UK context.
- 3.6 Nonetheless, concerns remain in a number of countries in Western and Eastern Europe (Feenstra 1992; Waedekin 1992), while Germany has continued the state ownership of the larger former state-farming units inherited from the GDR. This has been done primarily to ensure access to farmland for working farmers capable of investing in farm infrastructure and supporting local employment (Weiers 1997). By inference, German authorities have been wary of the motives of nonfarming investors and are using the state-organized privatization agency (the BVVG) to ensure that land is purchased by working farmers who, if they purchase at a discount, do not resell for twenty years. Similar moratoriums on the resale of privatized or restituted land have also been imposed in a number of former Soviet Union and Eastern European countries (Brooks 1993; Klyukin 1992; International Bank for Reconstruction and Development and Euroconsult 1995).
- 3.7 Systems of “guided” or “preferred” ownership operate in France and Ireland. In controlling local land markets, the French SAFER committee system ensures, for example, that the purchase of agricultural land for investment purposes (on any scale) is discouraged. This effectively limits ownership to working farmers (Lorvellec 1992; Barthelemy 1997; de Roos 1997). The Land Commission system in Ireland, while less formal and bureaucratic than the SAFERs, effectively fills the same function in retaining the right to purchase agricultural land and redistribute it for the purposes of existing farm expansion (CEC 1982).
- 3.8 From these examples, it is clear that the level of access to the ownership of agricultural land is largely a function of the importance placed on the continuation of existing farming families. Under “closed” regimes such as those operating in France and Ireland, the same farming families continue on the land for generations. This undoubtedly builds in a level of stability which tends to secure family-based employment and thus underpins the rural economy, even if the level of farm productivity and profitability is compromised. The opposite tends to be the case in more “open” regimes, where there is a greater heterogeneity of ownership, a much higher level of new entrants from nonfarming backgrounds, lower agricultural employment levels, and higher inputs of capital investment.

## **RESTRICTIONS ON THE SIZE OF HOLDING AND THE USES OF LAND**

- 3.9 Rather than restricting the amount of land which any individual or organization can own, those countries operating size restrictions tend to do so on the basis of individual holdings. In

France, for example, the amount of land which can be farmed by an individual is limited by the SAFER committees according to regional circumstances. However, exemptions to these limits can be negotiated and there is evidence that this form of regulation is not rigorously enforced (CEC 1982). An alternative system of control is operated in Spain through limiting the availability of credit to holdings above a certain size as well as limiting the extent of individual farm expansion. Again, there is little evidence of the success of these regulations (Agra Europe 1980).

- 3.10 A rather more formal system of limitation in Denmark is applied to both holding size and land use. The current maximum holding size is set at 125 hectares, an extension from the previous limit, negotiated to allow greater commercial viability. In addition, farmers seeking to purchase more than 30 hectares of additional land are required to seek a license from the local land authority. These limits are relaxed somewhat for family transactions, although the former predisposition to family farming is no longer so apparent. Strict controls also exist on the use of agricultural and forestry land. These are administered by local authorities, which have been accused of manipulating the legislation to their own ends and thereby limiting local rural (but nonagricultural) development (Wulff 1992).

## **RIGHT TO REPOSSESS TENANTED LAND**

- 3.11 Concomitant with the degree of “openness” of ownership is the extent of the security offered to tenants. In “closed” systems, such as France, the repossession of land from tenants is a relatively minor consideration, given the level of family orientation and the limits on landownership. Under the French system, therefore, the possibility of repossession is limited to default on the part of the tenant, adjudicated through special courts (*Tribunal Paritaire des Baux Ruraux*) (Lorvellec 1992), while in other similar systems there is also provision for repossession if the owner wishes to farm the holding. In Scotland, standard agricultural tenancies (which now account for approximately half of all let land) provide indefinite succession rights for tenants as long as there are eligible successors (Stockdale, Lang, and Jackson 1996).
- 3.12 At the opposite end of the scale, in England and Wales, the rules governing repossession have recently been changed. Under the previous code (which still applies to the majority of tenancies), repossession was virtually impossible from a competent tenant farmer and two eligible successors, unless the farm was required for nonagricultural development (when substantial compensation was due). Under the new code, repossession has been made simpler, in response to the perceived inflexibility of the previous system (Winter et al. 1990; Warren et al. 1995). Rather than the previous system, tenancies are now capable of being time-limited according to the individual contract, thus reducing the need for a complex notice to quit procedure.

## **CONTROLS ON LIFETIME DISPOSALS OF LAND**

- 3.13 Also related to the degree of “openness” of the system is the extent to which landowners are freely able to sell their land. In open systems such as England and Wales, any notion of

controls on sales would be contrary to the implied financial motives for ownership and investment in land. In France, however, while there are no formal controls on lifetime disposals, the influence of the SAFER committees is such that consultation with them would certainly be a major element in any decision to sell land (Barthelemy 1997).

- 3.14 This framework is taken a stage further in Portugal, where lifetime disposals have formally been regulated by the state since 1986 as a means of keeping farming families on the land (Perrier-Cornet et al. 1991). While there is evidence of some unofficial “sales” of land since that time, disposal and succession are, effectively, the same, occurring only on the death of the current owner. A level of compulsion also operates in Spain, but in terms of a right for the state to compulsorily purchase agricultural land which is currently underutilized or located in designated rural development zones (Agra Europe 1980).

### **CONCLUSIONS TO SECTION 3**

- 3.15 In overall terms, it is apparent that the degree to which states regulate the ownership and occupation of agricultural land is largely a function of the degree of “openness” of the system. Where the prime objectives of agricultural policy are principally connected to the financial viability of farming, there are less likely to be controls on ownership. Indeed, under these conditions there is more overt support for the separation of ownership and occupational interests as a means of bringing external capital into agriculture as well as encouraging farmers to concentrate on farming rather than land management.
- 3.16 In contrast to this, more “closed” systems, where the principal objectives of agricultural policy are more related to social and rural developmental objectives, are more likely to incorporate controls on both ownership and occupation. In such cases, the controls are predominantly concerned with preventing agricultural land from being purchased for investment purposes (and thus raising the potential for relative price increases beyond those driven by farm incomes). Such controls can also be used to prevent land going out of agriculture, while the example of Portugal suggests that they can even be used in a positive capacity to keep existing farming families on the land.

## **4. LEGAL DIMENSIONS OF LEASING ARRANGEMENTS**

- 4.1 As table 2 illustrates, there is a broad range of approaches to agricultural leases in Europe, from those offering high degrees of freedom to landowners—freedom of contract—to those offering high degrees of protection for tenants. According to the literature, the most significant features of tenancy agreements relate to rents, term lengths, lease renewal, succession, and investment in the holding. No clear pattern emerges with respect to any of these aspects of tenancies: approximately as many countries operate freedom of contract as seek to regulate tenancies; as many control rents as do not; approximately half operate a specified minimum term length (although only Denmark imposes a maximum); and succession rights, statutory lease renewal, and rights of pre-emption are all enjoyed in approximately half the countries studied.

**TABLE 2      Legal aspects of leasing agreements**

	<b>Freedom of contract</b>	<b>Leases governed by statute</b>	<b>Rent control</b>	<b>Min. term length</b>	<b>Max. term length</b>	<b>Improvements require consent</b>	<b>Automatic succession rights</b>	<b>Automatic lease renewal</b>	<b>Pre-emption rights</b>
Belgium		✓	✓	✓9 yrs	×	×	✓	✓	✓
Denmark	✓		×	×	✓30 yrs				
France		✓	✓	✓9 yrs	×	✓some			
Finland		✓							
Germany	✓	✓	×	×	×	✓	×	×	×
Ireland	✓	×	×	×	×		×	×	×
Italy		✓	✓	✓15 yrs	×				✓
Luxembourg	✓		×	×	×		×	×	×
Netherlands		✓	✓	✓6 yrs	×		✓	✓	✓
England & Wales	✓some	✓some	×	×	×	✓some	✓some	✓some	×

✓ = the feature applies.

×

**TABLE 3 Leasing of land**

	<b>Free / unfettered</b>	<b>Informal / unconventional</b>	<b>Restricted by State / statute</b>	<b>Restricted by contract</b>	<b>Absolute security of tenure</b>	<b>Tenancy passed on retirement</b>	<b>Minimum or maximum</b>	<b>Pre-emption rights</b>
Lease arrangements	Ire,	Fra, Bel, Ger, Ire, Por, Ital, EW, Scot	EW, Fra, Ire, Ger, Den, Nlds,	EW, Ger Den, Lux, Nlds	Eur			
Security of tenure			UK, Fra, Bel, Por	EW, Lux Den, Ger,	Nld, Bel, Fra	Bel, Ger Nlds, EW Fra		
Size of holding	EW, Scot		Den, Fra, Ger,					
Term length			Bel, Den Fra, Bel Nld	EW, Den, Lux,	EW		Bel, Fra, Eur, Den Nld	
Rent control / review	Den, EW		Bel, Nlds, Ital, Fra, EW,	Den, EW, Lux,			Bel, Ital, Fra, Nld	
Freedom of husbandry	Bel, Den		Ger, Bel,					
Land use	Fra		Den, Ger Fra					
Improvements / compensation	Bel		Ger, EW, Fra	EW				
Pre-emption rights			Bel					Bel, Ita, Fra, Nld

- 4.2 Considering individual countries provides little further structure, with the “open” agricultural economies of the UK and the Netherlands apparently having radically differing approaches to tenancy control—although it must be recognized that the England and Wales system was, until the Agricultural Tenancies Act 1995, much closer to that still operated in the Netherlands. Equally, highly regulated, “closed” agricultural economies, such as those in Denmark and France, also feature significant differences in their approach to tenancy regulation.
- 4.3 Specific reference to the individual situations is given in table 3, which does indicate the emergence of a pattern in which aspects of land leases come under control or regulation in most countries. In particular, the degree to which any tenancy system is completely unfettered is extremely limited and relates in the main to aspects such as land use and freedom of cropping and husbandry. This may be responsible for the range of informal or unconventional arrangements which are used in most countries, regardless of the degree of state intervention in formal tenancy arrangements. These alternatives will be considered in section 5.

### **STATE INTERVENTION IN LETTING ARRANGEMENTS**

- 4.4 Under most of the systems studied, there is an understanding that the basis of any tenancy relationship is the contract between landowner and tenant. The degree of intervention is thus dependent primarily upon the weight given to this agreement. As an example of this, the former legal framework for agricultural tenancies in England and Wales (which still covers many tenancies) divided aspects of tenancy agreements into separate categories of significance. For the most significant, such as rent reviews, freedom of cropping, security of tenure, and lease renewal, statutory regulations would prevail, even if contrary to a signed contract. For aspects considered to be of lesser importance, contractual provisions would prevail, with statutory regulations of significance only to the extent that the contract was silent (Gibbard and Ravenscroft 1993; Gibbard and Ravenscroft 1997). The revised tenancy code, contained in the Agricultural Tenancies Act 1995, gives more weight to the contract, with few statutory fallback provisions (Gibbard 1997; Moody 1997).
- 4.5 A greater level of control is exerted by the state in the Netherlands. Local land control boards (*Grondkamer*), for example, have the right to intervene directly in private contractual arrangements, can order mandatory extensions to tenancies at the end of their contractual term, and are also responsible for setting the level of rents. Furthermore, the *Grondkamers* arbitrate in the capital valuation of holdings for sale, with the valuation being based on rental incomes and, thus, in the order of half the equivalent vacant possession value (Brussaard 1992).
- 4.6 Similarly, local committee-based rent controls are operated in a number of other countries, including Belgium, France, and Italy (cf. 5.12). Rather than the apparently politicized system in the Netherlands, where the *Grondkamers* are part of local government, the committees in Belgium, France, and Italy are drawn from the local farming population (Barthelemy 1997; CEC 1982). However, in these types of systems the rents are also based on farm incomes and productivity, thus keeping them below vacant possession values and discouraging outside investment in agricultural land. Similarly, England and Wales have a system of agricultural

arbitration for settling technical matters such as rent, although this is brought into action only in the event of a failure to agree on the part of the landlord and tenant (Gibbard and Ravenscroft 1993).

- 4.7 Elsewhere, overt control of tenancies is not considered so necessary or separate from controls on agriculture more generally. In Denmark, for example, the only requirement is for parties to a tenancy to have a written agreement which makes specific reference to rent and term length (Wulff 1992). Similar requirements exist in Germany for tenancies of greater than one year (CEC 1982). In neither country is there security of tenure beyond the contract or rent control (or ability to vary the rent beyond any provision made in the contract), and there are no pre-emptive rights of purchase by tenants. Instead, as outlined in section 4, strict controls are exercised over holding sizes and land uses in Denmark, effectively denying agricultural land any element of capital value beyond that associated with agriculture while supposedly maintaining a sufficient stock of holdings to ensure access for prospective farmers.

## **TERM LENGTH AND SECURITY OF TENURE**

- 4.8 As table 2 indicates, five countries have statutorily controlled term lengths, four covering minimum terms and one, Denmark, a maximum term. Since the 6-year minimum term in the Netherlands is for bare land, with 12 years being the minimum for equipped farms (Brussaard 1992), all the minimum terms are for relatively long periods of time. In addition, lease renewal is available in most of these countries, particularly France, where further 9-year terms are automatic—and longer fixed terms of 18 to 25 years not uncommon (Barthelemy 1997).
- 4.9 The situation is little different in Belgium and the Netherlands, although landlords do have the right to serve notices to quit at the end of the original term. In the main, these notices are effective only if the landlord wishes to take over the farm, or if the land is in a designated development zone and is to be converted to an alternative use—which in Belgium must also be in the public interest (Gotzen 1992; Brussaard 1992). The former system in England and Wales (still in operation for many of those tenancies granted under this code) had similarities to this, with initial terms (not subject to a minimum and often annual) converted by statute to annual tenancies, capable of being terminated by the landlord only on certain specific grounds—but not including a wish to take over the farm (Densham and Evans 1997).
- 4.10 As the former England/Wales system implies, security of tenure has largely been a question of continuing to farm the land in a competent and appropriate manner (Ravenscroft 1988). Similar provisions exist in Belgium, where tenants' security and freedom of husbandry are protected as long as they farm "in a proper manner" (Gotzen 1992). Security of tenure in the Netherlands is even less conditional than this, being guaranteed by the *Grondkamer* (CEC 1982).
- 4.11 Elsewhere, term length and security are very much a question of contract. In Luxembourg, for example, it is customary to agree terms of three, six, or nine years, with no renewal (CEC 1982). This is currently under review, with a probable shift toward the system used in neighboring Belgium. In England, although there were many calls for a minimum term length (Ravenscroft 1988), the new legislation has left the matter to individual contracts, with no automatic right of renewal unless it is part of the contract. In Scotland, the new class of

“Limited Partnership” tenancy, covering both farming and tenurial arrangements, has no minimum term length, with few being for more than ten years, although some do have renewal options for either or both the parties (Stockdale, Lang, and Jackson 1996).

## RENT CONTROL

- 4.12 In general, the state control of rental levels is highly linked to the control of term lengths. In France, for example, the standard review period is nine years, in common with the minimum term length. At the reviews, the maximum and minimum levels of rent for the area are established by the regional SAFERs, using as a guide the levels of farm income in the area (Barthelemy 1997). Once the review has been completed, landlords and tenants can agree on a rent within these levels which, subject to annual indexation, will be the rent for the farm for the whole of the nine-year minimum term length. The rents are deliberately set at a level which discourages investors, representing no more than a 2.5 percent return on capital, with no expectation of growth.
- 4.13 Rather less draconian than the French system are those operating in Belgium and Italy. In both countries, maximum rental levels are set by regional committees comprising farmers, land owners, and government officials (Gotzen 1992). In Belgium, these levels prevail for five years, while in Italy the period is four years (CEC 1982). In common with France, parties to a tenancy can agree their individual rents, provided that they do not exceed the official level. Rents are generally low, with the common return on capital in Belgium being in the order of 1.3 percent per annum.
- 4.14 Elsewhere there tends to be less control on rent levels, with a number of countries operating “fall-back” provisions in the case of disputes. One such system, which existed in England and Wales until the change of law in 1995, allowed either landlord or tenant to refer the matter of the “rent properly payable” on their holding to a system of agricultural arbitration (Densham and Evans 1997). This process could occur at three-year intervals, but was invoked only when negotiations failed due to the costs associated official resolution. In determining the rent properly payable, the arbitrator was guided by a complex legislative definition, which included the productivity and earning capacity of the holding, but discounted market-based issues such as scarcity, marriage value, and the nonagricultural potential of the holding.
- 4.15 As a consequence of this “valuing-out” of elements of full market value, the rent levels set at arbitration—and largely replicated on other similar holdings—were lower than potential market levels, commonly providing a return on capital of approximately 3 percent. Given the investment orientation of the agricultural land market in the UK, however, average annual increases in capital values in the order of 8 percent were achieved over the two decades following entry to the EU, giving a total return on let farms in the order of 10 percent. Following a period of stagnation in capital growth in the early 1990s, effective deregulation of rent control in 1995 has led to rental increases of over 50 percent, thus significantly increasing direct returns to agricultural investment.



## SUCCESSION AND INHERITANCE

- 4.16 Much concern has been expressed throughout the EU about the opportunities being made available for new entrants to farming either from established farming families or from outside the industry. This has led to a number of comparative studies of succession and inheritance practices, including an influential internal report to the European Commission (Perrier-Cornet et al. 1991), together with later follow-up studies (Economic and Social Committee of the EC 1994; European Commission 1996; Kiely and Reyniers 1996). The original report has also been synthesized by the authors (Blanc and Perrier-Cornet 1993).
- 4.17 In all these reports, it is highlighted that only in countries where there is no right to pass on the lease (as in England and Wales) is there any significant proportion of new entrants coming from a nonfarming background. It is also recognized that succession and inheritance is an area in which law and custom can differ substantially (see table 4). Thus, for example, in the Netherlands equality among heirs, despite being the law, is not observed in practice. In contrast, the opposite situation is found in Italy and Spain, where provisions allowing for the “preferential attribution” of the holding to a single heir are rarely applied (Blanc and Perrier-Cornet 1993).

**TABLE 4 Succession and inheritance**

	<b>Free / unfettered</b>	<b>Informal / unconventional arrangements</b>	<b>Restricted by State / statute</b>	<b>Restricted by contract</b>	<b>Equal shares on inheritance</b>	<b>Preferential shares on inheritance - farm undivided</b>	<b>Grant / loan assistance by state</b>
Succession/ inheritance	Ger, Ire, EW, Scot		Bel, EW	Nlds			
Equality of heirs		Fra, Por, Nlds,			Por, Ita, Gre Spa	Bel, Fra, Por, Lux Ger, Nlds	
Retirement transfer	Bel		EW	Ger			
Young farmers and new entrants	Spa, EW				Spa	Fran, Por	Fra, Por, Spa
Grant/loan assistance							Den, Fin, Por, Bel, Fra, Lux, Spa

- 4.18 As a result of the variations observed, Blanc and Perrier-Cornet (1993) put forward three patterns of succession and inheritance which are commonly found in the EU: equal shares and break-up of the farm, equal shares and maintenance of the holding as a single unit, and unequal shares and maintenance of the holding as a single unit.

### **EQUAL SHARES AND BREAK-UP OF THE FARM**

- 4.19 This system is commonly found around the Mediterranean, particularly in Greece, Italy, and Spain, and commonly in Portugal. In both Greece and Italy, this situation has led to the fragmentation of holdings and, over the last 30 years, has hastened rural depopulation among younger people in the knowledge that they have been unlikely to be able to assemble a viable farming unit upon inheritance (Venzi 1988; Damiankos 1997). To some extent this trend has been reversed in recent years in Italy by the growth of informal lettings and a shift from the “peasant-style” existence of the past to one based increasingly on “pluriactivity” (Saraceno 1994).
- 4.20 In Portugal, fragmentation of holdings on death has been responsible for a major shift in the social fabric of rural areas, with nearly half the farmers in the Serra do Alvao region having purchased rather than inherited their farms (Black 1992). A similar fate has been avoided on the other farms either by devising family “arrangements” to blur the identity of the owner (Black 1992; Perrier-Cornet et al. 1991) or through continued collective ownership and management (Bermeo 1986). In Spain, the opportunities created by the fragmentation of holdings on death have been used by other farmers to restructure their holdings into larger units. This effectively means that, in a large country such as Spain, fragmentation and consolidation occur simultaneously (Yruela 1995).

### **EQUAL SHARES AND PRESERVATION OF THE HOLDING**

- 4.21 This is commonly practiced in France, Denmark, and Belgium, where forms of “preferential allotment” have modified the Civil Code to allow inheritance of the holding by one heir, with a cash settlement to the others. This has often happened in conjunction with compulsory land consolidation, such as the *Remembrement* system in France (Lorvellec 1992). However, while ensuring continuity of family farming, the need to compensate noninheriting heirs can leave new incumbents with high levels of debt. In Denmark, for example, the inheriting heir will be expected to pay approximately 80 percent of the full market value of the farm to the remaining family members. Despite preferential loans, the debt burdens of young farmers tend to be high, necessitating off-farm employment to earn additional income (Wulff 1992).

### **UNEQUAL SHARES AND PRESERVATION OF THE HOLDING**

- 4.22 In common law countries such as England and Wales, there is no need to divide capital between heirs, making preservation of the holding the norm under succession and inheritance. This form of inequality in the treatment of heirs is also found in Ireland, the Netherlands, and Germany. However, only under common law does the inheriting heir take free of legal

obligation to others. In Ireland, the commitment is to care for the remaining parents, while in Germany and the Netherlands, the co-heirs become entitled to a share of the capital if the holding is sold (Blanc and Perrier-Cornet 1993).

- 4.23 In cases where the holding is to be maintained as a single unit, there is usually a need for it to be able to support two families during the period of transition between generations and, in the case of retirements, to continue to do so until the eventual deaths of the outgoing farmers (Blanc and Perrier-Cornet 1993). This certainly puts the larger northern European holdings in a better position than the smaller southern ones, particularly where they follow formalized retirement procedures, such as the *Maatschaps* partnership arrangements in the Netherlands (Brussaard 1992). However, it is recognized that individual rights of succession, while contributing to the continuity of the holding, can be a significant barrier to new entrants in a way which the fragmentation of holdings is not (Brussaard 1992).

## CONCLUSIONS TO SECTION 4

- 4.24 As the literature indicates, there is a broad relationship between the degree of “openness” of the agricultural system and the level of regulation deemed appropriate for the efficient operation of agricultural tenancies. In the more commercialized agricultural systems, such as those in the UK and Denmark, for example, there is a noted deregulation in tenancy legislation, particularly with respect to minimum term length and the level of rent paid. There is also more likely to be provision for full inheritance. In contrast, in the more closed systems there is more likely to be a form of rent control in operation, as well as guaranteed minimum term lengths and an increased likelihood that holdings will become fragmented over time due to equality in succession.
- 4.25 The outcome of these differences is felt predominantly in the level of security and certainty given to tenants. With minimum terms, automatic renewal, and low rents tied to the term length, countries such as France operate a system highly favorable to the tenant farmer. Yet this has not been prejudicial to the future of the tenancy, given that most such arrangements occur within family farming structures, where these provisions assume little importance. By discouraging investors from purchasing farmland, this regulatory system also ensures that land remains in the hands of farmers, and that there is little nonagricultural opportunity to inflate capital values beyond their productive worth. It does, however, tend to militate against the introduction of external capital to agriculture.
- 4.26 The opposite is very much the case under a more open system, such as in England and Wales, where even a lesser form of regulation was widely held to have been instrumental in the decline in the number of new agricultural tenancies being let (Gibbard and Ravenscroft 1997). The revised system, with its strong contract orientation, has certainly produced a sharp increase in rental levels together with some evidence of new tenancies coming forward (Warren et al. 1995).
- 4.27 However, there is as yet little evidence to indicate what form this activity is taking. In particular, it is likely that the principal beneficiaries have been existing farmers, able to use their present capital base to finance expansion. This suggests that, under a deregulated

tenancy system operating in an environment of strong demand for farmland, the result will eventually be fewer farmers, operating increasingly large agribusinesses (Gibbard 1997).

## 5. ALTERNATIVE FARMING ARRANGEMENTS

5.1 As table 3 indicates, tenancies may be the dominant form of leasing land, but they are far from being the only ones. Indeed, an FAO report in the early 1960s makes it clear that while renting land for predetermined cash payments may be the most common form of nonowner occupation, arrangements such as sharefarming were certainly popular in parts of Europe in the 1940s and 1950s (FAO 1961), not being abolished in Italy until 1982 (Venzi 1988) and still occasionally being found in Portugal (Black 1992). In the UK, however, sharefarming has continued in various forms, including the shareflocking of sheep in the Lake District (RICS 1983) and has enjoyed a revival as a flexible alternative to formal tenancies, even for arable holdings (RICS 1983; Fell 1988; Winter et al. 1990). The Scottish “Limited Partnership” tenancy has also found favor, particularly among smaller landowners and working farmers wishing to expand their holdings (Stockdale, Lang, and Jackson 1996).

5.2 Flexibility is probably the key to the continuation of alternative forms of letting, providing the advantage of being tailored to individual requirements:

Farmers must have access to a wide range of land tenure options that could allow them to respond strategically and effectively to changing conditions, opportunities, and external environmental constraints (Herrera, Riddell, and Toselli 1997, pp. 55–56).

As an example, the *Maatschaps* partnerships in the Netherlands are encouraged by the state as a means of ensuring that successors gain experience of managing the farm prior to taking it over (Brussaard 1992). Similarly, family partnerships are common in France as a means of continuing the family influence and association with the farm in the longer term (Barthelemy 1994), while the Scottish Limited Partnership tenancy allows much flexibility for both landowner and farmer (Stockdale, Lang, and Jackson 1996). Flexibility is also viewed by the European Commission as the key to encouraging new entrants on the basis that arrangements such as partnerships, while offering less security than full tenancies, may offer better opportunities to build a career (European Commission 1996).

5.3 In other countries, alternative arrangements have sometimes found favor for the rather more negative reason of avoiding the pitfalls of formal tenancies or other legislation. In France, a number of families have incorporated their farming businesses, thus allowing them to transfer shares between family members in a more tax-efficient manner (Barthelemy 1997). A similar device has been used in the UK to facilitate the transfer of capital assets between generations. Another avoidance technique has been developed in Ireland, where a series of 11-month lets (known as *Conacre*) can legally be used to avoid formal control under the Land Purchase Acts (CEC 1982).

5.4 However, the most elaborate systems of avoidance have occurred in the countries with the most draconian tenancy laws. An example of this is England and Wales, where alternative ventures (principally partnerships, sharefarming agreements, and contract farming) have gained much popularity (Winter et al. 1990). In his reflection of tenant farming, Fell (1988)

suggests that the prime motivation for most landlords has been threefold: the maintenance of the vacant possession premium, the avoidance of granting security of tenure, and the ability to have their income treated as earned. This type of motivation is viewed by Winter et al. (1990) as the quest for another form of flexibility; but rather than relating to positive aspects of the agricultural economy, they tend to be seen as short-term measures to avoid restrictive legislation.

- 5.5 This, however, tends to miss—or dismiss—the extent to which the owner and prospective farmer wish to have the freedom to negotiate their own terms and the degree to which such alternatives can bring in particular resources which are in short supply. The most common resources to be brought in are capital and expertise. For example, some investors are clearly reluctant to tie their capital into farming for a long and uncertain period. Others, according to Stockdale, Lang, and Jackson (1996), are more concerned about the long-term diminution of their capital assets.
- 5.6 There is, however, evidence from the UK that landowners are more prepared to enter partnerships with working farmers, effectively providing loans for those farmer to get started in the knowledge that their businesses can be built up prior to the partnership being terminated and the farmer's taking on the entire capital debt. In the interim period, the landowner/investor is usually guaranteed a return of at least the rental equivalent plus a share of the net farm income (in the UK this is treated for tax purposes as earned income), has a guaranteed right of possession at the end of the term, and can have a greater say in the management of the business (Stockdale, Lang, and Jackson 1996). Elsewhere, in Germany, for example, some types of joint arrangement are considered more creditworthy than others, thus encouraging the establishment of certain types of business structure (Hagedorn, Heinrich, and Wendt 1992).

## CONCLUSION TO SECTION 5

- 5.7 Alternatives to farm tenancies have often been viewed with suspicion, either that they reflect an informality at odds with the increasing complexity of farming, or that they are merely an attempt to subvert public policy over the protection of farm tenants. However, while there clearly are examples of both these phenomena, there are also genuine circumstances in which the formal tenancy may not be the most appropriate form of managerial delegation. This is most likely to be the case when external capital investment in a farming business is required. With most farm rental levels failing to reflect either the full potential capital value of the farm or equivalent available returns from less risky investments, joint ventures can be a way of offering a greater incentive to investors.
- 5.8 Informal, often customary, farming arrangements can also offer a range of opportunities for young farmers, with no capital backing, who are prepared to accept minimal security in exchange for the chance to prove their worth as farmers. A particular example of this is the former Italian system of *Mezzadri* or share tenancies (Porru 1992a). In common with the wage-homestead tenancies found in Latin America and Asia (Horowitz 1996), the *Mezzadro* comprised the provision of a subsistence homestead and a wage in return for managing the owner's farm. While reflecting a form of feudalism increasingly at odds with post-World War

In Italy, it has been conceded that this system did produce many skilled and entrepreneurial farm managers, who later succeeded to formal tenancies or were able to buy farms with the aid of cheap loans from the CASSA (Porru 1992b; Shearer and Barbero 1996).

- 5.9 While apparently of most relevance to open agricultural systems, with their acceptance of external capital investment, it is quite possible that, as the Italian example demonstrates, alternative arrangements may have equal relevance to closed systems. For example, rather than burdening farming heirs with the debt of repaying nonfarming heirs, it could be possible to link repayments to farm profitability through a partnership or sharefarming arrangement. It could equally be the case that rather than investing directly in land purchase, farmers might do better arranging a partnership to farm land, leaving their own capital free to invest in modernizing or otherwise improving the holding.

## **6. CONCLUDING COMMENTS**

- 6.1 The central finding of the literature review has been that there are two basic models of the agricultural economy operating in Europe: the “closed” system, with its primary purpose of supporting the continuation of family farming; and the “open” system, based on improving the financial and technical efficiency of the farming industry. Under the former system, most factors of production, including land, capital, labor, and expertise, are supplied by existing farming families. The opportunities for new entrants are thus highly circumscribed, while the tenure of the land is largely incidental to the farming operation itself. While operating predominantly as a rural social policy, therefore, this type of closed system is characterized by several forms of inefficiency, particularly associated with land consolidation, lack of receptiveness to new ideas, and limits on investment through a lack of access to external forms of capital.
- 6.2 The open system, in contrast, is built around the core concept that farmland is an acceptable form of investment as well as a source of income for farming families. The system is thus based on a separation between ownership and occupation of land (even if vested in the same person). Rather than facilitating the continuation of the farming family, therefore, ownership in this system is about capital appreciation based on both income and growth. This tends to ensure greater flows of external capital into farming, thus allowing the expansion and modernization of existing units as well as offering greater opportunities to new entrants than the closed system. However, such an emphasis also means that there will be capital and revenue leaving the industry to service the investment, while the security of farming families will be more overtly tied to the financial performance of their businesses than is the case in the closed system.
- 6.3 Ownership of land under both systems is dominated by farmers, although this ownership has different dimensions under each system. In the closed system, where the land has little investment value, ownership and occupation tend to be largely synonymous, with the former being the prerequisite for the latter. Under this system, nonfarming owners are treated with suspicion, particularly if they are large corporations or absentee owners. Indeed, under many systems, such ownership is actively discouraged, if not actually disallowed. In essence,

therefore, under this system there is one farming community, comprising a range of long-term farming families, most of whom will own the majority of the land they farm.

- 6.4 Under the open system, there are effectively two farming communities: owner-occupier farmers, who own and farm their land (and probably inherited it); and tenant farmers, usually renting at arm's length from a variety of landowners. Unlike the closed system, where renting is largely seen as a short-term measure, tenant farmers in the open system are likely to remain so, although they may purchase some additional land if it becomes available. As "career" tenants, those in the open system seek a measure of longevity and protection from eviction as a prerequisite to investment. In contrast, their landlords want flexibility to exploit the changing commercial potential of their land.
- 6.5 As a result, overprotection of tenants in the open system tends to lead to a decline in the availability of let land, as landlords avoid reletting holdings which become vacant. Alternatively, deregulation may lead to more land becoming available to rent, but not necessarily more opportunities for career tenants, as they are outbid for smaller parcels of land by owner-occupier farmers wishing to expand their holding. Under the closed system, the relationship between regulation and the availability of land is of less significance. However, with controls on occupation and rent levels often being imposed in closed systems, the strict regulation of tenancies may encourage more land into formal letting, as nonfarming landowners seek a secure income in addition to the social acceptability of having created an opportunity for another farmer.
- 6.6 Succession and inheritance is also a major point of separation between the models. Most closed systems operate in Civil Law countries, where there is a recognition of equality of heirs either in gaining an actual share of the farm on the death of the owner or in gaining the right to a cash equivalent if there is preferential allocation of the farm. In the former case, there is almost invariably an element of fragmentation of holdings, with future generations increasingly faced with assembling a farm comprised of individual fields located over a substantial area of the locality. Under the latter, the farm may remain intact, but the debt burden can be too great for the holding to bear, leading to the new incumbent's having to take off-farm employment to meet the repayments.
- 6.7 Fragmentation is not an option for the open system to operate. In Common Law countries this is not an issue, as the complete farm can be willed to an individual with no liability (beyond tax) to others. For the open system to operate in Civil Law countries, provision must be made to ensure that complete commercial units can be inherited without being subject to nonfarming debt burden.
- 6.8 Accordingly, the literature indicates that there is no such thing as a single "right" system for ensuring best practice in private-sector tenancy arrangements. What it does indicate, however, is that best practice is a function of the overall policy objectives established for the sector. If these objectives relate overwhelmingly to the identity of the farmers, the tenure system will be of peripheral concern, with most farms being of mixed tenure. If the objectives are more related to finance, however, tenure—and the identities of those owning the various interests—will be paramount. Success in sustaining private sector tenancies in this latter case will be highly dependent upon maintaining a balance between the demands of the landowners for flexibility and their predisposition to use this flexibility to deny long-term prospects to

individual tenant farmers. It is in this latter area that much could be learned from the closed system, including, for example, limits on the size of holdings, which could aid in maintaining a sustainable let sector of the economy.

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