

Restrictions of ownership, leasing, transfer and financing of land and real properties in Europe and North America

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Preface

The UN-ECE Working Party on Land Administration, at its first session in November 1999 agreed to carry out a survey on the restrictions that existed in ECE member states on the ownership, leasing, transfer and mortgaging of land (real estate). The interest to conduct this survey was driven by the transition processes in countries of Central and Eastern Europe many of which for more than half a century had little or no experience of private land ownership as well as by the changing economic and natural environment that is challenging the concept of private ownership rights.

At the meeting in September 2000, the Bureau of the Working Party on Land Administration has reconfirmed its interest in the survey and appointed the delegation of the Russian Federation as responsible for the collection, processing and analysis of data from member countries on the subject of the survey.

The objective of the study was to achieve a better understanding of the present legal position on the attitudes to private ownership rights in land and other real property that prevail in the UN ECE region. Access to land and real property, financing its development, leasing, transferring and buying land and real property are recognized as essential features of an active and successful market economy based on private land and property ownership. Yet restrictions within individual countries exist where these are perceived to be in the wider interest of a country or its citizens.

This study is based on a simple questionnaire, which seeks answers to thirty-eight questions classified under four main headings:

- a. Restrictions on ownership of agricultural and non-agricultural land and real property
- b. Restrictions on leasing agricultural and non-agricultural land and real property
- c. Restrictions on transferring the ownership of agricultural and non-agricultural land and real property
- d. Restrictions on financing the investment or development of agricultural and non-agricultural land and real property

In order to address issues relating to agricultural and non agricultural land use each question was divided into two parts that have allowed to collect separate pieces of information in respect of these two major types of land use. The survey also makes an attempt to find out if in some countries individuals, legal entities and governments may enjoy different rights in land and real property.

Restrictions of rights in land and real properties are a highly sensitive issue. It is subject to cultural legal and historic traditions that develop in countries over centuries. Thus countries demonstrate different views on what can be considered a restriction of rights in land and real property. A restriction in one country may not be treated or considered as such in another. As the respondents were constantly kept informed on the progress made in the preparation of this report and every effort was made to verify with them the accuracy of information presented I have often encountered the problem of different attitudes towards restrictions and limitations of property rights. Because of the nature of this study I have decided to follow the views of respondents rather than give my own interpretations. Readers of this paper are also left with the opportunity to make their own conclusions on the issues presented by respondents as Annex 1 includes all their original replies.

The study is based on replies from 31 countries and jurisdictions in Europe and North America. It provides a snapshot of legal situation with respect to restrictions on ownership, leasing, transfer and mortgaging of land (real estate) that has developed in the UN ECE Region by the beginning of the XXI century. As with the development of human society the

issues of finding a balance between private and public interests in land are becoming increasingly important it is hoped that the results of this study may become a helpful tool for local, regional and national governments as well as other public institution in development of national land policies.

I am grateful to the UN ECE Working Party on Land Administration for supporting the idea of this study as well as to the Federal Land Cadastre Service of Russia for making this publication possible. I particularly appreciate the input made by John Manthorpe from the UK and Gabor Remetey Fulop from Hungary who have proposed the idea of this study and designed the original outline of the questionnaire. Acknowledging the fact that this publication became possible only due to the input that was given from the people who have donated their time to provide their informative replies to the questionnaire I would very much like to thank them for their efforts and patience.

If you do have any comments or enquiries please contact me at the address below:

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Survey area

In November 2000 the Study Questionnaire on Land (real estate) mass valuation system for taxation purposes was circulated among all relevant authorities in the countries of the UN ECE Region. Copies of the Questionnaire and the attached letter can be found in Annex 2. The collection and verification of replies has continued until September 2002.

The following UN ECE member countries have send in their replies to the Questionnaire:

- | | | |
|---------------------------|-----------------|------------------------|
| 1. Armenia | 12. France | 22. Romania |
| 2. Austria | 13. Georgia | 23. Russian Federation |
| 3. Azerbaijan | 14. Germany | 24. Slovak Republic |
| 4. Belarus | 15. Hungary | 25. Slovenia |
| 5. Belgium | 16. Iceland | 26. Spain |
| 6. Bosnia and Herzegovina | 17. Latvia | 27. Sweden |
| 7. Canada* | 18. Lithuania | 28. Switzerland |
| 8. Cyprus | | 29. Ukraine |
| 9. Denmark | 19. Malta | 30. United Kingdom** |
| 10. Estonia | 20. Netherlands | |
| 11. Finland | 21. Norway | |

* Within Canada the reply was received from the Province of Ontario.

** Within the United Kingdom two separate replies were received from England and Scotland.

Commentary of the Results of the Study

Property rights in land constitute one of the fundamental institutions that determine the very nature of social and economic framework of society. It is widely recognized that these rights are critical for economic growth and sustainable development as well as for good governance and social stability.

The countries of Central and Eastern Europe and of the Commonwealth of Independent States have recently experienced dramatic changes of their economic and political systems. This transformation process has particularly put the issue of land and its role in society on the surface of an often conflicting discussion about transferring land and improvements into private property and putting it under the control of individuals and legal entities rather than governments.

These discussions generally accept that private land ownership is a key component of an effective economy and a prerequisite for a functioning market system. To facilitate their countries economic growth governments concentrate their policies on development of land market support infrastructures that ensure sustainable supply of land on the market and create friendly environment for transfer of properties to more efficient owners who have the right to make decisions on how to use their property to its' highest potential.

It is also well understood by societies and governments that land is a unique limited resource. It is subject to many pressures that owners of land are not always able to consider while making management decisions with respect to the use of their properties. The consequences of such decisions often extend far further than land property boundaries. It is also the case that factors influencing land use are often beyond the control of private landowners. Global climate changes, evolvment of new technologies and growing

population density, as well as uncontrolled urban growth, soil degradation and decrease of productive agricultural land provide reasonable basis for increasing public concern and involvement into private property rights.

Like no other known resource land provides basis for all human activity. The relationship between men and land involves multiple interests. The comprehensive nature of land predetermines the need to look at the issue of restrictions imposed by governments on ownership, leasing, transfer and financing of land and real estate from view points that go beyond the understanding of land just been an object of private property rights.

Section A. Ownership of agricultural and non-agricultural land and real property

Ownership of land and real property is a basic right. Limitations related to the area of land held in private ownership are an important tool for prevention of land fragmentation or concentration of land held in single ownership. Imposing of limits on the growth of the number of small land holdings is usually intended to sustain the economic environment that would unless regulated lead to the necessity of land consolidation procedures and corresponding public expenditures. While in some transitional countries heavy land fragmentation became an issue in result of fast and sometimes unbalanced land property distribution in others it has been slowly progressing for centuries of unrestricted transactions on the land market. Apart from possible economic reasons imposing of limits on maximum size of land holding is often driven by political views on social justice that may prevail in the society.

Although the issue of imposing minimum and maximum restrictions on the size land property held in single ownership is evident and often debated the survey has revealed that very few countries actually impose them. Central governments usually stay away from imposing these types of restrictions on landowners. Where they exist maximum or minimum land areas that can be held in single ownership are usually established by municipal or regional legislations as part of their planning control mechanisms.

In urban areas municipal construction and zoning regulations establish minimum and maximum property sizes. These control mechanisms usually exercised by local authorities are often not perceived as restrictions of ownership rights.

Where they are found property size restrictions usually apply to agricultural land. There are examples when the area of land that can be held in single ownership is fixed by legislation. They are more frequently found in transitional then developed economies. Transitional economies also sometimes put time restrictions on the area of agricultural land that can be held in single ownership. It is probably believed that such measure would help to ensure that it is impossible to take advantage of low agricultural land prices due to the generally poor economic status of the agricultural sector in these countries and concentrate land property in single ownership.

There are also more flexible examples of such restrictions. They may sometimes be a condition of an ongoing land consolidation program and (or) be applied to formation of new property units thus gradually optimizing existing property sizes. Sometimes legislation may even specify that a size of a newly formed property should be suitable for its purpose in terms of its extend and design and places the decision on the size of such unit with a

surveyor. If a piece of land property is really small registering authorities may refuse to register ownership rights in it.

Not limiting the size of property held in single ownership itself a government may require specific qualification criteria from owners of agricultural land holdings, which are larger than certain area.

Responding countries demonstrate various levels of restrictions or requirements relating to the cultivation or use of land and real property. It is common that owners have the right to use their property the way they want to but in consistency with statutory laws and regulations and as long as they do not harm or interfere with rights and interests of other parties.

Ownership restrictions are usually not imposed on a person but on a certain type of property. Limitations of a person's ability to act as a party in a real property transaction can be found in contractual or civil law. For instance, legal maturity age can be a factor limiting a person's right to be involved in transactions with land.

Although collected responses suggest that countries apply different philosophies to restrictions imposed on the use of agricultural and urban land concerns over protection of landscapes and natural environment always exist.

Countries indicate that generally they are more concerned with use restrictions applied to agricultural land. It is viewed as an extremely valuable resource of public significance and governments usually make it obligatory for the owner to use it strictly for agricultural purposes. Although in most transitional economies agricultural land was one of the first targets of privatization in a rare case one can find that a government may even still prohibit private ownership of agricultural land. Where agricultural land is held privately it is common that an owner is obliged to maintain it in agricultural use. An unalloyed use of agricultural property that is different from its established purpose may justify a government to take steps to alienate property from an owner through court proceedings.

Agricultural market prices are often the reason for specific agricultural use restrictions imposed by national or EU regulations.

Some countries impose restrictions on who can be owners of agricultural land. In some transitional economies legal entities cannot hold land in private ownership. This restriction is driven by the idea of not allowing former large agricultural enterprises to reemerge as owners of large agricultural land areas. With respect to individuals the age restriction of when a person can become an owner of agricultural land and certain criteria requirements to farming experience and qualifications can be found in countries with developed land markets.

Use of urban properties is limited by planning and zoning control regulations. Local

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