

Transparency
in Land Management –
German Experiences
and Options for Ukraine

Kyiv, July 2018

The project German-Ukrainian Agricultural Policy Dialogue (APD) started 2006 and is supported up to 2018 by the Federal Ministry of Food and Agriculture of Germany (BMEL). On behalf of BMEL, it is carried out by the mandatary, GFA Consulting Group GmbH, and a working group consisting of IAK AGRAR CONSULTING GmbH (IAK), Leibniz-Institut für Agrarentwicklung in Transformationsökonomien (IAMO) and AFC Consultants International GmbH. Project executing organization is the Institute of Economic Research and Policy Consulting in Kyiv. The APD cooperates with the BVVG Bodenverwertungs- und- verwaltungs GmbH on the implementation of key components related to the development of an effective and transparent land administration system in Ukraine. Beneficiary of the project is the Ministry of Agrarian Policy and Food of Ukraine.



www.apd-ukraine.de

BVVG German AgriForest Privatisation Agency is the state-owned agency responsible for the administration and privatisation of state-owned farm and forest land in Eastern Germany. It was founded in 1992 and has since played an active role in the transformation process of the former GDR, aiding its transition from a centrally planned economy to a market economy. BVVG holds the mandate to privatise approximately 1.8 million parcels of land with a total area of 3.2 million ha, and has therefore generated a remarkable amount of know-how and expertise in the field of IT-supported land administration, lease management, land sales through auctions and tender, contract management, forest management, redevelopment of contaminated sites as well as methods for land valuation. BVVG was also involved in the process of restitution and allocation of land ownership rights to the different administrative levels of the German State and has therefore contributed to the formation of a well-balanced ownership structure in Eastern Germany.

Since the year 2000, BVVG also provides consultancy services to Eastern European, Central Asian and African countries on the privatisation of farm and forest land, land market development, institution building and land administration. In this context, BVVG has contributed to various projects of international cooperation.

BVVG's International Consulting Department provides policy and legal advisory services as well as technical assistance in areas that lie within its core competencies.



www.bvvg.de

Authors

Christoph Konrad Gilgen
Ulrike Meyer-Everloh

gilgen.christoph@bvvg.de
info.akp@bvvg.de

© 2018 German-Ukrainian Agricultural Policy Dialogue
All rights reserved.

Content

1. Introduction	5
2. Transparency in regard to agricultural land and the leasing market in Germany	10
2.1 Land documentation and overview	10
2.2 Legal regulations for more transparency	12
2.2.1 Special approval requirement for the sale of agricultural land	13
2.2.2 Committees of experts for property values	15
2.2.3 The agricultural leasing market	18
3. Market transparency and monitoring as a basis for the development of a land policy model	21
4. Additional areas of land management in Germany and measures for prevention of corruption on communal level	25
4.1 Plan approval procedure as a basis for the acquisition of land for infrastructure projects	26
4.2 Rezoning or change in type of land use	28
5. Transparency and prevention of corruption in the management of state-owned agricultural and forestry land at BVVG	31
5.1 Double checking principle and transparency	34
5.2 Making employees aware and instructing them	34
5.3 Handling rewards and gifts	35

5.4 Contact person for corruption prevention and legal counsel	38
5.5 Staff rotation	38
5.6 Insider rules	39
5.7 Internal audit / full-time lead investigators	39
5.8 Allocation of services to external third parties	40
6. Options for Ukraine	41
6.1 Development of a transparent leasing market	42
6.2 Publication of available state agricultural land	43
6.3 Financial transparency	45
6.4 Market monitoring by independent institutions	44
6.5 Transparency in property movements	45
6.6 Transparency as the basis for a land policy model	46
6.7 Uniform administrative processes and approval procedures	47
6.8 Transparency against corruption	48

1. Introduction

Ukraine's agricultural sector is currently on a comprehensive course of reform.¹ A central concern for the Ukrainian government, its responsible departments and international donor institutions seems to be the development of effective and transparent land management.

Particularly at a time when large parts of the country's own territory have been illegally removed from the Ukrainian state's sphere of influence, it appears all the more important for the state to strengthen the regions by means of the best possible management and cultivation of agricultural land. This is particularly true in view of the growing importance of the agricultural sector for the Ukrainian economy as a whole.

For ten years now, the German-Ukrainian Agricultural Policy Dialogue (APD) has been providing comprehensive advisory services for shaping the general agricultural and land policy conditions in Ukraine, primarily on the basis of German and European experience.

Particularly due to the similar experiences in the transformation of the agricultural sector, transparency in land management is regarded as very important in Germany. The land reform process, including the privatisation of land that started in Germany in the 1990s and lasted for a long time, was a *sub-process* within the transformation of the general economic and ownership conditions of a socialist centrally planned economy to

¹ See EU-Ukraine Association Agreement and strategy entitled "Development of Agriculture and Rural Areas in Ukraine 2015-2020"

the newly defined goals of a market-oriented, social economic order. The process of reintegrating nationalised land into the economic system gave rise above all to questions about the rule of law, transparency and the predictability of state action. Effectiveness and efficiency was another challenge in the reform process. The latter is considered to be an indicator of a state's ability to organise the implementation of the government and reform programme in a way that minimises costs.

Building on these experiences, the title "Consulting for the development of effective and transparent land management in Ukraine" was developed together with Ukrainian project partners for the land component of the German-Ukrainian Agricultural Policy Dialogue 2016 – 2018.

Land is not a commodity like any other. Above all, it is a limited commodity because of its non-reproducibility. For this reason, transparency is necessary for an orderly land market because "(...) land cannot be left solely to individual control and the forces of the market like other assets (...)", the 1976 UN Guidelines on Land Management state. And they continue: "(...) public control of agriculture is therefore essential to protect this asset and achieve long-term policy and strategic objectives."²

The necessary control by the public can only be carried out if detailed knowledge of market developments is available. Restrictions and regulation may also be necessary to achieve long-term policy and strategic objectives. The German Federal Constitutional Court has stated that it demands a fair legal and social order to take account of the interests of the general public in land to a *far greater* extent than in other goods.³ For this reason, agricultural land movements do not have to be as free as the movement of other "capital". Corresponding statutory and

2 See: "Vancouver Declaration On Human Settlements", 11 June 1976

3 See: Ruling by German Federal Constitutional Court on 12 January 1967.

other legal regulations designed to ensure transparency in German land administration are presented in this brochure.

Transparency is required for the timely identification of problems. It is necessary in order to be able to make and control policy decisions. For example, political decisions in the area of land market policy require comprehensive, up-to-date and high-quality data on price and volume movements in the land markets. This includes, among other things, information on the ownership and leasing of agricultural land. Market transparency is also indispensable for a meaningful allocation of the land. Transparency, however, should not only be exhausted in the supplying of statistical data, but should also include the activities of institutions active in the land market ⁴ – as the federal and state working group on “Land Market Policy” puts it.

Transparency in government action must also be seen as the basis for *uniform* administrative action: Every citizen should be able to rely on being treated equally by the state. Uniform administrative action is a cornerstone of trust in a country with the rule of law as the foundation of society.

In Germany, after reunification, there were state decisions, for example in connection with the restitution and property allocation processes or direct sales of state agricultural land, in which uniform and transparent administrative processes were particularly important for acceptance by the affected groups of the population. In the first few years after reunification, for example, decisions on leasing by the BVVG were accompanied and reviewed by regional leasing committees.

⁴ Agricultural land market policy: General situation and options for action; report by federal and state working group on “Land Market Policy” dated 16 January 2014, p. 40

To this day, there are a number of areas of land use in Germany that are particularly susceptible to corruption, which can best be prevented through transparent procedures.

Transparency is therefore also the basis for effective and faultless management of state-owned land. For this purpose, a series of procedural rules and instruments have been developed to ensure transparency in the BVVG.

In Ukraine, too, there are repeatedly processes that many Ukrainians find unfair. The experts of the Ukrainian professional association "Landunion", Serhij Bilenko, Anrij Koshyl and Andrij Martyn, have addressed this topic and listed examples in the land administration of Ukraine which are particularly characterised by a lack of transparency and susceptibility to corruption in their own publication appearing alongside this brochure.⁵ Thus, for example, a few people have been able to and are still able to use the free privatisation process to obtain particularly attractive land, while others have been able to exercise this right to which every Ukrainian is entitled only with a very high administrative effort in order to obtain possibly lower quality land as a result. Another example can be found in the often still relatively non-transparent processes for reclassifications or changes in the type of use. The processes relating to the examination and approval of regional planning documents, in which administrative decisions can be both positive and negative, or approval processes can be prolonged without the need for justification, have also been identified as areas for improvement.

5 Д-р. Андрій Мартин, Сергій Біленко, Андрій Кошиль, Асоціація «Земельна спілка України»: РЕКОМЕНДАЦІЇ ЩОДО ПІДВИЩЕННЯ ТРАНСПАРЕНТНОСТІ ТА ПРОТИДІЇ КОРУПЦІЇ У ГАЛУЗІ ЗЕМЕЛЬНИХ ВІДНОСИН В УКРАЇНІ

Even though there have been steps towards greater transparency in land management in the recent past - at the end of 2016 the State Agency for Geodesy, Cadastre and Cartography of Ukraine introduced the extra-territoriality tool to ensure that decisions are made not by local staff but by experts in other areas of Ukraine who are determined randomly online. Similarly, the public auctions process for the leasing of agricultural land, which is broadcast live on the internet and the results of which are collected, also contributes to increasing transparency in land relations. The creation of a clear legal framework and other transparent administrative procedures remains a major challenge nonetheless.

2. Transparency in regard to the land and leasing market in Germany

2.1 Land documentation and overview

In Germany, the information on land has been listed in two different registries that show its long historical development. The cadastre contains the actual information on all parcels of land (cadastral parcels) as a comprehensive survey-based register originally created for tax purposes. In combination with the also universally available maps of the property cadastre, it is possible to know the size, location and use of the respective part of the earth's surface. The cadastre is kept up to date by continually including any changes. Due to the federal administrative structure in Germany, the cadastre is kept by the competent state departments.⁶ The data can also be supplied by independently working, publicly appointed surveyors.⁷

The land register is now an electronically maintained, public register that provides information on properties (possibly consisting of several parcels) and the rights to the properties⁸. With the exception of certain properties owned by the public sector, each property in the land register has a land register sheet, which indicates, above all, the legal relationships, i.e. ownership situation and legal encumbrances of the property, in addition to the technical data taken from the cadastre on the location, size, type of cultivation, and development. The land register documents that an entered

6 Traditionally in the "cadastral offices", recently also e.g. handled by the "State Office for Surveying and Geoinformation"

7 See: Fundamentals of land market for agricultural areas in Germany – consideration of German experiences for the development of options for Ukraine, BVVG, 2015

8 The land register is maintained by the land registry. It is located at the respective district court which is responsible for the properties in its district.

property exists as such. Both registers (land register and cadastre) are obligated to cooperate and exchange their respective data with each other.

Changes in rights only become effective as a rule when they are entered in the land register. Even in the case of transfers of ownership outside of the land register (e.g. inheritance), the land register must first be corrected before the new owner can effectively dispose over the property. In the case of legal transactions for the transfer of ownership, the corresponding agreement and its entry in the land register is required. The content of the land register is considered to be correct in Germany and thus protects good faith, which means that until proof of the contrary is provided (e.g. in litigation / civil proceedings) it is assumed that the entered right holder is entitled to a right entered in the land register or that a deleted right no longer exists.⁹

Due to the substantive law significance of legal transactions with properties and the rights to them, a notary must be involved in Germany as a public official. Thus it is not only the agreement on the change in rights with regard to property law that must be notarised, but also the contract of sale for the property in accordance with the code of obligations. The notary then also submits the application necessary for the entry of the change in rights to the land registry.

Even if the land register is now kept electronically, it is not accessible to everyone or published on the internet. Viewing the land register is possible for anyone who can present a *legitimate interest* to the respective land registry.¹⁰ This unspecified legal term leaves the competent authorities and courts sufficient scope to decide on individual cases. A legitimate interest may exist, for example, if an injured party wishes to assert claims

9 Section 891 of the German Civil Code [Bürgerliches Gesetzbuch, BGB]

10 Section 12 of the German Real Estate Registry Act [Grundbuchordnung, GBO]

for damage compensation against the owner of a property. In certain cases, a prospective buyer or lessee may also have a legitimate interest in viewing the land register. If this is the case, that party may request a copy of the appropriate land register for a relatively small fee. That party will be allowed to view Section 1 (Owner Information¹¹) and Section 2 (Burdens and Restrictions¹²). Viewing Section 3 of the land register where mortgages¹³ are listed is only permitted in a few exceptional cases. There is no legitimate interest if, for example, the applicant wishes to obtain only information on the financial circumstances of their debtor by viewing the land register, or wants to find out whether their neighbour has already transferred the property to their son or daughter. Using deceptive tactics and making false claims of an allegedly legitimate interest in order to view the land register can be revealed by the fact that land registries must keep transcripts of land register viewings and provide information to the property owners upon request.¹⁴ Similarly, owner information can only be viewed on the basis of a specific property. It is not possible to obtain property information about a specific person, for example, using a name to learn what and how many properties this person owns.

2.2 Legal regulations for more transparency

Basic Law [Grundgesetz] in Germany provides the legal framework for protecting private property and strengthening ownership rights on the one hand and ensuring, on the other, the necessary transparency if the public interest or a legitimate individual interest requires such. German

11 Section 1: Name, place of residence and, in the case of natural persons, date of birth of the property owner(s); entry date and reason for transfer of ownership (purchase contract, will, gift, surcharge in the case of a compulsory auction)

12 Section 2: Easements, usufruct, encumbrances, pre-emptive rights, leasehold estates

13 Section 3: Mortgages, land charges, pension liabilities

14 <http://www.haus-und-grund-muenchen.de/mainw/presse/grundbucheinsicht.html>

Basic Law also ties the protection of ownership and the associated freedom to dispose over land to a social responsibility with regard to property. Accordingly, the use of the property must not be contrary to the interests of the common good or should benefit it. The consequence of this is that rural land movement, in view of the fact that land is non-reproducible and indispensable, does not have to be as free as other forms of capital movements. According to the aforementioned decision by the Federal Constitutional Court, a just legal and social order therefore requires that the interests of the general public be brought to bear to a far greater extent in regard to land than other capital goods. This means that, in addition to the principle of contractual freedom, which also applies to agricultural land, special provisions apply to legal movements (transactions) involving property.

As a long-term strategy to combat speculation on the land market with all its side effects, there is no static setting of values/prices in Germany. Rather, a system of market observation has been established by law to ensure transparency on the land market. In addition to the description and definition of the market value as a uniform concept of value for all participants in the land market, the following essential principles have therefore been laid out in the Building Code [Baugesetzbuch].¹⁵

2.2.1 Special approval requirement for the sale of agricultural land

The Act on Measures to Improve the Agricultural Structure and Safeguard Agricultural and Forestry Enterprises [Grundstücksverkehrsgesetz - GrdstVG], which entered into force in 1962, makes the sale of agricultural

¹⁵ See: Building Code [Baugesetzbuch, BauGB] Sections 193 to 199

and forestry assets subject to approval in order to prevent the threatened unhealthy distribution of land and to safeguard the food supply for the population. The state does not intervene in the land market in a regulatory capacity, but rather uses this law as prevention against:

- a. threats for the agricultural structure¹⁶
- b. avoiding of extensive parcellation¹⁷
- c. excessive purchase prices for agricultural land¹⁸

Even after the federal government transferred legislative competence for agricultural land rights to the federal states in 2008, the Act has retained its validity in all federal states. Above the exemption limit set in the states (from 0.15 to 2 ha, depending on the federal state), there is an obligation to obtain approval for planned sales or other disposals.

The right to approval is void if one of the concrete grounds for refusal specified in the Act is met. This is particularly the case if a non-farmer wants to acquire agricultural land and at the same time a productive farmer (in their main or secondary employment) urgently needs the land to expand their farm and is ready and able to buy it. Such a refusal decision can be appealed in the agricultural courts of the ordinary civil courts.

In the case of such a purchase contract with a non-farmer, the non-profit "Siedlungsgesellschaft" [Land Company] responsible under state law can exercise the state pre-emptive right granted to it under the Act on Measures to Improve the Agricultural Structure and Safeguard Agricultural and Forestry Enterprises [Grundstücksverkehrsgesetz - GrdstVG] in conjunction with the Reich Settlement Act [Reichssiedlungsgesetz] and enter into the contract concluded as purchaser with all its provisions in

16 See § 9 (1) 1 Grundstücksverkehrsgesetz and (2) Grundstücksverkehrsgesetz

17 See § 9 (1) 2 Grundstücksverkehrsgesetz

18 See § 9 (1) 3 Grundstücksverkehrsgesetz

order to then be able to use the land in accordance with the agricultural structural specifications for increasing the areas of agricultural operations.¹⁹

Even if the pre-emptive right is rarely used, the preventive character of the law is often emphasized, since contracts that are not approvable are often not concluded in the first place. Furthermore, the examination and approval requirement for property purchase contracts contributes to transparency on the German land market.

2.2.2 Committees of experts for property values

*Committees of experts*²⁰ for property values have been set up at the level of the districts and independent cities, which in principle make a significant contribution to transparency on the entire land market through a continuously managed collection of purchase prices. The committees of experts, as autonomous, independent bodies not bound by directives, prepare annual land guide values and property market reports. In the committees of experts, persons from different professional groups work on a voluntary basis where such are qualified for this purpose on account of their knowledge and experience in different areas of the entire property market.

As described in chapter 2.1, every contract in Germany where someone commits to transfer ownership of property for payment or exchange must

¹⁹ Although this possibility is only rarely used, the land companies are not insignificant players in public land management. In the eastern German federal states in 2013, for example, they managed more than 100,000 hectares of agricultural land, with the focus being on the northernmost state of Mecklenburg-Western Pomerania with about 87,000 hectares.

²⁰ Section 192 of the Building Code [Baugesetzbuch, BauGB]

be notarised. The notaries are obligated to send a copy of the contract to the locally competent committees of experts. The data obtained from the contracts is evaluated and processed in the departments of these committees. In addition, questionnaires are sent to the buyers of property where they are asked for additional information that is not usually contained in the purchase contracts.²¹ The information thus obtained is – after the elimination of outliers – included in the purchase price collection and, as a rule, represents the most important source of data for the regional land market. It is intended to provide everyone with the transparency on the property market that is necessary for decision-making and also to give specialist users the special data they need for valuations.²²

Committees of experts also have the legal mandate to prepare value appraisals for real estate upon request for authorities and courts. They also prepare compensation calculations, in particular if private property is to be accessed by the public sector for purchases or expropriations.

Above all, however, the committees of experts derive so-called *land reference values* across the board from their collections of purchase prices and publish them at least at the end of every other year.²³ Depending on the capacity of the departments, these are also determined annually. Land reference values are average location values based on one square metre of land for a number of properties in an area with essentially the same utilisation and value circumstances. The land reference value is based on a land reference value property, the value-influencing characteristics of

21 For example, information on the structural condition of the real estate on the property, questions about access or the relationship between seller and buyer (neighbourhood purchase or family connections)

22 Jürgen Kuse/Dr. Iris Homut: Transparenz am landwirtschaftlichen Grundstücksmarkt [Transparency on the Agricultural Land Market], in: NL-BzAR Bodenmarkt 2, p. 18

23 See: Section 193 (3) of the Building Code; Section 11 (1) of the Appraisal Board Ordinance [Gutachterausschussverordnung, GAV]

which are typical for this area. In developed areas, land reference values are to be determined with the value that would result if the land were undeveloped.²⁴

In this way, the real value on the land market is to be reproduced in the best possible way. The land reference values are usually displayed in land reference value maps and - partly also in the form of land reference value lists. In most of the federal states there are also internet portals with free access to the land reference values.

In addition to the individual evaluations of the committees of experts in the districts and independent cities, the evaluations of the Senior Committee of Experts offer the possibility of mapping the property market in regard to larger regions.

The Senior Committee of Experts also tries to collect and publish data on land leases. A different approach to the preparation of the data can be found in the individual districts. Parallel to the purchase price evaluations, it has only been possible to take account of new leases to date. However, a statement on the development of lease prices would also have to include existing contracts and the corresponding lease price adjustments in order to be able to make reliable statements on the lease market. However, this data is generally not accessible.²⁵

24 When concluding purchase contracts for agricultural land, it is of immense importance for the work of the committees of experts to assign this land to types of use and also to indicate purchase prices for each type of use. If there is only general information in the sales contract, for example: Farmer A sells farmer B agricultural land totalling 10 hectares at a price of x euros, this purchase contract cannot be evaluated meaningfully. It would make more sense to formulate the purchase contract in such a way: Farmer A sells farmer B 5.0 hectares of arable land at a price of x euros, 4.5 hectares of grassland at a price of x euros, 0.2 hectares of water land for a price of x euros and 0.3 hectares of woodland at a price of x euros.

Source: Jürgen Kuse/Dr. Iris Homut: Transparenz am landwirtschaftlichen Grundstücksmarkt [Transparency on the Agricultural Land Market], in: NL-BzAR Bodenmarkt 2, p. 19

25 Jürgen Kuse/Dr. Iris Homut: Transparenz am landwirtschaftlichen Grundstücksmarkt [Transparency on the Agricultural Land Market], in: NL-BzAR Bodenmarkt 2, p. 21

2.2.3 The agricultural lease market

The agricultural lease market is not an ordinary market, but also has many special features in Germany. Admittedly, there are suppliers (landowners) and demanders (lessees) who have to agree on the lease price and often have very different ideas about the value of the leased properties. But even within the two groups, ideas differ widely. The willingness of each lessee to pay is based on the ground rent that they can achieve with the land use planned by them. In this case, the marginal ground rent equals the maximum affordable lease price for the lease of an additional piece of land (maximum price to be paid for leasing it). Due to different production processes and manager skills, the prospective lessees may offer very different leases in some cases. In contrast to lessees, the lessors have less information for their price demands. Although they want to achieve the highest possible price, they will accept almost any price or possibly decide to sell their land if better long-term yield opportunities are possible as a result before they would not lease out their land at all.²⁶

The development of an equilibrium price is one of the important functions of a market. Therefore, the tendering of lease objects is an appropriate tool to create transparency regarding the offered object and to give farm businesses the opportunity to participate in the happenings of the lease market. Accordingly, in relation to the agricultural lease market, the one who could make the best profit at the competitive market price would be the one who acquires the land. This ideal conception of a market does not exist with the lease market. This might be explained by the fact that a large proportion of the lease contracts are negotiated directly between the involved parties without a previous public tender. There are usually only a few market participants, the leased areas traded vary in quality (type of soil, size, location) and there is hardly any meaningful price information. Above all, however, the market area is small in size and most prospective lessees have only a limited radius of

²⁶ Hans Dreier: Entstehung der Pachtpreise und ihre Transparenz [Establishment of Lease Prices and their Transparency], in: NL-BzAR Bodenmarkt 5, p. 12

action. In Germany, the agricultural lease market thus consists of many small submarkets, each of which usually covers the size of a municipality up to a maximum of one administrative district. In eastern Germany, in the area of the former GDR, the situation differs due to the partly regionally still existing (but constantly decreasing) influence of major state lessors such as the BVVG as well as lessees who often lease land in a larger area than farmers in other regions of Germany.²⁷

However, there is often no reliable price information to guide both lessees and lessors of agricultural land. It is true that agricultural structure surveys and agricultural counts are carried out at regular intervals to record lease prices by surveying farmers. However, there are no official quotations or a land exchange from which current prices could be derived. The BVVG, as the state-owned privatisation company for the federal government, which may only sell or lease its land at market prices, has therefore created a collection of its own lease prices in addition to the collection of its own purchase prices. The BVVG anonymously publishes the highest bids over the past six months at which tendered agricultural lots over five hectares have been sold or leased. The BVVG uses its collection of lease and purchase prices as basis for determining the price if land is not offered via invitation to tender.

The so-called comparison price system (for purchase prices) was deemed by the EU commission to be suitable for determining the market value.

The German Land Lease Act [Landpachtverkehrsgesetz, LPachtVG] adopted in 1985 was also intended to counteract the lack of transparency and to achieve official control or monitoring of the land lease contracts. It applies to all the newly concluded land lease contracts as well as to existing land lease contracts in the case of changes to the leased object, term of the lease and contractual services.

²⁷ See: *ibid*, p. 13

Lessors or lessees must report the contract to the authority. This authority has one month to object to the lease contract in question. This is possible if

1. the lease entails an unhealthy distribution of land use, in particular an unhealthy accumulation of agricultural and forestry land;
2. the leased property or a majority of spatially or economically connected land is uneconomically divided up for use; or
3. the lease is not proportionate to the income that can be generated in a sustainable manner if properly managed.

Legal protection is also guaranteed here through the agricultural courts of the ordinary civil courts.

The lease prices are documented by the counties, processed and reported once a year to the Ministry of Agriculture in the respective federal state. The announcement includes, among other things, the number of lease cases, the size of the leased land and the agreed lease prices broken down by arable land and grassland, as well as the amount of arable land and grassland. The Ministry publishes the statistics annually on the internet.

Due to the discretionary leeway in interpreting the term *unhealthy land distribution*, the implementation of the law has varied in individual federal states to date. In particular because the Land Lease Act does not include sanctions for failure to notify the authorities, many lease contracts are not included at all. For this reason, the data on the contract contents actually obtained due to the obligation to report the contract is subject to certain reservations. The statistical evaluation is only partially useful as a result. Nonetheless, the many reported contracts remain an important database.

3. Market transparency and monitoring as a basis for the development of a land policy model

Transparency on the agricultural land and lease market is not only useful for market participants who can base their decisions on the available data, but also for authorities, offices and courts that can rely on a comprehensive data collection for administrative decisions such as appraisals or compensation payments in the event of expropriation. Above all, however, political decisions for the management of land market policy also require comprehensive, up-to-date and qualitatively reliable data on price and volume movements on the land markets, as well as information on operating and ownership structures and leases.

In Germany, many reports of rapidly rising land prices and increased activity by investors on the land market, some of which are far removed from agriculture, led to a working group being set up in 2014 by the federal and state governments to develop a target system for land market policy and options for managing it.

First of all, the federal and state working group assessed the existing situation on the German land market and identified developments that agricultural policy should address by taking countermeasures. Between 1992 and 2011 alone, more than 800,000 hectares of agricultural land were lost for infrastructure and settlement measures. It is true that the size of the loss of land in the 1990s was considerably higher than in recent years.²⁸ However, the goal of reducing land loss to a maximum of

²⁸ From 1993 – 1996 the daily loss of agricultural land amounted to about 120 hectares; in the last few years it has been around 70 hectares per day.

30 hectares per day has not yet been achieved.²⁹ In addition, demand from non-agricultural investors has risen significantly as a result of the financial and euro crisis, which is also one of the reasons for the sharp increase in lease and purchase prices for agricultural land, especially in eastern Germany. However, at the beginning of the 1990s, prices in the former GDR were at a very low level compared to western Germany, so that the relatively sharp rise in prices can also be viewed as a result of the increasing price alignment between eastern and western Germany. Parallel, the prices in western Germany have increased notably. In addition to other factors such as bioenergy and, in particular, biogas production within the framework of the German Renewable Energies Act [Gesetz für den Ausbau erneuerbarer Energien, EEG], which secures high revenues for participating producers over a long contractual period, the increasing shortage of land, especially associated with animal husbandry is a determining factor for the noticed increase in prices.

In eastern Germany, the transparent presentation of the BVVG is also said to have contributed to the rise in prices. The BVVG anonymously publishes the highest bids over the past six months for which tendered agricultural lots over five hectares have been sold or leased. This high degree of transparency is still controversial today. Critics are of the opinion that the publication is driving up prices. On the other hand, the right to information about market prices of the BVVG is also a justified argument. After the BVVG sold much land for years on the basis of expert opinions, which could be prepared on the basis of outdated and

²⁹ As described in chapter 2.2.1, municipalities often make targeted land purchases prior to their own planning (for converting them from agricultural land, e.g., to building land), also in order to be able to achieve the planning gains themselves after the purchase as agriculturally used land and sale as building land. Land that is bindingly planned for public use (e.g. schools, streets, green areas, playgrounds, etc.) in municipal planning is also regularly bought in advance. If this is not possible, the building code grants the municipalities a municipal pre-emptive right to purchase these public areas in accordance with the statutes at the prices that are based on use at the beginning of the municipal planning.

only partially comparable data due to a lack of current data, the BVVG was only given a current and actual market overview by the fact that the invitation to tender was established as a *standard procedure*.

Above all in the new federal states, much larger farms than in western Germany have given rise to a number of supraregional holding structures in the agricultural sector with a correspondingly higher concentration of ownership in regional land markets. Smaller farms are facing increasing problems in the competition for land.

With regard to the principles and legal framework conditions described in the previous chapters, which were actually supposed to prevent this development, the federal and state working group found that Chapter 2.2.1 of the Act on Measures to Improve the Agricultural Structure and Safeguard Agricultural and Forestry Enterprises [Grundstücksverkehrsgesetz - GrdstVG] is applied differently both in a comparison of the federal states and also within the federal states themselves. For example, sales of land in the context of the sale of shares in a business are predominantly not covered by this Act. This also means that the authorities no longer have any control options to counter unhealthy land distribution.

The circumstances described above reduce the usefulness of the current data on the development of the lease market and the changes in ownership on the agricultural land market and could, without countermeasures, lead to a development contrary to the desired land policy model.

For this reason, the federal and state working group has identified options for action, particularly in the areas of "market transparency and statistics", "deficiencies in the implementation of existing laws" and "broader regulation of land law".

On this basis, the following seven land policy objectives were developed:

1. Maintaining and promoting a broad distribution of land ownership.
2. Avoidance of dominant positions on regional land markets.
3. Priority of farmers when purchasing land.
4. Ensuring the sustainability of agriculture.
5. Limitation of the increase in purchase and lease prices for agricultural land.
6. Priority for agricultural use of agricultural land.
7. Improvement of the information situation and market transparency on the land market.

These land policy objectives of the federal and state working group have also led to changes in the utilisation of state-owned agricultural land. For example, the BVVG's privatisation principles from 2010 have been adapted to the land policy objectives. The ceiling for the sale of land has been reduced from 25,000 hectares to 10,000 hectares per year now. Similarly, the size of the tendered lots was limited to a maximum of 15 hectares, after being a maximum of 50 hectares at the beginning. Approximately one-third of the land tendered is restricted to young farmers up to 40 years old and companies with labour-intensive farming practices.

4. Additional areas of land management in Germany and measures for prevention of corruption on communal level

Sensitive areas of land management in Germany are the rezoning or change of land use, for example, the conversion of forest or agricultural land to land for construction or building land. Permits are required for such rezoning of land or parts of land, which can be obtained in various administrative procedures depending on the existing or new type of use. As a rule, rezoning or conversion of land is associated with the expectation that, after successful approval, the value of the land in question will generally increase considerably.

Therefore, planning procedures that lead to an increase in the land value have to be rated as particularly vulnerable to corruption, since the threat of dishonest and tortious interference is potentially present. However, the Federal Building Code makes provisions for a high degree of transparency by governing that citizens and associations are informed about the general objectives and purpose of the planning process at the earliest possible stage. Stakeholders can comment on the planned measure and hand in requests for amendments. These statements handed in by the public have to be balanced with other interests before approving the planning measure.

Generally, public participation in the scope of drafting, changing, amending or annul a land-use plan happens in two-stages. Firstly, the public is informed at the earliest possible stage, secondly, the draft land-use plan is publicly displayed for a determined timeframe.

Additionally, authorities and other so called “agents of public concerns” have to be invited to deliver their opinion and make a statement.³⁰

4.1 Rezoning or change in type of land use

German Basic Law gives municipalities planning control over their territory. They are thus responsible for the land use planning where public interests in the use of the land for the construction project have to be organised and directed, taking account of the concerns related to protecting nature and the landscape and the design of the local and landscape appearance. Against this backdrop, an application for rezoning or conversion of the type of land use must be submitted to the competent municipality in whose territory the land is located.

The current land use plan or the development plan of the municipality is authoritative for determining how a plot of land can be used, as these contain the legally binding stipulations for the urban planning policy.

The land use plan is the municipality’s preparatory development plan. It is basically set up for the entire municipal territory and contains only the description of the intended type of land use. The development plan is prepared from the land use plan and contains, as a binding development plan, the legally binding stipulations for the urban planning policy in the municipality. It determines, for the building land, the type and extent of the building use, the construction, the plots of land that can be built over and the plots of land that cannot be built over, as well as other parameters of use.

³⁰ Examples and types in Bannenberg, *Korruption in Deutschland und ihre strafrechtliche Kontrolle* [Corruption in Germany and its Criminal Law Control], Neuwied 2002, p. 205 f and Dölling, *Handbuch der Korruptionsprävention* [Manual of Preventing Corruption], Munich 2007, page 21 f

The land use plan and the development plan are governed by the building planning provisions in the German Building Code [Baugesetzbuch, BauGB]³¹ and the German Building Use Ordinance [Baunutzungsverordnung, BauNVO].³² Decisive for the admissibility of a construction project in terms of building planning law and the type of possible use of the land is the area in which the respective land is located. Fundamentally, a municipality is generally divided into three areas according to planning law:

- areas within the scope of a development plan,
- internal area,
- external area.

A building project is always only permitted under planning law if it complies with its stipulations within the scope of a development plan. In the internal area, the admissibility of the development of a property depends on the existing buildings in the immediate vicinity.

The external area is supposed to be kept free of buildings, with the exception of the projects privileged in the Building Code. These include, for example, land use that serves agricultural, forestry and horticultural operations, uses related to the public supply of electricity, gas, telecommunications, heat and water, waste water management, wind and hydro power plants as well as projects for the energetic use of biomass and nuclear power plants.

In exceptional cases, however, a use other than one of the aforementioned kinds may be permitted if public interests are not impaired and a development of the property in question is secured. However, since

31 Text of the law under <http://www.gesetze-im-internet.de/bundesrecht/bbaug/gesamt.pdf>

32 Text of the ordinance under <http://www.gesetze-im-internet.de/bundesrecht/baunvo/gesamt.pdf>

the conditions for rezoning are relatively undefined, such cases can be regarded as relatively susceptible to corruption. Transparency, dual control and the possibility of judicial review of decisions are significant instruments for preventing corruption.

4.2 Plan approval procedure as a basis for the acquisition of land for infrastructure projects

It is necessary by law to carry out a so-called plan approval procedure (Planfeststellungsverfahren) for a new construction or a substantial modification of existing traffic infrastructure such as roads and railway lines. Unless a plan has been approved for an infrastructure project, construction of the measure may not begin. The plan approval procedure is a formal administrative procedure that is carried out in accordance with Sections 72-78 of the German Federal Administrative Procedures Act [Verwaltungsverfahrensgesetz des Bundes, VwVfG]³³ in conjunction with the corresponding provisions of the respective state laws³⁴ and the relevant technical laws. The legal basis for plan approval procedures consists of, for example, the German Federal Highway Act [Bundesfernstraßengesetz, FStrG]³⁵ for road construction, the Brandenburg Highway Act [das Brandenburgische Straßengesetz, BbgStrG]³⁶ for the federal state of Brandenburg, and the General Railway Act [Allgemeine Eisenbahngesetz, AEG] for railway infrastructure.³⁷

33 Text of the law under <http://gesetze-im-internet.de/bundesrecht/vwvfg/gesamt.pdf>

34 In the state of Brandenburg, for example, the Brandenburg Administrative Procedure Act [Verwaltungsverfahrensgesetz des Landes Brandenburg, VwVfGBbg], text of law under <http://bravos.brandenburg.de/gesetze-212926>

35 Text of law under <http://gesetze-im-internet.de/bundesrecht/fstrg/gesamt.pdf>

36 Text of law under <http://bravos.brandenburg.de/de/gesetze-212995>

37 http://www.gesetze-im-internet.de/bundesrecht/aeg_1994/gesamt.pdf

The plan approval decision at the end of the procedure replaces all public approvals, permits, authorisations and consents required by other legal provisions (so-called bundling function or concentration effect of the decision). For the party responsible for the construction, however, it also forms the basis for acquiring or expropriating the land required for construction and is therefore particularly important for changing the type of land use for infrastructure projects.

The plan approval procedure is a transparent procedure that includes the broad participation of those affected by the project. In order to ensure the intensive involvement of the public in the planning process from the outset, the party responsible for the project should carry out an early civic participation before the formal submission of applications or plans. With this early involvement, the citizens of the affected area, interest groups as well as those affected, associations and representatives of politics are to be fully integrated into the planning process. Early public participation includes early information on the general objectives of the project, the means of achieving them and the likely impact. At this stage, the public already has the opportunity to make suggestions and raise objections to the planned infrastructure measure and thus have an influence on the planning concept. Early public participation is not a substitute for participation in the subsequent plan approval procedure under administrative law, but merely a supplement to existing participation rights in the sense of optimisation.

The procedure begins with the submission of the plan by the party responsible for the project to the competent authority responsible for implementing the necessary hearing procedure. The competent hearing authority then obtains comments on the planned measures from the parties involved, in particular from the relevant authorities concerned,

initiates the public interpretation of the planning documents, discusses the objections raised by the parties concerned and, after careful consideration of all the concerned and private interests, adopts a decision establishing the plan. Those affected by the plan have a subjective right to a fair consideration of their own interests in relation to the public, taking account of the aspects that speak for and against the plan. After notification or public announcement, the parties concerned may have the plan approval decision reviewed by a court of law, if necessary.

Since a whole series of rules for ensuring transparency and the involvement of the parties concerned have to be observed in the plan approval procedure, the findings contained in the decision on the required land use for the infrastructure project are rarely subsequently reviewed by courts.

5. Transparency and prevention of corruption in the management of state-owned agricultural and forestry land

In order to be able to cope with the diverse challenges of the transformation process described in the introduction on the agricultural land market in eastern Germany, the BVVG was founded in 1992 by the German federal government in close coordination with the Treuhandanstalt as a state-owned company with the task of handling the management and exploitation of agricultural and forestry land. By choosing the form of an organisation as a corporation, the BVVG has been embedded in two control frameworks, which offer the following advantages in terms of transparency and effectiveness.

As a *corporation*, the BVVG is subject to all general statutory regulatory mechanisms³⁸ and principles that apply to all “large corporations”.³⁹ In particular, there are uniform rules for the establishment of a transparent accounting system. Net assets, financial position and results of operations must be reviewed annually on the respective balance sheet date by an independent and competent auditing firm. Furthermore, there is a legal obligation to publish the company’s annual financial statements. This means that the BVVG is also subject to all auditing and sanction mechanisms that exist for any other corporation. In addition, the establishment of an effective internal audit is mandatory for internal financial control.

38 In particular, the German “Commercial Code [Handelsgesetzbuch, HGB]” and the secondary commercial and tax laws.

39 According to the breakdown in Section 267 of the German Commercial Code [Handelsgesetzbuch, HGB], “large corporations” are companies with a balance sheet total of more than EUR 20 million, sales revenues of more than 40 million and more than 250 employees.

All punishable offences under commercial and tax law are also fully applicable to the BVVG. The employees of the BVVG are also regarded as public officials and are therefore subject to higher penalties for accepting advantages or bribes.⁴⁰ Public prosecutors' offices and the police have to investigate ex officio employees of the BVVG in the case of criminal charges or corresponding indications.

The shareholder of the "BVVG" corporation is the German Federal Ministry of Finance (BMF) for the federal government.⁴¹

As an indirect federal equity investment, the BVVG is therefore subject to not only the already discussed control mechanisms, which apply to each shareholder of a corporation, but also other regulatory and auditing bodies that prescribe more comprehensive audits of financial statements by law.

Like all federal authorities, the BVVG is subject to external financial control by the federal government and can, for example, be audited at any time by the Federal Audit Office [Bundesrechnungshof, BRH]. Parliamentary control is handled by the Bundestag in the form of hearings, petitions and inquiries, usually through the competent ministries.

The managing directors of the BVVG are appointed by the shareholder for a limited period of time, initially for three years, at the suggestion of the responsible ministries. Every year, target agreements between

⁴⁰ See: Sections 331 to 338 of the German Penal Code (Strafgesetzbuch, StGB)

⁴¹ For the sake of completeness, it should be mentioned that the German Federal Agency for Special Tasks Related to Reunification [Bundesanstalt für vereinigungsbedingte Sonderaufgaben, BvS] holds the shares in BVVG. Since, however, this structure also involves a 100% investment by the German federal government, and the German Federal Ministry of Finance [BMF] itself also assumes the role of shareholder, the federal government is referred to as a shareholder of the BVVG for the sake of simplification.

the management and the shareholder are concluded and regular discussions are held on all currently important issues.

The federal government has issued "*Guidelines on the Prevention of Corruption*" for its own departments and authorities in order to facilitate transparency and traceability in administrative actions, especially in areas at risk of corruption. These guidelines also apply to the BVVG.

In order to shed a little more light on these points, the following section presents various organisational measures for work and procedures that serve to ensure both the necessary transparency and a high level of efficiency in the day-to-day business of the BVVG, i.e., above all, the leasing and sale of agricultural and forestry land. Only individual aspects can be highlighted in this brochure. Transparency can be interpreted here not only in the sense of preventing corruption, but also as a general requirement for comprehensible and customer-friendly administrative actions and the offer of the real estate to be privatised to the widest possible circle of buyers. This means that accusations of systematic preferential treatment of certain groups of buyers or of a deterioration in the position of potential interested parties can also be countered from the outset.

In 2004 the federal government amended its 1998 Guidelines on the Prevention of Corruption. It now also takes into account the guidelines and recommendations for preventive measures in the United Nations Convention against Corruption, which was signed on 9 December 2003. The guidelines contain binding standards to be applied by all departments in areas (particularly) at risk of corruption. The following sections describe them and explain how they are implemented in the BVVG⁴².

42 See: http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Korruption_Sponsoring/Richtlinie_zur_Korruptionspraevention_in_der_Bundesverwaltung.pdf?__blob=publicationFile

5.1 Double checking principle and transparency

An “*Organisational Manual*” available to all employees contains the essential work instructions and procedures as well as the corresponding rules of responsibility. The verification of decisions by various organisational units is governed by the authorisation to sign and represent. This clearly specifies the voting requirements – partly differentiated by approval limits in euros – and isolated action by a single person is not possible, even at the level of management. The *double checking principle* generally applies to external correspondence: external correspondence must always be signed by two employees. The management of the BVVG is also handled by two equal managing directors.

5.2 Making employees aware and instructing them

It is important for BVVG employees to avoid even the appearance of being susceptible to personal advantages in the course of their work. The employees are trained in suitable events to identify and deal with attempts at corruption at a later date (immediate report to the supervisor and notification of the person in charge of corruption prevention). In addition, they are also informed about any possible penalties and consequences under labour law in the event of such violations. The “*Guidelines for the Acceptance of Rewards and Gifts*” applies to all employees.

5.3 Handling rewards and gifts

In general, rewards for professional activity may not be accepted. Exceptions can only be made in cases where there is no reason to fear that this will affect the professional activity. Acceptance of cash – irrespective of the amount – is not fundamentally permitted and must therefore be refrained from in any case.

All employees must inform their supervisor immediately and without being solicited if they are offered rewards or gifts for their work.

Rewards and gifts are all donations to which employees have no legal claim and which place them in an objectively better position materially or non-materially (advantage). This also includes benefits that are given to third parties (especially relatives, acquaintances, their own sports clubs, etc.) if they lead to savings for employees or if they actually place employees in a better position in any way whatsoever.

In addition to cash payments and benefits in kind, all other benefits also fall under this definition. These include, for example:

- the possibility of using or consuming objects (vehicles, construction machinery, fuel, etc.);
- vouchers, free passes or admission tickets, transportation or flight tickets;
- discounts for private transactions such as interest-free or low-interest loans, procurement of shopping opportunities at preferential prices, etc.;
- brokerage and/or granting of part-time employment or a job after departure;
- invitations with hospitality;
- free or cheap provision of accommodations;

-
- invitation to or inclusion on trips for information, representation and holiday or payment for such;
 - benefits under inheritance law (assignment of legacy or succession);
 - award ceremonies, etc., unless they are held by the employer.

In regard to the activity in the BVVG, a benefit is provided if the person providing the benefit is guided by the fact that an employee has certain influence as a result of which the recipient of the benefit could give the provider an advantage.

It does not matter whether the gift is accepted in a private or business capacity. This also applies if the benefit is donated directly to third parties or to a charitable institution. Acceptance does not have to be expressly declared. Logical behaviour is sufficient.

If consent from the superior to accept a gift cannot be applied for without delay, the approval of acceptance must be applied for retrospectively.

As an exception, employees can assume tacit consent in the following cases:

- In the case of acceptance of minor gifts up to a value of €25.00 (e.g. simple promotional items such as ballpoint pens, writing pads, calendars). The decisive factor is the market value in the Federal Republic of Germany. However, there is a *reporting duty* with respect to the employee's superior for the acceptance of each gift with a value of more than €5.00. The object, its estimated value, the reason for the gift and the donor of the object must be reported. The value must be stated for the total amount of the gift or the sum of the individual gifts offered by the donor and cannot be divided up.
- In the case of hospitality in the usual context by public sector

institutions or recipients of donations predominantly financed by the public sector, as well as in the case of hospitality by private individuals on occasions or on the occasion of official acts, meetings, tours or the like, if they are customary and reasonable, or if they have their reason in the rules of communication and courtesy, which also apply to BVVG employees, taking account of their special obligation to handle the duties of their office objectively without violating social conventions. This does not apply if the type and scope of hospitality represents a considerable value, whereby the scale in individual cases also depends on the function of the employees;

- In the case of minor services that facilitate or accelerate the execution of a service transaction (e.g. collection by car from the train station).

Breach of the aforesaid provisions on handling gifts and the prohibition of accepting rewards constitutes a breach of employment contract obligations, so that employees are threatened with employment law sanctions to the point of extraordinary termination.

If the BVVG suffers economic disadvantages in connection with a violation of the prohibition of accepting rewards or gifts, the employees in question are obligated to pay damage compensation. Irrespective of any claims for damage compensation, the BVVG may be entitled to claim a return of the benefits.

There is also the threat of criminal prosecution for violations

- due to accepting benefits, with imprisonment for up to three years or a fine, if employees demand, are promised or accept a benefit for themselves or a third party while performing their duties,⁴³
- due to corruption, with imprisonment of up to five years or a fine, if they demand, are promised or accept a benefit for themselves or a

43 See Section 331 (1) of the German Penal Code [Strafgesetzbuch]

third party as a consideration for the fact that they have undertaken an action at work or will undertake such in future and have violated or would violate their work duties as a result;⁴⁴ imprisonment of up to 10 years is possible in especially serious cases of bribery.⁴⁵

5.4 Contact person for corruption prevention and legal counsel

All employees at the BVVG are asked to report suspected cases of corruption – possibly anonymously – if there are specific facts and comprehensible indications. They can provide their information to the contact person responsible for corruption prevention or to the external legal counsel. Both persons are bound to secrecy. Both are available for a meeting at any time in order to clarify in a confidential conversation whether there could be a strong suspicion. The German Federal Audit Office [Bundesrechnungshof] also monitors the activities of corruption prevention within the BVVG.

5.5 Rotation of staff

Due to their decision-making authority, the group heads of the Sales and Leasing departments at the branches rotate every five years in order to prevent the development of business relationships that are too close. The sales/leasing advisers must also rotate, but to a much lesser extent. Because there is only one contract management group in the branches,

⁴⁴ See Section 332 (1) of the German Penal Code [Strafgesetzbuch]

⁴⁵ See Section 335 (1) (1) of the German Penal Code [Strafgesetzbuch]

whose heads do not have a partner with whom to change, the advisers rotate there after five years.

5.6 Insider rules

In order to guarantee the highest possible objectivity and transparency in the area of sales/leasing, BVVG legal transactions with so-called insiders are subjected to an additional internal audit.

Insiders are considered to be persons who, directly as a result of their activities or for other reasons, have acquired or can acquire not generally accessible knowledge of assets or the privatisation process of the BVVG. Persons from their personal or business environment are also considered to be insiders.

When there is an invitation to tender, the bidder must fill out a standardised declaration of the insider status and answer questions about their personal relationship to the BVVG. An internal committee then decides on the admissibility of the respective bid.

5.7 Internal audit / full-time lead investigators

In cases where there is evidence of fraudulent acts (cases of corruption), the Head of Internal Audit may be called in to act as the "lead investigator". All circumstances forming the basis of the discovered suspicion of corruption are initially checked internally as a rule. The management of the BVVG then decides on further measures such as the involvement of the public prosecutor's office.

5.8 Awarding of services to external third parties

An area particularly susceptible to corruption is always the selection and contracting of external third parties with, for example, deliveries (purchases) and services as well as construction services. In the BVVG, this relates primarily to purchasing for its own operations (e.g. IT, vehicles, office equipment), expert services (valuations) and construction work (demolition, emergency safety measures) on buildings and structural facilities. Even in the case of smaller order sums, special attention must always be paid to purchasing in order to ensure open and transparent competition as much as possible. In the area of *formal awarding law*, the same public law requirements apply to the BVVG for the ensuring of equal opportunity as they would to all other public organisations in compliance with European standards.

The applicable rules are also very complex for the users themselves. For a long time, efforts have been made to streamline and simplify without having to make concessions on objectives and content.

Accordingly, construction work starting from an amount of €10,000 and the purchase of goods and services starting from an amount of €15,000 must be tendered publicly. The standardised tendering processes in the awarding policy apply above these amounts.

Similarly, the principle of separating planning, awarding and accounting above certain value limits must be observed. The organisational separation of these aspects is intended to prevent price-fixing or other acts that prevent fair competition or give rise to suspicion of corruption.

6. Options for Ukraine

Although there are indisputably significant differences between Germany and Ukraine in terms of their agricultural structure, the amount of agricultural land and the importance of the agricultural sector, the brochure's explanatory remarks nonetheless show that the following criteria must be met above all in order to ensure transparent and effective land management:

- sufficient data on market developments for the state institutions and all participants in the land and lease market;
- an agricultural and land policy model;
- a coherent legal framework that guarantees the safeguarding of land use and property rights and enables state control based on this agricultural and land policy model;
- a clear division of competencies and responsibilities within and between state land management institutions;
- the ability to enforce independent external and internal audit and control mechanisms and to implement anti-corruption measures.

Since there are no textbooks for extensive national reform processes, German experience may be one of the main sources of impetus for further steps in Ukraine.

In order to increase efficiency and transparency in land management in Ukraine, the following proposals could be helpful.

6.1 Development of a transparent leasing market

Agricultural land in Ukraine has been evaluated so far according to abstract criteria due to a lack of reliable data. The expected range for the lease prices of state-owned agricultural land is calculated on the basis of the no longer current normative land and yield value, even if the lease price for new leases of state-owned agricultural land is now increasingly determined by public auctions so that more and more current regional lease market data will be available.

An important step down the path to a functioning land market for agricultural land appears to be the development of a transparent lease market with the lease prices based on the market. In addition, further cornerstones of the other regulations on the lease of state agricultural land also need to be reviewed and, if necessary, redesigned and, in particular, simplified as much as possible. This includes, above all, the regulations regarding the duration of the lease contract, the regular increase in lease rent in line with market conditions and sustainable management. In particular, the lease prices of newly concluded or renewed leases for state agricultural land should be made available to the public in an appropriate and clear anonymous form. This includes not only the duration of the contract and the amount of the annual lease, but also detailed information on the location and size of the land, the land quality and the percentages of green and arable land.

Legal possibilities for the premature termination of permanent usage contracts should be examined in order to create the conditions for new *market-based* contracts on the basis of public auctions or tenders. It would also be advisable to reconsider the current maximum lease duration for state land. In Ukraine, very long-term lease periods of up to 49 years are still possible according to the law. The corresponding

state land is therefore not available to the market for a long time, and misallocations and an imbalance between the interests of the owner (state) and lessee can result from this.⁴⁶

Even if private landowners are not bound to the legal guidelines for determining the lease price – these only apply to state land – they use them for orientation. The complete collection, processing and publication of lease prices determined by the market after a public offer – for both state and private land – would considerably improve market transparency for the benefit of all landowners.

6.2 Publication of available state agricultural land

State land is still often leased at the initiative of prospective lessees, since more detailed information on state agricultural land available for lease is often not accessible to the general public. A prerequisite for this is a complete registration of all land owned by the state or municipalities. Active management with the regular public offering of such land may make it possible to reduce the not so small share of previously unleased land and generate additional revenue for the state. The currently pursued approach of actively offering state land via the internet and leasing it through centrally held (internet) auctions is therefore an essential step.

⁴⁶ The choice of a long-term lease of state agricultural land for a period of 12 years with an extension option of up to 18 years, which was opted for in (eastern) Germany, initially provided the lessees with sufficient investment security. The lessees can then acquire a portion of their long-term leased land (100 - 450 hectares, depending on the region). The other land is offered for sale successively through public tenders. In order not to overwhelm the land market on the one hand, but also the farms on the other, no more than 20% of the total farming land of the respectively affected farms is withdrawn from the BVVG lease contract within a period of six years according to the privatisation principles agreed between the federal government and the federal states.

6.3 Financial transparency

In order to promote the transparent management of state property, all financial effects should be documented, prepared and presented in a comprehensible and verifiable manner for checking finances. This also applies in particular to the costs incurred from the management of the state land and the revenues generated thereby and its further use.

6.4 Market monitoring by independent institutions

In order to establish the necessary transparency for lease prices and possibly also for purchase prices in future and to be able to collect, evaluate and make publicly available, as necessary, the corresponding data for this purpose, an independent institution – which is only obligated to the law – is required. The system of decentralised and independently organised German committees of experts could serve as a model here.

Special attention must be paid not only to professional competence, but above all to the independence of these bodies. Institutional interdependencies with other tasks affecting the agricultural sector – such as the management and exploitation of state land – would probably lead to conflicts of interest. The preparation and provision of market information provides an indispensable basis not only for political decision-makers, but for all market participants. The information can also be used for the assessment of land in the event of compensation measures or compensation issues as well as for taxation.

In regard to the frequently expressed concern about the emergence of an uneven distribution of land following the lifting of the moratorium on the sale of agricultural land, it may be advantageous to collect and process

statistical data on land ownership in this case. In Germany, for example, because of a different historical starting point in western Germany with a very broad distribution of ownership, it has been accepted to date that reliable data on the distribution of land is not recorded centrally and therefore no overview of a possible concentration of ownership is available.

6.5 Transparency in property movements

Transparent property movements (transactions) for agricultural land require clear regulations that apply to all players and their consistent implementation. To this end, the regulatory objectives should be plausible and the prescribed procedures formulated as simply and comprehensibly as possible. This includes both regulations on the role of notaries and the entry of clear legal positions in state registers.

The consistent and timely implementation of the normative standards for real estate transactions could be achieved above all by streamlining and speeding up procedural processes. The smooth execution of all procedural steps in connection with land transactions – from the notarial handling of purchase contracts to entry in the land register as well as the surveying of properties and entry in the cadastre – is a prerequisite for a functioning land market. Under some circumstances, this may require major institutional reforms to improve procedures through appropriate technical, financial and human resources.

In addition, the introduction of anti-corruption and “good governance” measures plays a special role. The costs of the individual services (notary, registrations) must be affordable for market participants in order not to hinder land market activities.

In addition, property rights must be enforceable and confidence in the judiciary must rise. This can only be achieved by consistently implementing the principles of the rule of law.

Provided that all these conditions are met, it can also be suggested in this context that the principle – not only introduced in the German legal system – of “public faith in the land register” be adopted. However, this presupposes a functioning land register system in which all properties are entered once and, as a rule, all legal changes to land ownership only become effective once they have been entered in the land register. The principle of entry in the land register with the traceability of all documents and entering persons (legal clerks) is also a good preventive measure against corruption.

6.6 Transparency as the basis for a land policy model

The way state agricultural land is managed and used can have a major impact on the development of the land market and the rural area as a whole, depending on the amount of such land. The potential impact should be taken into account not only in the future design of the land market in Ukraine, but also in the implementation of the free privatisation of state land.

For this reason, the question of land market development in Ukraine should be linked to the overall process of further transformation of agriculture in accordance with a concrete agricultural policy model still to be developed.

This model should be accompanied by clear objectives in areas such as farm size and ownership distribution, rural development, land conservation for agriculture and environmental and nature conservation. Any regulatory

intervention by the state in the land market is an agricultural structure policy and should therefore be consistent with this described model.

Necessary measures on the part of the legislator and the responsible ministries should be designed according to their priorities as a step-by-step process in terms of content and time. In this respect, policymakers have the comprehensive task not only of shaping land policy and creating land rights in this process, but also of taking account of the consequences this entails for people living in rural areas and of ensuring social harmony in towns by creating conditions worth living in.

6.7 Uniform administrative processes and approval procedures

Common basic organisational rules for work and processes such as a distribution of tasks and responsibilities can form the basis of efficient and transparent task completion and thus also contribute to the prevention of structural corruption and favours.

Central management and local action should be designed within the framework of the standards, including any approval restrictions in the case of important decisions.

In addition, it also makes sense to standardise administrative processes or approval procedures, especially in areas that are particularly susceptible to corruption, on the basis of clear legal regulations. This includes, for example, setting clear processes and deadlines for reviewing applications as well as fixed fees instead of fee ranges, which should be transferred wherever possible and not paid in cash. The less discretionary leeway there

is in the interpretation of and possibilities for undesirable influence on the respective employees, the less arbitrary administrative decisions will be.

On the basis of realistic planning data and objectives, the processes to be implemented can be transparently mapped and made comprehensible for the responsible supervisory and control institutions as well as for the citizens and competitors in question and for the public and policymakers.

6.8 Transparency against corruption

Preventing corruption is not an issue specific to Ukraine's agricultural sector, but a fundamental challenge for general policy. The creation of transparency in the decision-making and responsibility structures, as well as operational processes with internal and external control, also serves to prevent structural corruption. The supervisory bodies of the responsible organisations as well as the structural and procedural organisation should be aligned with internationally accepted standards.

The implementation of various organisational measures for work and processes such as the double checking principle, the rotation of personnel or the separation of planning, awarding and invoicing of contracts, could also be suitable in Ukraine to ensure the necessary transparency as well as a high level of efficiency at institutions active in land management.

The fight against corruption remains a national responsibility. A transfer of responsibilities to regional or municipal authorities in the context of decentralisation will only shift this core issue unless it is simultaneously accompanied by strict standards for a largely uniform approach, anti-corruption measures and effective controls.