

# European Union Accession and Land Tenure Data in Central and Eastern Europe

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## SUMMARY

The European Union has been going through a major period of expansion, with ten new members, mainly from Central and Eastern Europe joining in 2004, two more expected to join in 2007, and two countries being given the status of Candidate Country. The Stabilisation and Association Process has opened the way to the eventual membership of the countries of the Western Balkans. The enlargement process has brought in countries that are significantly poorer than the existing Member States and whose economies have required considerable restructuring in order to be eligible for membership. The applicants have to undertake adjustments to meet EU requirements, including the adoption of the body of EU law, known as the *acquis communautaire*, before becoming members. Unlike earlier rounds of enlargement, new members have not been permitted extensive transitional periods once they have joined. Although land markets are an area of national rather than EU responsibility, the EU has made considerable demands on the new members in terms of their land markets. This is because land market activities impact upon certain common policies, particularly the Common Agricultural Policy, and on the free movement of capital. There can be no freedom of investment unless citizens and companies from elsewhere in the EU are able to own assets, including land. Inability to own assets will also have adverse impact on the free mobility of labour and of enterprise. Free movement of factors of production is central to the EU's Internal Market. Many of the new EU members have had restrictions on the foreign ownership of land and housing and will be obliged to give them up after relatively short transition periods. There have been fears that their land markets will be disrupted by the opening of them to more affluent Western Europeans, fears which are not without foundation. The Common Agricultural Policy required Member States to collect data on land tenure as part of the agricultural census and the Farm Accountancy Data Network. Area-based agricultural subsidies are paid through the Integrated Administration and Control System, which required the maintenance of a cadastre of rural land. EU membership opens up rural land markets to potential disruption but also offers some tools for the monitoring of this. However, the new Member States will need to develop policies to respond to the opening up of their rural land markets and these are likely to need to be different for different areas because of variability in the pressure they will face.

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## 1. EUROPEAN UNION ACCESSION

The European Union has embarked upon a major expansion into Central and Eastern Europe with eight countries from the region becoming members in 2004, two more expected to become members in 2007, and a process established by which the countries of the Western Balkans can eventually accede to the EU. On 1 May 2004 the Czech Republic, Estonia, Hungary, Poland, Latvia, Lithuania, Slovakia, and Slovenia, together with Cyprus and Malta, joined the European Union (EU) in its largest and most significant expansion to date. This brought to 25 the number of EU Member States. This expansion of the EU brought in more individual countries and a greater combined population than any previous EU enlargement. Bulgaria and Romania are expected to join the EU in January 2007. Croatia and Turkey have been granted the status of Candidate Country and negotiations on their entry began in October 2005. Under the Stabilisation and Association Process, a way has been opened that could eventually lead to EU membership for Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Montenegro, and Serbia (including Kosovo).

The current round of enlargements is quite different from any of the previous rounds. In the 1970s, when Denmark, Ireland, and the UK joined, and in 1990, when Austria, Finland, and Sweden joined, expansion brought in countries with a long history of having been market economies and, with the exception of Ireland at the time of entry, countries with relatively high incomes per capita. The expansion of 2004, and the subsequent enlargements that may take place, involve a group of relatively low income countries which, with the exception of Cyprus and Malta, have had only relatively experience of being market economies. Comparison might be drawn with the enlargement of the EU in the 1980s, with the entry of Greece in 1981, Spain and Portugal in 1986, which brought in low income countries, largely for political reasons. However, the scale of the current enlargement is much greater and involves more countries with significantly lower incomes per capita than the pre-2004 EU Member States, who are both more dependent upon agriculture and have a lower level of development. Swan (1992) has estimated that the entry of Greece, Portugal, and Spain added 20% to the then EU population and 10% to its Gross Domestic Product (GDP). By contrast, the Commission has estimated that the 2004 accessions increased the EU's population by 25%, but the GDP by only 5%.

Moreover, since the round of enlargement that brought in Greece, Portugal, and Spain, the EU has been through the creation of the Single Internal Market. This has introduced a wide range of laws aimed at ending non-tariff barriers to trade and deepening economic union. The entry into the EU of Greece, Portugal, and Spain was marked by lengthy transitional arrangements after entry in key areas such as the free movement of capital and foreign ownership of land. However, the EU has changed significantly since then so that lengthy

transition periods after the accession of new members are no longer practicable. Ever closer union within the EU has had the effect of raising the bar that a new member must clear before accession. The consequential strengthening of EU law that this process produced has meant that new entrants to the EU cannot any longer be admitted with lengthy transitional arrangements, during which they adopt EU law. Rather, new entrants must harmonise their laws with those of the EU *prior* to entry. Therefore, the transition to adopting the full EU membership obligations now takes place before rather than after entry. Only relatively minor transitional elements can be left to be tackled after entry, though one of these has been the ownership of agricultural land and housing used as secondary residences. For the potential new member, however, this process is not quite as onerous as it may sound. The EU has adopted a policy of asymmetrical reciprocity towards applicants for membership. The applicant gains entry to EU markets ahead of having to open its own markets to EU firms and citizens so the disadvantages during the transition period are primarily political, namely an inability to participate in the EU decision-making process.

The process of EU enlargement is clearly of great geo-political importance and, as such, is of obvious interest to political scientists and economists. But does it have any significance for those interested in land administration? At first sight the answer would appear to be no. One of the key doctrines underpinning the European Union is that of subsidiarity, namely those activities that are more appropriate to be dealt with at national level should be handled at national level and only those issues which are appropriate to be dealt with at the level of European Union should be the responsibility of the Commission and the other European Union institutions. Land policy has been a matter of national responsibility since the founding treaties of the EU. There has been no attempt by the European Union to produce harmonised land laws, town and country planning laws, or inheritance laws. The EU was created to achieve ever closer political union through economic means. To this end, it has created conditions that enable goods, services, and factors of production to be freely traded within the EU by removing tariffs, quotas, and the non-tariff barriers to trade that would restrict these. Unlike labour, capital, and enterprise, land is immobile. It cannot therefore be traded across national borders. Consequently, there is no reason why the EU should be involved in land laws or land policy since what one country does in this area is not a matter that should have any impact on other Member States. Logically, under the principle of subsidiarity, this should be for each country to determine.

In reality, two forces have drawn the EU into making land policy and into requiring Member States either to adopt certain policies or to refrain from others. Firstly, there are certain common policies that require Member States to follow certain land policies. One of the most important of these is the Common Agricultural Policy. Under this the EU requires Member States to collect data on land tenure through the Farm Accountancy Data Network and agricultural census. As the Common Agricultural Policy has moved from production-based subsidies to area-based ones, the EU has required Member States to create cadastres for agricultural land, if they had not previously had them, as the basis for making payments to farmers. Secondly, the EU has been obliged to recognise that the land policies pursued by Member States may conflict with other policies central to the functioning of the Single Internal Market. Free mobility of capital cannot occur if citizens or companies are prevented

from owning assets in other Member States. Clearly, investment is impossible without the acquisition of ownership rights. Therefore restrictions over the rights of foreigners to own land are incompatible with the principle of free mobility of capital. The EU has therefore had to reject attempts by applicants to create property markets protected from foreign ownership, as this would run counter to the requirements of the Single Internal Market for free mobility of capital. A free market requires the appropriate institutional infrastructure to enable it to function efficiently. Consequently, the EU has required applicants from Central and Eastern Europe to pursue certain policies in order to create fully functioning land markets, including completing privatisation and restitution policies and the development of land laws and market institutions, such as land registration systems.

## **2. THE COMMON AGRICULTURAL POLICY**

The Common Agricultural Policy obliges countries to put in place some powerful tools for the monitoring of land tenure, namely:

- Contribution of data to the Farm Accountancy Data Network (FADN);
- Conducting periodic surveys of agricultural holdings or agricultural censuses; and
- Introducing the Integrated Administration and Control System (IACS) for the payment of agricultural aid.

Both FADN and the agricultural census collect data about the amount of the Utilised Agricultural Area that is under owner-occupation, tenanted, or share cropped. They collect information at the level of the agricultural holding. IACS can provide the link between agricultural data and parcels of farmland. It collects area and location data for the parcels. It is important to note that none of the three tools is specifically concerned with land tenure data. Rather, land tenure data is produced as a by-product of collecting other information about agricultural production for use in the Common Agricultural Policy.

Under the Farm Accountancy Data Network (FADN) data is collected at the farm holding level about revenue, costs, inputs, outputs, and employment for an accounting year. This is used to generate Standard Gross Margins, which estimate of the income generated by each farming enterprise by measuring the value of the output less the variable costs directly attributable to the enterprise. In other words, it measures the contribution the enterprise makes to the payment of overhead costs and farm profits. Farm income can be derived from this by deducting overheads, payments for external resources, depreciation, and taxes, and adding in grants and subsidies. Information is also collected about the proportion of the Utilised Agricultural Area that is owned, rented, or share-cropped. FADN is a rich source of data that makes possible analyses of the relationship between land tenure and farming incomes, types of production, sizes of farm, the amount of bank borrowing undertaken, and net worth.

A number of issues that have arisen with FADN and the data derived from it. These have implications for the extent to which the data can be relied upon. It is concerned only with commercial farms. The data excludes any non-farming activities of the holder or the holder's family, other than forestry and tourism connected with the farm. This exclusion means that

FADN does not provide comprehensive information on standards of living of agricultural households, except where those households derive their entire income from the holding. The level of detail required means that the data can only be collected for a sample of holdings. This means that analyses for regions and small areas are not feasible as sample sizes are too small to produce robust data. Question can also be raised about how representative the samples are. There is some evidence that practices vary between Member States. In countries like the UK, where participation is voluntary, it is difficult to get farmers to take part because of the demands upon them. The need for farmers to gain experience of what is required before they are able to supply data of the required quality and low renewal rates, because of problems in finding replacements, means that there may be biases in the sample and an element of self-selection. The use of tax rather than farm management accounts overcomes the problem of low participation rates, but can introduce biases into the accounting data as a result of definitions and accounting conventions being based on tax law and, possibly, management decisions reflecting tax avoidance strategies. There are also questions about how well suited the methodology is to gathering data from the growing number of farms run by companies rather than individual farmers.

Member States are obliged to carry out a comprehensive survey of agricultural holdings or an agricultural census every 10 years and three interim surveys each decade. The most recent comprehensive survey was in 1999/2000 with interim surveys in 2003, 2005, and 2007. Data is collected about crops, livestock, farm labour, machinery, and amount of the Utilised Agricultural Area that is owner-occupied, tenanted, or held by share-cropping. Information is also collected about certain non-agricultural activities carried out on the holding, such as tourism, handicrafts, the processing of farm products, and contract work using the holding's equipment. The agricultural census makes possible comparative analyses of land tenure between different areas and over time, and these can be undertaken for relatively small geographical areas.

The main issues to arise with the agricultural census are:

- The extent to which sample surveys make a full census unnecessary, with Member States making increasing use of sampling for financial reasons;
- Whether the collection of data by holdings adequately captures the complexity of farm-based businesses; and
- Whether data ought to be collected about different types of tenancy agreement.

The issues that have arisen with the introduction of FADN and the agricultural census in the Central and Eastern Europe include:

- The recruitment and training of staff to administer the census and process the data;
- Budgetary pressures that government statistical services came under during the transition process;
- The need to upgrade methodologies and the quality and completeness of data to EU standards;
- The absence of a comprehensive farm register from which a sample of farms for FADN could initially be drawn until an agricultural census has been held; and

- Differences between what can be regarded as the minimum size of a commercial farm compared with those found in Western Europe.

There has been considerable cooperation between EU bodies, like Eurostat, and existing Member States and the applicant countries as part of the preparations for membership. Support has also been given by international bodies like the Food and Agriculture Organization of the United Nations.

Member States of the EU are responsible for administering the Common Agricultural Policy. This has recently changed from being a system for supporting agricultural production to one of providing income support for the land. Central to the agricultural support payments is the Integrated Administration and Control System (IACS), which is intended to ensure that the payments made are correct and traceable. This requires Member States to establish Land Parcel Information Systems that identify each parcel of farmland. These contain data about the location and size of each parcel, the identity of the holder, date of establishment, date of last activation, and whether it was acquired by purchase, lease or inheritance. The system has to be able to identify whether a claim is made from an individual or legal person who is permitted to make one, that multiple claims are not being made for any piece of land, and that the land is part of the Utilised Agricultural Area. As land can be transferred between farmers and agricultural land parcels may be joined together or divided, or land removed from the Utilised Agricultural Area, the system must contain means by which the registers are updated without compromising the integrity of the data.

The quality of land tenure data available to New Member States should be improved by the requirement to collect data on it for the FADN and the agricultural census. The IACS system provides data on the sizes and locations of agricultural land parcels and their occupiers. There are, however, a number of weaknesses in the EU's approach, which may mean that it fails fully to reflect changing circumstances in agriculture and rural society.

- The emphasis is on the holding rather than the agricultural enterprise. For many farmers, the business is much more complex, comprising several holdings and is made up of land held under different tenures. Data collection needs to focus on the business rather than the holding and the role of farming in the portfolio of businesses that farmers undertake.
- EU statistics use a crude distinction between owned, tenanted, and share-cropped land. These do not capture the subtleties of the different forms of tenure or the impact of different types of tenancy agreement. For example, between 2000 and 2003 in England the amount of rented land hardly changed, increasing from 3.42 to 3.49 million hectares. This conceals a decline in traditional full agricultural tenancies and an increase in more flexible arrangements, such as farm business tenancies.
- The EU does not require Member States to collect data on land prices, numbers of transactions, or rents. What the EU collects on these is neither comprehensive nor done in a standardised manner. Data on these is needed to understand what is happening in land markets, particularly in view of the wide divergence in prices of land of comparable productivity within the enlarged EU.

- EU data systems were created to monitor production and do not examine the impact upon the environment. In particular, they do not identify whether particular farming practices are associated with particular tenures.
- Neither FADN nor the agricultural censuses collect social data beyond limited information about the gender and age of farm holders, their spouses, farm managers, and employees. There is no data concerning the ethnicity or socio-economic status of owners and tenants or the access to land by ethnic or social groups.

### 3. THE LIBERALISATION OF CAPITAL MARKETS

The Copenhagen Council of 1993 set out three basic criteria to be achieved by would-be applicants for EU membership.

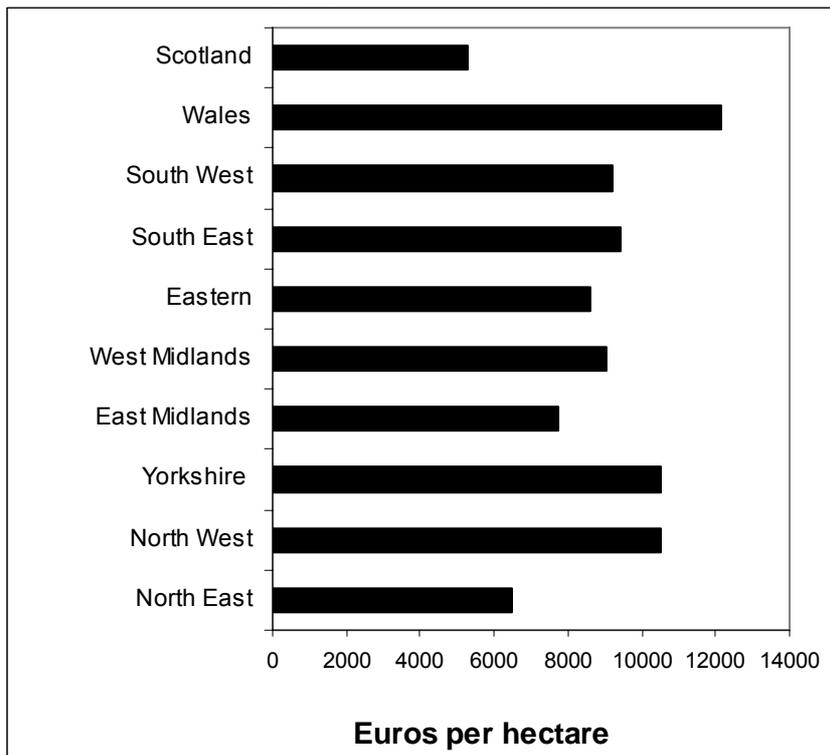
- Stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.
- The existence of a functioning market economy and the ability to cope with competitive pressures within the EU.
- The ability to take on the obligations of EU membership, including political, economic, and monetary union.

Chapter 4 of the *acquis communautaire* (the body of EU law which all applicants must adopt) is concerned with a key aspect of a functioning market economy, namely the free movement of capital. Restrictions on the movement of capital between Member States, and many of those to and from countries outside of the EU, are prohibited. The 1988 Directive that established free mobility of capital, though, does contain a safeguard clause that enables a Member State, with the consent of the Commission, to restrict real estate transactions in the event of disruption of its monetary and exchange rate policies by short-term capital movements of exceptional magnitude. Whilst this provides a mechanism by which a Member State experiencing problems in its real estate market as a result of the free mobility of capital can obtain temporary relief, preventing the liberalisation of land markets is not an option since to do so would prevent the ownership of key assets by citizens and companies from other Member States and, therefore, freedom of investment. Restrictions on the ownership of assets like land are likely to limit the free mobility of labour and enterprise, which are also fundamental to the EU's Internal Market. However, a number of the new EU members from Central and Eastern Europe had restrictions on the ownership of agricultural land by foreigners and sometimes also on its ownership by domestic companies. Amongst the countries joining the EU in 2004 and 2007 that had restrictions on foreign ownership of land were Hungary, Estonia, Lithuania, and Romania.

The issue of ownership of agricultural land and natural resources by foreigners is a contentious one for many of the applicant countries. There has been the fear that individuals and companies within the EU will take advantage of their greater wealth to buy up relatively cheap farmland and housing so that nationals of the applicant countries could find themselves priced out of their own land markets. For example, the Hungarian Government argued in 2002 that lifting the ban on the purchase of agricultural land by foreigners "would lead to speculative land purchases and impede the development of viable family farms." There may

also be fears that the opening up of land markets could re-open past disputes. In the aftermath of the Second World War there were large-scale movements of populations as particular ethnic groups and nationalities and political dissidents were expelled, fled, or dispossessed of their land. Some of these prospered in their new homelands. They are now in a position to take advantage of the relatively low prices of their ancestral lands to purchase their lost heritage, even though they may have been frustrated in their attempts to reclaim it under restitution laws.

**Figure 1** Prices of Unequipped Mixed Farming Land with Vacant Possession in the UK

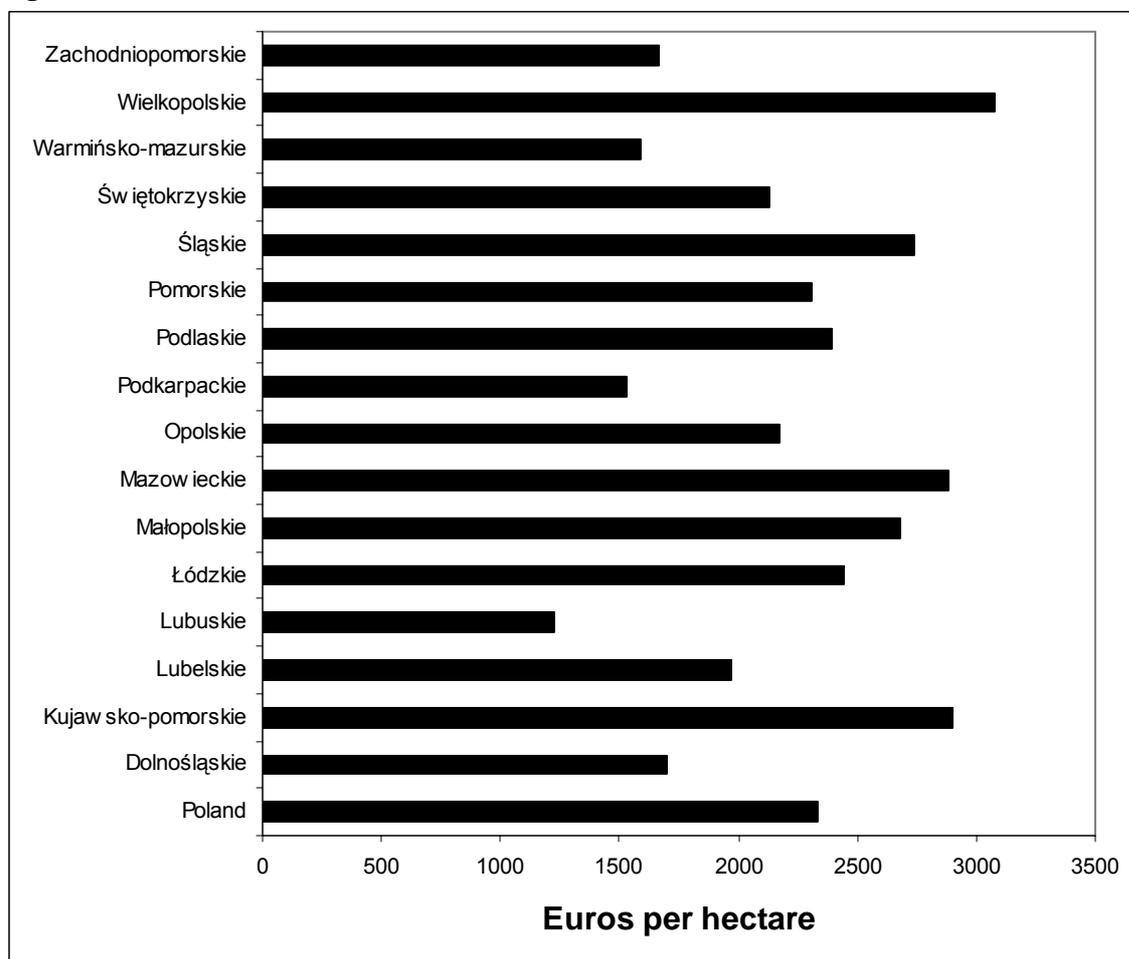


Source: UK Valuation Office Agency (2005)

The fear that land may be purchased by affluent Western Europeans is not an unrealistic one. Figures 1 and 2 illustrate the possibility of businesses in Western Europe using their greater economic wealth to acquire land in Eastern Europe. For example, the average price per hectare of unequipped mixed farmland in Scotland, the lowest of the UK regions, was 5,300 euros. By contrast, average prices of fertile land in the voidvodships of Poland ranged from 1,600 to 3,100 euros per hectare. Discrepancies between land prices in the Czech Republic, Hungary, and Latvia and those in Western Europe similarly can be documented (Vrbová 2005, Popp & Stauder 2003, Lebedinska et al 2005). Such differences in land prices make the purchase of land by Western European investors feasible. It can also be expected that housing, including farmhouses and housing for rural workers and that in coastal and scenic areas, border regions, and areas with winter or water sports, fishing, or hunting will be purchased as secondary residences by citizens from elsewhere in the EU or by companies and investors for tourist use. Such pressures are likely to be greatest in areas close to motorways

or airports served by budget airlines. Many such properties are already being marketed at Western European purchasers and there is anecdotal evidence to suggest that purchasers of secondary housing and agricultural land are finding ways around legal restrictions, such as not legally registering the new ownership and the use of nominees.

**Figure 2** Prices of Farmland in Poland



Source: Polish Central Statistical Office (2004)

The Accession Treaties governing the entry of the ten Central and Eastern European countries to the EU in 2004 and 2007 do provide for certain limited types of transitional arrangements with respect to real estate markets for a restricted period of time.

- **Secondary residencies.** The Czech Republic, Hungary, and Poland have been permitted to retain restrictions for five years from accession on the ownership of secondary residencies by non-resident EU nationals and companies and this arrangement will also apply to Bulgaria and Romania from when they join the EU in 2007.

- **Agricultural land and forests.** All the Central and Eastern European countries that joined the EU in 2004, except Slovenia, have been granted transition periods during which

they can restrict the ability of non-residents to acquire agricultural land and forests. The Czech Republic, Estonia, Hungary, Latvia, Lithuania, and Slovakia (and when they join, Bulgaria and Romania) were granted seven-year transition periods during which they are able to maintain restrictions on non-resident EU nationals and companies. Hungary is also able to maintain restrictions on the acquisition of agricultural land and forests by legal persons (ie companies), both domestic and from elsewhere in the EU, during this transition period. Poland has been granted a twelve-year transitional period. If there are serious disturbances in the agricultural land markets of the countries, or the threat of serious disturbance, the transition periods can be extended for up to a further three years.

- **Use of the general economic safeguard clause.** Slovenia has not been granted any specific real estate transitional arrangements, but is permitted to use the general economic safeguard clause in the Accession Treaty to protect its real estate market for up to seven years after accession. The safeguard clause permits a new Member State to apply for authorisation to take protective measures in the event of serious difficulties that are liable to persist and “could bring about serious deterioration in the economic situation of a given area.”

Although most of the Central and Eastern European countries have been granted transitional exemptions from opening up their rural markets, eventually rural land and secondary residential markets will be accessible to purchasers from elsewhere in the EU after relatively short transitional periods.

A cornerstone of the transition process has been the creation of private ownership of land and secure land tenure and property rights (Rembold 2003). Land markets, in which land can be bought, sold, or rented, have been created through the privatisation of state land and the restitution of expropriated land to its previous owners or their heirs. This has resulted in significant changes in land tenure, with an increase in the private ownership and the renting of land and the decline of state and co-operative land ownership. An important issue has been whether the applicant country’s property markets, including its agricultural land markets, are adequately prepared for accession. Typical problems encountered included:

- Lack of security of tenure in agricultural leases, resulting in the inability of tenants to offer collateral to potential lenders;
- Low take-up rate of EU funds for land improvement and re-parcelling;
- Delays in privatising unclaimed arable and forest lands;
- Slow pace of restitution and resolution of legal disputes;
- Need to improve land registration so as to improve the ability to use property as collateral for loans;
- Fragmentation of ownership and farmland going out of production;
- Low level of transactions;
- Slow pace of agricultural restructuring.

The EU has examined these issues in deciding whether a country has a functioning market economy, a key condition for EU accession. However, it does not have an absolute standard for determining whether a country has a functioning market economy, particularly in relation to real estate markets. These largely operate outside of the *acquis*, as they tend to be the

responsibility of Member States' governments rather than of the EU Commission. It can also be argued that the EU's monitoring and evaluation of the real estate markets of applicant countries has not been on a consistent basis or against precise criteria. Whilst a good deal of aid and advice has been given to applicants before they join the EU, it is possible that countries may become members before their land market problems have been fully resolved, even though they have brought in the formal legal changes required by the *acquis*.

#### 4. CONCLUSIONS

The EU's Single Internal Market raises questions about land tenure for EU members because of the eventual liberalisation of land markets that new members must accept. In joining the EU, its new members have accepted that they have become members of a club with free movement of capital, labour and enterprise, none of which are possible without freedom of citizens and companies from one Member State to own land and housing located in others. The adoption of the *acquis* does create some powerful land tenure data tools through FADN, the agricultural census, and IACS that enable the impact of land market liberalisation to be monitored. However, the land tenure data that results from them leaves some important unanswered questions that call for further development of the EU's land tenure data in the interests of all Member States and not just those from Central and Eastern Europe.

The EU should collect data for FADN and the agricultural census by agricultural enterprises rather than by holdings so that the emphasis is placed upon businesses rather than farms. It should use these sources to collect information about production methods and their environmental impact so that the role of land tenure in determining these can be examined. Better data is needed about farmers including their ethnicity and socio-economic status in order to understand which groups have access to land. Member States should be required to collect data on land prices, land transactions, and rents in a standardised form that the EU should publish in order that a clearer picture can be produced at regular intervals of the state of the land market.

Member States have the opportunity to collect additional data through FADN and the agricultural census to that required by the EU. This provides an opportunity to collect data about different tenancy arrangements, as these vary between countries. Even if there is no agreement at EU level on collecting data about the social characteristics of farmers, land prices and rents, and the impact of farming methods on the environment, individual Member States are able to collect these.

The countries joining the EU need to prepare for the liberalisation of their land markets. The impact is likely to vary between areas because, for example, of different opportunities to develop agriculture, tourism, and rural industries, the potential for inward investment, and competition for land and rural housing from incomers. Governments should therefore prepare spatial planning policies for each rural area that reflect their opportunities and strengths and the threats to them from liberalisation. Entry to the EU is likely to bring greater competition so governments need to pursue policies to encourage rural businesses to become more competitive and engage in diversification.

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## BIOGRAPHICAL NOTES

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