

# Lease Stability in Agricultural Land: Legal Instruments in Poland and Selected European Countries

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## Abstract

*This manuscript explores the legal instruments related to the stability of agricultural land lease in Poland and selected European countries. The study begins with a brief history and evaluation of land leasing in regions including Germany, France, Poland, and Switzerland. Despite its prevalence, the European Union lacks overarching regulations on this matter, leaving it to individual Member States. The research emphasizes lease duration, extension, and continuity, especially during events like the transfer of lease rights or the death of involved parties. A comparative analysis of legislation from countries like Poland, Germany, Italy, and France is presented. The paper also touches upon EU funds related to land leasing. In conclusion, various legal solutions across Europe are highlighted, underscoring the importance of stability for farm development and alignment with the Common Agricultural Policy.*

**Keywords:** Agricultural Producer, Lease of Agricultural Land, Contract in Agriculture, Common Agricultural Policy

## 1. Introduction

Agricultural producers enter into various contracts, such as farming, sales of agricultural products, contracts for the lease of agricultural properties, donations or life annuity contracts for agricultural properties, contracts for financing from EU funds. Lease has been popular in the countryside for centuries. Its subject is mainly agricultural land, farm but there is also the lease of animals.<sup>1</sup> The lease of agricultural land is an institution used by farmers as part of their agricultural activity not only in Europe,<sup>2</sup> but also in Asia, Central and South America, the USA

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<sup>1</sup> Wolfgang Winkler, 'Entwicklungen des Landpachtrechts in Europa', XIX *Europäischer Agrarrechtskongress. Berichte* (Bonn, 1998); Food and Agriculture Organization of the United Nations, 'Good Practice Guidelines for agriculture leasing arrangements' (Rome, 2001).

<sup>2</sup> See more Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych w ustawodawstwie krajów zachodnioeuropejskich', (Kraków, 1986), 10; Joint Research Centre (European Commission), 'Agricultural land market regulations in the EU Member States' (Brussels 2021).

'The Case for Long-Term Land Leasing: A Review of the Empirical Literature', *Land*, 10, 238 (2021) <https://doi.org/10.3390/land10030238>. 'Specific regulations for asset classes', <https://www.dlapiperrealworld.com/law/index.html?t=commercial-leases&s=legal-characteristics-of-a-lease&q=specific-regulations> [accessed 23 July 2023].

and in a large part of the agricultural lands in Africa.<sup>3</sup> In Poland, land lease became more popular in the 19<sup>th</sup> century in connection with the reforms carried out at that time, the aim of which was to change the feudal system of agricultural relations. Lease is still popular in the Polish countryside. The creation of legal regulations for lease was often influenced by political conditions, and the needs of agricultural activity were not sufficiently taken into account.

In order to ensure the uninterrupted course of agricultural activity based on lease agricultural land, it is necessary to have stable possession of it. Therefore, protecting the stability of the legal relationship of lease becomes an important issue. This is one element of the wider issue of ensuring the stabilization of possessing and harvesting (use the fruits from leased agricultural land). Stability is also provided by the acquisition of ownership of leased agricultural land. This is expressed, for example, by the implementation of such institutions as the preemption right or purchasing option. Although a lease is a continuous obligation, also known as permanent, it does not follow from this classification that the legislator ensures proper protection of the stability of this legal relationship.<sup>4</sup>

It is worth emphasizing that an even broader concept is the legal protection of the permanence of farming on leased agricultural land. This additionally includes ensuring the production capacity of the subject of the lease, which means protecting the production specificity of leased agricultural land and the use of buildings and devices for the requirements of running agricultural activity. Incorrect cultivation and farming practices on agricultural land can cause not only lower crop yields but also a deterioration of the soil quality.

This article will only cover selected issues associated with the legal protection of stability of the agricultural lease, which means securing the duration of the legal relationship in agricultural leases. Lease of agricultural land is important for ensuring food security, which should be understood as meaning access to sufficient, safe and nutritious food at all times.<sup>5</sup> Currently, in many European countries, e.g. in France, Italy, Germany agricultural producers have problems with expanding their farming areas. Land is often sold for commercial

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<sup>3</sup> Jordan Chamberlin and Jacob Ricker-Gilbert, 'Participation in rural land rental markets in Sub-Saharan Africa: who benefits and by how much? Evidence from Malawi and Zambia', *Am. J. Agric. Econ.*, 98.5 (2016), 1507-1528.

<sup>4</sup> Polish Civil Code in art. 384<sup>1</sup> and Art. 365<sup>1</sup> CC uses the concept of a continuous obligation. Jan Gwiazdomorski referred to them as 'permanent obligations'. See Jan Gwiazdomorski, 'Kodeks zobowiązań (skrypt)', (Kraków, 1934), 8. See. Zbigniew Radwański, 'Uwagi o zobowiązaniach trwałych (ciągłych) na tle kodeksu cywilnego', *Studia Cywilistyczne*, XIII-XIV, (Kraków, 1969), 251.

<sup>5</sup> See point 35 Preamble, Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 *OJ L 435*, 6.12.2021, 1-186. See e.g. Liana E. Pozza, Damien J. Field, The science of Soil Security and Food Security, *Soil Security*, Volume 1, (2020)2 <https://doi.org/10.1016/j.soisec.2020.100002>.

purposes.<sup>6</sup> This issue and associated challenges are present in many countries.<sup>7</sup> To maintain food security and stable agricultural activity,<sup>8</sup> it is beneficial to conclude a long-term lease agreement. Then the land will be used for agricultural purposes. Farmers use leases as a means of enlarging existing farms and creating new ones primarily for financial reasons. Lease does not involve such a large financial expense as, for example, buying agricultural land. They can allocate their financial resources to the development of agricultural activity, and not to the purchase of land. Numerous countries impose regulations that restrict the acquisition of farmland.<sup>9</sup> The literature emphasizes that land lease can affect productivity and factors involved in the economics of farm development.<sup>10</sup>

The need to ensure legal protection of the permanence of the lease relationship increased after Poland became a member of the European Union and was included in the Common Agricultural Policy. Stable agricultural activity on leased agricultural land will ensure the competitiveness of lessees – as agricultural producers on the EU market – and will allow them to effectively use financial assistance. Therefore, conducting agricultural activity in new political and economic conditions requires looking at the issue of maintaining the sustainability of farming on leased agricultural land in a modern way, through the prism of the current needs of economic reality. From January 2023, new rules of the Common Agricultural Policy apply in the European Union Member States. Environmental protection objectives (e.g., organic farming, agri-environmental programs, renewable energy investments) play an increasingly important role. The issue is even more interesting in theoretical and practical terms, because each of the Member States has its own national CAP Strategic Plan 2023-2027 and national legislation. This is, of course, in compliance with the EU regulations.

The aim of the article is to indicate selected legal instruments and to determine whether and to what extent legal regulations in Poland and selected European countries provide protection of stability of lease of agricultural land. The aim is also to estimate why and in what area the legal protection of stability of lease of agricultural land is important for the development of farms and the implementation of the principles of the Common Agricultural Policy. The limited scope of the article does not allow for an exhaustive presentation of the

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<sup>6</sup> François Purseigle, Guilhem Anzalone, Geneviève Nguyen et Bertrand Hervieu, 'Des entreprises agricoles «aux allures de firme» Mutations des exploitations agricoles françaises et nouveaux modes d'accès au foncier', in *Les mutations récentes du foncier et des agricultures en Europe*, ed. by Gérard Chouquer and Marie-Claude Maure (Paris: PUFC, 2018), 165-190; Coline Sovran, Terre de Liens (coordinator du rapport), 'La propriété des terres agricoles - A qui profite la terre?' (2023) <https://ressources.terredeliens.org/les-ressources/la-propriete-des-terres-agricoles-en-france> [accessed 27 August 2023].

<sup>7</sup> Jean-David Gerber, Thomas Hartmann, and Andreas Hengstermann (eds), 'Instruments of Land Policy', *Dealing with Scarcity of Land* (London: Taylor & Francis Ltd, 2018), (London, 2018).

<sup>8</sup> Paweł Wojciechowski, 'Bezpieczeństwo żywnościowe a ograniczenia w nabywaniu nieruchomości rolnych w kontekście strategii „Od pola do stołu”', *Przegląd Prawa Rolnego*, 1, (2021), 147-165.

<sup>9</sup> Paweł Wojciechowski, 'Wybrane aspekty ograniczenia obrotu nieruchomościami rolnymi w prawie polskim w kontekście unijnej zasady swobody przepływu kapitału', *Przegląd Prawa Rolnego*, 27.2 (2020), pp. 25-51 <https://doi.org/10.14746/ppr.2020.27.2.2>; János Ede Szilágyi (ed.), 'Acquisition of Agricultural Lands Cross-border Issues from a Central European Perspective' (Miskolc - Budapest: Central European Academic Publishing, 2022), 267-292 <https://doi.org/10.54171/2022.jesz.aoalcbicec.11>.

<sup>10</sup> Adenuga, Adewale Henry, Jack, Claire, McCarry, Ronan, 'The Case for Long-Term Land Leasing: A Review of the Empirical Literature', *Land*, 10.238 (2021), <https://doi.org/10.3390/land10030238>.

topic. Therefore, only selected issues will be presented. The basic research method was the dogmatic analysis of normative texts, which is a characteristic feature of a lawyer's work. In the first place, the legislative acts concerning lease and agricultural law were examined. The analysis of legislative acts in the field of civil or financial law included taking into account the agricultural aspect.

## 2. Discussion and Analysis

### 2.1. Short Remarks about the History and Evaluation of the Lease of Agricultural Land

At the beginning of the 20<sup>th</sup> century, lease was a popular form of land use in Europe,<sup>11</sup> e.g., in England, where, for example, in 1916, only 11 out of 100 farms were managed by owners, and the rest were leased. It was also significant in Belgium, where in 1910 leased land accounted for 54.2% of its total area. The situation was similar in France, where 36% of the agricultural area was leased and 11% was farmed on a share basis.<sup>12</sup> In Poland, lease of agricultural land began to be used more widely in the 19<sup>th</sup> century. The legal provisions were included on Polish soil e.g. in the Napoleonic Code, which was introduced on May 1, 1808<sup>13</sup> in the Duchy of Warsaw. This lease contract continued to be popular in the interwar period and after World War II.

The creation of the European Economic Community in 1957 and its adoption of a common agricultural policy for the Member States was of fundamental importance for the development of the institution of agricultural land lease in Western Europe. One of the key documents specifying the assumptions of the EEC policy towards agricultural leases was the so-called The Mansholt Plan of 1968.<sup>14</sup> This document contained a clear recommendation for Member States to introduce measures and legal institutions that would contribute to the improvement and rationalization of the agrarian structure of these countries, and would remove legal obstacles that hinder direct agricultural producers from conducting rational agricultural management on cultivated land. The Mansholt Plan devotes much attention to the institution of agricultural leases, postulating their transformation in the direction of protecting the rights of the lessee and enabling them to acquire ownership of the leased land.<sup>15</sup>

Despite the great popularity of the lease of agricultural land in rural relations, the European Union has not issued any legal rule regulating this institution in a general way. According to Article 222 of the Treaty of Rome, this issue lies within the domain of the internal

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<sup>11</sup> E.g. Avner Offer, 'Farm Tenure and Land Values in England, c. 1750-1950', *The Economic History Review New Series*, 44.1 (1991), 1-20; Asher Hobson, 'The Collective Leasing and Farming of Land in Italy', *The Journal of Land & Public Utility Economics*, 2.1 (1926), 67-72.

<sup>12</sup> Bożena Tańska-Hus, 'Dzierżawa rolnicza jako instrument przekształceń strukturalnych w rolnictwie', *Zeszyty Naukowe AR*, Wrocław, 383 (2000), 72-74. See about Deutschland Johannes Bracht, Ulrich Pfister, 'Landpacht, Marktgesellschaft und agrarische Entwicklung Fünf Adelsgüter zwischen Rhein und Weser, 16. bis 19. Jahrhundert', (Berlin: Steiner Verlag Wiesbaden GmbH, 2020).

<sup>13</sup> Dekret Króla Saskiego i Księcia Warszawskiego from 27 January 1808 r., ordering the introduction of Napoleonic Code, *Journal of Law Ks. War.*, I, 46.

<sup>14</sup> David Stead, *The Mansholt Plan Forty Years On*, EuroChoices, Volume 6, Issue 3, December 2007, 40-45.

<sup>15</sup> See more Mansholt Plan Aleksander Lichorowicz, 'Problematyka struktur agrarnych w ustawodawstwie Wspólnoty Europejskiej', (Kraków: Kantor, 1996), 24-35.

legislation of the Member States.<sup>16</sup> Nevertheless, the lease is often used by the European legislator as an instrument of agricultural land concentration, intended to accelerate the process of generation change in agriculture and to facilitate the start of independent farming by young farmers. Each Member State has its own legal regulations on leases, but lessees can, in principle, benefit from the same EU funds under the Common Agricultural Policy as owners.

The basic regulations of lease are very often contained in the Civil Code and there are additional separate legal rules. For example, in Germany, the basic provisions on agricultural tenancy are found in the BGB *Bürgerliches Gesetzbuch* (§ 585-597), the German General Civil Code, which was adopted in 1896 and came into force on 1 January 1900.<sup>17</sup> It has been amended many times. In addition, a special regulation was included in the Act of June 25, 1952 (*Landpachtverhrsgesetz*). This Act introduced the obligation of the relevant administrative body to notify the fact of an agricultural lease agreement being concluded, including details of its content and possible changes (within three months). This authority could oppose the contract if it was incompatible with the principles of rational economy or if the rent was too high. The law of 25 June 1952 was subsequently replaced by the law of 8 November, 1985 (*Landpachtverhrsgesetz*).<sup>18</sup> On November 8, 1985, a second Act on agricultural lease was also passed - *Gesetz über die Anzeige und Beanstandung von Landpachtverträgen*.<sup>19</sup> In Germany, after 1990, lease became the main legal title for using state agricultural lands in five new lands (East Part of Germany). Agricultural lease was used while taking actions aimed at the improvement of the agrarian structure in order to make it more similar to that in the western part of Germany. The lease of agricultural lands played an important role in the transformation of the political system not only in this country but also in some of the former Communist bloc countries in the 1990s. For example, in the Czech Republic, Slovakia and Hungary, lease was – and in some countries it still is – a common form of privatization of state-owned agricultural property.<sup>20</sup>

In France, the legal regulation of tenancy is contained primarily in the French Agricultural Code ('Code Rural et de la Pêche maritime').<sup>21</sup> In Poland, the provisions regulating the lease contract itself are included in Civil Code (from Article 693 to 709), the Act on 11 April 2003 on Formation of the Agricultural System.<sup>22</sup> They mainly refer to a so-called

<sup>16</sup> Paweł Czechowski, Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych w świetle standardów europejskich', *Podatki i Prawo Gospodarcze Unii Europejskiej*, 6 (1999), 2-4.

<sup>17</sup> Bürgerliches Gesetzbuch (BGB), <<https://www.gesetze-im-internet.de/bgb/>> [accessed 29 July 2023].

<sup>18</sup> Gesetz über die Anzeige und Beanstandung von Landpachtverträgen, BGBl. I S. 2075; see also Alfred Pikalo, 'Das neue Landpachtrecht', *Neue Juristische Wochenschrift*, 23 (1986), 1472-1478.

<sup>19</sup> BGBl. I S. 2065.

<sup>20</sup> Johan F.M. Swinnen, Erik Mathijs, 'Agricultural privatization, land reform and farm restructuring in Central and Eastern Europe', (Routledge 1997).

<sup>21</sup> *Code rural et de la pêche maritime*, [https://www.legifrance.gouv.fr/codes/texte\\_lc/LEGITEXT000006071367?etatTexte=VIGUEUR](https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071367?etatTexte=VIGUEUR); Isabelle Couturier, Edith Dejean, *Code rural et de la pêche maritime - Code forestier 2023 43ed - Annoté & commenté*, 27 April 2023.

<sup>22</sup> Consolidated text, Journal of Laws of 2022, item 2569, as amended. See more Paweł Blajer, Wojciech Gonet, *Ustawa o kształtowaniu ustroju rolnego. Komentarz*, (Warszawa 2020).

private lease. The so-called public lease<sup>23</sup> in turn, is subject also to some other legal rules, namely the Act of 19 October 1991 on Managing Real Estate from the State Treasury<sup>24</sup> and its implementing provisions.<sup>25</sup> The lease of agricultural lands from the local government units is regulated, except for the Civil Code, in the Act of 21 August 1997 on Real Estate Management.<sup>26</sup> The applicable regulations on the lease of agricultural lands are, therefore, versatile and diversified. In Slovenia, the contract of lease is regulated by the general provisions on the on-lease contract of the obligation Code (OC).<sup>27</sup> The Agricultural Land Act contains several special provisions relating, e.g. to statutory prelease rights, the content and written form of the lease contract and the minimum lease period.<sup>28</sup>

Lease is also popular outside the EU, e.g., in Switzerland. In this country, agricultural lease is regulated by the Federal Act on the Agricultural Lease from 4 October, 1985.<sup>29</sup> This law strengthens the position of the lessee. In Ukraine, after independence and the implementation of reforms, lease is a very popular title for organizing and expanding farms.<sup>30</sup> The legal regulation is contained in the Ukraine Land Code, the Land Lease Act<sup>31</sup> and others, e.g. Law of Ukraine of October 19, 2022 No. 2698-IX "On amendments to certain legal acts of Ukraine on the restoration of the system of registration of rights to lease of agricultural plots and improvement of land protection legislation."

By comparing statistical data, we can observe that the significance of lease has been on the rise in many European countries for a number of years. For example, the share of leased land in the total area of real estate comprising agricultural holdings in the years 2007 and 2009 was, respectively: in Belgium 67% and 74%; in the Czech Republic 83% and 85.6%, in Germany 62% and 69.6%,<sup>32</sup> in France 74% and 84.7%, in Slovakia 89% and 96.1%, in Sweden 39% and

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<sup>23</sup> So-called state lease was connected with the lease of lands from National Land Fund and as of 1992 – from Agricultural Property Agency of the State Treasury, currently called National Support Centre for Agriculture.

<sup>24</sup> Consolidated text, Journal of Laws of 2022, item 2329, as amended.

<sup>25</sup> Such as Regulation of the Minister of Agriculture and Rural Development of 1 August 2016 on setting lease rent in contracts of lease of real property from the Agricultural Property Stock of the State Treasury (Journal of Laws of 2016, Item 1186).

<sup>26</sup> Consolidated text: Journal of Laws of 2023, item 344, as amended.

<sup>27</sup> Obligacijski zakonik (OZ), OG RS, No. 83/01, 32/04 – OROZ195, 28/06 – odl. US, 40/07, 64/16 – odl. US, 20/18 – OROZ631. The 3rd unofficial consolidated version <http://pistrs.si/Pis.web/pregledPredpisa?id=ZAKO1263> [accessed 29 July 2023]; Franci Avsec, 'The Preemption Right on Agricultural Land in Slovenia: Past Developments and Future Challenges', *Journal of Agricultural and Environmental Law*, 15.28 (2020), 9-36 <https://doi.org/10.21029/JAEL.2020.28.9>.

<sup>28</sup> M. Kunc, B. Aver, M. Starman, and A. Temeljotov Salaj, 'Zakup Zemljišč v Sloveniji', *Dignitas: Revija za Človekove Pravice*, 79/80 (2018), 189.

<sup>29</sup> Bundesgesetz über die landwirtschaftliche Pacht (LPG) vom 4. Oktober 1985 (Stand am 1. Januar 2014). See also Verordnung über die Bemessung des landwirtschaftlichen Pachtzinses, (Pachtzinsverordnung, PZV).

<sup>30</sup> Andrii Martyn, Oleksandr Shevchenko, Ruslan Tykhenko, Ivan Openko and Oleksiy Zhuk, 'Indirect corporate agricultural land use in Ukraine: distribution, causes, consequences', *International Journal of Business and Globalisation, Inderscience Enterprises Ltd*, vol. 25(3), 378-395.

<sup>31</sup> Zakon Ukraïny, 'Pro Orendu Zemli' (vid 06.10.1998 №161-XIV). See more Dmytro V. Sannikov, Svetlana V. Khominets, Denys L. Kovach, Rymma A. Tsyliuryk, Alona O. CHyryk, Olena M. Savelieva, 'Legal Regulation of Land Lease in Ukraine' *Journal of Advanced Research In Law And Economics*, 11(4), 1398 – 1404. [https://doi.org/10.14505/jarle.v11.4\(50\).36](https://doi.org/10.14505/jarle.v11.4(50).36).

<sup>32</sup> Dieter Kirschke, Astrid Häger, Julia Christiane Schmid, 'New Trends and Drivers for Agricultural Land Use in Germany', in *Sustainable Land Management in a European Context*, ed. by T. Weith, T.

52.9%, in Great Britain 32% and 43.1%.<sup>33</sup> Thus, there has been a noticeable increase in the share of leased land in agricultural holdings, especially in France, where it amounted to over 10%. In Romania, agricultural area cultivated under land tenancy through formal contracts increased from 4.3% in 1993 to 8% in 1996 and 11% in 2000.<sup>34</sup> According to other data, in 2015, more than 40 % of Sweden's agricultural land was leased. In England, a third of farmed land is tenanted.<sup>35</sup> In Ukraine, lease of agricultural land is basic form of organizing companies, called agri-holding. In 2020 land leased from private owners – 56% and land leased from the state – 8%. In the United States, the proportion of farmland operated under lease arrangements has increased from 35% in 1950 to 43% in 1992 (USDA 1992).<sup>36</sup>

## 2.2. Lease Duration and Extension of the Lease for the Next Lease Period

There is no doubt that one of the essential instruments of the stability of the lease relationship is the determination of its duration. The essential elements of contract are regulated differently in legal provisions. As a matter of fact, private lease in Poland, offers a great deal of freedom for landlords and lessees to create the terms of the contract. In the light of the Civil Code, a lease may be concluded for a definite or indefinite period. This Code does not specify a minimum duration for the lease of agricultural land, nor does it distinguish between short-term, long-term, or lifetime leases. Legal provisions introduce certain restrictions, for example, Article 695 § 1 Civil Code. This provision provides that a lease concluded for a definite period longer than 30 years shall be deemed concluded for an indefinite period after the expiry of that period. In addition to the lease of private land in Poland, there are also regulations for lease from the Agricultural Property Stock of the State Treasury. With regard to this, the possibility of concluding contracts for an indefinite period has been excluded. Based on Article 24 sec. 1 point 2 of the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury, the legislator obliged the National Support Center for Agriculture to conclude lease agreements for a definite period, leaving the parties to determine their length. They are usually signed for periods of 10 years. In cases justified by economic reasons, e.g., production or investment cycle, the contractual duration of the lease may be longer. Article 38 of the Act of 19 October 1991 indicates that the provision of Article. 695 of the Civil Code (stipulating that a lease concluded for a definite period of time longer than 30 years is deemed after that period to be concluded for an

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Barkmann, N. Gaasch, S. Rogga, C. Strauß, J. Zscheischler, *Human-Environment Interactions*, 8 (Cham: Springer, 2021) [https://doi.org/10.1007/978-3-030-50841-8\\_3](https://doi.org/10.1007/978-3-030-50841-8_3).

<sup>33</sup> Eurostat, for: Pavel Ciaian, Artis Kancs, Kristine Van Herck, Liesbet Vranken, 'Rental Market Regulations for Agricultural Land in EU Member States and Candidate Countries', <http://www.ceps.be/book/rental-market-regulations-agricultural-land-eu-member-states-andcandidate-countries> [accessed: 27 July 2023], European Commission DGAGRI, 2013, 'EU farm economics overview FADN 2009', [http://ec.europa.eu/agriculture/rica/pdf/EU\\_farm\\_economics\\_2012.pdf](http://ec.europa.eu/agriculture/rica/pdf/EU_farm_economics_2012.pdf), [accessed 29 July 2023].

<sup>34</sup> Laurence Amblard, Jaen-Philippe Colin, 'Reverse tenancy in Romania: Actors' rationales and equity outcomes', *Land Use Policy*, 26.3 (2009), 828-836, <https://doi.org/10.1016/j.landusepol.2008.10.008>.

<sup>35</sup> *Tenant Farming in England*, <https://www.cornish-times.co.uk/news/tenant-farming-in-england-581981>, [accessed: 27 July 2023].

<sup>36</sup> Siddhartha Dasgupta & Thomas O. Knight & H. Alan Love, 'Evolution of Agricultural Land Leasing Models: A Survey of the Literature', *Review of Agricultural Economics*, 21(1) (1999), 148-176. About actual lease in USA: Robert Andrew Branan, 'Lease Considerations for Landowners and Farmers Farm Law for Operators and Landowners', <https://content.ces.ncsu.edu/keeping-farmland-in-farming>, [accessed 29 July 2023]. Jesse J. Richardson Jr., 'Land Tenure and Sustainable Agriculture', *TEX. A&M L. REV.*, 799, (2016), 799.

indefinite period), does not apply to the lease from the Agricultural Property Stock of the State Treasury.

With regard to the countries of Western Europe, in most of them legal solutions regarding the duration of the lease ensure the protection of the stability of the lease. Despite the undoubtedly often significant differences, these solutions can be reduced to two basic principles:

Firstly, agricultural land lease agreements are concluded for a definite period expressed in years. The possibility of concluding a lease agreement for an indefinite period is excluded, as it creates grounds for terminating the lease relationship at any time, subject only to the notice period.

Secondly, the duration of the agricultural land lease relationship should not be shorter than the statutory minimum. In the event of a different agreement of the parties, the lease shall be deemed concluded for the minimum period specified by law.<sup>37</sup> In addition, in much legislation of Western European countries, the duration of the lease varies depending on the subject of the lease; the minimum duration of a farm lease is longer than that of a single plot of agricultural land. In some countries there are also long-term and lifetime leases. In Belgium, three types of agricultural lease can be distinguished: ordinary, 'professional' (bail de carrière) and long-term. The duration of the first is determined by the parties to the contract, with the provision that it must be at least 9 years. A so-called professional lease is concluded for the period until the lessee's retirement (until the lessee reaches the age of 65).<sup>38</sup> New farm lease legislation that came into effect on January 1, 2020, in Wallonia, Belgium, specifies, for example, that the duration of a lease often considered as 'perpetual' is 36 years, which includes four renewals of nine years each.<sup>39</sup>

In Italy, the minimum duration of agricultural land leases is 15 years,<sup>40</sup> while in Switzerland it is 9 years for the lease of a farm, and 6 years for the lease of individual plots of land.<sup>41</sup> In France, it is set at 9 years.<sup>42</sup> There is also an institution called long-term lease, lasting 18 years. In addition, French legislation, taking steps to stabilize the position of the lessee and combining his social rights with the duration of the lease, introduced in 1980 a new form of long-term lease. It is characterized by the fact that it is concluded for more than 25 years and ends only when the lessee retires<sup>43</sup> The Swiss Federal Act on the Agricultural Lease from 4 October 1985 states that the first lease period is at least nine years for agricultural farms and at least six years for individual plots of land. In Netherland, an agricultural lease agreement

<sup>37</sup> See Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych', 106-107.

<sup>38</sup> See more Karin Theisinger, 'Neues Landpachtrecht in Belgien', *Agrarrecht*, 11 (1990), 311.

<sup>39</sup> 'Farm tenancy reform in Wallonia, Belgium', <https://www.accesstoland.eu/Farm-tenancy-reform-in-Wallonia-Belgium> [accessed 11 August 2023].

<sup>40</sup> See more Luigi Costato, 'Corso di diritto agrario', (Milano: Giuffrè, 2011), 305.

<sup>41</sup> See more about Landpacht in Switzerland Andreas Wasserfallen, 'Landwirtschaftliche Pacht', *Handbuch zum Agrarrecht*, ed. by Roland Norer (Wien: Springer-Verlag, 2017), 421-471; Roland Norer, 'Systembildende Elemente des Agrarrechts. Eine Überprüfung anhand der schweizerischen Rechtsordnung' in José Martínez, Gottfried Holzer, Roland Norer, 'Grundlagen der Systembildung im Agrarrecht' (Nomos 2022), 197 and next. Jürgen Lukanow, 'Pachtdauer und Pächterschutz in den europäischen Ländern', *Agrarrecht*, 9 (1974), 71-72.

<sup>42</sup> Art. L 411-5 kodeksu rolnego, <http://www.legifrance.gouv.fr>; see more Wolfgang Winkler, 'Das Landpachtrecht in Frankreich', *Agrar und Umweltrecht*, 1 (2012), 465-471. Wolfgang Winkler 'Das Landpachtrecht in Frankreich', *Agrar und Umweltrecht* 1 2012, 465-471.

<sup>43</sup> See Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych', 107-108.



must be concluded for a definite period of time, being 12 years for farms and homesteads and six years for separate land or buildings (Article 7:325(1), Dutch Civil Code). A farm lease agreement may be entered into for a shorter lease period provided that a specific date is set on which it will end. This shorter lease period needs the approval of the Agricultural Lease Authority, which can be granted either before the farm lease agreement has been entered into or during the normal approval procedure for this agreement.<sup>44</sup> In Lithuania, the duration of a contract of lease of agricultural land of state ownership shall not exceed 25 years. If a land plot is designated for public use according to territorial planning documents, it can only be leased for a limited period until it is expropriated for its intended purpose.<sup>45</sup>

German law does not stipulate a minimum duration of the lease. An agricultural lease agreement may be concluded for a definite or indefinite period.<sup>46</sup> In the UK, as well, parties are free to determine the duration of a farm business tenancy.<sup>47</sup> According to the Agricultural Tenancies Act of 1995:<sup>48</sup> “A farm business tenancy for a term of more than two years shall, instead of terminating on the term date, continue (as from that date) as a tenancy from year to year, but otherwise on the terms of the original tenancy so far as applicable, unless at least twelve months before the term date a written notice has been given by either party to the other of his intention to terminate the tenancy” (Part I, Point 5).<sup>49</sup> Short-term land leasing is still popular in some countries, e.g. in Ireland. The conacre system is a short-term land lease system specific to that country.<sup>50</sup> According to legal regulations long-term land leases are also possible but are not very popular.

Another institution important for the stability of the lease is the possibility of extending the lease for the subsequent lease period. In the Polish Civil Code, there is no provision for the automatic extension of the lease relationship for subsequent statutory periods. The Civil Code only provides for a tacit (implied) extension of the lease for an indefinite period (as per Article 674 in connection with Article 694), if, after the expiry of the period specified in the contract or in the notice of termination, the lessee continues to use the property with the consent of the lessor. The essence of this extension is that the leasing relationship continues with the same

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<sup>44</sup> Dutch Civil Code, Title 7.5 Farm lease agreement; <http://www.dutchcivillaw.com/civilcodebook077.html>.

<sup>45</sup> Jerzy Michalek, 'Country Report For Lithuania', in *European Commission, Agricultural land market regulations in the EU Member States* (Brussels, 2021), 215-220.

<sup>46</sup> Hubertus Schmitte, 'Dauergrünland und Pachtrecht', *Agrar und Umweltrecht*, 3 (2015), pp. 93-99; Christian Lüdtke-Handjery, Jens Haarstrich, and Constanze Nehls, 'Landwirtschaftliches Pachtrecht des BGB und Landpachtverkehrsgesetz' (Berlin: C.H. Beck, 2023).

<sup>47</sup> See Ines Hartel, 'Liberalisierung des englischen Landpachtrechtes', *Agrarrecht*, 10 (1996), 314-316; Ian Whitehead, Nick Millard, and Andrew Errington, 'The role of the Farm Business Tenancy in Agricultural Restructuring in England and Wales' <https://www.abdn.ac.uk/arkleton/aes2003/docs/papers/whitehead.doc> [accessed 20 July 2023].

<sup>48</sup> See more 'Halsbury's Statutes of England and Wales', 1 (London, 1998), 917-1010.

<sup>49</sup> Agricultural, <https://www.legislation.gov.uk/ukpga/1995/8/section/5> [accessed 20 July 2023].

<sup>50</sup> Adewale Henry Adenuga, Claire Jack, and Ronan McCarry, 'The Case for Long-Term Land Leasing: A Review of the Empirical Literature', *Land*, 10.238 (2021) <<https://doi.org/10.3390/land10030238>>. Bradfield, Tracy; Butler, Robert; Dillon, Emma J.; Hennessy, Thia, 'The factors influencing the profitability of leased land on dairy farms in Ireland'. *Land Use Policy* 2020, 95, Laura Onofri, Samuele Trestini, Fateh Mamine, Jason Loughrey, 'Understanding agricultural land leasing in Ireland: a transaction cost approach', *Agricultural and Food Economics* 11(1), 2023, <https://doi.org/10.1186/s40100-023-00254-x>.

terms. Changing the terms of the lease agreement means concluding a new one, and not extending the existing one as per Article 674 of the Civil Code.

The Polish Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury introduced the possibility of extending the lease for the next lease period in relation to state-owned land. However, this is a separate institution compared to the tacit extension of the lease provided for in the Civil Code. According to Article 39, sec. 2, point 1 of the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury, the tender procedure does not apply when the current lessee submits a declaration of intent to the National Center for Agriculture Support to further lease the real estate on new terms agreed with the aforementioned legal entity, provided that the rent is not lower than the current amount. However, if the declaration is not submitted at least three months before the end of the lease, or if new terms of the lease agreement are not agreed upon within one month of submitting the declaration, the lease will not be extended.

The institution of extending the lease, which takes place automatically, by operation of law, for a further statutory period, is present in many legal systems of Western European countries. Nevertheless, it does not usually consist in extending the first contract for another period, but in establishing, by operation of law, a new legal relationship between the parties for a mandatory period-corresponding to or longer than the statutory minimum. For this reason, individual legislation allows for a possible change in the provisions of the contract at the request of the parties, as a result of mutual agreement, or on the basis of a decision of the state authority competent to settle matters related to the lease of agricultural land. This most often concerns updating the rent.<sup>51</sup>

Reasons for excluding the lessee's ability to take advantage of the statutory extension of the legal relationship of the lease of agricultural land include improper management of the leased land, other forms of improper fulfillment of contractual obligations by the lessee (e.g., irregular payment of rent), bad relations between the parties to the contract, and withdrawal by the lessee from personally running the farm. Additionally, a common reason in Western European legislation for not extending the lease is the owner's desire to retake the farm for personal agricultural production, to have family members manage it, or to undertake significant investments, including construction, on the leased farm.

Under Belgian legislation, if an ordinary agricultural land lease agreement is not terminated, it is automatically extended after the expiry of the contractual term, each time for a period of 9 years. This rule applies even if the duration of the first lease period was set for more than 9 years.<sup>52</sup> The institution of automatic extension of the lease relationship is also present in Italian legislation. To terminate a lease concluded for a definite period, a notice of termination must be sent by registered letter at least one year before the expiry of the contractual term. Otherwise, the lease is automatically renewed for a minimum period of 15 or 6 years.<sup>53</sup> The French Rural Code provides for an automatic renewal of the lease for the next 9 years,<sup>54</sup> while Swiss legislation for the next 6 years in the case of a farm lease.<sup>55</sup>

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<sup>51</sup> See Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych', 109-110.

<sup>52</sup> See Christian Scholz, 'Die Landpacht', 115.

<sup>53</sup> See more Luigi Costato, 'Corso di diritto', 305.

<sup>54</sup> See Christian Scholz, 'Die Landpacht', 116-117. M. Merlet, 'The tenant farming statute in France', [http://www.agter.org/bdf/en/corpus\\_chemin/fiche-chemin-54.html](http://www.agter.org/bdf/en/corpus_chemin/fiche-chemin-54.html), [accessed 20 July 2023].

<sup>55</sup> See Jürgen Lukanow, 'Die Landpacht', 71-72.

### 2.3. Continuity of the Lease in the Event of Transfer of Rights and Obligations under the Lease Agreement for Agricultural Land or Death of the Lessor or Lessee

The Polish Civil Code does not contain any specific provision concerning the entry of a third party into a reciprocal contract. However, both the jurisprudence and the doctrine allow for such a possibility, provided that certain requirements are met, namely the joint transfer of the obligations (assumption of debt) and rights (assignment of receivables) that make up this item, unless the change of party is contrary to the act, contractual stipulation and the nature of the liability. In the case of the lease of agricultural land, so-called private property, the Civil Code does not address the separate regulation concerning the transfer of rights and obligations from one lessee to another person, it is therefore assumed possible with the consent of the lessor. In the case of a lease from the Agricultural Property Stock of the State Treasury (state lease), Article 39c of the Act of 19 October 1991 on the Management of Agricultural Property of the State Treasury stipulates that at the lessee's request, with the consent of the National Centre, a third party may assume the lessee's rights and obligations under the lease, namely, when the lessee obtains the right to early retirement or old-age pension, or due to his health condition, he will not be able to continue the contract. In addition, the application submitted to the National Center must demonstrate that the transfer of rights and obligations under the lease agreement is made to a person or persons close to the lessee, as defined by the provisions on shaping the agricultural system.

Different countries have different legal solutions regarding the transfer of rights and obligations of the lessee under the lease agreement to another person. For example, in Switzerland, the successor must submit a written declaration to the lessor, stating that they will manage the plot in accordance with its intended use. If the lessor does not reject this declaration within three months, then the successor becomes a party to the lease agreement (Article 19 of the Act of 4 October 1985).

In addition, some jurisdictions ease the requirement to obtain the lessor's consent for transferring the lessee's rights and obligations. For example, the legal regulations in Belgium and Luxembourg allow a change of lessee in favor of close relatives without the consent of the lessor.<sup>56</sup> In Italy, on the other hand, if the leased agricultural property is not part of the family farm, the lessee's rights and obligations may be transferred to one or more family members, who will directly continue to cultivate the agricultural land, even without the lessor's consent.<sup>57</sup>

Regarding the continuity of the lease in the event of the death of the lessee or lessor, various solutions exist in the domestic legislation of European countries. In the light of the provisions of the Polish Code of Obligations from 1934, the heritability of the rights of obligations under lease and tenancy was directly confirmed by Article. 391 §1 of this Code. The Polish Civil Code of 1964 does not contain such a relevant legal solution. However, the doctrine assumes that Polish legislation addresses the continuity of the legal relationship of the lease in the event of the death of the tenant or lessor. The heredity of a specific law of obligation is determined by the nature and socio-economic purpose of this law. Pursuant to Article 922 of the Civil Code, the inheritance does not include rights and obligations closely related to the deceased's person, and the rights that upon his death are transferred to designated persons, regardless of whether they are his heirs. The Civil Code does not specify

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<sup>56</sup> See more Wolfgang Winkler, 'Der Wechsel von Verpächter und Pächter', 329.

<sup>57</sup> See Luigi Costato, 'Corso di diritto', 301-302.

a legal succession procedure for leases, as it does, for example, in the event of the death of a dwelling tenant (Article 691 of the Civil Code).<sup>58</sup>

As far as Western European countries are concerned, most have a rule stating that the lessor's death does not affect the continuity of the agricultural land lease. Neither the lessee nor the lessor's heirs are granted any additional right to terminate the agreement for this reason. The heirs have the same rights and obligations as the deceased landlord. At the same time, only in a few countries are there provisions directly stipulating that the death of the lessor does not affect the continuation of the lease of agricultural land, and that the deceased party in the agricultural land lease is replaced by their heirs.<sup>59</sup>

Regarding the regulations for continuing the agricultural land lease after the lessee's death, there are no uniform rules across Western European countries. In some legal systems, however, these regulations are sometimes extensive, so it is impossible to discuss them in detail in this short article.

First, in some countries, the lessor is not entitled to any additional termination rights in the event of the lessee's death. The agricultural land lease relationship will continue with all heirs until the lease expires or until an admissible notice is given (Austria, Denmark, Sweden). Second, some legal systems restrict the succession of a deceased lessee's rights and obligations only to certain heirs with specific characteristics. These are aimed at ensuring proper management of the leased subject, whereby the lessor's right to terminate may be excluded (Greece) or the heirs may object to the termination (Germany). Sometimes legislators require heirs to declare that their main occupation is farming. For example, according to Article 594d of the German BGB, in the event of the lessee's death, both the lessee's heirs and the lessor are entitled to terminate the lease within one month of becoming aware of the lessee's death, with six months' notice to the end of the calendar quarter. It should be emphasized that the heirs do not have to agree to the notice of termination submitted by the lessor and can demand the continuation of the lease relationship if it seems probable that they, an heir, or a third party authorized by them, will ensure proper management of the leased subject<sup>60</sup>. The lessor may refuse to continue the lease if the heirs have not raised an objection at least 3 months before the lease expires and have not provided evidence that it seems probable that the leased subject will be properly managed. If no agreement can be reached, the agricultural court (*Landwirtschaftsgericht*) will decide on the application.

Swiss legislation allows the transfer of a deceased lessee's rights and obligations to certain relatives. "However, the lessor has the right to terminate the agricultural lease agreement if the heirs do not guarantee proper management of the leased subject, or if continuing the lease is unsatisfactory for the lessor for other reasons.<sup>61</sup>

#### 2.4. Termination of the Lease of Agricultural Land

In order to protect the stability of the lease of agricultural land, it is extremely important to determine what events lead to its termination. Traditionally, termination is considered to

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<sup>58</sup> See more e.g. Józef Skąpski, 'Wstąpienie w najem po śmierci najemcy', *Studia z prawa cywilnego. Księga pamiątkowa dla uczczenia 50-lecia pracy naukowej Prof. dr hab. Adama Szpunara*, (Warszawa-Łódź: Uniwersytet Łódzki, 1983), 403.

<sup>59</sup> See Wolfgang Winkler, 'Der Wechsel von Verpächter und Pächter', 328.

<sup>60</sup> See § 594 d Germany BGB.

<sup>61</sup> Article 18 Swiss act from 4 October 1985.

be the legal act posing the greatest threat to the stability of the legal relationship in question. A lease concluded for an indefinite period usually ends due to termination by one of the parties, with the observance of notice periods.<sup>62</sup>

The following elements are crucial for unilateral termination of a lease agreement: term, form, and admissibility. The Polish Civil Code does not restrict the parties in determining the length of the notice period for the legal lease relationship, if there is no such agreement, it may be terminated 1 year in advance at the end of the lease year (Article 704 of the Civil Code). This prompts the question of how to determine the lease year. At least three possibilities can be identified. Namely, recognizing the calendar year as a lease year, counting the lease year until the date of concluding the contract, or referring this concept to a single crop production cycle. It should be noted that scholarly accounts of this issue vary.

With simple termination of the lease relationship, the parties have ample time to terminate the agricultural activity associated with the leased subject. The situation is different with regard to termination of the lease with immediate effect. It may surprise the lessee during the production cycle, causing him serious losses due to the inability to withdraw the outlays already made on the land. It should be emphasized that the termination of the lease of agricultural land with immediate effect in the cases specified in the Civil Code is possible both in relation to contracts concluded for an indefinite period, as well as for a definite period. In most cases provided for by law, the lessor has the right to terminate the lease immediately, namely:

- when the lessee uses the subject of the lease in a manner contrary to the agreement or the intended use of the subject and does so despite warnings from the lessor (Article 667 § 2 sentence 1 of the Civil Code in connection with Article 694 of the Civil Code),
- when the lessee neglects the subject of the lease to such an extent that it can cause loss or damage (Article 667 § 2 sentence 2 of the Civil Code in connection with Article 694 of the Civil Code),
- when the lessee is in arrears with the payment of rent (Article 703 of the Civil Code),
- when the lessee, without the consent of the lessor, gives the subject of the lease to a third party for free use or sublease (Article 698 § 2 of the Civil Code).

The presentation of legal solutions concerning terminating the lease of agricultural land in selected countries of Western Europe should begin by distinguishing two fundamental directions of protecting the stability of the legal relationship of the lease of agricultural land.

Firstly, the existence of the *numerus clausus* principle in the legal systems of many countries as grounds for terminating a lease of agricultural land. Consequently, it will be effective only if it was made for reasons specified in the Act. Termination of the lease relationship based on reasons other than those specified in legal acts requires the consent of both parties.

Secondly, the regulations on the lease of agricultural land include sufficiently long periods of notice, enabling the lessee to collect the crops, possibly fully withdrawing the

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<sup>62</sup> See Zygmunt Radwański, Janina Panowicz-Lipska, *'Zobowiązania – część szczegółowa'*, (Warszawa: C.H. Beck, 1996), 134.

outlays made, and finding new agricultural land.<sup>63</sup> In France, on the other hand, unilateral termination by the lessor is also possible if the use of the plot for agricultural purposes can be changed.<sup>64</sup> Such a situation may occur if the plot is recognized in the zoning plan (*Plan d'occupation des sols*) for an urban area and thus it will be possible to use it as a building plot.

Another legal instrument to protect the stability of agricultural tenancies is the introduction by most countries of the possibility of invalidating the termination received ineffective by the tenant by applying to the court (or other authority competent in matters relating to the lease of agricultural land) for a review of the legitimacy of the termination. A very original Belgian solution should be mentioned, according to which the lessor whose termination of the lease of agricultural land has been declared ineffective by the court may not renew it before the expiry of 3 years.<sup>65</sup> In Switzerland, in a similar situation, the court can even extend the lease for another 3-6 years.

## 2.5. EU Funds and the Stability of Agricultural Land Lease

Poland's accession to the European Union in May 2004 resulted in a change in the method of financial support for agricultural activity. The most popular form of support has become the system of direct payments, including the single area payment. For example, in 2020, more than 1.3 million Polish farmers applied for direct payments, and the Agency for Restructuring and Modernization of Agriculture paid out PLN 15.72 billion.<sup>66</sup> In the years 2004–2020, the Agency for Restructuring and Modernization of Agriculture paid out PLN 202.7 billion as part of the indicated aid.<sup>67</sup> Direct payments are made in all countries of the European Union and can be used by lessees. Regulation (EU) No 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for the strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 states that decoupled direct payments are the following: (a) the basic income support for sustainability; (b) the complementary redistributive income support for sustainability; (c) the complementary income support for young farmers; (d) the climate, environment and animal welfare schemes. The details of the granting of payments and the amounts were specified in the Common Agricultural Policy Strategic Plans of each EU country and then in the legal regulations adopted on the basis of them.<sup>68</sup>

Article 23 of the Polish Act of 8 February 2023 on the Strategic Plan for the Common Agricultural Policy<sup>69</sup> for the years 2023-2027 stipulates that if the condition for granting the aid is the ownership of land or animals, and this land or animals are the subject of autonomous and dependent ownership, the dependent holder (e.g., lessee) is entitled to the aid. If the owner does not carry out agricultural activity, but has leased the land, he should not submit

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<sup>63</sup> See Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych', 113.

<sup>64</sup> Article Agricole Code L 411-32 French,

<sup>65</sup> Aleksander Lichorowicz, 'Dzierżawa gruntów rolnych', 116-117.

<sup>66</sup> ARiRM, 'Sprawozdanie z działalności Agencji Restrukturyzacji i Modernizacji Rolnictwa za 2021 rok', Warszawa, <https://www.gov.pl/web/arimr/sprawozdania-z-dzialalnosci-agencji-restrukturyzacji-i-modernizacji-rolnictwa>, [accessed 20 July 2023].

<sup>67</sup> Ibidem.

<sup>68</sup> See outside EU e.g. Agricultural subsidy reform in Switzerland in, OECD, The Political Economy of Biodiversity Policy Reform, OECD Publishing, Paris, 2017, <https://doi.org/10.1787/9789264269545-en>.

<sup>69</sup> Polish Journal of Laws 2023 item 412.

applications and receive payments according to the regulations. Article 25 of the Act of 8 February 2023 stipulates that direct payments are granted to a farmer if he carries out agricultural activity and the total area of land covered by the area approved for basic income support held by this farmer is not less than 1 ha. For the agricultural producer, including the lessee, the granting of the payment is linked to the fulfilment of obligations.

It should be emphasized that tenants can also apply for funds from the second pillar of the Common Agricultural Policy, e.g., agri-environmental program, support for investment in agricultural holdings, organic farming, payments for areas with natural handicaps or other specific handicaps. Very often there is a requirement to commit to farming for at least 5 years. It is therefore important to enter into a long-term farmland lease. For example, in the years 2015-2022, many Polish agricultural producers, including leaseholders, benefited from agri-environmental-climate programs specified in the Regulation of the Minister of Agriculture and Rural Development of 18 March 2015 on the detailed conditions and procedure for granting financial support under the measure "Agri-environment-climate measure" covered by the Rural Development Program for 2014-2020. The mentioned Act states that the AE-climate payment shall be granted to a farmer or manager if he has been allocated an identification number in accordance with the provisions on the national system of records of producers, records of farms; implements a 5-year AE-climate commitment; and fulfils the conditions for granting the AE-climate payment under specific packages or their variants as specified in the Regulation.

Article 69 of Regulation (EU) No 2021/2115 of the European Parliament and of the Council of 2 December 2021 established rules on support for the strategic plans to be drawn up by Member States under the common agricultural policy (CAP strategic plans) specifies the types of intervention which shall consist of payments or support related to environmental, climate-related and other management commitments; natural or other area-specific constraints; area-specific handicaps resulting from certain mandatory requirements; investments, including investments in irrigation; risk management tools; cooperation; and exchange of knowledge and dissemination of information. The possibility of receiving funds from the second pillar is linked to the beneficiary's commitments of five years or more. It is therefore important to maintain the permanence of the agricultural lease.

In France, environmental leasing is a way of incorporating the public interest (protection of the environment) into contract law. It protects tenants whose lease cannot be terminated because of certain types of environmentally friendly practices. In the past, it has indeed happened that certain practices favoring organic farming have led the landlord to terminate the lease. These environmental clauses include, for example: - organic farming; restriction or prohibition of the use of fertilizers and phytosanitary products; soil protection; diversification of crop rotation; specific harvesting techniques; creation, maintenance and management of agro-ecological infrastructure such as hedges, slopes, terraces, ponds and corpses; agroforestry.<sup>70</sup> If the farmer fails to comply with some of these clauses, the landowner may decide to terminate or not renew the lease.

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<sup>70</sup> 'Environmental rural lease' <<https://www.accesstoland.eu/Environmental-rural-lease>> [accessed 20 July 2023]; Christine Léger-Bosch, Marie Houdart, Salma Loudiyi, and Pierre-Mathieu Le Bel, 'Changes in property-use relationships on French farmland: A social innovation perspective', *Land Use Policy*, 94 (2020).

### 3. Conclusion

The analysis of legal regulation regarding the protection of the stability of the lease of agricultural land shows various approaches in European countries. Countries with a "protectionist" model have a broader range of instruments for protection, often with state oversight of leasing transactions. In contrast, "liberal" model countries have fewer instruments. Key legal instruments include guarantees of minimum lease terms, possibilities for long-term leases, and conditions for lease termination. Continuity of the lease, even with changes in parties or circumstances, is also emphasized. Ensuring the continuity of a lease contract in the event of a change of generation in agriculture and the takeover of a farm by a successor holds significant importance. In Poland, family farms, often used leased land, receive more legal protection due to the state's agricultural policy.

The permanence of tenancy is vital for agricultural development and investment. With decreasing availability and rising prices of agricultural land, leasing becomes essential for financial stability and adherence to the Common Agricultural Policy. Stable, long-term leases encourage tenants to invest in land and infrastructure, aiming for long-term profit. In contrast, short-term leases often lead to prioritizing immediate profit over land quality improvement. The transferability of lease rights to successors is also crucial. There is less and less agricultural land available to agricultural producers on the market. The lease it is crucial for the financial stability of agricultural producers and possibilities of establishing and expanding farms. Given the growing importance of leasing, many countries, including the Netherlands, Switzerland, Poland, and Great Britain, are considering changes to their leasing regulations.

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