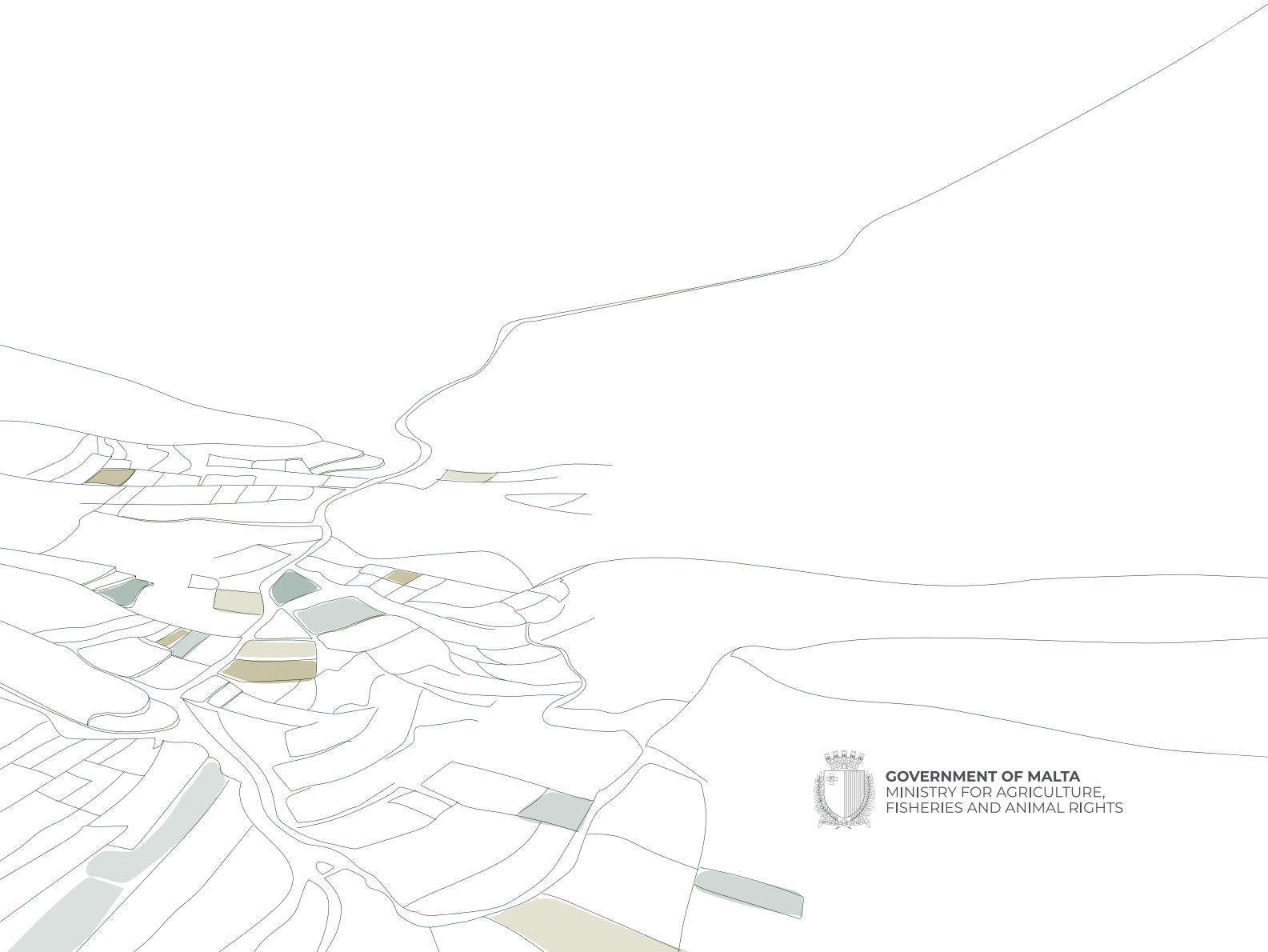


# AGRICULTURAL LAND REFORM

WHITE PAPER



**GOVERNMENT OF MALTA**  
MINISTRY FOR AGRICULTURE,  
FISHERIES AND ANIMAL RIGHTS



# REFORM

## IN THE ACQUISITION AND OWNERSHIP OF FARMLAND

WHITE PAPER

ISSUED BY  
**THE MINISTRY FOR AGRICULTURE,  
FISHERIES AND ANIMAL RIGHTS**

October 2022

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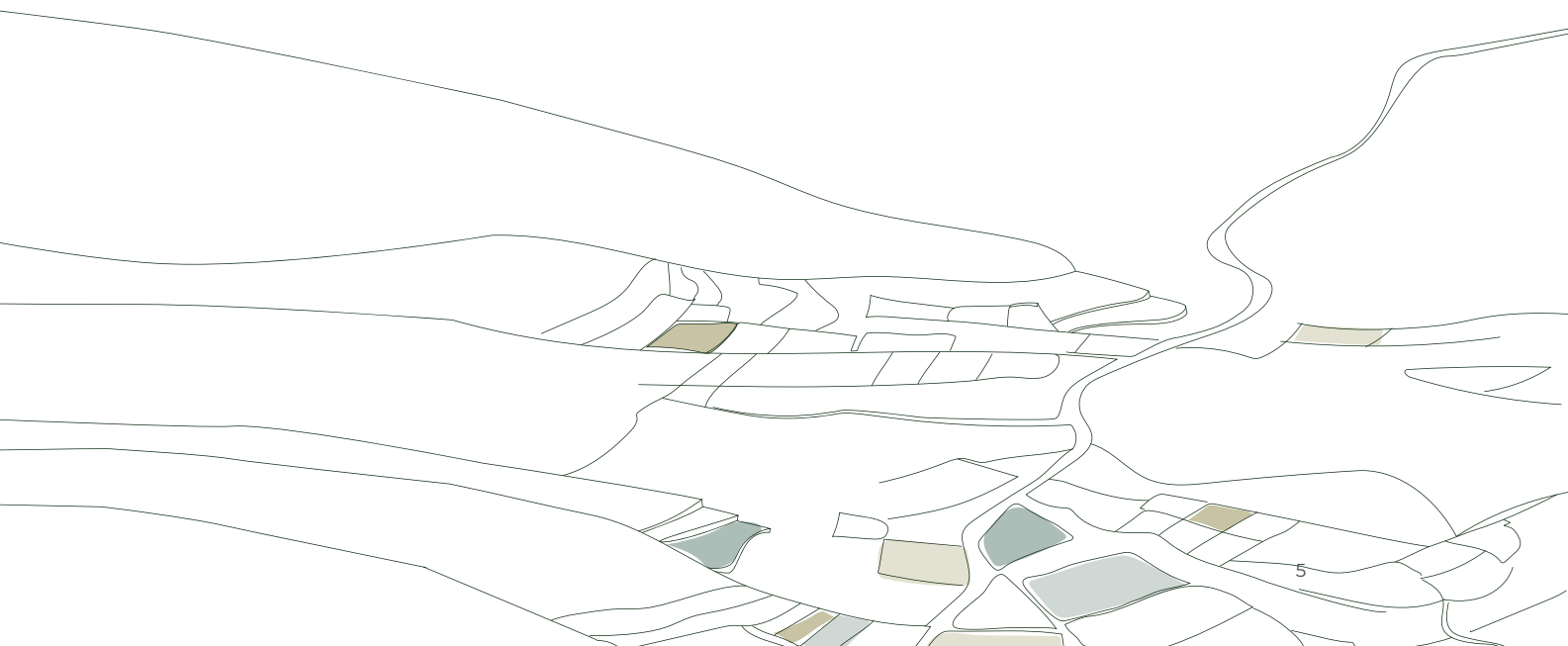
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# Introduction

Controlling the acquisition and ownership of land is fundamental to guaranteeing the sustainability of agriculture and food production, as well as the protection of the rural environment. For this reason, whenever there are issues in this area, these not only affect farmers but also have a strong impact on the supply and security of food and the quality of the environment that can be enjoyed by society. When the acquisition and possession of land are not controlled, there is a risk of farmers losing agricultural land, to the detriment of their livelihood, as well as to the country's ability to produce food and safeguard the rural environment.

Achieving the goals that we envisage requires a reform that is based on a long-term vision and offers direction to the necessary action, is in line with the Constitution of Malta and the European Convention on Human Rights, is motivated by reasons which are in the interest of the general public, and involves farmers. This is why this White Paper brings together a set of proposals designed to address issues that may bring about the loss of crops, thus creating a legal framework and control systems that safeguard the social rights of all stakeholders, food safety, and environmental protection. The public is being invited to submit comments on the White Paper during the consultation period.



# The International Scope

## The right to enjoy your property

According to Article 1 of Protocol No. 1 of the **European Convention on Human Rights**, a person is entitled to the enjoyment of his possessions, and no one shall be deprived of his possessions except in the public interest and subject to the conditions laid down in the law. These provisions shall not, however, prejudice the right of the State to enforce laws which it considers necessary to control the use of property in the general interest.

## The fight against hunger and poverty

As a member of the **World Food and Agriculture Organization**, Malta is committed to following the **Voluntary Guidelines on the Responsible Governance of Land Ownership**, which serve as a reference framework in this area, designed intentionally as part of the fight against hunger and poverty.

## Respect for fundamental freedoms

Under the **Treaty on the Functioning of the European Union**, Member States have the jurisdiction and discretion to regulate their land markets; however, they must respect the basic principles of the Treaty, which respect fundamental freedoms and ensure no discrimination on the grounds of nationality. The right to acquire, use or dispose of land falls within the principles of the free movement of capital laid down in Article 63 et seq. of the **Treaty on the Functioning of the European Union**.

National measures that may infringe the right to fundamental freedoms may be permitted only if a number of conditions are met. The measures introduced must not be discriminatory, must be justified by an overriding public interest, must be appropriate to attain the objective pursued and not go beyond what is necessary, and may not be replaced by less restrictive alternative means. In addition, national measures must comply with other general principles of European Union law, such as legal certainty.

The Court of Justice of the European Union has stated on several occasions that the objectives of these measures must be consistent with the objectives of the **Common Agricultural Policy** under Article 39 of the Treaty on the Functioning of the European Union, which sets food supply and security as an objective.

## European Parliament resolution

On 27th April 2017, the **European Parliament** adopted a **resolution** on the situation with regard to arable land in the Member States of the European Union and how to facilitate access to farmers. Parliament acknowledged that land is, on the one hand, **owned property**, while on the other hand, it is one of the **public assets** that are subject to social obligations. The resolution refers to farmland as an increasingly **scarce, non-renewable** resource and that it is a **basic necessity for the fundamental human right** to have **good and sufficient food for health**, as well as for many **ecosystem services** that are vital for survival, and should therefore not be treated as an **ordinary commodity**.

This resolution recognises that land may be a **source of conflict** not only over land use but also as a result of rivalry between agricultural and non-agricultural investors. This leads to **higher farmland prices and rents** to levels that encourage **financial speculation**, a situation that makes it impossible for many farms to maintain leased land or acquire more land to be

able to maintain small and medium-sized farms. This is because, in many Member States, sale prices and, in some cases, rents have been detached from the value of the income obtained from food production.

## Tools for ownership and use of land

The European Parliament calls on the Member States to focus their policy on the use of crops on **tools**, such as **taxation** and **financial and aid schemes** relating to the **Common Agricultural Policy**, to maintain the farm-based model for small and family-run businesses. Member States are invited to **formulate** their **crop market policy** in such a way as to allow access to ownership or ownership under appropriate financial conditions for farming and to **monitor farm purchase** and rental prices. In addition, land transactions should be subject to **verification procedures** in order to verify compliance with the law and to **monitor** land purchase and rental prices.

The European Parliament also calls for **special protection** to be granted to farmers with a view to enabling Member States, in coordination with local authorities and farmers' organisations, **to regulate the sale, use and leasing** of land in order to ensure **food security** in accordance with the EU Treaty and the case law of the European Court of Justice on land ownership and access to land, as well as with regard to the four **fundamental** European **freedoms** and the **public interest**.

# The Situation in Malta

## Ownership of land by farmers

Most Maltese farmers do not own land as their own private property. Agriculture statistics released by the National Statistics Office show that about 50% of the land is owned by the Government, 28% is privately owned by the owner, and 23% is owned by the Government and leased to farmers. This means that most of the land farmed by farmers has been acquired through a **lease agreement**.

The control of land ownership in Malta dates back to the time of the Knights, where we see that, in order to improve the food supply, they offered plots of land with security of ownership under an arrangement of long-term leases with a **nominal lease over a period of 99 years** to prospective farmers. Long-term, low-rent rents were also used by the British in the early 19th century.

There are various types of landlord and tenant arrangements that have been in place since the 15th century. The long lease, or so-called **emphyteusis**, became popular before the 17th century and remained so until recently. **Subleasing** was carried out under the **public-private partnership system**. However, ordinary lease is the most common type of lease. Under this type of lease, the landlord retains full ownership of the property and assigns only the personal right of use to the tenant.

Nowadays, land tenure is governed by the Lease Renewal Act (Chapter 199 of the Laws of Malta), which deals with the lease of land and offers a framework for procedures in this regard. The management of Government property is governed by Chapter 573 Government Lands Act and subsidiary regulations, mainly SL 573.01 and SL 573.06, with regard to land.

The **inheritance** of land is passed from **father to son** and not between brothers and sisters. In 2017, through a change in the Government's land transfer regulations (Legal Notice 159 of 2017, referred to as the Agricultural Land Regulations, 2017), it became possible to **transfer the land to bona fide farmers**, provided that this is approved by the Board of Governors of the Land Authority. This law also provides for **agriculture students** by providing land for rent at a **favourable rate** for the first five (5) years. In addition, through Legal Notice 438 of 2018, new regulations have been introduced, called the Government-Owned Agricultural Land Regulations (SL 573.06), to further simplify the transfer of landlord rights between farmers.

## The law of land leasing

Land leases in Malta are governed by the **Lease Renewal Act** (Chapter 199 of the Laws of Malta). The Act provides legal definitions and stipulates the **landlord's rights** to regain his land, the **tenant's rights** to maintain the use of the land, **tenant compensation** in case of **eviction** and criteria to establish compensation, and the establishment of the **Land Leases Control Board**. The Board has the powers conferred by the First Hall of the Civil Court and holds its hearings in the Superior Courts of Malta or the Court of Magistrates in Gozo.

Chapter 199 defines "**lease**" as an **agreement** for a period **not exceeding 16 years** for rent **in cash or another consideration** payable annually in one or more instalments. The lease is **automatically renewed from year to year** or by a decision of the Leases Control Board; however, it excludes emphyteusis or an agreement under which the agricultural product is in any way divided with the landlord or tenant (public-private partnership).

The Act provides adequate protection for the farmer as it is quite difficult for the landowner to regain full control over the leased land. Although, as stated, the lease is renewed annually, the Act allows the landlord to **change the condition of the lease** upon expiration of the term by written agreement with the tenant or by application to the Board. The law gives six reasons when it is justified for the **landlord** to apply to the Board to **reclaim his land**. The lessee (in this case, the farmer) is safeguarded from losing the land if he is able to satisfactorily show the Board that he would **suffer** more than the landlord if this happens. If the Board decides in favour of the landlord, the tenant is entitled to compensation from the landlord.

## The policy framework

One of the strategic goals of the **National Agricultural Policy for Malta**<sup>1</sup> is related to the need to address the consolidation of land.

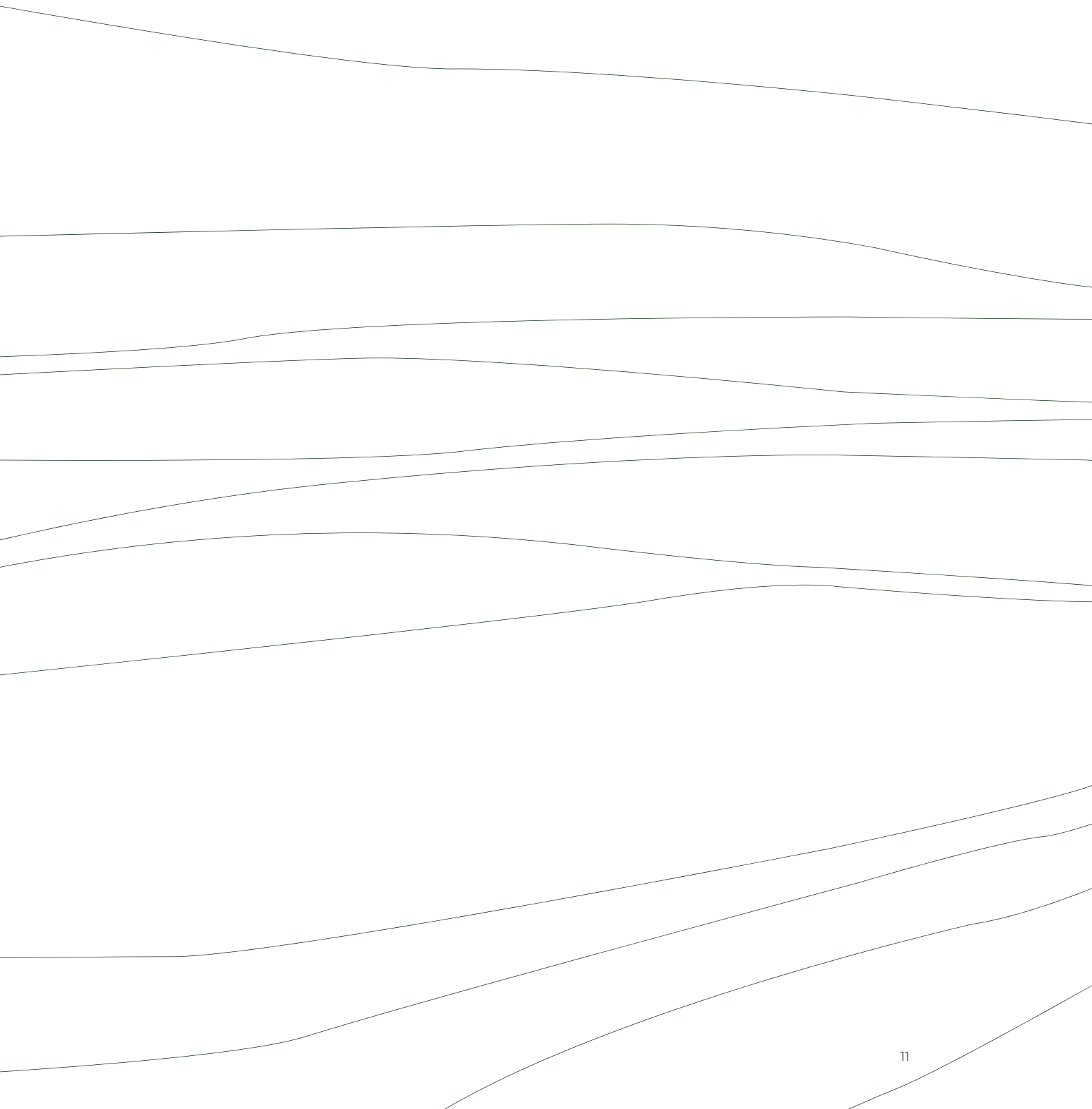
In order to continue investing in a more competitive and resilient farming sector to meet today's challenges through European Union funding at the heart of the **Common Agricultural Policy**, Malta has drawn up a **strategic plan** for the years 2023 to 2027. This plan also recognises the need to **improve the position of farmers**, for instance, through market-regulating tools that serve as incentives for more sustainable production.

**The Development Planning Policy in Rural Areas**<sup>2</sup> offers a framework of principles to ensure legitimate rural development.

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<sup>1</sup> *National Agricultural Policy for the Maltese Islands 2018–2028.*

<sup>2</sup> *Rural Policy and Design Guidance (PA, 2014).*



## Legal Developments

In recent months, the Courts of Malta have issued **decisions<sup>3</sup> with significant impact**, which have highlighted the need for reform in the field of land acquisition and ownership based on up-to-date principles and realities.


### Violation of the landlord's rights

In the case of J&C Properties Ltd vs Nazzareno and Antonia Pulis and the Attorney General (133/18 JZM), the Constitutional Court held that the provisions of Articles 3, 4 and 14 of the Land Leasing Act **infringe the fundamental principle of the rights of the landlord**, which are protected under Article 39 of the Constitution of Malta, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 1 of the First Protocol to the Convention.

### Imbalances between the landlord and tenant's interests

In the case of Baldacchino Holdings Ltd vs Advocate General and Carmelo Spiteri (72/2016 MH), the Court acknowledged that although the same law offers a good framework, it no longer offers a balance between the interests of the landlord and those of the tenant, and in fact, a **strong disproportion and disadvantage arose against the landlord**.

<sup>3</sup> *J&C Properties Ltd v Nazzareno and Antonia Pulis and Advocate General (133/18 JZM)*, *Baldacchino Holdings Ltd v Advocate General and Carmelo Spiteri (72/2016 MH)*, *Maria Stella Azzopardi Vella v State Attorney and John Buttigieg (313/20 JVC)*, *Vincenza Magro v State Attorney and Annalisa Schembri and Liberata Schembri (224/2019 LM)*.



The Court also noted that the rent rate which the applicant and his ancestors could receive under the law was low in comparison with the rent payable on the free market and that this was proven through the observations and conclusions of the technical architect.

The Court stressed that the right of the State to control the use of property by law is not contested **as long as it is in the public interest**. At the same time, however, the State is obliged to ensure a balance and proportionality between the general interest and the private interest. Reference was also made to the fact that the State remained passive to the need for effective law in order to strike a proportionate balance between the burdens and the rights of landowners.

## A legitimate pro-farming goal

The last judgement (224/2019 LM) in the case of Vincenza Magro vs Advocate General and Analisa and Liberata Schembri, the Court declared that there was no disputing the fact that at that time, the measures that were enabled by Chapter 199 were intended to control the use of the land and that the purpose of this law was a **legitimate** one.

This is because the Court recognises that the State has a duty to ensure the existence of food products deriving from sufficient and adequate farming in order for the country to ensure its food supply and that, therefore, the State has a very wide discretion to ensure that the **farming sector is not at risk of failure** at any time.

The Court acknowledged that the law was enacted with the aim of **protecting the agricultural sector**, ensuring that the farmer is not easily deprived of the land he had been working on for decades, even by imposing on him an increase in rent that would not allow him to continue cultivating that land or grow his produce economically, and that he would be able to have a sufficient and adequate income to ensure a **decent and respectable lifestyle** for both himself and his family.

## The need for proportionality

The Court also stated that the State has no absolute right to interfere with the owner of the land in the enjoyment of his property, and any intervention must respect the **principle of proportionality**. The Court also claimed that the **valuation of agricultural land** on the basis of the value of land on the open market is **not an appropriate reflection** of the price of land being used solely for agricultural purposes, but rather a valuation which takes place in other contexts where land is sold or rented for different purposes, including recreational purposes.

# Motivation

## The link with agriculture, food and the environment

Although, as a sector, agriculture accounts for only 1.4% of gross value added, it is a well-known fact that it plays a very important role both in terms of **fresh food supply** and in **shaping the rural landscape** and the **provision of public assets** in the field of environment, biodiversity and climate change.

**The COVID-19 pandemic** has shed light on both the challenges we face in the food system, including the fact that due to various factors, the viability of farming is declining and the sector is not providing enough opportunities to young people and entrepreneurs, as well as how crucial it is that, in addition to relying on imported food, we do our utmost to ensure that the supply of food from the agricultural sector does not stop.

In addition to temporary and emergency measures, in order not to disrupt food production, there must be strong systems in place to facilitate access to land, markets and funds to support food production. That is why controlling of the **acquisition and ownership of land** is one of the key elements among the range of measures in support of farming and food supply and is part of what must be protected in the **public interest**.

## The need for reform

Following the recent ruling of the Court, in which Chapter 199 was declared unconstitutional, the Government felt the need to intervene in this area of governance on land ownership. This need also stems from the **National Post-Pandemic Strategy**,<sup>4</sup> which speaks very clearly about the significance of recent legal developments and the danger that they will continue to threaten the resilience of the farming sector and its function with regard to food supply and security. In this regard, in recent months, the Government, through the Ministry responsible for Agriculture, Fisheries and Animal Rights, has been working to reform the legal framework to protect crops. This reform takes into account the international and local contexts and respects the relevant laws, including Article 37 of the Constitution of Malta on the requirement not to be deprived of property and Article 1 of Protocol 1 of the European Convention on Human Rights concerning the right to property.

The aim of the reform is to protect the land in the public interest in a legitimate and proportionate manner so as to do justice to all parties, including the owner, reduce over-speculation, protect areas and above all, support agriculture in the wake of its importance for guaranteeing an ample food supply. Legislative amendments have already been tabled to Chapter 199, which are intended to meet the main objectives of this reform.

<sup>4</sup> *National Post-Pandemic Strategy, 2021.*

# Proposals

Based on the legal framework that binds Malta from both the international and local context, and in light of recent legal developments in the agricultural land market, together with the legislative amendments tabled before Parliament, Government is proposing a number of additional measures aimed at protecting Maltese agricultural land.



# 01

## Authority responsible for agriculture land

An Authority that safeguards private agricultural land and its tenure is being proposed. This Authority is intended to be part of the portfolio of the Ministry responsible for Agriculture, and to be vested with four main responsibilities:

- i. To keep a record of sales, rentals and use of private agricultural land the Maltese Islands;
- ii. To reinforce the need of ensuring that agricultural land is worked and utilised in line with its agricultural purpose, without undermining the rights that emanate from existing planning policies.
- iii. To incentivise the acquisition of private agricultural land by genuine farmers who are currently making use of agricultural land leased to them, by giving them a right of precedence to purchase that same land if the owner chooses to sell.
- iv. To acquire land offered for sale by its owners through a right given to it, so that it may allocate that land to be worked by genuine farmers.

It is proposed that the **Authority has a board** composed of a number of experts in different sectors, representatives of competent authorities, and other interested stakeholders.

## 02

### **The establishment of agricultural zones**

It is proposed that the Authority is responsible for the safeguarding of agricultural land found within the boundaries established as per Rural Zones in line with the Local Plans of 2006, whilst ensuring that these are constantly updated according to the farm register.

## 03

### **The establishment of a cadaster and sales register**

The establishment of an agricultural land cadaster is being proposed.. The cadaster is an information system on land tenure, use and ownership. It is a useful tool for the administration, monitoring and safeguarding of agricultural land, and is therefore useful for the implementation of agricultural land policy by the same Authority. It is proposed that the cadaster is developed from records of existing registers and is updated with new ownership information available through the sale or transfer of agricultural land lease.

# 04

## **A distinction is made according to the farmer's status**

In the context of the land ownership and control reform, it is crucially important to define the farmer's status and to distinguish between active farmers, hobby farmers, and newcomers entering or attempting to enter in the sector. This will help ensure that agricultural land is managed and owned by genuine farmers, which aspect comes out clearly from the National Agricultural Policy. In the absence of such a system, there is the risk of abuse of benefits that should be only reserved for those seriously engaged and committed to the agricultural sector.

The principle that is being embraced in this reform, which consists of distinguishing on the basis of farmer status and farming activity, is firmly enshrined in the new regulations on the functioning of Common Agricultural Policy. This will that, as already mentioned, income support is provided to active farmers, therefore improving the results achieved through the same Policy.

To create this distinction, different categories will be established on the basis of product value outgoing from the agricultural land or farm over a period of one (1) year (the so-called Standard Output). The farmer's status and the link to the farming activity will be criteria that will determine who gets preference to benefit from the reform. As expected, there will also be criteria for young people wishing to enter the agricultural sector for the first time.

05

### **Safeguarding the need to cultivate agricultural land**

The Authority shall establish measures to safeguard and ensure the need to cultivate agricultural land for its agricultural scope and purpose.

06

### **Tenure and sale of agricultural land**

As an addition to the mechanism prospected in the legislative amendments tabled before Parliament and to ensure the effective safeguarding of the need for arable land to be used for its own agricultural purpose it is being proposed that the Authority is notified of all promise of sales and the eventual sale itself of the private agricultural land. Landowners who intend to sell their agricultural land will have the option of selling land to the Authority.

07

## Registration of agricultural land leases

For existing leases that involve an agreement between the landlord and the tenant, both will have the option of registering the lease with the Authority. All leases reviewed by the Lease Control Board in accordance with legislative amendments tabled to Parliament will have to be registered with the Authority.

As proposed in the legislative amendments, there should be regulations that establish the fair pricing of land, including the procedure, method and criteria to be complied with, or to serve as guidelines for any agricultural land financial value assessment.

A fair lease price should take into account the estimated value of the agricultural land to be used for agricultural use, which price can be obtained from the open market, the tenant's means, the circumstances and the condition of the agricultural land, and any weight that may be proportionate to the landlord.

Lease agreements shall be for a minimum period of eight (8) years and not more than sixteen (16) years. This should ensure that lease fees are stable, to ensure the farmer's peace of mind so that he can invest in the sector unhindered.

08

## The Authority as an intermediary

The Authority is intended to act as an intermediary, bringing together young farmers or genuine farmers who are looking for agricultural land, farmers who are about to retire and who are willing to transfer their land parcel, or private landlords who are willing to lease or sell their land

09

## Coherence with Planning and Development Policy

Land Planning and Development Policy provides an opportunity to further strengthen a control the legal framework that controls agricultural land, to counter speculation and loss of the same agricultural land. Here we are proposing the stricter protection systems that make it more difficult to change the use where this is not permissible as per current planning policies.

It is envisaged to have the full coordination between the Authority responsible for agriculture land and the Planning Authority, to strengthen control over the acquisition and tenure of land, leading to improvements in systems safeguarding agricultural land from undesirable development.

10

## Government-owned agricultural land

The Lands Authority will start an exercise that will calculate the value of the agricultural lease in a just and fair manner whenever a call for offers is issued for new agricultural land leases for agricultural purposes. This will ensure that the charged price makes economic sense for farming, so that agricultural activity is safeguarded. Preference will be given to genuine farmers.

# 11

## Tax measures

Together with existing tax measures, we can also consider other measures aimed at creating incentives on agricultural land tenure and acquisition. These may include:

- Exemptions from inheritance tax if the land is leased to the farmer;
- Fiscal incentives for landowners who lease their land to farmers; and
- Tax on agricultural land that requires to be cultivated and which is not being used for agricultural purposes.

# 12

## Financial assistance

It is well known that financial incentives encourage activity and investment in agriculture. As part of the reform, we are seeing how, through national funds, we can add to the aid that already exists in the framework of the strategic plan stemming from the Common Agricultural Policy. The scope is to incentivise measures like early retirement and the consolidation of land holdings.. Other envisaged measures include guarantee schemes for farmers that allow them to obtain low-interest loans to buy agricultural land that is currently leased to them.

It is worth remembering that the funding from the Common Agricultural Policy, including the so-called direct payments, is based on the principle that these aids are granted, to guarantee the food security in Europe and to reward farmers for public benefits that are not normally paid for by the market, including environmentally friendly services. Government will be looking at increasing this funding aspect, to continue sustaining agricultural activity.

# CONSULTATION PROCESS

Government is asking the general public to reflect on the proposals presented in this White Paper.

Submissions are to be sent through the following channels:

By email: **publicconsultation.mafa@gov.mt**

By post: **Agriculture Land Reform White Paper,**  
Ministry for Agriculture, Fisheries and Animal Rights  
Agriculture Directorate  
Agriculture research and Innovation Hub  
Ingiered Road, Marsa  
MRS 3300

Submissions should be sent by the **8th of November 2022**

Thank you for your input and interest.





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