

Land Consolidation in the Netherlands

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1. Introduction.

Since the first land consolidation act in 1924 more than 500 land consolidation projects (with a total of almost 1.4 million hectares) were affected through instruments of land consolidation and/or land development.

In the Netherlands there is a difference between land development and land consolidation. Land development is defined as the overall approach for a project area with objectives to improve agriculture, nature, landscape, infrastructure, water management and outdoor recreation. Land consolidation or re-allotment (land exchange) concerns measures that were often crucial to achieve the overall objectives of the land development project.

Land consolidation started as an important land management instrument to improve the agricultural structure, but it develops to an instrument of multipurpose use in the rural area.

The current law (Law on Development of the rural areas), entered into force in 2007, contains a significant change in responsibility for land development. The responsibility for land development (or land consolidation) projects went from the central government to the provincial government. Not only for the implementation of the projects, but also the financing of the projects.

2. Historical perspective of land consolidation.

After two experimental land consolidation projects, done by a private company in the period 1913 - 1919, the need for a legal base for land consolidation was growing. In 1924 the first land consolidation act entered into force. The only objective of the law was to improve the agricultural structure. Only 20 projects were implemented in the following ten years. There were three reasons for the limited enthusiasm; (1) Land consolidation had to be initiated by at least 25% of the land owners in the project area, (2) the land consolidation plan needed the approval of a majority of land owners with a majority of the land area as well (a so called double majority), (3) the project had to be financed by the involved landowners. The professional support was still done by a private company.

An important change came in 1935 when land consolidation became an instrument of governmental policy and a Governmental Service for Land Consolidation was introduced. The Land Consolidation Act was modified in 1938 and the governmental subsidy for land consolidation projects became a fact. The number of projects increased and there was a serious interest in land consolidation.

The following act (1954) introduces some essential modifications, like a separate legal position for the tenant (in case of regular and approved land lease contract) and the introduction of 'deduction'. Deduction means that the private property of every land owner can be reduced till a maximum of 3% (later 5%) in the re-allotment process. In this way room was created to improve infrastructure needed for general purposes, in particular for new or improved roads and water courses. Infrastructure and water resources were improvements for the region as a whole and therefore also for the land owners (and the agricultural structure). For this reason the land owners did not get financial compensation for the deduction. In later legislation, deduction was also used for nature, landscape, outdoor recreation and other objectives of general interests. A financial compensation for deduction was introduced also in the later legislation.

The basic system of land consolidation of the Land Consolidation Act of 1954 did not change essentially until 2007. The same basic approach was followed in the Land Development Act of 1985. Since that period onwards it is better to use the term 'land development' as defined before.

In headlines the process is carried out as follows: Land development starts with drafting a land development plan containing all the measures and facilities to be realized in a tightly limited project area. Mostly land consolidation is one of the most important measures. The plan is approved by the provincial government after a procedure of participation and appeal procedures. Appeal to the court is restricted to the land owners who are involved in the measures (roads, watercourses, nature, landscape) to be realized with deduction.

An important evolution of land development is that it has been changed from purely agricultural importance to multifunctional objectives (infrastructure, water management, nature, landscape, outdoor recreation). This means that implementation of a land development plan contains not only the re-allotment, but also the construction of nature, landscaping, new and improved roads, water courses etc.. Though introduced gradually in the 1970s, the integrated approach received a legal basis and further elaboration in the Land Development Act of 1985.

An important consequence of this multifunctional approach was that, in addition to agricultural actors, public authorities and organizations defending general interests became stakeholders in the process.

Besides regular national legislation, also specific laws for specific areas and/or specific objectives were used, like Re-allotment Act Walcheren (1947) with the intention of reconstructing the agricultural situation of a region in the Province of Zeeland after the second World War or the Reconstruction Act Concentration Areas (2002). After the outbreak of food and mouth disease, there was a need for restructuring the areas containing concentrations of pig farms by creating pig free zones.

Land Development Act 1985

The Land Development Act 1985 provided the legal base for the integrated (multifunctional) approach of land development. The act introduces four forms of land development, that expressed the integrated manner of land development;

- Land consolidation. Improvement of the agricultural structure was still the main aim. After endorsing the land development plan by the provincial government, a voting process took place by all the participants (land owners and tenants) of the planning area. The plan was adopted in case of a majority of the participants **or** in case of a majority of the project area which they represent.
- Land redevelopment. Redevelopment means land development wherein multiple targets were served in the project area. Agricultural restructuring is not the most important aim, but rather the improvement of nature, landscape or outdoor recreation. The reallocation process is not a compulsory part of the plan. The implementation of redevelopment starts after approval of the plan by the provincial government. There is, almost self-evidently, no voting for this plan, because the interests of the private owners in the area are subordinate to the public interest. The possibility of expropriation in the interest of land development was introduced by the law for a redevelopment plan. Despite this possibility expropriation has never become a popular instrument for reaching the intended aims in the land development plan.
- Land adaptation. In this situation land development was related to a big infrastructural project (project of national or regional importance, like a motorway, railway or airport). However, the infrastructural project itself was not part of the planning area. The infrastructural project was the responsibility of the concerned governmental service. The purpose of land adaptation was to remove constraints caused by the construction of the infrastructural project. The task of the reallocation process was to compensate or neutralize the adverse effects of the infrastructural project, like the intersection of plots and deteriorated accessibility. Only a few land adaptation projects took place. It never became a popular instrument. The absence of the infrastructural project itself as part of the land adaptation project was seen as a handicap
- Land consolidation by agreement'. This is voluntary land exchange, based on private initiative. The legal definition of land consolidation by agreement defines this form of voluntary land exchange as a process of at least three land owners involved. This form of land consolidation became very popular and is still in use. The financial advantages are attractive; the costs of the exchange of ownership were fully subsidized and the transactions are free of property transfer tax). In the period 1990 - 2000 yearly more than 10.000 hectares of land were changing ownership by voluntary land exchange. This process is still very popular.

Halfway the nineties, the voting for land consolidation plans by land owners and tenants resulted in rejections of plans, due to a lack of efficiency and benefits for the farmers. Subsequently, these plans were converted to redevelopment plans with voluntary land exchange. It means the end of the land development form 'land consolidation' as described above

As part of land development plans the planned voluntary land exchange became a useful instrument for the realization of different objectives in rural areas. In practise this meant that approximately 75% of the intended objectives of the plan were realised.

3. **The reallocation process.**

Throughout history the most important part of land development is the re-allotment process (also indicated as land consolidation in the definition as given in chapter 1). It is not only an important instrument for improvement of the agricultural structure, but also very useful for the realisation of other functions like for example nature, landscaping and infrastructure.

The re-allotment process is an important part of the task of the Land Development Committee, which is responsible for the implementation of the plan.

Since the Land Consolidation Act of 1938 Land Development Committee (or land-consolidation committee) was responsible for the implementation of the plan. The committee derives its power from the law. The committee consists of representatives of the various interest-groups in the concerned rural area, like farmers, nature-management organisations, water management authorities and municipalities. This was a precondition for the participatory approach of land development. They were appointed by the provincial government and they got a fee for their contribution. For the implementation of the plan, the committee used the professional advice and support of the Cadastre and the Government Service for Land and Water Management (till 2015).

The re-allotment process consists of three procedural stages;

- List of rightful claimants and land valuation

First step in the process is to determine the entitled landowners. For this purpose the committee draws up a list of rightful claimants/landowners with land property in the project area in accordance with the land register of the Cadastral Registry office. At the same time an up to date list of tenants with legal leases will be made.

Each participant in the re-allotment process has the right to receive land of same type, quality, fertility and agricultural value as was brought in. For that reason land valuation took place. This land valuation is done with the help of a system of land classification (with approximately 6-10 classes).

The results of land valuation and the list of rightful claimants is available for a public consultation. The law provides a process of lodging objections which will be described shortly below.

- Re-allotment plan

The second step of the process is the most exciting one, because it concerns the exchange of private properties.

Land, released with the instrument of deduction for infrastructure (roads, water resources), nature and landscaping is not part of this process. This land is assigned directly to the public bodies involved, like water management authorities and municipalities.

The re-allotment process can also be used for the realisation of new nature, landscape and water storage. For that purpose the Bureau for Agricultural Land Management, established by law bought land and brought in this land in the re-allotment process. The bureau is participant in the re-allotment process because of their landbanking role. The Bureau buys land at market prices in the project area as far as needed for the objectives like nature, landscape, outdoor recreation and others within the project area.

The re-allotment process starts with the inventory of wishes of all participants in the project area (land owners and tenants). Based on these wishes, the intended objectives in the project area and the land valuation, the Committee will design a re-allotment plan with professional support.

With the re-allotment plan the committee aims to realise well shaped plots, preferably near the farm buildings, concentration of land use and accessibility of land plots, road safety and other improvements of the agricultural structure and, last but not at least, the planned improvements of nature, landscaping, water storage and other functions with a general interest. The last mentioned improvements become more and more important and, looking into the future, it seems to be the most important reason for re-allotment.

To give the newly formed plots the same uses, plot device works will be done like levelling, making and filling of drainage canals and ditches, subsurface drainage, connecting dams etc. This work will be commissioned by the land development committee.

These works have the objective of making the whole re-allotment procedure physically acceptable for all participants. The combination of reallotment with the implementation of works makes this approach unique for rural development.

The draft re-allotment plan is subject of a public consultation and a process of lodging objections as described below.

After the process of lodging objections the re-allotment plan is finalised followed by drawing up a deed by the notary for the property transfer. The process is closed by registering the new properties in the public registers of the Cadastral office.

- List of financial arrangements

The last step in the re-allotment process is the financial arrangement with the participants. The costs, which are not financed or subsidized by government, province, municipality or other public bodies, have to be paid by the landowners involved in the re-allotment process (as far as it concerns land consolidation costs). In practise, it concerns a maximum of 35% of the total costs of the re-allotment process (excluding the costs of professional support). The contribution of the participants is determined on the basis of the benefits of the re-allotment process. A land owner whose property

is located close to the farm buildings after the re-allotment, has a maximum benefit and has to pay for it. If there is no benefit, no costs have to be paid.

The list of financial arrangements contains not only re-allotment benefits, but also settlements between the old and new land owner, like facilities left and received, subsurface drainage systems, and for example non-agricultural value of the land (if planning for housing in the future is foreseen).

The list of financial arrangements is also subject for public consultation and a process of lodging objections. After finalization of this procedure, each owner is obliged to pay a certain amount.

3.2.4 Process of lodging objections

The re-allotment process touches property rights which are well protected fundamental rights. This requires a good and thorough legal protection. Therefore every step in the re-allotment process is surrounded by safeguards and legal protection.

Each step (list of rightful claimants /land valuation, re-allotment plan, list of financial arrangements) starts with a public inspection in a public office during a month. The participants in the project area have the opportunity to lodge written objections to the Land Development Committee.

The process starts with a treatment of the objections by the committee. The committee tries to solve the objections by making arrangements with objector and, if needed, relevant stakeholders, for instance by making an alternative re-allotment.

If the committee fails to solve the objection, the committee submits the objection to an investigating judge. The jurisdiction of this judge does not go further than trying to arrange an agreement with the involved stakeholders (including the objector). If this fails, the Court will take a decision after a judicial treatment.

4. The current situation.

In 2007 a new land development act (Law on Development of the Rural Areas) entered into force. The new Act was introduced for two important reasons. The most important one was the shift of the responsibility for Land Development from the Central Government to the Province. This concerned the responsibility for the implementation of the projects but also the responsibility for the financing of the projects.

The other reason was the decreasing popularity of land development. This concerned in particular the re-allotment process due to the fact that this is a time consuming process. The new law revised the re-allotment process, with maintaining adequate legal protection and safeguards for the participants. This revision has the intention to speed up the re-allotment process. The aim was to make re-allotment less time consuming and therefore more applicable to today's time. The new law was an attempt to make re-allotment more popular as instrument for improvement of the rural area and in particular, for the realisation of objectives of general interest.

The slow pace of the land development process was not only caused by the time-consuming process of re-allotment. Other causes were interim changes of the plans, the (lack of) availability of the finances and, not in the least, the size of the planning areas. Project areas of more than 5.000 hectares (sometimes more than 10.000 hectares) mean a long lasting process of re-allotment. In particular the treatment of objections had slow progress in such big areas. Therefore it was concluded to restrict the project area to a maximum of 1.500 to 2.000 hectares or to split up the project area in more separated re-allotment blocks. Also the restricted improvements for agriculture has significance for the limited interest.

The decentralisation of the finances resulted in less interest of the Provincial Governments in land development, specially the reallotment process. In addition, the provinces regards reallotment primarily as an agricultural interest. The multifunctional character of land consolidation (reallotment) is only recognized to a limited extent. The Provincial Governments preferred mostly other instruments for the realisation of the different objectives in rural areas. This concerns acquisition (combined with the implementation of design work), expropriation, subsidizing and the possibilities of voluntary land exchange (land consolidation by agreement).

The step to make Provincial Governments responsible for land development meant the formal end of the Land Development Committees, which for decades were responsible for the implementation of land development plans and re-allotment processes. The implementation of a land development plan is done now by the provincial government itself. They have the opportunity (not the duty), given by the Act of Provinces, to appoint a provincial committee and give such committee similar authority as the classical Land Development Committee. At the moment, the provinces use different forms for this.

The new law leaves the main points of above described re-allotment process unchanged. The main changes are the following;

- the different forms of land development of the former law were deleted. Besides land consolidation by agreement there is only one integrated and multifunctional form of land development with all the ingredients of the three forms of the former law.
- To speed up the re-allotment process the legislator deleted the valuation of land. The soil quality is still very important for the process of land exchange, but for this part of the process soil suitability maps will be used. Separate valuation of the soil is no longer part of the process.
- The list of rightful claimants and the re-allotment plan are merged into one step of the re-allotment process. This means a restriction of the reallotment process to two steps.
- The process of lodging objections consists of two steps;

1. Lodging objections against the draft reallocation plan. After treating the objections the provincial Government takes a decision and determines the final plan.
2. Appeal to the Court against the final reallocation plan.

In this process there is no role for an investigating judge. This process will exclude time-consuming negotiations concerning some particular objections. Otherwise, the introduction of the possibility for an appeal to the supreme court can cause a considerable delay and a lot of uncertainty regarding ownership rights.

- After termination of the procedure concerning the list of financial arrangements, the land development repayment has to be done directly and not in annual instalments. Till 2007 the land development payments could be paid in 26 annual installments.
- The land development payment has to be done by the landowner at the moment of the deposit of the draft reallocation plan. Changes in property rights by selling land will not change the responsibility for the payments.

In 2015 the Government Service for Land and Water Management was lifted. This means that the province were fully responsible for the start and implementation of land consolidation processes and also responsible for landbanking in the rural area.

Within a broader process of harmonisation of legislation the current law on Development of Rural Areas will be incorporated into a single and harmonized Environment and Planning Act in 2022 or 2023. This harmonisation contains no essential changes in the process.

5. Recommendations for future land consolidation projects.

- A new bottom-up approach.

Since the new legal process of re-allocation did not have the expected acceleration, a different approach towards the process of land exchange was developed. It is the intention to create an economically viable agricultural structure and at the same time to realize governmental objectives in the rural area (like Nature Network, Water Framework Directive, Flood Protection Programmes, infrastructural challenges and restructuring outdoor recreation). The intention is to achieve these aims faster and cheaper in a bottom up approach. It is possible in this approach to combine voluntary and compulsory land exchange. Starting point is that farmers, convinced that a good and efficient re-allocation will contribute to a viable and future oriented agriculture, together with other landowners and governmental services and/or public bodies in good cooperation design jointly a draft re-allocation plan ('sketch and match sessions'). This draft re-allocation plan will follow the described legal reallocation process (for compulsory land consolidation), but in practice the number of objections and court trials will be very limited and shorten the re-

allotment process. Only participants who disagree with the jointly designed plan will go to court

- Land consolidation as a good alternative for expropriation.

Expropriation can be prevented by using the reallocation process for obtaining the land on the right place. In case of getting a financial compensation, the involved land owner will get land as compensation and retains the possibility to continue farming. This will create more support under the involved landowners. Land consolidation has also the possibility to prevent other disadvantages of expropriation like fragmented land use and disturbing infrastructure. Last but not least, land consolidation is from a financial point of view more attractive than expropriation.

- Land banking and land consolidation for climate goals.

Provinces or public bodies who wants to realise objectives like nature, energy transition (solar fields, windmills), water storage, have to buy land within the rural area (the reallocation block) for getting property rights to bring in in the reallocation process. The possibilities to buy land are growing because a lot of farmers are changing the agricultural business situation. In the reallocation process the land can be allocated in the right place without harm the interests of others. In the reallocation process priority will be given to the interest of these public bodies in stead of the interests of other landowners. In this situation compulsory land consolidation projects are used for realising other objectives than agriculture.

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