

Esther MUÑIZ ESPADA*
Particular Rules on the Transfer of the Holding Farm in Spanish Law**

Abstract

This article aims to provide a brief summary of Spanish law on the transfer of holding farms. After a general introduction, the author analyses the rules on leases and transfers. Subsequently, land access issues are discussed, particularly for young farmers and women. The author also addresses taxation on the transfer of agricultural land and mentions specific contract law provisions. The rules on mortis causa and inter-vivos access are discussed separately.

Keywords: Spanish law, agricultural land, land transfer, holding farm transfers

1. General characteristics of the transfer of agricultural holding in Spanish law

With an awareness of the importance of maintaining agricultural assets to boost the competitiveness of this sector and for the dynamism of rural areas, Spanish legislation has special rules for farm continuity. These rules specifically ensure the entity of the farm itself, along with its conservation. Unfortunately, this legislation is not backed up by strong enforcement and protections in such areas. As a result, future reforms should consider strengthening the law and improving bureaucratic procedures, which are particularly crucial at the time of transfer for the future of agricultural enterprises. However, Spanish agricultural legislation is highly dispersed and fragmented. This is partly because of the particularities of the structure of the Spanish state, where 17 autonomous communities each have their own strengths and powers in agricultural matters, generating a variety of legislation and economic regimes.

This, therefore, reduces the efficiency of the Spanish agrarian sector, and the task is further complicated by a highly decentralised territorial organisation.

Spanish law contains rules on the transfer of agricultural holdings, in particular, granting tax benefits to facilitate the transfer. There are also specific rules for the transfer of a business, including farms, as an inheritance.

Thus, tax incentives are provided for the transfer of rural property through purchase, inheritance, or donation, in the case of the constitution or consolidation of farms. At the same time, special incentives are provided for the transfer of entire farms when transfers are carried out for the benefit of young farmers. To increase competitiveness, tax incentives are also provided for the transfer of small farms to larger ones.

Esther Muñiz Espada: Particular Rules on the Transfer of the Holding Farm in Spanish Law.
Journal of Agricultural and Environmental Law ISSN 1788-6171, 2020 Vol. XV No. 29 pp. 171-183,
<https://doi.org/10.21029/JAEL.2020.29.171>

* Full professor, University of Valladolid (Spain), e-mail: mariaesther.muniz@uva.es.

** The research of this article was supported by the Ferenc Mádl Institute of Comparative Law.



Since many farms are too small to be viable in the future, Spanish legislation provides for measures to stimulate the land market and allow easier access to ownership and leasing. In the enabling tools needed for the mobilisation of land to regulate the leasing of land, we see the phenomenon of the transfer of the agricultural enterprise. Through its regulations on terms and extensions, along with a reduction in the minimum duration of leases, it allows a substantial increase in the supply of land to be leased, as well as generating a more agile and open market.

With regard to access to property, high land prices make it difficult for farmers to acquire ownership of land for farming or indeed expand the area of land under cultivation. This rise in land prices threatens us with the possibility of a fixed rural population. It also brings the possibility of increasing the number of agricultural assets, as the trend towards increasing leased areas has disadvantaged landowners. To tackle these problems, some authors have proposed leasing with an option to buy (as we have seen in cities). However, the limited success we have witnessed for this project in relation to housing may indicate a similar lack of usefulness in the rural environment. If this were to be considered, more flexible rules would have to be in place than those foreseen for cities.

Therefore, from various perspectives and in various ways, Spanish law offers options when a person is faced with a decisive moment for the evolution of agricultural activity, such as the moment of the transfer of the farm.

We will now specify what measures are provided when taking this decision.

2. Lease and transfer

The law on rural leases provides a preferential right of acquisition in the case of transfer. In other words, the landowner and transferor must notify the tenant in a reliable manner of his intention to sell and must indicate the essential elements of the contract. In this way, the tenant may exercise his/her rights and be granted preference in opting to acquire the property or development. The tenant shall have a term of 60 days from the date of receipt of the notification to exercise his/her right of first refusal (that is, to acquire the property in preference to a third party at the same price and conditions) and must notify the transferor thereof in an irrefutable manner.¹ In the absence of notice from the landlord, the tenant must have the right to withdraw for 60 days from the date on which (by whatever means) he/she became aware of the transfer.²

¹ See Pasquau Liaño 2005, 611.; Karrera Egialde 2006, 72.

² 1. The purchaser of the property, although covered by Article 34 of the Mortgage Law, will be subrogated to all the rights and obligations of the lessor, and must respect the remaining period of the minimum duration of the contract laid out in Article 12 or that of the tacit extension that is in progress in the case of the third mortgage holder. In other cases, he must respect the total duration agreed.

2. In all live transfers of leased rural property, including donations, contributions to companies, exchanges, awards in payment, or any other form other than purchase and sale, of their bare ownership, of a determined portion or of an undivided interest in them, the tenant who is a professional farmer or is one of the entities referred to in Article 9.2 shall have the right of first refusal. To this end, the transferor shall notify the tenant in a reliable manner of his intention to

It has been argued that to be effective, the law must enable certain tenants to increase their economic activity under equal conditions, and for this purpose, it introduces the mechanisms of right of first refusal that allow the tenant to access the ownership of new land.³

sell and shall indicate the essential elements of the contract and, in the absence of a price, an estimate of that considered fair in accordance with Article 11.1 and taking into account the criteria established in the second additional provision of this Act.

The lessee will have a period of 60 working days from the date of receipt of the notification to exercise his right to acquire the property at the same price and conditions and will notify the seller in an irrefutable manner. In the absence of notification from the landlord, the tenant will have the right to withdraw for 60 working days from the date on which, by whatever means, he became aware of the transfer.

If the contract is priceless and the tenant does not agree with the estimate made by the landlord, it will be determined by an independent expert appointed by mutual agreement between the parties, and, in the absence of agreement between them, by the civil jurisdiction in accordance with the valuation rules established by the compulsory purchase law.

3. In all cases, the deed of sale shall be notified in a reliable manner to the tenant, so that he may exercise his right of withdrawal or, if applicable, his right of acquisition, if the conditions of sale, the price or the person of the purchaser do not correspond exactly to those contained in the prior notification. The same right shall apply if the requirement for prior notification has not been complied with in due form. In this case, the withdrawal or right of first refusal may be exercised within 60 working days of notification.

4. In order to register the *inter vivos* acquisition titles of rented rural properties in the Land Registry, the notification practice established in the previous section must be justified.

5. Rights of pre-emption, withdrawal, and preferential acquisition will not apply in the following cases: (a) In transfers free of charge when the acquirer is a descendant or ascendant of the transferor, a relative up to the second degree of consanguinity or affinity, or his spouse. (b) In the exchange of rural properties when it is carried out to add one of the exchanged properties and provided that the properties exchanged are less than 10 hectares of dry land, or one hectare of irrigated land.

6. The rights established in this article shall be preferential to any other acquisition rights, except for the right of withdrawal of neighbouring properties established in Article 1523 of the Civil Code, which shall prevail over the latter when both the property under withdrawal and the neighbouring property on which it is based do not exceed one hectare.

7. In the case of properties with various uses granted to different tenants over the whole of the property, the right of refusal shall only be exercised by the person who is the owner of the main site. If there are several, then by the person who is a young farmer and, if there is more than one young farmer, by the oldest tenant.

8. When there are several tenants of different parts of the same farm, the notification obligations must be complied with for each one of them, and the right of first refusal may be exercised by each one for the portion they have leased. If any of them does not wish to exercise it, any of the others may do so, and the one with the status of young farmer shall be preferred, or in the event of several, the oldest.

9. In the case of properties of which only a part of the area has been leased, the rights regulated in the previous paragraphs shall be understood to be limited to the area leased. To this end, the document by which the transfer of the property is formalised must specify, where applicable, the amount of the total price corresponding to the portion given in the lease (clause 22).

³ See De Castro Vitores 2008, 219.

Unfortunately, while this option or right is advantageous for the tenant, it limits the owner, or is a hindrance for the property that thus assumes restrictions and conditions. This would have discouraged landlords from renting. In any case, for the law to be an effective instrument, it must provide sufficient security to both tenants and landowners and be equally attractive to both.⁴ As the preamble of the law itself justifies, it must favour the mobility of land and be scrupulously respectful of the relationship freely agreed upon by both. With respect to this contractual relationship, the law, except in the cases provided for therein, leaves it sufficiently open and flexible so that any cases that may arise are agreed upon by the parties.

3. Young farmers' access

On the other hand, taking into account that the ageing population of farm owners is one of the main brakes on the modernisation of agriculture, many strategies are in place to facilitate access of young people to farm ownership. There are measures to promote a role for young people in direction and management of farms, especially in the case of priority farms. These measures provide for tax relief on personal income tax, as well as more specifically advantageous treatment in other aid and tax benefits.

In this respect, the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of November 2017 'The Future of Food and Farming' COM(2017) 713 final proposes that Member States adopt 'appropriate incentives to facilitate the exit of the older generation and increase land mobility' (emphasis in original text). The Communication further notes, 'there is a growing need to support actions that stimulate the transfer of knowledge among generations (through partnerships and other new business models) and facilitate succession planning (i.e. advisory services, mentoring and the development of 'farm succession plans')' (emphasis in original text). A discussion on technological development and digitisation in the same Communication observes the following:

Technological development and digitisation make possible big leaps in resource efficiency enhancing an environment and climate smart agriculture, which reduces the environment-/climate impact of farming, increase resilience and soil health and decrease costs for farmers. However, the uptake of new technologies in farming remains below expectations and unevenly spread throughout the EU, and there is a particular need to address small and medium-sized farms' access to technology. [emphasis in original]

⁴ See Caballero Lozano 2009, 147–175; On a new type of professional in agricultural development, see also 'Modernización de la explotación y de la actividad agraria', *Revista de Derecho agrario y alimentario*, n° 31, p. 11.

4. Women and access to holdings

Likewise, Spanish law contains specific regulations to encourage the incorporation of women into the agricultural sector.⁵ Law 35/2011 of 4 October takes into account the fact that men are in the majority in the rural world, and to modify this inertia, it adopts a series of incentives to favour female ownership of farms. The preamble to this law explains that within the scope of family farms in the rural environment, many women share agricultural tasks with men, taking on a large portion of them and contributing both assets and work; however, in most cases, the man appears as the sole owner of the farm. This makes it difficult to adequately value the participation of women in the rights and obligations derived from farm management.⁶ In Spain, more than 70 percent of farm owners are men.

In Spain, women obviously face no legal limitations in access to agricultural property, nor in any other type of property (although, in reality, women usually own operations of small economic size and low profitability), but they face practical difficulties, as recognised by this law, in accessing credit or other intangible goods and rights. This is because these rights are linked not to ownership of the land but to its yield. Furthermore, traditional stereotypes are still in place in rural environments. Women's work continues to be understood more as a 'family allowance' to supplement the main income rather than as an actual economic contribution.

Despite the longstanding existence of corporate measures guaranteeing women the same civil and commercial legal rights as men, and women asserting these rights in the marketplace, the social reality is that women working on farms have not made use of such corporate measures. That is why the state intended (with this legal initiative) to adapt the legal framework to social reality.

This Act seeks to achieve these objectives through the legal measure of shared ownership. As is well known, a persistent demand in the agricultural environment has been to achieve a legal status for the collaborator or 'partner' of the farm, who in many cases is a wife. In France, attempts have been made to resolve this issue through the measure of 'salaire différencié', and in Spain, through the measure of shared ownership.⁷ This is not a major legal innovation, but simply a way of making women's work on the farm more visible by encouraging them to co-own farms alongside their husbands.⁸ A shared-ownership agricultural holding is defined as an economic unit, without legal personality and liable to taxation, which is set up by a married couple or an unmarried partner for the joint management of agricultural holding.

The Law also regulates another mechanism for the recognition of the economic rights of women who carry out tasks on the farm. Thus, those who have participated in an effective and regular manner, who do not receive any payment or consideration for the work done, and who have not constituted a shared ownership with their spouses or civil partners will be entitled to financial compensation in the event of both the transfer of the farm and the dissolution of the marriage or civil partnership.

⁵ Espin Alba 2009, 67–89.

⁶ Rico Gonzalez 2008, 583–619.

⁷ Bosse-Platière 2019, *comm.* 97; Champenois 2012, 5.

⁸ See Cosialls Ubach 2015, 102–105.; Muñiz Espada 2012, 103.

Shared ownership of agricultural holdings shall be extinguished (a) by annulment, separation, or dissolution of the marriage; (b) because of the break-up of the partnership, or the death or declaration of death of one of its members; (c) because of loss of ownership of agricultural holdings for any legally established reason; (d) because of the transfer of ownership of holding to third parties; (e) when the requirements set out in Article 3 of this law are no longer met by either of the two owners; or (f) by agreement between the owners of the jointly owned agricultural holding, expressed by personal appearance or electronic signature, before the jointly owned register regulated in Article 6 of this Law, Article 8.

5. Transfer and tax benefits

On the other hand, on the subject of the transfer of agricultural holdings, Law 19/1995, of 4 July 1995, on the Modernisation of Agricultural Holdings lays down particular rules in the various cases of transfer of agricultural holdings. In any case, it should be noted that this law is outdated and has already been largely superseded by many community regulations but is still in force.⁹ It is grounded in an agricultural model that is essentially family-based and was designed to meet the difficult challenge of Spain's integration into the European Union and to adapt farms to a more complex and demanding agricultural policy by tackling a series of structural adjustments.¹⁰

This law uses, as a basic reference for action and for the concession of special benefits, the concept of priority agricultural exploitation, whether it is family or associative. This priority mode of exploitation is defined by subjective criteria linked to the owner, as well as other objective criteria, so that they ensure the economic viability of the operation and justify the possible granting of public support on a preferential basis.¹¹

⁹ About this law, see Amat Llobart 2003, 1–17.; ‘La explotación agraria, sus elementos integrantes y tipos cualificados de explotación. La reforma legislativa pendiente’, in *Tratado de derecho agrario*, La Ley Wolters Kluwer, Madrid, 2017, 157–205.; ‘Mejoras en el funcionamiento de la cadena agroalimentaria en la Unión Europea y en España a partir del régimen jurídico de negociación y contratación: el contrato alimentario y el contrato tipo agroalimentario’, *Revista de derecho Agrario y Alimentario*, n.º. 66, 2015, 7–50.

¹⁰ The purpose of this Act is to achieve the following aims: (a) To stimulate the formation of agricultural holdings of sufficient size to ensure their viability and which constitute the permanent basis of the family economy of their owners. (b) To define the agricultural holdings that are considered to be priority recipients of public support for agriculture and of the benefits established by this Act. (c) To encourage the incorporation of young farmers as owners of the priority farms. (d) To promote agricultural associations as a means of training or supporting agricultural holdings of sufficient size to ensure their viability and stability. (e) To prevent the excessive fragmentation of rural properties. (f) To increase mobility in the land market, both in terms of ownership and leasing. (g) To improve the professional qualifications of farmers, especially young people, to enable them to adapt to the needs of modern agriculture. (h) To facilitate access to credit for owners of farms seeking to modernise their farms. (Article 1).

¹¹ For a holding owned by a self-employed individual to be considered as a priority, it is required that the holding provides for the occupation of at least one agricultural work unit and that the unit labour income obtained from it is equal to or higher than 35 percent of the reference

This law basically contains tax benefits to encourage the transfer of agricultural holdings in the following cases: (a) The transfer or acquisition by any title, whether onerous or lucrative, *inter vivos*, or *mortis causa*, of full ownership or lifelong usufruct of an agricultural holding in its entirety, in favour of or by the owner of a separate priority holding;¹² (b) The transfer or acquisition of land by any title, onerous or lucrative, *inter vivos*, or *mortis causa*, which is carried out in order to complete under a single boundary the area sufficient to constitute a priority holding;¹³ (c) In the case of the transfer or acquisition by any title, onerous or lucrative, *inter vivos*, or *mortis causa*, of the full ownership or lifelong usufruct of a rural property or part of an agricultural operation, in favour of a holder of a priority holding where this condition is reached as

income and less than 120 percent of the reference income, subject to the provisions of the single transitional provision. In addition, the holder must meet the following requirements: (a) Be a professional farmer as defined in Article 2(5) (b) Have a sufficient level of agricultural training, the determination of which shall be based on a combination of educational and professional experience. (c) Be at least 18 years old and under 65 years old. (d) Be registered in the Special Social Security Scheme for Own-Account or Self-Employed Workers or, as the case may be, in the Special System for Own-Account Agrarian Workers included in the said Scheme. Professional farmers who are not included in the above regime must comply with the requirements indicating their agricultural professionalism established for this purpose by the Autonomous Communities. (e) Residence in the region where the holding is located or in the bordering regions defined by the Autonomous Community legislation or territorial organisation. Failing this, the agricultural district established in the Agricultural Census of the National Institute of Statistics shall be taken into account. (Article 4).

¹² Art. 9: 1. The transfer or acquisition by any title, onerous or lucrative, ‘*inter vivos*’ or ‘*mortis causa*’, of the full ownership or lifelong usufruct of an agricultural holding in its entirety, either in favour of or by the owner of another holding (which is a priority), or that reaches this consideration as a consequence of the acquisition, shall receive a 90 percent reduction in the taxable base of the tax levied on the transfer or acquisition of the holding or its component elements, provided that, as a consequence of said transfer, the priority status of the acquirer's holding is not altered. The transfer of the holding must be effected by public deed. The reduction shall be 100 percent in the event of continuation of the holding by the surviving spouse. For the purposes indicated in the previous paragraph, it will be understood that there is a transfer of an entire agricultural holding, even if the dwelling is excluded.

2. In order for this reduction to be made, it will be recorded in the public deed of acquisition (and in the Property Register, if the transferred properties were registered), that if the acquired properties were sold, rented, or transferred during the following five years, the payment of the corresponding tax, or part of it, that had not been paid as a consequence of the reduction along with delayed interest, must be settled beforehand, except in cases of *force majeure*.

¹³ Article 10: 1. The transfer or acquisition by any title, onerous or lucrative, ‘*inter vivos*’ or ‘*mortis causa*’, of land, which is carried out to complete under one single boundary the sufficient area to constitute a priority holding, shall be exempt from the tax on the transfer or acquisition, provided that the public deed of acquisition states the indivisibility of the resulting property during the period of five years, except in cases of *force majeure*. When the transfer or acquisition of the land is carried out by the owners of agricultural holdings with the intention of completing at least 50 percent of the area of a holding whose unit income from work is within the limits established in this Law for the purpose of granting tax benefits for priority holdings, a 50 percent reduction shall be applied to the taxable base of the tax charged on the transfer or acquisition. The application of the reduction shall be subject to the same requirements of indivisibility and public document of acquisition indicated in the previous paragraph.

a consequence of the acquisition.¹⁴ (d) There are also tax benefits for voluntary exchanges of rural property, when the purpose of the exchange is to eliminate the rights of way or to restructure agricultural holdings, including, in this case, multiple exchanges to carry out private land consolidation.¹⁵ (e) In addition, tax benefits are provided for in the case of transfer or acquisition by any means, whether for consideration or for profit, *inter vivos* or *mortis causa*, of full ownership or lifelong usufruct of an agricultural holding or part thereof or of a rural property, in favour of a young farmer.¹⁶ (f) There is also tax relief for the transfer of rustic forestry areas.¹⁷ (g) There are

¹⁴ Article 11: In the transfer or acquisition, by any title, whether onerous or lucrative, '*inter vivos*' or '*mortis causa*', of the full ownership or lifelong usufruct of a rural property or part of an agricultural operation, in favour of a priority farm owner who does not lose or who reaches this condition as a result of the acquisition, a 75 percent reduction shall be applied to the taxable base of the taxes levied on the transfer or acquisition. For the application of the benefit, the transfer must be made in a public deed, and the provisions of Article 9(2) shall apply.

¹⁵ Article 12: Voluntary exchanges of rural property authorised by the Ministry of Agriculture, Fisheries, and Food or by the corresponding bodies of the Autonomous Communities with competence in this area, shall be exempt from the 'transfer of property for consideration' category of the Tax on Property Transfers and Documented Legal Acts or from Value Added Tax, provided that at least one of the exchangers is the owner of a priority agricultural operation, and the exchange, which must be carried out in a public deed, has one of the following purposes: (a) To eliminate interlocking plots of land, understood as those considered in the general legislation on agricultural reform and development. (b) To eliminate rights of way. (c) Restructuring of agricultural holdings, including in this case, the multiple exchanges which take place in order to carry out private land consolidation.

¹⁶ Article 20: 1. The transfer or acquisition by any title, whether for consideration or for gain, *inter vivos* or *mortis causa*, of full ownership or lifelong usufruct of an agricultural holding or part thereof or of a rural property, in favour of a young farmer or an agricultural employee for his first installation on a priority holding, shall be exempt from the tax on the transfer or acquisition in question 2. The reductions in the taxable amount provided for in Articles 9 and 11 shall be increased by ten percentage points in each case if the acquirer is also a young farmer or an employed farmer and the transfer or acquisition takes place within five years of his first establishment. 3. In the cases referred to in paragraphs 1 and 2 of this Article, Article 9(2) shall apply. 4. The first copies of public deeds that document the constitution, modification, or cancellation of mortgage loans subject to Value Added Tax shall be exempt from the tax on Documented Legal Acts, when these are granted to young farmers or wage-earning agricultural workers to facilitate their first installation on a priority holding.

¹⁷ Fourth additional provision. Tax relief on the transfer of rural areas dedicated to forestry: In the case of '*mortis causa*' transfers and comparable '*inter vivos*' donations of rural areas dedicated to forestry, both in full ownership and in bare ownership, a reduction will be made in the taxable base of the corresponding tax, according to the following scale: 90 percent for areas included in protection plans for reasons of natural interest approved by the competent body of the Autonomous Community or, where appropriate, by the corresponding body of the Ministry of Agriculture, Fisheries, and Food; 75 percent for areas with a Forest Management Plan or a Technical Plan for Forest Management and Improvement, or equivalent forest planning figures, approved by the competent Administration; 50 percent for other rustic areas dedicated to forestry, provided that, as a consequence of this transfer, the forestry nature of the property is not altered, and it is not transferred for '*inter vivos*' reasons, leased or assigned by the acquirer, during the five years following the acquisition. The same reduction will apply to the extinction of the usufruct that the transferor had reserved for himself. The tax relief regulated in this

reductions in personal income tax when the rural property or agricultural holdings transferred are used by the purchaser to set up or consolidate priority agricultural holdings or are acquired by the public authorities for integration into 'land banks' or similar bodies or for reasons of environmental protection.¹⁸

6. Mortis causa access holding

In the area of transfer mortis causa, the Spanish Civil Code contains some rules to maintain the company as a unit at the time of hereditary succession. Several articles relate to this, but the most significant would be articles 1056 and 1062 of the Civil Code.¹⁹ Thus, the testator who, in order to maintain whatever kind of company the testator has, wants to keep it undivided may do so provided that the legitimate sum is paid in cash to the other co-heirs so that one will receive the company as a whole and the other co-heirs will receive their share of the inheritance in money. For this purpose, it will not be necessary to have sufficient cash in the inheritance for payment, and it will be possible to make the payment with extra-heritable cash and for the testator or the accountant-partner designated by him to establish a deferral, provided that this period does not exceed five years from the death of the testator. If the form of payment has not been established, any legitimate person may demand that the inheritance be legitimately paid.

Likewise, the unity of certain types of property is reinforced by establishing that when an item is indivisible or is very unworthy of division, it may be awarded to a co-heir, with the others being paid excess money. However, it will be enough for one of the heirs to ask for its sale in a public auction and, with the admission of foreign bidders, for this to be done – art. 1062 Civil Code.

Therefore, the following conclusions can be drawn from these precepts: the Civil Code itself contains a very generic and very weak provision on the undivided maintenance of economic exploitation, such as a farm. Likewise, the fact that an agricultural holding or any other enterprise is maintained as a unit depends on the will of the testator; it is a simple entitlement for him. In this regard, given the importance of primary sectors such as agriculture, the transfer of agricultural holdings at the time of

provision will apply, on the appropriate scale, to the entire agricultural holding where the area under forestry is more than 80 percent of the total area of the holding.

¹⁸ Sixth additional provision. Tax benefits in the Personal Income Tax for the transfer of certain rural properties and farms: the net increases in assets that become evident during the five years following the entry into force of this Law, derived from the transfer of rural property or agricultural operations, will be included in the net income resulting from the application of the method of signs, indices, or modules of the objective estimation method of Personal Income Tax, in the amount established by regulation according to the period of time the assets remain as the assets of the taxpayer and provided that the transfers do not exceed the amount established by regulation. The application of the provisions of the previous paragraph shall require that the rural property or agricultural holdings transferred are used by the acquirer for the constitution or consolidation of priority agricultural holdings or are acquired by the public administrations for their integration into land banks or similar bodies or for reasons of protection of the natural environment. The requirements to be met by both transmitters and acquirers in order to apply this provision will be developed in a regulatory manner.

¹⁹ See Cadenas Osuna 2020.

the death of the owner of the holding cannot depend on his will, as has already been expressed: 'the father cannot construe the right to distribute goods among his children as he wishes, as he must take into account not only his particular interest but also the general interest that is expressed in the regulations on the social function of property, specifically in Article 33 of the Spanish Constitution.' On the other hand, the provision states that in compensation for the attribution of the company to a single heir, the legitimate payment of monies must be made to other interested parties, but for this, it must be possible to make the payment with hereditary or extra-hereditary cash, and reality shows that sometimes this requirement cannot be met. However, setting a period of time for the testator, or making the hereditary division comply with the payment in money to the other co-heirs (thus determining a deferral of payment) may also defeat the purpose of the provision. This is because the income of the farm during this period may not be sufficient for the successor to the farm to pay the other co-heirs, which may limit the likelihood that the succession to the farm is accepted. The provision is further complicated by the fact that if the method of payment has not been established, any legitimate claimant may demand that the inheritance be made.²⁰

Therefore, a realistic rule for the unitary maintenance of agricultural holding at the time of transfer *mortis causa* should involve a policy of credits in favour of the successor to the holding, to guarantee legitimate payment to those who will not assume ownership of the agricultural undertaking, with the addition of other tax reductions.²¹

The *salairé différé* in French law is another system for this purpose. It benefits, at the time of succession, those who have taken part in the agricultural holding without having been remunerated beforehand and who do not pose any particular problems for payment to the other beneficiaries of the inheritance. Thus, the hereditary partition is the moment to compensate for the work done on agricultural holding without receipt of payment during the period of collaboration. A credit is thus generated with respect to the inheritance at the time of the death of the farm holder. However, this compensation could also be made upon cessation of the holder's agricultural activity.

Accordingly, one system in particular that of *salairé différé*, has generated a significant volume of contentious and conflicting assumptions. For some, it has been considered outdated, although there is no lack of supporters of the French doctrine who propose the extension of this system to organise the remuneration of other services performed by the heirs.

Despite this system of *salairé différé*, the objective is to enhance the value of agricultural work, to lighten the wage burden on farms, to prevent a rural exodus, and to facilitate the transfer of agricultural enterprises, even if this is a complex matter in terms of regulating the succession of farmers. It is, in any case, a response to a clear preference for family farms.

On the other hand, when dealing with the issue of transfer of the agricultural enterprise, *mortis causa*, another problem to consider is the capacity of the successor to ensure the best viability of the farm. The preference for professional farming descendants, or widowed spouses, was present in the Spanish rules. If there are several farming descendants, the scheme provided for the father to be succeeded by the

²⁰ Martinez Espin 2006, 1254–1258.

²¹ Gonzalez Acebes 2005, 62.

beneficiary in his will or, failing that, by the one chosen by common agreement between them.

In the law on rural leases, preference is given to the young farmer when it comes to terminating the lease. The lease ends upon the death of the tenant, without prejudice to the rights of his legitimate successors. In this case, in the absence of an express designation by the testator, preference shall be given to the young farmer, and if there are several young farmers, the oldest should be given preference. If none of them has the status of young farmer, the successors will have to choose among them, by majority vote, to which the deceased tenant will be subrogated under the conditions and rights of the deceased. In the latter case, the landlord must be notified in writing within one year of death. This is related to one of the main concerns of this text, which is to establish some priorities in favour of the professional farmer and to contribute to the 'necessary generational renewal'. The fact remains that it is not easy to provide a fully satisfactory criterion for choosing a successor to ensure the profitable continuation of the agricultural enterprise.²²

7. Specific contract law

It should also be pointed out that in Spanish territories that have a particular regulation in the field of inheritance law, the system of the Inheritance Act is considered as another means to guarantee the unitary transfer of the agricultural holding for the moment of the death of the owner of this holding. These agreements on succession have been defined as the mechanism for achieving cohesion of family farms. Inheritance agreements are permitted for special civil rights, such as in the Basque Country, Navarre, Galicia, Aragon, Catalonia, and the Balearic Islands (on some islands, but not all, specifically Mallorca, Ibiza, and Formentera). The Inheritance Act cannot be used in all Spain. Therefore, only people who have a civil neighbour in one of the aforementioned territories can grant valid inheritance pacts. The pact of succession is a contract by which a person undertakes with another or others, before his or her death, to hand over to them some property and/or rights when his or her death occurs. In this way, the manner of succession and the successor to take over the agricultural exploitation in the event of the holder's death could also be determined.²³

8. Inter vivos access

Finally, with regard to the inter vivos transfer of agricultural holding, it should be said that the person who continues with the holding will usually need to make investments to modernise and make the agricultural holding more profitable, and the main criticism that could be made is that there is no possibility of providing a single guarantee for the entire agricultural holding. In other words, in the case of an application for a loan to make improvements on the farm, or on any other holding, as many mortgages or guarantees would have to be provided as there are types of assets on the agricultural enterprise.

²² Muñiz Espada 2009, 161–183.; Muñiz Espada 2012, 167–224.

²³ Cerda Gimeno 2005; Cazorla González 1998; Cosials Ubach 2018; On special rules in Basque country see Karrera Egialde 2016, 135.

This is economically inefficient for the profitability of the farm because modernisation of the farm and the challenges of applying new technologies require a great deal of credit, so specific guarantees are needed that are appropriate and adapted to the needs of the agricultural business environment.

9. Conclusion

It can be concluded from the aforementioned that, while from the point of view of tax law, with tax benefits, the transfer of the farm can be encouraged and made more dynamic in order to ensure the continuation of the farm, from the point of view of private civil or commercial law, other types of rules should be adopted to improve the conditions of transfer. This is especially true in times of crisis in which the profitability of the sector must be better promoted with legal rules rather than with a state economic budget. This must all be implemented under a new methodology that will simplify Spanish agricultural legislation in the same way as the French law, which is integrated under the same rural code.

Bibliography

1. Amat Llobart P (2017) La explotación agraria, sus elementos integrantes y tipos cualificados de explotación. La reforma legislativa pendiente, in Muñiz Espada E, Amat Llobart P, eds., *Tratado de derecho agrario*, La Ley Wolters Kluwer, Madrid, pp. 157–205.
2. Amat Llobart P (2015) Mejoras en el funcionamiento de la cadena agroalimentaria en la Unión Europea y en España a partir del régimen jurídico de negociación y contratación: el contrato alimentario y el contrato tipo agroalimentario, *Revista de derecho Agrario y Alimentario*, 66/2015, pp. 7–50.
3. Caballero González JM (1982) *Los colaboradores en el proyecto de Ley del Estatuto de la explotación familiar agraria y de los jóvenes agricultores*, MAPA.
4. Caballero González JM “Modernización de la explotación y de la actividad agraria”, *DAA*, no. 31.
5. Cadenas Osuna D (2020) *La transmisión mortis causa de la empresa familiar*, Dykinson, Madrid.
6. Cano Martínez De Velasco JI (2002) *La prohibición de los contratos sucesorios*, Bosch, Barcelona.
7. Cazorla González MJ (1998) *El Derecho agrario sucesorio español*, Comares, Granada.
8. Cusialls Ubach A (2018) La partición de la herencia y la libertad de testar, in Pons M, ed., *La libertad de testar y sus límites*, Barcelona.
9. Cusialls Ubach A (2018) La regulación de los contratos de cultivo e integración en el Código Civil de Cataluña, in Pons M, ed., *Estudios sobre el Libro Sexto del Código Civil de Cataluña*, Barcelona.
10. De Castro Vitores G (2008) La normativa de arrendamientos rústicos. Reflexión y propuestas para un nuevo debate”, in Pons M, ed., *Homenaje a A. Ballarín Marcial*, Madrid.
11. De La Cuesta Saenz J (2019) En torno a las prácticas desleales en las relaciones entre empresas en la cadena alimentaria, *Revista de la Facultad de Derecho de la UNAM (México)*.
12. De La Cuesta Saenz J (2018) Usucapión e inmatriculación de fincas, *Revista Jurídica del Notariado*, 106/2018.
13. Karrera Egialde M (2016) La sucesión agraria y la troncalidad vizcaína, *Revista de Derecho agrario y alimentario*, 32/2016.
14. Muñiz Espada E (2009) *La transmisión de la empresa agraria*, Aranzadi, Navarra.
15. Muñiz Espada E (2012) Pactos sucesorios, pactos de familia y empresa agraria, *Revista jurídica del Notariado*, pp. 167–224.
16. Pasquau Liaño M (2005) *Ley de Arrendamientos Rústicos. Comentarios Doctrinales y Formularios*, Aranzadi, Pamplona.
17. Serrano De Nicolás A (2011) Pactos sucesorios de atribución particular: su relación con otras instituciones sucesorias del propio Código civil de Cataluña, *Rev. general de Derecho romano*.