



Agreement based land consolidation – In perspective of new modes of governance



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ARTICLE INFO

Article history:

Received 29 March 2014

Received in revised form

15 December 2014

Accepted 30 January 2015

Keywords:

Environmental policy

New modes of governance

Land consolidation

Conflict resolution

Capacity building

ABSTRACT

A comparative study on the performance of new modes of governance in selected Central and Eastern European countries stated the problem that the emergence of new modes of governance in environmental policy is impaired by weak governance capacities in state and civil society and lack of mutual trust among stakeholders (Börzel, 2009a). The purpose of this article is to draw attention to agreement based land consolidation for implementation of area based environmental policies. The article contends that land consolidation exclusively based on agreements can cope with capacity constraints in state and civil society and at the same time apply the principles of new modes of governance. The research questions are: (i) how are principles of new modes of governance applied in agreement based land consolidation? (ii) what are the incentives and the technique in agreement based land consolidation? and (iii) what are the capacity building requirements for an agreement based land consolidation approach? The Danish land consolidation procedure is used as an example of an agreement based approach. Transaction technique, planning technique, and incentives are exposed with reference to transaction cost theory. The impact on trust is illuminated with reference to theory on social capital. The wetland projects serve as an example of area based environmental projects and is illustrated by a case. Data, however incomplete, indicate that agreement based land consolidation has been and is used as an important implementation tool in land related environmental policies in Denmark. The article concludes that the agreement based approach displays key features of new modes of governance. The principle of voluntary agreements grants the affected non-state actors a strong position to influence the final policy outcome and they contribute with local knowledge and mediation. The approach avoids conventional enforcement. Agreement based land consolidation is possible but relies on demanding preconditions. The investment in incentives and capacity building can be justified by a broad range of benefits.

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Introduction

Over time land consolidation has been adapted to progressively more complex objectives in land related development. This article adds yet another policy objective to which land consolidation may be applied, the European Union (EU) policy of new modes of governance (European Commission, 2001). The article departs from a study on the performance of new modes of governance in environmental policy in six Central and Eastern European (CEE) countries in process of accession to EU (Börzel, 2009a). The study revealed that the emergence and the effectiveness of new modes of governance has been impaired by insufficient capacity of state and non-state actors to engage in nonhierarchical coordination in order to improve the effectiveness of public policy

(Börzel, 2009a, p. 4). The study calls for concrete means to increase the effectiveness of European legislation in new member states including capacity building oriented towards both state and non-state actors (Börzel, 2009c, p. 208–209). The article reasons from these findings.

The problem is to devise ways of implementation of land related environmental projects that can cope with the capacity constraints in state and civil society and at the same time apply the principles of new modes of governance. While the new modes of governance literature considers issues at EU and national level and assumes market regulation, the focus of the article is narrowed to environmental policies that materialize in specific areas, impose new rules for use of land and natural resources and, thereby, intervene into individual property and trigger the conflict between public policy and private right. Area specific environmental policies, therefore, need to reach an outcome, which the affected citizens and community can accept, comply with and live with. This requires a particular implementation technique.

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The article contends that land consolidation exclusively based on agreements can implement such projects in ways that apply the principles of new modes of governance. The purpose is to draw attention to this implementation technique and outline the investment in capacity building it likely takes under conditions of weak state and weak civil society. The agreement based approach which the article exposes is the Danish land consolidation procedure. The logic in this variant of land consolidation is explained by linking the planning and transaction technique to institutional theory. The article attempts to answer the research questions: (i) how are principles of new modes of governance applied in agreement based land consolidation? (ii) what are the incentives and the technique in agreement based land consolidation? and (iii) what are the capacity building requirements for an agreement based land consolidation approach?

The result part of the article consists of five sections. The first of these gives a brief overview of background and key features of the EU policy on new modes of governance. The overall objective is to strengthen efficiency and legitimacy of EU legislation. Idea and key concepts are introduced that shall later be related to the agreement based land consolidation approach. The main reference is a comparative study (Börzel, 2009a) that found weak capacity in both state and civil society and lack of mutual trust among stakeholders as barrier for the emergence of new modes of governance in countries in accession to the EU. This finding is the benchmark for the article.

The next section explains the operational aspects of an agreement based land consolidation with reference to the Danish procedure for land consolidation. Focus is on two aspects. One is the transaction technique, which is explained by the range of transactions that are possible and how they are formalized. The other is the planning technique, which is explained by five principles. The key incentive lies in offering zero transaction costs; this is exposed with reference to transaction cost theory (North, 1990).

The third result section addresses the problem of low level of mutual trust among the stakeholders. Reference is Rothstein's analysis of social traps and the problem of trust (Rothstein, 2005). The concepts of trust and social capital are explained. These determine the capacity to cooperate. It is summarized how the performance of state agencies influence mutual trust in a community. This leads to the additional contention that agreement based land consolidation can impact on and strengthen the level of trust and thereby generate social capital.

The case in the article is the wetland projects in Denmark, which implements EU environmental policy. And it is an example of an area specific public intervention that impacts on land ownership and land use and which is implemented by agreement based land consolidation. The case shows that the policy deliberation process as well as the planning technique in implementation displays features of new modes of governance. The Halkaer Lake project as example together with the scale of wetland projects at national level serves to prove that implementation of an area based environmental project by land consolidation exclusively based on agreements is possible.

The last result section takes stock of the ways in which the features of new modes of governance can appear in an agreement based land consolidation: non-state actors participate on a voluntary basis, they contribute with resources and insight and in return they gain influence on the final policy outcome, which therefore is more likely to be complied with. Implementation is accomplished outside the conventional top down law enforcement. A particular feature of agreement based land consolidation as presented in this article is that it takes place not in a so-called shadow of a *credible threat* of potential alternative government enforced action, but is driven by a *credible offer* of extraordinary service in zero transaction costs in combination with a planning technique that affords

accommodation of individual preferences to the extent possible. Finally, the section outlines the rather demanding preconditions.

Discussion maintains focus on CEE countries where the constraints of a so-called double capacity trap prevail (Börzel, 2009c) and where the formal framework for land consolidation is not yet in place (Thomas, 2012; Hartvigsen, 2015) and considers three issues. First, capacity requirements are outlined. These will likely include completion of land registration in the target area, adjudication of diverse uncertainties in ownership, finance for land consolidation and cooperation between environmental and land administration agencies. A specific challenge for professionals is the shift in planning technique from compulsory to agreement based approach. Secondly, an area based environmental project encounters an extraordinary investment under such conditions. However, the higher costs are justified by a broader range of benefits, including the clarification of uncertainties in ownership, a strengthening of the involved public agencies, a contribution to rural development and an impact on social capital. The third discussion point suggests ways in which an agreement based approach may be adopted by adaptation of existing compulsory land consolidation approaches.

Research background

This article sees land consolidation as a reform instrument subject to recurrent adaptation to changing circumstances. In Western European countries land consolidation approaches evolved over long periods of time. Diverse conditions in landscape, land policy, and institutional framework led countries to develop each their tradition (van Dijk, 2007, p. 508). Tradition in e.g. Germany and the Netherlands have evolved as approaches where land consolidation projects integrate farm restructuring with local planning and infrastructure projects and with a strong mandate to dispose over land within a defined project area once a majority of owners have accepted the project. In addition to large projects with so-called compulsory land consolidation also voluntary approaches have been developed for simple land consolidations. By contrast a tradition has evolved in Denmark with land consolidation being voluntary and not necessarily with full coverage of a project area. Furthermore, countries have in each their way combined land consolidation with land banking. In all countries there has been a general trend that land consolidation addresses a progressively more complex range of policies on agriculture, rural development, environmental regulation and major infrastructure such as high ways. For overview of the different traditions of land consolidation in the Netherlands, Germany and Denmark see (Hartvigsen, 2015, p. 10–15).

The transition in the CEE countries from planned to market economies occasioned an enormous scale of land reform involving restitution of earlier private rights, privatization and direct sale of publicly owned land. The widely documented problem of excessive fragmentation of land resulted and often in combination with a polarized structure with large proportion of land held in small holdings and small share of land under very large holdings; all with great regional variation (van Dijk and Kopeva, 2006; Hartvigsen, 2014a). In most of the CEE countries governments recognized the need to address the structural problems in agriculture with land fragmentation and small farm sizes. Land management instruments such as land consolidation and land banking have been introduced. However, the concept of land consolidation is not new because most of the CEE countries have previous experience with land consolidation from the land reforms earlier in the 20th century (Hartvigsen, 2015, p. 1). Efforts were made to draw on experience from the Western European countries. FAO established an international network of professionals and organized annual workshops for purpose of exchange of experience on land consolidation; an activity

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