

PROTECTING EASTERN EUROPE'S FARMLAND IN THE ERA OF EUROSCEPTIC POPULISM: LIBERAL SOLUTIONS TO THE EUROPEAN UNION'S CONFLICT WITH ITS EASTERN MEMBERS OVER FOREIGN ACQUISITION OF FARMLAND

*Jeffrey Caviston**

Farming has economic, political, and cultural importance virtually all across the globe. Over the last decade, foreign investment in agriculture has grown in size and scope, offering both benefits and drawbacks to nations that receive such investments. Where once uncommon, the European Union has begun to encounter more instances of foreigners acquiring farmland, particularly in Eastern Europe. With the growing popularity of Eurosceptic populism in Eastern Europe, some national governments have enacted laws that restrict foreign ownership of farmland but which conflict with EU free-trade principles. In light of current and developing problems facing Europe, it is important for the EU and its eastern members to reach a compromise that both recognizes and facilitates redress of the members' concerns and reaffirms the liberal democratic traditions of European integration.

* J.D. Candidate, May 2018, Michigan State University College of Law. I would like to thank Professor David Blankfein-Tabachnick for his valuable guidance during the writing process, Professor Daniel Barnhizer for leading the study abroad trip that inspired this topic, and most importantly Torey Fry for her continual love and support.

I. INTRODUCTION	539
II. BACKGROUND	542
A. The Advantages of Domestic Farmland and the Benefits and Concerns over Foreign Agricultural Investment in Developing Democracies	542
B. International Responses to Foreign Agricultural Investment.....	546
1. Guidance from the United Nations	547
C. Supranational and National Responses in Europe to Foreign Agricultural Investment	550
1. Agricultural Policy and the Changing Political Landscape in the European Union	550
2. Agricultural Policy and the Political Shift in Poland and Eastern Europe.....	559
III. ANALYSIS.....	564
A. EU Reforms	565
1. Change How the CAP Incentivizes and Educates Farmers	565
2. Permit Member States to Exercise Greater Control Over Their Farmland	567
B. National Reforms	569
1. Stronger Property Rights and Benefits for Natural Persons ...	569
2. More Public Oversight and Transparency on Land Transactions with Foreign Entities	571
IV. CONCLUSION	572

I. INTRODUCTION

The agriculture sector is of critical importance to the proper functioning of every country in the world.¹ Farming is the foundation upon which civilization developed and provides a renewable source for the basic necessities of human life, along with other important public benefits.² Accordingly, agricultural property can be a particularly valuable asset for numerous reasons.³ Thus, there is a strong incentive for public and private entities to invest in the agriculture and food production industry. With the expansion of international trade, the investments that were traditionally made within a country's boundaries have extended to agricultural property within foreign borders, particularly developing nations with under-utilized but high-quality farmland.⁴ Such investments—termed Foreign Direct Investments (FDIs)—were primarily made by private investors; however, more recently, government actors have increasingly sought out larger scale FDI opportunities to secure access to food production and diversify investment assets in light of the rise in global food prices and worldwide market volatility.⁵ This new sort of investment has been described as “farmland grabbing.”⁶

FDI in agriculture has been generally supported by international organizations, particularly the United Nations (UN), as a means of

1. See *About FAO*, FAO, <http://www.fao.org/about/en/> (last visited Jan. 11, 2017).

2. *The Development of Agriculture*, NAT'L GEOGRAPHIC, <https://genographic.nationalgeographic.com/development-of-agriculture/> (last visited Jan. 11, 2017).

3. See generally HANCOCK AGRIC. INV. GRP., RESEARCH NOTE: BENEFITS OF FARMLAND INVESTMENTS (2011), http://hancockagriculture.com/wp-content/uploads/sites/3/Research_Note_-_Benefits_Of_Farmland_Investments_2011.pdf; Lori Lynch & Joshua M. Duke, *Economic Benefits of Farmland Preservation: Evidence from the United States* 1 (Univ. Md. Dep't of Agric. & Res. Econ., Working Paper No. 07-04, 2007).

4. Yannick Fiedler & Jesper Karlsson, *Home Country Measures that Promote Responsible Foreign Investment: Evidence from Selected OECD Countries* 1 (FAO Commodity & Trade Pol'y Research Working Paper No. 52, 2016).

5. *Buying Farmland Abroad: Outsourcing's Third Wave*, ECONOMIST (May 21, 2009), <http://www.economist.com/node/13692889>.

6. EUR. PARL., EXTENT OF FARMLAND GRABBING IN THE EU 11 (2015) [hereinafter EUR. PARL. STUDY].

helping impoverished countries address hunger problems and develop their economies.⁷ However, recognizing the negative aspects of FDI in agricultural property and the potential for abuse, the UN and several other international organizations have developed principles to help guide and encourage responsible FDI transactions.⁸ While these guidelines primarily focus on improving the conduct of investors, they are voluntary and therefore not legally binding on either the investor or the host country.⁹

The European Union (EU) meanwhile has found itself in a tough position over how to respond to foreign ownership of its members' farmland. On the one hand, the purpose of the EU is to promote free trade and economic cooperation among its members; accordingly, its laws and policies disfavor restricting FDI, at least between its members.¹⁰ On the other hand, evidence of farmland grabbing in the EU, especially within the EU's Eastern European members, has raised concern among its old and new members about the fate of traditional European farming and prompted calls for the reform of EU law.¹¹ Further complicating matters, populist movements across Europe, and the democratic world in general, are leading to laws reflecting a decline in globalism and increased apprehension over foreign ingression in domestic affairs.¹²

Ultimately, the national laws of an EU country will determine whether and to what extent foreign entities can purchase interest in agricultural property. Given that FDIs pose potential negative implications on a host country's sovereignty, particularly its control over

7. Fiedler & Karlsson, *supra* note 4, at vii.

8. *See, e.g.*, COMM. ON WORLD FOOD SEC., PRINCIPLES FOR RESPONSIBLE INVESTMENT IN AGRICULTURAL AND FOOD SYSTEMS (2014), <http://www.fao.org/3/a-au866e.pdf> [hereinafter *RAI*]; FOOD AND AGRIC. ORG. OF THE U.N. (FAO), VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE OF LAND, FISHERIES AND FORESTS IN THE CONTEXT OF NATIONAL FOOD SECURITY iv (2012), <http://www.fao.org/docrep/016/i2801e/i2801e.pdf> [hereinafter *VGGT*].

9. *See VGGT, supra* note 8, at 2.

10. *See* EUR. COMMISSION, SINGLE MARKET SCOREBOARD, INTEGRATION AND MARKET OPENNESS, FOREIGN DIRECT INVESTMENT 2013 – 2014 10 (2016), http://ec.europa.eu/internal_market/scoreboard/_docs/2017/fdi/2017-scoreboard-fdi_en.pdf at 10 (2016); ORG. FOR ECON. CO-OPERATION AND DEV., 1 OECD ECONOMIC OUTLOOK NO. 73, SPECIAL FOCUS ON: FOREIGN DIRECT INVESTMENT 169 (2003) [hereinafter *OECD ECONOMIC OUTLOOK*].

11. *See* EUR. PARL. STUDY, *supra* note 6.

12. *See id.* at 11.

domestic food supplies, governments may be cautious to permit FDIs in their agricultural sector.¹³ That cautiousness is exacerbated in Eastern Europe, where the new members of the EU have struggled to reconcile their domestic policies—which were designed to keep their farmland locally owned—with the EU's mandatory free trade laws and democratic principles.¹⁴ Combined with the concerns of the new members over losing their national identity, turmoil following Brexit, and expanding Russian hegemony, there is escalating tension between the EU and its newest members.¹⁵ Poland, in particular, epitomizes Eastern Europe's political, economic, and legal situation and may offer an indication of where that region is headed. Elections in 2015 resulted in the installation of a populist government that quickly took steps to curb the ability of foreigners to acquire Polish farmland.¹⁶ Like similar laws effected by its neighbors, Poland's law may impermissibly restrict the movement of capital within the EU¹⁷ and have serious economic consequences.¹⁸ More troubling is that the new law is susceptible to corruption and anti-democratic abuse, especially given the government's apparent disregard

13. FAO, TRENDS AND IMPACTS OF FOREIGN INVESTMENT IN DEVELOPING COUNTRY AGRICULTURE: EVIDENCE FROM CASE STUDIES 339 (2013) [hereinafter TRENDS & IMPACTS STUDY].

14. See Ben Margulies, *Why Are So Many Liberal Democracies in Europe Struggling?*, POLITICAL STUDIES ASS'N BLOG (Sept. 12, 2016), <https://www.psa.ac.uk/insight-plus/blog/why-are-so-many-liberal-democracies-europe-struggling>.

15. See Kate Connolly, *The Eastern Countries Standing Up to Brussels in the Wake of Brexit*, THE GUARDIAN (July 22, 2016), <https://www.theguardian.com/world/2016/jul/23/poland-czech-republic-hungary-slovakia-brussels-brexit>.

16. See Jan Cienski, *Poland Raises Fences to Block Farmland Sales*, POLITICO.EU (Apr. 25, 2016), <http://www.politico.eu/article/poland-raises-fences-to-block-farmland-sales/>.

17. *Id.*; European Commission Press Release IP/16/1827, Financial Services: Commission Requests Bulgaria, Hungary, Latvia, Lithuania and Slovakia to Comply with EU Rules on the Acquisition of Agricultural Land (May 26, 2016) [hereinafter Financial Services]; European Commission Press Release IP/17/3901, Sales of Farmland: Commission Issues Guidelines to Member States (Oct. 12, 2017) [hereinafter Sales of Farmland].

18. See generally Lukasz Lipinski, *Polish Farmland Bill May Breach EU Law*, EUOBSERVER (Apr. 14, 2016), <https://euobserver.com/beyond-brussels/133035>.

for the rule of law and its disrespect of EU institutions.¹⁹ Such laws thus threaten to undermine and reverse the democratization and liberalization of Eastern and Central Europe.

Therefore, both the EU and its former-Soviet members should consider reforms to better protect against the potential problems of agricultural FDI while reaping its benefits. Broadly speaking, this paper argues that the efficacy of such efforts rests on both the EU imbuing its members with greater latitude to manage their land markets and members tailoring their internal policies to better reflect and affirm the EU's free trade principles. Specifically, these reforms should also aim to address some of the more-legitimate public concerns that have led to the rise in populism throughout the western world while avoiding illiberal economic policy and anti-democratic laws.

II. BACKGROUND

A. The Advantages of Domestic Farmland and the Benefits and Concerns over Foreign Agricultural Investment in Developing Democracies

There are several compelling reasons for governments to protect, preserve, and invest in their farmland. The first and most apparent is to ensure that a country's population has an accessible and sustainable supply of food.²⁰ "Food security," as it is known, is a paramount concern among governments across the world.²¹ In fact, the UN recognizes having access to adequate food as being a basic human right.²² Similarly, protecting domestic food supplies also serves a country's national

19. See Marek Strzelecki, *Defiant Poland Scoffs at EU Rebuke Over Eroding Rule of Law*, BLOOMBERG (Oct. 27, 2016, 6:00 PM), <https://www.bloomberg.com/news/articles/2016-10-27/poland-plots-endgame-in-democracy-row-as-eu-obsesses-over-brex-it>; Steven Simmons, *Constitutional Crisis in Poland*, MICH. ST. U. INT'L L. REV. (Aug. 17, 2017), <https://www.msuir.org/msuir-legalforum-blogs/2017/8/17/constitutional-crisis-in-poland>.

20. *Food Security*, INT'L FOOD POL'Y RESEARCH INST., <http://www.ifpri.org/topic/food-security> (last visited Feb. 23, 2017).

21. *Id.*

22. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

security interests.²³ Not only does it provide the basic supplies to support a nation's military, protecting a nation's farmland also keeps at least some agricultural production within the influence of that nation's domestic policy, mitigating reliance on foreign governments to feed its population.²⁴ In times of international crisis or war, the extent of a nation's ability to feed its population may very well determine the fate of that nation.²⁵

Economic incentives are also prevalent, considering that agriculture is a multi-trillion dollar industry worldwide with over one-third of the Earth's labor force dependent upon it for employment to some extent.²⁶ While the agriculture sector in wealthier countries is a smaller economic contributor, it nevertheless continues to be an important component in those countries' rural areas and bolsters international trade.²⁷ Additionally, agriculture has an important cultural element. Farming and farm ownership have provided, and continue to provide, people with the means to grow and prosper; subsequently, it reflects how a civilization developed and the national identity of that civilization's people.²⁸ For many it represents a "lifestyle based on beliefs and traditions about living and work."²⁹

23. See Press Release, House Comm. on Agric., Former Military Leaders Highlight the Importance of Agriculture and National Security (July 7, 2016), <http://agriculture.house.gov/news/documentsingle.aspx?DocumentID=3480>.

24. See Chris Arsenault, *Global Dependence on Food Imports Leaves Countries Vulnerable*, REUTERS (Mar. 13, 2015, 3:50 PM), <http://www.reuters.com/article/us-food-trade-idUSKBN0M92CG20150313>.

25. See Press Release, House Comm. on Agric., *supra* note 23. See, e.g., Roy Gutman, *Assad Regime to Besieged Aleppo: Surrender or Starve*, THE NATION (Sept. 2, 2016), <https://www.thenation.com/article/assad-regime-to-besieged-aleppo-surrender-or-starve/>.

26. See *The World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/xx.html> (last visited Jan. 14, 2017).

27. See *CAP at a Glance*, EUR. COMM'N, https://ec.europa.eu/agriculture/cap-overview_en (last visited Feb. 9, 2017). Although agriculture accounted for 6% of EU GDP, it supports one of the largest employment sectors of the EU economy and constitutes a growing portion of EU exports. See *id.*; European Commission Memorandum MEMO/13/621, *The Common Agricultural Policy (CAP) and Agriculture in Europe – Frequently Asked Questions* (June 26, 2013).

28. See *Agricultural Heritage: A Legacy for the Future*, FAO, <http://www.fao.org/giahs/background/en/> (last visited Feb. 27, 2017).

29. *Family Farming*, EUR. COMM'N, https://ec.europa.eu/agriculture/family-farming_en (last updated Feb. 02, 2017).

Finally, farmland and agricultural policy play an important role in environmental protection.³⁰ This includes promoting biodiversity, enhancing water quality, controlling erosion, and managing wildlife.³¹ Because farming can have significant negative effects on these aspects of the environment, governments may be compelled to encourage, discourage, or prohibit certain farming operations or techniques.³²

In light of these reasons, agriculture takes on a powerful political dimension as well, particularly in democratic societies where those impacted by agriculture may make up a substantial portion of the electorate.³³ Thus, national governments may be compelled to initiate various efforts that safeguard property for agricultural uses and encourage methods of farming that maximize its value in a given community.³⁴ A common approach is for governments to offer farmers financial incentives, like subsidies or tax breaks that are defined and tailored to address particular issues that farmers may face.³⁵ Agricultural property owners may also be given special property rights or become eligible to receive special opportunities in connection with their ownership, such as the ability to transfer development rights to other properties so that the other properties may be further developed or the chance to sell development rights in exchange for money and lower property taxes.³⁶ Zoning also plays a key role by setting forth and

30. See *Integrating Environmental Concerns into the CAP*, EUR. COMM'N, https://ec.europa.eu/agriculture/envir/cap_en (last visited Jan. 11, 2017).

31. *Sustainable Agriculture for Biodiversity – Biodiversity for Sustainable Agriculture*, FAO, <http://www.fao.org/documents/card/en/c/85baf9c5-ea7f-4e25-812f-737755a8b320/> (last visited Jan 11, 2018).

32. See, e.g., *Integrating Environmental Concerns Into the CAP*, *supra* note 30.

33. See Marc F. Bellemare & Nicholas Carnes, *Why Do Members of Congress Support Agricultural Protection?*, 50 *FOOD POL'Y* 20, 20–21 (2015); see, e.g., Eleanor Beardsley, *In a Heated Campaign Season, French Politicians Flock to Paris Farm Fair*, NPR (Mar. 1, 2017, 5:10 AM), <http://www.npr.org/sections/parallels/2017/03/01/517882201/in-a-heated-campaign-season-french-politicians-flock-to-paris-farm-fair>.

34. See Bellemare & Carnes, *supra* note 33, at 20–21.

35. See, e.g., USDA, *FARM AND RURAL TAX POLICY* 1–2 (2013); *CAP at a Glance*, *supra* note 27; *Property Taxes*, MICH. FARM BUREAU, https://www.michfb.com/MI/Farm_Business_Resources/Natural_Resources_and_Environment/Property_Taxes/ (last visited Feb. 20, 2017).

36. See *Transfer of Development Rights*, PENN. LAND TR. ASS'N, <http://conservationtools.org/guides/12-transfer-of-development-rights> (last visited Feb.

delineating a community's preference for agriculture in relation to other development; zoning laws may award farmland special protection.³⁷ To address environmental concerns, policy initiatives may include financing the preservation of farmland to maintain wildlife habitat or encouraging certain plowing and fertilizing techniques to improve soil and water quality.³⁸ In short, addressing the fate of farming and its impact on society is an active priority of governments across the world.

As such, a growing concern for many nations recently is the increasing amount of investment by foreign entities into those nations' farmland and means of agricultural production.³⁹ While foreign investment in farmland is not new, the identity of investors and the size of acquisitions have changed in recent years.⁴⁰ Where land investments used to be between private parties, more investments are now being pursued by foreign governments directly or through entities with close connections to those governments.⁴¹ These new investors have a different motivation from the financial incentives of private investors, namely their own food security.⁴² Additionally, transactions now involve much more land than what they used to, with the obvious result that these land deals place larger shares of the host country's agricultural output directly into the hands and under the control of foreign governments.⁴³ Moreover, the acquired lands are usually the best properties available for agricultural use.⁴⁴ Exacerbating concerns is that in some cases, these

20, 2017); CTR. FOR LAND USE EDUC., PLANNING IMPLEMENTATION TOOLS: PURCHASE OF DEVELOPMENT RIGHTS (PDR) (2006), https://www.uwsp.edu/cnr-ap/clue/Documents/PlanImplementation/Purchase_of_Development_Rights.pdf. Both options generally offer some financial benefits to the property owner.

37. See DAVID KRUF, AGRIC. LAW RES. & REF. CENT., DICKINSON SCH. OF LAW OF PENN. ST. UNIV., AGRICULTURAL ZONING 1-3 (2001); see, e.g., MICH. COMP. LAWS § 286.471 (1981).

38. See, e.g., *Financial Assistance*, NAT. RES. CONSERVATION SERV., USDA, <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/financial/> (last visited Feb. 6, 2017).

39. GRAIN, THE GLOBAL FARMLAND GRAB IN 2016: HOW BIG, HOW BAD? 3 (2016), <https://www.grain.org/article/entries/5492-the-global-farmland-grab-in-2016-how-big-how-bad.pdf>.

40. *Buying Farmland Abroad*, *supra* note 5.

41. *Id.*

42. *Id.*

43. *Id.*

44. TRENDS & IMPACTS STUDY, *supra* note 13, at 335.

investors have imported farmers from their own countries rather than employ local help.⁴⁵ Thus, such transactions have the potential to exploit a host country through the displacement of its people and the dispossession of its resources.⁴⁶

Nevertheless, foreign investment in agriculture is seen as carrying with it important benefits, particularly in developing countries.⁴⁷ Most notably, it is “one [of] the most effective ways to reduce poverty and hunger” and thus promotes greater food security.⁴⁸ Despite some investors eschewing local help, many in fact do employ the host country’s farmers and laborers.⁴⁹ Foreign investment can also provide a host country with the ability to engage in more trade through access to foreign markets.⁵⁰ Likewise, it may lead to greater production capabilities through the introduction of new technology and improvements in the host country’s infrastructure.⁵¹ Thus, nations that wish to improve the capabilities and efficacy of their agricultural industries may be drawn to foreign investment opportunities as a quick means to make up for lost development.⁵²

In setting policy and crafting law, democratic nations should therefore strike a balance between the pros and cons associated with foreign investment in agriculture while also remaining sensitive and accountable to the public sentiment toward such activity.

B. International Responses to Foreign Agricultural Investment

Generally, international organizations favor foreign agricultural investment for its potential to reduce world hunger and poverty.⁵³ However, the international community is not blind to the evident perils posed by FDI in farmland.⁵⁴ Thus, a number of international organizations and interests—coordinated mostly through the UN—have

45. *Buying Farmland Abroad*, *supra* note 5.

46. TRENDS & IMPACTS STUDY, *supra* note 13, at 335.

47. Fiedler & Karlsson, *supra* note 4, at 1.

48. *Id.*

49. See TRENDS & IMPACTS STUDY, *supra* note 13, at 323.

50. Fiedler & Karlsson, *supra* note 4, at 1.

51. *Id.*

52. *Buying Farmland Abroad*, *supra* note 5.

53. See Fiedler & Karlsson, *supra* note 4, at 1–2.

54. *Id.*

collaborated to address the many political, legal, economic, cultural, and environmental issues that may be implicated when entities invest in the agricultural industries of other nations.⁵⁵

1. Guidance from the United Nations

In response to the growing international concern over large scale foreign agricultural investing, the UN delved into the issue and developed several guidance documents to assist both investors and host countries in structuring investments so that the transactions are more likely to be done responsibly and to the parties' mutual benefit.⁵⁶ Two of these documents are of particular note. First are the Principles for Responsible Agricultural Investment in Agriculture and Food Systems (RAI).⁵⁷ The RAI were developed by the UN's Committee on World Food Security (CFS) in response to the emergence of farmland grabbing and the ensuing global concern.⁵⁸ The RAI is based upon ten principles that broadly define acceptable standards of responsible foreign investment in agriculture.⁵⁹ These suggest *inter alia* that, with respect to their effect on host countries, foreign investments should strengthen food security, be sensitive to cultural heritages, and promote transparent and accountable governmental oversight systems.⁶⁰ Moreover, the guidelines place primary responsibility on national governments to ensure that policies are in place that ensure responsible investment.⁶¹ While the principles are regarded as soft law instruments, the RAI is nevertheless widely recognized due to the many interest groups that helped to develop it.⁶²

55. *Id.*

56. *Id.* at 2.

57. RAI, *supra* note 8.

58. *Id.* at 4. The RAI were derived from an earlier proposal by the Food and Agriculture Organization of the UN (FAO), International Fund for Agricultural Development (IFAD), UN Conference on Trade and Development (UNCTAD), and World Bank. Fiedler & Karlsson, *supra* note 4, at 28.

59. RAI, *supra* note 8, at 11–18.

60. *Id.* at 11, 15, 17–18.

61. *Id.* at 20–23.

62. *Responsible Investment in Agriculture and Food Systems*, UN COMM. ON WORLD FOOD SEC., <http://www.fao.org/cfs/cfs-home/activities/rai/en/> (last visited Feb. 20, 2017).

Second, the Food and Agricultural Organization of the UN's Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT) represent an "unprecedented international agreement" on land use.⁶³ Where the RAI broadly elaborates the ideals of responsible FDI, VGGT takes those ideals and provides suggestions on how they may be realized.⁶⁴ It thus aims to "achiev[e] food security for all and to support . . . the right to adequate food in the context of national food security" by offering the many actors involved in FDI a "framework[] that can be used [for] developing strategies, policies, laws, programme[s] and activities."⁶⁵ Of central importance to these guidelines is the principle that "[s]tates should provide frameworks that are non-discriminatory and promote social equity."⁶⁶

Given the transactional nature of FDI, significant attention is given to the transferability of property.⁶⁷ Accordingly, "fair[, efficient,] and transparent sale and lease markets" on land use and ownership should be facilitated when appropriate, with special protection and support afforded to small-scale farming due to its "importance . . . [to] national food security and social stability."⁶⁸ Moreover, the guidelines encourage countries to collect and disseminate information related to land use and ownership publicly.⁶⁹ The valuation methods a county uses for its land is also important; such methods should be fair, timely, transparent, in line with common international standards, and should consider non-economic values.⁷⁰

A significant issue that VGGT attempts to prevent is corruption.⁷¹ To this end, it advises generally that systems should be in place to monitor the actions of, and hold accountable, governmental and nongovernmental actors; public institutions should employ "transparent processes and decision-making;" and the development of anti-corruption policies

63. *Voluntary Guidelines on Tenure*, FAO, <http://www.fao.org/nr/tenure/voluntary-guidelines/en/> (last visited Jan. 11, 2017).

64. See Fiedler & Karlsson, *supra* note 4, at 27–28.

65. VGGT, *supra* note 8, at preface.

66. *Id.* at 8.

67. See generally *id.* at 19–28.

68. *Id.* at 19, 20.

69. *Id.* at 9–11, 29–30.

70. *Id.* at 30–31.

71. See *id.* at 10, 14, 16, 17.

should be done consultatively and inclusively.⁷² More specifically, VGGT recommends “applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations” as methods of mitigating the risk of corruption.⁷³

On the topic of investments specifically, the VGGT encourages host countries to enact “safeguards to protect legitimate tenure rights, human rights, livelihoods, food security[,] and the environment from risks that could arise from large-scale transactions.”⁷⁴ To detect any risks associated with these matters, it advocates for independent assessments of large-scale transactions prior to their consummation.⁷⁵ Restrictions, such as placing limits on how many large-scale land transactions are allowed or the size of land transactions, may be permissible methods to address the negative aspects of agricultural FDI.⁷⁶

While the UN's land tenure model may provide useful guidance to countries and foreign investors on how they should structure investments and acquisitions, the UN recognizes that several intrastate factors are of equal importance in ensuring that both parties reap the benefits of such investments.⁷⁷ Of particular relevance is the legal framework that exists in a host country and that host country's commitment to the rule of law.⁷⁸ To that point, the VGGT, for example, states that it “should be interpreted and applied consistent with existing obligations under national and international law[] and . . . in accordance with national legal systems and their institutions.”⁷⁹ Furthermore, it recognizes the transient nature of politics and thus suggests that “[w]here the broader contexts change,” reforms to land policy should accord with the “national consensus.”⁸⁰

72. *Id.* at 8–10.

73. *Id.* at 10.

74. *Id.* at 21.

75. *Id.* at 22.

76. *Id.* at 21. To this point, the VGGT recommends that states “define what constitutes large-scale transactions.” *Id.*

77. *Trends and Impacts of Foreign Investment*, FAO, <http://www.fao.org/economic/est/publications/trends/en/> (last visited Nov. 17, 2016).

78. *Id.*

79. VGGT, *supra* note 8, at 2.

80. *Id.* at 9.

C. Supranational and National Responses in Europe to Foreign Agricultural Investment

Although largely ignored in the context of the international community's concern, the prevalence and effects of agricultural FDI are growing in Europe.⁸¹ While the ability of some countries to address these concerns is fettered only by their own limitations, the majority of European states have fallen under the yoke of the EU's limited supranational legal system as the bloc has continued to expand eastward.⁸² Accordingly, some of the traditional national policy decisions of its members are now made by or in conjunction with the EU, specifically those on matters related to economic, agricultural, and environmental law.⁸³ Consequently, national laws that conflict with or operate within the same legal sphere as EU law may be limited or subject to preemption.⁸⁴ Thus, some of the policy concerns associated with agricultural FDI fall within the EU's prerogatives, requiring some action on its part to address them and raising the possibility that similar efforts by members will be in discordance with its laws.⁸⁵

1. Agricultural Policy and the Changing Political Landscape in the European Union

The EU is in a somewhat unique position in regard to agricultural FDI. On one hand, arguably the most fundamental function of the EU is to encourage economic cooperation and decrease trade barriers among its

81. EUR. PARL. STUDY, *supra* note 6, at 17–18.

82. *Enlargement*, EUR. UNION, http://europa.eu/european-union/topics/enlargement_en (last visited Jan. 11, 2017) (there are 44 countries in Europe and currently 28 EU members). While the EU is not strictly a supranational institution (its specific boundaries are difficult to define), the supranational elements of its legislative and legal system is what matters for the purposes of this paper. Izabela Kraśnicka, Associate Professor, Lecture at University of Białystok Faculty of Law (May 31, 2016).

83. *How the EU Works*, DELEGATION OF THE EUR. UNION TO THE U.S., <http://www.euintheus.org/who-we-are/how-the-eu-works/> (last visited Jan. 11, 2017).

84. *Id.*; Kraśnicka, *supra* note 82.

85. *See supra* text accompanying notes 41–51.

members.⁸⁶ As such, restrictions imposed by members on the movement of capital between other members or non-EU countries are generally prohibited.⁸⁷ Thus, should one member proscribe the citizens of other members from purchasing its land, EU law would ostensibly be violated and infringement procedures initiated.⁸⁸ On the other hand, land—particularly farmland—is a finite resource and “cannot be considered simply as an ordinary commodity.”⁸⁹ Moreover, small farms are very important to European culture and economy, as they promote food security and sovereignty, help protect the environment, and sustain rural economies and cultures; conversely, the large commercial farms characteristic of FDI are more susceptible to market downturns, employ fewer laborers, are less productive, and have potential negative effects on the environment as a result of their farming practices.⁹⁰

In 2004, the European Council and European Parliament supported land policy guidelines that EU members should consider when investing in the property of developing countries.⁹¹ While the guidelines focused more on the responsibilities of EU members as the source of FDI, it acknowledged the role the guidelines could play in developing national land policy in Central and Eastern Europe.⁹² Moreover, in early 2015 the European Economic and Social Committee (EESC) recommended that all EU members should implement the VGGT and report their use and application to both EU and UN bodies.⁹³ While some guidelines have been adopted and followed by EU members to an extent, many do not

86. *The EU in Brief*, EUR. UNION, https://europa.eu/european-union/about-eu/eu-in-brief_en (last visited Jan. 4, 2017).

87. Treaty on the Functioning of the European Union art. 63, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter *TFEU*]. However, an exception to this rule is that members may restrict the movement of capital if they can justify such restrictions “on grounds of public policy or public security.” *Id.* art. 65(1)(b).

88. See sources cited *supra* note 17.

89. EUR. PARL. STUDY, *supra* note 6, at 54.

90. See generally EUR. COMM’N, OVERVIEW OF CAP REFORM 2014–2020, (2013), http://ec.europa.eu/agriculture/sites/agriculture/files/policy-perspectives/policy-briefs/05_en.pdf [hereinafter OVERVIEW OF CAP REFORM].

91. See generally EU TASK FORCE ON LAND TENURE, EU LAND POLICY GUIDELINES: GUIDELINES FOR SUPPORT TO LAND POLICY DESIGN AND LAND POLICY REFORM PROCESSES IN DEVELOPING COUNTRIES (2004).

92. *Id.* at 1, 12.

93. Opinion of the European Economic and Social Committee on Land Grabbing, ¶ 1.13, 2015 O.J. (C 242) 16 [hereinafter EESC Opinion].

necessarily recognize them when investing either outside or inside the EU.⁹⁴ Thus, it is not surprising that in addition to adopting guidelines, the EESC suggested that member states should have more power to regulate their own land markets.⁹⁵

Nor does the EU itself apply any EU-wide statutory restrictions on FDI per se.⁹⁶ In fact, consistent with its support of globalization, the EU encourages FDI generally and actively works to make EU markets and regulations more attractive to foreign investors.⁹⁷ To a significant extent, the EU has, broadly speaking, benefited greatly from the foreign investments of its members, with trillions of dollars brought into their economies—and by extension the European Single Market—over the last decade.⁹⁸ However, a significant portion of those inflows are the result of intra-EU FDI—largely realized from investments by wealthier EU members.⁹⁹ Nevertheless, the EU undoubtedly benefits by promoting policies that keep its markets efficient and make it an attractive location for FDI.¹⁰⁰

Accordingly, the decisions of the European Court of Justice (EJC) uphold the preference for freer markets, including land markets, through the unrestricted movement of capital.¹⁰¹ While the Court acknowledges that under the Treaty on the Functioning of the European Union (TFEU) members have full control over their system of property ownership, the rules effecting such systems must nevertheless accord with other provisions of EU law.¹⁰² Specifically with the movement of capital, national laws regulating land must 1) “be applied in a non-discriminatory manner;” 2) serve a substantial public interest; 3) be suited to attain that

94. See *EU Policy, ACCESS TO LAND*, <http://www.accesstoland.eu/-EU-Policy-> (last visited Jan. 5, 2017); Fiedler & Karlsson, *supra* note 4, at 16–17.

95. EESC Opinion, *supra* note 93, ¶ 6.10.

96. See *Investment*, EUR. COMM’N, <http://ec.europa.eu/trade/policy/accessing-markets/investment/> (last visited Feb. 20, 2017).

97. See *SINGLE MARKET SCOREBOARD*, *supra* note 10.

98. STEFAN VETTER, DEUTSCHE BANK, *RECENT TRENDS IN FDI ACTIVITY IN EUROPE 5* (2014).

99. See *id.* at 1, 5–8.

100. *Id.* at 8–10.

101. See, e.g., Case C-452/01, *Ospelt v. Schlössle Weissenberg Familienstiftung*, 2003 E.C.R. I-9743.

102. Opinion of AG Geelhoed, Case C-452/01, *Ospelt v. Schlössle Weissenberg Familienstiftung*, 2003 E.C.R. I-9743, ¶ 82.

interest; and 4) “not go beyond what is necessary in order to attain it.”¹⁰³ Discrimination in this respect refers to rules “which provide for different treatment on the basis of nationality.”¹⁰⁴ The final prong, known as proportionality, though ostensibly interpreted flexibly by the courts, has also been applied more rigidly against member state action than EU action.¹⁰⁵

Thus, despite EU law generally proscribing the use of protectionist measures on the flow of capital by its members, there are to a limited extent barriers to agricultural FDI permitted and in place within some EU nations.¹⁰⁶ Many of these restrictions are procedural rather than explicit prohibitions, making investment more difficult or impractical for foreign entities due to compliance requirements with regulatory agencies.¹⁰⁷ However, the trend since the end of the twentieth century has been the elimination of these barriers, with the EU now generally regarded as being among the least restrictive places for foreign investment in the world.¹⁰⁸ Furthermore, FDI between member states is “almost completely unrestricted.”¹⁰⁹

That being said, EU policy is not unsympathetic to the interests of its developing members and their farmers. Instead of erecting barriers, the EU has taken the approach of bolstering its members' family farms and agricultural capabilities through the Common Agricultural Policy (CAP).¹¹⁰ While having undergone several reforms throughout its history, since 2013, the CAP operates under two interrelated pillars designed to promote “viable food production, sustainable management of natural

103. *Id.* ¶ 84.

104. *Id.* ¶ 124.

105. Valentina Vadi, *The Migration of Constitutional Ideas to Regional and International Economic Law: The Case of Proportionality*, 35 *NW. J. INT'L L. & BUS.* 557, 574–75, 577 (2015). However, EU courts have generally adapted the concept of proportionality to meet the needs of European integration. *Id.* at 577.

106. EUR. PARL. STUDY, *supra* note 6, at 59; see Press Release, Sales of Farmland, *supra* note 17.

107. See Thomas Wiedmann, Land Grabbing and Freedom of Investment 7, Presented at European Econ. & Soc. Comm. Public Hearing on Land Grabbing/Large-scale Land Acquisitions (Nov. 4, 2014), http://www.eesc.europa.eu/resources/docs/5-presentation-wiedman_land-grabbing-and-freedom-of-investment.pdf; see, e.g., EUR. PARL. STUDY, *supra* note 6, at 59 (discussing the French SAFERs regulatory scheme).

108. VETTER, *supra* note 98, at 8–9.

109. OECD ECONOMIC OUTLOOK, *supra* note 10, at 169.

110. CAP at a Glance, *supra* note 27.

resources and climate action[,] and balanced territorial development.”¹¹¹ The first pillar involves subsidies and price supports paid directly to farmers who meet certain conditions¹¹² or where market conditions justify payments.¹¹³ The second is designed to encourage rural development through *inter alia* education, innovation, and risk-management.¹¹⁴ While some of the tools under the CAP are compulsory, meaning they are available to farmers in all EU member countries, other support mechanisms are voluntary and may be adopted by member countries to tailor the CAP to their needs.¹¹⁵

Although there is evidence of the CAP’s efficacy in the past,¹¹⁶ some of its measures have contributed to the emergence of large-scale FDI farms and the decline of Europe’s small farmers.¹¹⁷ Notably, the CAP as it existed prior to its 2013 reform premised direct payments to farmers *inter alia* on how much farmland they owned.¹¹⁸ As such, there arises an implication “that land is bought up for the sole use of accessing subsidies.”¹¹⁹ Thus, Farmers and investors had an additional incentive to buy larger parcels of farmland.¹²⁰

Additionally, other EU policies have encouraged large-scale FDI in farmland. Particularly, the EU’s 2009 Renewable Energy Directive

111. OVERVIEW OF CAP REFORM, *supra* note 90, at 1–2.

112. See Albert Massot, *First Pillar of the CAP: II – Direct Payment to Farmers*, EUR. PARL. (Jan. 2016), http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.5.html.

113. See Guillaume Ragonnaud & Albert Massot, *First Pillar of the CAP: I – Common Organisation of the Markets (CMO) in Agricultural Products*, EUR. PARL. (Oct. 2016), http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.4.html.

114. See Guillaume Ragonnaud, *Second Pillar of the CAP: Rural Development Policy*, EUR. PARL. (2016), http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.6.html.

115. See *Agriculture and Rural Development, Direct Payments*, EUR. COMM’N, https://ec.europa.eu/agriculture/direct-support/direct-payments_en (last visited Jan. 5, 2017).

116. See, e.g., EUR. COMM’N CAP IN YOUR COUNTRY: SPAIN 4–5 (Sept. 2016), https://ec.europa.eu/agriculture/sites/agriculture/files/cap-in-your-country/pdf/es_en.pdf.

117. EUR. PARL. STUDY, *supra* note 6, at 30–31, 49–51 “The CAP . . . has clearly failed to live up to its declared objectives to keep people in farming and on the land and to promote a balanced territorial development.” *Id.* at 50.

118. *Id.* at 31.

119. *Id.*

120. *Id.* at 33.

pushed many new investors to begin buying up land for bioenergy purposes.¹²¹ This has resulted in an increasing amount of Europe's limited farmland being converted from food production to energy crops.¹²² Furthermore, by expanding the commercial usefulness of farmland beyond food production, bioenergy production has driven up land prices and driven out small and entrepreneurial farmers.¹²³

In response to the growing concern across the EU, the European Parliament completed a study in 2015 analyzing the scope of farmland acquisition by foreigners among its member states and offering suggestions for how the EU should address the negative aspects of it.¹²⁴ The study first noted that while FDI "is a limited but creeping phenomenon in the EU," it has been increasing quickly in Eastern Europe over the last decade.¹²⁵ However, it is difficult to determine the actual figures of FDI due in part to a lack of record-keeping in some countries, minimal concern and data collection by international organizations on FDIs in Europe, and in some instances the foreign elements of land deals being disguised to protect party confidentiality or circumvent laws.¹²⁶ Nevertheless, there is sufficient evidence that geographically larger and democratically younger countries like Poland and Hungary are experiencing most of the EU's FDI activity.¹²⁷

The study also pointed out a number of unique interests that are behind many of the acquisitions in Eastern Europe. These include holding companies owned by investors from Far Eastern, Middle Eastern, and Western powers and a broad variety of investment funds seeking asset diversification in response to the financial crisis of 2008.¹²⁸ Domestic interests, which include both local entrepreneurs and government actors, also play an important role in facilitating these transactions by providing financial or political support and mediating deals.¹²⁹ A troubling, though unsurprising result of the involvement by

121. *Id.* at 36.

122. *Id.* at 37.

123. *Id.*

124. *Id.* at 1.

125. *Id.* at 17, 20–22.

126. *See id.* at 17–20.

127. *See id.* at 20.

128. *Id.* at 22–23.

129. *Id.* at 23.

these domestic actors is that illicit and corrupt practices are sometimes employed to entice and complete transactions.¹³⁰

Following this information, the study goes on to make several recommendations to ameliorate the problem of farmland grabbing.¹³¹ With respect to the CAP, it suggests that members use the existing framework to financially bolster small-scale farming and that further EU-level reforms be similarly tailored.¹³² Furthermore, the authors of the study argue that because land can have transnational implications and is a unique commodity, the EU should play a greater role in land management through environmental policy.¹³³ The study also suggests that the EU—via the EJC—be more accommodating to member-imposed impediments on FDI, favorably noting some members’ use of preemptive rights to allow governments greater control over acquisitions and the efforts of “civil society led initiatives” in promoting small-scale farming.¹³⁴ Moreover, it advocates that the EU should develop “new data collecting instruments” to create a “pan-European and socially relevant database on the state of the land in Europe.”¹³⁵ Finally, it echoed the EESC by advising the use of the VGGT as a reference point for further reforms.¹³⁶

Ultimately, the situation presents an existential problem for EU farming in that large-scale FDI farm acquisitions threaten to destroy Europe’s traditional family farm system by squeezing out existing small farmers and precluding new ones from taking their place.¹³⁷ As more property is bought up for large-scale farming (or in some cases converted to non-agricultural uses), the availability of agricultural property is diminished and prices for the remaining farmland are pushed up with more and more small farms selling or losing their land as a result of their financial constraints and inability to compete with larger operations.¹³⁸ Additionally, prospective farmers are likely to lack the capital necessary

130. *Id.* at 23, 26.

131. *Id.* at 49.

132. *See id.* at 51–54.

133. *Id.* at 54–55.

134. *Id.* at 58–60.

135. *Id.* at 61.

136. *Id.* at 62.

137. *Id.* at 39–40.

138. *Id.* at 40, 43.

to acquire small farms.¹³⁹ This can leave rural communities financially and culturally depressed.¹⁴⁰ Moreover, once the transition from small-scale to large-scale farming has occurred, it is apparently very difficult to reverse.¹⁴¹

The EU's trouble with FDI is compounded by a political shift across Europe—as well as Western democratic societies worldwide—toward more populist ideologies.¹⁴² Fueled by dissatisfaction with globalist trade policies that are seen as only benefiting the wealthy and apparent disconnect between policymakers and segments of the population, many Europeans are turning to fringe parties, or conversely, mainstream parties are reforming their policies to court those disaffected voters.¹⁴³ However, the movement does not necessarily implicate the traditional shift along the left-right political spectrum; rather, it is a challenge to liberalization generally, in some cases invoking the specter of past greatness that allegedly existed in far less democratic days of old.¹⁴⁴ Accordingly, European populists are showing distrust or outright hostility toward European integration under the EU, favoring more protectionist and nationalistic policies, both politically and economically.¹⁴⁵ With the election of populists in some EU member countries, these policies are beginning to be reflected in national laws throughout the EU.¹⁴⁶

139. *See id.* at 39–41.

140. *Id.* at 45.

141. *Id.* at 43–46.

142. *See generally* Gerald F. Seib, *Behind the Rise of Populism, Economic Angst*, WALL ST. J. (Jan. 20, 2016), <http://www.wsj.com/articles/behind-the-rise-of-populism-economic-angst-1453199402>; Rick Lyman, *Like Trump, Europe's Populists Win Big With Rural Voters*, N.Y. TIMES (Dec. 6, 2016), <http://www.nytimes.com/2016/12/06/world/europe/europe-poland-populism-rural-voters.html>.

143. Seib, *supra* note 142.

144. *See, e.g.*, Lyman, *supra* note 142. “In the formerly Communist nations of Eastern Europe, populists on the left and the right woo rural voters by playing off nostalgia for lost greatness, and the old era of authoritarian leaders and governments that provided for people.” *Id.*

145. *See* Katya Adler, *Populist Challenge Brings Europe to Crossroads*, BBC (Feb. 9, 2017), <http://www.bbc.com/news/world-europe-38915466>.

146. *See, e.g.*, *Denmark Adopts Controversial Law to Seize Asylum Seekers' Valuables*, CNN (Jan. 26, 2016), <http://www.cnn.com/2016/01/26/europe/denmark-vote-jewelry-bill-migrants/>.

Fundamentally then, this growing political trend stands in stark contrast to the free trade principles upon which the EU, and indeed the western world, has prospered over the last century.¹⁴⁷ Thus, while EU leaders attempt to take action on issues facing their bloc of nations, they must do so against a political current that is antithetic to the function and purpose of the EU.¹⁴⁸

While perhaps not at the forefront of this clash between liberal and populist ideologies, policy decisions regarding the agricultural sector are closely implicated in the rise of populism in Europe. Agricultural policy in general tends to directly affect the segment of the population that is fueling the populist movements, namely those living in rural areas, the working poor, and the less educated.¹⁴⁹ Furthermore, agricultural policy in the context of foreign investment invokes several of the main policy concerns of the populist movement: influx of foreign interests (notably in the form of immigration), free trade, and loss of national identity.¹⁵⁰ In the EU, where approximately 44 million people are employed in connection to agriculture—making it the bloc’s largest labor sector—the effect of the CAP on its members’ political, economic, and cultural structures should be evident.¹⁵¹

147. *Anti-globalists: Why They’re Wrong*, ECONOMIST (Oct. 1, 2016), <http://www.economist.com/news/leaders/21707926-globalisations-critics-say-it-benefits-only-elite-fact-less-open-world-would-hurt>. While there is certainly a live debate about whether globalization is a good or a bad thing, this statement (and paper) does not purport to answer that question, but rather is intended to show the unmistakable economic benefit of globalization.

148. See Heather Grabbe & Stefan Lehne, *Can the EU Survive Populism?*, CARNEGIE EUR. (June 14, 2016), <http://carnegieeurope.eu/2016/06/14/can-eu-survive-populism-pub-63804>.

149. See *Reduce Rural Poverty*, FAO, <http://www.fao.org/about/what-we-do/so3/en/> (last visited Nov. 17, 2016); Anton Troianovski, *Europe’s Populist Politicians Tap Into Deep-Seated Frustrations*, WALL ST. J. (May 19, 2016), <http://www.wsj.com/articles/europes-populist-politicians-win-voters-hearts-1463689360>; see also *Guide to Nationalist Parties Challenging Europe*, BBC (May 23, 2016), <http://www.bbc.com/news/world-europe-36130006>.

150. Troianovski, *supra* note 149.

151. *CAP at a Glance*, *supra* note 27.

2. *Agricultural Policy and the Political Shift in Poland and Eastern Europe*

With the collapse of the Soviet Union in 1991, the newly-liberated European states began eyeing membership in the EU.¹⁵² Notably, four countries—Poland, Hungary, Czech Republic, and Slovakia—banded together to form the Visegrad Group (V4) with the objective of hastening acceptance into the bloc.¹⁵³ From the eventual success of the V4 and thus the EU's subsequent expansion eastward, vast swaths of previously unavailable agricultural property began to attract the attention of both EU and international investors.¹⁵⁴

Because of their relatively weak economies and inexpensive property (as compared with the older EU members), the new eastern members feared that their means of domestic agriculture production would be bought up by farmers from Western Europe, leaving locals with diminished farming opportunities.¹⁵⁵ Accordingly, many of the new EU members negotiated to include in their EU accession agreements a moratorium on the sale of farmland to foreign investors.¹⁵⁶ It was hoped that restricting foreign acquisition of land would provide adequate time for the Eastern European economies to mature and land prices to align with those in Western Europe, thereby removing the financial incentive of opportunistic investors.¹⁵⁷

However, the events of 2008 severely changed the outlook for the EU's Eastern members. First, the global financial crisis impeded the economic improvement of Eastern Europe.¹⁵⁸ Second, food prices skyrocketed, causing nations dependent upon importing food to begin

152. *History of the Visegrad Group*, VISEGRAD GRP., <http://www.visegradgroup.eu/about/history> (last visited Feb. 23, 2017).

153. *Id.*

154. See EUR. PARL. STUDY, *supra* note 6, at 27–29; JOHAN F.M. SWINNEN & LIESBET VRANKEN, CTR. FOR EUR. PO'Y STUD., *LAND & EU ACCESSION 1* (2009).

155. Pavel Ciaian et al., *Sales Market Regulations for Agricultural Land in EU Member States and Candidate Countries 6* (FACTOR MARKETS: CENT. FOR EUR. POLICY STUDIES, Working Paper No. 14, 2012).

156. *Id.*

157. See *id.*

158. See Pascal Liu, *Impacts of Foreign Agricultural Investment on Developing Countries: Evidence from Case Studies 9* (FAO COMMODITY & TRADE POLICY RESEARCH, Working Paper No. 47, 2014).

searching outside their borders for opportunities to secure food sources.¹⁵⁹ Due to clever and motivated investors who were able to exploit loopholes in the law, the land sale moratoriums under the accession agreements appear to have had little effect in preventing Eastern European farmland from ending up under the control of foreigners.¹⁶⁰ Perhaps unsurprisingly, many of these investors are from wealthier EU countries like Germany and Denmark.¹⁶¹

Moreover, where the new members—particular those comprising the V4—once actively sought to adopt the liberal democratic principles of the EU, some governments have begun to exhibit authoritarian tendencies.¹⁶² With respect to the V4, its mission has changed following accession to the EU.¹⁶³ For instance, V4's efforts lately have sought to bolster the national power of its members and encourage the EU to give member states a “strong say in the decision-making process.”¹⁶⁴ Critics have suggested that because of these internal shifts, the Eastern members' new policy positions have become more economically restrictive and therefore inapposite to EU policy.¹⁶⁵ Thus sentiment on

159. *Id.*

160. *See* EUR. PARL. STUDY, *supra* note 6, at 19–20.

161. *Id.* It is apt to note that Northern and Western European members of the EU, Germany in particular, are regarded as wielding much of the economic and political power in the EU. *See What Some Europeans See When They Look at Germany*, SPIEGEL ONLINE (Mar. 23, 2015, 4:28 PM), <http://www.spiegel.de/international/germany/german-power-in-the-age-of-the-euro-crisis-a-1024714.html>.

162. *See, e.g.,* Margit Feher & Veronika Gulyas, *Putin's Hungary Visit Aimed at Cementing Ties with Orban*, WALL ST. J. (Feb. 2, 2017), <https://www.wsj.com/articles/putins-hungary-visit-aimed-at-cementing-ties-with-orban-1486072262>; *Hands Off Their DNA: Huge Protests Force Romania's Government to Reverse Itself on Corruption*, ECONOMIST (Feb. 11, 2017), <https://www.economist.com/news/europe/21716570-decree-would-pardon-crooked-officials-dropped>.

163. *The Bratislava Declaration of the Prime Ministers of the Czech Republic, the Republic of Hungary, the Republic of Poland and the Slovak Republic on the Occasion of the 20th Anniversary of the Visegrad Group*, VISEGRAD GRP. (Feb. 15, 2011), <http://www.visegradgroup.eu/2011/the-bratislava> [hereinafter *Bratislava Declaration*].

164. *Joint Statement of the Heads of Governments of the V4 Countries*, VISEGRAD GRP. (Sept. 16, 2016), <http://www.visegradgroup.eu/calendar/2016/joint-statement-of-the-160919>.

165. *Illiberal Central Europe: Big, Bad Visegrad*, ECONOMIST (Jan. 28, 2016), <http://www.economist.com/news/europe/21689629-migration-crisis-has-given-unsettling-new-direction-old-alliance-big-bad-visegrad>.

both sides is deteriorating, with new conflicts emerging between the EU and its Eastern members.¹⁶⁶

Recent legislation enacted in Poland provides a great example of Eastern Europe's reaction to the threat of foreign ownership of farmland and the populist movement within the EU.¹⁶⁷ Compelled by the interests of many Polish farmers, the Polish parliament passed an act on April 14, 2016, which entered into force the day before Poland's moratorium on farmland sales under the terms of its EU accession agreement expired.¹⁶⁸ While ostensibly placing formidable restrictions on the ability of foreigners to hold agricultural properties in Poland, the act also makes it significantly more difficult for Polish citizens to acquire farmland.¹⁶⁹

The new law has several components. First, it limits the sale of farmland to "individual farmers" who receive permission from the government in exchange for agreeing to certain conditions.¹⁷⁰ Individual farmers are defined as natural persons with farming qualifications and existing legal title to agricultural property who have lived and managed farmland for five years in the particular municipality where the property is located.¹⁷¹ Furthermore, an individual farmer cannot own more than 300 hectares of farmland.¹⁷² A farmer who wishes to sell to an unqualified buyer (i.e., not an individual farmer) must first gain approval

166. *See id.*

167. Arkadiusz Krasnodębski et al, *Poland: Restrictions on Trade in Agricultural Property*, MONDAQ (Apr. 28, 2016), <http://www.mondaq.com/x/487202/agriculture+land+law/Restrictions+on+trade+in+agricultural+property>. The title of the law in English is the Act of 14 April 2016 on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury and Amendment to Certain Acts. *Id.*

168. Cienski, *supra* note 16; Chris Fitch, *Polish Farmers Protest 'Land-Grabbing'*, GEOGRAPHICAL (Feb. 9, 2015), <http://geographical.co.uk/people/development/item/788-polish-farmers-protest-land-grabbing>.

169. Cienski, *supra* note 16.

170. *Poland: New Restrictions on Trade in Agricultural Properties Applicable as of 30 April 2016*, SCHOENHERR (Apr. 28, 2016), <https://www.schoenherr.eu/si/publications/publication-detail/poland-new-restrictions-on-trade-in-agricultural-properties-applicable-as-of-30-april-2016/> [hereinafter *Poland: New Restrictions*]; Krasnodębski et al., *supra* note 167.

171. Krasnodębski et al., *supra* note 167.

172. *Id.*

from Poland's Agricultural Property Agency (APA).¹⁷³ Likewise, most business entities may purchase farmland only upon approval and the issuance of a permit by the APA.¹⁷⁴

Second, the law requires that the purchasing farmer not sell or lease the acquired property for ten years after it is acquired; additionally, the purchasing farmer must personally use the property as farmland during that time.¹⁷⁵ However, under extraordinary circumstances, the farmer may be granted a release from these obligations by the courts.¹⁷⁶

Third, the Act subjects potential acquisitions of farmland to a review by the APA, which will also have the power to purchase the property for itself at market price.¹⁷⁷ This preemptive right also includes transactions involving the transfer of shares by companies that own farmland.¹⁷⁸ Similarly, the APA also has a right to purchase agricultural property in several situations where a change in ownership occurs for reasons other than a sale.¹⁷⁹ Notably, such situations may arise in relation to decisions by a court or other public authority.¹⁸⁰ The price paid by the APA is "estimated according to the regulations on real estate management . . . with the participation of a property valuer," which is seen by some as the government essentially setting its own price.¹⁸¹ However, the APA loses these preemptive rights once it consents to the transaction.¹⁸²

Finally, under the Act, the sale of all farmland owned and managed by the government is suspended for five years.¹⁸³ This will keep the nearly

173. *Poland: New Restrictions*, *supra* note 170.

174. *Id.*

175. *Id.*

176. Krasnodębski et al., *supra* note 167.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Katarzyna Kotkowska & Jakub Budyh, *Valuation of Agricultural Property in the New Legal Situation in Poland*, CUSHMAN & WAKEFIELD (June 3, 2016), <http://www.cushmanwakefield.com/en-gb/news/2016/06/valuation-of-agricultural-property-in-the-new-legal-situation-in-poland/>; Lipinski, *supra* note 18.

182. Krasnodębski et al., *supra* note 167.

183. USDA FOREIGN AGRIC. SERV., GAIN REPORT: STATE AG LAND SALES TO BE SUSPENDED 1–2 (2016), https://gain.fas.usda.gov/Recent%20GAIN%20Publications/State%20Ag%20Land%20Sales%20to%20be%20Suspended.%20_Warsaw_Poland_1-22-2016.pdf.

1.5 million hectares of agricultural property that the APA currently manages in public hands at least until that point.¹⁸⁴

The new law applies to “all agricultural properties located in Poland regardless of the legal title to the property of the eligible party.”¹⁸⁵ This includes any arable land that may be used for agricultural purposes even if that land is not or has not previously been used for farming.¹⁸⁶ However, some agricultural properties are excluded, such as properties that are less than 0.3 hectares and properties that contain a residence under 0.5 hectares.¹⁸⁷ Moreover, transfers to some persons and entities are exempt from the purchase requirements and the government's preemptive rights on sales, including: close relatives of the seller; heirs and devisees; local governments; Poland's Treasury or APA; and religious institutions, particularly the Catholic Church.¹⁸⁸ Similar exceptions apply to the APA's preemptive rights for non-sale transfers, and also include situations where the transfer expands a family farm to less than 300 hectares.¹⁸⁹

The implications of the new law are several. Most apparent is that fewer farmland transactions are likely to occur, destabilizing Poland's agricultural property market.¹⁹⁰ Accordingly, property values are likely to become opaque and uncertain, with many of the traditional methods of valuation becoming unsuited for the task.¹⁹¹ Similarly, because most of Poland's land is classified as agricultural, the Act will presumably make the process of buying and converting land for non-agricultural purposes more difficult and costly.¹⁹² In addition, the new law drastically reduces Polish property rights and, stemming from the government's valuation methods and preemptive rights, increases the chances of political corruption.¹⁹³ Finally, the Act may fail to comply with EU law.¹⁹⁴ The

184. *Id.* Note: approximately 2.5 acres is equal to 1 hectare.

185. *Poland: New Restrictions*, *supra* note 170.

186. *Id.*

187. *Id.* This translates to mean properties less than about 0.75 and 1.25 acres, respectively.

188. *See* Krasnodębski et al., *supra* note 167.

189. *Id.*

190. Kotkowska & Budyń, *supra* note 181.

191. *Id.*

192. *See* Lipinski, *supra* note 18.

193. *See Id.*

194. Cienski, *supra* note 16.

European Commission (EC)—which initiates infringement proceedings on behalf of the EU¹⁹⁵—recently found laws enacted by other Eastern members concerned with the acquisition of farmland to be both disproportionate to achieving the members’ objectives and discriminatory toward other EU members.¹⁹⁶ Specifically, the Commission faulted the other laws for requiring buyers to be “long-term residents in the country,” prohibiting legal entities from acquiring farmland, setting farmer qualification standards for buyers, and obligating buyers to personally farm the land.¹⁹⁷ Thus, Poland’s law may likewise be a “restriction to the free movement of capital and freedom of establishment.”¹⁹⁸ This could set the stage for yet another conflict between Poland and the EU.¹⁹⁹

III. ANALYSIS

Although the clash between the EU and its Eastern Members’ farmland policies is largely overshadowed by other issues facing the region,²⁰⁰ it nevertheless presents an untenable situation for the EU.²⁰¹ Reforms should thus be considered by both the EU generally and its members individually. For the EU, this means ceding some powers back to its members and reevaluating the methods it uses to advance farming under the CAP. With respect to the members, efforts to better collect data on FDI in their countries and encourage free market methods of preserving small, family farming would further their objectives; as such, members should endeavor to recognize and accord their policies with the liberal democratic values that the EU represents. The suggestions below should neither be considered an exclusive or exhaustive solution, but rather concepts that demonstrate the existence of liberal solutions which

195. See *Infringement Procedure*, EUR. COMM’N, https://ec.europa.eu/info/infringement-procedure_en (last visited Feb. 23, 2017).

196. Press Release, Financial Services, *supra* note 17.

197. *Id.*

198. *Id.*

199. See sources cited *supra* note 19.

200. For example, Brexit, the perceived degradation of some countries’ rule of law, Russia, etc. See Connolly, *supra* note 15.

201. Press Release, Financial Services, *supra* note 17.

are thus more appropriate to address the issues facing Eastern European EU members and their tension with the EU.

A. EU Reforms

Given that the CAP is the most significant aspect of the EU's agriculture policy and has a financial impact on members' farmers, it presents an opportunity to effect change of the members' laws and influence their people directly. Moreover, through its interpretation and enforcement of its treaties, the EU's discretion is not insignificant when it comes to defining the boundaries of national and supranational competences. Thus, two areas where changes may be helpful are in policies related to how and to what end the EU incentivizes farmers, and the extent to which EU members' may regulate their agricultural property.

1. Change How the CAP Incentivizes and Educates Farmers

While the concept of the CAP is generally considered to be successful since its inception, the policy nevertheless continues to require tweaking in reaction to economic and political changes.²⁰² As the EU embarks on further adjustments to the CAP, it has the opportunity then to implement reforms that contemporaneously address the concerns of Eastern Europe.²⁰³ With its control over the purse strings, the CAP poses a powerful tool to steer reforms within member states.²⁰⁴ To that point, some portion of CAP payments could be made conditional upon members adhering to and demonstrating compliance with basic requirements that generally further free market principles.

Such action would serve two important interests. First, conditioning payments on members' willingness to actively support liberal interests would place political pressure on populist governments to temper their anti-trade policies from both the EU and the farming community reliant

202. See Albert Massot, *CAP Instruments and Reforms Made to Them*, Eur. Parl. (Dec. 2016), http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.3.html.

203. See Massot, *supra* note 112.

204. See *id.*; EUR. PARL. STUDY, *supra* note 6, at 51.

on such payments.²⁰⁵ Giving farmers and rural voters a financial incentive to eschew populism thus undercuts a substantial base of support for the populist politicians.²⁰⁶ Second, conditional CAP payments could presumably ease concerns that the EU may have in permitting members to implement greater barriers to their farmland markets because the EU would still retain its persuasive financial power.²⁰⁷ Though members would have the ability to ultimately enact restrictions contrary to the conditions, they would do so at significant political and financial peril.²⁰⁸

Another opportunity to address some of the underlying issues of populism is through education funding under the CAP. Although part of the EU's mission under the CAP is to encourage innovation in agriculture,²⁰⁹ it still seems to treat farming as something based more on pastoral ideals and traditions rather than a profession suited for modernization or formal education.²¹⁰ Moreover, one of the predominant factions driving European populism is less educated voters from predominately agricultural areas.²¹¹ Thus, should farming be treated more as a hard science deserving of a university level education and were the EU to offer financial incentives through the CAP for such education, some of the aforementioned voters would likely become more educated and presumably less agreeable with the ideas effused by populism.

While the concept of farmers utilizing hard science in farming may be associated with the image of America's giant agri-corporations and commodification of farming (and thus inconsistent with the ideals of

205. See *supra* notes 33, 149–151.

206. *Id.*

207. See *supra* note 204.

208. For example, between 2014 and 2020, Poland stands to utilize over €30 billion of CAP funding and Hungary is projected to receive €12 billion. EUR. COMM'N, CAP IN YOUR COUNTRY: POLAND 1 (June 2017), https://ec.europa.eu/agriculture/sites/agriculture/files/cap-in-your-country/pdf/pl_en.pdf; EUR. COMM'N, CAP IN YOUR COUNTRY: HUNGARY 2 (Nov. 2016), https://ec.europa.eu/agriculture/sites/agriculture/files/cap-in-your-country/pdf/tc-iyc-hu_en.pdf.

209. Ragonnaud, *supra* note 114.

210. *Farming as Rocket Science*, ECONOMIST (Sept. 7, 2013), <http://www.economist.com/news/united-states/21584994-why-american-agriculture-different-european-variety-farming-rocket-science>.

211. See *supra* notes 27, 149.

European farming),²¹² adopting a more scientific, researched based education to the practice of farming should not necessarily predicate a move toward large-scale commercial farming.²¹³ In fact, maintaining Europe's system of small farms could offer numerous *de facto* laboratories on which to test and improve the outputs of different farming methods and thus bettering the agriculture sector as a whole.²¹⁴

2. Permit Member States to Exercise Greater Control Over Their Farmland

As one of the main issues between the EU and its eastern members is the perceived intrusion by the EU into their national identities, rather than expand its role,²¹⁵ the EU should allow its members to exercise a greater degree of sovereignty to address farmland grabbing.²¹⁶ Although EU law limits the extent to which members may restrict the movement of capital, it nevertheless contains exceptions to those limitations.²¹⁷ Moreover, there appears to be recent softening by the EU legislative bodies where it comes to the EU's exclusive position in regulating capital related to agriculture, thus opening the door to members being able to play a greater role in agricultural markets.²¹⁸ Although EU law as written and generally recognized by the courts imposes significant obstacles on members seeking to restrict FDI in agricultural land markets, the EU's judicial system seems to exhibit fluidity in its

212. See *Overview of CAP Reform*, *supra* note 90, at 6.

213. See Tom MacMillan & Tim G. Benton, *Engage Farmers in Research*, NATURE (Apr. 30, 2014), <http://www.nature.com/news/agriculture-engage-farmers-in-research-1.15108>.

214. See *generally id.*

215. See EUR. PARL. STUDY, *supra* note 6, at 54–55, 60–61.

216. See *supra* notes 15, 61, 80.

217. See *supra* notes 87–88, 101–106 and accompanying text.

218. See Albert Massot, *The Common Agricultural Policy (CAP) and the Treaty*, EUR. PARL. (Oct. 2016), http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.1.html (“Article 4(2)(d) [of TFEU] recognises that competence is shared between the Union and the Member States in the field of agriculture, contrary to established legal opinion and the stance adopted by the Commission’s legal services . . . , which have hitherto regarded policy on markets . . . as an exclusive Union competence.”).

interpretations when it appears appropriate to ameliorate the growing pains associated with the process of European integration.²¹⁹

Such a shift in policy may not require much in terms of actual changes to EU law or its treaties. Rather than pursuing the suggestion in the European Parliament Study calling for the EU's courts to be more lenient when dealing with members' restrictions on land markets, a change could be implemented earlier on in the process whereby the EC simply chooses to not bring infringement procedures against some national laws restricting farmland acquisitions that pose potential violations of EU law.²²⁰ This is not to say that the EC should ignore such potential violations altogether. Instead, for an appropriate time it could merely relax its enforcement, targeting only the more egregious violators. Moreover, changing enforcement policy would ostensibly be less unusual than a conscious decision by the court system to reinterpret legal principles.²²¹

Conversely, the EU could consider taking a somewhat simpler—though perhaps more blunt and extraordinary—approach of entering into new agreements with some of its Eastern members to reinstate their previous land sale moratoriums for a reasonable amount of time.²²² Considering that many of the new members arguably did not receive the benefit of their moratoriums due to the 2008 financial crisis and motivated loophole-exploiting investors, new moratoriums would ostensibly be justified in order to correct the unanticipated problems that occurred under the previous ones.²²³ Furthermore, the moratoriums could be conditioned on members creating and implementing a satisfactorily liberal democratic regulatory framework for once the stay has ended.²²⁴ Additionally, such a measure would temporarily remove a present,

219. See Vadi, *supra* note 105 and accompanying text.

220. See *supra* notes 17, 195. “The [European] Commission . . . enjoys wide discretion whether to initiate and terminate infringement proceedings.” STINE ANDERSON, EUR. PARL., THE RELATIONSHIP BETWEEN THE COMMISSION ACTING AS GUARDIAN OF THE EU TREATIES AND COMPLAINANTS: SELECTED TOPICS 6 (2012), [http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462441/IPOL-JURI_NT\(2012\)462441_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2012/462441/IPOL-JURI_NT(2012)462441_EN.pdf) [hereinafter COMMISSION DISCRETION STUDY].

221. See COMMISSION DISCRETION STUDY, *supra* note 220.

222. See *supra* notes 6, 155, 159.

223. See *supra* notes 6, 155, 159.

224. See, e.g., *infra* Section III.B.

though lesser point of political contention, and allow the EU time to focus on more pressing problems.²²⁵

B. National Reforms

Reforms at the EU level, however, can only go so far. Ultimately, the efficacy and willingness of national actors will be a main determinant of the extent to which agricultural FDI will be regulated and EU principles upheld.²²⁶ While ostensibly members will have greater latitude to enact stronger rules related to agricultural acquisitions given the EU concessions suggested, they would do well to keep in mind the economic benefits that FDI and, more generally, EU membership offers.²²⁷ Thus, members should also aim to structure any such regulations with an eye toward promoting liberal democratic principles in the long run, specifically by strengthening the private property rights of their citizens and ensuring that their regulatory structures are transparent.

1. Stronger Property Rights and Benefits for Natural Persons

Thus far, the methods pursued to curtail large-scale farmland FDI by eastern EU members have taken a decidedly restrictive angle.²²⁸ However, rather than a limitation-based approach to protecting the property interests of farmers, measures that both strengthen private property rights and offer incentives based on those rights would be more closely aligned with the liberal democratic principles of the EU.²²⁹

225. See Connolly, *supra* note 15.

226. See *supra* notes 61, 78, 90, 146–48.

227. See, e.g., *supra* notes 47–52, 98, 112–115.

228. See generally Press Release, Financial Services, *supra* note 17; see generally Cienski, *supra* note 16.

229. See ECONOMIST INTELLIGENCE UNIT, DEMOCRACY INDEX 2015: DEMOCRACY IN AN AGE OF ANXIETY 57 (2016), <http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=EIU-Democracy-Index-2015.pdf&mode=wp&campaignid=DemocracyIndex2015> (stating the extent to which a country has and upholds private property rights is a determinant in how democratic the country is regarded); *Measuring Change: A Look at the Impact of Property Rights on Farmers*, USAID (Nov. 16, 2015), <https://www.land-links.org/2015/11/measuring-change-a-look-at-the-impact-of-property-rights-on-farmers/>.

Given that large-scale FDI acquisitions are often effected by conglomerations, as a preliminary matter laws would do well to recognize that fact.²³⁰ Therefore, members could enact regulations that distinguish between natural and legal persons for purposes of land acquisition.²³¹ These would provide governments greater ability to limit acquisitions by the usual perpetrators of large-scale FDI while making acquisitions by those typically engaged in small-scale farming, such as individuals, less restricted. Disclosure requirements could also be tailored so that such rules are not susceptible to the work-arounds that enabled acquisitions to occur under the new member's accession agreements.²³² So long as the regulations fail to make differentiations based on an entity's national origin and do not outright prohibit the sale to legal entities, they would appear to satisfy the non-discrimination requirement of the European courts and avoid EU scrutiny.²³³

As for property rights specifically, rules could be enacted to recognize farm sizes within a certain acreage and owned by natural persons as "family farms." Tax laws could then be amended to provide owners of such properties tax benefits—credits, deductions, etc.—thus reducing some of the financial burden that small-scale farmers face and making them more competitive with large-scale farming.²³⁴ Moreover, once a property has been designated a family farm, laws could serve to make it more difficult to rezone such farms for other uses or to zone adjacent properties with uses incongruent to agriculture.²³⁵ While such restrictions may impact the transferability of the farm, and thus its value, the tax implications could accordingly be adjusted by regulators so as to counterbalance the negative effects.

Similarly, member countries could encourage agricultural conservation efforts.²³⁶ This could be done primarily by recognizing tax breaks for agricultural properties of a certain size where the farmer has

230. See *supra* notes 40–41, 128. See also *supra* note 76 and accompanying text.

231. See *supra* notes 68, 76.

232. See *supra* note 160; *infra* note 245.

233. See *supra* notes 103–104. Cf. *supra* note 197.

234. See *supra* notes 35, 138.

235. See KRUFIT, *supra* note 37, at 1–2; Mich. Comp. Laws Ann. § 286.471 (2018).

236. See, e.g., EUR. PARL. STUDY, *supra* note 6, at 60 (discussing the European Network on Access to Land).

sold development rights to a public or private conservation entity.²³⁷ In addition to accomplishing the government's apparent purpose of lessening the hardships that drive small-scale farmers off their lands, such measures could also propagate a synergistic industry based on the preservation of farmland.²³⁸ Additionally, or conversely, national governments could consider imbuing small-scale farmers with the ability to transfer development rights.²³⁹ Not only would such rights be valuable to those farmers, thus encouraging them to retain and use their properties, the development transfers could help supplement the CAP's objectives by being channeled into the farmers' communities in order to spur rural development and create jobs.²⁴⁰

2. More Public Oversight and Transparency on Land Transactions with Foreign Entities

Given the lack of information and transparency over FDI in Europe, the creation of public oversight and data-collection systems may well be the most important reform members can implement.²⁴¹ At the very least, gathering information is a key first step toward developing more comprehensive policies on FDI and farmland.²⁴² While the European Parliament Study favors establishing an EU-wide reporting mechanism,²⁴³ there are more potential benefits and opportunities if the EU (while remaining insistent) were to instead defer to its members to implement national systems.

First, the EU's insistence could be aided by financial incentives (or conversely penalties) to implement reporting requirements that gather the basic information sought by the EU.²⁴⁴ Second, this would give national governments the ability and some discretion to adjust their requirements to focus on and root out particular information with which their nations

237. See *supra* note 36 and accompanying text.

238. See, e.g., *What We Do*, LAND TR. ALLIANCE, <http://www.landtrustalliance.org/what-we-do> (last visited Mar. 1, 2017).

239. See *supra* note 36 and accompanying text.

240. Ragonnaud, *supra* note 114.

241. *Supra* note 114.

242. EUR. PARL. STUDY, *supra* note 6, at 61.

243. *Id.*

244. See discussion *supra* Section III.A.1.

may be interested, such as exploitative investors.²⁴⁵ Third, publicly disseminating information related to farmland transactions could help ameliorate some of the concerns associated with valuation that FDI restrictions may impose.²⁴⁶ Specifically, disclosure of price information would enable the public to make sure any land deals conducted by their government were for a reasonable value and allow the market to evaluate such transactions in comparison to others.²⁴⁷ Finally, public oversight and transparency is simply akin to good democratic government.²⁴⁸ Not only would such initiatives encourage beneficial investing by more responsible investors,²⁴⁹ they may also be regarded as a measure of good faith by the EU, thus further supporting its concessions.²⁵⁰

Unfortunately, it appears that there is a tendency among Eastern European governments to eschew oversight. For example, Poland's government is generally becoming more secretive and actively curtailing efforts to increase public transparency,²⁵¹ Romanian officials recently attempted to quietly undermine public corruption laws,²⁵² and Hungary's Prime Minister appears to relish Russian authoritarianism.²⁵³ Thus, it remains to be seen whether the additional financial incentives and ancillary political pressure will be enough to alter that tendency.

IV. CONCLUSION

While foreign investment in agriculture is not a new phenomenon, the increasing size of transactions and the expansion of its scope into the EU adds another wrinkle for national and international governments to

245. See *supra* note 131, 160.

246. See, e.g., Kotkowska & Budysh, *supra* note 181.

247. *Supra* notes 70, 191, 193.

248. ECONOMIST INTELLIGENCE UNIT, *supra* note 229, at 50 (noting that whether the functioning of government is open and transparent is a factor that informs the level of democracy in a given country).

249. See Fiedler & Karlsson, *supra* note 4, at 2; RAI, *supra* note 8, at 11, 15, 17–18.

250. See discussion *supra* at Section III.A.2.

251. See Neil Buckley & Evon Huber, *Poland's Media Protests Mark Bitter Political Stand-off*, FIN. TIMES (Dec. 18, 2016), <https://www.ft.com/content/fc4b12d8-c524-11e6-8f29-9445cac8966f>.

252. *Hands Off Their DNA*, *supra* note 162.

253. Feher & Gulyas, *supra* note 162.

consider. The rise in Eurosceptic populism across the EU makes addressing large-scale agricultural FDI more challenging at both the national and supranational levels. Thus, land grabbing and the associated negative aspects of it, in particular the economic consequences, present real and continuing political and legal challenges for the EU and its Eastern European Members.

Without placating to the more illiberal elements of the populist movement in Europe, the EU should consider reforming its agricultural policy to better promote and incentivize farming in the EU and allow its members greater ability to address farmland grabbing. Additionally, it is in the best interests of member states, particular those in Central and Eastern Europe, to identify and record the extent of agricultural FDI within their borders and take measures that protect the rights and livelihoods of their farmers while simultaneously continuing to promote the EU's liberal democratic principles. Whether the EU will capitulate to these reforms and whether Eastern European governments will responsibly utilize any new discretion in accordance with liberal principles is yet to be determined. However, in light of the larger problems facing Europe, both parties would be wise to amicably ameliorate this situation in favor of a more united, democratic Europe.

