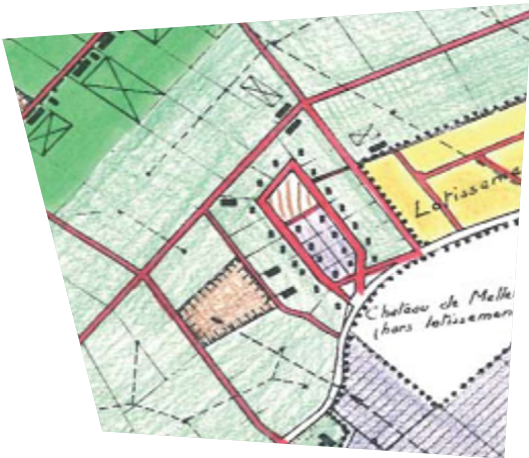




SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Review of France's SAFER Land Market Interventions

A report to the Scottish Land Commission
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Review of France's SAFER Land Market Interventions

Author:

Kirsteen Shields

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For further information on this project contact:

James MacKessack-Leitch
Scottish Land Commission
An Lòchran,
10 Inverness Campus
Inverness, IV2 5NA

 +44 (0)1463 423 300

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Executive Summary

Understanding international experience of land market interventions is a key part of developing the Scottish Land Commission's evidence base, and ensures robust advice is available on developing proposals for the Scottish context. The French 'SAFER'¹ model regulates agricultural land in the public interest in France and is a key international model in this respect.

Recent research for the Scottish Government has highlighted the SAFER mechanism as an example of an intervention in land markets in Europe.² In that study the SAFER example was located within a wider discussion about land restrictions in Europe and the short SAFER case-study did not go beyond a summary of the mechanism and perceived compatibility with European Convention on Human Rights (ECHR) case law.

The SAFER agricultural land governance model was introduced as part of a wide package of reforms credited with transforming French agriculture from the 1960s onwards. Yet beyond France SAFER is hardly known, and within France, experts have commented that SAFER is little understood. Existing research on SAFERs is mostly in French and few studies focus purely on SAFER and not the wider package of agricultural reforms introduced at the same time.

This report presents a new analysis of this important institution. It collates existing research and new primary research, collected through interviews with key experts, into a comprehensive account of the model. It produces a robust understanding of the processes and development of the SAFER land governance model.

¹ On terminology; the term 'SAFER' is used to denote the institution as a whole but there are times when the 'SAFERs' is used to denote the plurality of regional SAFER organisations. 'SAFER' is an acronym for Sociétés d'aménagement foncier et d'établissement rural. Suggested translation: 'French Land Use and Rural Settlement Corporation'.

² Shields, K. (2022). [A Review of Evidence on Land Acquisition Powers and Land Ownership Restrictions in European Countries](#), Scottish Government Report.

1. Introduction

This report presents new primary research gathered through interviews with key experts on French land markets together with translation of existing research and reports to provide a comprehensive overview of the SAFER mechanism.

In particular the work presents:

- A technical overview of the SAFER mechanism (Chapter 3)
- Beyond agricultural case studies (Chapter 4)
- A review of the SAFER governance framework (Chapter 5)
- A review of SAFER's impacts (Chapter 6)
- A review of SAFER legal compatibility with ECHR and EU law (Chapter 7)
- A summary of relevant legal developments and caselaw (Chapters 3 and 7)
- An extensive list of resources on SAFER (References)

1.1 Background to this Report – Reforming Land Markets

Scotland is well known for an unusually concentrated pattern of land ownership by European standards. The public consultation on the forthcoming Land Reform Bill contains a proposal for a Public Interest Test (PIT) on significant land transfers which would provide a mechanism to better address this issue.³

The PIT draws on previous work by the Scottish Land Commission (SLC),⁴ which looked at similar mechanisms within the wider UK economy, such as the Competition and Markets Authority, as well as drawing upon international experience of relevant models.⁵ The SLC has noted that the French SAFER model, while significantly and substantially different in operation, provides a possible parallel to the proposed PIT in stated objectives and the mechanism by which these are achieved.

The aim of this report is to expand understanding of the SAFER model.

³ The Scottish Government. (2022). [Consultation on 'Land Reform in a Net Zero Nation'](#). Scottish Government website.

⁴ Scottish Land Commission. (2021). [Legislative proposals to address the impact of Scotland's concentration of land ownership](#).

⁵ Glass, J., Bryce, R., Combe, M., Hutchison, N.E., Price, M.F., Schulz, L. and Valero, D. (2018). [Research on interventions to manage land markets and limit the concentration of land ownership elsewhere in the world](#). A report commissioned by the Scottish Land Commission.

1.2 Introduction to 'SAFER'

At the end of the second World War, French agriculture was a relic of the nineteenth century and lagged behind those agricultural states that had begun to transition to industrial agriculture. Faced with a rural-urban exodus, France adopted a series of agricultural reforms in 1960 (see s.3.1.2.). By the middle of the 1970s, French agriculture was transformed, and France had become the second largest exporter of agricultural goods globally.⁶

The SAFER was created during this time as part of extensive agricultural reforms rolled into the Orientation Laws of 1960. The legislation established that each region in France should have a 'SAFER' office which would monitor regional sales of farmland, and which would have the power to intervene in land sales. The SAFER can be considered equivalent to a land bank purchasing and storing lands before redistributing them to individual buyers in a bid to consolidate land parcels and render French agriculture more effective.

The regional SAFERs are private sector companies upon which the State and the Parliament have bestowed a public interest function. The SAFERs conduct transactions in farmland and rural property under the authority of representatives of the government (The Finance Ministry and the Ministry of Agriculture). The SAFERs operate on the profits from sales but they do not pay dividends to shareholders. SAFER shareholders include Crédit Agricole, agricultural companies, the state and the region.⁷

Originally the SAFERs intervened only in the service of the agricultural sector, for example to assist young farmers acquire land, increase the size of holdings, or to restructure land parcels. From 1990, legislation empowered the SAFERs to handle the land management needs of the State and local government authorities during public infrastructure projects such as the construction of highways or railways (e.g., the TGV Atlantique). More recently the mission of the SAFERs has been enlarged to include environmental protection of the countryside.

The SAFERs have public missions set out in their founding legislation (French Agriculture Orientation Law 1960). To fulfil their public missions the SAFERs purchase and sell rural and agricultural property on the open market. They may use a pre-emptive right to intervene in land sales, as notaries have an obligation to inform the SAFERs of any sales they are handling two months prior to the closing of the sale. Pre-emption also includes the right to contest the declared sale price if the SAFERs believe the price is too high compared to the prevailing market conditions. It is understood that for the most part sales are not contested and the SAFERs intervene in the minority of agricultural land transactions.

When SAFERs resell land, the sale is open for public tenders. Potential acquirers of property are examined by a SAFER local administrative ('département') committee and the purchaser is selected based on how their proposed use of the land fits with agricultural land use policy and broader land management directives. These SAFER committees bring together representatives of professional agricultural organisations, different government agencies as well as local, elected officials in order to ensure the rural property market serves the established priorities of national land management.

⁶ See further Lynch, E. (2010). *Interwar France and the Rural Exodus: The National Myth in Peril*. *Rural History*, 21 (2), 165–176; Bivar, V. (2018). *Organic Resistance. The Struggle over Industrial Farming in Postwar France*, Chapel Hill, University of North Carolina Press.

⁷ From internal SAFER documentation shared with the author and the Scottish Land Commission.

2 Methodology

This work seeks to provide a robust understanding of the processes and development of the SAFER mechanism, accessible to all stakeholders and interested parties. It does so by collating existing research in French and English on the SAFER mechanism, the wider land market context in France, and supplementing this research with interviews with key experts on SAFER and land dynamics in France.

2.1 Research Questions

The research was concerned with the following questions:

1. How and why was the mechanism created?
2. What are the stated objectives of the SAFER mechanism?
3. What is the governance framework for the mechanism?
4. What are the actual and perceived failures and successes of the mechanism?
5. How is public interest understood and engaged for SAFER purposes and by whom?
6. What impacts has the SAFER had on the wider land market in relation to land values/prices/uses and the volume of land coming to market?
7. What mechanisms and loopholes exist for landowners to avoid SAFER interventions?
8. Are there any landowner behaviours and/or culture changes associated with SAFER protections?
9. Have there been internal domestic legal challenges concerning SAFER protections? If so on what grounds and what was the outcome?
10. Have there been ECHR challenges concerning SAFER protections? If so on what grounds and what was the outcome?
11. To what extent is SAFER considered a cultural and political norm in France?
12. Have there been attempts to revise or remove SAFER? If so, why?

In order to address these questions, the research grouped questions together and addressed through the following stages: (i) review of existing material on SAFERs; (ii) interviews with key experts; and (iii) cross-checking findings from (i) and (ii) with supplementary resources on advice of experts.

2.2 Review of Existing Literature

Existing research on and knowledge of the SAFER model beyond France is limited and most studies are in French. The initial evidence review stage therefore sought sources using online tools such as Mendeley, ResearchGate, and Discovered databases, as well as web searches for governmental and intergovernmental reports. These documents were reviewed and summarised to gather existing knowledge relevant for responding to the research questions (outlined above).

2.3 Interviews with Key Experts

The research goes beyond existing descriptions of SAFER to address knowledge gaps on SAFERs and develops new primary research through semi-structured interviews with key experts.⁸

The interviewees gave their consent to be listed and quoted in this research. Interviews were conducted mostly in French with some English where interviewees were comfortable speaking English. The interviews were recorded and transcribed by Dr Kirsteen Shields, who has competence in French language, with ad hoc French language assistance from University of Edinburgh doctoral student, Mayline Strouk, who is a French citizen. The interview responses were grouped into themes aligned to the research questions outlined above.

2.4 Cross-checking Findings

This report was shared with all interviewees ahead of publication. Findings were discussed with an internal group of academic experts and with the Scottish Land Commission team at appropriate intervals.

⁸ The Schedule of Interviews can be found in [Annex I](#)

3. SAFER: Technical Overview

Summary

This chapter collates existing research on the SAFER model beyond France to establish what we already know about SAFER. Research depositories Mendeley, Researchgate, and Discovered were used to locate existing research including governmental and intergovernmental reports. These sources were reviewed and summarised with a view to answering the following research questions:

1. How and why was the mechanism created? (Section 3.1.)
2. What are the stated objectives of the SAFER mechanism? (Section 3.2.)
3. What is the governance framework for the mechanism? (Section 3.3.)
4. What are the actual and perceived failures and successes of the mechanism? (Section 3.4.)

3.1 Rationale

The SAFERs were created in 1960 as part of extensive agricultural reforms (the 'Lois d'Orientation') with the rationale of agricultural 'modernisation'. A key aim of SAFER was the redistribution of agricultural land, by acting as a landbank, and the reorganisation of agricultural land into consolidated parcels (that could be rendered more efficient through mechanisation and industrialisation). As Tanguy Martin highlighted in interview, it is important to note that SAFER aimed at creating 'human-sized' farms, rather than land consolidation without limit.⁹

The rationale for SAFER should be understood within the wider aims of transforming French agriculture after the Second World War. The agricultural reforms were set within a period of social mobility in the post-war boom years which had particular impacts on agricultural communities. In *Rural Inventions: The French Countryside after 1945*,¹⁰ Sarah Farmer describes how the combination of impoverished conditions on farms alongside improved conditions in cities led to a rural 'exodus', as not only landless farm labourers but also the children of smallholder or 'peasant' farmers left the countryside for the city.¹¹ In some cases the migration of rural men was precipitated by the migration of rural women for whom "the desire to live in a decent house with washing machines and updated kitchens could be the first step in a decision to leave for the city."¹²

⁹ Tanguy Martin in interview. The first laws about SAFER mentioned 'human-sized' farms but the law did not define them. Pierre Missioux comments that the term used now is "'family farms' – that is to say farms where the capital comes from the family."

¹⁰ Farmer, S. (2020). *Rural Inventions: The French Countryside after 1945*. Oxford University Press.

¹¹ See further; Lynch, E. (2010). Interwar France and the Rural Exodus: The National Myth in Peril. *Rural History*. 21 (2), 165–176.

¹² Farmer, S. (2020). *Rural Inventions: The French Countryside after 1945*. Oxford University Press. At p.19

The exodus created long-lasting impacts on the viability of rural life in France as described in 'Rural Inventions':

*"[T]hese years saw 2.4 million people overall leave the countryside to seek employment in sectors of the economy stimulated by the postwar boom (construction, chemicals, electricity, and engineering) as well as in administration, commerce, and service industries. During those same years 1.3 million retirees came back, indicating a continued attachment to their place of origin. But their return could do little to counter the collapse of rural communities, as young people left farms followed by the shopkeepers, artisans, and workers who drained away from small towns and villages."*¹³

Like many agricultural states at the time, the French government used different tools to industrialise French farming, such as creating subsidies for major agricultural crops, promoting chemical inputs, new seeds, techniques, technologies, and mechanisation – and by facilitating farmers access to these inventions through enabling access to credit and agricultural loans, sometimes for the first time.¹⁴

These developments underlined the need for further intervention in agricultural land redistribution in a bid to ensure that land was structured into effective linear parcels (that would allow machinery, namely tractors, to operate). Farmers and the French government were also concerned that agricultural land should remain in the hands of those who could farm it (in pursuit of the national interest and with an eye to the European common market) and that new entrants could gain access to land.

Farmers organised through the JAC union (Jeunesse Agricole Catholique or Young Catholic Farmers) and the main farming union FNSEA (Fédération Nationale des Syndicats d'Exploitants Agricoles) to advocate for the creation of a body to monitor and manage agricultural land transfers as well as other aspects such as security of tenure and subsidies deemed essential for agricultural prosperity. After decades of campaigning, the French state supported the major unions calls and the SAFERs were created.¹⁵

¹³ Ibid. At p.20.

¹⁴ See Bivar, V. (2018) *Organic Resistance: The Struggle over Industrial Farming in Postwar France*, Chapel Hill: University of North Carolina Press, 13–47. See also Cleary, M. C., (1989) *Peasants, Politicians, and Producers: The Organisation of Agriculture in France since 1918*, Cambridge: Cambridge University Press. See further; Loveluck, W. 2017. "L'agriculture à crédit: Une analyse socio-historique de l'évolution du crédit en agriculture en France à l'aune des évolutions du capital fictive", Mémoire de Master 2 à l'EHESS sous la direction d'Eve Chiapello.

¹⁵ See further Benegiamo, M. & Loveluck, W. (2022) Agrarian crises and producerist populism in French rural unions: limits and potential for an emancipatory rural politics. *Sociologia del Lavoro*. 164-183. Sencébé, Y., Pinton F. & Alphanéry, P. (2013) Le contrôle des terres agricoles en France. Du gouvernement par les pairs à l'action des experts, *Sociologie* 2013/3 (Vol. 4), pps 251-268.

3.2 Four key policies for agricultural reform

“It took 30 years of youth movements to impose a new agricultural policy in the 1960s. France had a (trade) deficit and wanted to modernise agriculture. At the same time, it wanted to create a common market with 6 countries. [...] Young farmers were keen to set up these SAFERs, and the state made this possible.”

Robert Levesque, President, AGTER, France.

Key policies for agricultural reform introduced in the post war period have since evolved but remain the bedrock of France’s agricultural vision. The reforms are commonly referred to in terms of four key policies:

1. The statute of agricultural tenancies introduced in 1946, stated that the tenant could not be removed by the landlord and that the rent was governed by a prefectorial decree (in other words the law defined the method of calculating the rent).

Through the Orientation Law of 1960, three further policies were legislated:

2. The creation of SAFERs as a governance mechanism to oversee agricultural land transactions.
3. The creation of ‘control over farm structures’ which aimed to ensure farms are neither too big nor too small according to the model of a modern farm operating on human level and keeping its family trait.¹⁶
4. The creation of subsidies to support the setting-up of farmers considered to be ‘good’ or ‘preferable’ farmers by the agriculture ministry and the farming unions. These were known as ‘installation policies’.

In 1962, a further key legislative development that continues to shape agricultural transactions in France today was the introduction of the SAFERs rights of pre-emption (the right of first refusal on the sale of land). These policy reforms on farming tenancies, the creation of the SAFERs, control of farm structures and subsidies, remain the foundation for French agricultural policy today despite amendments and evolutions.

¹⁶ See further Mertz, G. (2010) *France: La régulation de la taille des exploitations agricoles, “le contrôle des structures”*, AGTER pub. Also see Access to Land blog, *Structures Policy in France: Controlling the right to access farmland*. Available at acesstoland.eu/Structures-Policy-in-France. Accessed June 2023.

3.3 SAFER Objectives

3.3.1 Aims and objectives

“The years 1945-50 were dedicated to production, the years 1960/62 were those of adaptation to Europe, the 1990s are those of adaptation in the world, taking into account supply and demand.”

Pierre Méhaignerie, French Minister of Agriculture, 1977 – 1981.¹⁷

The SAFER is understood to have been introduced in order to drive ‘modernisation’ of French agriculture. This was partly in response to demands of farmer movements and partly in conjunction with a desire for French agriculture to be competitive within the common market of what is now known as the European Union.¹⁸ The SAFER mechanism was intended to guarantee access to land for farmers who had the highest potential productivity gains.¹⁹

The legislative basis for the introduction of SAFERs is found in the *Agricultural Orientation Law 1960*,²⁰ known as *Société d’Aménagement Foncier et d’Etablissement Rural*, or ‘SAFER’.²¹

In the 1960 Act, the overall aims of the legislation are described as:

‘[To] establish parity between agriculture and other economic activities;

1. By increasing the contribution of agriculture to the development of the French economy and national social life, by balancing the overall agricultural trade balance of the national territory, taking into account the evolution of the needs, the natural vocations of the country, its place in ‘la Communauté’ [the French general public] and in the European Community and the aid to be given to underdeveloped countries;
2. By making agriculture participate equitably in the benefit of this expansion by eliminating the causes of disparity existing between the income of persons exercising their activity in agriculture and that of persons employed in other sectors, in order to bring in particular the social situation of farmers and agricultural employees at the same level as that of other professional categories;
3. By putting agriculture, and more especially family farming, in a position to compensate for the natural and economic disadvantages to which it remains subject compared to other sectors of the economy.’²²

¹⁷ Cited in SAFER report (2018). 1960-2010 Les Safer: *Repères historiques*. Available at www.safer.fr/app/uploads/2018/10/Notre-Histoire.pdf. Accessed 25th September 2023.

¹⁸ Butterwick, M., & Rolfe, E.N. (1965) Structural Reform in French Agriculture the Work of the SAFERs. *Journal of Agricultural Economics*, 16 (4), 548–554.

¹⁹ Boinon, JP. (2011). Les Politiques Foncières Agricoles en France Depuis 1945. *Économie et Statistique*, 444-445.

²⁰ *Loi n° 60-808 du 5 août 1960 d’orientation agricole* [Suggested translation: Law no 60-808 du 5 August 1960 on agricultural orientation.]

²¹ Article 15, SAFER incorporation, in *Loi n° 60-808 du 5 août 1960 d’orientation agricole*.

²² As above, at Article 1.

3.3.2 Public Missions

The SAFERs have four missions of 'general interest'²³:

1. Development of agriculture and forestry

- Promote the installation of young farmers and the transmission of farms;
- Restructure, expand agricultural and forestry holdings by seeking economic and environmental performance.

2. Support local development

- Provide land solutions;
- Economic or infrastructure projects of local authorities;
- To support local leaders.

3. Participate in the protection of the environment

- Preserve landscapes;
- Protect natural resources (agricultural land, wetlands, water, biodiversity);
- Fight against natural hazards and the risk of flooding;
- Providing environmental offsets.

4. Ensuring transparency in the rural land market

- Process all market information;
- Transmit information on land movements to local authorities;
- Propose indicators of land dynamics at different geographical scales;
- Alert public authorities and provide them with national indicators.

There is no official hierarchy between these missions and different regions have different priorities and challenges.

Regional Variations:

"One of the roles of my SAFER is to fight against "Mitage" translated as "sprawl". People try to build houses without permission, they will put a trailer on the land, they bring rubbish things, cut the wood without permission. We have a pre-emptive right; we work with local authorities. We are informed of the sale and if there is a danger, we can use our pre-emptive right and there is no sale."

Pierre Missioux, Director General of the SAFER Ile-de-France, in interview for this report.

23 These are translated directly from the SAFER [website](#). Accessed 25th September 2023.

3.4 Further Legislation c. 1960

The 1960 legislation was further supported by key legal provisions establishing the operating methods, financing and control of SAFERs²⁴; the SAFER right of pre-emption²⁵; and the implementation of land use plans²⁶.

By 1975 the rural population was no longer in decline, but the size of farms had increased, and the active farming population continued to decrease. Further legislation²⁷ sought to encourage the participation of farmers in the maintenance of heritage, the maintenance of environmental balance and the preservation of plant species and domestic animal breeds.

3.4.1 Recent Legal Reforms

SAFER operates within a continually evolving legal and political landscapes. Below is a synopsis of relevant developments since 2014:

- The ‘*law on the future of agriculture, food and the forest*’ passed in 2014²⁸ made several recommendations including: territorial restructuring, implementation of multi-year activity programs (PPAS) and, extension of the scope of transactions notified to SAFERs so that they fulfil their mission of market transparency.
- The ‘*law on balancing agricultural trade with healthy and sustainable diets*’ (also known in French as “EGAlim”) passed on 1st of November 2018. The law pursued three objectives: fairer prices for producers; stronger safety, environmental and nutritional quality of food products; and the promotion of healthy, safe and sustainable food for all. It also strengthens regulation around the sale and the use of pesticides in France.²⁹ It does not have direct implications for SAFER although it could be said to strengthen the agricultural vision which SAFER accesses land purchases against.

²⁴ [Décret n°61-610 du 14 juin 1961 relatif aux sociétés d'aménagement foncier et d'établissement rural](#) [Suggested translation: Decree no 61-610, 14th June 1961 relating to land development and rural settlement companies].

²⁵ [Loi n° 62-933 du 8 août 1962 complémentaire à la loi d'orientation agricole](#) [Suggested translation: Law no 62-933, 8th August 1962, complementary to the agricultural orientation law].

²⁶ [Loi no 67-1253 du 30 décembre 1967 d'orientation foncière](#) [Suggested translation: Law no 67-1253 du 30 December 1967 on land orientation]; and associated *Schéma Directeur d'Aménagement et d'Urbanisme (SDAU)* [Master Plans Planning and Urbanism] and *Plan d'Occupation des Sols (POS)* [Suggested translation: Land Use Plans].

²⁷ For example: [Loi n° 80-502 du 4 Juillet 1980 D'Orientation Agricole](#) [Suggested translation: Law no 80-502, 4th July 1980, on Agricultural Reform]; and [Loi n° 95-115 du 4 février 1995 d'orientation pour l'aménagement et le développement du territoire](#) [Suggested translation: Law No. 95-115 of February 4, 1995 on guidance for territorial planning and development].

²⁸ [Loi n° 2014-1170 du 13 octobre 2014 d'avenir pour l'agriculture, l'alimentation et la forêt](#) [Suggested translation: ‘Law no. 2014-1170 of October 13, 2014, for the future for agriculture, food and forestry].

²⁹ [Loi n° 2018-938 du 30 octobre 2018 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous.](#) (Abbreviated as EGAlim law.) [Suggested translation: Law no. 2018-938 of October 30, 2018, on balancing agricultural trade with healthy, sustainable and accessible food for all.]

- The ‘Sempastous law on emergency measures to ensure the regulation of access to agricultural land through corporate structures’ came into force on January 1, 2023. It is named after the member of the French National Assembly who introduced the bill, Jean-Bernard Sempastous and abbreviated to the ‘Sempastous law’. It establishes a new administrative control intended in particular to regulate the market for shares in agricultural companies, to promote the installation, consolidation of agricultural holdings and the renewal of generations by fighting against the excessive concentration of land. Transfer of shares in companies that hold or operate agricultural land may be subject to authorisation by administration following the opinion of FNSafer (the National Federation of SAFER organisations) if certain thresholds are met.³⁰
- As of Sept 2023, the French Ministry of Agriculture has set out plans for a new wide-reaching agricultural bill with a focus on climate change and young farmers. The French Minister for Agriculture, Marc Fesneau, detailed a number of measures that will be included in this bill:
 - a. *“A 400 million euros ‘farmland holding fund’. This fund will participate in national or regional holding funds, which buy land to make it available to farmers on a gradual basis so that they in turn can buy it ‘at the time of their choosing’ and ‘if they wish to acquire it’;*
 - b. *500 million euros to reduce the use of plant protection products;*
 - c. *100 million euros for a plant protein plan;*
 - d. *A “food sovereignty and ecological transition fund” to ‘enable farms to adapt their economic model locally to the requirements of decarbonising activities, developing renewable energy production or adapting to climate change’;*
 - e. *And for every child enrolled in a primary school to benefit from an initiative to discover agricultural activity, based on the living world and the cycle of the seasons.*
 - f. *The possibility of increasing the number of agricultural work placements for secondary school pupils was also mentioned, as was the creation of an ‘agricultural bachelor degree’.”³¹*

The bill is not yet available and is intended to be examined by the Parliament in December 2023.³²

³⁰ [Loi n° 2021-1756 du 23 décembre 2021](#) portant mesures d’urgence pour assurer la régulation de l’accès au foncier agricole au travers de structures sociétaires. [Suggested translation: Law n° 2021-1756 of December 23, 2021, on emergency measures to ensure the regulation of access to agricultural land through corporate structures.]

³¹ La Tribune, (2023). [“Accès au foncier, changement climatique: le ministre de l’Agriculture esquisse la future loi d’orientation agricole”](#). La Tribune, 11 Sept 2023. Suggested translation; “Access to land, climate change: the French Minister of Agriculture outlines the future agricultural legislation”.

³² Follow updates from the French Ministry for Agriculture and Food Sovereignty [here](#). Accessed 25th September 2023.

4. Beyond Agriculture Case Studies

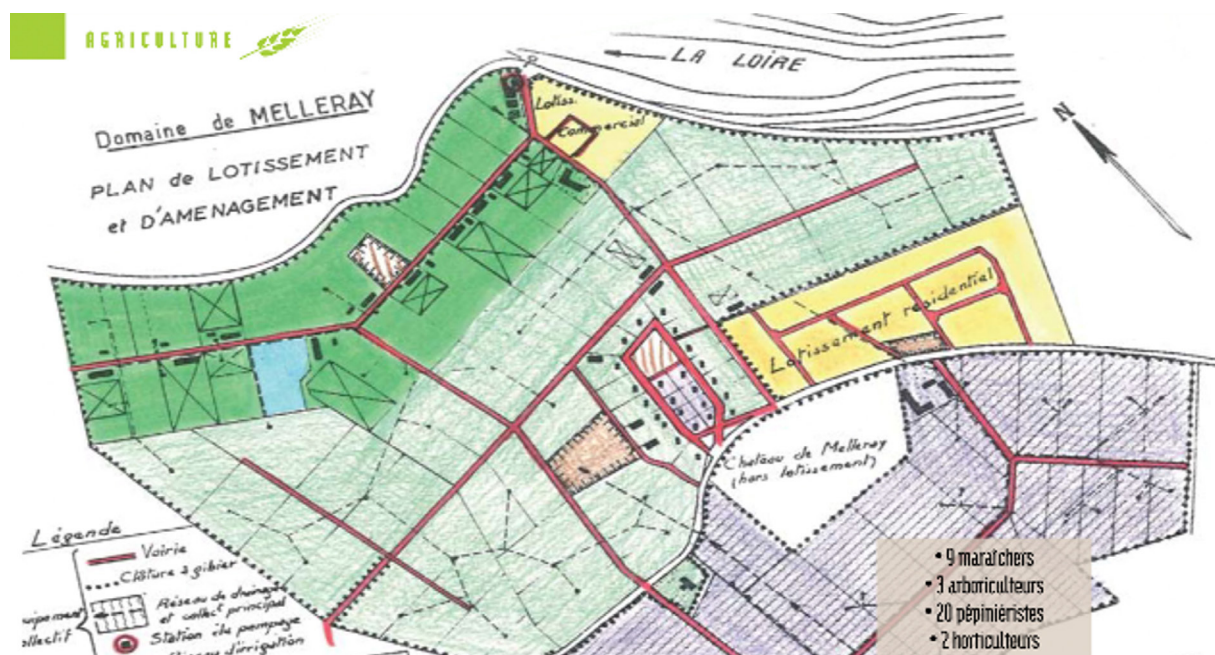
Since around 2000, the SAFERs have expanded their activities to conduct studies, create maps, and make recommendations relating to land use planning measures which protect agricultural and uncultivated land as well as environmentally sensitive areas. The SAFERs mandate has expanded beyond agriculture to include protection of the environment, landscapes, natural resources such as water, and support of local authorities in their land projects. The following sections present case studies on SAFER acquisition of land to resettle displaced farmers, to facilitate the introduction of the TGV high-speed railway, and to conserve water quality.³³

³³ For more case studies see resources on the [SAFER](#) website.

4.1 Case Study 1

Melleray: One of the first installations of SAFER.

In 1961, the first SAFER operation in the Central region was the reinstatement of a group of farmers displaced from land due to urban sprawl around Orleans (more specifically in the Melleray area, or 'commune' in French, located in the region of Pays de la Loire in north-western France). The SAFER acquired 270ha of abandoned land and oversaw the drainage of wetlands, forest clearance, construction of roads and services, game fencing, irrigation, electrification, construction of dwellings and sheds, restoration of farms, network water, telephone installation. The farmers were resettled gradually on the land between 1963 – 1965.



Source: www.safer.fr/app/uploads/2018/10/Notre-Histoire.pdf

Image: www.safer.fr/app/uploads/2018/10/50-actions.pdf

4.2 Case Study 2

TGV Atlantique

The introduction of the TGV Atlantique trainline in 1982 had a significant impact on some agricultural land, in particular by fragmenting the farms that the trainline crossed through. Two regional SAFERs (Centre and Maine Océan) stocked (i.e., 'banked') agricultural land through financing supported by the national train company, SNCF in order to make the land available for the construction of the trainline. In this way SAFERs were considered to successfully manage land in order to enable the delivery of a rail project deemed to be in the public interest.



Source: [SAFER 2018](#)

Image: A TGV Nantes – Paris, 1990. © [Railpassion.fr](#)

4.3 Case Study 3

Vittel Water Conservation

SAFER has also played a role in protecting water quality. In the Vittel region, The Vittel Water Company works with the regional SAFER to ensure that agricultural enterprises comply with guidelines that conserve the water quality. SAFER's ability to preempt sales enables further protections against the land being sold to enterprises that do not respect the environmental safeguards that conserve the water quality.



Source: [SAFER 2018](#)

5. The SAFERs Governance Framework

Summary

This chapter gives an overview of the key components of the governance framework of the SAFER including: the regional bodies; buying and selling functions; the land transaction process; resourcing; compensation; authorisations and relationships with unions.

5.1 Regional SAFERs

SAFERs are incorporated as private sector companies with public interest functions, publicly chartered by Parliament and French law. The SAFERs operate on the profits from sales but they do not pay dividends to shareholders. SAFER shareholders include Crédit Agricole, agricultural companies, the state and the region.

Each French region has a SAFER. There are thirteen SAFER regions in metropolitan France, and three in overseas France (Guadeloupe, Martinique, and Réunion). A seventeenth SAFER is being created in French Guiana.



Source: [SAFER](#)

All SAFERs are subject to the same legislation and fulfil the same public missions (as outlined above s.3.2.2.) however each region has different challenges and SAFER responds to those challenges in tailored ways with detailed knowledge of the region. According to one interviewee: *“It is important to know that this is very local, locally tailored. In the comités techniques (technical committees) of SAFER, there are farmers from unions, people from the banks...they know very well farmers from the territory.”*³⁴ Each SAFER creates a plan for the region.³⁵

5.2 Buying and Selling

Each SAFER monitors farmland sales and intervenes when needed to make the sale best suit the objectives of the law. They take action by buying the land and selling it back to the person or entity they choose. Unlike a private seller who will choose the highest bidder, the SAFER can choose to sell to the ‘best bidder’. Who qualifies as the best bidder is determined by the SAFER regional technical committee according to the criteria bullet pointed below.

If a farmer wants to sell land, he can contact the regional SAFER which will pay a fair price for the land (referred to as direct sale). Advertising is undertaken by SAFER through the town halls and on the Vigifoncier website³⁶. Candidates for the purchase must make a written submission outlining their proposal (projects) for the land.

A regional Technical Committee (composed of members of the Agriculture Chamber, the majority farmers union, banks and insurance companies, regional authorities, and representatives of the State who know the context well) examines all the projects based on multiple criteria. These can include:

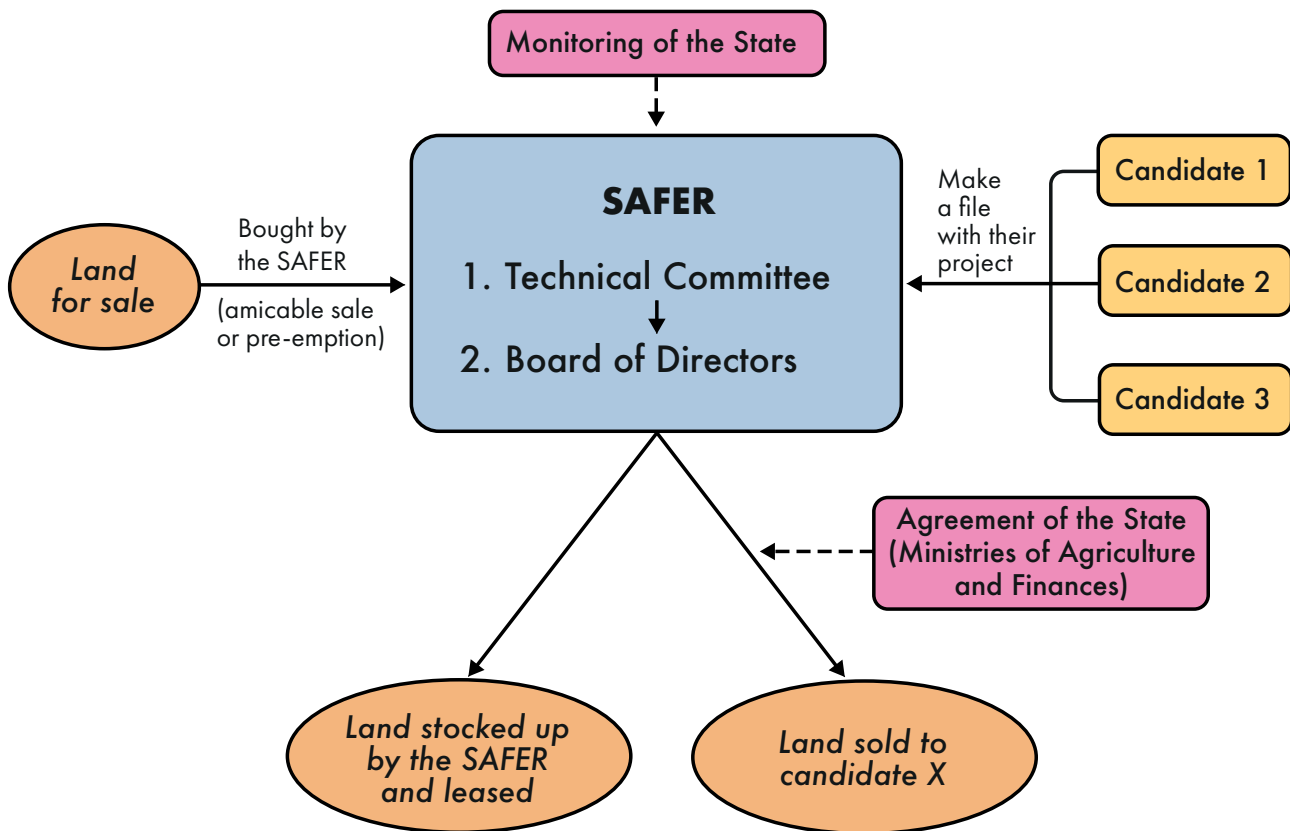
- the local situation;
- SAFER’s missions (which align with public interest objectives);
- the skills of the candidate;
- the viability of the project.

The Committee then make a recommendation to the Board of Directors which will make the final decision. The process is set out in the diagram on the following page.

³⁴ Interview with Laurent Piet, Agricultural Economist at French National Institute for Agriculture, Food, and Environment (INRAE).

³⁵ SAFER Provence-Alpes-Côte d’Azur. 2021. [Programme Pluriannuel d’Activité 2022-2028](#). SAFER Provence-Alpes-Côte d’Azur publication.

³⁶ Vigifoncier is an online information service offered by SAFER that shares live information on land sales (password protected): www.vigifoncier.fr/ Accessed 25th September 2023



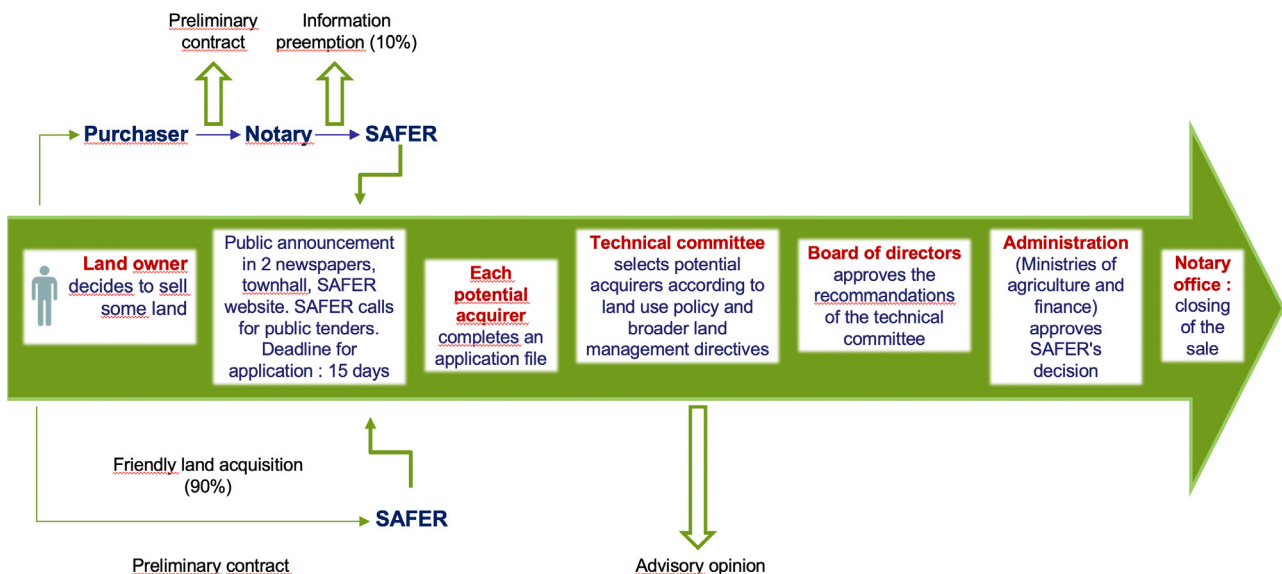
Source: [Agriculture and Rural Convention 2020 website](#). [Accessed 25th Sept 2023]

5.3 Land Transaction Process

When the landowner decides to sell land there are two transaction routes that may appear, (i) one using a right to pre-emption and (ii) the other through direct sale to SAFER from the existing landowner ('friendly land acquisition'). A purchaser may seek to buy the land directly from the seller, in which case the notary is informed who notifies SAFER. SAFER can pre-empt the sale and resell the land (i). Alternatively, the seller may sell directly to SAFER who may stock the land for up to two years (ii). When SAFER decides to purchase and sell land (either from pre-emption or direct sale to SAFER) it must make a public announcement in two newspapers, the townhall noticeboard, the SAFER website, and calls for public tenders within a deadline of fifteen days. Friendly land acquisition occurs in 90% of cases, and pre-emption takes place in around 10% of cases.

Each potential acquirer or purchaser of the land lodges an application. The application is reviewed by the Technical Committee who reviews potential acquirers according to SAFER's public missions, land use policy and broader land management directives (generally set out in the SAFER's regional plan) and produces an Advisory Opinion as to who should be awarded the sale. The Advisory Opinion is then passed to the Board of Directors who then approves the Technical Committee's Advisory Opinion. Final approval is sought by Ministries of Agriculture and Finance before the notary office closes the sale. The process is set out in the diagram on the following page.

LAND TRANSACTION PROCESS BY SAFER



Source: Internal SAFER documentation shared with the author and the Scottish Land Commission with permission to reproduce.

5.4 Resourcing

When SAFERs were introduced in the 1960s they received some financing from the state, and subsequently in the 1980s when land prices collapsed. Nowadays SAFERs receive subsidies only for 'special missions' (e.g., public infrastructure projects such as the SNCF TGV case study above). SAFERs mostly operate on their own capital and if needed, they can borrow from the bank, Crédit Agricole. As explained above, the SAFERs operate on the profits from sales but they do not pay dividends to shareholders. SAFERs have been able to build up capital through land sales as SAFERs do not pay tax on reselling land and therefore they can make profits on the reselling of land whilst maintaining reasonable resale prices.

5.5 Compensation

When SAFER intervenes in the purchase of land, compensation to the seller may be required for the loss of economic potential. Compensation is given as 'La Compensation Agricole Collective (CCA)', which is defined as "the collective agricultural compensation intended to maintain or restore the agricultural economic potential lost due to development projects or works that permanently consume land in agricultural activity, whether they are of public utility or not." ³⁷

³⁷ See further work of CETIAC, Compensation et Études d'Impacts Agricoles Conseil; compensation-agricole.fr/compensation-agricole/

5.6 Authorisations

All SAFERs transactions must be approved by the French Ministry of Agriculture (to verify the validity of the sale) and the French Ministry of Finance (to verify the price). Another commission, the Commission Départementale d'Orientation Agricole, regulates authorisations to farm. The Tribunal des Baux Ruraux has jurisdiction over any conflicts that emerge.

5.7 Relationship with Unions

SAFER is constituted by farmers from unions. As FNSEA is the dominant union, this is represented in SAFER membership and can lead to accusations of discrimination against non FNSEA members. *“The bad reputation of SAFER is that of FNSEA, farmers who don't get land say it's because of SAFER and FNSEA. Farmers might say 'I didn't get the land I asked for because it was decided by the farmers who are in the union and I'm not in the union'.”*³⁸

³⁸ Interview with Bernard Créatin.

6. SAFER Impacts and Loopholes

Summary

The chapter reviews evidence and discussion to identify perceived impacts and weaknesses of SAFER.

- The interview data suggested that there is general agreement SAFER has achieved its original aims of slowing an 'agricultural exodus' in France.
- In addition, there is some evidence that SAFER has had impacts on agricultural land prices (lower in comparison to other European countries) and on farm sizes (a slower concentration of land into super-farms and a diversity of sizes of farms).
- The growth of agricultural corporations has enabled landowners to evade SAFER oversight through agricultural shares that are not subject to the right of pre-emption and has led to an increase in non-farming owners of agricultural land (who may then lease their land for agricultural production).

6.1 Impacts

What impacts has the SAFER had on the wider land market in relation to land values, land prices and land uses, and the volume of land coming to market? In order to answer this question, existing research was reviewed and supplemented with insights from the experts interviewed.

6.2 On Price

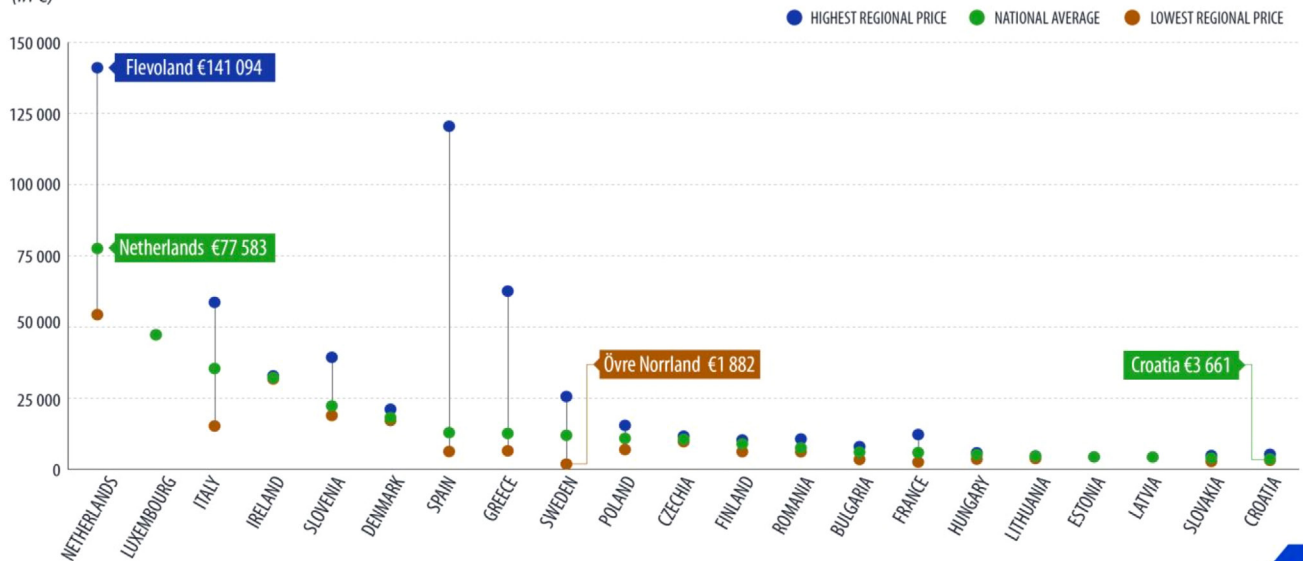
Average prices for arable land in France have doubled over the past ten years but remain amongst the lowest in Europe. Eurostat data³⁹ from 2021 show that France had one of the lowest national average prices and also the lowest regional prices for land. Of France's neighbouring countries, the Netherlands, Belgium and Germany, only the Netherlands is included in the Eurostat data. However other sources on Belgian and German land prices suggest that France is also an outlier amongst them.⁴⁰

³⁹ Eurostat. 2021. [Agricultural land prices and rents – statistics](#)

⁴⁰ Brussels Times. 2021. [Agricultural land becoming more expensive; some blame government](#), Wednesday, 15 September 2021; Kirschke, D., Häger, A., Schmid, J.C. (2021). New Trends and Drivers for Agricultural Land Use in Germany in Weith, T., Barkmann, T., Gaasch, N., Rogga, S., Strauß, C., Zscheischler, J. (eds) *Sustainable Land Management in a European Context. Human-Environment Interactions*, vol 8. Springer, Cham.

Average prices of one hectare of arable land in the EU, 2021

(in €)



Ranked on national average. Italy: data for 2020. Ireland, Spain and Greece: provisional data. Poland: estimated data. France: average price of arable land and permanent grassland. Belgium, Germany, Cyprus, Malta, Austria and Portugal: not available.

eurostat

France's highest regional price for arable land was 12,260 euros per hectare, the lowest regional price was 2,560/ha, and the national average was 5,940/ha. Compare this to the Netherlands had the highest prices in Europe at 141,094 euros/ha, 54,356/ha (lowest), and 77,583/ha (average), or to Ireland's prices of 32,863/ha (highest), 31,778 (lowest), 32,201 (average).

The relatively low price of arable land in France is thought to be due to strong agricultural policies in France, of which SAFER is one. According to interviewed expert Laurent Piet:

"Apart from all the other factors' which are known to drive farmland prices and which also play a role in other countries (returns of agricultural products, farm income, CAP payments, environmental zonings, urbanization, etc.), it is 'common wisdom' that the various elements of the "politique des structures" regulation (SAFER intervention, land rental price control, tenant pre-emption right...) are the factors specific to France that are most likely to explain why farm land prices remain low compared to similar countries."

This finding is supported by studies that have concluded that SAFER regulation has impacted the price of arable land in France⁴¹ and that it has contributed to maintaining relatively low land prices in comparison with other European countries.⁴² It is important to acknowledge that strong supervision of rents on agricultural land is also recognised as a key factor influencing land prices as noted in the Report to the National Assembly by the Joint Mission on Agricultural Land by Petel and Potier⁴³ and as referenced in interview comments from expert Tanguy Martin.

⁴¹ Sanglier, M. et al. (2017). [Policies and instruments of land market regulations: The SAFER, French land agencies](#). Terre de Liens.

⁴² AEIAR. (2015). [Status of agricultural land market regulation in Europe: Policies and instruments](#). Association Européenne des Institutions d'Aménagement Rural.

⁴³ Petel, A-L. & Potier, M.D. (2018). [Rapport d'information ... sur le foncier agricole](#). Report to the French National Assembly by the Joint Mission on Agricultural Land.

6.3 On Farm Size

As pointed out in a recent report by the Cour des Comptes (the French National Auditor), although a small proportion of agricultural land transactions (11%) engage the SAFERs, the SAFERs mediation activity is more significant in terms of surface area: “SAFER affected sales account for 21% of the surface area, i.e., 89,327ha. in 2018, to which should be added a large proportion of the 126,171ha of land retained or rented by the SAFERs in the same year.”⁴⁴

Impacts of SAFER governance on farm sizes in France must be understood within the wider context of increasingly large farm sizes across Europe. Eurostat data⁴⁵ provides that *the number of farms in the EU decreased by about 37% in the relatively short period between 2005 and 2020*. The amount of land that was used for agricultural production remained broadly unchanged (+0.3 %) between 2005 and 2020, despite the sharp reduction in farm numbers.

The Eurostat data demonstrates that there was most growth in the largest category of farms – those more than 100ha.⁴⁶ This was also reflected in most Member States having a greater concentration of larger farms. Three exceptions were Denmark, Greece and Austria. Most farms were lost in the smallest size classes: “*The number of the smallest farms under 5ha in the EU was 4.6 million (about 87%) less in 2020 than in 2005. Although there were also considerable losses in larger farm sizes classes, these were far fewer; the total number of farms of a size between 5ha and 100ha was 0.7 million less in 2020 than 2005.*”⁴⁷

In France, data suggests that the concentration of land into super-farms over 100ha is slower than in other parts of Europe. Research led by Laurent Piet concludes that SAFER policies have contributed to reducing the consolidation of agricultural land.⁴⁸ Piet et al, conclude: “*Although the general view is that CAP subsidies have accelerated farm wealth concentration and income inequalities among farmers, the specific French structural policy and regulations on the land market may have mitigated the effect in France.*”⁴⁹

A key finding by Piet and others is that the size inequalities between farms is less affected in France than in other European countries. In interview Piet explained what is meant by this; “*not only small farms disappeared, but also medium and big. Smaller farms grew, increased in size and could have been considered to be medium sized, but medium farms also increased in size, so it's relative. The SAFER system leads to equality of opportunity. Without SAFER, only*

⁴⁴ Cour des Comptes. 2020. ‘Les leviers de la politique foncière agricole’. (Translation ‘The levers of agricultural land policy’. [Available in French only](#), at p.3.

⁴⁵ Eurostat. 2022. [Farms and farmland in the European Union – statistics](#).

⁴⁶ Noting that numbers are indicative rather than precise; “*The number of farms in the EU has been in decline for a long time. However, putting a precise figure on farm losses should be treated with some caution, as coverage has decreased in some countries with the raising of the size threshold for what is considered a farm. This means that figures in time series analysis of farm numbers, types of farms and characteristics of the labour force should be seen as indicative rather than precise.*” See definitions Eurostat. [Farm structure survey – definition of agricultural holding](#).

⁴⁷ Continues: “*During this period, there were fewer farms in every Member State but the largest reductions were recorded in Romania (an indicative loss of 1.4 million farms, equivalent to a decline of -32 %), Poland (an indicative loss of 1.2 million farms, or -47 %), Italy (an indicative loss of 0.6 million farms, or -34 %), Hungary (an indicative loss of 0.5 million farms, or -68 %), Bulgaria (an indicative loss of 0.4 million farms, or -75 %) and Greece (an indicative loss of 0.3 million farms, or -36 %).*” See Eurostat. 2022. [Farms and farmland in the European Union – statistics](#).

⁴⁸ Piet, L. et al. (2012). How do agricultural policies influence farm size inequality? The example of France. *European Review of Agricultural Economics*, 39(1), 5–28.

⁴⁹ Ibid.

the bigger or richer farmers would be able to afford more land.”⁵⁰ In other words, although there has been increased concentration of farmland ownership there remains a diversity of sizes of farms, and that is partly due to SAFER regulation.

In interview Tanguy Martin explained this impact further: “In France, these [SAFER] regulations, which were paradoxically designed to exclude farmers from agriculture in order to reduce the number of farmers, have today, after 50 years of evolution, become institutions that preserve the number of farmers, because the target at the time was above average and now it is below average.”⁵¹

6.4 On Concentration of Ownership

This issue of farm size relates to concentration of land ownership; the more large farms there are, the fewer owners there are, and the greater the land concentration. There are very few studies on the relationship between agricultural policies and land concentration globally. A starting point is Roberts and Key (2008)⁵² on US farmland during the period 1987-2002 as one of the only studies on the relationship between farmland concentration and public policies. “The main finding is that there is a strong positive association between government payments and change in land concentration.”⁵³

French farmland is not immune to the forces of land concentration that exist globally, the number of farms in France has more than halved over 25 years. According to various sources, this is understood to be partly due to national (i.e. French) farming stakeholders taking advantage of business models that enable farms to be grouped together and partly due to non-agricultural actors speculating on land and some increase in foreign ownership of farmland (although foreign ownership primarily affects vineyards rather than arable land).⁵⁴ There is also pressure on land from the renewable energy sector and from large processed foods manufacturers (Tanguy Martin cites the example of Lays crisp manufacturer’s acquisition of land in Brittany to produce potatoes for export).

It should be noted that there is a lack of data on farm ownership in France and the European Parliament has called for more data on European land transactions more generally. There is however a recent report from Terre de Liens⁵⁵ using fiscal data on property taxes provided by Cerema⁵⁶ to assess patterns of ownership of agricultural land in France.

⁵⁰ In interview.

⁵¹ Tanguy Martin interview.

⁵² Roberts, M. and Key, N. (2008). Agricultural payments and land concentration: A semiparametric spatial regression analysis. *American Journal of Agricultural Economics* 90(3): 627-643. See also Butault, J.-P. and Delame, N. (2003). La disparition des exploitations s’accélère sans concentration excessive. *Agreste Cahiers* 3: 17-26.

⁵³ Piet, L., Desjeux, Y., Latruffe, L., & Le Mouël, C. (2010). How do agricultural policies influence farmland concentration? The example of France. 114. *EAAE seminar: Structural change in agriculture, European Association of Agricultural Economists (EAAE)*. INT., Berlin, Germany. p.31.

⁵⁴ See ARC (Agricultural and Rural Convention) (2019). [*France: Land Concentration – a Case For Regulation*](#).

⁵⁵ Terre de Liens, 2023, “[La Propriété des Terres Agricoles en France – À qui profite la terre?](#)” [Translated as “Ownership of Agricultural Land in France – Who benefits from the land?”](#) L’État des Terres Agricoles en France No 2” 2023. Available in French only.

⁵⁶ French public agency for developing public expertise in the fields of urban planning, regional cohesion and ecological and energy transition.

6.5 Fewer Transactions

The experts interviewed for this report were in agreement that a key impact of SAFER on the wider land market was that there were fewer land transactions on the open market. This is understood to be as a result of the following factors:

- SAFERs can also stock land (i.e., act as a land bank). In particular SAFERs stocked a lot of land during the 1980/90s to facilitate land consolidation policies ('remembrement').
- As a result of SAFER mechanisms farmers are more likely to lease land than to sell it.
- Local municipalities are also buying more land – for environmental and community projects. To facilitate this SAFERs may receive money from municipalities to buy land.⁵⁷

6.6 On Market Share

It should also be acknowledged that SAFER intervenes in the minority of market transactions. According to the Robert Levesque: *"The SAFERs buy between 80 and 100,000ha per year. There are 400,000ha per year on the market, (of which about half are rental rather than sales property)."*

Unlike the case studies above, nowadays SAFER does not do much restructuring and is instead only an intermediary in the buying and selling of land. Pierre Missioux comments: *"This is because restructuring takes a lot of time and costs a lot of money, and since 2017 the French ministry of Agriculture doesn't give any subsidy to SAFERs, except for overseas SAFER."*

6.7 On Land – Buildings Separation

The SAFERs do not have an agreed policy on keeping land and buildings together so it cannot be said that it has had a particular impact on this area. According to Tanguy Martin although this is a blind spot, the SAFERs can reflect the farming unions policies on agricultural buildings; *"it can be one of the blind spots of the SAFERs not to have a doctrine, a very precise policy on agricultural buildings. That said, the SAFERs remain tools for the people who invest in them, for agricultural unions, which can have a policy on buildings. Even if the SAFER does not have a public service objective for buildings, the unions can use the SAFER to carry out their policies on buildings."*⁵⁸

6.8 On Farming Population

The introduction of SAFER was intended to preserve French agriculture and enable young farmers to access land and the consensus amongst the expert interviews was that SAFER has achieved this aim. SAFER has not been able to reverse wider global trends affecting agriculture such as a shrinking farming population (from c. 50% of the French population post WW2 to around 2.5% in 2023) and the rise of corporate agriculture where farmers are employees not owners. There is also a wider cultural shift in French agriculture towards farming for export and away from deep rooted cultures of self-sufficiency and agroecology.

⁵⁷ Pierre Missioux and Stephanie Barral interviews.

⁵⁸ Tanguy Martin interview notes.

6.9 Loopholes

An emergent challenge to SAFER's efficacy is the growth of farm corporations, i.e., limited and trading companies whose capital can be held by farming or non-farming associates. SAFER's right of pre-emption has not covered partial transfers of shares in agricultural companies enabling entities to acquire vast amounts of land without SAFER oversight (see the case study of the Berry region below). There have been some legislative attempts to tighten regulations, in this regard see discussion of the Sempastous law in the following chapter.

6.9.1 New Farming Business Models

A major factor which limits the reach of SAFER is the rise of new forms of farming business models. According to research in 2013⁵⁹ by Robert Levesque the majority of farms were individually owned (65%) by comprised the minority of agricultural land (38%) and agricultural corporations where capital can be held by non-farming associates had rapidly increased since 2000. According to Levesque: *"These structures have gradually distanced themselves from the family model, with hired labour surpassing family labour."*⁶⁰ How this intersects with SAFER is further explained below.

6.9.2 Agricultural Share Ownership

The growth of farm corporations has led to a growth in agricultural company shares. Agricultural shares have been ruled to be beyond the reach of SAFER's right of pre-emption three times by the Conseil Constitutionnel, but a new law was passed in December 2021 to regulate this – the Sempastous law, discussed in the following chapter.

6.9.3 Case Study: Chinese Investment by Capital Shares in the Berry Region

The situation of agricultural shares ownership is well illustrated by Robert Levesque with the example of Chinese investment in the Berry region⁶¹. Starting in 2014 one Chinese company took control of four farm corporations in quick succession by acquiring the majority share of the company capital in each farm. The structural and administrative controls introduced in 1960 designed to control entry into agriculture do not cover entry via share ownership and the SAFERs did not have a right of pre-emption on partial transfers of shares in agricultural companies.

Levesque reports that the procedures used in this case are commonly adopted by investors, particularly French agricultural investors. He gives the example of Upper Normandy where 20 production units of over 300 hectares group together 48 farm corporations, each with the right to submit its own CAP declaration in order to obtain European subsidies.

⁵⁹ Levesque, R. (2019). *France: Land Concentration – A Case for Regulation*, ARC (Agricultural and Rural Convention) blog. Accessed 25th September 2023. More recent statistics were not available.

⁶⁰ Ibid.

⁶¹ Levesque, R. (2016). Farming land: Chinese purchases in the Berry a European case', *La Revue Foncière*, May-June 2016, n°11.

7. Legal and Political Aspects of SAFER

Summary

The chapter reviews evidence and discussion to assess the legal and political acceptability of SAFER. Key findings:

- The SAFERs have been the subject of critical audits from the French Court of Auditors on various occasions.
- SAFER regulation has not been found to be in contravention of the European Convention on Human Rights.
- New legislation – the ‘Sempastous law’ – came into force on the 1st of January 2023 to regulate the issue of agricultural share ownership discussed in the preceding chapter.

7.1 ECHR Compatibility

A recent report for the Scottish Government on land ownership restrictions in other jurisdictions⁶² included a SAFER case study highlighting European Convention on Human Rights (ECHR) caselaw to assess compatibility of the SAFER model with the ECHR.

The case study was focused on whether land ownership restrictions are deemed to fall within the public interest, a requisite for interference with Article 1 Protocol 1, ECHR. A review of the HUDOC database⁶³ found five hundred and seventy cases (after duplicates removed) concerning France and Article 1 Protocol 1. Of these cases, four concerned land transactions which engaged SAFER regulation. These cases were read to assess whether the SAFER regulation was at issue. The SAFER regulation was found to be not at issue in the cases⁶⁴ and the complaints were not specific to SAFER regulated property.

⁶² Shields, K. (2022) ‘A Review of Evidence on Land Acquisition Powers and Land Ownership Restrictions in European Countries’, Scottish Government Report.

⁶³ HUDOC database refers to the official online repository for the European Court of Human rights judgments, decisions, summaries, opinions and press releases.

⁶⁴ The cases were:

- *Affaire Hentrich v. France* App 13616/88 1994: concerned just satisfaction for non-pecuniary damage caused by excessive length of civil proceedings.
- *Fernandez et Autres v. France* App 28440/05: Concerned the inaction of the Stat to end to an illegal occupation of the claimants’ agricultural estate.
- *Affaire R.P. v. France* App 10271/02 2010: Concerned the failure of the French authorities to end illegal occupation of the claimant’s properties.
- *L.H. v. France* App 13616/88. Concerned the seizing of property as a result of a tax discrepancy. The court found that the interference was in the public interest but not proportionate.

See the report for the full list of cases reviewed.

7.2 EU Compatibility

The compatibility of SAFER regulations with European Union law (i.e., law from the European Commission as opposed to the European Court of Human Rights) has been examined in a recent article by PhD student Gabriela Teodoru.⁶⁵ She draws on a survey of “Agricultural land market regulations in EU Member States”⁶⁶ published by the European Commission and considers the compatibility of land restrictions in EU Members states with EU law. The commentary focuses on Hungary, Croatia, Poland, and Romania with brief mentions of Germany and France.

The article summarises the relevant EU law as “EU Member States have the legal competence and discretion to regulate their land markets, but they must respect the basic principles of the Treaties, in particular regarding fundamental freedoms and non-discrimination on grounds of citizenship or nationality. The conditions which national measures likely to impede the exercise of fundamental freedoms must fulfil in such a way as not to infringe Union law are:

1. Not to be discriminatory,
2. To be justified by a major public interest,
3. To be appropriate to achieve the objective pursued,
4. Not to exceed what is necessary to achieve that objective, and
5. Cannot be replaced by alternatives less restrictive (principle of proportionality).⁶⁷

In the review of relevant caselaw from the Court of Justice of the European Union (the CJEU), Teodoru found that the CJEU has recognized a number of public policy objectives that may, in principle, justify restrictions on investments in agricultural land, such as:

- Increasing the area of agricultural plots so that they can be exploited profitably, preventing land speculation⁶⁸;
- Preserving agricultural communities, maintaining a distribution of land ownership to enable the development of viable agricultural holdings and managing green spaces and rural areas, encouraging the reasonable use of available land, prevent natural disasters and support the development of viable agriculture on basis of social and spatial planning considerations (which means maintaining the destination of agricultural land and continuing to use it in appropriate conditions)⁶⁹;
- Maintaining a traditional form of cultivation of agricultural land, by exploiting it directly and ensuring that it is occupied and exploited predominantly by their owners, maintaining a permanent population in rural areas and encouraging the reasonable use of available land to avoid land pressure⁷⁰;

⁶⁵ Teodoru, G. (2022). Restrictions on the sale of agricultural land. *Controversies National Law – Union Law (sic). Perspectives of Law and Public Administration*, 11(1), 142–156.

⁶⁶ Vranken, L., Tabeau, E., Roebeling, P. and Ciaian, P., (2021). [Agricultural land market regulations in the EU Member States](#), Publications Office of the European Union, Luxembourg.

⁶⁷ Teodoru, G. (2022). Restrictions on the sale of agricultural land. *Controversies National Law – Union Law (sic). Perspectives of Law and Public Administration*, 11(1), 142–156. At 144.

⁶⁸ Case C-182/83, Fearon, paragraph 3

⁶⁹ Case C-452/01 Ospelt, paragraphs 39 and 43

⁷⁰ Case C-370/05 Festersen, paragraphs 27 and 28

- For the purpose of urban and rural or regional planning and in the general interest, the maintenance, in certain regions, of a permanent population and an economic activity independent of the tourism sector⁷¹;
- The preservation of national territory in areas established as being of military importance and the protection of military interests against real, specific and serious risks.⁷²

The CJEU has repeatedly emphasized that these objectives are consistent with the objectives of the Common Agricultural Policy (CAP) set out in Article 39 TFEU. See for example the Commission Interpretative Communication on the Acquisition of Farmland and European Union Law, wherein it is stated that agricultural land is a special asset; that the acquisition of farmland falls within the remit of EU law; and that the Treaties allow restrictions on intra-EU as well as extra-EU investments in farmland where they are proportionate to protect legitimate public interests such as preventing excessive land speculation, preserving agricultural communities or sustaining and developing viable agriculture.⁷³

The EU Communication details relevant types of regulation for agricultural land markets – including regulations such as those that create SAFERs that empower competent authorities or bodies to object to a sale that goes against the objectives of the regulation, and pre-emption rights – and outlines their compatibility with EU law:

“Regulations on land sales generally aim to preserve the agricultural characteristics of the assets, the proper cultivation of the land, the viability of existing farms and safeguards against land speculation. To this end, such regulations often require administrative authorisation of land sales and empower the competent authorities or bodies to object to a sale that goes against the objectives of the regulation. This can often be the case when the land is to be sold to a non-farmer where a local farmer in need of land is interested in it. The competent authorities can also intervene if they consider that the sale price is disproportionate to the value of the land. Some regulations on land sales grant pre-emption rights to the public authorities or bodies so they can resell the land to another buyer or rent it out in line with the agricultural policy. Another regulatory approach to address local land consolidation is to grant pre-emption rights to certain categories of interested parties, such as the tenant or the owner of the property neighbouring the land for sale.”⁷⁴

⁷¹ Case C-302/97 Konle, paragraph 40, related cases C-519/99-C-524/99 and C-526/99-C-540/99 Reisch, paragraph 34.

⁷² Case C-423/98, Albore, paragraphs 18 and 22.

⁷³ European Commission. (2017)/ Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05), Official Journal of the European Union, 18/10/2017. *“The acquisition of farmland falls within the remit of EU law. Intra-EU investors enjoy the fundamental freedoms, first and foremost the free movement of capital and the freedom of establishment. These freedoms are integral parts of the internal market where goods, persons, services and capital can circulate freely. The internal market also extends to agriculture (2). The Commission has recently stressed that the Common Agricultural Policy (CAP) strives to contribute to its ten priorities which include a deeper and fairer internal market (3). At the same time, EU law also recognises the specific nature of agricultural land. The Treaties allow restrictions on foreign investments in farmland where they are proportionate to protect legitimate public interests such as preventing excessive land speculation, preserving agricultural communities or sustaining and developing viable agriculture. This is evident from the jurisprudence of the Court of Justice of the European Union (CJEU). Contrasting to the other fundamental freedoms under the Treaty, the free movement of capital – with its possible legitimate restrictions as established by the CJEU – also extends to investors from third countries. This interpretative Communication thus covers intra-EU as well as extra-EU acquisitions of farm land.”* At C.350/5.

⁷⁴ Ibid at C.350/6. See also: Orbison, M.H., (2013). Land reform in Central and Eastern Europe after 1989 and its outcome in the form of farm structures and land fragmentation, FAO pubs; Ciaian, P., Drabik, D., Falkowski, J., & Kancs, d’A. (2016). Market Impacts of new Land Market Regulations in Eastern EU Member States, JRC Technical Reports; Swinnen, J., van Herck, K., & Vranken, L., (2016). The Diversity of Land Markets and Regulations in Europe, and (some of) its Causes, *The Journal of Development Studies*, 2016, Vol. 52, No 2, 186-205. On the compatibility of the right of pre-emption in favour of farmers with EU law see also the Ospelt (Austria) case 2003 (Case C-452/01 Ospelt, paragraph 52).

7.3 French Domestic Law

The SAFERs have received critical audits and reports from the Cour des Comptes (CdC), the French national auditor, on several occasions. It has also received a judgement from the Cour de Cassation in relation to procedural aspects of the right of pre-emption.

The CdC undertook an audit in 2014 which focused on the two national structures, as well as four regional SAFERs. It was critical of SAFER's independence to lead on "diversified activities" with "little control by the public authorities" and lack of transparency and ethics in some deals⁷⁵. It called for a "reframing their missions and better control of their network".⁷⁶

In 2019, further criticisms of SAFERs were made in relation to the failure of proper notification to the sellers of the right of pre-emption. Although the SAFER had duly notified their decision by recorded delivery letters to each member of the household at their shared address, the delivery receipt was only signed by one of them. The French Cour de Cassation ruled that notification under the rural code required that there was a formal record that each member of the family had received the decision letter.⁷⁷

In 2020, the CdC observed that and "contrary to the model of family farming that successive agricultural laws continue to promote, the concentration of agricultural land is continuing". In the same report it recommended that all SAFER activities be given clearer direction and "a defined framework for SAFER's intervention in corporate shares, to enable them to act safely and report precisely on these operations, under the reinforced control of government commissioners".⁷⁸

7.4 Political Acceptance

For this report, the experts interviewed made points in relation to the public perception of the SAFERs, criticisms over transparency, and criticisms over SAFERs objectives.

Richard Pichet suggests that the SAFERs are not well understood by the general public and are misrepresented by politicians; "[There is] the image of the big bad wolf, of [a body that is] pre-empting all the time. I know people who want to sell a house in the countryside, and they are afraid of being pre-empted, but we [SAFER] don't pre-empt houses [only agricultural land.]" ... Regularly, politicians try to shoot us down... The general public does not know us at all."⁷⁹

⁷⁵ See news item, [Rural Land Agency 'Lacks Transparency'](#), 11th March 2014. [French-property.com](#).

⁷⁶ See Cour des Comptes, (2014). [Les SAFER: les dérives d'un outil de politique d'aménagement agricole et rural](#), Rapport 2014 de la Cour des Comptes, Chapitre 1.2., Accessed Sept 2023.

⁷⁷ See for example, "SAFER Property Pre-Emption Annulled", [French-Property.com](#), 9th July 2019; [french-property.com](#)

⁷⁸ Cour des Comptes. (2020). ['Les leviers de la politique foncière agricole'](#). (Translation 'The levers of agricultural land policy'. Available in French only. "The Court also notes that, although a small proportion of transactions (11%) carried out on the agricultural land market benefit from the expertise of the SAFERs and the related tax advantages, this intermediation activity is more significant in terms of surface area. Sales account for 21% of the surface area, i.e., 89,327 ha. in 2018, to which should be added a large proportion of the 126,171 ha of land retained or rented by the SAFERs in the same year. These figures argue in favour of a more assertive approach to the activities of the SAFERs and their interventions, both in terms of market taking but also in terms of allocating land to areas or operations that present particular challenges in terms of environmental or rural development issues. To achieve this the PPASs between the State and the SAFERs should set out more clearly the SAFERs' strategy for SAFERs in their region. The State and the SAFER network should also strengthen the content and monitoring of the specifications attached to land intermediation transactions, by including environmental and cultivation requirements, which are still little used."

⁷⁹ In interview.

Coline Perrin⁸⁰ highlighted that there is an issue of transparency within the SAFERs, and she suggests that the debates that take place at the SAFER monthly committee should be open (accessible to the public, through minutes for instance). She also agrees with recommendations that both the SAFER committees and the CDOA committees are enlarge membership to include a wider range of actors and to improve the transparency of the debates. It is difficult to substantiate how widely shared these criticisms are from existing data and sources. Without undertaking a wider survey, it is not possible to present statistics on the political acceptance of the SAFERs, and as far as the author is aware no such survey has been undertaken.

Historically, according to some commentators the creation of SAFER was “highly controversial”. For example, Bivar notes “*The French National Archives are replete with letters from farmers addressed to the SAFER, the Ministry of Agriculture, and to the President of the Republic himself seeking recourse in the wake of what they deemed unjust decisions regarding land redistribution. But remedy was rarely granted.*”⁸¹ Some sociological studies provide insights into regional perceptions of SAFERs at various times but even still the observations are of mixed reactions to SAFER.⁸² As the SAFERs operate regionally, it is extremely difficult to generalize about attitudes to the SAFERs as a whole.

As Robert Levesque commented in interview, it is easy to romanticise the French agricultural vision and to overlook the political struggles behind the reforms. He noted; “*In France, there is a tendency to consider that farmers all have the same interests and the same vision, because they have been united since the beginning of the 20th century in very strong and very monopolistic unions. There are very few agricultural unions and the FNSEA holds a very large majority. This monolithic union phenomenon hides a diversity of points of view and internal debates in French agriculture.*”⁸³

Historians of France in the post-war period describe struggles between the unions, farmers and land workers who campaigned for ‘modernisation’ and those who did not for various reasons.⁸⁴

⁸⁰ In interview.

⁸¹ Bivar, V. (2019) Agricultural High Modernism and Land Reform in Postwar France. *Agricultural History*. 93 (4), 636–655. At p.640.

⁸² For example, Sarah Farmer notes that; “[I]n the Ardèche, some observers thought the SAFER aided neo-ruraux [urbanites who were new to rural life]. Others perceived it as acting primarily in the interests of the larger farmers (represented by the FNSEA, the largest farmers’ trade union), with the Confédération paysanne playing only a consulting role. Indeed, some néo-ruraux in the Ardèche criticized the SAFER for not serving the agricultural community at all and of supporting sales to second homeowners rather than providing land to those who wanted to farm.” Farmer, S. (2020) *Rural Inventions: The French Countryside after 1945*. United Kingdom: Oxford University Press. pp 68-69. Citing Rouviere, C. (2015). *Retourner à la terre: L’utopie néo-rurale en Ardèche depuis les années 1960*. Rennes: Presses universitaires de Rennes.

⁸³ Robert Levesque in interview.

⁸⁴ See further Preto et al. (2014). *Agriculture in the Age of Fascism. Authoritarian Technocracy and Rural Modernization, 1922-1945*, Brepols Publisher, Turnhout; Bivar, V. (2019). *Organic Resistance: The Struggle over Industrial Farming in Postwar France*. University of North Carolina Press, 2018; Bivar, V. (2019). *Agricultural High Modernism and Land Reform in Postwar France. Agricultural history*. 93 (4), 636–655; Pisani, E. (1977) *Utopie Foncière*; Keeler, J. (1987). *The politics of neocorporatism in France: farmers, the state and agricultural policy-making in the Fifth Republic* Oxford University Press.

8. Conclusion

The SAFERs are long established as a legal and political institution in France. What may be most striking from the Scottish perspective is that they hold powers to interfere with the right to property in pursuit of the public interest (pre-emption rights). Despite this the legitimacy of SAFERs has never been challenged at the European Court of Human Rights in their sixty-year long history. When SAFERs have received criticism, for example from the French Court of Auditors, this has been in relation to SAFER's processes affecting notification of parties, transparency on land deals, or alternatively from farming movements in relation to achieving specific aims.

Over their long history the SAFERS have adapted their governance mechanisms to tackle new threats to the balance of agriculture, livelihoods and the environment. For example, the French law on the future of farming in 2014 expanded SAFERs scope to monitor land transactions, and the Sempastous law 2018 (in force 2023) sought to give SAFERs powers to monitor the transfer of capital shares in agricultural holdings. The new agricultural bill tabled for later this year is intended to create a new fund for agricultural land holdings in order to enable the French government further controls on access to agricultural land.

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Annex I: Schedule of Interviews

- Tanguy Martin, Land Mediator, Terre de Liens 13/01/2023.
- Bernard Crétin, retired farmer, Terre de Liens volunteer, 16/01/2023.
- Robert Levesque, President, AGTER (Association to Improve Governance of Land, Water and Natural Resources) 16/01/2023.
- Pierre Missioux, Director General of the SAFER Ile-de-France, – 18/01/2023.
- Richard Pichet, SAFER du Centre, – 11/01/2023.
- Stephanie Barral, Sociologist, French National Institute for Agronomic and Environmental Research – 24/01/2023.
- Coline Perrin, Agricultural Researcher at French National Institute for Agriculture, Food, and Environment (INRAE) – 23/01/2023.
- Laurent Piet, Agricultural Economist at French National Institute for Agriculture, Food, and Environment (INRAE) – 28/02/2023.

Annex II: Topic Guide & Interviewee Consent Form

Title of Project: Review of France's SAFER Land Market Interventions

This research, led by Dr Kirsteen Shields, is the response to a tender from the Scottish Land Commission to develop a rigorous case study that goes beyond existing descriptions of SAFER (the French agricultural land management system) to fully address unknowns about this land market system. It will do so through the development of new primary research, primarily through interviews, and the translation of findings into a comprehensive account of the model and its perceived and actual impacts. Where interviews are conducted in French, language assistance will be provided by Mayline Strouk, a French PhD candidate at the University of Edinburgh. It will produce a robust understanding of the processes and development of the SAFER mechanism, accessible to all stakeholders and interested parties.

Involvement:

- 60 mins
- Online discussion /interview.
- Your participation is voluntary. You may choose to withdraw before the final report is drafted.
- The interview may be recorded for transcription purposes.

UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018:

The data will be gathered, stored and processed according to UK GDPR. The **UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018** protect the rights of individuals when you process personal data about them, including obtaining, holding and destroying it.

Contact information: Dr Kirsteen Shields, kirsteen.shields@ed.ac.uk.

Consent statement:

- You understand the purpose of this study, and that you are able to ask questions about it at any time.
- You understand that your name will appear in any published document relating to this study, as an expert in the subject area.
- You understand that the data collected may appear in publications and reports relevant to this area of research.

By continuing, you have read and understood the above.

Signature:

Date:



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Contact us

Scottish Land Commission
An Lòchran
10 Inverness Campus
Inverness
IV2 5NA

@ info@landcommission.gov.scot

☎ 01463 423 300

🌐 www.landcommission.gov.scot

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