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Article

Innovative land policies in Europe

Raumforschung und Raumordnung / Spatial Research and Planning

Provided in Cooperation with:

Leibniz-Forschungsnetzwerk "R – Räumliches Wissen für Gesellschaft und Umwelt | Spatial Knowledge for Society and Environment"

Suggested Citation: Hengstermann, Andreas; Wenner, Fabian; Jehling, Mathias; Hartmann, Thomas (2023) : Innovative land policies in Europe, Raumforschung und Raumordnung / Spatial Research and Planning, ISSN 1869-4179, oekom verlag, München, Vol. 81, Iss. 6, pp. 575-578, <https://doi.org/10.14512/rur.2246>

This Version is available at:

<https://hdl.handle.net/10419/283290>

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Innovative Land Policies in Europe

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Received: 15 November 2023 ■ Accepted: 20 November 2023 ■ Published online: 13 December 2023

1 Introduction

During the last decades, the topic of land policy has been mainly relegated to the realm of academia. The current simultaneity of multiple societal and ecological crises, however, is challenging established practices of planning and spatial policy and threatening sustainable development. In many European countries, land policies have (again) recently made their way up the list of political and public priorities. On the one hand, the housing (affordability) question, largely assumed to be an issue of the past in the 1990s and 2000s, has returned, especially in metropolitan regions. On the other hand, criticism of urban expansion in greenfield areas has grown due to an awareness of the detrimental consequences for the environment, landscape and agricultural areas. Instead, a reduction of net land take (land thrift) is now a declared political aim (EEA/FOEN 2016; Schatz/Bovet/Lieder et al. 2021; Lacoere/Leinfelder 2023a).

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Land policies are a political domain where potential solutions to these contradicting land use claims can be negotiated and attempted (Hengstermann/Gerber 2015; Hartmann/Spit 2018; Jehling/Hecht 2022). Consequently, land policies frame the rights and obligations that land ownership entails (Davy 2012). They substantiate the provisions made by constitutional and civil laws, typically to solve common land use conflicts. Land policies comprise instruments such as land value capture, pre-emption rights, building obligations and development strategies that rely on public land ownership (Gerber/Hartmann/Hengstermann 2018). They are applied by actors who use them for different purposes and interests, following individual land policy strategies (Shahab/Hartmann/Jonkman 2021). Besides these ‘intentional’ policies, numerous other political decisions can influence the rights and obligations of land ownership without this being their primary aim, as is often the case with land taxation (Wenner 2018). They can hence be considered ‘unintentional’ land policies.

The current attention paid to land policies that address housing needs while respecting ecological boundaries (Ehrhardt/Eichhorn/Behnisch et al. 2022) asks for innovative solutions. Across Europe, numerous ideas, attempts and innovative approaches have the potential to lead the way towards governing land more sustainably. Some are merely the subject of political discussion, while others are in the actual process of legislation or have even already been implemented (Jehling/Hecht/Herold 2018; Hartmann/Hengstermann 2019; Hengstermann/Hartmann 2021; Shahab/Hartmann/Jonkman 2021). However, while there has been a recent surge in academic interest in the development of new strategies and instruments of land policies, national discussions rarely inform one another. Land policy innovations so far do not tend to cross borders.

The aim of this special issue is to conduct an in-depth exploration of innovative land policies, their potentials, and barriers to their implementation throughout Europe and in

the respective national contexts. The contributions to the special issue are linked to the activities of the International Working Group “Land Policies in Europe” of the German Academy for Territorial Development in the Leibniz Association (*ARL – Akademie für Raumentwicklung in der Leibniz-Gemeinschaft*). The papers in this special issue seek to add to a European debate and exchange about land policies by encompassing various understandings of land policies, scales of intervention and primary goals.

2 Understandings of land policy

Even though attempts to bring the predominantly national scientific and practical discourses on land policy within Europe closer together have recently taken shape, a synopsis of the contributions gathered in this special issue reveals persistent differences with regards to the very definition of land policy, its relation to spatial planning, its associated spatial scales and its aims. Some authors (e.g. Le Bivic/Idt 2023 and Hengstermann/Skala 2023) conceive of land policy as a predominantly local, municipal endeavour guided by national framework legislation beyond statutory spatial planning. Often, understandings of land policies entail municipalities acting on land markets under private law, i.e. by intermediary land trading, active land policy or land banking. Some of the contributions point to land policy as a national policy domain that guides regional and local public actors, and especially private actors (developers, investors, landowners) by setting institutional conditions for how they use land (e.g. Lacoere/Leinfelder 2023b; Dembski/O’Brien 2023; Roboger 2023). This shows that a European consensus on the term land policy is currently only emerging, and understanding of the term often relies on national (also linguistic) preconceptions.

3 Tracing innovations

The contributions discuss a range of innovations. *Peter Lacoere* and *Hans Leinfelder* present the Belgian case, where innovations are sought to solve a stalemate caused by overly extensive planning permission and strong property rights that hinder land thrift (Lacoere/Leinfelder 2023b). *Cornelia Roboger* focuses on an innovation unseen by policymakers: the reform of German land tax, in most federal states, was not used to promote the development of highly accessible underused land for housing or other uses (Roboger 2023). However, even the existence of legal instruments does not always imply their actual implementation by the planning authorities. The question always arises as to how active the role of the public actors should, may and must

be and how much risk-taking is acceptable. Hence, a direct influence of the public actors on the land market is often avoided. Instead, indirect solutions are pursued. The Germany-Switzerland comparison by *Andreas Hengstermann* and *Nadja Skala* shows how both legislatures push indirect legislative solutions to equip municipalities with the instruments needed (Hengstermann/Skala 2023). Although the planning challenges in both countries have similarities, the two legislatures prioritise different instruments, in particular regarding the degree to which planning can interfere with disposal rights of land owners. *Sebastian Dembski* and *Phil O’Brien* present a politically debated proposal for how the land policy culture of the planning system could be reformed in England (Dembski/O’Brien 2023). *Camille Le Bivic* and *Joël Idt* emphasise the multidimensionality of land policy – the link between European, national and local tiers of government through analysing no-net-land-take policies across national borders (Le Bivic/Idt 2023).

The goals of the innovations discussed also vary between the papers, highlighting different assessments and prioritisations in the current multiple crises affecting European countries. While contributions more focused on local land policy are more concerned with mobilising building land and creating more affordable housing, national policies are more focused on reducing land take.

4 Balancing private and public interests

The housing shortage and reducing net land take are significant public policy issues. Here, all contributions have in common that they assess the application of intervention-intensive instruments towards landowners to be politically and legally challenging for public authorities. In all the countries considered, landowners enjoy strongly protected fundamental rights that can only be restricted if an overwhelming public interest exists. However, legislative efforts in all countries deal with the question of how to achieve a balance between private and public interests. Public goals can only be achieved if the private interests of the owners are addressed. Vice versa, however, private property owners cannot enjoy a veto position if societal goals are to be implemented. Well-thought-out solutions balancing the two sides are required. This particularly includes the need for price developments to be cushioned without at the same time curtailing market laws and the potential profits of land market actors too much.

5 Certainty and flexibility of land policies

Finally, the contributions also address the question of how to reconcile certainty with flexibility in guiding land use (Booth 1996; Feiertag/Schoppengerd 2023). To protect land users from potential external effects and to create transparency on the land market, land policy and planning should guarantee the nature of permissible land uses for the foreseeable future. On the other hand, being overly rigid here risks losing sight of actual demand (Lacoere/Leinfelder 2023b). The English legislative proposal makes this dilemma explicit (Dembski/O'Brien 2023). The legislator is trying (not for the first time) to increase the certainty (and thereby also the efficiency) of the system. In France, a similar pattern is emerging (Le Bivic/Idt 2023). Spatial plans are already adjusted relatively frequently. They are also given additional flexibility by the far-reaching scope provided for deviation and negotiation by local actors – whether or not this is actually used in planning practice. It is precisely this discretion that is to be increased for municipalities in Switzerland (and to a lesser extent in Germany) through legislative activities providing new instruments and ensuring the readjustment of existing instruments (Hengstermann/Skala 2023). So, while there is a recognisable pattern whereby the certainty-flexibility balance is being addressed, the respective national developments are contrary to one another.

Regardless of the specific approaches to changes in land policy, what all the papers have in common is that they provoke the underlying question about the understanding of property. As *Benjamin Davy* points out in his contribution, this question is neither new nor something special. It is the fundamental question that accompanies policy making over time. It is therefore worth looking at the classics of land policy (Davy 2023). Given the current societal challenges, the question must be asked anew. Here, the first concern is whether new instruments might be needed or whether the desired goals could also be achieved with the existing set of instruments that are applied more consistently. Both the introduction and the application can be innovative – what Davy (2023) then consistently calls innovative property.

6 Not a conclusion

In general, the traced innovations fall into three categories in terms of how they seek to address the housing and ecological crisis: by changing the regulation of the land market and land prices, by reconsidering the role of the public actors, and by reconfiguring land ownership rights. The focus on innovation makes two important things possible: first,

it shows common current challenges; second, it shows a diversity of approaches to meeting these challenges.

This special issue supports the claim that actors of different national backgrounds can be inspired by each other and improve their own policies based on experience in other countries. However, it does not advocate ‘legal transplants’, which ignore the respective local context, legal system and planning culture. It is beyond that, that the comparisons can be inspiring, allowing reflection on the weaknesses and strengths of national approaches. In conclusion, the special issue does not provide a final answer to the challenges of land policies and innovative approaches in different countries. Still, with its contributions it illustrates the relevance of and need to re-discover land policies and property rights.

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