

State of the art and the potential for further development of conservation agreements as private land conservation tools



ENPLC

European Networks for
Private Land Conservation





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Contents

0. Glossary.....	5
1. Introduction	7
1.1. Brief overview on private land conservation tools	7
1.2. Project background	7
1.3. EU policies and strategies of relevance for private land conservation.....	9
2. Objectives.....	11
3. Description of six conservation agreements	12
3.1. Land stewardship	12
3.1.1. Description and characteristics.....	12
3.1.2. Stakeholders	15
3.1.3. Rights, obligations and duration	16
3.1.4. Economic transactions and fiscality.....	16
3.1.5. Legal basis and needs to reform	16
3.2. Conservation easements.....	17
3.2.1. Description and characteristics.....	17
3.2.2. Stakeholders	19
3.2.3. Rights, obligations and duration	20
3.2.4. Economic transactions and fiscality.....	20
3.2.5. Legal basis and needs to reform	20
3.3. Conservation leases.....	21
3.3.1. Description and characteristics.....	21
3.3.2. Stakeholders	23
3.3.3. Rights, obligations and duration	24
3.3.4. Economic transactions and fiscality.....	24
3.3.5. Legal basis and needs to reform	24
3.4. Privately protected areas	25
3.4.1. Description and characteristics.....	25
3.4.2. Stakeholders	28
3.4.3. Rights, obligations and duration	28
3.4.4. Economic transactions and fiscality.....	28
3.4.5. Legal basis and needs to reform	28
3.5. Results-based agri-environmental payment schemes	29

3.5.1.	Description and characteristics.....	29
3.5.2.	Stakeholders	32
3.5.3.	Rights, obligations and duration	32
3.5.4.	Economic transactions and fiscality	32
3.5.5.	Legal basis and needs to reform	33
3.6.	Temporary nature and safe harbour agreements	33
3.6.1.	Description and characteristics.....	33
3.6.2.	Stakeholders	35
3.6.3.	Rights, obligations and duration	35
3.6.4.	Economic transactions and fiscality	36
3.6.5.	Legal basis and needs to reform	36
3.7.	Comparative table	37
3.8.	Comparison of opportunities and weakness	39
4.	Governance	45
5.	Future opportunities and next steps	47
5.1.	General strengths.....	47
5.2.	General barriers and difficulties.....	47
5.3.	Improving the instruments.....	47
5.4.	Expanding Private Land Conservation.....	48
5.5.	Taking advantage of the favourable EU framework	48
6.	Bibliography	49
Annex 1.	Examples on PLC tools	51
	Land stewardship	51
	Conservation leases	57
	Conservation easements.....	61
	Privately Protected Areas	62
	Result based agri-environmental schemes.....	65
	Temporary nature	69

0. Glossary

According to the terminology of Private Land Conservation, there is a broad set of definitions to describe certain conservation methods, tools, processes and so on. To provide a shared understanding of key terminology we have defined the following terms as follows:

- **Conservation Agreement:** voluntary contractual tools that can either transfer land use rights/competencies relevant for conservation from a landowner to an NGO, public authority or other types of organisations with nature conservation objectives (e.g. in the form of a stewardship agreement) or restrict uses of land for conservation purposes when it is leased to an external party (conservation lease contracts).
- **Conservation Agriculture:** farming system that promotes minimum soil disturbance (i.e., no tillage), maintenance of a permanent soil cover, and diversification of plant species. It may also be referred to as regenerative agriculture or agroecology.
- **Conservation Easement:** tool of property law, also called conservation covenants, conservation servitudes, or conservation restrictions. They grant a right to a public authority or a qualified conservation organisation to restrict land use on properties not in their ownership. These land-use rights are otherwise held by the landowner. They are very heterogeneous in form and scope. Conservation easements function similarly to regulatory restrictions on land use but result from direct contractual agreements between two private parties.
- **Land Stewardship:** strategy to involve landowners and land users in the conservation of their properties. It usually comes in the form of a contractual or informal voluntary agreement between the landowner and the land stewardship organisation to take care of the target habitats and species on the property.
- **Land stewardship organisation:** public or private non-profit organizations that carry out initiatives that include land stewardship agreements for the conservation of natural heritage and biodiversity. Organizations as diverse as a neighbourhood association, a conservation organization, a foundation, a town hall, a consortium and other types of public entities can act as a land stewardship organisation.
- **Land Trust:** non-profit organisation that, as all or part of its mission, actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by the stewardship of such land or easements. Land Trusts work with landowners and the community to conserve land by accepting donations of land, purchasing land, private negotiations, voluntary conservation agreements on land, and stewarding conserved land through the generations to come.
- **Other Effective area-based Conservation Measures (OECM):** a geographically defined area other than a protected area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values. The distinguishing criterion is that a protected area has a primary conservation objective, whereas an OECM delivers the effective in-situ conservation of biodiversity, regardless of its objectives.
- **Private Land Conservation:** voluntary activity carried out by individuals, groups of individuals, corporations or non-governmental organisations with the aim to protect or to restore habitats or species on a property under their governance. It includes the protection of nature and biodiversity on a property which is already in private

ownership as well as the private acquisition of a property or of use rights for conservation purposes. As it excludes properties under public governance, it does not refer to lobbying campaigns by private individuals or organisations to conserve public land.

- **Privately Protected Area:** protected area, as defined by the IUCN (e.g., a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values), under private governance. Private governance of a protected area can include governance by individuals and groups of individuals, non-governmental organisations, corporations, including existing commercial companies and small companies established to manage groups of PPAs, for-profit owners such as ecotourism companies, research entities such as universities and field stations, or religious entities.
- **Result based agri-environment payment schemes:** there is no single agreed definition of what constitutes a results-based agri-environment payment scheme, but the principle behind it is that the landowner or land manager is given flexibility to choose the most appropriate practices to achieve a defined environmental result in exchange for a payment.
- **Safe Harbour Agreements:** landowners voluntarily propose to implement habitat restoration or management measures aimed at species of conservation interest. In return, the landowner is provided with a 'safe harbour' guarantee ensuring that the competent authorities will not impose additional conservation measures or land use restrictions if the population/habitat size of the targeted species increases as a result of the landowner's actions.
- **Temporary Nature:** the basic concept is to allow derogations from the requirements of species conservation law before endangered species emerge on the property. It can be used as a tool to incentivise voluntary conservation/restoration of species or habitats on private property for a limited time period by freeing landowners from possible legal consequences of the establishment of protected habitats or species on the property. The idea behind temporary nature is that some species or habitats of conservation interest are pioneers who quickly occupy ecological niches when they become available. These habitats or species benefit from dynamic short-term protection measures that can be accommodated on many otherwise commercially used properties, e.g., quarries, harbours, off-road racetracks etc.

1. Introduction

1.1. Brief overview on private land conservation tools

Historically, we define land stewardship and other kind of conservation agreements as a strategy or mechanism that allows citizens to participate in the protection of biodiversity by contributing to the establishment and management of protected areas¹. The expression points to a new type of management characterised by actively involving private initiative in achieving goals of public interest. The shared objectives between the private stewardship movement and public environmental policies, has strongly positioned land stewardship in the field of public-private participation and collaboration for nature protection².

In Private Land Conservation (PLC) we use conservation agreements as voluntary contractual tools that can either transfer land use rights relevant for conservation from a landowner to an NGO (e.g., in the form of a stewardship agreement) or restrict uses of land owned for conservation purposes when it is leased to an external party (conservation lease contracts).

We use the term “conservation agreement” as an umbrella for various forms of contractual agreements between landowners and third parties³. What these contractual tools have in common is that two parties voluntarily enter a written contract to advance conservation interest on a property⁴ and that the agreement is only binding for the contractual parties. This distinguishes these tools slightly from other private land conservation tools, such as privately protected areas⁵ and conservation easements⁶.

In addition, other mechanisms have appeared, like payment schemes, where the achievement of a defined environmental result is linked to a financial compensation.

Finally, Safe Harbour Agreements, appear as an instrument where landowners voluntarily propose to implement habitat restoration or management measures aimed at species of conservation interest.

The various forms of conservation agreements can be distinguished from one another with regards to the extent and duration of the rights and responsibilities of the contractual parties. Their scope, duration and conditions for their termination, can vary widely. While some contracts can be cancelled on short notice, others can remain in force for decades and can only be terminated under certain conditions defined in the contract.

The list of conservation tools expands above the ones listed above; however, we will focus on these tools as part of this research as they have been identified as most preferred by landowners and managers in previous research as detailed in the next section.

1.2. Project background

1 The IUCN World Commission on Protected Areas defines a protected area as “a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature and its associated ecosystem services and cultural values”.

2 Barreira, A. (coord.), et al. 2010. Estudio jurídico sobre la custodia del territorio. Plataforma de Custodia del Territorio de la Fundación Biodiversidad, 279 pp.

3 Mostly conservation NGOs, but also public entities or potentially landowners’ associations.

4 Although some cases of informal agreements may also be considered under this term.

5 Privately protected areas designation usually has legal consequences for the general public.

6 Conservation easements have legal consequences for the current and all future owners of the encumbered property.

Documentation on many of the tools mentioned are already brought together by the LIFE+ projects “ELCN” and “Land Is For Ever”. Consequently, this action was built on the outcome of both existing projects. Below we summarize the main achievements of these projects.

The European Land Conservation Network (ELCN)⁷ was an initiative of conservation organisations and land user groups to advance private land conservation in Europe. The objective of the network was to test a number of private land conservation tools with an eye to promote their replication at a wider level wherever feasible, propose policy actions to support them, and to develop a robust, well-informed European network on private land conservation with a clear long-term strategy and strong international allies.

Some of the main lessons learnt in the ELCN project was, that national legal frameworks might be very different, but experience sharing is very important when trying to develop conservation easements, land stewardship agreements, or to establish privately protected areas (PPA). Another finding was that many European countries recognise easements as a feasible tool to promote PLC, even if these are not used fully yet.

The project also concluded that, while some countries have more similarities than others. There will not be a one size fits all solution. Legal tools to support private land conservation are needed, but the legal tools will most likely differ from one Member State to the other.

The members of the ELCN project determined that Privately Protected Areas (PPAs) can contribute substantially to biodiversity and other conservation objectives, and should therefore be, better recognized, encouraged and resourced then they are now.

The ‘Land Is For Ever (LIFE)’⁸ network was founded as part of a Life funded project in 2018 and ran in parallel with the ELCN network. The LIFE network connected landowners willing to be, or being engaged in nature conservation activities, as well as landowners’ associations and other stakeholders.

The LIFE project concluded with a menu of recommended tools and mechanisms for private land conservation in Europe and an action plan with responsibilities for the different stakeholders involved⁹. Recommendations also covered the long-term perspective of such tools, the drivers and barriers of conservation commitments, and their financial implications. The project also concluded that the further engagement of private landowners will be crucial to realise the objectives of the EU Biodiversity Strategy, especially the target of reaching 30% of protected areas on land. It will remain vital to invest further in convincing private landowners to fully cooperate in land conservation efforts. However, this will only be effective if the right tools are available for them. Through the project it has become clear also that under the broad definition of ‘private land conservation tools’, many governance arrangements emerge, depending on contingents’ settings, property laws, the role of environmental NGOs and the implementation (or lack) of public policies and incentive mechanisms for the promotion of these tools. These factors should be taken further into consideration within a multi-level governance perspective when discussing the potential role of voluntary mechanisms for nature conservation. These voluntary mechanisms for nature

⁷ More information about the project: <https://elcn.eu/>

⁸ More information about the project: <http://landisforever.eu/>

⁹ Mulier, A.S, Tack, J., Orban, M. 2021. Recommendations to promote private land conservation to support the EU agenda. LIFE Land is For Ever.

conservation gain even more relevance when considering the EU policies and strategies to reverse the biodiversity crisis.

The two networks are now working together on a follow-up LIFE project – European Networks for Private Land Conservation (LIFE ENPLC).

1.3. EU policies and strategies of relevance for private land conservation

PLC is well framed in different European strategies involving biodiversity, land conservation and farming. For example, the Commission communication “EU Biodiversity Strategy for 2030 - Bringing nature back into our lives”¹⁰ is a comprehensive, ambitious and long-term plan to protect nature and reverse the degradation of ecosystems. The strategy aims to put Europe's biodiversity on a path to recovery by 2030 and contains specific actions and commitments. Many of these actions can be led by PLC projects and initiatives.

According to this strategy, the European Commission's proposal for a Nature Restoration Law¹¹, calls for binding targets to restore degraded ecosystems, in particular those with the most potential to capture and store carbon and to prevent and reduce the impact of natural disasters. The proposal contains specific targets on the restoration and non-deterioration of habitats for which PLC tools and innovative financing mechanisms will be needed to engage landowners and land managers.

Another example can be the Commission communication “A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system”¹². Its purpose is to address the challenges of sustainable food systems, recognizing the inextricable links between healthy people, healthy societies and a healthy planet. The Strategy admits that agricultural systems remain a major contributor to greenhouse gas emissions and that food systems remain one of the key drivers of climate change. In this sense, the Strategy seeks to ensure that agriculture, fisheries and aquaculture, and the food value chain contribute appropriately to the EU climate goals.

The strategy highlights that “all actors of the food chain must play their part in achieving the sustainability of the food chain. Farmers, fishers and aquaculture producers need to transform their production methods more quickly, and make the best use of nature-based, technological, digital, and space-based solutions to deliver better climate and environmental results, increase climate resilience and reduce and optimise the use of inputs (e.g., pesticides, fertilisers). These solutions require human and financial investment, but also promise higher returns by creating added value and by reducing costs”. The strategy sets out both regulatory and non-regulatory initiatives, with the common agricultural and fisheries policies as key tools to support a just transition. PLC can have a central role in this transition through mechanisms such as Result Based Payment Schemes which could allow to increase biodiversity conservation targets under a purposeful rather than restrictive approach.

In the conclusion of this strategy, the EU sets out that:

“The European Green Deal is an opportunity to reconcile our food system with the needs of the planet and to respond positively to Europeans' aspirations for healthy, equitable and

10 Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52020DC0380&from=EN>

11 Available at: https://environment.ec.europa.eu/topics/nature-and-biodiversity/nature-restoration-law_en

12 Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:ea0f9f73-9ab2-11ea-9d2d-01aa75ed71a1.0001.02/DOC_1&format=PDF

environmentally-friendly food. The aim of this strategy is to make the EU food system a global standard for sustainability. The transition to sustainable food systems requires a collective approach involving public authorities at all levels of governance (including cities, rural and coastal communities), private sector- actors across the food value chain, non-governmental organisations, social partners, academics and citizens”.

In conclusion, different European plans and strategies place PLC tools at the fore front of change for the biodiversity conservation and for the transition to a healthier and sustainable food system.

2. Objectives

Based on previous experiences, EU policies and by acknowledging that conservation agreements exist in all EU countries, the report has two aims: first, to identify these shared trades and cluster conservation agreements; and second, to create definitions of conservation agreements that are applicable across EU countries.

Based on these two aims four objectives can be distinguished:

- Identify similarities and difference between types of conservation agreements in the EU.
- Propose common definitions for all these agreements.
- Focus on the 'typical' aspects of the instruments and aim to work as far as possible towards harmonisation at EU level.
- Try to find a common language and understanding of concepts.

3. Description of six conservation agreements

This analysis will focus on six types of private land conservation agreements:

1. Land stewardship
2. Conservation easements
3. Conservation leases
4. Privately protected areas
5. Results-based agri-environmental payment schemes
6. Temporary nature and save harbour agreements.

These six agreement types are, on the one hand, the most commonly used in the countries analysed and, on the other hand, they are applicable in different context and allow to involve all stakeholders as recommended by the EU strategies.

The next chapter explains each conservation agreement type, its main characteristics including a list of the main stakeholders involved, rights and obligation, the legal basis and the needs of future revisions of the tool. Finally, we analyse the opportunities and barriers for each kind of conservation agreement and showcase these with concrete examples (further examples can be found in annex 1)¹³.

3.1. Land stewardship

3.1.1. Description and characteristics

Land stewardship are the strategies and instruments through which landowners and land users engage with each other to conserve nature on the property of the landowner. It usually comes in the form of a voluntary contractual or informal agreement between the landowner and public or private associations to manage target habitats and/or species on the property of a landowner.

Landowners and Land stewardship organisations can be public or private and their actions not only take place on land, but also in fluvial and marine ecosystems. This tool can be seen as a means of mutual understanding between landowners and land stewardship organisations to jointly preserve natural, cultural or landscape values.

Under land stewardship agreements, a conservation organisation and an individual landowner agree to a series of actions to be implemented on the property. For that, an environment of mutual trust between the landowner and the organisation is needed. Especially since this kind of contracts, imply reciprocal obligations where usually the landowner grants access to his/her property so that the conservation organisation can develop conservation-oriented actions such as protect species, restore habitats, and if desired, undertake additional activities such as volunteering, educational activities or research. The duration of the contracts and agreements is temporal in most cases and negotiated between the parties.

¹³ This information and examples presented here do not constitute legal advice. Do not act upon any of the information provided without first seeking qualified professional counsel.

Stewardship agreements are very heterogeneous in form and scope as they range from informal verbal agreements to written contracts registered in the land registry¹⁴.

Public administrations can be involved in the agreement as:

1. The owner of the land.
2. Facilitating agents of the agreement.
3. Managers of a land for conservation purposes not in their ownership.

Depending on the needs, agreements can take the form of management support or management transfer agreements. When the land management is transferred, the owner of the land can still own the goods produced by the property.

The main key characteristics are the following:

- Contracting parties: a conservation agreement or contract is established through an agreement between a landowner and a public or private non-profit organisation or another kind of conservation organisation.
- The contractual agreement to establish a conservation agreement or contract is voluntary on both sides.
- The stewardship agreements are flexible and can take the form of verbal agreements up to written contracts.
- The stewardship agreements or contracts are tools specifically designed for conservation purposes, which means that its scope is tailored to the conservation value and objectives of a specific property.
- Land rights always stay with the owner, in some cases it could require an agreement on management support or management transfer, and in other cases some land rights might be previously assigned to any of the parties while setting up the contract and they might not require previous consultation.
- The duration of the contracts and agreements is temporal, variable and the duration are negotiated between the parties.

¹⁴ Government-managed system that records all legal transactions, changes, and interests in land and property in a given area. It is a central database that provides a detailed history of ownership and other rights associated with land, as well as any restrictions, mortgages, liens, and other legal claims.

Case study on land stewardship in Spain

Land stewardship at la Gutina

The temporary ponds are within the estate of «la Gutina» at the Albera Mountain (municipality of Sant Climent Sescebes, Girona, Spain). In this typically Mediterranean ecosystem, there are a total of four temporary ponds. These ponds are characterised by a high floristic and faunistic diversity. Their characteristics and species composition make it a fragile and threatened ecosystem according to EU legislation. The estate is within the Natura 2000 habitat directive and includes a natural site of community importance. Before



Image 1 La Gutina pond. Photo credits: laeden - Institució Alt Empordanesa per a la Defensa i Estudi de la Natura.

2015, in the property there were only two temporary ponds and a large part of the natural heritage, and the species of the ponds weren't present. The third pond called, «Prat dels Rosers» was drained in the twentieth century and through an irrigation channel drained water to nearby vineyards of the property. Hence, the Prat dels Rosers Pond was dried out and underwent a process of scrub encroachment and afforestation.

The recovery of the Prat de les Roses Pond is a success story for the stewardship organisation laeden - Institució Alt Empordanesa per a la Defensa i Estudi de la Natura. Within the agricultural stewardship program of IADEN, the objectives are to preserve the natural heritage of agricultural plots. Under that umbrella, in 2011 IADEN signed a stewardship contract with the property used for ecological wine production. The initial objective of the stewardship contract was to preserve the two initial ponds and its natural values. Landowners were eager to sign the stewardship contract as otherwise it would have been difficult to maintain and restore the habitats within their property. After conversations with the owners, it was realised that a third pond existed. Hence between 2014 and 2015 a project was initiated to restore the third pond with the support of the landowners. The project had a total budget of 9.300 euros and was financed by Fundació Adrena and was implemented by IADEN with the collaboration of the Universitat de Vic – Universitat Central de Catalunya (UVic-UCC), the companies Geoservei and Foresterra and the support of the landowners.

Actions undertaken consisted of hydrogeological studies to analyse the pond and restore it to avoid drainage to nearby vineyards in which also volunteers collaborated. The project allowed to identify a fourth pond in which similar actions were undertaken. Restoration activities of these two ponds increased the surface of rare habitats and contributes to the viability of the metapopulations of the ponds. The study of the seed bank and the floristic composition allowed to determine species which are associated with these temporary habitats. Hence the project offered a win-win solution for the landowners as the drained water to nearby vineyards was of problem for their production, and IAEDEN was able to

recover a habitat of community interest while the stewardship actions were compatible with the productivity of the property. In fact, the landowners have a high environmental consciousness as they don't use pesticides in their vine production and keep livestock to preserve the typical Mediterranean landscape of the property.

After the restoration of the ecosystem additional volunteering actions have taken place on the estate. For example, in March of 2022 a Bioblitz was carried out with the collaboration of universities, natural history museums, iNaturalist, the landowners and nature conservation organisations. Along one day experts of fish, macro-invertebrates, reptiles, mammals, amphibia and moths collaborated in the event. As of that date in Mas Torres 760 observations of 360 species were made by 213 different people. More information on the Bioblitz can be found here: <https://www.youtube.com/watch?v=JW3kQEe93wI>

3.1.2. Stakeholders

Common stakeholders that are involved are the following.

- **Landowner:** landowner plays a central role. A landowner can promote the agreement, sees its environmental benefits and maintains the basis of the agreement.
- **Land Stewardship organisation:** public or private, non-profit organisation that carries out initiatives, including the implementation of land stewardship agreements for the conservation of natural heritage and biodiversity. Land stewardship organisations are either private non-profit organisations (associations or foundations: conservation associations, landowner association, neighbourhood associations, cultural associations, etc.) or in some EU countries public organisations such as town councils or consortia for the management of natural areas.
- **Public administration:** in some EU countries they can act as owner of the land, facilitating agent of the agreement or managing the land. They can support stewardship through incentives, subsidies or tax deduction.
- **Universities and research centres and technical consultants:** stewarded land can be subject of research and support education.
- **Land registry:** can be involved when the stewardship involves real rights¹⁵.
- **Notary:** can be involved if the landowner and stewardship organisation agree to document de contract establishment (this is not a requirement).
- **Civil society:** can be involved through volunteering activities, environmental education or training. Civil society can also benefit from the goods and services provided by the stewarded land.

¹⁵ Are legal rights that relate to tangible and intangible assets, including land. Real rights confer a set of legal entitlements and obligations that allow individuals or entities to use, enjoy, and dispose of property in a manner recognized by law. These rights are enforceable against third parties and protect the owner's interest in the property.

3.1.3. Rights, obligations and duration

Land stewardship agreements could be subject to real rights or personal rights. The formalisation of the contract does not impose conditions upon the landowner as these are the result of the negotiation between the parties within the contract or agreement. In the case of conservation agreements subjected to real rights, there are similarities with conservation easements in the sense that the contract “runs with the land” regardless of changes in property rights.

Land rights always stay with the owner but what is required is an agreement on management support or management transfer. In some cases, the contract or agreement involves conditions to monitor the evolution of the contract and the environmental indicators of the implemented conservation actions.

The duration of the agreements is temporal and variable. It is recommended to sign contracts for longer time periods, but the duration is negotiated between the parties and must appear in the contract. After the finalization of the contract, the parts can renegotiate and extend the contract/agreement or it can be terminated and therewith all contents of the agreement or contract.

Agreements last from 1 year up to 99 years (i.e., 10 to 15 years being typical in regions such as Catalonia or 5 to 10 years in Czech Republic). Real rights last up to 99 years and tend to be longer than contracts under personal rights (i.e. 30 years).

3.1.4. Economic transactions and fiscality

Stewardship agreements are based on the voluntary agreement between the parties and no economic transactions are involved. However, in some countries, governments apply a specific fiscality on these properties, with tax benefits and discounts. Stewardship agreements can involve costs for the conservation organisation as of the writing of the agreement and possible notary costs. Furthermore, the monitoring and enforcement of the conservation actions usually involves material and personnel costs. These costs are not necessarily borne by the stewardship organisation but can come from public budgets in the form of funding programmes or as tax deduction.

3.1.5. Legal basis and needs to reform

While stewardship is a popular tool, a structural economic support and an EU wide legal approach are still lacking. Consequently, the legal frameworks between countries might differ and approaches that are of use in one country might not in another. Additionally, parties often lack the legal knowledge on how to implement a stewardship contract or agreement and how to proceed in the case of an early agreement termination.

Land stewardship contracts can have legal basis, although it is not present in all countries. It is used to be based on tools of real right or personal right. Some examples of legal frameworks are:

- Civil code of Catalonia (art. 623-34): freedom to the parties exist to set the contract terms, including obligations and the breach, the duration or guarantees, and the general contents.

- Law 42/2007 on Natural Heritage and Biodiversity, Spain. The concept and mechanisms of stewardship are integrated into the domestic legal system through article 3 and under Title V on: "Promotion of knowledge, conservation and restoration of natural heritage and biodiversity".
- Law 40/2015 of 1 October 2015, on the Legal Regime of the Public Sector of Spain, for stewardship in which the public sector is involved.

3.2. Conservation easements

3.2.1. Description and characteristics

A conservation easement is a voluntarily entered legal agreement between a landowner and a conservation organisation or public agency that restricts uses of the land to protect its conservation values. The conservation easement transfers the power to the easement holder to exercise certain use rights linked to the property. This transfer of rights becomes part of the property title, meaning that it remains valid when ownership of the property changes (the easement “runs with the land”).

Conservation easements (also called conservation covenants, conservation servitudes or conservation restrictions) are a tool of property law¹⁶. They grant the power to a public authority or a qualified conservation organisation (often called land trust) to permanently limit uses on properties not in their ownership as has been agreed in the agreement. These land-use rights are otherwise held by the landowner. Conservation easements thus function similarly to regulatory restrictions on land use but result from direct contractual agreements between two parties. Conservation easements are usually in gross, meaning they benefit a natural or legal person. If conservation easements are of unlimited duration, they are binding for the present and all future owners of the property. Although they can be changed and revoked under certain conditions, they are normally designed to remain effective in perpetuity. A conservation easement on a property is recorded in its title, which means that it has to be registered by a notary at the land registry office.

Conservation easements are very heterogeneous in form and scope. In their simplest form, they merely state that a property (or part of it) is dedicated to conservation purposes. This implies that all actions that run counter to this objective are prohibited. More sophisticated easements specify what natural features (habitats, species, scenery etc.) of the property are protected, what may or may not be allowed on the property, and by whom the allowed activities may be carried out. In their most comprehensive form, they can resemble detailed management plans, or they refer to planning documents that are not registered with the deed and that can thus be updated more easily.

The purpose and application of conservation easements typically is species or habitat conservation or habitat restoration. Conservation easements provide a valuable alternative to land purchase, when, restricting only some of the use rights linked to the property is sufficient to achieve the conservation target, or when, the landowner is unwilling to sell.

¹⁶ Property law is an area of law that deals with legal rights and obligations related to ownership, use, and transfer of property, including real property (land and buildings) and personal property (tangible and intangible assets).

Another example of conservation easement could be the “conservation agriculture”, a farming system that promotes minimum soil disturbance (i.e., no tillage), maintenance of a permanent soil cover, and diversification of plant species.

The main key characteristics of conservation easements are the following:

- Contracting parties: a conservation easement is established by an agreement between a landowner and someone who is interested in the conservation of the property and is eligible to hold a conservation easement (normally a conservation organisation or a public body).
- The contractual agreement to establish a conservation easement is voluntary on both sides.
- The conservation easement is registered in the title of the property. It has to be recorded at the land register to be valid.
- The conservation easement is a tool specifically designed for conservation purposes, which means that its scope is tailored to the conservation value and objectives of a specific property.
- A conservation easement “runs with the land”, i.e., it burdens the current landowners and the successors in title.
- Unless explicitly specified, conservation easement usually last in perpetuity or many years.
- A conservation easement may impose negative and positive obligations on the landowner.

Case study on conservation easements in Estonia

Woodland Key Habitats as Conservation Easements

In Estonia, the protection of woodland key habitats¹⁷ (WKH) can be regarded as a form of conservation easement. A WKH is an area where there is a high probability of the occurrence of narrowly adapted, endangered, or rare species. They are areas outside a nature protection area. This mechanism which started in the early 90s currently includes 286 contracts signed with private forest owners, all over Estonia. The WKH contracts cover about 682 ha in 363 different WKH areas, and the average size of WKH is 1,9 ha. The WKH give opportunities to some species with specific habitat requirements to survive in cases where the surrounding habitats are degraded. WKH areas also are important steppingstones for different species between areas.

To protect such an area, a private forest owner can enter into an agreement with the Private Forest Centre, which compensates for damages and costs caused by restrictions on forest use (§ 23 of the Forest Act). The protection of a WKH in a privately owned forest is

¹⁷ <https://www.riigiteataja.ee/en/eli/507062022001/consolide>

voluntary. If the forest owner wants to protect valuable forest plots with a contract, the owner can first apply to the Environmental Board.

Then a specialist of the Environmental Board checks the existence of the WKH in the forest, adjusts its boundaries, if necessary, and prepares an accurate price calculation. The state Forest Management Centre's timber sales statistics and felling cost data are then used as the source information when determining the price, and forest assessment data are used to determine the liquid timber quantity.

If a private forest owner wishes to enter into an agreement for the protection of a WKH, the owner shall confirm it by signing that the information specified in the act prepared by the Environmental Board is correct and that he or she agrees to share the information with the Private Forest Centre and a notary. After that, the Private Forest Centre organizes the conclusion of a notarial contract, which encumbers the forest with a personal right of use for the benefit of the state for 20 years. The contract of the WKH will be registered to the land register. The fees involved in concluding the contract are paid by the Private Forest Centre.

The Environmental Board will control the preservation of WKH during the contract and the compensation for the loss of the income is paid by the Private Forest Centre to the owner in annual equal payments.

Under the agreement, the owner of the estate accepts the obligation to prevent and not allow in the area of WKH: forest management (except for emergency felling with the consent of the Environmental Board), removal of dead wood, forest drainage, construction of forest roads, reforestation, as well as camping and campfires. In case of breach of contract, a contractual penalty of up to 10% of the total value of the contract can be demanded from the owner.

If the ownership of a WKH changes, all the rights and obligations of the existing owner related to the protection of the WKH shall be transferred to the new owner. The new owner does not have the right to terminate the WKH agreement prematurely for one year.

If the owner terminates the contract before the term expires, he/she must return the amount of compensation received so far under the contract and pay a contractual penalty of 20% of the total amount of the contract.

3.2.2. Stakeholders

Common stakeholders that are involved are the following.

- **Landowner:** is willing to achieve conservation purposes on their property by transferring use rights linked to the property to a third party.
- **Easement holder:** is willing to protect natural values by receiving the power to exercise, enforce or restrict use rights linked to a property.
- **Land registry:** records the conservation easement as part of the property title.
- **Notary:** documents the signing of the contract that establishes the easement and makes sure all administrative steps are taken.

3.2.3. Rights, obligations and duration

The easement holder has the right to enforce the terms of the easement. This includes making sure that all land use stipulations are respected by parties and taking (legal) action in case the terms of the easement are violated. The easement holder can have the obligation to monitor and report whether the terms of the easement have been respected. The landowner has the obligation to respect the terms of the easement. Besides the land use stipulations, this can include granting access to (part of) the property for the easement holder or the public. The contract can be ended after the duration of the easement if it is not in perpetuity or by mutual agreement of the parties.

Unless explicitly specified, conservation easements usually last in perpetuity or are temporary, it depends on the specific civil law in each country.

3.2.4. Economic transactions and fiscality

Easements can be, but often are not, cheaper than purchasing land in fee. This is due to the comparatively high transactional costs.

Setting up an easement can create transactional costs: the costs of setting up the easement itself, including costs and time investment for negotiations, the environmental assessment that should be done beforehand, legal advice, notary costs and fees between other costs. Then there are costs associated with the potential compensation for the landowner. These costs are not necessarily borne by the easement holder but can come from public budgets in the form of tax deductions or funding programmes. After the registration of the easement, there may be costs associated to the monitoring and enforcement of the agreement.

Fiscal provisions to encourage landowners to grant conservation easements already exist in some countries but they are not widespread. We believe that this aspect is crucially important for expanding the concept within the EU and testing it in action. Therefore, we recommend incentivising the process of applying conservation easements as a specific nature conservation tool in EU countries. The LIFE programme and other EU funds could be a very strong mechanism for this purpose¹⁸.

3.2.5. Legal basis and needs to reform

The legal basis exists in various forms in most EU member states as part of the respective property law, which in most EU countries is part of the civil code.

Although no explicit legal obstacle exists for their use in most member states, conservation easements are not yet widely used. The provision of most EU funding programmes (e.g., LIFE+, RDP) stating that land acquisition for conservation is only eligible if the investment is adequately ensured in the long-term through adequate legal safeguards has led to an increased use of easement like provisions for conservation purposes in some member states. However, conservation-related entries in the property title, as described above, rarely go beyond general language dedicating the land to conservation purposes.

18 Račinska, I., Vahtrus, S. (2018). The Use of Conservation Easements in the European Union. Report to NABU Bundesverband.

It was found that in 22 of 25 countries that were analysed in an ELCN report¹⁹, easements can be used to dedicate the property to nature conservation purposes in principle. However, only for a few countries' experts reported a regulation that explicitly addresses the use of easements for conservation purposes (e.g. Belgium, Estonia, France, Ireland, the Netherlands), in other cases the experts found that traditional limited real property rights could be used, among others, for conservation purposes. The most commonly used mechanism that to some extent could be adapted to the conservation easement concept, is that of the "servitude". Other mechanisms include land lease and various other contractual agreements.

This mentioned report confirms that many promising examples can be found in the EU, letting us conclude that most EU member states can apply the concept of conservation easements within the existing legal framework, with some adaptations or additions to existing laws. The main challenge is not the legal system, but rather a lack of implementation practice and incentives for testing and wider application of this measure.

3.3. Conservation leases

3.3.1. Description and characteristics

Conservation leases are a voluntary tool, usually used by nature conservation organisations and private landowners to ensure that land use of a property is compatible with nature conservation objectives²⁰. The lease may include all or part of a property, or a particular use, such as farming or forestry. The leaseholder gains the use rights and in consequence the lease is a form of management transfer agreement, where the leaseholder is responsible for the management of the land. Usually, this type of agreement between the landowner and the leaseholder involves economic transactions from the first to the second in the form of rent.

Conservation leases can be implemented by public or private organisations as well as private landowners, which means that the leased land can be owned by the public administration, private landowners, companies, the church or nature conservation organisations.

In conservation leases, a landowner and the leaseholder agree, based on free will, to a series of conditions under which his/her land is leased. For that, an environment of mutual trust is essential. In lease contracts the objectives of land conservation or restoration actions are specified as well as the restrictions to which the leaseholder agrees once the contract is formalised. If desired, additional activities such as volunteering, educational activities or research could be implemented on the land.

Conservation leases imply management transfer while property rights stay with the landowner, hence these conditions have to fit with the objectives of the involved parties. However, some leases work differently, for example, emphyteutic lease. In that case, rights are attached to the land parcel. The emphyteutic lease of immovable property confers on the lease a real right which may be mortgaged.

¹⁹ Račinska, I., Vahtrus, S. (2018). The Use of Conservation Easements in the European Union. Report to NABU Bundesverband.

²⁰ Available at: <https://elcn.eu/sites/default/files/2018-01/Disselhoff%202015%20Tools%20to%20support%20private%20land%20conservation.pdf>

The main key characteristics are the following:

- Conservation leases constitute private agreements which involve the lease of land from a landowner, that can be public or private, to a leaseholder with the objective of nature conservation or restoration.
- In many countries, the land lease is regulated by civil law.
- The contractual agreement to establish a conservation lease is voluntary on both sides.
- Land rights always stay with the owner, but the management of it is transferred to the leaseholder.
- The duration of the lease is variable and negotiated between the parties according to corresponding national law.
- Compensation is provided through rent payments

Case study on conservation leases in Germany

Fairpachten in Germany

Fairpachten is a project implemented by NABU National Natural Heritage Foundation. Through Fairpachten NABU provides recommendations to private landowners on integrating conservation aspects in lease contracts with farmers, for the implementation of nature-friendly management of meadows, pastures and arable fields. The project is of great interest as biodiversity in the agricultural landscape is under massive threat. The population of many species depending on



Image 2 Flower rich grassland. Photo credits: © Frank Gottwald

traditional agricultural land uses has declined sharply in recent decades. Between the principal causes of it are the fragmentation and increasing sealing of the landscape, the loss of landscape elements, and the intensification of agriculture with corresponding increases in the use of fertiliser and pesticides.

Fairpachten provides a modular system of text elements for various conservation measures that can be integrated in lease agreements. In addition to that, a team of consultants helps landowners choose the best conservation measures suitable for their land.

Using lease contracts for conservation is a form of private land conservation where the lessors (private landowners, churches, municipalities and regional authorities or foundations and companies) lease their land leaseholders for conservation management. The lessors and the tenants agree on the mutual rights and obligations (such as the amount

and payment date of the lease) as well as the general conditions for exercising management (e.g., from when and for how long the lease should apply). During this process, landowners can also agree on additional measures for the management of their land regarding the special protection of nature and the environment as part of the contract negotiations. The lease contracts can be from verbal to written, but it is recommended to always have a written form.

Fairpachten provides a template of the lease contract and free advice and information service for everyone who wants to protect or restore nature on arable land, meadows and pastures in cooperation with farmers. In practice, that means that NABU advises landowners based on the local conditions and explains what measures are suitable for the property, based on a range of conservation objectives such as field birds, hares, insects or wild herbs. Measures also contribute to the protection of soil and water. All nature conservation measures promoted by Fairpachten benefit biodiversity in the cultural landscape, e.g., nature-friendly management without pesticides or the creation of field margins with wildflowers. Where possible, Fairpachten also indicates if there are funding opportunities for selected measures. On this basis, landowners can agree on measures for more biodiversity with their tenants.

The Fair Leases project is funded by the German Federal Agency for Nature Conservation within the Federal Biological Diversity Programme with funds from the Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection.

3.3.2. Stakeholders

Common stakeholders that are involved are the following.

- **Landowner:** can be public or private and is willing to achieve conservation purposes on their property by leasing the property to a third party.
- **Lease holder/land user:** typically a farmer willing to protect or restore natural values by restricting land uses to those compatible with conservation objectives linked to a property.
- **Land registry:** records the conservation lease as part of the property title (optional).
- **Notary:** documents the signing of the contract that establishes the rent and makes sure all administrative steps are taken (optional).
- **Nature consultant:** evaluates the natural features and the potential of property and provides advice to landowner and leaseholder about what stipulations to include in the lease contract (optional).
- **Civil society:** society can be involved through volunteering activities, environmental education or training and they can benefit from the goods and services provided by the leased land.

3.3.3. Rights, obligations and duration

The formalisation of the lease does not impose conditions upon the landowner as rights and obligations will be detailed in each lease contract as a result of the negotiation between the parties.

The lease can establish conditions for tillage, rotation, soil management, use of chemicals, logging rights, etc.

Property rights always stay with the landowner, but management is transferred to the leaseholder. Once the conservation lease is terminated, no further rights or obligations apply to the involved parties if not specified differently in the lease contract.

The duration of leases is variable, negotiated between the parties and must appear in the contract. Maximum or minimum duration will depend on the civil regulation in each country. It is recommended within the possibilities to sign lease contracts for long periods, for example, five years or more. This allows a tenant to invest in sustainable practices, which in turn can lead to increased soil health, higher crop yields, and added value to the land. After the finalization of the contract, depending on the country, the lease can be extended.

Landowners and tenants can also use an automatic renewal clause to help encourage a long-term relationship.

There are big differences among countries. From cases like the UK with 99 years maximum duration, to cases like Spain with 5 years minimum duration and the possibility of indefinite extensions.

3.3.4. Economic transactions and fiscality

Conservation leases are based on a voluntary agreement between parties, and economic transactions in form of the rent are involved. To compensate for the economic loss associated with the restrictions or the non-profit objectives of the lease, land is often leased below market value. The monitoring and management of the leased land, as well as taxes, can imply additional cost for the land steward.

3.3.5. Legal basis and needs to reform

Conservation leases are **regulated by civil law** and are **different in each country**.

In France, conservation leases (“baux environnementaux”) were included as a new form of land leases in the Rural and Marine Code.

The Administration and conservation entities can also lease land they own, both to nature conservation organizations, and to individuals who use them responsibly and respectfully from an environmental point of view.

3.4. Privately protected areas

3.4.1. Description and characteristics

Privately protected areas (PPA) are as defined by the IUCN “(i.e., a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values), under private governance”²¹.

The private governance of a protected area can include governance by individuals and groups of individuals, non-governmental organisations, corporations, including existing commercial companies and small companies established to manage groups of PPAs, for-profit owners such as ecotourism companies, research entities such as universities and field stations, or religious entities. The IUCN’s PPA Guidelines also acknowledge the existence of “many instances of shared governance arrangements that involve private governance in combination with other governance types, depending on the legal and institutional context for conservation in any country”²².

The motivation behind the establishment of PPAs by private landowners or land users can be philanthropic motives, cultural, religious or spiritual values, or because of economic or scientific interests.

Private governance of nature emerges under land and sea tenure systems which agree rights over a property of private landholders. These rights may be through, for example, land title or long-term lease.

The landholder has rights to the exclusive occupation and use of the area, to assign or cede these rights to others through leasehold or other agreements, and to sell or alienate the property to successors in title. The landholders may therefore be:

- An individual or individuals who hold a title or lease to a property.
- A legally constituted organisation, which owns the property/lease, including NGOs, community property owners’ associations, trusts and foundations.
- A company or corporation, which owns the property/lease including not-for-profit, commercial or for-profit.

Several defining criteria for PPAs can be derived. In order to be considered a PPA, the land or sea:

- Must be recognised, dedicated and managed as a protected area
- Must have nature conservation as the primary objective of its protection status This can include areas with other goals as well, but in the case of conflict, nature conservation will be the priority.
- Must be dedicated to nature conservation in the long term, either through legal designation as a protected area, through a permanent or renewable binding agreement (e.g., conservation covenant or easement) or through governance by an organisation with clear perpetual conservation objectives
- Must be governed by a private entity. This excludes protected areas under public or shared governance. Governance in this context is understood as having decision

²¹ Available at: <https://portals.iucn.org/library/sites/library/files/documents/pag-029-en.pdf>

²² Available at: <https://portals.iucn.org/library/sites/library/files/documents/pag-029-en.pdf>

making power over the establishment of a PPA; the long-term goal (vision) of the PPA; the management objectives; the adoption of a management plan and/or system; deciding who will implement the management; ensuring adequate human and financial resources.

There are several arguments why PPAs should be treated distinctly from publicly protected areas. The most striking difference is the voluntary nature of PPAs. The standard conservation categories of protected areas, as they are found in the nature conservation legislation of most member states, do not sufficiently respect these motivations behind PPA designation. They treat landowners who voluntarily protect their land the same as those who will only comply with conservation objectives if they impose landowners with the exertion of coercive power. If landowners know that their conservation initiative will trigger statutory area protection, this may pose a disincentive for private commitment. This lack of clarity about the functioning of PPAs has sometimes limited their creation and prevented long-term conservation solutions²³.

Not all private land conservation initiatives can or should thus be treated as PPAs or should become PPAs. Where nature conservation is not the primary aim of the site management or is limited to the protection of parts of a larger property.

Case study on privately protected areas in Latvia

Micro-reserves as Privately Protected Areas in Latvia

Micro-reserves can be established nation-wide in Latvia since 2012, even though the concept dates back to the 1970s. It is a mechanism to ensure the conservation of species and habitats outside protected areas, or in protected areas if a functional zone fails to ensure it. Specifically, micro-reserves can be established for protection of certain species and habitats listed

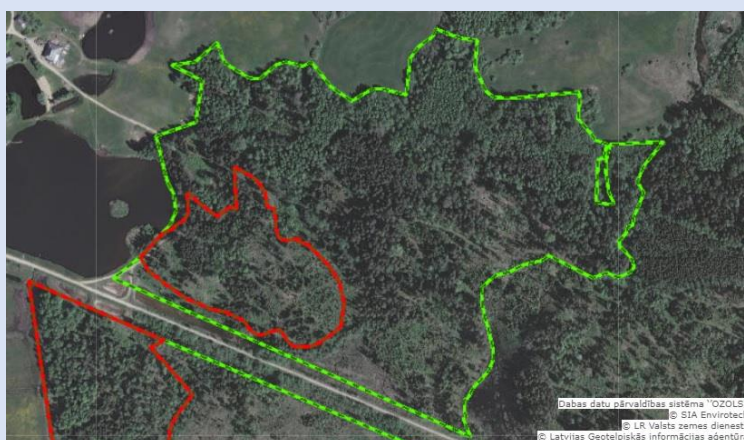


Image 3 Map of a Micro-reserve. Photo credits: LIFE IP LatViaNature and Nature Conservation Agency of Latvia

under the Cabinet Regulation No.940. In 88% of the cases, they are established for conservation of bird species. The area of a micro-reserve can reach 30 ha for species of animals, plants, fungus, lichen, algae and 200 ha for bird species. However, the normal size of micro-reserves in private land is 5-10 ha.

To establish such micro-reserves, the involvement of a certified biodiversity conservation expert, the local government, the state institutions and the landowner is required. Only

²³ Available at: <https://elcn.eu/sites/default/files/2018-01/Disselhoff%202015%20Tools%20to%20support%20private%20land%20conservation.pdf>

when the micro-reserve is established with the consent of the landowner this area can be defined as a privately protected area as described in this chapter (voluntary conservation initiative). Any person can propose an area as a micro-reserve. The proposal is then assessed by the certifier, the landowner, the local government and is evaluated by the State Forest Service or Nature Conservation Agency. When the proposal passes through, the micro-reserves established through an administrative act.

An example of the process when a landowner proposes the establishment:

- Private landowner applies for establishment of micro-reserve in his/her land for the conservation of osprey (*Pandion haliaetus*).
- State Forest Service agrees to establish a micro-reserve (3,1 ha) and a buffer zone (8,2 ha).
- In the micro-reserve forest management is now prohibited.
- The landowner receives annual payments - 160 euro/ha to compensate for the forestry restrictions in the micro-reserve.

Micro-reserves are a permanent nature conservation mechanism. Hence, the status of a micro-reserve shall be revoked only if it has irrevocably lost its significance to the conservation of the relevant species or habitats. Furthermore, as a consequence of its establishment, nearly all economic activities (including forestry) in micro-reserves are prohibited. The restrictions in micro-reserves are similar to restrictions in nature reserves. In addition, a buffer zone may be determined for bird micro-reserves. In these buffer zones forest management activities in spring and summer (bird nesting season) are prohibited. To compensate landowners for the loss of productivity they have a right to receive an annual support payment (160 euro/ha).

The total area of micro-reserves in Latvia is more than 46,000 ha (2800 micro-reserves) of which 4000 ha have been established on private lands. However, cases where a landowner voluntarily proposes the establishment of a micro-reserve are still rather rare; during the past ten years, 5 cases have been submitted by landowners to the State Forest Service, out of the in total about 600 proposals. Unfortunately, there are several cases of conflicts between involved parties since micro-reserve can be established without the approval of the landowner. Article 17 of Cabinet Regulation No.940 requires that the responsible institution shall send the information at its disposal characterizing the micro-reserve to be established to the landowner and local government. The landowner and local government shall provide an opinion on the proposal for the establishment of a micro-reserve (the coherence of establishing a micro-reserve, the area occupied, the location). Upon taking a decision to establish a micro-reserve, the responsible institution shall evaluate the opinion of the landowner and the local government and the social and economic interests of significance to the society.

3.4.2. Stakeholders

Common stakeholders that are involved are the following.

- **Landowner:** is willing to achieve an ambitious conservation purpose on their property.
- **Nature conservation organization:** can collaborate with landowners to assess and achieve the conservation goals (optional).
- **Governments:** the public administration is the actor who allows this kind of long-term conservations, with specific measures and legislation, but no specific intervention (i.e., management).
- **External evaluator:** assesses the value of the rights that are given up.
- **Nature consultant:** assesses the ecosystem or habitats and supports setting up the nature conservation or restoration targets.

3.4.3. Rights, obligations and duration

In PPA projects, it could be recommended to establish a voluntary agreement between property owners and other agents, like NGOs, to determine the rights and obligations in mutual agreement with all actors involved.

The duration of rights is case and country dependent. There are examples with private protected areas agreements for 10, 20, 30 or even more years.

3.4.4. Economic transactions and fiscality

Cases exist where landowners receive fiscal benefits for PPA designation of their land, but these are rather exceptional and most of the time there is no direct economic transaction linked to it.

However, PPAs often provide public benefits at a lower cost than public agencies managing protected areas. PPAs can reduce public costs of land purchase and water management for governments, and hence taxpayers. Countries can maximise these benefits by encouraging and supporting PPAs.

3.4.5. Legal basis and needs to reform

For an area in private ownership to be designated or declared as PPA, it must meet the requirements for a protected area as defined by IUCN or in the equivalent applicable laws, including the statement of intent to achieve the conservation of nature in the long term. Achieving a degree of permanence usually requires an instrument that is binding on current and future successors in title. This can take the form of a specific statement of intent, undertaking, contract, articles of association covenant, registered servitudes in favour of nature conservation over the title to the property, memorandum of understanding or another similar instrument.

The question of how a PPA is recognised, dedicated and managed, is dealt with differently in the EU member states. A few member states explicitly mention PPAs as a category in their national nature conservation laws and foresee a formal process for their designation and recognition (e.g., Portugal, Belgium and Slovakia). In most member states, no such official

categories or procedures exist. The nature conservation acts of other member states do not mention this possibility but allow it implicitly. In some member states, protected areas may only be established on private properties with the consent of the landowner, e.g., in Finland, Belgium and in the UK²⁴.

3.5. Results-based agri-environmental payment schemes

3.5.1. Description and characteristics

The principle behind results-based agri-environment payment schemes (RBAPS) is that the farmer or land manager is given flexibility to choose the most appropriate practices to achieve a defined environmental result in exchange for a payment. The central difference from traditional payments is that they do not prescribe when or what a farmer has to do or not do in order to achieve the agreed result and get a payment.

However, there is no single agreed definition of what constitutes a results-based agri-environment payment scheme²⁵.

The funding of these schemes can come from various sources i.e., public EU (Common Agricultural Policy), national or regional funds, or even private initiatives.

In Europe, different payment mechanisms based on different criteria/measurements of results have been applied.

In RBAPS projects and initiatives, the key characteristics are based on the relation between results and payments, also between conservation indicators and monitoring. RBAPS are effective when a varying range of biodiversity quality exists (e.g., good and moderate). It's also important for maintaining and incentivising improvements in the condition of semi-natural habitats and the environmental conditions for species.

Many different types of RBAPSs have been implemented across Europe, mostly on a case-by-case basis²⁶. One can distinguish between measures aimed at biodiversity conservation targeted at species and habitats of conservation concern, such as species rich grasslands, and those aimed at ecosystem services provision, which are often common habitat generalists, occurring in a wide variety of environments²⁷.

There is a general belief that results-based approaches will be able to deliver better ecological outcomes than prescription-based approaches and can better integrate ecosystem services within agri-environment programmes because they carry less dead-weight (measures of which it is hard to monitor their environmental effectiveness). They are also believed to be more cost effective, as payments are directly linked to outcomes²⁸. Within result-based payments the farmer or land manager is free to choose the most appropriate management to achieve the prescribed result, and payments should reflect the level of achievement.

²⁴ Available at: <https://elcn.eu/sites/default/files/2018-01/Disselhoff%202015%20Tools%20to%20support%20private%20land%20conservation.pdf>

²⁵ Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0264837717304866>

²⁶ More information: <https://www.rbpnetwork.eu>

²⁷ Available at: <https://www.sciencedirect.com/science/article/pii/S0006320719307256>

²⁸ Available at: <https://www.sciencedirect.com/science/article/abs/pii/S0264837709000805>

The key characteristics are the following:

- A clear link between payments and the biodiversity conservation outputs delivered on the ground exists.
- Increased cost-effectiveness: money is paid for concrete biodiversity results.
- Incentivised maintenance of high-quality biodiversity.
- The clear definition of the ecological objective (i.e., the outcome), based on strong ecological research and up to date baseline data.
- The biodiversity target should be a conservation priority and be dependent on agricultural practices.
- There needs to be a clear, unambiguous link between the ecological objectives and reliable indicators that act as proxy for achieving these objectives, and upon which payments depend.
- The result indicators should not be easily achieved by means other than agricultural management. The indicators should be easily measurable, quantifiable and observable by farmers, and they should not be heavily dependent on factors external to the farm²⁹.
- The existence of adequate expert knowledge on ecological requirements to inform best practice and knowledge transfer to farmers and farm advisors.
- An appropriate system for results verification, farm advisory service and dispute resolution needs to be in place.
- Socio-economic factors need to be taken into account, including stakeholders' attitudes to innovation and risk taking, along with the existence of a culture of trust between the various actors – farmers, farm advisory service, evaluators and government institutions.
- RBAPS work well with a locally led approach.

²⁹ Available at: <https://pubmed.ncbi.nlm.nih.gov/23086399/>

Case study on result based agri-environmental schemes in Romania³⁰

High Natural Value farmland landscapes

Between 2015 and 2019 Fundatia ADEPT coordinated a pilot project on Result Based Payment Schemes in Romania. The project areas consisted of High Natural Value (HNV) farmland landscapes in Southern Transylvania covering 150 ha of the Continental and Alpine biogeographical regions. These HNV farmlands are the habitat of a large diversity of species, with different management requirements. However, approximately 20% of grasslands and pastures were badly managed with overgrazing,



Image 4 Farmers within a RBAPS. Photo credits: © Fundatia ADEPT

overfertilizing and scrub encroachment. This mismanagement was caused by a collapsing traditional rural economy and years of abandonment. With the development of the scheme list of appropriate plant indicators was set-up to measure the habitat quality. Based on the monitoring of these indicators by transects the payments were calculated. Three levels of payment were established linked to minimum 5, 8 and 10 indicator species detected on the transect. The number of indicator species present in a grassland was assumed to decline if management becomes less “biodiversity-friendly”, e.g. through earlier mowing or excessive application of fertiliser. Thus, in the calculation it was assumed that a higher number of species corresponded to a greater investment by the farmer. The calculations were based on income foregone and additional costs if ideal management was carried out, and transaction costs – the costs to the farmer of learning the methodology, plant identification, and doing his own controls, as required under the measure.

To select the farms for this project, ADEPT held meetings with over 300 farmers, and a series of village associations in Târnava Mare area and Pogany-havas areas. Interested farms were selected based on several criteria, including: the farmer must be a legal user of the land (owner or rental contracts); sign a commitment for 3 years; maximum 10 ha per owner; people employed in project cannot provide land; land may be under basic payments (SAPS) but not under agri-environment agreements; only hay meadows are eligible and must be permanent grassland (older than 5 years). After the final selection the RBAPSs were piloted in Târnava Mare with 16 farmers on 72.91 ha and in Pogany-havas with 56 farmers on 90.95 ha.

³⁰ Further details: <https://fundatia-adept.org/projects/rbaps-results-based-payments-for-biodiversity>

The project was successful and liked by farmers as the scheme allowed them to take management decisions themselves based on local conditions and annual weather changes. The project also maintained or improved all the sites under agreements. As of 2022 these were the only RBAPSs in Romania. This was a pilot project and unfortunately results based schemes have not been adopted by the Romanian government under the Rural Development Programme. There are thus no current results-based schemes in Romania.

3.5.2. Stakeholders

Common stakeholders that are involved are the following.

- **Farmer:** who is eager to implement the conservation measures and/or monitor outcomes.
- **Specialist/Scientist:** to develop scorecard, design monitoring and evaluation, and provide best-practice management guidelines.
- **Farm advisor:** with ecological knowledge to support delivery on the ground.
- **Government:** public administration is the actor who can allow this kind of conservations, with specific measures, legislation, or funds but no specific legal intervention.
- **NGO:** can collaborate with landowners to assess and achieve the conservation goals (optional) or funding the activities.

3.5.3. Rights, obligations and duration

RBAPS projects are delivered through result indicators which easily and reliably assess the biodiversity quality and consistently respond to farming practices. Specially, through farmers' understanding of the scoring system and the best-practice management which delivers the biodiversity target.

Farmers will have obligations to achieve a specific nature conservation objective, based on the specific program of RBAPS.

Depending on the details of the RBAPS program, if the farmer does not achieve the targets the possibility could exist of partial payments and/or modifications of the objectives. The same applies if the farmer invests efforts and time but the objectives of conservation were not well established. All these possibilities must be contemplated in RBAPS programs and contracts.

Duration of rights depends on each country but, based on some experiences, RBAPS have run under the agri-environment-climate measure of a Rural Development Program which can normally offer contracts of no more than five years, which means that the indicators of biodiversity results must be achieved and measured within this timescale.

3.5.4. Economic transactions and fiscality

Payments can be done according to different criteria, based on the achievement of the conservation goals, analysed by a scientific panel. These payments can be done with a specific economic amount for an area, for conservation goals, for the improvement of the indicators,

etc. For example, payments can be based on verifiable maintenance or improvement of selected biodiversity indicators on individual land parcels, by which improved indicator scores mean a higher payment.

Transaction costs are relatively cheap compared to traditional action-based payment systems. Once RBAPS are set up they are quite efficient because the monitoring is inbuilt.

Hybrid payment schemes can use a mix of both results- and prescription-based actions and, as with any approach, can include capital investments to pay for one-off complementary actions.

3.5.5. Legal basis and needs to reform

There is no need to have a specific legislation. Results-based schemes can run as a private agreement between the different agents involved or through a public agreement. In the latter case, a legal base will be needed. So, many times, the legal basis is depending on political programmes and not on specific legislation.

In economic terms and legislation, RBAPS have been funded through measures of Rural Development Programmes other than Agri-environmental measures.

In spite of this situation, a legal basis for RBAPS projects could be needed to reinforce legal security. Comparing with the other kinds of private conservation agreements, regulations through civil code could be a promising approach.

3.6. Temporary nature and safe harbour agreements

3.6.1. Description and characteristics

In the context of urbanization and industrialization, often large pieces of land designated for development remain undeveloped for years or decades. This private land could be transformed into temporary areas for nature conservation. The basic concept of temporary nature is to allow landowners derogations from the requirements of species conservation law before endangered species emerge on the property as a result of active management practices or no intervention measures which are voluntarily agreed by the landowner.

The idea behind temporary nature is that some species or habitats of conservation interest are pioneers who quickly occupy ecological niches when they become available. These habitats or species benefit from dynamic short-term protection measures that can be accommodated on many otherwise commercially used properties, e.g., quarries, harbours, off-road racetracks, etc. Temporary nature can act as an effective temporary corridor for certain species. The habitats can temporarily guarantee the sustainable survival of a population, but can only be beneficial to nature with a permanent backbone structure for species to fall back on when temporary nature disappears.

Temporary nature mainly benefits pioneer species that quickly colonise barren soil habitats such as construction lands, sand heaps or reclaimed port areas. These conditions are almost nowhere to be found in other parts of landscape. Landowners on sites awaiting development often invest time and money to prevent natural succession e.g., by mowing, ploughing or using pesticides, to overcome colonisation of protected species. Such colonization could impair their development plans as the law sometimes stipulates that landowners need in that

case to apply for an exemption from species protection or provide compensation for the impact. Here is where safe harbour agreements can provide a positive solution. Under a safe harbour agreement, landowners voluntarily propose to implement restorative and habitat management measures aimed at the conservation of threatened or valuable species. In return for restoring habitats of these species, the landowner is provided with a 'safe harbour guarantee', ensuring them that no additional conservation measures will be required, and no additional land, water or resource restrictions will be imposed if the number of listed species increases as a result of the landowner's actions³¹.

Temporary nature can also be used on more developed nature on waste land. Important in both situations, but indispensable in situations with more developed nature on waste land, is a baseline measurement. A baseline measurement consists of a comprehensive inventory of species present on the site before it is put into management.

While the conservation of 'ordinary' biodiversity is often not the primary objective of nature conservation laws, temporary nature might serve as a useful catalyst for biodiversity restoration across the wider landscape and complement the more permanent restoration actions³². The main key characteristics are the following:

- Temporary nature and safe harbour agreements are voluntary tools.
- Limited time period.
- It frees landowners from conservation measures or land restrictions if habitat or populations of the targeted species increases as a result of the actions undertaken during the safe harbour or temporary nature agreement.

Case study on Temporary Nature in Belgium

Signify' factory in Turnhout



Image 5 Signify factory in Turnhout. Photo source: <https://www.corridor.land/signify-turnhout/>

The example was implemented in the city of Turnhout in Flanders, Belgium at the industry park of the factory Signify (formerly known as Philips Lighting). Signify's industry park is a classic site from the 60-ies. Consisting of large area of paving with classically pruned hedges and large short mowed lawns. The pavement is kept weed-free with the use of chemicals. This classic management is both intensive and expensive and has little to no value for people and biodiversity.

³¹ Available at: <https://elcn.eu/sites/default/files/2018-01/Disselhoff%202015%20Tools%20to%20support%20private%20land%20conservation.pdf>

³² Available at: https://www.researchgate.net/publication/336263512_Temporary_Nature_-_A_Win-Win_for_Nature_and_Developers_Tinkering_with_the_Law_in_Order_to_Combat_Biodiversity_Loss

Signify' factory in Turnhout has been severely downsized in recent years. As a result, parts of the nearly 20-hectare industrial site look abandoned today. In anticipation of renewed industrial activity, nature now has a chance to develop thanks to the use of "temporary nature". A company garden is usually austere due to frequent mowing, but the lamp manufacturer aims to restore the historical vegetation of the Kempen: dry, heathery grasslands bursting with small life, kept short by sheep.

In exchange, Signify' management received a guarantee that the nature can be removed if new company land is needed in the future, because the pieces of grassland are and will remain company land. Nothing will change about the legislation. Everything starts with a zero measurement and if there is no European valuable nature at that location, then the licensing authority give the guarantee that the "new" nature that will develop or will be created can also be taken away again.

Signify leaves the construction and green management to specialized nature managers. It saves on maintenance, because company greenery is usually frequently mowed and treated with pesticides.

The grasslands on Signify' site will be grazed by sheep twice a year. The sheep bring seeds of native plants in their fleece. And those plants attract native animals and insects. The lawnmower and sprayer can stay aside now that the company has a legal guarantee of the temporal nature that develops there. This removes a perverse effect of nature legislation: companies are terrified of rare species establishing themselves on their property and interfering with future operations.

3.6.2. Stakeholders

Common stakeholders that are involved are the following. This however, does not exclude the participation of other stakeholders in the process depending on local circumstances.

- **Landowner:** is willing to achieve temporary conservation purposes on his/her property.
- **Government:** public administration is the actor who allows this kind of temporary conservations, with specific measures and legislation.
- **External evaluator:** assesses the value of the rights that are given up.
- **Nature consultant:** evaluates the nature at the beginning and at the end of the contract and supports setting up of nature targets.

3.6.3. Rights, obligations and duration

A voluntary legal agreement must be met between property owners and governments.

Management of a site for temporary nature can range from no intervention (allowing natural succession) to active management for targeted habitats and species.

Duration of rights depends on each country. For example, in the US it's between 5 and 100 years, and 10 years in Belgium.

3.6.4. Economic transactions and fiscality

There are no direct costs associated with the temporary nature concept. On the contrary, private landowners can save costs by being able to renounce to pre-emptive maintenance measures on their land.

Temporary nature, as happens in the Netherlands, provides incentives for landowners to voluntarily use their lands for ecological purposes while awaiting development.

3.6.5. Legal basis and needs to reform

The legal stipulations of conservation law create the perverse incentive for landowners to take pre-emptive action against protected species and habitats. The temporary support of pioneer species and habitats, can be argued, is in the interest of protecting wild fauna and flora and conserving natural habitats, as compared to the status quo of preventing their emergence on the land in question.

These initiatives can include derogations from the species protection restrictions in advance.

At the national level, there may be need for changes to national laws, or in the way they are implemented, to better enable the uptake of temporary nature. For example, in many Member States, additional species and/or habitats, beyond those protected by the Nature Directives, may be protected under national law; these national protections may further constrain temporary nature.

The German Environment Ministry is analysing practical temporary nature experience in the implementation of current legislation, including where conflicts arise, with a view to identifying solutions to these conflicts³³.

In Flanders, there are some minor cases known where the concept of temporary nature is used. However, there is no specific legislation. As a result, temporary nature remains a grey area. In Flanders, temporary nature is implemented by means of two derogations to the species decree. The first is an individual deviation from the prohibitions of the species decree. The second deviation is an individual deviation from the prohibitions on vegetation change in the vegetation decree.

Temporary Nature is not excluded within Natura 2000 but must be implemented within the legal framework set out in Article 6 of the Habitats Directive. But it is important to ensure that temporary nature does not undermine full implementation of the nature directives and does not result in net loss of protected species and/or habitats.

³³ More information: <https://www.bfn.de/natur-auf-zeit>

3.7. Comparative table

To gain an overview of the different tools explained in this report, below is a non-exhaustive summary table. The table aims to highlight the key aspects of each tool and depict the most striking similarities and differences of each of the six tools.

Conservation tool	Main characteristics	Land rights or legal requirements	Economic transactions	Duration
Land stewardship	Voluntary, flexible temporal agreement for conservation purposes.	Management support or management transfer where land rights stay with the owner. Subject to real rights or personal rights.	No economic transactions are involved.	Temporal and variable.
Conservation easements	Voluntary, for conservation purpose and in perpetuity or long-term contract. Usually restricts uses on land. Rights “run with the land”.	Burdens landowner and future owners as rights “run with the land”. Easement holder has the right to enforce the terms and landowner has the obligation to respect the terms.	Transactional costs and costs associated to land register, monitoring and enforcement. Compensation for given up rights is sometimes available e.g. in form of tax incentive	Designed to last in perpetuity but can be temporary.
Conservation leases	Voluntary, to ensure that land use is compatible with nature conservation or restoration objectives.	Management transfer where land rights stay with the owner.	Economic transactions in form of the lease are involved.	Temporary and variable.
Privately protected areas	Geographical space, recognised, dedicated and managed, through legal or other means, to achieve the long-term conservation of nature under private governance.	Usually requires an instrument that is binding on current and future successors in title. Requires state recognition.	No direct economic transaction, but sometimes there are fiscal benefits for landowners.	Case dependent (i.e. 10, 20, 30 or more years).
Result based agri-environmental payment schemes	Farmer or land manager is given flexibility to choose the most appropriate practices to achieve a defined environmental result in exchange for a payment.	Land rights stay with the landowner. RBAPS projects are delivered through result indicators. Farmers will have multiple obligations to achieve a specific nature conservation objective.	Payments done according to different criteria, based on the achievement of the conservation goals.	Country specific but can normally offer contracts of no more than five years.
Temporary nature and save harbour agreements	Voluntary and temporal instrument to allow landowners derogations from the requirements of species conservation law before endangered species emerge on the property.	Land rights stay with the landowner. A voluntary legal agreement must be needed between property owners and governments.	No direct costs associated. Landowners can save money by reducing expenditure to prevent nature to appear on the property.	Country specific (typically up to 10 years).

3.8. Comparison of opportunities and weakness

As a result of the analysis done, opportunities and weaknesses were detected for each kind of conservation agreement which are summarized in the table below.

Land stewardship	
Opportunities	<ul style="list-style-type: none"> Agreements are flexible in their description and duration and, if required, when subject to personal rights it can be ended if the landowner's interest changes (i.e., succession, cases of disagreement between the parties or changes in legislation). However, it is recommended that parties renegotiate and search new ways for a prosperous dialogue and collaboration, with early termination as last option. In the case of real rights of partial use, contract can only be ended by the landowner after the period fixed by law. Other contracts regarding farmland use, hunting rights, timber exploitation, etc. can be complementary on the same land if they are not against the interest or the objectives of the stewardship contract. Support on on-site interpretation, habitat improvement, technical assistance and (public) recognition for biodiversity's values through a trustworthy cooperation (i.e., voluntary labels). Fiscal incentives with benefits and discount on taxes or access to subsidies. It can contribute to the Social Corporate Responsibility strategy of companies. Parties can also choose if they want to establish an agreement strictly among themselves or establish rights on the land enforceable against third parties. Both parties decide together on their duties and restrictions in the agreement. Management transfers are an interesting option when a landowner or nature conservation organization is not interested in the use and management of the land himself/herself or if they prefer to increase the biodiversity value of the land through a specialized management by the organization or if the organization wants to transfer the management to another landowner. Contribute to establishing a larger framework to achieve conservation objectives in a transparent and formalised way. Promote active nature conservation through volunteers. Get involved with research projects and funding for nature conservation on the stewarded properties. Expand high value nature areas without land purchase in a cost-effective manner for the conservation NGOs. Serve as contact point for the landowner to provide information and advisory services on financial, technical or legal nature conservation issues. Provide nature management advice and hence facilitate formation.
Weaknesses	<ul style="list-style-type: none"> There does not yet exist a structural economic support to stewardship. Even if in most countries legal recognition of stewardship exists, a comprehensive EU wide approach is lacking. Differences among legal systems throughout Europe could imply that frameworks applied in one country, might not be completely appropriate for another country. The exact fitting will depend on each countries own legal system. Parties often lack the legal knowledge to set up a concrete plan on the commitments of both parties and the procedure in case of an early agreement termination. Need to build up trust with the involved parties, which can be time consuming. Lack of examples and references in the surrounding properties. Lack of experiences and hence knowledge on land stewardship tools and contracts. Landowners might need legal or technical advice.

	<ul style="list-style-type: none"> ▪ In case of early termination, depending on the contractual conditions, a real right is a legal power exercised by a person (natural or legal) over an object, while personal rights are established between persons, it could bear compensation costs to the stewardship association. ▪ While the flexible time horizon can be a benefit for landowners it can pose insecurity to stewardship organizations and the natural, landscape and cultural values of the property. ▪ When stewardship contracts are established under personal right (according to the civil code of Spain), if the landownership changes during the duration of the contract, the contract automatically will be cancelled unless specified differently in the contract (this is not the case for real rights of partial use). ▪ Stewardship contracts and agreements can be terminated at any moment which can bear costs for the stewardship association if investments in the stewarded land have been made. If contracts are terminated early, the stewardship association might not be able to afford the cost of a legal process. A way to overcome the risk of early termination is to write contracts that foresee this possibility or restrain this possibility.
Conservation easements	
Opportunities	<ul style="list-style-type: none"> ▪ Easements provide help to preserve the environmental value of the land for future generations. ▪ Easements provide continued private ownership and use of the protected land. ▪ Easements are tailored to the circumstances. They only regulate those land uses relevant for the conservation purpose. ▪ The value of the rights given to the easement may be compensated for in the form of tax incentives or one-off payments. ▪ The agreement can be adapted to a specific (part of the) land. ▪ For conservation organisations, conservation easements can be used as an alternative to the acquisition of land. This can be effective whenever a landowner agrees to usually permanently protect his/her property but does not want to sell the land. ▪ Conservation easements provide an additional legal certainty as they are not linked to the landowner but to the property. ▪ Conservation easements can be used as safeguards for donors when conservation organisations purchase and/or restore land with external funding, be it from conservation programmes or offsetting schemes. ▪ The agreement can be adapted to each case. ▪ Flexible/balanced use of land where only those activities need to be restricted to assure the protection targets are reached. ▪ Easements are usually long-term agreements, often in perpetuity ▪ Runs with the land, not bound to a person
Weaknesses	<ul style="list-style-type: none"> ▪ Legal uncertainty: <ul style="list-style-type: none"> ▪ Legislation on country level ▪ Lack of court cases challenging the easement ▪ Currently still missing financial incentives in many EU countries ▪ Lack of implementation practice and knowledge for testing and wider application of the tool ▪ It can potentially have compatibility with third party right, like rights related to hunting reserves and pre-existing farming lease but will depend on national legislation

Conservation leases	
Opportunities	<ul style="list-style-type: none"> Landowner keeps the property of the land and inheritance is not constrained. Parties decide together on which are the conditions to exercise, enforce or restrict use rights of a property to protect or restore natural values. The transfer of the management of the land can be of interest to the landowner when they are not interested in the use and management of the land or if they are interested in increasing biodiversity value through a specialized management done by the leaseholder. The conservation leases are flexible in their description and duration (subject to national law) and, if required, it can be ended if the landowner experiences change in interest (i.e., succession, cases of disagreement between the parties or changes in legislation). However, the early termination of the contract could imply economic or material compensation to the land steward. Concrete conditions of early termination are negotiated freely in the lease contract. It is recommended that parties renegotiate and search alternative ways to secure a prosperous dialogue and collaboration, being early termination a last option. Recommended to sign contracts for long time periods if national law permits it. When the leased land is part of a larger estate, land stewards can act as a broker for financial support to implement nature conservation activities by capturing public funds or promoting products and services of the larger estate. Conservation or restoration management practices can increase public recognition of the land (i.e., voluntary labels). Land users can increase their estate by leasing land from nature conservation organisation, sometimes below market value, under certain management conditions. Represents an alternative to land acquisition when purchase is either impossible because of high costs or if the landowner is not interested to sell his/her property. The long-term lease may be of interest for land conservation or restoration, because actions undertaken go beyond what the civil regulations provide. According to the pact, it may include good management of the territory, such as good agricultural practices, soil conservation and minimum tillage, reforestation or landscaping, among many others. In countries that allow long-term leases, e.g., in the UK where leases routinely last for 99 years, they provide a useful tool for the conservation of private properties. Mechanism for conservation organisations to delegate the management of a property in their ownership to private land users (farmers, ranchers etc.) on the condition of certain management obligations. Can be combined with other environmental aid (Natura 2000). Possibility to break the lease and dismiss the farmer in case of non-compliance with environmental clauses.
Weaknesses	<ul style="list-style-type: none"> There does not yet exist a structural economic support to conservation leases. Each EU country has its own legal approach and hence a comprehensive EU wide approach is lacking. Parties often lack the legal knowledge to set up a concrete plan on the commitments of both parties and the procedure in case of an early agreement termination. Need to build up trust with the involved parties, which can be time consuming. Legal obstacles can impede the inclusion of management restrictions in the lease contract (case of France). Possibility of notary fees and payments of charges. No tacit renewal.

	<ul style="list-style-type: none"> ▪ Lack of examples and references in the surrounding properties. ▪ Lack of experiences and hence knowledge on land stewardship tools and contracts. Landowners might need legal or technical advice. ▪ For conservation projects, the drawback of leases is that it is a contract that is not perpetual but of limited duration, while most conservation projects are aimed at permanently improving the area in question. ▪ Conservation leases can be costly and not every stewardship organisation will have the capacity for it even if a free cession is involved as the lease can involve management or tax cost for the land steward. ▪ Conservation leases can be terminated at any moment if specified in the contract.
Privately protected areas	
Opportunities	<ul style="list-style-type: none"> ▪ PPAs have many public benefits such as in situ biodiversity conservation; habitat conservation, restoration and connectivity; ecosystem functions such as water supply; geoheritage conservation; providing for research; religious attachments; personal fulfilment; and often public access. ▪ The landholders may lease or delegate governance or management responsibilities to others, including the private actors. Landholders usually have the right to determine the land-use including for nature conservation purposes ▪ Designation of PPAs under the property of conservation NGOs, ensuring long-term nature protection of these sites. ▪ Governance framework that allows conservation NGOs to claim for effective nature conservation and restoration across the EU.
Weaknesses	<ul style="list-style-type: none"> ▪ Tool not recognized in many European countries ▪ It is excluded of the regulation and benefits of the Natura 2000 sites or any other network of public natural areas ▪ Lack of clarity about definitions and management and sometimes a poor match between areas protected and biodiversity richness ▪ The existence of sometimes ineffective incentive structures has created the risk of 'temporary' PPAs being created and have sometimes limited creation of PPAs ▪ PPA owners complain of limited opportunity to engage with wider conservation policy and limited government support ▪ The rights of landholders may be constrained by prevailing land-use planning laws that regulate activities that may be conducted on private property.
Results-based agri-environmental payment schemes	
Opportunities	<ul style="list-style-type: none"> ▪ The relationship between payments and biodiversity achievements is much clearer than for prescription-based payments ▪ Contracts with farmers simply define the desired results, without the need to detail the farming practices to be applied ▪ Farmers can use their farming skills, professional judgment and local knowledge instead of just following instructions and are rewarded for achieving the results of their entrepreneurial efforts ▪ Farmers take 'ownership' of biodiversity outcomes, which can lead to greater public recognition of the role of farmers in conserving biodiversity ▪ The 'production' of biodiversity becomes an integral part of the farming system and farm business, not just another set of land management 'rules' to be followed ▪ RBAPS can more easily meet the EU requirements for verification of agri-environment-climate payments

	<ul style="list-style-type: none"> ▪ RBAPS are more easily targeted and budgets carry less 'deadweight' because there is a built-in incentive for farmers to select only the land where the biodiversity results are achievable ▪ The 'production' of biodiversity becomes an integral part of the agricultural system increasing environmental consciousness of the primary sector.
Weaknesses	<ul style="list-style-type: none"> ▪ Reliable indicators of biodiversity outcomes and methods that can quantify them on farms cannot be designed ▪ Lack of environmental knowledge of managing authority to put in place a results-based mechanism ▪ Lack of human and financial resources to support farmers in implementing and monitoring RBAPS ▪ The farming community is reluctant to accept results-based strategies ▪ There is insufficient understanding of the biodiversity requirements or insufficient resources to develop and deliver the measures.
Temporary nature and save harbour agreements	
Opportunities	<ul style="list-style-type: none"> ▪ Ability to return the property to baseline conditions at the end of the agreement ▪ Under temporary nature, landowners are no longer seen as the subject of protection rules, but rather as an equal partner at the negotiation table ▪ Private landowners save costs by being able to renounce to pre-emptive maintenance measures on their land ▪ If it is required the return of the property to baseline conditions at the end of the agreement, landowners receive a permit that authorizes incidental take of species that may result from actions undertaken by the landowner ▪ They are not directly linked to permit procedures for projects with negative impacts on nature. This means that they can provide a real additional, albeit temporary, benefit for nature conservation ▪ Otherwise, reluctant owners can be attracted to conservation as legal burdens for conservation are relieved and improve relation to governmental agencies ▪ It creates more awareness about protected species among developers and builders and therefore induces them to take nature into account in the design and use of their land ▪ Green management becomes cheaper, healthier and has a good image quality ▪ No need to invest time and money in preventive exclusion of protected species ▪ Construction projects without risk of delay due to protected flora and fauna. Nature can be removed as soon as implementation starts ▪ Giving tangible form to the policy of Corporate Social Responsibility ▪ A temporary nature reserve contributes to the survival of (rare and protected) plant and animal species ▪ It is an opportunity to improve the relationship with the people living in the vicinity of your managed site, especially if the temporary nature reserve is open to the public.
Weaknesses	<ul style="list-style-type: none"> ▪ Lack of a legal framework ▪ Temporary nature can benefit colonization species but does not offer suitable conditions for survival or reproduction on the long-term ▪ Destruction of the habitat has an impact on non-mobile species, but according to the requirements of the tools the overall population afterwards cannot be smaller than before temporary nature ▪ Destruction can have a more far-reaching negative impact on species that choose temporary nature for reproduction ▪ Destruction can cause extinction of species that have no other suitable habitat

	<ul style="list-style-type: none">▪ Additional assurances need to be provided to landowners in advance (derogation in advance/agreement), which might conflict with other regulations
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4. Governance

According to the IUCN guide “Governance of Protected Areas”³⁴, protected areas of all categories can be governed (and owned) by governmental agencies, NGOs, communities, indigenous peoples, companies and private parties – either alone or in combination. The present governance model of IUCN is for protected areas, but it can be applied with protected areas and outside of these and hence is relevant for PLC.

We analysed governance of the tools because it helps to detect the roles and responsibilities of the involved actors for each case.

Management categories and governance types are concepts designed to capture the main features of the protected area management system, but they can hide a much more complex reality. To restate the points:

- it is not always easy to assign a governance type to a protected area;
- some protected areas combine features of several types of management and ownership;
- governance arrangements often change over time.

So, depending on the main actor involved in the governance, it can be classified as different types:

- A. **Governance by government:** federal or national ministry or agency in charge, sub-national ministry or agency in charge (e.g., at regional, provincial, municipal level) or government-delegated management (e.g., through an NGO).
- B. **Shared governance:** transboundary governance (formal arrangements between one or more sovereign State or Territory), collaborative governance (through various ways in which diverse actors and institutions work together), or joint governance (pluralist board or other multi-party governing body).
- C. **Private governance:** conserved areas established and run by individual landowners, non-profit organisations (e.g., NGOs, universities) or for-profit organisations (e.g., corporate landowners).
- D. **Governance by indigenous peoples and local communities:** indigenous peoples’ conserved territories and areas – established and run by indigenous peoples or community conserved areas and territories – established and run by local communities.

The following table shows under which governance model each instrument discussed in this report could categorize according to the IUCN governance model:

³⁴ Borrini-Feyerabend, G., N. Dudley, T. Jaeger, B. Lassen, N. Pathak Broome, A. Phillips and T. Sandwith (2013). Governance of Protected Areas: From understanding to action. Best Practice Protected Area Guidelines Series No. 20, Gland, Switzerland: IUCN. xvi + 124pp.

Conser- vation in- strument / Gov- ernance Type	A. Governance by govern- ment			B. Shared governance			C. Private governance			D. Governance by indigenous peo- ples and local communities	
	Federal or national ministry or agency in charge	Sub-national ministry or agency in charge	Government-delegated management (e.g., to an NGO)	Transboundary governance	Collaborative governance (various forms of pluralist influence)	Joint governance (pluralist governing body)	Conserved areas established and run by individual landowners	...by non-profit organisations (e.g., NGOs, universities)	...by for-profit organisations (e.g., corpo- rate landowners)	Indigenous peoples' conserved areas and territories – established and run by indigenous peoples	Community conserved areas and territo- ries – established and run by local com- munities
Land steward- ship			X			X		X			X
Conser- vation ease- ments			X					X			
Conser- vation leases								X	X		
Privately pro- tected areas			X			X	X	X	X		X
Results- based agri-envi- ronmen- tal pay- ment schemes			X				X	X	X		
Tempo- rary na- ture			X						X		

5. Future opportunities and next steps

5.1. General strengths

With all the background described and according to the main conclusions, it could be affirmed that there are many strengths within various private land conservation tools. Some of the strengths that we want to emphasise in this introduction are the following:

- Conservation agreements can be adapted to each local circumstance without implying legal burdens to the landowner, as agreements are negotiated between the parties.
- Flexibility in time frame of stewardship agreements and contracts can be an advantage to adapt to new environmental conditions in response to climate change
- Shared opportunities can be visibility and public recognition, the engagement in networks of diverse actors and the contribution to the long-term sustainability of a land with environmental values.
- For conservation organisations, conservation agreements, like easements, can be used as an alternative to the acquisition of land. This can be effective whenever a landowner agrees to permanently protect his/her property but does not want to sell the land
- Different kind of agreements can be adapted to each circumstance. Parties decide together on the conditions to exercise, enforce or restrict use rights of a property to protect or restore natural values
- Landholders may lease or delegate governance or management responsibilities to others, including private actors. Landholders usually have the right to determine the land-use including for nature conservation purposes.

Therefore, even though these strengths are only a few, they underline the opportunities of PLC as an instrument to combine ecological, social and economic requirements of property management in the fight against climate change and nature conservation.

5.2. General barriers and difficulties

When elaborating this analysis, some barriers and difficulties came up. For example, through generalisation the instruments across European Member States, regional circumstances might get overlooked (e.g., in Spain, Catalonia and Spain have different concepts for land stewardship organizations).

As relevant national laws are continuously being updated, this report should be checked against the most recent legislation.

Finally, we have to consider that this is the first exercise of mapping PLC tools and instruments at EU level. Hence this is a first proposal of how to structure these various tools (toolbox) and is a first exercise towards future efforts of harmonization at EU level of these tools.

5.3. Improving the instruments

To strengthen the applicability of the PLC tools two follow-up steps are of crucial importance:

- Boost the legal development in countries that do not have supportive structures for private land conservation

- Develop standardised forms and templates for each tool while granting space for country or regional specific context.

5.4. Expanding Private Land Conservation

To then expand the use of PLC tools we recommend the following:

- Assess the degree of implementation of the tools in each country through structured and shared monitoring of their implementation.
- Creating national registers for PLC initiatives to which incentives can be bound.
- Develop management templates for different habitat types.
- Communication and training on how PLC tools are and can be implemented.
- It's not one tool PLC alone or an individual tool that will provide solutions, but there is an intrinsic need to combine different tools to achieve conservation objectives at regional, national and EU level.

5.5. Taking advantage of the favourable EU framework

Currently there is a favourable EU framework of which PLC can take advantage, specifically:

- The future nature restoration law provides a large opportunity to mainstream and promote PLC.
- Biodiversity strategy objective of 30% of land and sea protected by 2030 requires the active involvement of PLC
- Achieving nature conservation targets at EU level isn't possible without the involvement of conservation NGOs and landowners. Also, the role of volunteering is crucial, and PLC facilitates this.
- RBAPS and farm to fork strategy could be a way to achieve desired outcomes.

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Annex 1. Examples on PLC tools

Land stewardship

Case study on land stewardship in Lavia

Land Stewardship Contracts in the LIFE WoodMeadowLIFE project

In Estonia and Latvia under the Life project WoodMeadow (LIFE20NAT/EE/074) on private lands restoration of Fennoscandian wooded meadows (EU priority habitat 6530*) are done in 33 Natura 2000 sites between 2021 and 2026. The Fennoscandian wooded meadows are an especially endangered and rare habitat, that largely depends on human activity (grazing or mowing) to exist. Due to the changes in the agricultural



Image 6 Wooded meadow. Photo credits: @Kristaps Kalns and LIFE GrassLIFE

practices, many wooded meadows were abandoned or destroyed by ploughing or forestry. It is a highly endangered habitat that is in an unfavourable conservation status (U2) throughout its range. The wooded meadows have developed in the conditions of traditional agriculture with a very diverse approaches for management, that included sustainable use of timber, collecting branches and hay for winter fodder, providing pastures and using the area for beekeeping, collecting berries and hazelnuts and other uses. The diversity of management approaches provided for an extraordinary species richness - the wooded meadows are the most diverse habitats in the Boreal region and can host up to 50 species per square meter. The main threat to the wooded meadows is the same that all seminatural habitats are facing nowadays - abandonment or inappropriate management. Wooded meadows are a unique example of heritage landscapes that are very labour and cost-intensive to maintain, but hold an enormous socio-economic value, in terms of ecosystem services and ecological functions. Estonia and Latvia together host 60% of all remaining wooded meadows in the Boreal Biogeographic region, with Estonia hosting 42% (2000-4000 ha, average 3000 ha) and Latvia 18% (1075-1400 ha, average 1240 ha). However, in 2019, only around 830 hectares i.e., 28% of Estonian wooded meadows and 380 ha (31%, 2015 data from the Habitat Management Plan) of Latvian wooded meadows were managed. Unmanaged sites have been heavily overgrown with shrubs and trees and more efforts are needed to stop the overall degradation of the wooded meadows in Estonia and Latvia and to reach the aims for favourable conservation status (i.e., managing at least 3300 ha of Estonian wooded meadows by 2020, as set in the Estonian Nature Conservation Development plan, or 80% of Latvian wooded meadows, as set in the Latvian PAF). Therefore, all possible efforts need to be taken to maintain or restore them.

The restoration works are performed and funded by the Estonian Environmental Board in Estonia and by Latvian Fund for Nature in Latvia, but the sites that are selected for restoration depend on the voluntary interest of landowner to cooperate in the restoration and maintenance of the restored site. As the restoration sites are located on private lands, land stewardship agreements and detailed planning with the landowners is a crucial precondition to start the restoration. For part of the restoration areas, the landowner consent has been obtained already prior to for restoration, while for the remaining areas, an open and inclusive landowner engagement approach will be applied - best locations will be selected based on an open call for landowners. After obtaining the landowner consent, and investing project money in restoration of the areas, the landowner is obliged to ensure the maintenance of restored areas for at least 20 years.

Case study on land stewardship in Italy 1

Land Stewardship agreement for the management of green infrastructures

The LIFE Greenchange project developed several pilot interventions aiming to restore and enhance segments of the riparian strips along the ditch network and part of the windbreakers system of the Pontine Plain to improve the biodiversity of the area. Such system of ditches and windbreaks was created following the integral reclamation of the plain when 4,000,000 trees are "planted" to protect 480 km of fields and cultivated land and still strongly characterizes the local landscape. Different land stewardship contracts which last



Image 7 Ganci Farm, Cicerchia Canal bank after the elimination of allochthonous vegetation and planting of native trees and shrubs. Photo credits: @Giovanni Mastrobuoni

between 2019 and 2029 regulate each intervention involving 4 private farms and the Province of Latina. Within the agreements, each farm accepts to manage according to shared rules the green infrastructure/ecological corridor financed by the LIFE project and realized as demonstrative intervention partly on farm's property and partly on public property. Windbreaks and riparian strips are in fact owned by the Regional Authority, and the Province previously obtained the authorization to the works during a formal meeting (a procedure called "Conferenza dei Servizi"). The final objective is to demonstrate that it is feasible to realize and maintain, within a productive farm, ecological connections and steppingstones.

The actions implemented consist of: I) The removal and maintenance by cutting and pruning of dry, damaged, unstable eucalyptus plants (*Eucalyptus camaldulensis*) with replacement, by planting, of the eliminated plants with native species (partial re-naturalization); II) The restoration and re-naturalization of the functionality of the windbreak strips by planting native shrub and tree species in the voids and in the interruptions of the strips; and III) The planting of new linear tree strips within farms in order to generate ecological corridors. In parallel farmers commit to respect the following management practices: I) Calibrated and sustainable management aimed at the conservation of the autochthonous tree, shrub and herbaceous essences that constitute the linear and areal plant formation object of the intervention; II) Favouring the natural evolution of the linear and areal formations of vegetation towards complex and diversified natural structures; III) Conservation and protection of mature trees of native species, even if dead, dying or perishing; Cutting of only allochthonous tree species and according to modalities, timing and methodologies agreed with the Province of Latina; IV) or not to use of herbicides, pesticides, chemical fertilizers and livestock waste within the linear and areal plant formations and in the perimeter areas, for a distance of at least 20 m, between other activities. Quarterly monitoring of the fauna and flora was scheduled to verify the evolution

of the site and of the species in order to allow the Province of Latina to estimate the effects of the intervention and report to the Life Program managing authority.

Case study on land stewardship in Italy 2

Land Stewardship agreement for the management of The Maccarese Oasis³⁵



Image 8 Maccarese Oasis estate under stewardship of WWF Italy. Photo credits: @F. Marcone

The land stewardship initiative takes place in an area close to Rome within the Roman Coastal Reserve. The Maccarese company, who is the landowner of this property of approximately 353 hectares, has agreed to transfer the management of his property to WWF Italy for more than 35 years to enhance its environmental values. The land stewardship contract was renewed in 2022 for a duration of 5 more years.

Before the collaboration started, the areas was degraded and at risk of land development and fire risk. Thanks to the management of WWF, the areas were managed and recognized as protected areas (Natura 2000 site and State Reserve) and monitoring and surveillance is regularly carried out. Due to this collaboration now the property has a high naturalistic value and image with a distinctive character. Within the property the distinctive flora includes dune pioneer plants. On the top of the dune and in the back dune area there are common Junipers, phoenician juniper, rosemary, mastic tree, myrtle and laurel. The woodland is composed of holm oak, oaks and, in the wetter areas, alders and various species of poplars. There are also various species of wild orchids. The aquatic avifauna is very rich, including mallard, teal cormorant, grey heron, egret, little bittern and purple heron. Among the birds of prey, the marsh harrier, kestrel, osprey and buzzard have been observed. Mammals include porcupines, wild rabbits, foxes, stone martens and rice field mouse. In the scrubland, numerous individuals of the common tortoise, the symbol of the property.

Between the property there is also a wetland which in the 70s was used for intensive fishing and after its abandonment and restoration has been transformed into an eutrophic biotope that now harbors important wetland bird species.

The initiatives and actions developed are aimed primarily at involving local citizenship, but also visitors who are not resident in the municipal area, starting with school children and

³⁵ Further information can be found here: <https://www.youtube.com/watch?v=EFa3M4sg8gs> and https://elcn.eu/sites/default/files/2022-04/220222_manuale_ELCN_v8_low.pdf

their families. In fact, their management turns out to be an operational tool that responds to the founding objectives of the Roman Littoral State Reserve.

Case study on land stewardship in France

Land stewardship with the Conservatoire d'Espaces Naturels

In Allonzier-la-Caille (Haute-Savoie, France) the association Conservatoire d'Espaces Naturels (CEN) de Haute-Savoie along with landowners established a land stewardship agreement (Civil Code Art. 1101 et 1134) to protect the "Etang" wetland of 3223m² for a period of 10 years. The abandonment of farming practices and the consequent scrub encroachment is threatening this habitat with extinction whereas the Etang wetland plays an important hydrological role and harbours a high biodiversity. Consequently, the Conservatoire d'Espaces Naturels de Haute-Savoie will implement restoration and maintenance actions of the wetland to ensure its persistence and its functionality. Besides the restoration actions and monitoring, on the wetland drainage is banned and leisure activities that could harm the environment are prohibited. Despite these restrictions the landowners retain the use rights of the land such as hunting rights, wood harvesting, etc. Benefits of these mechanism is its flexibility and its compatibility with other uses such as rural lease or hunting leases. However, the mechanism has a lower legal certainty.

Between the land stewardship tools also the "loans for use" (Civil code art. 1875 à 1878) do exist in France. This mechanism is a contract established between landowners/farmers and a legal person under public or private law (land stewardship organization). So, for example this mechanism could be to establish a contract through which CEN that owns a piece of land provides this land to a farmer under the specification of specific environmental criteria. Benefits of this mechanism to the landowners is that they do not have to pay for the land and its flexibility and for the nature conservation NGO is the possibility to impose strict conditions to the management of the land. On the other hand, downsides are its fragility and rather short-term perspective. A concrete example of this mechanism is the contract established between CEN- Haute-Savoie, owner of 27473 m² of wetland, and a farmer in Le Reposoir (Haute-Savoie). The contract which lasts until 2024 and it aims to sustain and adapt agricultural practices to preserve the ecological quality of the wetland and ensure a management and exploitation which is compatible with the sustainability of the Great burnet (*Sanguisorba officinalis*) and therefore populations of the butterfly *Maculinea*. The importance of the protection of this wetland is confirmed by the presence of two patrimonial species of butterflies The Dusky large blue (*Phengaris nausithous*) and the Scarce large blue (*Phengaris teleius*). These are protected species on IUCN red list and on the Habitat Directive. The two species coexist obligatorily with the Great burnet (*Sanguisorba officinalis*) that feeds the caterpillars and ants that then raise and feed the caterpillars during the winter. It is also home to two priority habitats of community interest and two habitats of community interest. The management practices that the farmer has to follow are between others to respect mowing dates, the maintenance of refuge areas located in different regions each year, extensive cattle grazing on hay meadows or the ban of fertilizers on wetland and a buffer zone, the ban to modify soils physico-chemical composition.

A similar mechanism is the “agri-environmental partnership agreement” which is equivalent to the above contract, except that it is clearer that the objective of the contract is not the provision of agricultural land, but a "win-win" partnership between the landowner/land stewardship organization and a farmer, besides, annual financial compensation can be paid by the lender to the farmer.

Another type of contract is the Agreement to join the network of a technical assistance unit. This agreement commits the owner to maintain the ecological qualities of his land in return for free advice from the technical assistance unit but also for example, the technical assistance undertakes to carry out a diagnosis of the site and provide a management document of the site for the landowner. This contract of adhesion is a short-term contract and is not referring to any legal contractual scheme.

Conservation leases

Case study on conservation leases in Spain

Boada lagoon restoration

Fundación Global Nature is implementing a project to restore the Boada lagoon in the municipality of Boada de Campos (Palencia, Castilla y León). The Boada lagoon was drained in 1968 coinciding with the land concentration process in the region. Consequently, its original surface area of approximately 90 ha was used to increase the cereal and pulses of the



Image 9 La Boda lagoon. Photo credits: @Fundación Global Nature

municipality of Boada de Campos. However, the former lagoon proved to be an area of poor agricultural quality due water drainage and soil salinity, yet this situation lasted for 30 years. In 1998, Fundación Global Nature started the progressive restoration of the ecosystems of the Boada Lagoon. Today, Fundación Global Nature is responsible for its management together with the Boada de Campos Council, and many public and private organisations have financed and collaborated in the restoration actions.

The first restoration actions undertaken were, to recover the water supply from the main stream to the lagoon and the establishment of agreements with the town council and private landowners; subsequently, three fundamental actions were undertaken for the restoration of the lagoon: improvement of the water quality, the purchase of perilagunar agricultural plots and compensation payments for the loss of natural runoff, with an extra artificial supply of water from the Canal de Castilla. The conservation lease thus arises from the fact that Fundación Global Nature purchases agricultural plots on the perimeter of the lagoon, the basin of which is owned by the municipalities, and leases these plots every year to the municipalities of Boada and Pedraza to guarantee their flooding. Between other smaller activities in the area Fundación Global Nature is implementing action for the maintenance of the nesting island; as well as improvements and maintenance of the facilities for public and tourist use like an interpretative route, panels, bird observatory, the management of a House-Museum and nesting boxes for birds of prey and bat shelters, to mention just a few. That way, together with other actions, many of the natural values have been restored, but full restoration will only be completed when the entire catchment area has been restored and all disturbances are gone.

To evaluate the results of the actions implemented, these are monitored. Examples of monitoring activities are, the censuses of water birds, the monitoring of flora and habitats of community interest, the evaluation of water quality, the involvement of research centres and their projects, and the valuation of ecosystem services by the local population.

Thanks to the restoration work carried out, the Boada lagoon has increased the biodiversity of the territory through communities of aquatic flora and fauna, the presence of several habitats of community interest, and threatened or rare species which makes it a place of reference for the conservation of its biodiversity. In addition, it has become a reference as a bird-watching site, giving value to a depopulated rural area which, through this activity, helps to consolidate the area as a tourist attraction together with other cultural values of the region of Tierra de Campos. Today, the Boada lagoon together with the La Nava and Pedraza lagoons in Palencia are the second most important complex of wetlands in Castilla y León.

Case study on conservation leases in Czech Republic

Opolonec Nature Reserve

The site Opolenec is a nature reserve (přírodní rezervace, PR) and Special Area of Conservation (EVL) in the Prachatice region. Crystalline limestone associations together with species-rich forest cover are found in this reserve. The meadow biotopes on the limestone base, where rare species of dwarf gentian grow, are also valuable. The regional authority (krajský úřad) has an obligation to take care of the nature reserve. But the authority previously outsourced the mowing of meadows to other entities and the management wasn't provided properly for a long time. But it is important for dwarf gentians to provide well set up dates for mowing and other management work. The authority decided to hand over the care of the meadows in the site to the local ČSOP chapter "ZO ČSOP Šumava".

The next step was to conclude agreements with the owners of the land located in the site. When the chapter had contracts (agreements) with the owners, the regional authority could start finance the management work (mowing) on the meadows.

The local chapter and the owner agreed to establish a loan agreement (nájem, nájemní smlouva). Under the agreement, members of the chapter could apply management work in the site. The regional authority can finance the management work based on the agreements. The principles of the contract establish that its purpose is to protect and maintain an important natural reserve with rare species of dwarf gentiana. The agreement explicitly specifies what kind of management work should be done in the site: scarification, mowing, sheep grazing. With that purpose in mind a rent was agreed at the amount of CZK 200 per year for an indefinite time period. The right of lease can be terminated by agreement or termination of the agreement. Also, the lessor has the right to terminate the contract if the lessee violates any obligation specified in this contract or if the lessee finds himself in arrears with the payment of rent. Finally, the lessee undertakes to use the leased land in the agreed manner and avoids anything that would interfere with the use of neighboring land. Any modifications may only be made with the prior consent of the lessor and on the basis of permission from the regional authority.



Image 10 Elm under conservation lease. Photo credits: @ZO ČSOP Šumava

Case study on conservation leases in France

Different type of lease can be signed between landowners and a land stewardship organisation or between a land stewardship organization and a farmer. Indeed, a landowner can entrust the management of his land to an organization with the signature of a Emphyteutic lease, this contract is a notarial deed, gives land management to the organization and gives real right on the property. For example, in Ain department, the city of Samognat has signed an emphyteutic lease for 30 years with the Conservatoire d'espaces naturels Rhône-Alpes for conservation and enhancement of the natural environment thus the Conservatoire owns real right on the property and has a fee to pay every year to the landowner.

In Saint-Maurice-ès-Allier (Puy-de-Dôme department), a landowner signed another type of lease, a civil lease with the Conservatoire des Espaces et Paysages d'Auvergne in order to protect remarkable natural heritage of the land (2ha). The site corresponds in particular to the emergence of two mineral water sources, allowing the development of a maritime flora remarkable at regional and European level. The Conservatoire is committed to the ecological management of these highly sensitive natural areas, for example, vegetation control, vegetation monitoring, maintenance of the area, public discovery tour creation, ... For his part, the landowner is committed to respect the entirety of the site. The lease runs for 5 years.

Finally, another type of lease is available, the Rural lease with or without environmental clauses. Regarding the Rural lease with environmental clauses (BRE), it is for farmland, for a duration of at least 9 years and a list of 16 environmental clauses can be added to the lease. These clauses are about farming practices to respect or practices restriction. The BRE allows a farming practices monitoring; indeed, the farmer may have to record his practices in a notebook. As a rural lease, the BRE is subject to tenant status. In Puy Saint-Jean (Puy-de-Dôme, Auvergne-Rhône-Alpes), the Conservatoire d'espaces naturels (CEN) d'Auvergne have signed a BRE with a couple of farmers for 25 years in order to ensure sustainable management of a part of a communal land (about 1ha) while respecting the ecological and landscape value of the site (the CEN has signed an emphyteutic lease with the municipality who owns the land). The farm management is the cultivation of a biodynamic vineyard while maintaining this vineyard trough mixed sheep/donkey grazing. This management is experimental and original and its aim to prove that it is possible to produce wine of quality while preserving soil and existing vegetation. As the plot concerned is within a Natura 2000 area, some agricultural practices must respect a number of general environmental recommendations. Consequently, environmental clauses have been included in the rural lease such as no grassland turning, no fertiliser use, ban of phytosanitary products use, follow the specifications of biodynamic agriculture, maintenance of fruit trees, ... Control and monitoring of the environmental specifications is based notably on bio-indicators (plant species: *Ononis spinosa*, *Orchis purpurea*, etc.) and record of agricultural practices. As a rural lease, a rent must be paid. Here, it is set at 10 € per year for a total of 250 €.

Another type of lease exists; it is the Multiannual pasture or farming agreement. It is a particular form of lease which does not confer continuous or exclusive use of the land for the lessee. This type of agreement leaves the owner free to use the leased land for non-agricultural purposes under certain conditions.

Conservation easements

Case study on conservation easements in France

Inspired by tools found in several Anglo-Saxon countries (notably "conservation easements"), French government has created in 2016 from the law on reconquest of biodiversity a new contractual tool called Obligations réelles environnementales (ORE). A landowner can contract with a legal personality under public law or private law working for nature conservation. ORE gives rise to an obligation on landowner's part in order to maintain, conserve, manage or restore biodiversity or ecological functions. Obligations are linked to the land and not to the landowner, commitments persist when the landowner change. The signature of ORE request notary fees and sometimes a very long processing time. In Virac, (Tarn, Occitanie), a landowner concerned about the conservation of his agricultural land (18ha) and having no descendants has signed an ORE with the departmental federation of hunters (FDC) of Tarn for 99 years in order to ensure the sustainable and good management of his territory. This ORE contains a number of obligations designed to restore, maintain, conserve, communicate and manage biodiversity and the ecological functions of the farm such as the ban of phytopharmaceutical products use and apply management recommendations established by the FDC in the monitoring and management sheet that has been produced for each type of element of biodiversity to be conserved (hedges, orchards, isolated trees, moorland, dry grassland, ponds, wet meadows, etc.). Financial incentive (tax exemption of the communal part of the property tax on non-built properties) is linked to the ORE but most of the time landowners don't request it because they are not aware of it or because it is not attractive enough.

Privately Protected Areas

Case study on privately protected areas in Spain

Cañada de los Pájaros, a Privately Protected Area in Spain

The Cañada de los Pájaros located in the municipality of La Puebla del Río (Sevilla, Andalusia) is an estate of 7,5 ha under the property of La Cañada de los Pájaros S.L. The space harbors an artificial lagoon covering 70% of the estate and an impressive aquatic flora. The estate also has a small representation of the Mediterranean forest and shrub land, riverine vegetation and an important presence of nesting sites of threatened bird species.



Image 11 La Cañada de los Pájaros PPA before restoration.
Photo credits: @La Cañada de los Pájaros S.L.

The Cañada de los Pájaros did pioneer work in its time, as in 1991 it was the first experience of a Privately Protected Area in Spain with the aim to restore and manage a gravel pit. The Agency of Environment from the regional government of Andalusia subscribed a collaboration agreement with the property to create a concerted natural reserve (the first of private ownership declared in Spain). This was possible under the framework of the Law 2/1989, of 18 of July, which approves the Inventory of Protected Areas in Andalusia. This property of great ecological interest is included is declared Special Protection Site Doñana Norte y Oeste, LIC ES0000024 Doñana, is within the Biosphere Reserve Doñana and the Inventories of Wetlands of Andalusia and Spain.

But how did all start? The landowners bought the property in 1987 with own financial funds, when it was a degraded area, but with a great potential for nature conservation because of the wetland and the nearby avifauna. The land was back then a former gravel pit used as a landfill, but the owners thought that if they restore the gravel pit (not a common practice back then), and due to its proximity to Doñana, the owners could contribute their bit to nature conservation. The first actions of restoration were the removal of eucalyptus trees and cleaning the landfill during more than 4 years. Also the lagoon and the island's structure were adapted and later planted with autochthonous species of Doñana and of the tidal marsh. After that in 1992 the property opened the space for visitors. This way, what formerly was a landfill has transformed into a protected wetland. Nowadays, birds use the property as an alternative to Doñana, especially in dry years. Up to 200 bird species can be sighted, including protected species such as *Fulica cristata*, *Marmaronetta angustirostris* or *Aythya nyroca*.

Nowadays, between the activities of the Cañada de los Pájaros, are the protection of species, the collaboration with research centres and universities to promote nature conservation or develop environmental education and training activities with schools, universities or trainees. Ornithological tourism is another of the activities in the property as they are recognized with the European Card for Sustainable Tourism since 2009. To

assess the outcomes of the conservation and restoration activities implemented, the property promotes the monitoring and tracking of endangered species. The property to finance the management and restoration of the space is financed through entry fees to the space. It also has received some public funds for the development of specific projects, such as the reproduction of endangered species.

Nowadays, the Cañada de los pájaros is no longer the only concerted nature reserve in Andalusia or elsewhere in Spain, such as Vivencia Dehesa in Extremadura, cataloged as a Private Area of Ecological Interest or the Paraje Natural Municipal Salem (Vall d'Albaida, Valencia).

Case study on privately protected areas in Italy

The Pratesi Estate a Privately Protected Area initiative by WWF Oasis in Italy

The Pratesi Estate (region of Lazio in the province of Viterbo) is a private estate owned by WWF Oasis in which unique natural environments and archaeological remains coexist and where nature meets history: century-old oaks, wooded ravines and ancient monuments are the elements that characterise the landscape. The privately protected area is called Monumento Naturale Pian Sant'Angelo and overs 254 ha.



Image 12 Pratesi Estate. Photo credits: @F. Marcone

Within the area vegetation alternates areas dominated by the Mediterranean scrub and mixed

deciduous woods with a rich undergrowth. The forests, which have not been cut for commercial purposes for several decades, are evolving towards more natural, tall, uneven-aged forest formations, with the presence of dead and decaying trees and vines. The presence of some orchid species is reported, as well as anemones and cyclamens. Between the mammals the wild cat and marten can be highlighted, while the crayfish and Hermann's tortoise are of interest between insects and reptiles. Also up to 93 bird species have been reported in the estate, of which at least 72 are breeding and 35 of conservation interest.

Within the privately protected area agriculture is managed in respect with nature, where the gorges, formed as a result of massive volcanic events and periods of glaciation, show themselves as a natural phenomenon unique to Europe. The agricultural landscape, is preserved with all its traditional characteristic, such as hedges and large oak trees in the middle of fields, which are particularly important for the protection of biodiversity. For this reason, the farm cultivates crops and produces hay and spelt according to ancient traditions and in compliance with ecological regulations. These landscape are recognised as a Natural Monument in the region. It is an area of rich biodiversity, excellent for insect communities.

The Pratesi Estate, which is embedded within interesting archaeological remains, is known for its high historical and cultural values. In fact, the area manages to reconcile the need to safeguard the environment with the promotion of its vast architectural heritage: from prehistoric finds dating back to the Palaeolithic to the monumental remains of the Falisco aqueduct and archaic necropolises.

The capability to implement effective and active environmental policies makes the area one of the most virtuous municipalities in Italy. The motivations behind this are principally related to the ability to complement a successful management activity to protect the landscape with the protection of the historical heritage. The Pratesi Estate complements its agricultural activity with tourism and does guided tours and school visits. The estate also promotes visits of photographers and birdwatchers.

Result based agri-environmental schemes

Case study on result based agri-environmental schemes in Latvia

Latvian initiative for Result Based Agri-Environmental Payment Schemes

From 2023 to 2026 the pilot programs “BLOOMING MEADOWS” and “LIVING FOREST” will take place in Latvia (outside Natura 2000 network). The participation in the programs is voluntary, meaning that the initiative to join the programs comes from a grassland or forest owner. Selected private owners will sign contracts with the Nature Conservation Agency of Latvia (state institution). The programs will focus on potentially biologically valuable grasslands and forest habitats of EU importance outside of Natura 2000. Owners will receive consultative and financial support in order to improve grassland or forest biodiversity.

The RBPs for grassland habitats is of relevance as in Latvia more than 60.000 ha of grassland habitats are of EU importance and in addition, there are more than 15 000 ha potentially biologically valuable grasslands. In fact, nearly 90% of biologically valuable grasslands are privately owned and more than 60% of them are located outside Natura 2000 network. The Blooming Meadows program will be targeted potentially biologically valuable grasslands where relatively small support to landowners can lead to a considerable improvement in grassland biodiversity quality. Specifically, priority will be given for grasslands with a high potential to provide necessary connectivity between semi-natural grassland habitats. Once the grassland reaches the condition of biologically valuable grassland, landowners can receive permanent support under the Rural Development Program of Latvia and thus being supported to continue the management of grassland in the long run. The RBPs will be utilized in order to increase landowner's role in grassland biodiversity conservation. Landowners will receive consultations and annual financial support (87-203 euro/ha) depending on results regarding biodiversity level in the grassland. Every participant of the program will be involved in monitoring of grassland biodiversity conservation success. The program aims to improve the biodiversity of at least 675 ha of privately owned grassland through the management of 4 years under the RBPs. The overall budget of the program is 405 000 euro.

For forests, the RBPs depicts is relevance as more than 40 000 ha of forest habitats of EU importance in private forests of Latvia are in areas which are not sufficiently protected by legal acts of nature conservation (meaning that they are commercial forests). Specifically, the program is divided in 3 sub-programs: I) the conservation of the most valuable forest areas; II) the creation of forest habitats through the reduction of fragmentation and expansion of habitats; and III) promoting sustainable forestry with high ecological standards. The Living Forest program aims to motivate landowners to apply biodiversity friendly forest management practices in their forests. The program will facilitate the integrity of the Natura 2000 network by means of improving connectivity by creating and supporting green infrastructure, creating steppingstones, or other elements supporting biodiversity conservation. As for the grassland program, Landowners will receive consultations and financial support in order to reach forest biodiversity conservation goals. For forest habitats of EU importance, the main conservation approach will be non-intervention while for the sustainable forestry sub-programme emphasis will be put on increasing deadwood volume in forest stands and other elements and practices improving

forest biodiversity. The program aims to improve the biodiversity of at least 370 ha of privately owned forests, preserved/managed for 4 years period through the RBPs. The overall budget of the program is 444 000 euro.

Case study on result based agri-environmental schemes in Germany

Arbeitsgemeinschaft Biologischer Umweltschutz im Kreis Soest

In the federal state of Nordrhein-Westfalen, Germany a RBPS exists since 1993. The scheme pays for the protection of nest sites of three bird species: the Montagu's Harrier (*Circus pygargus*) in arable fields, and also to a lesser extent for the protection of Marsh Harrier (*Circus aeruginosus*) and Hen Harrier (*Circus cyaneus*). The scheme operates in the Natura 2000 area "Hellwegbörde" in the district of Soest, Unna and Paderborn. The relevance of this RBPS comes from the fact that the harrier populations in Nordrhein-



Image 13 A nest protection zone for harriers with electrical fencing against predators. Photo credits: @R. Joest

Westfalen are in steep decline. Key drivers are the declining populations of key prey species and the loss of extensive cereal cultivation which supports these food sources. The RBPS is run by a nature conservation association called Arbeitsgemeinschaft Biologischer Umweltschutz im Kreis Soest e.V. The association is responsible for the general administration of the scheme: agreement on annual payment rates with the farming authority, monitoring of nest sites, agreement of nature conservation contracts with farmers and administrative work on behalf of the farmers, as well as the promotion of monitoring and advice to farmers. The scheme is funded by the federal state, based on annual contracts between the farmers and the local authority, and payments are done based on the identified presence of nests of the Montagu's Harrier or Marsh Harrier. Farmers are paid for leaving an unharvested protective cereal crop zone of 50m x 50m (0.25 ha) around the nest until the young birds have fledged. The payment rate is determined annually based on the opportunity costs of the cereal crop loss published by the agricultural ministry each year, ranging between about €300 and €500 (barley payment is generally lower than wheat). Specifically, two types of payments exist if the presence of a bird nest is discovered. First and most commonly, when a harrier nest is found in a farmer's field, they are asked for the permit to monitor that nest and are offered a payment to compensate the lost cereal harvest (0,25ha). A second alternative, which is rather rare, takes place when farmers within or close to the Natura 2000 discover a nest and protect it during cereal harvesting (excluding the nest sites that were already discovered before harvest) (Finderlohn). In this case farmers are paid 100 euro for each discovered nest. The scheme is generally well accepted by the farmers.

According to the nature conservation association approximately 95% of the Montagu's Harrier nest sites in arable fields are discovered through this approach, and more than 90% of the Marsh Harrier nests in arable fields. Once the nests are discovered, these are marked or fenced before harvesting. After the farmer announced his/her intention to harvest the field and did so, staff members of the nature conservation association or volunteers'

control if the farmer has left the protective areas around the nest site and if the birds remain on the site. Then, the farmer is given a date of when he/she will be able to harvest the remaining stand. Despite these schemes, the species population in Nordrhein-Westfalen have continued to decline. In total 23 pairs of Montagu's Harrier bred in 2022 in the Hellwegbörde, all of them were protected through the scheme.

Temporary nature

Case study on temporary nature in Germany

Advance on the Temporary Nature concept in Germany

As of 2022 in Germany the concept of temporary nature is being explored. In that sense the Ministry for Nature Conservation is trying to promote the potential of close to nature planning of business sites under the concept of "nature on time". Temporary nature" is understood to mean the possibility that the nature and the landscape is temporarily changed positively from a nature conservation perspective and that this change may be removed again under certain conditions. The dynamic conservation concepts of "nature on time" is desirable and feasible within the current legal framework if the overall ecological balance is positive. For that a debate has been created on the current legal possibilities and the temporal flexibility. In that sense, the German law foresees the possibility of nature conservation law exceptions for temporary nature as the focus of conservation law can be focused on populations and the bigger picture rather than on individual populations. Also, when considering "nature on time" it is foreseen to take into account the surrounding habitats. As private individuals voluntarily improve natural conditions, this must be taken into account in a favourable manner when the authorities have to decide on the permissibility of restoring the original condition and its uses. At the moment, legislation limits Temporary Nature only to companies of the extractive industry.



Image 14 Actors involved on a Temporary nature contract in Germany. Photo credits: ©Bernd Raab

The new regulations recognise and update the concept of nature for a limited period of time, which is now legally anchored for the first time. These empower the Federal Environment Ministry to regulate more detailed requirements for the application of temporary nature measures for a minimum period of one year and a maximum of ten years. For the time being, it is limited to areas in which the extraction of mineral raw materials has been authorised. In the legislator's view, these areas are the most appropriate for standardising the requirements for temporary measures. Other areas, such as production sites or airports, will only be regulated in more detail when an evaluation of the regulations for the extractive industry reaches a positive assessment of nature conservation.

Within the guiding document elaborated by the "Stiftung Rheinische Kulturlandschaft" a three-step process for the implementation of the concept "nature on time" was proposed, namely the planning and solicitation phase, the implementation phase and the termination phase. The solicitation phase consists of the contact with the responsible authority, the evaluation that exemptions of nature law can be ensured, an assessment of species present on the space subject to "nature on time" before the implementation of conservation

actions and the design of the conservation actions for a duration of up to ten years. During the implementation phase, the planned actions are implemented on the site and when all actions are implemented that should be notified. Finally, during the termination phase an evaluation of the correct implementation of all actions will be implemented before a new use of the site can be implemented.

A concrete example is the management of habitats of FFH-relevant amphibian species in raw material extraction sites of Bavaria (Germany). The objective of that initiative implemented between 2016 and 2021 was to safeguard and develop selected amphibian populations in raw material extraction sites during ongoing extraction of over 100 extraction sites. This was done by developing suitable measures to generate temporally and spatially distributed habitats. This creates a win-win situation for nature conservation and companies.

According to Natura 2000 the conservation state of six endangered amphibians was unfavourable with Europe-wide significance and predominantly a negative overall trend in their occurrence. There is thus an urgent need to reverse this trend and to introduce measures for the recovery of these species. These species are now largely dependent on excavation sites, as raw material extraction sites can provide important secondary habitats for amphibians. Their special importance lies above all in the fact that they are replacement habitats for near-natural wild river floodplains, which have largely disappeared due to river regulation. Because of that the circumstance the extraction companies and the Landesbund für Vögel und Naturschutz in Bayern (LBV) established a collaboration framework.

The novelty of that collaboration framework is the conclusion of a contract under public law between the LBV, the mining company and the nature conservation authority, which serves to ensure legal certainty. The principle is that exceptions from nature conservation law are facilitated to the company in exchange for the promotion of the habitat sites of the amphibians during extraction. The cooperation projects are developed jointly by industry and nature conservation, from preliminary planning to renaturation. If no amphibian occurrences yet exist in the area, the measures should strengthen natural immigration from nearby, neighbouring populations. The areas are to be in ongoing operation. All measures should be controlled and documented with a standardised monitoring for their implementation success.