



The current and potential use of easements as a nature conservation tool in the European Union

REPORT TO NABU FEDERAL ASSOCIATION

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1. Introduction

This report is intended to further the discussion around the development of appropriate guidance, incentive mechanisms, and capacity for the use of easements as a private land conservation tool in the EU. It presents the results of an online survey on the use of easements for conservation purposes in 25 EU member states and draws conclusions on the current use of the tool and its growth potential for conservation in the EU.

Easements (or “covenants” or “servitudes”) are a tool of property law that allows the transfer or restriction of use rights linked to a property without a transfer of the property ownership itself. In some regions around the world, particularly in the USA, easements have increasingly been used for conservation purposes: in order to achieve certain conservation outcomes, a qualified land conservation organisation (called a “land trust”) or a government agency enters into a voluntary agreement with a landowner to constrain his/her exercise of land use rights and to record the agreement as a “conservation easement” in the property record of the land register. The conservation easement thereby becomes a part of the title for the property and is binding for both present and future owners of the land. The conservation easement's scope can vary depending on the property, the conservation objectives and the needs of the landowner. For example, a landowner might choose to give up the right to subdivide the land or build houses on it, to use pesticides on agricultural land, or to log a forest. The holder of the easement has the right to enforce the land use restriction and to monitor compliance with the easement's terms. In some countries, landowners can claim a deduction from their income or property taxes for the donation of a conservation easement.

An earlier study for NABU and the European Land Conservation Network - ELCN (Račinska and Vahtrus 2018) found that most EU member states already have a sufficient legal basis for the use of easements for conservation purposes. However, the study concluded that despite the existence of appropriate legal mechanisms, easements are not widely used in the EU for conservation purposes, in contrast to their widespread use in the US. While a probable explanation for this discrepancy lies in the presence (in the case of the US) or absence (in the case of the EU) of adequate financial incentive mechanisms, additional reasons may exist for the scarce use of conservation easements in the EU, e.g. the availability of other tools for the same conservation purposes (such as agri-environmental subsidies, lease agreements, and spatial planning) or a lack of familiarity with conservation easements by conservation NGOs and public authorities. This highlights the need for further research in order to better assess the potential demand for conservation easements in the EU and to identify obstacles for their upscaling.

To shed light on the current use and potential of conservation easements in the EU, an online survey was distributed to conservation practitioners across Europe, asking them to reflect on the current tools used by their organisations to restrict land uses on private properties and on their willingness to use conservation easements for this purpose. The survey received 102 responses in total, with replies coming from all EU member states except for Luxembourg and Malta. This report presents the findings from the survey, discusses the political context for upscaling conservation easements in the EU, outlines open questions and proposes next steps.

The questionnaire of the survey is attached in the annex. The survey was designed to gather the experiences of respondents in the practical application of conservation easements, learn about their opinions about this tool, and to identify the needs for its further development. The questionnaire consisted of 16 questions, most of which are multiple-choice with the option to comment. They can be grouped as shown in Figure 1.

The first four questions concern basic (optional) information about the respondent (name, organisation, type of organisation, country). Question 5 addresses the general availability of legal tools to engage private landowners in voluntary nature conservation activities - the idea being to understand the context in which the respondent may or may not use conservation easements. Questions 6 and 7 ask about the familiarity of the respondent with conservation easements (theoretical and practical experience). For those respondents who have used easements, questions 8 and 9 ask about the type, purpose and stipulations of the easements. This is the core of the survey, gathering data on how easements have been used so far. Question 10 addresses financial incentives and technical support available to landowners for drafting and implementing conservation easements. Question 11 and 12 ask about the landowners' perspective on conservation easements - is the tool popular and sufficiently incentivised? Question 13 asks about incentives directed at conservation organisations. Question 14 and 15 wrap up by asking about the respondents view on the potential of easements for nature conservation in the EU and the interest in testing easements as conservation tool. Question 16 allowed for any other comments/remarks.

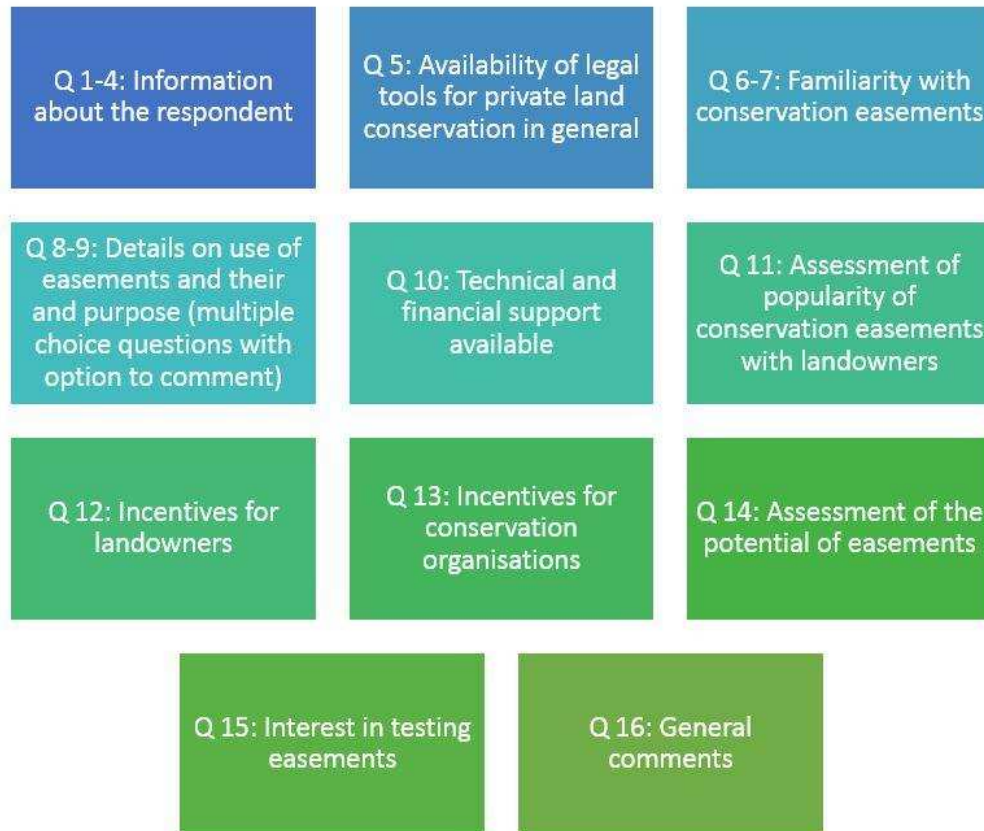


Figure 1 Thematic overview of the online questionnaire

2. Analysis of the responses to the online survey

The following chapter summarises the responses to our survey, analyses common trends and draws conclusions for the upscaling potential of conservation easements in the EU.

2.1. Composition and representativity of responses

The survey received 103 responses. Replies came from all EU member countries except for Luxembourg and Malta. Most replies came from representatives of environmental NGOs (46%), while 39% of the respondents answered on behalf of governmental nature conservation authorities. The vast majority of respondents thus represented organisations primarily dedicated to nature conservation. 7% represented NGOs not focussed on nature conservation. The remaining 9% represented other types of organisations or replied as individuals (Figure 2). The survey was sent by email to conservation practitioners selected for their expertise with (private land) conservation tools and distributed via email lists or newsletters targeting European nature conservationists. Due to the limited time available for publicising the survey, we chose to focus on covering as many EU member states as possible, rather than maximising the number of respondents for larger member states. Our aim was to gather replies that are fairly representative of the EU nature conservation community, even if the limited number of replies per member state do not allow us to draw conclusions on a national level.

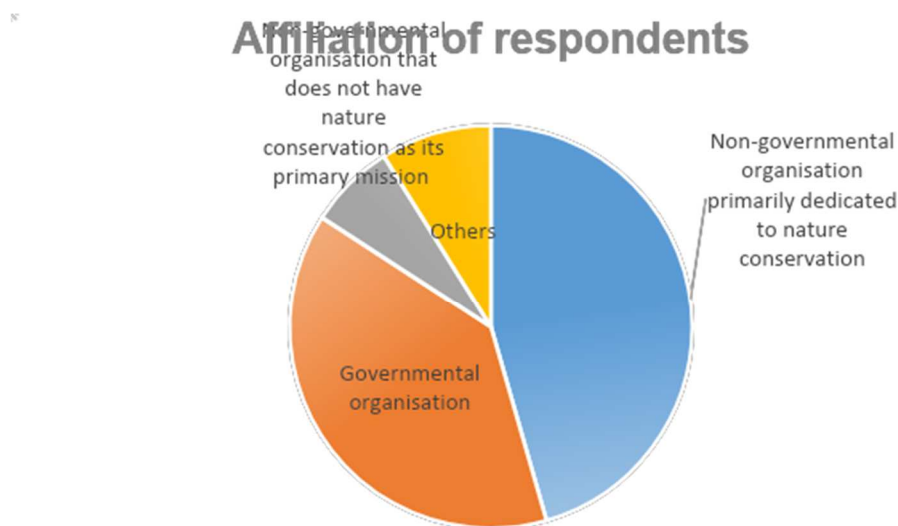


Figure 2 Affiliation of respondents

2.2. Current use of legal tools to engage private landowners in voluntary conservation activities

Question 5: Do you have sufficient legal tools at your disposal that allow you to engage private landowners in voluntary nature conservation activities? If you do, please name the most important legal tool that you use and comment on your answer.

Judging from the replies to the survey, a great variety of legal tools are used to engage private landowners in conservation, with the most important ones being various forms of contractual agreements (lease contracts, management/conservation agreements, and land stewardship agreements) and site management plans. Few respondents named easements, servitudes, covenants or - on an abstract level - the entry of land use restrictions in the land register as an option.

but it remains unclear whether this refers to established agri-environmental payments or new tools with a longer-term conservation scope.

2.2. Familiarity with conservation easements

Question 6: Have you heard about conservation easements before?

Question 7: Have you used conservation easements before?

While the responses to question 5 showed that the lack of funding is an important barrier for the application of private land conservation tools in general, the responses to questions 6 and 7 indicated that the lack of familiarity with easements as a conservation tool may be an additional reason for its low application rate. The replies to questions 6 and 7 revealed a striking discrepancy between a comparatively wide knowledge among conservationists of the term “conservation easement” and a rather limited use of the tool: Although 62% of the respondents stated to have heard of the term “conservation easement”, only 22 % replied that they have used easements in their own conservation work. One dimension of this contrast is clearly due to the different histories of the EU member states. While respondents from all countries covered by the survey replied that they have at least heard of “conservation easements”, their use seems to be more common in the Northwest of Europe. Judging from the replies to our survey, conservation easements have so far been used in at least 13 of the 22 EU member states that have a legal basis for conservation easements : Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Italy, the Netherlands, Portugal, Slovenia, Spain, and Sweden. This distribution shows a contrast between former “Western Bloc” countries, where easements are more widely used, and former “Eastern Bloc” countries that joined the EU after 2004, where the use of easements for conservation purposes seems less common.

We already mentioned the scarce availability of funding for private land conservation in general and conservation easements in particular as one factor limiting its use in all EU member states, but given the geographic differences of the use of conservation easement in the EU, it is safe to assume that insufficient familiarity with the tool is also responsible for its limited use. We suspect that this is not only true for former “Eastern Bloc” countries, but to different degrees for all EU member states, as even in those countries where conservation easements have already been used, they are not known by all respondents.

2.3 Types and purposes of conservation easements

Question 8: What kind of easements have you used?

Question 9: What were the purposes of those easements? What kind of stipulations did they include?

In question 8, respondents gave examples of situations in which they used easements for conservation purposes, e.g. for conserving nature on farmland (Finland), ensuring free access to watercourses (Slovenia), implementing of Natura 2000 management plans (Belgium), increasing water levels on peatlands and banning the use of fertilisers and chemicals (Denmark), protecting natural areas in the public interest (Italy), ecological restoration (Belgium), protecting Annex I bird habitats and other natural values (Germany) and the construction of wetlands (Spain). The above-listed cases illustrate the broad range of conservation issues for which conservation easements have been used in the EU. The LIFE programme was mentioned repeatedly as the enabling funding source in this context, either by supporting projects trialling novel approaches to conservation or by asking projects to ensure the long-term security of in-situ investments in nature conservation by dedicating the property to conservation purposes in form of an easement.

We received 24 replies to question 9 asking about the purposes and stipulations of the conservation easements used to date. They showed that the most common purpose of conservation easements in the EU is to protect Natura 2000 habitats and species, with almost three quarters of easements having this purpose. One reason for this might be indeed the link of easement use to stipulations in the LIFE programme with regard to the long-term dedication of properties that were targeted by a project to conservation purposes. Regardless of whether this interpretation is correct, the data shows that conservation easements have proven to be a suitable tool to dedicate (parts of) properties to the conservation of Natura 2000 habitats and species.

As for the type of natural features protected through easements, respondents mostly named wetlands, agricultural lands and forests. The protection of scenery and aesthetic values or public access to private properties were mentioned less often. When looking at the stipulations, a continuation of the traditional land use is most often codified in easements on

agricultural land, while specific habitat management stipulations are equally popular for agricultural land, wetlands and forests. Restrictions to development are mostly applied to agricultural land and forest and to a lesser extent to wetlands.

Land use stipulation codified in the easement

Purpose of easement	Dedication of the property to conservation	Continuation of traditional land use	Specific habitat management		Restriction of development	Creation of buffers	Creation of corridors/ connectivity	Other methods
Natura 2000 habitat species	74%	35%	61%		30%	30%	39%	4%
Forest	35%	17%	39%		30%	13%	17%	4%
Agricultural land	43%	35%	39%		35%	22%	22%	4%
Wetlands/ water bodies	61%	17%	43%		17%	30%	22%	4%
Scenery/ aesthetic values	17%	4%	9%		13%	13%	17%	4%
Public access/ recreation	17%	9%	13%		4%	17%	22%	4%
Other values	0%	0%	0%		0%	0%	0%	0%

Figure 5 Responses to questions 9 –What were the purposes of those easements? What kind of stipulations did they include? (24 replies, table shows percentage of responses per category, multiple choice possible)

2.4 Support and incentives for landowners willing to implement conservation easements

The overwhelming majority of respondents (70 %) stated that the incentives for landowners to protect their land with a conservation easement are insufficient. 26 % of respondents were not sure whether incentives existed and only 4 % of the respondents deemed them as sufficient. Hardly any respondents were able to point to concrete financial or technical support available to landowners for drafting and implementing conservation easements. This documents both a scarcity of adequate support and incentive mechanisms and a general lack of information about potential funding sources or technical support for conservation easements in the EU. The fact that a few positive responses (often just one per country) came from countries such as Belgium, Spain, and Sweden shows that there seem to be at least rudimentary support schemes in place, but that these are hardly known.

Consequently, respondents were divided over the question whether easements have proved popular with landowners, with approximately an equal number of respondents answering “yes” or “no” to this question. We conclude that in addition to lack of financial support, this shows that the concept is little known in the EU at the moment. Most positive replies came from by respondents in Austria, Belgium, Denmark, France, Germany, Italy, Spain and Sweden, confirming the Western skew in the distribution of the tool.

2.5 Incentives for conservation NGOs to take on conservation easements

Most respondents reported that conservation NGOs deal with the same lack of support structures and incentives for signing conservation easements or similar tools with private landowners. Although slightly more respondents assessed incentives as sufficient for conservation NGOs (15%) than for landowners (4%), the situation is far from satisfactory. For some countries, opinions differ among respondents. The most relevant incentive schemes mentioned were agricultural subsidies (including agri-environmental payments), land consolidation schemes, LIFE projects, and funding for voluntary agreements and site management plans.

2.6 Interest in conservation easements

Despite this rather bleak situation, 60% of the respondents stated that they consider conservation easements a promising tool for nature conservation, while 29 % were undecided and 11 % responded negatively

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Do you consider conservation easements a promising tool for nature conservation in the EU?

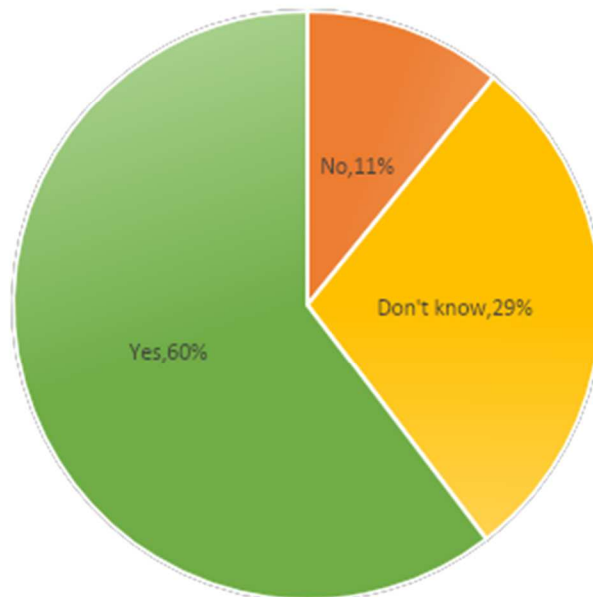


Figure 6. Replies to question 14: Do you consider conservation easements a promising tool for nature conservation in the EU?

Respondents commenting on their assessment emphasised the potential of conservation easements as a voluntary tool that allows to enter land use restrictions in the property title itself. Some respondents cautioned that the tool's effectiveness depends on the duration of the use restrictions. Others pointed out that adequate financial incentives and pilot projects are needed to make conservation easements attractive to private landowners. Tax deductions were mentioned as the most promising financial incentive for landowners. Many respondents perceive conservation easements as a tool complimentary to land purchase, i.e. an option to be used when landowners do not want to sell their property or a conservation NGO cannot or does not want to purchase a property to implement conservation objectives. (For example, Latvian NGOs are not allowed to purchase agricultural land that is larger than 5 ha.)

The starting point for further exploring the use of conservation easements in the EU seems very good. Most respondents expressed an interest in testing conservation easements, with many of them proposing case studies for their application. Additionally, several representatives of organisations that already use conservation easements offered to pass on their experience to other conservation practitioners. Some respondents stated that they are unsure whether easements would work in their given circumstances and that they would need additional information before feeling confident to use the tool themselves. Respondents who were not yet willing to test conservation easements cited the perceived lack of a legal basis, lack of interest from landowners without proper financial compensation, and a lack of understanding within their organisation as reasons for their scepticism.

8

Would your organisation be interested in testing easements as a conservation tool?

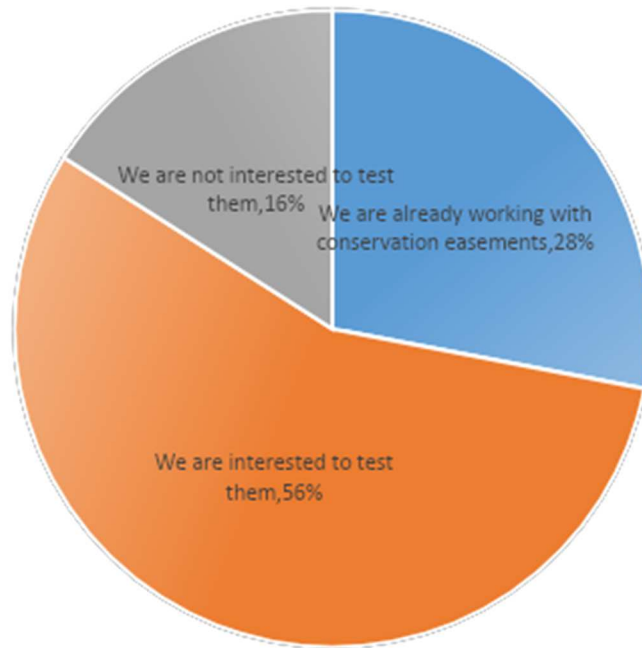


Figure 6. Replies to question 15: Would your organisation be interested in testing easements as a conservation tool?

3. Conclusions – the growth potential of conservation easements

While most respondents assessed the range of legal tools available for engaging private landowners in voluntary nature conservation activities as insufficient, this survey made it clear that the main problem is not the lack of tools as such, but rather a lack of financial incentives and support structures for their application. Although respondents from all countries covered by the survey had heard of conservation easements, the use of the tool was only reported for half of them (13 countries), with a clear Western skew in the distribution. We assume that the lack of familiarity with private land conservation tools as well as lack of good case studies/success stories is thus another obstacle for their wider application.

Where conservation easements have been signed to date, they have mostly been used to dedicate parts of a property or the entire property to conservation purposes, to prescribe specific habitat management (e.g. in Belgium), or to ensure the continuation of traditional land uses. Three quarters of the conservation easements reported in this survey were linked to the protection of Natura 2000 habitats or species. Some easements were used to create ecological corridors between protected areas (e.g. in Italy) or buffer zones around sensitive areas such as wetlands or water bodies (e.g. in Austria). The stipulations and purposes of conservation easements mentioned by the survey participants by and large mirror those known from other regions of the world. The most obvious apparent difference between the use of conservation easements in the EU and in North America is that whilst in the US and Canada, conservation easements are predominantly used to limit development rights on private property, this was only the case for 30% of the reported cases in the EU. We assume that this is due to stricter land use regulation in the EU, which often suffices as tool to limit development.

Despite the limited reported number of conservation easement uses to date, most of the respondents thought that easements could be a promising tool for nature conservation, and half of them expected conservation easements to be potentially popular among landowners. Respondents emphasised the voluntary nature of conservation easements as important argument for their potential use by private landowners. Most respondents expressed interest in testing conservation easements, and several offered to participate in case studies for their application or to share their experience with using conservation easements.

In conclusion, the survey showed that there is widespread interest in conservation easements in the EU, but also a need for better technical and financial support. Efforts should be placed on sharing existing experience and testing concrete case studies in different EU member states. The LIFE programme is already an important driving force in this process. Running and future projects dealing with private land conservation could help to create further incentives for the application of conservation easements by offering guidance and investigating public funding options.

The LIFE project “European Networks for Private Land Conservation” (LIFE ENPLC) aims to tackle some of the identified barriers: the lack of familiarity with conservation easements and other private land conservation tools as well as the absences of good practices or case studies. LIFE ENPLC will develop model easement language for various types of conservation values (forest, peatland, freshwater, agricultural land) in cooperation with private landowners and test these templates by registering conservation easements in at least 10 case studies (in total) in at least 5 EU Member States (Germany, Belgium, Portugal, Sweden, and Spain) covering a total area of at least 500 ha. It will also address the lack of financial incentives for landowners and funding sources for conservationists by exploring and assessing existing incentives for private land conservation in EU member states and developing policy recommendations for new incentives.