Land Consolidation in North Rhine-Westphalia

Modern Challenges and European cooperation –
From FARLAND to Tripartite

Martina HUNKE-KLEIN and Ralph MERTEN, North Rhine-Westphalia (Germany)

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SUMMARY:
The EU-FARLAND project compared the strategy and instruments of 7 European countries for facing the challenges to protect nature and environment in densely populated areas with the interaction of modern agricultural and forestal use of land. The collaboration lead to results: several countries revised their approach, laws and procedures in the following years.

NRW did not revise the legal tool box: a wide range of land consolidation procedures - from integrated to very focused targets - are available. A cost-benefit analysis is developed and used as a guideline in the preparation of a specific procedure for large infrastructure.

New tasks emerge in the wake of European initiatives as the European ecological network (Natura 2000) or the Water framework directive. The self-evident modern participatory approach, the evolution of modern farming, diminishing land mobility and rising prices challenge the existing tools. Long-lasting, expensive procedures with a wide range of topics are refused, whereas the acquisition of exchange land needs time. Development plans with planar target areas often miss the urgency of linear plans.

Considering the resemblance of spatial, geographical and socio-economic contexts, the public administrations of land consolidation of the Netherlands, Flanders (Belgium) and North Rhine-Westphalia stayed in contact until now. The Tripartite Cooperation is to be continued even after dissolution of the Dutch DLG in 2015, as the now responsible Dutch provinces and the Wallonian part of Belgium show interest and commitment.

The paper will give a short description of the history and the valid German tool box of land consolidation. It will reflect on the demands, the changes in EU-funding and the organizational situation since 2000. It will tackle the actual challenges and topics and give some answers.

After all, there is a demand and a role for land consolidation carried out by state organizations in the years after 2016. The celebration of 100 years of land consolidation in the Netherlands shows the relevance of land consolidation to steer land use in a way as it is needed and seems a good opportunity to identify future topics of cooperation.
ZUSAMMENFASSUNG


Aufgrund des gut ausgestatteten Instrumentenkoffers waren Gesetzesänderungen in NRW nicht angezeigt. Am Beispiel der Unternehmensflurbereinigung wurde eine Wertschöpfungsanalyse konzipiert und Hilfestellung in der Verfahrensvorbereitung gegeben.


Der Artikel gibt einen kurzen Überblick über Ausrichtung und Verfahren der Flurbereinigung in NRW, benennt aktuelle Herausforderungen und artikuliert Vorschläge aus Sicht der Verwaltung. Das 100-jährige Jubiläum in den Niederlanden zeigt die Bedeutung der Flurbereinigung als Instrument für eine ausgewogene Landnutzung und gibt einen Rahmen zum Austausch über die künftige Zusammenarbeit.

1. The network

By the EU-INTERREG III C-Project “Future approaches to Land Development” (FARLAND, 2005 - 2007) professionals from seven European countries were brought together to stimulate exchange of knowledge and experience and to contribute to the upgrading of instruments for integrated land development. The partnership was oriented as a mix of policy and implementation as well as research and development.

Partners came from Germany, the Netherlands, Flanders, Galicia, Portugal, Lithuania and Hungary. Land development in this context was defined as public task for adapting the nature and the location of land use and land ownership for the sake of public as well as of private objectives. To achieve this, a set of legal and informal land related instruments are used. The mainly used instrument was land consolidation for various objectives, with priority for agriculture. As a result of
the cooperation some countries revised their approach, laws and procedures in the following years in order to come to more integrated, decentralized and flexible procedures. In 2007 the FARLAND-project was finished.

Considering the clear resemblance of spatial, geographic and socio-economic preconditions and common challenges in their rural and peri-urban areas, i.e. the implementation of European initiatives as the European ecological network NATURA 2000 or the Water Framework directive, the Netherlands, Flanders and North Rhine-Westphalia decided to keep the network alive and to continue the fruitful cooperation between the organizations responsible for land consolidation.

In 2009 the North Rhine-Westphalian Land Consolidation Authorities, the Dutch Government Service for Land and Water Management (Dienst Landelijk Gebied, DLG) and the Flemish Land Agency (Vlaamse Landmaatschappij, VLM) started the cross-border Tripartite Cooperation on rural development as the common cooperation topic. Because of similar challenges, especially conflicts in land use between private/ agricultural and public interests, and preconditions (density of population, proper land administration systems, property rights or good farming conditions), there are similar questions, how to deal with and react on them, but there are different answers, depending on different legal bases, organizational structures or national policies. The knowledge exchange looks for reasons and identifies possibilities to integrate other point of views in one’s own actions and to reflect own standards and procedures.

After dissolution of DLG in 2015 the responsibility for land consolidation is given to the Dutch Provinces, so that the cooperation has to regroup. Since 2015 the Wallonia (Direction of Rural Development, DAFOR) is interested in being part of the cooperation.

2. Land consolidation in North Rhine-Westphalia

2.1 Organizational structures

Land consolidation in North Rhine-Westphalia is a governmental task. Responsible authorities are the Ministry for Climate Protection, Environment, Agriculture, Conservation and Consumer Protection of the State of North Rhine-Westphalia (MKULNV) as supreme and upper land consolidation authority and five Regional District Governments as the executing land consolidation authorities.
2.2 Legal base

Legal base for German land consolidation procedures is the Land Consolidation Act. The legislation was enacted in 1953 and several times revised by the Federal Republic of Germany. 1994 the opportunity to start a land consolidation to solve conflicts in land use between private and public interests has been opened by a change of law. 2006 the responsibility for the legislation was given to the federal states. The federal law remains in effect, until the states enact their own land consolidation acts. Up to now no federal state has an own land consolidation act.

Land consolidation - in the sense of the German Land Consolidation Act (LCA) - is a flexible instrument to cope with the modern tasks of rural development. It is a mean with view to improve the production and working conditions in agriculture and forestry as well as promoting the general use and development of land and rural areas by re-arrangement of agricultural land. Land consolidation is a mix of agrarian special planning and land re-adjustment.

The German land consolidation act offers with five kinds of land consolidation procedures an instrument with a wide range of applications. The different measures are chosen with view to the comprehensiveness especially of the public interests. Beside the land consolidation act North Rhine-Westphalia has a special law, which uses the regulations of the land consolidation act in order to improve common forest management.

As the legislative basis provides a well-assorted tool box it did need a significant revision except for some additions in 1994 to allow the pragmatic changes to be implemented in the last decades. The terms are wide enough to address all kind of objectives that society sets for a healthy and appealing rural landscape. The different measures are chosen with view to the comprehensiveness especially of the public interests.

2.3 Facts about North Rhine-Westphalian land consolidation procedures (LCP)

<table>
<thead>
<tr>
<th>Kind of procedure</th>
<th>Number of Procedures</th>
<th>Land consolidation area in ha</th>
<th>Number of Participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 1,37 LCA</td>
<td>9</td>
<td>15,632</td>
<td>7,110</td>
</tr>
<tr>
<td>§ 86 LCA (Simplified LCP)</td>
<td>115</td>
<td>68,897</td>
<td>16,866</td>
</tr>
<tr>
<td>§ 87 LCPCA (LCP in the Case of Permissible Compulsory Acquisition)</td>
<td>49</td>
<td>25,626</td>
<td>9,761</td>
</tr>
<tr>
<td>§ 91 LCA (Accelerated LCP)</td>
<td>17</td>
<td>5,367</td>
<td>1,021</td>
</tr>
<tr>
<td>§ 103 a LCA (Voluntary Land Exchange)</td>
<td>49</td>
<td>754</td>
<td>138</td>
</tr>
<tr>
<td>Law for Common Forest Management</td>
<td>9</td>
<td>3,445</td>
<td>1,544</td>
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<tr>
<td>Sums</td>
<td>248</td>
<td>119,721</td>
<td>36,440</td>
</tr>
</tbody>
</table>

Table 1: NRW Land Consolidation Procedures (30.09.2016)

Land consolidation areas cover ca. 3,5% of the North Rhine-Westphalian area.
2.4 Different Measures of North Rhine-Westphalian land consolidation procedures

The so-called Comprehensive Land Consolidation (CLC, on the base of §§ 1,37 LCA) has a far-reaching planning approach and will be implemented for an integrated rural development. In order to improve the production and working conditions in agriculture and forestry land parcels will be reshaped and consolidated with due regard for respective structure of the landscape to serve the interests of the parties concerned as weighted against each other, to further general use and development of land and to benefit the general public health. Ways, roads, water bodies and other common facilities can be provided, soil-conservation, soil-improving and landscaping measures can be taken as well as any other measures improving enterprises, reducing the amount of work and facilitating farm management. Village renewal measures can be taken. The legal situation and relationships will be clarified.

The Simplified Land Consolidation (SLC, on the base of § 86 LCA) can be implemented to eliminate or to minimize the detrimental impacts on the agricultural structure caused by public request to land use. Classic examples are planning concerning nature protection and landscape, communal land use planning, water management planning or transport planning. The SLC is not solely carried out in support of public purposes – private benefit must be evident. At least all participants shall be entitled to receive land of equal value.

If, for special reason, it is permissible to acquire agricultural land on a large scale by compulsory purchase, then a Land Consolidation in Case of Permissible Compulsory Acquisition (LCPCA, on the base of §§ 87, 88 LCA) may be carried out to apportion the loss of land among a large number of owners and to avoid the disadvantages the project may bring for the general use of the land. Although the LCPCA strives that each participant receives land of equal value, it is not in every case possible to avoid the expropriation. Classic examples are projects for public transport (construction of highways, federal roads, railway lines) including accompanying environmental compensation for the intrusion into the nature and assault upon the landscape or flood protection measures.

The aforementioned three measures are the most powerful of the LCA, as they can be applied for multi-purpose development aims. Besides that the legal provisions do not determine the measures to be executed with total voluntariness, although the agreement of all participants is strived for.

Voluntary Land Exchange (§103 a LCA) and Accelerated Land Consolidation (§91 LCA) go for fast and favorable re-arrangement of land parcels, as all parties concerned have to agree respectively the physical rural infrastructure does not need improvement. The measures aim at the improvement of agricultural farming conditions and/or may be used to enable necessary measures of the protection of nature and landscape.

The five different measures can be put in an order with view to the administration’s ability to assert the objectives especially of the public interests.
3. Changing demands on land consolidation

3.1 Land consolidation in adaption to changing agricultural and societal demands 1950 - 2000

The historic procedures after World War II focused on the guarantee of sufficient food and the adaption of farmwork to modern machinery. They provided new ways and roads, waterbodies fitted for drainage water and cultivated fallow land, moor and wetlands. Scattered parcels were allocated to bigger plots. Big efforts were undertaken to build new settlement of refugees from the eastern parts of Germany.

In the 1970/80’s the ecological impact of the induced change of land use became obvious: from now on the procedures were accompanied by a strong and ever expanding harmonization of economic and ecological needs: the standard procedures were accompanied by extensive compensation methods to balance the conflicting interest.

Now agricultural areas became objectives of societal development: infrastructure projects for roads and train lines demanded land on a large scale for projects of public interest. Apportioning the loss of land and avoiding disadvantages in the general use of land became a major task of the land consolidation authorities. In many cases the main task of minimizing land use conflicts could be complemented with improvements towards sound agricultural conditions. In 1994 area wide landscape-planning got obligatory in NRW.

3.2 Land consolidation and the Common Agricultural Policy (CAP) 2000 – 2015

Agricultural politics and funding played always an important role since the founding of the European Union. The turn of the century saw a CAP that intended to strengthen the rural areas via the second pillar, as the regions apparently needed more assistance than the benefits granted to the agricultural companies. New programmatic steps were taken: Measures of village and touristic development were facilitated by land consolidation, even though the financial budgets and the staff resources constrained the quantity thereof.

The large, costly land consolidation procedures were replaced by well-prepared, target-oriented smaller operations. The comprehensive integration of interests was somewhat narrowed to the topics of prime importance. As the land consolidation act was not changed, there was always (and still is today) the possibility and necessity to respond to the actual regional demand: as integrated as necessary, as focussed as possible.

That conforms to one of the FARLAND results, that land development in the future will be an important approach, facilitated by governments to restructure land use (both public and
private) and property and that it will be most effective when done in an integrated way in which different interests of sectors and organizations are balanced during project preparation and procedure.

With increasing public demands on the use of agricultural areas - at least in the range of urban concentrations – mono-dimensional improvements of agrarian structures are a matter of the distant past. Instead land consolidation has been increasingly integrated into the means of implementing conservation programs, projects to improve transport infrastructure and water management. In correspondence the number and area underlying the Comprehensive Land Consolidation has been constantly decreasing. That comes along with a steady incline of the Simplified Land Consolidation. The Land Consolidation in Case of Permissible Compulsory Acquisition and the Accelerated Land Consolidation keep a pretty constant level.

Whereas the statutory rules of German land consolidation offers excellent opportunities to integrate private and (different) public interests, the majority of the procedures focus on only some (2 – 3) public interests. Time-consuming lawsuits can be avoided by means of mutual agreements in the most cases.

In 2005 a tool was developed with external experts of consulting and research to link the costs of organization and implementation of the procedure with its economic impact on private and public goods. The cost-benefit-analysis of the value added was executed on the procedures in case of permissible compulsory acquisition (LCPCCA) and led to a positive balance. In the following years it was developed further. It proofed positive results for other kinds of procedures and is used in several federal states as a prediction tool.

3.3 Modern societal demands on land consolidation

The guidelines on the European network of NATURA 2000 (including Important Bird Areas – IBA) and the European Water Framework Directive (WFD) show the directions to counterbalance the ongoing loss of species and biodiversity: allocation of land for nature conservancy and for dynamic and ecological development of riverbeds and their bottom land is an invaluable precondition to change and develop the present land use. The adaption to the approaching climate change asks for solutions even more voluminous, as lateral flood detention basins have to supplement the floodplain retention areas allowing river dynamics.

The challenging requirements clash with an evolving competitive agricultural business competing with the world market. A lot of farmers in highly productive agricultural and horticultural areas of NRW are mostly businessmen, have invested in new machinery, stables, livestock and try to expand their business. This evolution is not likely to stop in our countries due to the advantageous conditions for agriculture and farming concerning climate, water and soil in comparison to other areas of the world.

As the number of farms in NRW decreases about 3% per year, agricultural land decreased 8% in 20 years and currently with about 17 ha per day (NRW 9,3 ha per day). As the land is taken for other purposes as settlement, industry, infrastructure or the specific function of nature, forest or water retention, the political intention to come to a “near zero consumption” of 5 ha per day in NRW in 2020 will be hard to achieve.

The ongoing structural change to lesser and bigger farms can be noticed with a look to the rental rates: the NRW leasehold proportion rose 8% in 15 years and the average is around 60% of the farmland. In some very competitive areas in NRW the relation is already up to
75%. The current situation will not ease in the foreseeable future. The NRW tenants´ laws are weak compared to the regulations in Belgium and the Netherlands.

4 Challenges to NRW land consolidation in the 2020’s

Some of the new challenges can be met with the instruments of land consolidation, if specific limitations will be overcome. While the overall agricultural situation is quite similar in the regions or countries of the Tripartite cooperation, the legal, political and administrative reactions differ to some extent. The exchange of knowledge and ideas with the partner organizations leads to the following considerations - eventually to a modified approach.

- Agricultural land is scarce and will further diminish. Non-farmers try to buy land, even if there is a possibility for active farmers for preemption. The mobility of land slows down to unequalled low rates – especially in the highly productive regions! Resigning farmers feel obliged to sell their land not to a public or nature organization, but to keep farmland in farmer´s hands. The “normal” structural change in agriculture is somewhat hindered. So far the acquisition of land to be used in a land consolidation procedure in NRW may only begin when the underlying measure will start.

  - The problem has to be tackled in the public: resigning farmers should be addressed proactively to sell their land. Selling of parcels is no defeat, but helps to manage a sustainable mix of land use.

  - The rising prices exceed the project budgets of private and public organisations. Nevertheless, the efforts to land banking should be intensified, as a further increase of prices is expected. The NRW instrument of project-based land banking might be adapted.

  - In times of steadily rising prices of agricultural land and increasing lease rates potential sellers will retain their plot until the latest moment. Early acquisition might be possible via an agreement to compensate the following increase of prices during a defined number of years.

- The fierce competition between well educated, middle-aged farmers leads to rising prices. Few of the farmers support the ecological purpose actively, some fear the predictable loss of (intensively usable) land as a strike on their competitiveness. Public institutions are recognized mostly as competitors, seldom as a persevering partner to reorganize intensive farming to come to a diversified portfolio.

  - The model of farming as a business to administer a certain use of land for purposes of nature, flood prevention is to be strengthened. Cooperation and the moderation of different interests and organizations are necessary. „Facilitators“ will be of importance in the early state of the implementation process.

- The farmers fear losing their land for measures derived from the overall planning schemes of NATURA 2000, the general road map to implement the Water Framework Directive action plan or the Biodiversity Strategy of NRW. In response to this fear and to increase the acceptance of ecological measures the ministry (MKULNV) decides for a cooperative and consensual way of action with the farmers as land owners and land users. In ministerial agreements with the farmers’ associations framework and conditions for
action were laid down. The public authority should seek of prime importance for mutual contracts with the land users. The agreements however regard land consolidation procedures as an uncommon instrument rarely used in land consuming projects – not easy to understand when looking at the achievements of the preceding years and neither easy to understand when looking on the much more competitive environment and the widely spread distrust of farmers towards politics, bureaucracy and regional activists for nature in some of the agricultural strongholds of NRW.

- Nowadays the agricultural competition is stronger than in 2000 and the number of farmers has diminished. The agricultural lobby concentrates their power. A promise to come to mutual agreements with everybody (owner and user) in a large project area cannot be given and should be modified: the solution of the underlying land use conflict might come by a simplified land consolidation procedure. Land of equal value is guaranteed for every owner. Long lasting experience shows possibilities to serve not only the owner’s, but also the user’s interests, even if the legal safe-guards to this effect are not strong in Germany.

- Project areas of European network of NATURA 2000 and WFRD are of big scale: the important bird area of the lower Rhine f.e. covers an area of 26.000 ha, the WFRD deals with 14.000 km of riverbeds and an enormous number of hectares of corridors for natural river development in NRW alone. Concerning NATURA 2000 areas NRW follows the approach to safeguard and develop core areas, whereas the remaining ecological hot spots of floodplains shall be linked by a line of stepping stones. This approach of “soft, light green” (or “soft, light blue”) diffuse target areas offers different alternatives to achieve the expected results, if the actors and farmers concerned cooperate. If they don’t cooperate, success is endangered.

- If the offer on cooperative implementation is refused, appropriate target areas might be covered by well defined “hard, dark green” (or hard, dark blue”) planning schemes, that should be executed to show the time-consuming, but effective alternative to fulfil the European obligations.

- After all cooperative efforts are more efficient than specifications by administrative decisions: land consolidation procedures to solve the named land use conflicts might broaden the target and offer possibilities and subsidies to the farmers. The German LCA allows the allocation of the land needed as long as every owner gets land of equal value: anticipatory acquisition of exchange land is of great importance.

- Regional institutions of water associations are responsible to carry planning into execution as part of their legal obligation to care and develop the water bodies. There are financed by contributions of the members and get support by public funding. Whereas big institutions with professional staff are qualified to deal with the necessary works, small institutions with close linkage to the farmers are confronted with a difficult task.

- The small institutions might be assisted by hired professionals or by employees of the public administrative bodies for raising awareness on the regional level of politics and with farmers’ associations, for coordination with other organizations, financing and funding, acquisition of exchange land, planning.

- Funding decisions might pick up competitive elements: institutions willing to come to good and quick results might get a better funding or more assistance.
• The acquisition of land for market participants other than farmers is difficult due to a preemption right for active farmers if they express the need for the land for their business.

  ➢ A newly revised NRW law on water management offers for the first time a preemption possibility for state authorities on parcels situated at the river banks. Likewise the draft of a new legislation on nature conservation also stipulates the right of preemption in nature protection areas.

  ➢ Time will tell whether acquisition of land on the spot leads to good results or whether the range of application should be extended in other areas, because usable exchange land might be purchased in areas unaffected by ecological developments! Land banking on a wider scale would be a logical advancement, even if farmers’ associations oppose the idea.

• The multifunctionality of agricultural areas in ways of ecology, recreation and balancing the impact of urban areas in general is neglected by some of the farmers. In some areas the owners of agricultural parcels articulate via their leaseholders. The standstill will not reduce the conflicts.

  ➢ The defensive attitude has to be tackled. Land consolidation may safeguard the rights of the owner and might offer possibilities to satisfy the needs of the users and the society in the same procedure by land management. Good examples of land consolidation to overcome the standstill are to be disseminated.

  ➢ The German experience of land consolidation shows the benefit of an increasing tendency towards consensus in the planning and decision-making. At least the outcome of a realization measure is partly predetermined by integrating the parties concerned in the decision-making. Therefore land consolidation should strive for the agreement of the participants to the greatest possible extent even when not stipulated by law. As no guarantee might (and should) be given in the beginning of the procedure, an extensive preparation and communication is necessary to build up the confidence needed.

  ➢ Specific attention is to be given to the active farmers’ needs, as their rights in Germany rely predominantly on the particular lease contracts with the owners, not on specific legal provisions. In the consequence there might be relevant contractual differences that might provoke opposition. An early survey of the actual leasehold situation and map exercises with farmers before start of the consolidation procedure should build up the confidence of the farmers, uncover unrecognized obstacles and show possibilities to solve conventional as well as current problems of land use.

• After all, modern farmers, water associations, nature conservancy organizations and public administrations in general face similar problems, as they are obliged to follow a lot of rules and regulations with decreasing money and time.

  ➢ They need fast, low-cost and effective measures to improve their situation. The NRW land consolidation administration strives to be a reliable partner, keep contacts and facilitate changes in land use as occasion demands.

5 Prospects of future cooperation

The celebration of 100 years of land consolidation in the Netherlands shows in retrospect the relevance of land consolidation to steer land use in a way as it was (and is) needed at the time.
Conflicting interests on land use persist and even intensify in consideration of the climate-change, loss of biodiversity and growing population altogether. Thus NRW politics see a demand and a role for land consolidation carried out by state organizations in the years after 2015.

The administration of land consolidation in NRW will continue the business. It will keep well-proven instruments and modify them only when and to the extent it is appropriate. New problems ask for new solutions – the exchange of knowledge, experience and good ideas in a network of international partners may work as passing lane. After the dissolution of the Dutch Dienst Landelijk Gebied (DLG) NRW looks forward to welcome the Dutch provinces in the cooperation and let the Wallonian colleagues (DAFOR) take their role.

NRW will memorize the bicentennial anniversary of its land consolidation administration in 2020 – this should be a good opportunity to reflect on the progress to fulfill European obligations.

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BIOGRAPHICAL NOTES

Academic experience  
Dipl.-Ing. (Land Surveyor) Rheinische Friedrichs-Wilhelms-University Bonn

Current position  
Head of unit Land Consolidation, Surveying and Technology for Land Consolidation, Ministry for Climate Protection, Environment, Agriculture, Conservation and Consumer Affairs of the State of North Rhine-Westphalia

International experience  
Member of EU-INTERREG IIIC project FARLAND  
Member of Tripartite Cooperation of Flanders, Netherland, North Rhine-Westphalia (and Wallonia, since 2009)

Academic experience  
Dipl.-Ing. (Land Surveyor) Technical University Berlin

Current position  
Head of Land Consolidation Authority  
Department 33 of District Government Düsseldorf Mönchengladbach (North Rhine-Westphalia)

International experience  
Member of UNECE-WPLA-Land Administration Reviews in Lithuania (2004), Azerbaijan (2006);  
Member of EU-INTERREG IIIC project FARLAND  
Exchange visits concerning Rural Development in Sichuan/P.R. of China (2008, 2010);  
Member of Tripartite Cooperation of Flanders, Netherland, North Rhine-Westphalia (and Wallonia, since 2009)

CONTACTS

Dipl.-Ing. Martina Hunke-Klein  
Unit II B 4 Land Consolidation, Surveying and Technology for Land Consolidation  
Ministry of Climate Protection, Environment, Agriculture, Conservation and Consumer Affairs North Rhine-Westphalia  
Schwannstr. 3  
D-40476 Düsseldorf  
GERMANY

Tel  +49 211 4566 -347  
Fax  +49 211 4566-456  
Email  martina.hunke-klein@mkulnv.nrw.de  
Website  www.umwelt.nrw.de
Dipl.-Ing. Ralph Merten  
Department on Land Consolidation and Rural Development  
Regional District Government Düsseldorf  
Croonsallee 36 – 40  
D-41061 Mönchengladbach  
GERMANY  
Tel       +49 211 475-3300  
Fax       +49 211 475-9729  
Email     ralph.merten@brd.nrw.de  
Website   www.brd.nrw.de