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CROSS-BORDER ACQUISITION OF AGRICULTURAL LANDS
A PERSPECTIVE FROM THE VISEGRÁD COUNTRIES

(PhD thesis)

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Doctoral Programme: Further development of the Hungarian state and legal system and legal scholarship, with special regard to European legal trends
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RECOMMENDATION FROM THE SUPERVISOR

I have had the privilege of supervising the PhD thesis entitled *Cross-Border Acquisition of Agricultural Lands – A Perspective from the Visegrád Countries*, authored by dr. Hajnalka Szinek Csütörtöki. From the very beginning, she has demonstrated exceptional dedication, curiosity, and analytical rigor. Her research focuses on a field of law undergoing rapid transformation—an area in which national legal frameworks, the law of the European Union, and international investment law intersect and evolve constantly. This makes the research both challenging and highly significant for modern legal scholarship.

The dissertation examines the legal and regulatory dimensions of cross-border acquisitions of agricultural lands, with a particular emphasis on the Visegrád countries. It addresses the ways in which national legal systems, EU law, and international investment law interact and influence each other, shaping a complex and sensitive area of law. This research is highly topical: the liberalisation of land markets, national interests, property rights protection, and agricultural policy have all become pressing issues in Central Europe, especially in the aftermath of accession to the European Union and subsequent harmonisation of laws in the examined countries.

The author and I have collaborated on several publications, including a book where authors from eight countries prepared national chapters according to a uniform comparative framework. Within this project, we conducted a comparative analysis of land law and related case law in Poland, the Czech Republic, Slovakia, Romania, Slovenia, Croatia, Serbia, and Hungary. This collaborative work provided an excellent basis for her doctoral research.

The novelty of the thesis lies in its focus on the national land law regimes of the Visegrád countries (Part I), and the most recent developments in this rapidly evolving field of law —a comparative study of this kind has not yet been published. It pays particular attention to legislative amendments and the new legal institutions. Significant progress can be observed, for example, in the regulation of agricultural holdings, particularly regarding their subtypes in the Czech Republic and Slovakia. Some countries have introduced measures moderately restricting previously liberalised land law regimes, such as the principle of reciprocity in Czechia. Additionally, Poland has recently proposed the adoption of a comprehensive Agrarian Code, while in Hungary, for example, a major reform of land law has recognised the

agricultural holding, together with agricultural land, as a central subject of regulation. The legislator has further established a specific regime governing the intestate succession of agricultural land.

The author of the thesis (in Part II) examines European Union law, as well as recent developments in the topic. As can be seen, the KOB SIA ruling represents a potential turning point in CJEU case law, as the freedom of establishment may now take precedence over the traditional reliance on the free movement of capital in land acquisition cases involving ongoing economic activity. The judgment also applies the Services Directive to land-related issues, marking a novel development in EU law. The dissertation further examines preliminary ruling procedures and infringement proceedings, illustrating the practical implications of EU law.

Another significant aspect concerns international investment law, especially international investment agreements (Part III). The dissertation carefully examines the types of reservations that enable Member States to retain discretion in future negotiations and the associated dispute settlement procedures. Ensuring that the Czech, Polish, Hungarian, and Slovak national interests are effectively safeguarded within these procedures is crucial so that these regimes are not purely investor-friendly. These extra-EU investment frameworks could have a substantial impact on the future development of the Visegrád countries, emphasising the importance of protecting national interests.

Another notable strength of the dissertation is its special methodological approach. The author employs a rigorous comprehensive comparative legal analysis, examining legislation, case law, and policy measures across multiple jurisdictions. She draws upon sources not only in English but also in the relevant national languages, allowing her to access primary legal texts and contextual interpretations often overlooked in international literature. This multilingual approach enables a precise understanding of how cross-border land acquisitions are regulated and enforced in different legal systems. It also allows her to provide insights into national policy responses and legislative innovations, offering a practical and policy-oriented dimension to her work.

The originality of the author’s work is further reflected in the way she structures her analysis. The dissertation integrates national, EU, and international perspectives into a coherent system, highlighting the comparative dimensions of legal frameworks in the Visegrád countries. This comparative perspective, combined with

her analytical precision, enables the dissertation to make a meaningful contribution to the study of EU law, international investment law, and comparative law more broadly.

Overall, the thesis represents a substantial, original, and coherent contribution to legal scholarship. It combines comparative analysis with a practical understanding of the real-world challenges associated with cross-border land acquisitions. The dissertation addresses a rapidly evolving legal field with clarity, precision, and depth, making it highly valuable for academics, policymakers, and practitioners alike.

The author's research demonstrates a strong commitment to continuous learning and academic excellence. In addition to her doctoral studies, she has actively pursued advanced international legal education, including participation in the Hague Academy of International Law's Public and Private Law courses, as well as earning an LL.M. diploma in European and International Business Law. These experiences have broadened her perspective, strengthened her comparative legal analysis skills, and deepened her understanding of international regulatory frameworks, uniquely equipping her to analyse the complexities of cross-border agricultural acquisitions.

I have every confidence in the scholarly quality and academic merit of this research. I therefore recommend this dissertation for successful defence and the conferral of the degree of Doctor of Law (PhD).

Miskolc, 14 October 2025

Prof. Dr. János Ede Szilágyi
full professor
supervisor

LIST OF ABBREVIATIONS

Abbreviation	Full Name
AG	Advocate General
BIT	Bilateral Investment Treaty
BRI	Belt and Road Initiative
CAP	Common Agricultural Policy
Charter	Charter of Fundamental Rights of the European Union
CJEU, Court	Court of Justice of the European Union
Curia	Curia of Hungary
EAEU	Eurasian Economic Union
EESC	European Economic and Social Committee
EC, Commission	European Commission
ECHR	European Convention on Human Rights
EU	European Union
EP	European Parliament
CAI	Comprehensive Agreement on Investment
FAO	Food and Agriculture Organization of the United Nations
FDI	Foreign direct investment
FPI	Foreign portfolio investment
GATS	General Agreement on Trade in Services
ICSID	International Centre for Settlement of Investment Disputes
IIA	International investment agreement
ISDS	Investor-state dispute settlement
NASC	National Agriculture Support Centre
OECD	Organisation for Economic Co-operation and Development
TEAEU	Treaty on the Eurasian Economic Union
TEC	Treaty establishing the European Community
TIP	Treaty with investment provisions
TFEU	Treaty on the Functioning of the European Union
TTIP	Transatlantic Trade and Investment Partnership

VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security
WTO	World Trade Organisation

INTRODUCTION

Cross-border agricultural land acquisitions have increasingly attracted attention in the field of legal and policy discourse, evolving from a relatively overlooked issue into a subject of intense international interest. This growing relevance is driven by multiple global developments, including the globalisation of capital markets, shifts in investment strategies, and changes in national and supranational regulatory frameworks.[1] This thesis focuses on the legal and regulatory dimensions of these acquisitions, examining how the national laws of the Visegrád countries, the European Union (hereinafter also referred to as the EU) frameworks and international investment law respond to and shape this complex phenomenon.

In turn, while the acquisition of agricultural land by foreign persons is not a new 'practice', the scale and scope of such acquisitions have escalated significantly over the past two decades.[2] Legal systems worldwide face increasing challenges in adapting to these developments, as cross-border land acquisitions raise complex issues related to, *inter alia*, national interests, rural development, and property rights. This thesis aims to provide a comprehensive analysis of the legal mechanisms governing these acquisitions, identifying both regulatory gaps and innovations.

It should be highlighted that a significant turning point occurred in the wake of the 2008 global economic crisis, which led to increased financial interest in tangible, low-volatility assets such as land. Agricultural land, in particular, became an attractive option for investors seeking long-term returns, portfolio diversification, or strategic resource control. In many jurisdictions, this trend was facilitated by domestic policies designed to attract foreign direct investment in agriculture and land-related sectors.[3] Host states—especially those in transition economies or developing regions—often view such investments as opportunities for modernisation, rural revitalisation, and economic development. At the same time, this process has raised critical legal questions: How should states balance the desire for capital inflows with the need to protect land rights, food sovereignty,[4] and social stability? What legal safeguards are in place to ensure equitable and transparent transactions? And how do supranational

[1] Szilágyi, 2024, p. 29.
[2] Cf. FAO, 2014.
[3] Budak, 2022, pp. 12–13.
[4] On this issue, see, for example Raisz, 2023, p. 74.; Csirszki, Szinek Csütörtöki, Zombory, 2021, pp. 30–31.

entities like the EU navigate the tensions between internal market freedoms and Member States' land law legislations?

Individual countries have adopted distinct legal approaches to address these questions. For instance, Hungary, has maintained a blanket ban on all legal persons[5]—foreign and domestic—from acquiring ownership of agricultural land, a restriction in place since 1994. In my view, national restrictions on land ownership, including limitations on foreign acquisitions, are often designed to achieve broader social and political goals—such as preserving family farms, preventing excessive land concentration, and protecting rural communities.

Globally, recent land acquisitions also reflect a broader shift in how land is conceptualised—not merely as a means of production, but increasingly as a financial asset. In this context, agricultural land is often commodified, leading to concerns about land speculation, displacement of local communities, and lack of transparency. Some experts have characterised this trend as a form of 'neo-colonialism', especially when transnational corporations, supported by foreign governments, engage in large-scale land deals that undermine local governance structures.[6]

When an agricultural land acquisition originates from a non-EU country, EU law does not apply. Instead, such matters are typically governed by bilateral agreements between the states involved. Until the Treaty of Lisbon came into effect in 2009, individual EU Member States independently concluded these investment agreements with third countries as trade partners.[7] Since 2009, the EU itself has taken over the responsibility of negotiating such agreements on behalf of its Member States.[8] As a result, agreements concluded after 2009 replace earlier bilateral treaties. Currently, the EU is working to replace the existing bilateral investment treaties (hereinafter referred to as the BITs) between Member States and third countries[9] with unified EU-level trade and investment agreements. In this context, it is particularly important to examine why issues related to land are often governed under different legal frameworks within such agreement.

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[5] With a few exceptions.
[6] Budak, 2022, p. 13.
[7] See the Treaty on the Functioning of the European Union (hereinafter referred to as the TFEU), Articles 206–207. See also European Commission, 2010.
[8] The EU holds exclusive competence over foreign direct investment as part of its Common Commercial Policy (hereinafter referred to as the CAP).
[9] Such as the United States or China.

A notable example is the EU-Singapore Free Trade Agreement, which sparked significant legal and political debate prior to its conclusion. At the core of the controversy was the question of whether the EU could unilaterally enter into such an agreement, or whether Member States had a say in its adoption. The Court of Justice of the European Union (hereinafter referred to as the CJEU or Court) clarified that, despite the Treaty of Lisbon granting the EU competence over trade agreements, the area of investment remains sufficiently complex to justify continued involvement by the Member States in such decisions.[10]

The relevance of cross-border agricultural land acquisitions is manifold, as the phenomenon raises legal questions at the intersection of international, European Union, and national legal orders. These transactions increasingly test the capacity of legal systems to regulate complex cross-border investments while balancing divergent interests such as market liberalisation, national regulatory autonomy, and the protection of property rights. The legal relevance is further underscored by the diverse and often fragmented approaches adopted by states, which reveal significant variations in ownership restrictions,[11] land use legislation, and conditions for foreign participation. The evolving treatment of agricultural land as an object of investment necessitates a re-evaluation of traditional legal categories, and the role of public interest considerations. At the supranational level, the EU introduces an additional dimension, as Member States must align national land law legislation with internal market obligations, including the free movement of capital and the non-discrimination principle, while also invoking legitimate public interest exceptions. This interplay of legal norms at multiple levels generates both regulatory gaps and opportunities for innovation, highlighting the need for a coherent, comparative legal analysis. As such, the legal significance of the topic extends well beyond individual transactions, offering insight into broader structural tensions and transformative developments within the legal legislation of cross-border land acquisitions.

Based on the foregoing analysis, this research is guided by three main hypotheses. The first hypothesis posits that the national land law frameworks of the

[10] Referring to TFEU, Article 218 and considering, among others, Article 207, the CJEU determined in Opinion No. 2/15 (16 May 2017) that provisions in a free trade agreement concerning foreign investment other than direct investment, as well as dispute settlement mechanisms between investors and states, do not fall under the exclusive competence of the EU. Consequently, in such cases, the agreement cannot be concluded without the involvement of the Member States.

[11] Cf. Frumarová and Grygar, 2022, p. 130.

Visegrád countries adopt distinct approaches to the acquisition, transfer, use, and inheritance of agricultural land, reflecting each country's legal traditions and national interests. The second hypothesis asserts that the EU legal framework provides a coherent and suitable structure enabling Member States to regulate agricultural land acquisitions while ensuring alignment with EU law and safeguarding legitimate national interests. The third hypothesis focuses on international investment agreements, which strengthen legal protections for foreign investors in agricultural land acquisitions and may, in turn, limit host states' regulatory autonomy, complicating the reconciliation of investment protection with public policy objectives. Together, these hypotheses serve as a guiding framework for the research, shaping its direction and providing a structured lens through which the analysis can be conducted.

1. Conceptual basis and delimitation

Due to the multifaceted nature of the subject, this section of the thesis begins by reaffirming the growing academic and policy interest in cross-border investments, particularly in the acquisition of agricultural land. As this phenomenon continues to garner attention, it is essential to clarify several core concepts that form the foundation of the analysis. Providing clear definitions and distinctions at the outset is a necessary step for ensuring analytical coherence. Accordingly, this section lays the theoretical and definitional groundwork for the thesis and delineates its conceptual and analytical boundaries.

As a result, the following subsections will systematically examine these concepts.

First, the concept of 'acquisition' as used in this thesis refers specifically to the traditional notion of the 'acquisition of ownership', rather than a broader interpretation. In contrast, 'acquirement' is used more broadly to cover various ways of acquiring rights, including ownership, limited rights *in rem*, use of land, indirect acquirement, intestate succession and testamentary disposition, and other cases of farm-transfers *inter vivos* or in the event of death.[12] This distinction ensures conceptual precision while acknowledging that, depending on the regulatory framework,

[12] Szilágyi, 2022a, p. 12.

acquisition can sometimes extend to long-term user rights such as leaseholds or usufructs.

Second, the notion of a 'cross-border' element in land-related issues can encompass both intra-EU and extra-EU scenarios. Within the EU's internal market, such situations are often assessed through the lens of the free movement of capital.[13] However, agricultural land adds complexity, as these cases may also engage the freedom of establishment alongside capital movement. This thesis explores the jurisprudence concerning both freedoms in greater depth. The interpretation of indirect cross-border land acquisition can be particularly complex—for example, when acquisition occur via a European Cooperative Society *(Societas Cooperativa Europaea)*[14] or a European Company *(Societas Europaea).*[15] Owing to the scope of this thesis, these forms will not be addressed in detail. It is also important to note that within the framework of EU law, the 'cross-border character' of a national measure—and by extension, of the acquisition affected by it—is typically assessed within the jurisprudence of the CJEU. In contrast, extra-EU cases, where the investor originates from outside the European Union, are not governed by the EU's internal market freedoms. Instead, these acquisitions often fall under BITs or other international investment agreements (hereinafter referred to as the IIAs) concluded by Member States or the EU itself. The legal framework is therefore shaped not only by domestic land laws but also by obligations under international law, adding another layer of complexity to the legislation of cross-border land acquisitions.

Third, as can be observed, the boundary between 'cross-border land acquisitions' and 'land acquisitions' taking place within a single state is not clearly delineated.[16] Therefore, in the context of the thesis, the term 'cross-border land acquisition' primarily refers to situations in which the persons (natural or legal) of one country acquire ownership of agricultural land located in another country.[17] The

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[13] Typically, a cross-border element is required for the application of free movement of capital. However, in the case *Reisch and Others (*C-515/99), the CJEU applied free movement of capital rules even in the absence of a clear cross-border element, aiming to eliminate potential restrictions. See Korom, 2022b, p. 64.

[14] Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society

[15] Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company

[16] In this thesis, the notion of 'agricultural land acquisition' is discussed with reference to the following publications: Szilágyi, 2022a, p. 12.; Szilágyi and Szinek Csütörtöki, 2022b, pp. 344–354.

[17] A specific form of land acquisition relevant to cross-border investment is often referred to as 'land grabbing.' In 2009, the UN Special Rapporteur on the Right to Food noted growing interest by private and state actors in acquiring ownership or long-term use of large tracts of arable land, typically over

objectives of these acquisitions may vary—ranging from agricultural production to speculation, or a combination of various factors.

Fourth, it is important to clarify the term 'investment' and the context in which it is used. Generally, foreign investment is defined as the transfer of tangible or intangible assets from one country to another to generate profit by exercising full or partial ownership and utilising these assets in the host country.[18] Legal documents[19] and scholarly literature[20] distinguish between two main types of foreign investments: foreign direct investment (hereinafter referred to as the FDI) and foreign portfolio investment (hereinafter referred to as the FPI). This thesis primarily focuses on FDI, especially involving agricultural land ownership, although FPI can sometimes indirectly affect land transactions. Therefore, both types are considered conceptually at the outset.

Fifth, the term 'IIA' is used broadly here because thousands[21] of such treaties exist worldwide under various names, formats, and contents. These agreements can address cross-border agricultural land acquisitions differently. Two important points follow: first, investments are regulated not only by treaties but also by other international sources of law,[22] which this thesis does not explore in detail. Second, investment agreements often have diverse titles, sometimes not even including the word investment,[23] yet they may regulate land acquisition similarly. For example, the EU's recent agreements typically handle such issues through specific reservations. Given the broad scope of these treaties, varied naming is justifiable.[24]

1,000 hectares. Since 2006, foreign investors have negotiated or completed transactions covering 15–20 million hectares in developing countries. Central European countries are increasingly affected as well. These transactions, usually conducted under IIAs, often include control over local water resources, yet most agreements provide minimal regulation, raising concerns about impacts on local hydrological systems. See de Schutter, 2014. See also Pastuszko, 2017, pp. 147–156.

[18] Sornarajah, 2017, p. 11.

[19] OECD, 2017, pp. 23–24.; International Monetary Fund, 2003, p. 23., 37., pp. 39–41., 151.; etc.

[20] Sornarajah, 2017, pp. 11–13.; Kreuzer, 1990, p. 3.

[21] *Sornarajah* estimated that roughly three thousand bilateral IIAs existed at that time, excluding regional agreements. By 2023, this number had grown modestly to approximately 3,291, comprising about 2,831 BITs and 460 treaties containing investment provisions (hereinafter referred to as the TIPs). Recent trends, however, indicate that more treaties have been terminated than newly concluded, signalling a gradual transformation in the global landscape of IIAs. See Sornarajah, 2010, p. 81. and UNCTAD, 2023.

[22] Sornarajah, 2010, pp. 79–87.

[23] For reference, the European Commission provides an overview of ongoing and concluded trade negotiations and agreements. Available at: http://ec.europa.eu/trade/policy/countries-and-regions/negotiations-and-agreements/ (Accessed: 3 July 2024)

[24] For instance, the EU's agreement with China, is referred to as the Investment Agreement, while the roughly contemporaneous EU–U.S. deal is named the Transatlantic Trade and Investment Partnership.

Sixth, the subject of 'cross-border agricultural investments' is interpreted both broadly and narrowly. In its broader sense, it encompasses the diverse and multifaceted range of direct investments related to agriculture. In a narrower interpretation, the focus narrows to agricultural land and agricultural holdings specifically. For this thesis, an agricultural holding refers to the totality of economic assets—such as land, buildings, machinery, livestock, and entitlements to subsidies—that are treated as a single legal-economic unit, especially for the acquisition and transfer of rights.[25] The thesis also explores how different Member States regulate agricultural holdings and their transferability. While the core of this dissertation concentrates on the narrower, more indirect regulatory framework, a comprehensive understanding of this 'environment' necessitates, at least in the initial phase of the research, an examination of the broader regulatory context as well.

Seventh, in the context of this thesis, the term 'national land law' refers to the body of laws and legal provisions in a given country that govern the transfer of ownership and right of use of agricultural land, as well as—where applicable—the legal framework surrounding agricultural holdings. It is important to note that while national land laws may also include specific provisions for state-owned (or, in some cases, municipally owned) land, this comparative analysis does not aim to examine the detailed rules governing such publicly owned land acquisitions. In this dissertation, I will focus primarily on agricultural land and will not address provisions related to forests or state-owned land. At this point, I would also like to highlight that the decisions of the constitutional courts of the examined Member States will not be addressed in detail, except in cases where such decisions had a significant impact on national land law legislation.

Last, but not least, the concept of 'land' as a legal and administrative category requires careful differentiation from other closely related notions that appear in connection with the research topic. So, building on this, three 'levels' should be considered: the international level, the European level, and the national level, each of which conceptualises and regulates 'land' in distinct, yet often interrelated ways.

At the international level, particularly within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as the FAO), land is understood not merely as a physical surface or soil, but as a composite of

[25] Cf. Szilágyi and Szinek Csütörtöki, 2022, p. 349.

biophysical, environmental, and socio-economic elements. It encompasses the natural attributes of an area—such as soil, climate, hydrology, vegetation, and topography—alongside human interventions.[26] This definition reflects land's strategic importance in achieving food security, sustainable rural development, and equitable governance. In addition, documents such as the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (hereinafter referred to as the VGGT) emphasise land as a public good, placing particular importance on how tenure rights to land, fisheries, and forests are regulated and respected within national legal systems.[27]

In the context of IIAs, the concept of land is typically categorised as immovable property or real estate, where it assumes a central role in determining the scope of protections afforded to foreign investors. IIAs generally serve to ensure that investors are treated fairly and equitably, particularly with respect to their investments in land and property. In many cases, the protection of land and real estate investments becomes a key concern within the broader framework of investment law, which seeks to balance the protection of private property with the interests of host states.[28] Furthermore, the concept of 'expropriation' remains a key concern in these agreements, and the inclusion of provisions related to expropriation aims to balance the rights of investors with the rights of states to regulate land for purposes of public welfare.

At the level of the European Union, there is no single, unified legal definition of 'land', as land-related issues are primarily regulated by Member States. Nevertheless, the EU exerts significant influence through, for example, the CAP[29], and internal market rules[30]—particularly the free movement of capital and freedom of establishment—which can limit national restrictions on land acquisition, especially by foreigners.[31]

At the national level, the concept of land is primarily a legal construct defined by domestic laws, land registration systems, and spatial planning frameworks. Two

[26] For the exact definition, see FAO, 2025.
[27] FAO, 2012.
[28] For example, the Energy Charter Treaty, CETA, and many BITs, all include real estate or immovable property in their definitions of investment, extending protections and ensuring fair treatment for foreign investors.
[29] For more on this topic, see, for example Réti, 2024, pp. 291–316.
[30] While the provisions of the internal market influence the margin of appreciation of Member States, they do not affect the legal definition of agricultural land.
[31] European Commission, 2024.

comments should be added at this point. The first concerns Polish legislation, as the legislator considers it important to distinguish between the categories of 'agricultural real estate' and 'agricultural land': the former is treated as a property unit under private law, while the latter is not a property unit and is regulated under public law.[32] The mentioned two terms are used in the present thesis interchangeably. The second comment relates to Hungary, where land-related terminology has undergone significant changes. Between 1994 and 2013, the legal category 'arable land' referred to non-urban land used for agricultural purposes. However, Act CXXII of 2013 on the Transfer of Agricultural and Forestry Land (hereinafter referred to as the Land Transfer Act) introduced a broader and more functional category: 'agricultural and forestry land', which also includes forest areas previously excluded under the former classification. While this shift reflects an integrated regulatory approach, the older term 'arable land' retains constitutional and symbolic importance, and both terms continue to coexist within legal and policy frameworks.[33]

Other categorisations of land can be also found in the scientific literature.[34] One such concept is the plot—cadastral parcel, which serves as the fundamental unit in land registration systems. Another broader and more encompassing concept is that of real estate or immovable property, recognised as a unit in real estate registration as well as a legal instrument in civil law. Within the overarching category of real estate, it is useful—particularly in comparative legal contexts—to distinguish between several subcategories: land real estate, building real estate, and other real estates.[35]

2. Methodology

The methodology applied in this thesis is primarily doctrinal, complemented by comparative, normative, and interdisciplinary approaches. Given the relatively limited academic literature on land law legislation, particularly in the Czech Republic and Slovakia, this thesis seeks to make a dual contribution: first, to the academic understanding of land law; and second, to the discourse on the interaction between

[32] Ledwoń, 2022, p. 201.
[33] Bányai, 2023, pp. 24–25.
[34] See Szilágyi and Szinek Csütörtöki, 2022, p. 342.
[35] Cf. Ibid, p. 342.

national land ‘protection measures’ and supranational legal frameworks, including EU law and international investment law.

At its core, Part I of the dissertation relies on the detailed analysis of legal sources, including constitutional provisions, acts, case law, and regulatory instruments. Part I is doctrinal in nature, systematically examining, clarifying, and structuring the key legal terms and concepts relevant to the topic of the thesis in the Czech Republic, Hungary, Poland, and Slovakia. Doctrinal research, in this context, seeks to answer the fundamental question of ‘what the law is’ in each jurisdiction.[36] To achieve this, the analysis focuses not only on the letter of the law but also on its hierarchical structure, including the status of constitutional and quasi-constitutional acts, the relationship between general and special legislation, and the interaction between national provisions and EU law obligations. This approach ensures a rigorous foundation upon which subsequent comparative analyses are built.

The doctrinal method is supplemented by critical evaluation, identifying inconsistencies, ambiguities, and gaps in land law legislation of the respective countries. Particular attention is paid to mechanisms for protecting agricultural land, the regulation of transfer of the ownership, and succession rules. The comparative aspect is integrated systematically: analytically, through the examination of legal definitions and concepts across the four countries; structurally, by identifying common patterns and divergences; and functionally, by assessing how these frameworks operate in practice. Historical and socio-legal context is incorporated where relevant, illuminating the evolution of national land law regimes, the influence of post-socialist transitions, and the impact of EU accession.

Part II focuses on the interaction between national land law legislation and EU law. It examines the margin of appreciation afforded to Member States in regulating agricultural land issues under internal market constraints. This part examines the four fundamental freedoms of the EU, especially free movement of capital and the freedom of establishment, focusing on how these principles limit or shape the margin of appreciation of Member States. The analysis incorporates case law from the CJEU, infringement proceedings initiated by the European Commission, and preliminary ruling procedures. By scrutinising these mechanisms, the thesis highlights the tensions between national interests over land and obligations under EU law, while providing

[36] Johns, 2007, pp. 18–19. See also Csirszki, 2022, p. 26. and Csirszki, 2025, p. 16.

insights into how Member States navigate conflicts between domestic land protection measures and market freedoms. Methodologically, this part combines doctrinal analysis with a critical evaluation of the implications of EU law on national land law regulation. A comparative legal approach is also employed when examining infringement proceedings and preliminary ruling procedures.

Part III extends the scope to international dimensions, with particular emphasis on extra-EU acquisitions of agricultural land. Here, the methodology engages with international investment law, including bilateral and multilateral agreements, and their interaction with EU foreign direct investment rules. The regulatory framework is analysed, alongside EU reforms such as the Investment Court System and selected agreements with countries including, for example, Canada, Japan, Singapore, or Vietnam. Methodologically, this involves both textual analysis of treaties and interpretive assessment of their potential impact on national land law. The interplay between direct investment provisions, national regulatory measures, and the overarching EU legal framework is examined to provide a holistic understanding of the challenges posed by cross-border land acquisitions.

Throughout the dissertation, normative methods are employed to evaluate the adequacy, coherence, and effectiveness of statutory and regulatory frameworks. This includes identifying legal gaps, contradictions, or inconsistencies in the regulation of agricultural land, as well as assessing the extent to which national measures align with EU and international obligations. The methodology also incorporates interdisciplinary insights, acknowledging that land law intersects with economics, rural development, environmental management, and public policy.

As mentioned, historical and contextual considerations are embedded where relevant, particularly regarding post-socialist transitions, accession to the EU, and the evolution of domestic land markets. Comparative method is applied to highlight lessons from divergences and convergences in national approaches.

To sum up, the methodology combines doctrinal, comparative, normative, and interdisciplinary approaches, producing a multi-layered analysis. By progressing from national-level legal acts through EU integration and Member State's margin of appreciation to the broader international investment context, the dissertation provides a comprehensive framework for understanding land-related issues in the Visegrád countries. This methodological approach ensures that the thesis not only clarifies the formal legal structures but also addresses their practical application, relevance, and

interaction with supranational and international legal regimes, offering a robust foundation for academic contribution and recommendations.

3. Structure

The dissertation is structured into five main parts.

The introduction defines the conceptual framework, methodology, and scope of the research.

Part I examines the land law regimes of the Visegrád countries presented in alphabetical order. Each chapter follows a unified structure covering sources of law, legal definitions and concepts, rules on the acquisition of ownership of agricultural land, whether by inheritance or by acquiring shares in a company that owns agricultural land, and acquisition of other rights. This consistency enables systematic comparison, and the findings form the basis for later evaluation and reform proposals.

Part II analyses the EU legal framework and its impact on Member States' margin of appreciation related to land law legislation of respective countries. It traces the evolution of EU integration, highlighting the role of the European Commission and the CJEU in enforcing market freedoms. Particular attention is given to infringement proceedings initiated against the Visegrád countries, the preliminary ruling procedures, and the tension between national land protection measures and EU obligations.

Part III addresses cross-border acquisitions of agricultural land, focusing on extra-EU acquisitions. The chapter considers some relevant EU investment agreements, including, for example, those with Canada, Japan, Singapore, or Vietnam. Since the Lisbon Treaty is in effect, FDI falls under EU competence, although pre-existing BITs remain in effect until replaced. EU reforms, such as the Investment Court System, and the classification of real estate investment under the TFEU as direct investment, frame the regulatory context for cross-border agricultural land acquisitions.

Finally, the concluding chapter presents a synthesis of the main findings of the comparative analysis, offers concluding observations, and considers the broader significance of the research, including potential directions for future study.

PART I: LAND LAW LEGISLATION OF THE V4 COUNTRIES

Part I of the thesis offers a comparative overview of land law legislation in the V4 countries[37] presented in alphabetical order, with a particular focus on the acquisition of ownership of agricultural land.[38] Each national chapter follows a unified structure,[39] addressing the following areas: introductory remarks; main sources of law; key terms and concepts; rules on the acquisition of ownership of agricultural land/holding, acquisition of ownership of agricultural land/holding by inheritance, acquisition of shares in a company that owns agricultural land and acquisition of other rights.

At this point, some additional remarks should be made.

Firstly, regarding sources of law, due to the scope limitations of this dissertation, a detailed overview of all relevant legislation will not be provided; instead, only those legal acts deemed pertinent to the objectives of this thesis will be analysed. Likewise, the case law of constitutional courts will not be examined in depth, except where directly relevant. Secondly, concerning key terms and legal definitions, the unified structure will be adapted such that when another significant legal instrument exists within a country, it will be examined in detail. Thirdly, regarding succession, in countries without specific rules on agricultural land, the general provisions of the Civil Codes will not be examined in detail.

1. The Czech Republic

1. 1. Introductory remarks

The current structure of agricultural land ownership in the Czech Republic is a result of a complex historical process shaped by shifting political regimes and legal

[37] The comparison is primarily based on their status as of 1 September 2024; however, significant subsequent changes to national land law regimes have also been taken into account in this analysis where appropriate. Cf. Szilágyi and Szinek Csütörtöki, 2024, pp. 182–214.; Szilágyi and Szinek Csütörtöki, 2023b, pp. 145–172.

[38] Although the main focus of this dissertation is on agricultural land, key information regarding agricultural holdings is also presented to provide a clearer understanding of national land law.

[39] In this thesis, the structure is discussed (partly) with reference to the following publication: Szilágyi, 2022a.

reforms.[40] Under communist rule,[41] land was largely nationalised,[42] with owners often stripped of effective control as cooperatives managed agricultural production. This system severed the link between legal ownership and land use.[43]

Following the Velvet Revolution in 1989, the newly democratic state sought to reverse, at least partially, these injustices through a two-pronged legal strategy: restitution and privatisation. These two processes were not merely sequential but deeply intertwined,[44] both temporally and functionally. While restitution aimed to restore property rights to pre-communist owners or their heirs, privatisation focused on reallocating state assets[45]—including land—to private actors in order to establish a functioning market economy. These objectives converged, overlapped, and occasionally conflicted, shaping a hybrid system of land redistribution.[46]

Restitution acts enacted in 1990 and 1991[47] aimed to reverse these expropriations[48] by returning confiscated land to former owners or providing substitute parcels when restitution was impossible. This process was integral to broader privatisation efforts, facilitating the transition to a market economy. Initially, restitution claims could be sold, but after 2005 only original owners and their heirs could acquire land through restitution,[49] reflecting a state policy rather than a constitutional right.[50]

Privatisation of agricultural assets accelerated in the 1990s, but land acquisitions remained limited until Act No. 95/1999 Coll. on the Conditions for the Transfer of Agricultural and Forestry land, established a legal framework for transferring state-owned land to private parties. This act, replaced in 2013 by Act No. 503/2012 Coll. on State Land Office, greatly expedited privatisation, with over half a million hectares transferred by 2011 and nearly all restitution cases resolved by 2019.[51]

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[40] Vomáčka and Leichmann, 2022, p. 142.
[41] For a detailed overview, see Kabrhel, 1980.
[42] On the issue of nationalisation, see, for example, Macek, 1918.
[43] Hanák and Leichmann, 2022, p. 11.
[44] The Constitutional Court of the Czech Republic in its Judgment of 4 June 1997, No. Pl. ÚS 33/96 considered restitution as form of privatisation.
[45] Zeman, 2013, p. 251.
[46] Hanák and Leichmann, 2022, p. 11. See also Homolac and Tomsik, 2016, pp. 528–536.
[47] I.e., still in Czechoslovakia.
[48] In connection with the expropriation, see, for example Frumarová and Grygar, 2020, pp. 515–522.; Frumarová, 2020, pp. 8–21.; Frumarová, 2020b, pp. 212–216.; Grygar, Frumarová, Horák and Masarik, 2021.
[49] In connection with this, see the Judgment of the Constitutional Court of 13 December 2005, No. Pl. ÚS 6/05.
[50] Hanák and Leichmann, 2022, p. 11.
[51] Ibid., p. 12.

Land sales prioritised former owners and tenant farmers with demonstrated ties to the land, while unclaimed parcels were sold via open tenders to qualified buyers, including EU nationals. Although restitution allowed for substitute land outside original locations, this often resulted in fragmented holdings, requiring ongoing consolidation efforts.[52] Competitive bidding among restituents sometimes reduced the practical benefits of restitution claims.[53]

It can be stated that privatisation and land sales significantly reshaped the agricultural land market, particularly after 2001, contrasting with the limited land transactions of the 1990s when leasing was more profitable than ownership. Sales often focused on peri-urban areas suitable for development, highlighting ongoing tensions between agricultural land preservation and urban expansion.[54]

When it comes to the acquisition of agricultural land ownership, Czech natural and legal persons were historically subject to different rules than foreigners. However, these distinctions have now been largely eliminated. Czech agriculture also differs from that of other EU member states, characterised by larger average farm sizes, a high proportion of leased land, and strong corporate participation. As highlighted by *Vomáčka* and *Leichmann*, the lack of recent foreign-language literature on Czech land law makes it challenging for international investors, lawyers, and researchers to fully grasp the unique ownership and economic structure of Czech agriculture.[55]

1. 2. Sources of national land law

In the Czech Republic, the legal regime regulating the acquisition of ownership of agricultural land is composed of a complex system of legislative provisions, reflecting the layered historical, political, and economic developments that have shaped land ownership and transfer.

Although the highest legal source of the country,[56] i.e., the Constitution of the Czech Republic,[57] does not contain any explicit provisions specifically addressing

[52] Cf. Hartvigsen, 2025, pp. 9–21.
[53] Hanák and Leichmann, 2022, pp. 12–13.
[54] Vomáčka and Leichmann, 2022, p. 136.
[55] Ibid., p. 128.
[56] The Czech constitutional order is distinctive in that it is not limited to the Constitution itself but also includes constitutional acts and the Charter of Fundamental Rights and Freedoms, all of which have the same legal force as the Constitution. See Hojnyák and Szinek Csütörtöki, 2021, p. 218.
[57] Constitutional Act No. 1/1993 Sb., Constitution of the Czech Republic

agricultural land,[58] its constitutional norms remain highly relevant to the subject of this thesis.[59] This is primarily due to their focus on property rights, and environmental protection—particularly regarding soil.[60] The Constitutional Court of the Czech Republic interprets these constitutional guarantees within the broader context of the Czech Republic's obligations as a member of the EU. In doing so, it incorporates key principles of EU law, especially those related to the protection of fundamental rights.[61]

The constitutional protection of property, as enshrined in Article 11 of the Charter of Fundamental Rights and Freedoms,[62] establishes both a general guarantee and a requirement for equal protection. Consequently, any substantial interference with the ownership, use, or possession of immovable property—including agricultural land—may be subject to constitutional review, provided that ordinary legal remedies have been exhausted and the interference reaches a certain threshold of seriousness.[63] Furthermore, landowners who are negatively impacted by agricultural activities may seek remedies in civil or administrative courts and, if necessary, file a constitutional complaint on the basis of infringed property rights under the same provision.[64] In addition, the Charter of Fundamental Rights and Freedoms specifically regulates the conditions under which expropriation may occur, permitting such action only when it serves the public interest, is grounded in law, and is accompanied by fair compensation.[65]

It is important to note that the Constitutional Court of the Czech Republic has affirmed that the state may designate certain types of property as exclusively state-owned to serve societal needs, promote economic development, or protect the public interest.[66] In fulfilling this role, the state is entitled to ensure the careful use of its natural resources and protect the environment, even when such measures do not

[58] The Constitution in its Preamble explicitly expresses the commitment to jointly safeguard the inherited natural resources. Furthermore, Article 7 imposes on the state the duty to protect these resources and to oversee their sustainable use.
[59] For a detailed overview on the agricultural issues and the Czech Constitution, see Vomáčka and Tkáčiková, 2022, pp. 157–171.
[60] Vomáčka and Leichmann, 2022, p. 130.
[61] Ibid. See also the Judgment of the Constitutional Court of the Czech Republic of 8 March 2006, No. Pl. ÚS 50/04.
[62] Constitutional Act No. 2/1993 Coll.
[63] Vomáčka and Tomoszek, 2020.
[64] Vomáčka and Leichmann, 2022, p. 130.
[65] Charter of Fundamental Rights and Freedoms, Article 11(4). See also Hanák, Židek and Černocký, 2020.
[66] Judgment of the Constitutional Court of 25 September 2018, No. Pl. ÚS 18/17, para. 128.

involve confiscating private property for the benefit of other private parties.[67] This principle is reflected, for instance, in the legal framework governing land consolidation procedures, which are carried out in the public interest as specified in Act No. 139/2002 Coll. on Land Adjustments and Land Offices.[68] However, despite these general principles, the Constitutional Court of the Czech Republic has yet to offer detailed guidance specifically relating to the acquisition and ownership of agricultural land.[69]

Regarding the level of acts, one of the most relevant[70] to this dissertation is Act No. 89/2012 Coll., the Civil Code, which governs private law relations, including ownership and transfers of agricultural land. Although it does not explicitly define agricultural land, it imposes key limitations on its division. In particular, it requires that land may only be subdivided in a manner that allows for continued effective cultivation, with permanent access and sufficient area to support agricultural activity. Exceptions are permitted only in cases where division is necessary for construction or expropriation purposes.[71]

Moving forward, land ownership and rights are formally recorded in the Real Estate Register, governed by the Act No. 256/2013 Coll. on Real Estate Register. This register is mandatory and comprehensive, containing details such as the geometric and positional characteristics of the land, its classification, and legal entitlements associated with it.

The overarching statutory framework supporting the sustainable use of natural resources is provided by Act No. 252/1997 Coll. on Agriculture. This act defines[72] the essential conditions for agricultural entrepreneurship, sets out mechanisms for national agricultural support, and facilitates the implementation of both the EU's CAP,[73] and its rural development policy.

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[67] See the dissenting opinion of Judge *Šimáčková* in the resolution of the Constitutional Court of 5 August 2014, No. Pl. ÚS 26/13.
[68] See para. 2 of the mentioned act.
[69] Vomáčka and Leichmann, 2022, p. 130.
[70] For the general sources governing land issues, see, for example, Brynychová, 2020, pp. 7–20.
[71] Civil Code, para. 1142(2).
[72] The Czech legal system does not provide a single definition of agriculture; rather, it is shaped by different legal contexts, often linked to agricultural land. Agriculture is viewed both as a property and environmental matter, and as an entrepreneurial activity focused on producing food and other goods. The Agriculture Act reflects this broad approach, covering plant and animal cultivation, processing and sale of farm products, and related forestry and water management activities. See Vomáčka and Leichmann, 2022, p. 128.
[73] In this regard, see TFEU, Articles 39(2) and 50(2) point e).

Further, organic farming practices are governed by Act No. 242/2000 Coll. on Organic Agriculture. This act outlines the standards, conditions, and certification procedures for ecological production and plays an important role in fostering environmentally responsible agricultural practices within the Czech Republic.

Equally important is the Act No. 334/1992 Coll. on the Protection on Agricultural Land Fund (hereinafter referred to as the Agricultural Land Fund Act), which has evolved from earlier acts first enacted in 1959 and subsequently replaced in 1966 and again in 1992, following the Velvet Revolution. This legislation aims to safeguard agricultural land against erosion, contamination, and conversion to non-agricultural uses. It also extends protection to ancillary non-agricultural land that is critical to agricultural production, and aquaculture facilities like fish ponds.[74]

Taken together, these acts constitute a comprehensive and coherent legal framework that endeavours to reconcile the protection of private property rights with the public interest in safeguarding agricultural land as a critical natural resource. This framework not only secures the legal certainty necessary for agricultural business activities and land ownership but also promotes sustainable land use practices in response to environmental imperatives and socio-economic challenges. Furthermore, the integration of EU legal principles serves to enhance the regulatory coherence and effectiveness of national laws.

1. 3. Key terms and concepts

1. 3. 1. Agricultural land

In the Czech legal framework, the definition of 'agricultural land'[75] *(zemědělská půda)* is closely tied to the concept of the Agricultural Land Fund, as outlined in the Agricultural Land Fund Act. This act recognises agricultural land as an essential natural resource, a means of production, and an integral component of the environment.[76] It should be added that the Agricultural Land Fund comprises land used for agricultural cultivation, including arable land, vineyards, hop-growing areas, orchards, gardens, and permanent grassland, along with land continuously used for

[74] See Agricultural Land Fund Act, para. 1.
[75] On considerations related to the term 'land', see, for example, Frumarová, 2023, p. 4.
[76] Agricultural Land Fund Act, para. 1.

agricultural purposes, excluding temporarily cultivated plots. Collectively, these categories are referred to legislatively as agricultural land.[77] Moreover, para. 1(3) of the mentioned act extends this definition to include fish ponds and waterfowl farming areas, as well as non-agricultural land essential for agricultural activities—such as dirt roads, irrigation facilities, drainage diches, dikes, and anti-erosion structures. Where the classification of a particular plot is unclear, the competent municipal authority with extended powers is responsible for making the determination. Additional legal provisions concerning the use of agricultural land—for instance, regulations on fertiliser application—are based on this core definition and do not introduce alternative interpretations.[78]

1. 3. 2. Agricultural holding

The Czech legal framework does not explicitly recognise agricultural holdings as a distinct legal category, nor provide a detailed definition of their components or structure.[79] However, for statistical and agricultural survey purposes, there is a practical definition of agricultural holdings in Czechia: they are considered single units, both technically and economically, with single management undertaking agricultural activities according to the common statistical classification either as a primary or secondary activity. This definition is used for data collection and agricultural surveys but does not constitute a formal legal category in Czech law.[80]

1. 3. 2. 1. Family farm

While the Czech legal system historically lacked a unified, formal definition of a ‘family farm’, the concept was nonetheless present in agricultural policy discourse and statistical classifications. Prior to 2025, the term was used descriptively rather than normatively, often aligned with criteria set out by the Czech Statistical Office and European Union policy frameworks, particularly the CAP. In practice, family farms were understood as agricultural holdings managed and predominantly operated by

[77] Ibid., para. 1(2)
[78] Vomáčka and Leichmann, 2022, p. 129.
[79] Szilágyi and Szinek Csütörtöki, 2022, p. 351.
[80] FAO, 2020.

members of a single family, relying primarily on family labour, with ownership and decision-making concentrated within the household.

This ambiguity was addressed in 2025 when the Czech Parliament's Chamber of Deputies adopted an amendment to Act No. 252/1997 Coll., on Agriculture. This amendment, for the first time, introduced a legal definition of a family farm. Under the amended act, a family farm is understood as an agricultural holding operated and managed by members of a single family, conducting agricultural activities within the meaning of the mentioned act and cultivating no more than 1,000 hectares of agricultural land. In addition to these substantive criteria, such farms are required to be registered in a newly established public or private registry maintained by the State Agricultural Intervention Fund.[81]

According to the amendments' proponents, led by Minister of Agriculture *Výborný*, this represents a first step toward formally recognising family farms in Czech law, with further measures expected to follow to address the specific needs of this type of agricultural holding. After approval by the Chamber of Deputies and by the Senate,[82] the amendment was signed by President *Pavel* on 21 August 2025. So, family farms may be established from 1 January 2026. The law defines a family farm as an agricultural entrepreneur, either a legal person or a civil law partnership, whose partners consist exclusively of individual farmers recognised as members of a family farm.[83] Both types of family farms must, in addition to demonstrating family ties,[84] comply with the definition of a micro-enterprise as set out in European Commission Recommendation 2003/361/EC of 6 May 2003, which defines micro, small, and medium-sized enterprises.[85] Accordingly, a family farm may employ no more than ten workers and may not exceed an annual turnover of €2 million (approximately CZK 53.2 million). The status of a family farm, or of a member of such a farm, is conferred upon qualifying applicants by the State Agricultural Intervention Fund, in accordance with the relevant framework.[86]

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[81] Bílý, 2025.
[82] In the Czech Republic, the legislative process operates within a bicameral parliamentary system consisting of the Chamber of Deputies and the Senate. For more on the system, see, for example, Filip and Svatoň, 2011.
[83] Act No. 252/1997 Coll., on Agriculture, para. 2j (1) (a) and (b)
[84] Ibid., para. 2j (2)
[85] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
[86] Mikeš, 2025.

1. 4. Acquisition of ownership of agricultural land and holding

1. 4. 1. Agricultural land

In the Czech Republic, the acquisition of ownership of agricultural land is primarily governed by general civil law,[87] with no comprehensive special restrictions applicable to such cases.[88] The legal framework applies uniformly to both Czech and foreign natural and legal persons, reflecting the liberalised approach adopted following the country's accession to the European Union. While a right of pre-emption in favour of the state exists for certain types of agricultural land—particularly land held by the state or designated for specific public purposes—this is one of the few substantive limitations currently in force.[89]

Historically, significant distinctions were drawn between domestic and foreign persons. However, these restrictions were effectively lifted[90] following the expiration of transitional period post-EU accession, aligning Czech law with EU law.[91]

Until 2011, the acquisition of agricultural land in the Czech Republic by foreigners—both natural and legal persons (also foreigners)—was generally prohibited. Nevertheless, certain exceptions existed. Foreign persons[92] could acquire land if they held Czech citizenship or were married to a Czech citizen. Acquisition was also permissible through inheritance or by exercising a pre-emption right stemming from co-ownership. Further exceptions applied in cases where the land in question was inseparable from property already owned by the foreign party, or when the acquisition

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[87] The transfer of ownership of immovable property, including agricultural land, is regulated by the Civil Code. A valid transfer requires a written contract clearly identifying the land, but ownership passes only upon registration in the Real Estate Register. Registration is initiated by application and finalised after a 20-day protective period, during which the Register Office verifies compliance. Entries in the Real Estate Register enjoy the presumption of accuracy, ensuring legal certainty for third parties relying on ownership records. See Vomáčka and Leichmann, 2022, p. 133.; Barešová et al., 2019, pp. 224–268.; Pavelec, 2021, pp. 194–264.

[88] Adam and Syrovátko, 2010, p. 12

[89] Vomáčka and Leichmann, 2022, p. 133. It also should be added that Czech law imposes no specific constraints on the establishment or transfer of rights *in rem* over agricultural land, such as usufruct, or lease arrangements. There is also no standalone legal regime regulating the lease of agricultural land or holdings, and such agreements are governed under the general provisions of the Civil Code.

[90] On 1 May 2011 the Parliament of the Czech Republic approved an amendment to the Foreign Exchange Act (Amendment No. 206/2011 proposed to the Act No. 219/1995 Coll.) which formally removed all of the restrictions for foreigners.

[91] Barešová et al., 2011, pp. I.-VII.

[92] On the issue of acquisition of agricultural land by foreigners in the Czech Republic following the expiration of the seven-year transitional period, see Gala, 2010, pp. 10–13. See also Fráňa, 2007, pp. 834–840.

occurred as part of a land exchange involving domestic land.[93] Additionally, citizens of EU Member States engaged in farming were eligible to acquire land provided they were registered as self-employed agricultural entrepreneurs and had legally resided in the Czech Republic for a continuous period of at least three years. These persons were also required to demonstrate integrity, appropriate agricultural expertise, and proficiency in the Czech language. However, since November 2010, as stated above, the Czech legal framework has undergone liberalisation.[94]

In turn, on 3 May 2024, the Chamber of Deputies approved a draft act amending Agricultural Land Fund Act.[95] It was also approved by the Senate on 30 May 2024[96] and subsequently signed by the President. The principal objectives of the amendment are twofold: firstly, to address long-standing application difficulties and deficiencies arising from the outdated nature of the current legislation, and secondly, to enhance the protection of both the ecological functions of the Agricultural Land Fund and the economic and environmental functions of the agricultural landscape.[97] In doing so, the legislator has sought to reinforce the substantive and procedural safeguards applicable to agricultural land, recognising its irreplaceable value within the national territory.

Among the most significant legislative innovations introduced by the amendment is the principle of reciprocity, according to which ownership rights to agricultural land may not be acquired by a state, or by its nationals, natural persons having permanent residence within its territory, or legal persons having their registered office there, if the legal order of that state does not permit the acquisition of agricultural land by nationals of the Czech Republic, by natural persons with permanent residence in the Czech Republic, or by legal persons with their registered office in the Czech Republic. This restriction does not apply to the Member States of the European Union, the European Economic Area (hereinafter referred to as the EEA), or Switzerland, nor to any state in respect of which an international treaty binding upon the Czech Republic provides otherwise. The restriction is also inapplicable in cases where agricultural land is acquired by inheritance.[98]

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[93] Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 39–40.
[94] Ciaian, Kancs, Swinnen, Van Herck and Vranken, 2012, p. 9.
[95] Chamber of Deputies, Parliament of the Czech Republic, Parliamentary Print No. 579.
[96] ČTK, 2024.
[97] Kmoch and Hamáčková, 2024.
[98] Agricultural Land Fund Act, para. 3d.

In my view, the adoption of the recent amendment to the Agricultural Land Fund Act marks an important shift in the Czech Republic's legal and policy approach to the ownership and protection of agricultural land. Whereas, in the years following EU accession, the prevailing legislative framework reflected a liberalised regime grounded in the principle of free movement of capital and a market-oriented view of land ownership, the amendment evidences a start of recalibration toward a protective, resource-oriented stance. It should be added that although the restriction, i.e., the principle of reciprocity, does not extend to Member States of the EU, the EEA, Switzerland, or to states bound to the Czech Republic by an international treaty providing otherwise, nor to acquisitions by way of inheritance, its inclusion in the Czech legislative framework underscores the legislator's intention to assert some kind of control over the conditions under which this natural resource may be transferred across borders.

Moreover, although it is clear that the amendment aims commendably to safeguard agricultural land within the Czech Republic, its practical implementation raises several challenges. A key difficulty concerns the verification of whether a foreign jurisdiction under review permits Czech citizens to acquire agricultural land, thus satisfying the principle of reciprocity embedded in the legislation. Currently, the Czech Republic lacks any public database or official register that comprehensively identifies which states grant Czech nationals the right to acquire agricultural property. Consequently, prospective purchasers must rely on consultations with legal experts capable of analysing the relevant foreign laws or resort to requests directed at foreign authorities to obtain such information. This procedure is often time-intensive and costly, creating significant barriers, particularly for natural persons. An inaccurate or incomplete assessment may have serious repercussions if a transaction is subsequently deemed unlawful.[99] Moreover, swift legislative changes in some countries can result in situations where ownership acquisition was permissible at the time of purchase but later prohibited before the completion of the transaction. In such cases, if a foreign individual subject to the restrictions of para. 3d of the Agricultural Land Fund Act inadvertently acquires agricultural land, the validity of the transfer may be legally contested on the basis of its non-compliance with the law.

[99] Hrubešová, 2024.

1. 4. 2. Agricultural holding

Regarding this issue, i.e., the acquisition of ownership of an agricultural holding in the Czech Republic, it should be noted that the legal framework contains no specific legislation addressing this type of transaction.

1. 4. 3. Acquisition of ownership of agricultural land and holding by inheritance

1. 4. 3. 1. Agricultural land

The inheritance of agricultural land in the Czech Republic is regulated under general civil law, specifically by the Act No. 89/2012 Coll., the Civil Code.[100] Therefore, general rules apply to agriculture provided that they do not obstruct the continuous fragmentation of agricultural land. This fragmentation is considered one of the primary reasons owners rent out land instead of farming it. Furthermore, the law does not prohibit the inheritance of land by foreign persons across borders based on the legal hierarchy of succession or inheritance agreements made during the testator's lifetime.[101]

At this point it should be highlighted that until 2011, it was not possible for foreigners, including both natural and legal persons, to purchase agricultural land in the Czech Republic, except for a few exceptions. These exceptions included foreigners who had Czech citizenship or were married to a Czech citizen, who inherited the land or had pre-emption rights from co-ownership, who could not separate the land from another asset already owned by the foreigners or exchange it for domestic land, and EU-citizen farmers who were registered as self-employed and permanently staying in the Czech Republic for at least three years. Eligibility conditions have eased since November 2010, with the only requirement being official registration as a farmer. Individuals who are natural residents of the Czech Republic and have been farming on leased land for a minimum of three years, as well as Czech legal persons that combine both domestic and foreign capital, have been allowed to purchase private agricultural land, provided they can demonstrate their integrity, professional farming knowledge,

[100] See Civil Code, paras. 1475–1720. See also Elischer, Frinta and Pauknerová, 2013.
[101] Vomáčka and Leichmann, 2022, p. 132.

and proficiency in the Czech language. However, since November 2010, the Czech government eased the eligibility criteria for foreigners seeking to purchase private or state-owned land. Previous requirements of permanent residency, three years of farming experience, and language and farming knowledge were eliminated.[102]

Regarding tax issues, it should be highlighted that the inheritance tax at the end of 2013 was abolished in the Czech Republic.[103] Since 2014, the regulation of inheritance (and also gift) taxes is no longer separate but rather incorporated under the income tax law. This means that inheritance tax is subject to progressive taxation, similar to other forms of personal income. However, this incorporation resulted in a significant increase in gift taxes compared with previous legislation. Note that exemptions may be available, such as total exemptions from inheritance taxes for certain persons.[104]

1. 4. 3. 2. Agricultural holding

Similar to the inheritance of agricultural land, there are no special rules governing the inheritance of agricultural holdings in the Czech Republic.

1. 4. 4. Acquisition of shares in a company that owns agricultural land

Under Czech law, there are no specific restrictions governing the acquisition of shares in legal persons—particularly commercial companies—that own agricultural land. Legal persons, whether domestic or foreign, are generally not subject to additional legal conditions when acquiring such shares.

1. 4. 5. Acquisition of other rights

In the Czech Republic, there are, in principle, no specific rules governing the acquisition or disposal of other rights *in rem* related to the use of agricultural land.[105]

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[102] Ciaian, Kancs, Swinnen, Van Herck and Vranken, 2012, p. 9.
[103] Act No. 586/1992 Coll. on Income Tax, para. 4a point a).
[104] Borkovec, 2023.
[105] Vomáčka and Leichmann, 2022, p. 132.

2. Hungary

2. 1. Introductory remarks

Hungarian land law has been marked by continuous transformation since the political transition of 1989–1990 and remains a dynamically evolving field. In the initial years following the fall of the socialist regime, the legislator sought to re-regulate an area that had previously been only partially and inconsistently governed. This effort culminated in the adoption of the Act LV of 1994 on Arable Land (hereinafter referred to as the Arable Land Act), which laid the foundations for the current regulatory framework.[106] Already at this early stage, the legal framework introduced key features that continue to shape Hungarian land law to this day, including restrictions on the acquisition of land by legal persons, and the establishment of a complex system of pre-emption and pre-lease rights.[107]

Simultaneously, the Hungarian state implemented a compensation-based system to address property loss under socialism. Unlike full restitution models employed elsewhere in Central Europe, Hungary adopted a scheme centred on compensation vouchers, which claimants could use to acquire land and other assets through auctions and public sales.[108] This system was operated in reallocating property[109] within a new market-oriented framework and in facilitating the dismantling of former state-owned agricultural cooperatives. Nevertheless, it also produced long-term challenges—including fragmented ownership structures and lingering legal uncertainties—which continue to reverberate in the present legal landscape.[110]

A second significant milestone in the evolution of Hungarian land law came with the country's accession to the European Union in 2004.[111] During a ten-year transitional period following the accession,[112] Hungary was permitted to temporarily preserve certain restrictions on land ownership. However, the eventual harmonisation

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[106] Cf. Bányai, 2023, pp. 113–156.; Prugberger, 1989, pp. 609–617.; Prugberger, 1995, pp. 232–234.; Prugberger, 2012, pp. 62–65.
[107] Cf. Csák, 2006, pp. 49–73.; Csák, 2008, pp. 54–76.; Mikó, 2013, pp. 151–163.; Bobvos, 2004, pp. 1–25.
[108] Cf. Prugberger, 2012, pp. 62–65.
[109] Cf. Lenkovics, 2024.
[110] Cf. Szilágyi, 2024, p. 145.
[111] Cf. Prugberger, 2010, pp. 211–239.
[112] On the regulation of agricultural land ownership in Hungary after land moratorium, see, for example, Csák, 2017, pp. 1125–1136.

with EU law necessitated substantial legislative reform.[113] The centrepiece of this reform was the adoption of the Land Transfer Act, which, alongside several complementary acts, redefined the national framework for agricultural land acquisition and use.[114]

The 2013 legislation was expressly grounded in the Fundamental Law of Hungary (hereinafter also referred to as Fundamental Law), which recognises the dual imperative of protecting private property rights and preserving agricultural land[115] as a natural resource and strategic national asset.[116] The Land Transfer Act thus sought to reconcile constitutional guarantees with broader public interest considerations. One of its notable innovations was the recognition of the agricultural holding—alongside agricultural land—as a distinct object of legal regulation. Furthermore, the mentioned act introduced a special intestate succession regime applicable specifically to agricultural land, thereby departing from the general inheritance rules of the Civil Code.[117]

The interpretation and application of these legal norms have been shaped by decisions of both the Constitutional Court of Hungary and the CJEU. These rulings have addressed key constitutional issues as well as the compatibility of national restrictions with EU internal market principles. In parallel, Hungary's obligations under bilateral and regional investment protection agreements have emerged as another critical axis of legal constraint, particularly with respect to the regulation of foreign ownership and investor rights.

In sum, Hungarian land law reflects the intersection of past legal frameworks, constitutional commitments, EU integration,[118] and national policy priorities. Despite substantial legislative overhauls over the past three decades, the regulatory landscape continues to evolve, shaped by unresolved tensions and ongoing interpretive challenges.

[113] Szilágyi and Szinek Csütörtöki, 2023a, p. 319.
[114] Ibid., p. 319. See also Olajos, 2002a, pp. 8–12.; Olajos, 2002b, pp. 13–17.; Tanka, 2013, pp. 109–136.
[115] As mentioned earlier, it uses the term 'arable land'.
[116] Fundamental Law of Hungary, Article P)
[117] Szilágyi, 2022b, p. 145.
[118] Cf. Tanka, 2000, pp. 15–37; Tanka, 2001, pp. 1–27.

2. 2. Sources of national land law

Hungarian land law, as it stands since 1 May 2014, is founded upon the principles enshrined in the Fundamental Law, which serves as the highest constitutional framework governing property rights and land use. This legal framework[119] integrates constitutional mandates, cardinal acts,[120] ordinary legislation, and government decrees into a complex body of law specifically tailored to regulate the acquisition, possession, and use of agricultural land, as well as agricultural holdings.[121] The legal regime reflects a careful balance between respecting individual property rights, protecting national natural resources,[122] and ensuring sustainable land management in alignment with both domestic constitutional requirements and broader European Union law.[123]

The Fundamental Law is pivotal in shaping the country's land law,[124] especially through three key constitutional provisions.

Article XIII guarantees the right to property[125] but, in line with interpretations by the European Convention on Human Rights (hereinafter referred to as the ECHR)[126] and the Constitutional Court of Hungary,[127,128] this right does not translate into an unfettered entitlement to acquire property. This understanding allows the legal system to impose restrictions on the acquisition of agricultural land without infringing on existing property rights.[129] Consequently, the Hungarian land law primarily restricts

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[119] On the fundamental institutions of land transactions and land use, see, for example, Bobvos and Hegyes, 2015.
[120] Cardinal acts can be adopted by a two-thirds majority of the members of Parliament and with reference to these provisions and form an important basis of Hungarian land law.
[121] On this topic, see, for example, Réti, 2018, pp. 97–112.
[122] Cf. Horváth, 2013, pp. 359–366.
[123] See Marinkás, 2018, pp. 99–134.
[124] Orosz, 2018, pp. 178–191.; Olajos, Csák and Hornyák, 2018, pp. 5–19.; Csák, 2018a, pp. 5–32.; Hojnyák, 2019, pp. 58–76.
[125] For more on this topic, see, for example, Téglási, 2014.
[126] In the context of the European Court of Human Rights (hereinafter referred to as the ECtHR) case *Gasparetz v Slovakia* (inadmissibility decision, 28 June 1995, No. 24506/94), *Raisz* highlighted the controversial manner in which the ECtHR applied principles related to property rights in connection with the Beneš Decrees. See Raisz, 2010, pp. 244–245.; Téglási, 2010, pp. 22–47.; Téglási, 2015, pp. 148–157.
[127] In connection with this, see, for example: Decision No. 35/1994 (24.VI.), III/3.; Decision No. 3387/2012 (30.XII.) [Explanatory Memorandum (16.)]; Decision No. 35/1994 (24.VI.), ABH 1994, 201.; Decision No. 3021/2014 (11.II.), [Explanatory Memorandum (14.)]; Decision No. 17/2015 (5.VI.) [Explanatory Memorandum IV. (67.)]. Relevant case law of the Constitutional Court is discussed, for example, in Bobvos, Csamangó, Hegyes and Jani, 2016, pp. 31–40.; Kocsis, 2014, p. 125.; Téglási, 2009, pp. 20–21.
[128] Cf. Charter of Fundamental Rights of the European Union, Article 17.
[129] And even the previous land legislation of 1994. Cf. Prugberger, 1999a, pp. 81–116.; Csák and Nagy, 2011, pp. 541–549.

the conditions under which new acquisitions can occur, thereby upholding property rights while safeguarding the public interest.

Equally significant is Article P), which underscores the special status of natural resources, including arable land,[130] forests, and water bodies, as the nation's common heritage.[131] This designation transcends the notion of these resources as mere commodities, emphasising their vital ecological, economic, and cultural functions that must be preserved for present and future generations.[132] Para. (2) of Article P) mandates the adoption of cardinal acts regulating the acquisition and use of agricultural and forest lands, the organisation of integrated agricultural production, and the legal framework of agricultural holdings, notably family farms.[133] While the legislation governing integrated agricultural production remains pending, substantial progress has been made in codifying the legal regimes for land transfer and agricultural holdings.

Article 38 of the Fundamental Law of Hungary addresses the nationalisation of state and local authorities' property, establishing it as national property. Under this constitutional provision, the Act LXXXVII of 2010 on the National Land Fund (hereinafter referred to as the National Land Fund Act) institutes a National Land Fund composed of state-owned agricultural lands managed by the National Land Centre on behalf of the Hungarian state. This act delineates a special regime for the use and transfer of these lands, aiming to harmonise land tenure policies with national interests, thus playing a crucial role in the state's agricultural policy and land management strategy.[134]

Central to Hungarian land law is the Land Transfer Act alongside the Act CCXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act[135] (hereinafter referred to as the Implementation Land Act),[136] both cardinal acts that replaced the former Arable Land Act.[137] These acts establish

[130] According to the Constitutional Court's jurisprudence, this terminological distinction has not yet created interpretive challenges.
[131] Fundamental Law of Hungary, article P) para. (1)
[132] Szilágyi, 2022b, p. 148.
[133] Csák, 2018b, pp. 6–21.
[134] Szilágyi, 2022b, p. 152.
[135] It qualifies as a partially cardinal act; however, certain provisions of the Implementation Land Act derive their cardinal status not only from Article P) of the Fundamental Law of Hungary but also from para 38 of the National Property Act. See Implementation Land Act, para. 107.
[136] In addition, certain provisions of the Implementation Land Act are not only cardinal under Article P) of the Fundamental Law of Hungary but also under Article 38 of the National Property Act; Implementation Land Act, Article 107.
[137] The transitional provisions of the Land Transfer Act, adopted as part of the 2013–2014 land reforms, balance continuity with flexibility in Hungarian land law. They define the act's role within the broader

comprehensive rules covering both the acquisition of ownership rights and the use of agricultural land through contractual arrangements. They form the foundation for regulating how agricultural land may be acquired and transferred, imposing statutory limits and conditions reflective of the constitutional imperatives.

Complementing this framework is the Act CXXIII of 2020 on Family Farms (hereinafter referred to as the Family Farms Act), which entered into force on 1 January 2021.[138] This cardinal act recognises family farms as a distinct legal category within agricultural holdings and introduces important preferential rights, such as pre-emption[139] and pre-lease,[140] to the so-called primary agricultural producer's[141] family farms[142] and family agricultural companies.[143] These provisions are designed to promote the sustainable continuation of family farming by facilitating intra-family transfers and enhancing the security of land tenure, including the possibility of gratuitous land use transfers within defined circumstances.[144]

Addressing a critical impediment to efficient agricultural development, the Act LXXI of 2020 on the Termination of Undivided Co-ownership of Land (hereinafter referred to as the Co-ownership Land Act)[145] provides a specialised legal mechanism to resolve the widespread issue of undivided co-ownership[146] of agricultural and forestry land. This phenomenon, largely a legacy of restitution processes following the political transition, has hindered land consolidation and productivity. The act introduces a *lex specialis* regime[147] allowing heirs in cases of intestate succession to avoid the creation of fragmented ownership by concluding allocation agreements,

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system of cardinal legislation under Article P) (2) of the Fundamental Law, establishing it as a core framework while permitting future adjustments in key sectors such as agricultural holdings and integrated production. These measures maintain legal stability during reform and embed adaptability into Hungary's land law legislation. See Land Transfer Act, para. 1(2) and para. 1(3).

[138] Olajos, 2022, p. 106.

[139] Land Transfer Act, para. 18(4).

[140] Ibid., para. 46(4).

[141] A primary agricultural producer is a natural person over sixteen, registered as such, who engages in agricultural, forestry, or related activities on a personal farm. The personal farm includes the land, buildings, and assets necessary for production, operated individually or within a family farm. Supplementary activities' income must not exceed one quarter of annual primary production income. Registration requires approval from the Hungarian Chamber of Agriculture, Food Economy, and Rural Development, which oversees compliance with legal requirements. For more, see Family Farms Act, paras. 2 points f) and h); 3(1)–(2); 4(1).

[142] The concept of the 'family farm of primary agricultural producers'' will be clarified later.

[143] The concept of the 'family agricultural company' will be clarified later.

[144] In connection with this, see Implementation Land Act, para. 91(9), Land Transfer Act, paras. 13(2), 38(3a) and 42(2).

[145] Article P) of the Fundamental Law of Hungary provides the cornerstone for the mentioned act.

[146] Cf. Nagy, 2022a, 2022b.

[147] Land Transfer Act, para. 2(7) and Co-ownership Land Act, para. 2.

dividing property physically, selling the property as a whole, or, alternatively, donating it to the state. Prioritisation is given to heirs engaged professionally in agricultural production, and rules are articulated to ensure compliance with territorial minimums, thereby fostering agricultural viability and economic competitiveness.[148]

Further refining the land transfer regime is the Act CXLIII of 2021 (hereinafter referred to as the Farm Transfer Act),[149] which came into effect on 1 January 2023.[150] This act governs the transfer of agricultural holdings or farms belonging to primary agricultural producers or individual agricultural entrepreneurs.[151] The legal concept of the farm is expansive, encompassing not only agricultural and non-agricultural real estate essential for farming but also movable assets, rights *in rem*, shares in agricultural partnerships, and associated contractual rights and obligations.[152] The act imposes eligibility conditions for transferees, emphasising the continuity of agricultural production through intergenerational transfer or long-term employment ties with the transferor. Various forms of farm transfer contracts are recognised, including sales, gifts, maintenance, annuity, lease, and gratuitous use contracts. The approval of these contracts by authorities ensures regulatory oversight, and provisions allow the transferee to assume contractual positions and necessary operational authorisations, facilitating seamless succession and farm management.[153]

Beyond cardinal acts, Hungarian land law is supported by several ordinary acts[154] that address specific regulatory needs and complement the land transfer regime. The Act LIII of 1996 on Nature Conservation (hereinafter referred to as the Nature Conservation Act) introduces stringent restrictions on the alienation of protected natural areas owned by the state, requiring exchanges of equivalent conservation value or ministerial consent to prevent ecological degradation.[155]

To address attempts to circumvent land acquisition restrictions, Hungarian legislation provides for both preventive and punitive measures. The Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquirement or Use of Agricultural Land, together with the

[148] Szilágyi, 2022b, p. 150.
[149] The provisions of the mentioned act are *lex specialis* compared to those of the Land Transfer Act.
[150] The Fundamental Law of Hungary, Article P) also provides the cardinal act status for several provisions of the mentioned act.
[151] Farm Transfer Act, para. 1.
[152] Ibid, para. 2, point a).
[153] Szilágyi, 2022b, p. 150.
[154] The adoption of which requires the support of a simple majority of half of the members of Parliament.
[155] See Olajos, 2018, pp. 157–189.

introduction of the criminal offense of unlawful acquisition of arable land under Act C of 2012 on the Criminal Code,[156] targets 'fraudulent contracts'[157] and other manipulative practices designed to evade the regulatory framework. Collectively, these measures serve to reinforce the integrity of the agricultural land transfer system and ensure compliance with national restrictions.[158]

The Hungarian land law regime operates within the broader context of the national legal system, interacting closely with the Civil Code, Civil Procedure Code, Real Estate Register Act,[159] and Act CL of 2016 on General Administrative Procedure, among others. Financial legislation related to land transactions also plays a significant role, as underscored by experts, emphasising the interdependence of land law and economic regulation.[160]

In addition, sector-specific legislation imposes further tailored requirements on land transfer and use, reflecting the diverse nature of agricultural and natural resource management in Hungary.

Government decrees serve to operationalise the statutory framework, delineating administrative structures responsible for enforcement, procedures for exercising pre-emption and pre-lease rights,[161] maintaining specialised land registers,[162] regulating security interests[163] related to land, and governing auctions.[164] These secondary legislations ensure the practical implementation and effective administration of the legal provisions, closing regulatory gaps and providing procedural clarity.[165]

Overall, Hungarian land law represents a multifaceted legal structure grounded in constitutional values, legislative precision, and administrative oversight. As it can be seen, it seeks to balance the protection of property rights with the imperative to safeguard natural resources, foster sustainable agricultural development, and maintain

[156] See Criminal Code, para. 349.
[157] On these contracts, see, for example, Olajos and Szalontai, 2001, pp. 3–10.; Bányai, 2014, pp. 62–71.; Kocsis, 2015, pp. 241–258.
[158] Szilágyi, 2022b.
[159] Until 31 January 2023, the applicable legislation was Act CXLI of 1997, which was replaced on 1 February 2023 by Act C of 2021. See Olajos and Juhász, 2018, pp. 164–193.; see also Kurucz, 2007b.
[160] See, for example, Nagy, 2010, p. 187.
[161] Government Decree No. 474/2013. (12.XII.). On this topic, see further Hegyes, 2009, pp. 199–207.
[162] Government Decree No. 38/2014. (24.II.)
[163] Government Decree No. 47/2014. (26.II.)
[164] Government Decree No. 191/2014. (31.VII.)
[165] Szilágyi, 2022b, pp. 153–154.

national interests. This approach underscores the complexity and significance of land law as a cornerstone of Hungary's legal (and economic) framework.

2. 3. Key terms and concepts

2. 3. 1. Agricultural land

Since 15 December 2013, the term of 'agricultural and forestry land' *(mező- és erdőgazdasági föld)* has been introduced and consistently applied by legislation through the Land Transfer Act. Despite this effort, certain legal provisions continue to refer to arable land.[166] It is important to highlight, that, the Fundamental Law protects arable land as a generally safeguarded legal object, underscoring its constitutional significance. Given the longstanding use of both terms[167] in Hungarian law and legal practice, this dissertation, as mentioned in the introduction, employs both terms, acknowledging that while the term agricultural and forestry land is more precise, it largely corresponds to the concept of arable land.[168] Notably, the Land Transfer Act's definition is broader, encompassing certain lands withdrawn from cultivation and defined as forest under the Act XXXVII of 2009 on Forests, Forest Protection, and Forest Management (hereinafter referred to as the Forestry Act), whereas the arable in the Arable Land Act pertains primarily to non-urban parcels, including fishponds.[169] Where specificity demands, such as in discussions of the Land Transfer Act, the dissertation uses the precise terminology 'agricultural and forestry land' or, where appropriate, 'agricultural land' or simply 'land' to reflect the regulatory distinctions accurately.

Under Hungarian land law, the concept of 'agricultural land'[170] includes all parcels—regardless of their rural or urban location—that are registered in the Real Estate Register as arable land, vineyard, orchard, garden, meadow, pasture, reed, forest, or wooded land. It also includes land officially designated as set-aside, provided it is registered as forest within the National Forest Inventory.[171] At this point, it is

[166] See, for example, Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquirement or Use of Agricultural Land.
[167] Cf. Horváth, 2022, pp. 88–89.
[168] Bányai, 2023, pp. 24–25.
[169] Ibid., pp. 24–25.
[170] Cf. Horváth, 2017, p. 168.; Horváth, 2015, p. 184.
[171] Land Transfer Act, para. 5. point 17.

important to note that the Land Transfer Act defines the concept of an estate, encompassing all land used for agricultural purposes, whether held in ownership, usufruct, or under any other legally recognised form of use.[172]

2. 3. 2. Agricultural holding

Under Hungarian land law, an 'agricultural holding' is recognised as a fundamental unit of organisation and management, comprising various assets such as land and agricultural equipment.[173] The legal framework now extends beyond merely defining agricultural land, encompassing a broader concept of agricultural holdings to better regulate land transactions.[174] Accordingly, the Land Transfer Act defines both the 'agricultural holding'[175] and the related an 'agricultural holding centre',[176] terms that increasingly align with terminology used in Western European land policy.[177] These are considered as organisational units composed of agricultural production factors[178] operating with a common purpose, which, through their economic interconnection, also function as basic economic management entities.[179]

2. 3. 2. 1. Family farm

In Hungarian land law, the 'family farm' represents a specific subtype of agricultural holding.[180] Its legal framework is governed by the Family Farms Act, which entered into force as a cardinal act on 1 January 2021. This legislation not only defined the structural and operational characteristics of family farms but also amended the Land

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[172] Ibid., para. 5. point 3.
[173] Szilágyi, 2022b, p. 146. Cf. Fodor, 2005, pp. 35–43.; Kurucz, 2013, pp. 55–77.; Tanka, 2014, pp. 105–128.
[174] Ibid., p. 155.
[175] The Land Transfer Act previously recognised a subtype of agricultural holding called the 'family farm', with its transitional rules governed by the Implementation Land Act. Since 1 January 2021, however, the definition and most detailed provisions on family farms have been transferred to the Family Farms Act. Cf. Land Transfer Act, para. 5. point 20.
[176] An agricultural holding centre is understood as a property owned or used by an agricultural producer or producer organisation, comprising commercial, residential, or office buildings, or a farmstead. It serves as the site for carrying out or organising agricultural, forestry, or supplementary activities and must be officially registered with the competent agricultural authority. See Land Transfer Act, para. 5. point 21.
[177] Bányai, 2023, p. 166. Cf. Fodor, 2010, p. 128.; Prugberger, 1999b, pp. 13–18.
[178] i.e., land, agricultural equipment, and other assets.
[179] In connection with this, see, for example, Csák, 2010; Kurucz, 2010, pp. 211–239.; Kurucz, 2012, pp. 118–136; Jójárt and Kurucz, 2008, pp. 31–33.; Hornyák, 2018, pp. 52–54.
[180] Cf. Bobvos, 2017, pp. 53–66.

Transfer Act and the Implementation Land Act to integrate the family farm as a legally significant entity. As a result, both the so-called 'primary agricultural producer's family farm' and the 'family agricultural company' have been granted preferential rights, including pre-emption and pre-lease rights, thereby enhancing their position in the regulatory regime concerning access to and use of agricultural land.[181] These preferences improve the legal framework for designating suitable land users, particularly within the familial agricultural sector. Additionally, members of family farm associations[182] may benefit from further entitlements in land use transfers, including, in certain cases, the right to gratuitous land use.[183]

In connection with the above-mentioned, some terms and concepts shall to be clarified.

First, the concept of the 'primary agricultural producer', which is defined as a natural person over the age of sixteen who is registered as a primary agricultural producer and carries out primary agricultural activities on their personal farm.[184] Central to this concept is the notion of primary agricultural activity, encompassing agricultural, forestry, and supplementary agricultural activities entered in the register of primary agricultural producers.[185] This definition largely mirrors the corresponding provisions in the Land Transfer Act,[186] albeit with minor deviations.[187] Another key element is the personal farm, which consists of land used for agricultural and forestry purposes by a natural person or jointly by members of the family farm, together with the means of agricultural production. These means include all assets employed in the primary agricultural activity, namely real estate, buildings and structures, and movable property, over which the individual or family members hold the right to organise production and use its results.[188]

Accordingly, a primary agricultural producer may operate independently or as a member of a family farm. Income derived from supplementary agricultural activities is limited to no more than one-quarter of the annual income obtained from primary

[181] Szilágyi, 2022b, pp. 149–150.
[182] Land Transfer Act, paras. 13(2) and 42(2)
[183] Ibid., para. 38(3a). See also Szilágyi, 2022b, p. 150.
[184] Family Farms Act, para. 3(1)–(2)
[185] Ibid., para. 2, point g)
[186] Land Transfer Act, para. 5(18)
[187] Family Farms Act, para. 2, point e)
[188] Ibid., para. 2, points f) and h)

agricultural production.[189] Applications for registration are decided by the Hungarian Chamber of Agriculture, Food Economy, and Rural Development.[190]

Secondly, a 'family farm of primary agricultural producers' is legally recognised as a production-oriented community composed of at least two registered primary agricultural producers who are relatives. Such a farm operates without individual legal personality, and its assets are not distinct from those of its members. The members collectively conduct agricultural activities on their holdings through personal contributions and coordinated work.[191] For these purposes, 'relatives' are defined in accordance with the Civil Code.[192] The formation of a family farm requires a written agreement,[193] and its underlying legal framework is governed by the provisions applicable to civil law partnerships under the Civil Code.[194] Legal recognition is achieved upon registration with the Hungarian Chamber of Agriculture, Food Economy, and Rural Development.[195]

In contrast, a 'family agricultural company' represents a more institutionalised form of agricultural organisation. It may assume the legal form of a company, cooperative, or forest management association, and must be registered in the official register of family agricultural companies.[196] Its activities are strictly limited to agricultural, forestry, or supplementary operations as defined by the Land Transfer Act. Membership requires at least two related natural persons, and no individual may hold membership in more than one such company simultaneously. Legal persons are generally excluded from membership, except when acquiring shares or stock as part of internal corporate restructuring. Registration and oversight of family agricultural companies are managed by the Hungarian Chamber of Agriculture, Food Economy, and Rural Development.[197]

[189] Family Farms Act, para. 3(3)–(4)
[190] Ibid., para. 4(1)
[191] Ibid., para. 6(1) and (3)
[192] Civil Code, para. 2(b)
[193] Family Farms Act, para. 7(1)
[194] Civil Code, para. 6(2)
[195] Family Farms Act, para. 7(2)–(3)
[196] Ibid., para. 14.
[197] Ibid., para. 15(1)

2. 3. 2. 2. Farm

Equally important regarding agricultural holdings is the concept of the 'farm' introduced by the Farm Transfer Act, which came into effect on 1 January 2023.[198] As mentioned earlier, this legislation aligns the specific rules on farm transfers with those set out in the Land Transfer Act. Under the relevant legislation, the farm is defined as a distinct economic unit comprising several interrelated asset categories essential for its operation. These include: agricultural and forestry land utilised or owned by the transferor, which explicitly encompasses farmsteads; additional real estate assets held or used by the transferor that are necessary to carry out agricultural and forestry activities; movable property required for the conduct of such activities, over which the transferor exercises rights relating to the organisation of production and, with certain exceptions—specifically contract seed production, contract rearing, contract fattening, and outsourced animal husbandry—the right to utilise the resulting products; property rights connected to agricultural and forestry operations that may either belong to or encumber the transferor; ownership interests in economic companies, cooperative memberships, or shares in forestry associations associated with the agricultural enterprise;[199] and finally rights and obligations associated with the above-listed elements.[200]

Several 'farm-related' concepts are also reflected in two other distinct categories within the Land Transfer Act: the 'farmstead'[201] and the 'livestock holding'.[202] According to the Land Transfer Act, unless otherwise specified, parcels designated as farmsteads are treated as land.[203] Operators of livestock holdings benefit from several preferential rights in land transactions. For example, regarding the land

[198] The introductory provisions of the law underline the objective of facilitating the intergenerational transfer of agricultural holdings as distinct legal-economic units. These holdings are shaped by the combined use of family members' resources and the cumulative results of their activity, treated by the legislator as integrated assets. The rules apply to holdings managed by agricultural producers, including small-scale family farms and individual entrepreneurs engaged in agriculture, forestry, or related activities, even if not formally registered as small-scale farmers. In such cases, the transfer is personal in nature, involving a change in the holder's identity. By contrast, in the case of family agricultural companies, which possess separate legal personality, it is only the ownership share that is transferred, leaving the entitled party unchanged. For more on this topic, see, for example Barta, 2024, pp. 7–25.; Kurucz, 2007a, pp. 41–84.; Szuromi and Hornyák, 2024, pp. 209–219.
[199] In connection with this, see also Bak, 2018, pp. 43–45.
[200] Farm Transfer Act, para. 2.
[201] Land Transfer Act, para. 5, point 25.
[202] Ibid., para. 5, point 1.
[203] Ibid., para. 3(1)

possession maximum,[204] livestock holding operators may qualify for a higher maximum land possession—up to 1,800 hectares—compared to the standard 1,200 hectares. They also enjoy priority in exercising rights of pre-emption[205] and pre-lease.[206]

2. 4. Acquisition of ownership of agricultural land and holding

2. 4. 1. Agricultural land

The acquisition of ownership of agricultural land in Hungary is governed by a layered and highly regulated legal framework that reflects the historical, economic, and policy significance of land as a finite and strategically important national resource.[207] The principal piece of legislation governing the transfer and use of agricultural land is the Land Transfer Act, which is further complemented by the Civil Code, Implementation Land Act, and sector-specific legislations such as the Family Farms Act. Together, these acts establish the substantive and procedural framework for land acquisition, including the qualification criteria of acquirers, the permissible legal titles, oversight and control mechanism, and limitations imposed to safeguard sustainable agricultural practices and the protection of national resources.

The Hungarian land regime operates under the constitutional and statutory recognition that agricultural land is not merely a commodity subject to free trade but rather a national asset tied closely to food security, rural livelihoods, and environmental stewardship. Consequently, the acquisition of ownership of agricultural land is not liberalised in the same manner as other forms of immovable property. Instead, such acquisition is subject to numerous substantive eligibility requirements, territorial restrictions, and administrative controls, all intended to promote the long-term retention of land in the hands of qualified, locally committed agricultural producers.

At the outset it can be stated, and as *Bányai* highlighted, that one of the foundational elements of the Hungarian land transfer regime is the categorisation of eligible acquirers. The explicit objective of the Land Transfer Act is to ensure that, in

[204] Ibid., para. 16(3)
[205] Ibid., para. 18(2) point a). See also para. 19(4)
[206] Ibid., para. 46(3) point a). See also para. 47(4)
[207] Cf. Bobvos, 2011, pp. 49–54.

line with the commitments undertaken in the Accession Treaty, ownership of agricultural land may only be acquired by domestic natural persons or citizens of EU Member States. The act is designed to direct land ownership toward professional farmers while excluding speculative acquisitions aimed at investment rather than production.[208] Regarding land ownership, the categories of eligible subjects can be divided into three, or more precisely four, main groups.[209]

First, domestic natural persons (whether farmers or non-farmers) and citizens of EU Member States (also whether farmers or non-farmers) enjoy full acquisition rights without personal restrictions.[210]

Second, limited acquisition rights apply to certain subjects. For example, the state may acquire land to implement land policy objectives, public employment programs, or other public-interest purposes. The state may also be a beneficiary of gifts, and since 1 July 2020, acquisitions may occur under a life-annuity arrangement.[211] This group also includes legal persons defined by law.[212]

Third, foreign natural persons, foreign states or their subdivisions, local authorities, any of their organs, and legal persons[213] generally do not have the right to acquire land. Regarding legal persons, the Land Transfer Act removed the exception previously established under the Act No. CXXIX of 2007 on the Protection of Arable Land, which allowed legal persons created through separation, demerger, merger, or other structural changes to acquire ownership of such land. As a result, such persons cannot obtain ownership of land that their predecessor had acquired under the mentioned 2007 act prior to the Land Transfer Act's entry into force.[214]

Finally, a fourth category is distinguished not by acquisition eligibility itself, but by associated benefits and exceptions. Within the framework of the Land Transfer Act, close relatives occupy a special status. When agricultural land is acquired by a close relative, certain acquisition restrictions do not apply: no pre-emption rights are granted to other parties, and approval from the agricultural administration is not required for the transfer of ownership or, implicitly, for gifts.[215] One of the aims of the

[208] Bányai, 2023, p. 170.
[209] In connection with this, see Ibid., pp. 171–173.
[210] Their acquisition is limited only by the amount of land they may hold, both in terms of ownership and use rights.
[211] Land Transfer Act, paras. 11(1), 12(2) and 12(3)
[212] For more on this, see a few paras. below.
[213] Except in the cases explicitly provided for in the Land Transfer Act (see para. 9.)
[214] Land Transfer Act, para. 9(2)
[215] Bányai, 2023, p. 173.

legislation was to ensure that intra-family transfers of land are unobstructed. Accordingly, transfers between close relatives are not subject to the general one-hectare limit that applies to non-farmers, allowing domestic natural persons and EU citizens who are close relatives of a farmer to exceed this quantity threshold.[216]

In contrast, as mentioned earlier, legal persons and foreigners are subject to stringent restrictions and may, in most cases, be excluded altogether from acquiring land unless they meet exceptional conditions defined by the law.

It can be stated that the defining feature of current Hungarian land law, as enshrined in the Land Transfer Act,[217] is its stringent restriction on the acquisition of ownership of agricultural land by legal persons. This restriction applies broadly, permitting only a narrow and exceptional category of legal persons to acquire land, and then solely under tightly specified conditions.[218] From the perspective of the European Commission, this restrictive framework has been interpreted as amounting effectively to a general prohibition on land acquisition by legal persons, notwithstanding the limited exceptions allowed under domestic legislation. It may therefore be concluded that, as a rule, ownership of agricultural land is restricted to natural persons, subject only to narrowly defined statutory exceptions.[219]

The exceptional group of legal persons entitled to acquire ownership of agricultural land in Hungary under the Land Transfer Act can be divided into two groups according to the conditions under which they are legally permitted to acquire such land. The Hungarian state occupies a unique position, as it may acquire agricultural land without restriction.[220] Other legal persons may acquire agricultural

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[216] Land Transfer Act, para. 10. See also Bányai, 2023, p. 173.

[217] It should also be noted that the Arable Land Act, in force for two decades, generally prohibited legal persons from acquiring agricultural land, though its exceptions were frequently amended in line with government policy.

[218] Land Transfer Act, para. 6(1); cf. Land Transfer Act, para. 9(1), point c)

[219] The acquisition of larger areas of agricultural land is in principle reserved for agricultural producers, subject to limited exceptions. Under the Land Transfer Act, this status may be obtained either by holding a formal qualification in agriculture or forestry, or, alternatively, by demonstrating at least three years of continuous agricultural or forestry activity in Hungary on one's own account and at one's own risk, supported by proof of income or justified absence thereof. Membership in a registered producer organisation with at least a 25% shareholding and active participation may also suffice. Similar requirements govern the contractual acquisition of land use, which is likewise restricted to agricultural producers and their organisations. In such organisations, executive officers must meet the same conditions, either through formal qualification or through three years of certified professional experience. In connection with this, see the Land Transfer Act, para. 5, points 7 and 22, the Government Decree No. 504/2013 on Vocational Qualifications in Agriculture or Forestry, Land Transfer Act, para. 40(1), Land Transfer Act, para. 5, points 19 and 26.

[220] Land Transfer Act, para. 11(1)

land only under specific circumstances.[221] Registered churches and their internal ecclesiastical legal persons may acquire the ownership of agricultural land exclusively through testamentary disposition, maintenance, annuity, care, gift contracts, transfers intended for the establishment or expansion of cemeteries, or by transfer for religious purposes, or by exchange of existing land.[222] In these cases, both the legal basis for acquisition and the permissible purpose of ownership are explicitly defined.

Moving forward, mortgage credit institutions may acquire the ownership of agricultural land only within the framework established by the law governing their operations.[223] Their entitlement to ownership is subject to restrictions both in terms of legal basis and duration: such institutions may acquire ownership of agricultural land temporarily, for a maximum of one year from the date of acquisition, and only in the context of liquidation or executory proceedings.[224] Should the institution fail to dispose of the land within this period, ownership automatically vests in the Hungarian state and is transferred to the National Land Fund.[225] The National Land Fund Management Organisation is required to pay the mortgage credit institution the collateral value of the land within ninety days following the registration of the state's ownership in the land registry. For the purposes of this provision, the date of acquisition is deemed to be the day immediately following registration of the title in the Real Estate Register.[226]

Local governments also may acquire the ownership of agricultural land only within the territorial boundaries of their jurisdiction and solely for purposes authorised by law. Such purposes include public employment programs, social land programs, municipal development, and, where applicable, the protection of locally significant protected natural areas as defined in the Act on the Protection of Nature. These provisions impose both territorial and functional limitations, the latter being general and potentially subject to interpretive uncertainty over time.[227]

It should be noted that, prior to the Land Transfer Act came in force, certain legal persons may have acquired agricultural land at specific times and may no longer be entitled to acquire land under the current act. Importantly, the entry into force of

[221] Ibid., para. 11(2)
[222] Szilágyi, 2022b, p. 175.
[223] See Act XXX of 1997 on Mortgage Credit Institutions and Mortgage Deed.
[224] Szilágyi, 2022b, p. 175.
[225] Ibid.
[226] Act XXX of 1997 on Mortgage Credit Institutions and Mortgage Deed, para. 10(4)–(5)
[227] Szilágyi, 2022b, p. 175.

the Land Transfer Act did not affect the ownership of land previously acquired by these persons; their acquired rights remain protected under the constitutional right to property. Furthermore, with regard to the current group of beneficiary legal persons, the legislator was required to address the issues of legal succession and transformation of legal entities, and the implications of these processes on land ownership. Accordingly, the Land Transfer Act establishes that a legal person resulting from division, spin-off, consolidation,[228] or a change in organisational form[229]—excluding registered churches and their internal ecclesiastical legal entities—may not acquire ownership of land previously held by its predecessor under the Arable Land Act[230] or land acquired prior to the entry into force of the Arable Land Act. Nevertheless, legal persons retain broader rights to acquire the right to use agricultural land under the law of obligations. In addition to the general rights of agricultural producer organisations, forestry associations, churches, and public or higher education institutions operating in the agricultural sector are entitled to acquire land use rights.[231]

In addition to the legal and personal criteria for acquisition, acquisition caps also apply to land—Hungarian law imposes both acquisition limits[232] and possession limits,[233] which are intended to prevent excessive land concentration of land ownership.[234]

According to the rules on land acquisition limits, the maximum area that may be acquired varies according to the status of the acquirer. Agricultural producers are entitled to acquire ownership of agricultural land up to a maximum of 300 hectares, with the calculation including both lands already in their ownership and usufructuary used by them. The same 300-hectare limit applies to close relatives of the transferor, provided that they are Hungarian nationals or citizens of another Member State, even if they do not qualify as agricultural producers. Where acquisition takes place for

[228] i.e., merger or takeover
[229] i.e., organisational transformation
[230] In force before the Land Transfer Act.
[231] Szilágyi, 2022b, p. 175.
[232] It provides for restrictions not only on property rights but also on limited rights *in rem*.
[233] It applies to land in use by any other valid title in addition to ownership and other limited rights *in rem*.
[234] Neither the land acquisition nor possession limits apply to the exceptional group of legal persons permitted to own agricultural land. Comparable exemptions exist for public and higher education institutions in the agricultural sector, as well as for state-owned forestry enterprises. In connection with this, see Land Transfer Act, para. 16(7) and (8).

recreational purposes,[235] the maximum is fixed at 300 hectares.[236] By contrast, natural persons—whether domestic natural persons or nationals of a Member State—who are not agricultural producers and do not qualify as close relatives may acquire ownership only if their total possession, including the land sought to be acquired, do not exceed one hectare.[237] In this category, therefore, the applicable land possession limit is stricter than the land acquisition limit.[238]

The Land Transfer Act nevertheless establishes a framework of exceptions under which the general limits of 300 hectares and one hectare may be exceeded, but only in relation to agricultural land already existing on 1 May 2014, i.e., the date of entry into force of the mentioned act. In such cases, the legislator provides for specific circumstances in which the acquisition limit may be exceeded. These include land purchased with compensation received for expropriation; land corresponding to the share of an owner upon termination of co-ownership; land acquired by former spouses upon termination of the marital community of property; and land obtained through exchange of ownership.[239] Furthermore, the Land Transfer Act provides an additional exception in respect of land acquired through intestate succession: where such land is subsequently exchanged, the acquisition may exceed both the 300-hectare and the one-hectare limits, and in this context the temporal restriction of 1 May 2014 does not apply.[240]

With regard to the land possession limit, the general rule is that an agricultural producer or an agricultural producer organisation may acquire the ownership of agricultural land up to 1,200 hectares of land, including the area already owned.[241] The legislation, however, establishes a preferential land possession limit of up to 1,800 hectares in specific circumstances.[242] First, operators of livestock holdings are eligible for the preferential limit if, in the year preceding the conclusion of the contract—or, alternatively, on average over the previous three years—the number of livestock units

[235] This provision applies when a domestic individual, not formally an agricultural producer—or a national of a Member State—acquires land from a municipal authority that has specifically designated it for such use. Acquisition is limited to one hectare, and the land must be used exclusively to meet the personal needs of the acquirer and their household family members. See Land Transfer Act, para. 5. point 22a.
[236] Land Transfer Act, para. 16(1) and 10(3) and (3a)
[237] Ibid., para. 10(2) and (4)
[238] Szilágyi, 2022b, p. 177.
[239] Land Transfer Act, para. 17(1)
[240] Ibid., para. 17(2)
[241] Ibid., para. 16(2)
[242] Ibid., para. 16(3)

kept annually on the land already possessed amounts to at least 600.[243] Secondly, producers of seeds of arable and horticultural plant species may also benefit from the preferential limit, provided that in the three years preceding the contract, at least one-tenth of the arable land they held, but not less than 120 hectares, was devoted to seed or propagating material production.[244] Thirdly, an agricultural producer organisation may exceed the general land possession limit, up to 1,800 hectares, through the use of land owned by one of its members, provided that such land has been under its use for at least one year.[245]

Special considerations apply when calculating land possession limits. For persons or organisations designated as compulsory users of land, the area under compulsory use is disregarded when determining both the ordinary and preferential limits.[246] In addition, where an agricultural producer organisation has been created through division or spin-off, the land possessed by its predecessor must be taken into account for a period of five years from the date of its establishment.[247]

In addition to the above-mentioned, acquisitions are subject to public law controls.

Under the Land Transfer Act, the transfer of ownership of agricultural land generally requires the authorisation of the agricultural administration body, and the same applies where ownership is acquired by means other than transfer. Such authorisation, however, does not replace the fulfilment of other statutory conditions of validity, nor does it substitute for any prior approval that must be obtained from other competent authorities.[248]

By way of exception to the general rule laid down in the Land Transfer Act, the approval of the agricultural administration body is not required in certain cases. These include the acquisition of land by the state or by those legal persons expressly entitled to acquire agricultural land; the disposal of land owned by the state or a municipality; transfers by way of gift; transfers between close relatives; transfers effected under a farm transfer contract; and acquisitions carried out within the framework of land consolidation.[249]

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[243] Implementation Land Act, para. 6(1)
[244] Ibid., para. 7(1)
[245] Land Transfer Act, para. 43(2)
[246] Ibid., para. 16(6)
[247] Ibid., para. 43(3)
[248] Ibid., para. 7.
[249] Ibid., para. 36(1) and (2)

It must be stressed that the authorisation procedure conducted by the agricultural administration body for the acquisition of land ownership is distinct from the land registration procedure. In Hungary, the transfer of ownership becomes effective only upon registration of the property right in the land register; however, this registration is separate from, and subsequent to, the administrative authorisation. The land use registration procedure is initiated only after the administrative decision permitting the acquisition has been issued.[250] For the purposes of this dissertation, neither the land register nor the land use register, nor the whole process of obtaining prior approval for a sales contract,[251] will be examined in further detail.

2. 4. 2. Agricultural holding

The Farm Transfer Act represents a significant legislative development in Hungary, aimed at facilitating the intergenerational transfer of agricultural holdings as cohesive and unique economic units. The act in question, which took effect on 1 January 2023, is tailored to address the complexities inherent in agricultural holding where personal, familial, and entrepreneurial assets intersect, particularly in small-scale family farms and individual agricultural entrepreneurs engaged in agriculture, forestry, and ancillary activities.[252] Moreover, it provides a new type of transfer of contract: the farm transfer.[253]

The provisions of the Farm Transfer Act operate as a *lex specialis* in relation to the general rules established by the Land Transfer Act,[254] specifically addressing the transfer of the farm of a primary agricultural producer and an agricultural individual entrepreneur.[255] In this context, the mentioned act defines the concept of farm broadly, encompassing not only the transferor's real estate necessary for agricultural activity, but also movable property used for or connected with agricultural and forestry activities, rights *in rem*, shares in business partnership, and all related legal rights and obligations as well.[256]

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[250] Szilágyi, 2022b, pp. 162–163.; Bábits, 2016, pp. 54–60.
[251] For the detailed overview, see Szilágyi, 2022b, pp. 162–167. See also Land Transfer Act, paras. 13–15, 21, 23–25.
[252] Barta, 2024, p. 17.
[253] Gárdos, 2024, part III, chapter 8, point a)
[254] Land Transfer Act, para. 2(5)
[255] Farm Transfer Act, para. 1.
[256] Ibid., para. 2, point a)

Both the transferor and the transferee must qualify as primary agricultural producers or as self-employed persons engaged in farming.[257] The transferee must generally be under fifty years of age and at least ten years younger than the transferor, who must have reached or will reach retirement age within five years from the conclusion of the contract. Additionally, the transferee must either be a close relative of the transferor, as defined under the Family Farms Act, or have been employed by or in a comparable working relationship with the transferor for a minimum of seven years.[258]

The act recognises several forms of farm transfer contracts, including property transfer contracts[259]—comprising sale, gift, maintenance, and annuity contracts—as well as farm transfer land use contracts,[260] such as lease agreements or gratuitous land use contracts, and permits hybrid forms combining elements of these categories.[261] Provisions of the Land Transfer Act apply to the extent necessary, for example regarding declarations to the agricultural administration, maximum terms for land use under use contracts, and compliance with land acquisition and possession limits.[262]

Where the farm transfer contract involves a gift, maintenance, or annuity arrangement, and it includes the transfer of agricultural or forestry land, it may only be concluded between close relatives, with the corresponding rules under the Land Transfer Act governing such contracts.[263] The parties may also agree to cooperate in the joint management of the farm for a maximum period of five years,[264] during which the transferee participates personally in management and may assume shared decision-making and responsibilities.[265]

Finally, the farm transfer contract must be approved by the competent agricultural administrative body,[266] which ensures compliance with all statutory conditions. The transferee assumes the transferor's position in civil law contracts relating to the transferred elements of the farm, without requiring the consent of the other contracting parties, and replaces the transferor as the holder of any prior

[257] Or forestry.
[258] Farm Transfer Act, para. 2, points b–c)
[259] Ibid., para. 3(2)
[260] Ibid., para. 3(3)
[261] Ibid., para. 3(4)
[262] Szilágyi, 2022b, p. 151.
[263] Farm Transfer Act, para. 9(2)
[264] Ibid., para. 10(1)
[265] Szilágyi, 2022b, p. 152.
[266] Farm Transfer Act, para. 12(1)

authorisations required for pursuing agricultural or forestry activities under the transferred farm, provided that the transferee fulfils all relevant legal requirements.[267]

2. 4. 3. Acquisition of ownership of agricultural land and holding by inheritance

2. 4. 3. 1. Agricultural land

The Hungarian land transfer regime, which entered into force in 2014,[268] diverges from the approaches adopted in other EU Member States, such as France and Austria, as well as in Switzerland, a non-EU country that has nevertheless aligned its framework with EU law.[269] From the outset, the Hungarian system exhibited similarities to other restrictive regulatory models, yet it initially contained no specific provisions[270] on the intestate succession of agricultural land, addressing only testamentary disposition.[271] A major shift occurred with the amendment introduced by the Co-ownership Land Act, effective as of 1 January 2023. This legislative development represents a significant step towards the establishment of special statutory rules governing succession to agricultural land, particularly aimed at resolving the problem of undivided co-ownership while maintaining constitutional safeguards attached to property rights.[272]

The Co-ownership Land Act introduces specific rules applicable when the subject of succession is either immovable property[273] or ownership interests in immovable property.[274] Under the provisions relating to immovable property,[275] if the deceased's estate consists of property inherited jointly by multiple heirs under intestate succession, the heirs are required to take measures to prevent the creation of undivided co-ownership. Recognising the procedural particularities of inheritance and probate, the amendment further provides for differentiated rules in cases where immovable property is divided between heirs and non-co-owners, thereby minimizing the risk of

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[267] Ibid., paras. 13(1) and 14(1)
[268] In connection with this, see, for example, Hornyák, 2019a; Hornyák, 2019b; Hornyák, 2020; Hornyák, 2021; Csák, Kocsis and Raisz 2015; Olajos, 2022; Olajos, 2018.
[269] Szinek Csütörtöki, 2023, p. 137.
[270] The general rules of the Hungarian Civil Code should be applied to the issues in question. See for example, Barzó, 2016; Vékás, 2008; Vékás 2019.
[271] Hornyák, 2019a.
[272] Szinek Csütörtöki, 2023, p. 137.
[273] Co-ownership Land Act, para. 18/A
[274] Ibid., para. 18/B
[275] Ibid., para. 18/A (1)–(4)

undivided co-ownership arising.[276] With respect to the second issue, co-heirs may take certain actions during the probate process to prevent further fragmentation of ownership interests. Such measures include concluding an allocation agreement, selling their shares, or transferring them to the state by way of donation.[277]

If none of these measures are taken, the heirs[278] inherit their respective shares in the immovable property in accordance with the rules of intestate succession; however, they are then required to either sell their shares within five years, consolidate the shares under one heir, offer them gratuitously to the state, or otherwise terminate the undivided co-ownership by initiating the appropriate legal proceedings. Failure to act within this timeframe results in the forced sale of the inherited ownership interests.[279]

With regard to testamentary disposition, and given that the acquisition of ownership of agricultural land by testamentary disposition has been addressed in several studies, this dissertation will not examine the matter in detail but will focus on the provisions most relevant under the Land Transfer Act. The mentioned act imposes restrictions on the creation of usufruct rights over agricultural land, as provided in the Hungarian Civil Code. Usufructs established by contract or testamentary disposition are generally void unless granted to a close relative. Where a usufruct is granted to a close relative, the rules on acquisition of property under the Land Transfer Act apply with certain modifications: the usufruct may not exceed twenty years; its establishment does not require the approval of the agricultural administration body; the limits on land acquisition and land possession apply to the usufruct, treating the usufruct as the relevant property right and taking into account the area of land already owned by the beneficiary; and the land may only be transferred with the usufruct retained to another close relative.[280]

It is not uncommon for testators to designate a non-agricultural producer as their heir; however, the Land Transfer Act imposes strict restrictions on the size of agricultural land that such individuals may acquire. As a general rule, a domestic natural person who does not qualify as an agricultural producer, as well as nationals of EU Member States, may acquire ownership of agricultural land only if the total area

[276] Szinek Csütörtöki, 2023, p. 137.
[277] Ibid.
[278] Co-ownership Land Act, para. 18/A (3)
[279] Ibid.
[280] Land Transfer Act, para. 37(5). See also Szilágyi, 2022b, p. 159.

of land they already own, combined with the area intended to be acquired, does not exceed one hectare.[281] An exception to this limitation applies where the transferor is a close relative of the non-agricultural producer or EU national.[282] In cases involving agricultural producers, if the acquirer is a close relative of the transferor or if the acquisition is for recreational purposes, the general land acquisition limit applicable to agricultural producers must be observed. It should be recalled that under this limit, the acquirer may obtain ownership of agricultural land up to a total of 300 hectares, taking into account both ownership and usufruct and the area of land already possessed. These restrictions—including the one-hectare and, in certain cases, the 300-hectare limits—also apply to acquisitions made by testamentary disposition.[283]

It should be emphasised that the acquisition of ownership of agricultural land through testamentary disposition requires the prior approval of the agricultural administration authority.[284] In addition, certain procedural rules specific to such acquisitions are applicable.[285] The acquisition rules established by the Land Transfer Act, however, do not encompass all legal bases or methods of acquisition. Notably, they do not apply to intestate succession, transfers of land to the state during probate proceedings, expropriation, or acquisition by auction for restitution purposes.[286] In cases of intestate succession, including situations where a testamentary heir becomes an intestate heir due to the absence of a valid will or the exclusion of other heirs, the general provisions of the Civil Code govern the transfer of ownership.[287]

Regarding inheritance taxation, direct relatives, surviving spouses, and siblings are exempt from paying inheritance tax, which similarly applies to agricultural land. From 1 January 2023, upon the death of a landowner, legal heirs have four options to maintain the integrity of the land, as outlined above. These options are limited to intestate succession and do not apply in the context of testamentary dispositions. If the heirs fail to exercise one of these alternatives within one year from the commencement of probate proceedings, the exemption from inheritance tax is forfeited, and, as a general rule, an inheritance tax of 9 % is applied to the value of the land.[288]

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[281] Ibid., para. 10(2)
[282] Ibid., para. 10(3)
[283] Szinek Csütörtöki, 2023, p. 139.
[284] Land Transfer Act, para. 7(1). On detailed rules, see Hornyák, 2019a, p. 190. and Paic-Karsai, 2022, p. 115.
[285] Hornyák, 2019a, p. 91.
[286] Land Transfer Act, para. 6(2)
[287] Szilágyi, 2022b, p. 160.
[288] Szinek Csütörtöki, 2023, p. 139.

2. 4. 3. 2. Agricultural holding

While Hungarian legislation contains specific rules for the succession of agricultural land, there are no provisions addressing the succession of agricultural holdings as distinct legal entities, meaning general Civil Code rules govern such cases.[289]

2. 4. 4. Acquisition of shares in a company that owns agricultural land

Under Hungarian land law, the acquisition of ownership of agricultural land by legal persons is generally prohibited,[290] reflecting the policy aim of keeping agricultural property in the hands of natural persons actively engaged in farming. As a consequence of this general prohibition, no special regulations govern the acquisition of shares in companies that already own agricultural land, since the law effectively limits indirect control by legal persons as well. This framework underscores Hungary's dual objectives of preserving agricultural land as part of the national heritage and ensuring that its use remains tied to active agricultural production.

2. 4. 5. Acquisition of other rights

A particularly complex aspect of land acquisition concerns usufructuary rights and other limited rights *in rem*. Although such rights are principally regulated under the Civil Code, the Land Transfer Act provides supplementary rules, especially where agricultural land is involved.

Under the general provisions of the Civil Code,[291] the usufruct grants the beneficiary the right to possess, use, exploit and benefit from a property of another person. The usufruct remains effective regardless of any change in the ownership of the property. When the usufruct is granted to a natural person, it may exist for a specifically defined period, ceasing at the latest upon the death of the beneficiary. For usufructs established over immovable property, registration in the Real Estate Register is a prerequisite for its legal validity. While the usufructuary may exercise the rights

[289] Szilágyi and Szinek Csütörtöki, 2022, p. 352.
[290] With a few exceptions.
[291] See Civil Code, paras. 5:146–155.

of possession, use, and enjoyment of benefits, they are prohibited from transferring the usufruct itself.[292]

It should be added that the right of use *in rem* differs from usufruct in that the holder may use the property and derive its benefits only insofar as necessary for themselves and the members of their household, and it is strictly non-transferable, although otherwise the rules applicable to usufruct are generally applied.[293]

The Land Transfer Act imposes additional restrictions on usufructuary rights (in this part, hereinafter referred to as the usufruct) when they relate to agricultural land, by rendering null and void any contractual or testamentary arrangements that would establish usufruct or use rights, except where such rights are created in favour of a close relative.[294]

In circumstances where a usufruct is validly established between close relatives through contract or testamentary disposition, the rules of the Land Transfer Act on the acquisition of property apply with specific modifications: the usufruct may not exceed 20 years in duration; the creation of the usufruct does not require prior approval by the agricultural administrative body; the land acquisition and possession limits are applied to the usufruct as though it were ownership, taking into account the total areas of land of the usufructuary; and the ownership of the land may be transferred subject to retention of the usufruct only to a close relative.[295]

[292] Szilágyi, 2022b, p. 159.
[293] Civil Code, para. 5:159.
[294] Land Transfer Act, para. 37.
[295] Szilágyi, 2022b, pp. 159–160.

3. Poland[296]

3. 1. Introductory remarks

Poland's agricultural framework have evolved through a complex historical journey.[297] The idea of a formal agricultural system first appeared during the interwar years, with the 1921 Constitution[298] explicitly recognising in Article 99 (*in fine*) that the agricultural system of the Republic of Poland must be founded on agricultural holdings that are both capable of effective production and recognised as personal property. This approach was upheld by the 1935 Constitution[299].[300]

The introduction of socialism brought significant shifts, as the government aimed to align peasants with socialist reforms and push forward agricultural collectivisation.[301] The 1952 Constitution[302] emphasised the dominance of state-run and cooperative farms, diminishing the role of individual farming. Political and social upheavals—most notably the movements in 1956, 1970, and the Solidarity wave of 1980—further influenced agricultural policy during the communist[303] era.[304]

Following the democratic transition in 1989, formal constitutional regulation of agriculture was absent until the 1997 Constitution[305] reinstated provisions concerning the state's agricultural system and the family holding model. Poland's accession process to the European Union—initiated by its association agreement in the

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[297] For a detailed historical overview, see, for example, Karwat-Woźniak, Wrzochalska and Łaba, 2023, pp. 21 – 28.

[298] Act of 17 March 1921, Constitution of the Republic of Poland, Journal of Laws of 1921, No. 44, item 267—also known as March Constitution, was the first Polish constitution adopted after regaining independence, enacted by the newly formed Polish Sejm on 17 March 1921.

[299] Constitutional Act of 23 April 1935, Journal of Laws of 1935, No. 30, item 227. Also known as April Constitution.

[300] Ledwoń, 2022, p. 200.

[301] The agrarian reform granting the peasants individual land ownership in 1944 was introduced by the decree of the Polish Committee of National Liberation.

[302] Constitution of the Polish People's Republic, adopted by the Legislative Sejm on 22 July 1952, Journal of Laws of 1952, No. 33, item 232.

[303] Collectivisation in Poland proved unsuccessful, with individual ownership remaining dominant. Between 1949 and 1955, nearly 9,750 production cooperatives were established, encompassing around 205,000 members. By mid-1956, about 9,975 cooperatives were still active, but after *Gomułka*'s rise and the subsequent legal relaxation, their number fell sharply to roughly 1,534 by year-end. See Sekściński, 2011, p. 226.

[304] Korzycka, 2019a.

[305] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483.

early 1990s and culminating in full membership in 2004—has since become a pivotal factor in shaping modern agricultural policies and legal frameworks.[306]

3. 2. Sources of national land law

The Polish legal framework governing agricultural land acquisitions is a complex system based on several acts, with its core principles established in the 1997 Constitution,[307] which is the highest legal source of the country.

At this point, it should be mentioned that modern constitutions seldom explicitly articulate distinct principles governing agricultural systems.[308] Nonetheless, the Polish 1997 Constitution uniquely acknowledges the foundational role of family farms in the national agricultural structure. Although it does not directly regulate agricultural land (or its acquisition), it sets a framework that guides subsidiary legislation.[309,310]

Article 23 of the 1997 Constitution establishes that the foundation of the state's agricultural system is the family farm. Despite its concise wording, this provision is positioned within Chapter I ('The Republic'), giving it significant interpretative weight within the constitutional order. It serves primarily as a policy directive rather than a source of direct individual rights, guiding legislative and administrative actions related to agriculture. While Article 23 does not explicitly safeguard property rights, inheritance, or economic freedoms, those protections are found elsewhere in the Constitution—specifically in Article 21 (property and inheritance) and Article 22 (economic freedom). Article 23 is often regarded as a 'second-level' constitutional norm, complementing more foundational principles such as the social market economy, and shaping the legal and institutional support for family-based agriculture in Poland.[311]

A notable interpretative challenge arises from the fact that Article 23 does not confer direct subjective rights. Unlike Articles 21 and 22, which protect individual

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[306] Korzycka, 2019a.
[307] Zombory, 2020, p. 282.
[308] Rather, these principles are generally subsumed under broader economic and social framework.
[309] Ledwoń, 2022, p. 210.
[310] This elaboration of Article 23 of the Constitution was affirmed by the Constitutional Tribunal in its 2010 ruling (K 8/08), which underscored the importance of regulating the trade of agricultural holdings. It is critical to recognise that agricultural land constitutes an essential component of every agricultural holding.
[311] Ledwoń, 2022, p. 211. See also Garlicki and Zubik, 2016.

constitutional rights and may serve as grounds for constitutional complaints, Article 23 functions primarily as a directive for public policy rather than an individual entitlement. Functioning as a constitutional safeguard, Article 23 mandates the preservation of an agricultural structure anchored by family farms. Its scope transcends mere survival, aiming to ensure that family farms remain economically viable and resilient, thereby shaping the national agricultural landscape. This provision also imposes a legislative duty on the state to support family farms across economic, social, and financial dimensions, including enacting legal protections for family farm owners. At the same time, Article 23 accommodates the existence of other types of farms.[312] As the Constitutional Tribunal clarified in its 2014 judgment,[313] while family farms are to remain the structural foundation of Polish agriculture, other forms of holdings are permissible. The Constitutional Tribunal defined a family farm as an agricultural holding owned by members of a single family, a concept which doctrinally extends beyond literal ownership to include family labour contributions.[314]

Moreover, it is essential to acknowledge the dynamic character of Article 23 and its underlying concepts, which evolve in response to shifting economic, social, and global contexts. Complementing this framework, Article 31(3) of the 1997 Constitution permits statutory restrictions on constitutional rights and freedoms, provided they are justified by democratic necessity—such as public order, environmental protection, health or public morals—and do not impair the essence of those rights.[315] This constitutional provision lends strong support to legislative interventions regulating agricultural land markets, including criteria designed to prevent both excessive land fragmentation and concentration. Preferences favouring farmers or the maintenance of agricultural character are likewise constitutionally defensible.[316]

The primacy of the 1997 Constitution over statutory enactments is explicitly recognised in the preamble to the Act of 11 April 2003, i.e., the Act on Shaping the Agricultural System[317] (hereinafter referred to as the ASAS),[318] which states that the

[312] Ledwoń, 2022, p. 211.
[313] Judgment of the Constitutional Tribunal of 7 May 2014, case no. K 43/12
[314] See Tuleja, 2021.
[315] For the precise formulation, see Article 31(3) of the 1997 Constitution.
[316] Ledwoń, 2022, p. 211.
[317] Act of 11 April 2003 on the Shaping of the Agricultural System, Journal of Laws of 2003, No. 64, item 592.
[318] Ledwoń, 2022, p. 201.

act aims to reinforce family farms as the foundation of the national agricultural system, consistent with constitutional mandates.[319]

At this point, it should be noted that the jurisprudence of the Constitutional Tribunal frequently addresses diverse aspects of agricultural law[320] reflecting the ongoing constitutional engagement with agricultural policy. Nonetheless, since the expiration of the EU derogation period, the Constitutional Tribunal has not issued rulings directly relevant to the subjects covered herein, a fact that is beyond the scope of this analysis.[321]

Besides the Constitution, the current framework is supported by important acts such as the ASAS, the Act of 23 April 1964, the Civil Code,[322] and the Act of 24 March 1920, i.e., Act on the Acquisition of Real Estate by Foreigners (hereinafter referred to as the AAREF),[323] but also the Act of 19 October 1991, i.e., the Act on the Management of Agricultural Real Estate of the State Treasury (hereinafter referred to as the AMARE).[324]

First and foremost, one of the most important acts shaping the state's agricultural system is the Civil Code. The Civil Code, among other things, defines the concept of agricultural real estate[325] and agricultural farms,[326] but it generally refers to the ASAS as the primary legal framework governing the sale, other forms of acquisition, and changes in ownership of agricultural properties.[327] However, this approach is not entirely consistent, as the Civil Code also includes certain specific provisions directly regulating agricultural land. For instance, it grants co-owners a right of first refusal when an agricultural property held in common is sold,[328] prescribes rules for the division of inheritance concerning agricultural land or farms,[329] and regulates the notice period required to terminate a lease of agricultural land.[330]

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[319] See the preamble of the act. It further seeks to ensure the effective utilisation of agricultural land, guarantee citizens' food security, and promote sustainable farming practices that comply with environmental protection standards and support the socio-economic development of rural areas.
[320] Including, for example, taxation, insurance, and reform.
[321] See also Ledwoń, 2022, pp. 212–213.
[322] Act of 23 April 1964, Civil Code, Journal of Laws of 1964, No. 16, item 93.
[323] In connection with this, see, for example Czubik, 2016, pp. 141–150.
[324] Ledwoń, 2022, pp. 200–201.
[325] See Civil Code, Article 46^1.
[326] See Ibid., Article 55^3.
[327] See Ibid., Articles 166(3), 172(3), 210(2), 213(2), 214(3), and 1070(1).
[328] Civil Code, Article 166(1)
[329] See Ibid., Articles 1070 and 1070^1.
[330] Ibid., Article 704.

Additionally, the Civil Code contains a separate chapter[331] detailing special rules for the inheritance of agricultural farms. Overall, the situation is somewhat complex. It can be said that the Civil Code primarily establishes *lex generalis* rules governing real estate transactions, frequently referring to the more specific *(lex specialis)* provisions of the ASAS. At the same time, however, in my view, the Civil Code itself enshrines several *lex specialis* rules specifically applicable to agricultural land and farms.

Another key legal act governing the scope of this thesis is the ASAS, which sets out principles for structuring the state's agricultural system. Its objectives[332] include improving the size and distribution of agricultural farms, preventing excessive concentration of agricultural real estate, ensuring that agricultural activities are carried out by qualified individuals, supporting rural development, and implementing active state agricultural policies and support instruments.[333]

Finally, as mentioned earlier, rules on the acquisition of agricultural land are found in other legislation, such as the AAREF and the AMARE.[334]

3. 3. Key terms and concepts

3. 3. 1. Agricultural real estate (agricultural land)

As pointed out by *Ledwoń*, when discussing the concept of 'agricultural real estate', it is essential first to understand the general legal definition of 'real estate'.[335] In the Polish legal order, real estate consists of land parcels that form distinct objects of ownership, along with buildings permanently attached to such land or parts of these buildings, if they are separately owned under specific laws.[336] Based on this definition, real estate can be categorised into three types: land, buildings, and premises.[337]

Within the category of land, the Polish law identifies a specific subcategory known as agricultural real estate. Article 46^1 of the Civil Code primarily highlights the land-based nature of agricultural real estate.[338] This provision defines agricultural real

[331] Ibid., Articles 1058–1088.
[332] See ASAS, Article 1.
[333] Ledwoń, 2022, p. 201. See also Ledwoń, 2013, p. 104.; Niewiadomski, 2014, pp. 608–615.
[334] Ledwoń, 2022, p. 201.
[335] Ibid.
[336] Civil Code, Article 46. para. 1.
[337] See also Szilágyi and Szinek Csütörtöki, 2022, p. 342.
[338] Szymczyk, 2017.

estate (agricultural land) as „*real estate which is or may be used for conducting manufacturing activity in agriculture within the scope of plant and animal production, not excluding horticultural, orchard, and fishery production.*"[339] This implies that 'agricultural real estate' *(nieruchomość rolna)* and 'agricultural land' *(grunt rolny)* are often used interchangeably,[340] although from a legal standpoint, agricultural real estate is a property unit governed by private law, while agricultural land may be regarded as a public law concept.[341] For the purposes of this work, they will be used synonymously.

Based on the mentioned provision, agricultural real estate as defined by the Civil Code includes real estate currently utilised for agricultural production as well as real estate that could potentially be used for such purposes in the future.[342] In this sense, productive agricultural activity refers to a specialised form of farming that involves intentional and organised human effort aimed at producing agricultural goods.[343] Additionally, as *Blajer* noted, the primary factor distinguishing agricultural real estate lies in the physical and chemical (agronomic) characteristics of the soil's top layer, which must be suitable for growing agricultural products when proper farming techniques are applied. Essentially, the land's agronomic qualities determine whether it can physically support agricultural production.[344]

So, a defining characteristic of agricultural real estate, distinguishing it from other types of property, lies in its intended use. Specifically, property that is either currently utilised or can potentially be used for agricultural production is classified as agricultural property. This also extends to horticulture, orchard management, and fish farming.[345] The examples provided are not exhaustive; for instance, activities like beekeeping, cotton farming, and silkworm breeding also fall under this category.[346] However, forestry is explicitly excluded from the scope of agricultural production under this definition, even though forest land may still be part of an agricultural holding.[347]

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[339] Civil Code, Article 46[1]
[340] On the terminology, see, for example, Suchoń, 2019, pp. 91–111.
[341] Ledwoń, 2022, p. 201.
[342] Łobos-Kotowska and Stańko, 2019.
[343] In connection with this, see the Judgment of the Supreme Court of 14 November 2001, II CKN 440/01, OSNC 2002/7–8.
[344] Blajer, 2022b, p. 10. See also Lichorowicz, 2001, p. 88.
[345] Ledwoń, 2022, p. 201.
[346] Stańko, 2018.
[347] Wojciechowski, 2019a.

According to Article 46[1] of the Civil Code, agricultural real estate refers to land that is either already used for productive agricultural purposes or has the potential to serve such purposes in the future.[348] This broad definition found in the Civil Code serves as a general legal provision, applicable across various legal acts unless a specific act indicates otherwise. A notable example is the ASAS, which refers directly to the Civil Code's definition but narrows it by excluding properties located in zones designated for non-agricultural use according to zoning plans. As a result, the classification of a property as agricultural under Polish law involves a multi-step assessment. First, it must be determined whether the land qualifies under the Civil Code's definition. Second, zoning plans must be examined to verify whether the land is intended for agricultural use.[349]

In practice, when applying the ASAS, it must also be checked whether any of the statutory exemptions under Articles 1a–1c apply. These include, for example, properties that are part of the Agricultural Property Stock of the State Treasury, land parcels smaller than 0.3 hectares of utilised agricultural area *(użytek rolny)*, or land designated as internal roads.[350] While such properties may still be considered agricultural in nature, the ASAS restrictions do not apply to them. Following the recent amendments introduced by the Act of 13 July 2023, which amended the AMARE and certain other acts (effective as of 5 October 2023), the ASAS now explicitly applies only to agricultural land parcels of at least 0.30 ha of utilised agricultural area, rather than 0.30 ha *par excellence* as previously stated. This seemingly minor editorial change has significant practical implications, as it broadly limits the scope of the ASAS. Additionally, if a piece of land does not meet the criteria outlined in Article 2 point 1 of the ASAS, transactions involving it are governed by general property law rather than the specific provisions of the ASAS. Consequently, the ASAS outlines agricultural real estate through both inclusionary and exclusionary criteria, offering a functional definition shaped by context and use.[351]

[348] Baranowski et al., 2025, p. 2. According to the mentioned article, such estate is defined as real estate "*that is or can be used to conduct productive activity in agriculture involving vegetable or animal production, not excluding garden, orchard or fish production*."
[349] Ledwoń, 2022, pp. 201–202.
[350] ASAS, Article 1a point 1 a)–c). For the exhaustive list of exemptions, see ASAS, Articles 1a–1c.
[351] Osajda and Popardowski, 2022.

3. 3. 2. Agricultural holding

Another key concept in Polish land law is the term 'agricultural farm', which legal definition is currently found in Article 55^3 of the Civil Code, introduced by the amendment of 28 July 1990.[352] This provision defines an agricultural farm as a combination of agricultural land[353] along with buildings (or their parts), equipment, and livestock, provided they form or are capable of forming an organised economic unit, along with rights associated with the operation of the farm.[354] This formulation marked a significant development, as prior to the 1990 amendment, the Civil Code did not provide its own definitions for essential terms such as agricultural farm or agricultural real estate. Instead, these issues were delegated to the Council of Ministers through regulation, reflecting the view at the time that trade in agricultural properties required flexibility and responsiveness to ongoing policy changes.[355] As *Wójcik* observed, entrusting such definitions to regulations rather than statutory law left critical decisions about ownership and property trade subject to executive discretion rather than clear legislative authority. In his view, embedding the definition of agricultural farm directly into the Civil Code was a step toward reinforcing legal certainty and strengthening private ownership rights, as the scope of state interference would henceforth be defined by the legislator.[356]

Further clarification of the concept came with the 2003 amendment to the Civil Code, which removed liabilities associated with running an agricultural farm from its legal definition. As a result, *de lege lata,* an agricultural farm is viewed exclusively as a set of assets, not including debts or obligations.[357]

A key feature of this legal definition is the hierarchical structure of its components, with agricultural land holding a foundational role. As emphasised by the Polish Supreme Court in a ruling from 9 December 2010,[358] agricultural land is not simply one of several elements—it is the defining feature. Without it, the collection of other components (such as buildings or livestock) cannot legally qualify as an

[352] Mikołajczyk, 2021, p. 57.
[353] Including forestry land.
[354] Civil Code, Article 55^3
[355] Mikołajczyk, 2021, p. 57.
[356] Wójcik, 1983, p. 322.
[357] Mikołajczyk, 2021, p. 58.
[358] Case no. IV CSK 210/10

agricultural farm under Article 55^3 of the Civil Code.[359] This underscores the primacy of agricultural land in the structure and legal status of agricultural operations under Polish civil law.

Similar to the definition of agricultural real estate, the ASAS provides a distinct definition of an agricultural farm. According to the ASAS, an agricultural farm is characterised by two cumulative criteria: first, the production unit must satisfy the requirements established under Article 55^3 of the Civil Code; second, the agricultural land constituting the holding must meet a minimum area threshold of one hectare.[360] Failure to fulfil both conditions concurrently precludes classification of the unit as an agricultural farm within the scope of the ASAS regulations.[361]

It can be stated that the definition of an agricultural farm provided in Article 55^3 of the Civil Code holds a crucial role within civil law.[362] Furthermore, its significance extends well beyond the scope of the Civil Code itself.[363]

3. 3. 2. 1. Family farm

The current Polish land regime aims to uphold the principle established in Article 23 of the 1997 Constitution, which states that the country's agricultural system is founded on the 'family farm',[364] which is considered as a special type of agricultural holding. The ASAS defines an agricultural farm as a family farm managed by an individual farmer, with a total area of land does not exceeding 300 hectares.[365] An individual farmer, as defined by the act, is a natural person who either owns or has lawful use—through usufruct (perpetual), lease, or possession—of agricultural land, provided that the total area does not exceed 300 hectares.[366] It should be added that the status of an individual farmer in Polish law is not contingent upon the possession of Polish citizenship; in particular, there is no legal requirement that the person be a Polish citizen.[367]

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[359] Ledwoń, 2022, p. 202.
[360] ASAS, Article 2, point 2.
[361] Osajda and Popardowski, 2022.
[362] Wojciechowski, 2019b, p. 198.
[363] Stefańska, 2012, p. 302.
[364] See the relevant provision of the Constitution.
[365] ASAS, Article 5 para. 1.
[366] See Ibid., Article 6 point 1 and 2(1).
[367] Czech, 2020a, chapter 14. See also Blajer, 2013, pp. 77–91.

To qualify, the person must also meet educational requirements related to agriculture and must have maintained permanent residence for a continuous period of at least five years in the municipality where at least part of the farm is located. During this time, the individual must have been directly involved in managing the farming operation.[368] The standard for personal operation[369] is met if the person either engages physically in the farming work or exercises comprehensive authority over the farm's operational decisions.[370] With regard to agricultural qualifications, the necessary competence may be demonstrated through formal agricultural vocational training or a higher education degree in agriculture. However, this requirement may also be satisfied by holding another type of qualification in conjunction with an appropriate period of professional experience in the agricultural sector.[371] The detailed criteria for determining the existence of agricultural qualifications are laid down in a regulation[372] issued by the Minister of Agriculture and Rural Development.[373]

While the notion of a family farm is acknowledged in both the 1997 Constitution and the ASAS, the existing legal framework does not provide a precise definition of the legal status of family farms.[374] This legislative gap has been addressed in the literature, notably by *Truszkiewicz*.[375]

Moreover, the Polish Constitutional Tribunal has interpreted the term 'family farm' as denoting an agricultural enterprise owned and operated by a single family unit.[376] In addition to this, the Tribunal has clarified that an individual farmer is entitled to possess only one family farm.[377]

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[368] ASAS, Article 6 para. 1.
[369] The Polish Supreme Court clarified the requirement of personal operation of an agricultural holding in its 13 November 2014 judgment (V CSK 52/14). The Court held that the obligation requires not only managerial authority but also active participation in the farm's physical work, covering either the entire enterprise or a substantial part. This ensures that agricultural land remains in the hands of those genuinely engaged in farming rather than formal or administrative owners.
[370] ASAS, Article 6 para. 1.
[371] Ibid., Article 6 paras. 2–3.
[372] Regulation of the Minister of Agriculture and Rural Development of 17 January 2012 on Agricultural Qualifications Held by Persons Engaged in Agricultural Activity, Journal of Laws of 2012, item 109.
[373] Zombory, 2020, p. 293.
[374] Ibid., p. 301.
[375] Truszkiewicz, 2017, p. 253.
[376] Judgment of the Constitutional Tribunal of 7 May 2014, case no. K 43/12, point 4.2.4.
[377] Czech, 2020b.

3. 4. Acquisition of ownership of agricultural land and holding

3. 4. 1. Agricultural land

Given the essential role of agricultural land, Polish law provides special rules governing its transfer.[378] These rules aim to preserve the land's agricultural function and prevent its misuse or excessive concentration.[379] The unique characteristics of agricultural land—its finite availability and non-replicability—are also recognised in international documents, including those adopted by the EU and the UN.[380] Increasingly, scholarly literature highlights large-scale land concentration, including the so-called 'land grabbing,' as a problematic phenomenon often at odds with long-term sustainability and equitable access to natural resources.[381]

Prior to Poland's accession to the European Union on 1 May 2004, restrictions on the acquisition of agricultural real estate were already in place under the ASAS,[382] which applied regardless of the acquirer's nationality. This legislation established a pre-emption right for lessees in cases of sale of agricultural land, allowing them priority to purchase under specific conditions. If no eligible party exercised this right, it then passed to the State Treasury. Furthermore, for transfers of agricultural real estate through means other than sale, the State Treasury held the right to acquire the land by paying its fair value. The act's primary objectives[383] were to enhance the structural organisation of farms, prevent excessive concentration of agricultural land ownership, and ensure that farming activities were carried out by individuals possessing appropriate qualifications.[384]

Following Poland's accession to the EU on 1 May 2004, amendments were necessary to the AAREF,[385] to comply with the principles of the EU, including the free movement of capital. The amendment effective on accession allowed natural and legal persons from the EEA countries and Switzerland to acquire property without prior

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[378] For more information, see Czubik, 2025, p. 15.
[379] In connection with this, see, for example, Korzycka, 2019b, pp. 54–55.
[380] See, for example, the European Commission (EC): Commission Interpretative Communication on the Acquisition of Farmland and European Union Law, 2017/C 350/05, HL C 350, 18 October 2017 (C/2017/6168) (hereinafter referred to as the Commission Interpretative Communication) or the VGGT.
[381] Strzała, 2024, p. 131.
[382] Cf. Wojciechowski, 2020, pp. 25–51.
[383] See ASAS, Article 1 paras. 1–3.
[384] Strzała, 2024, p. 133.
[385] Cf. Czubik, 2017b, pp. 171–182.

permission, except for agricultural and forestry land, where restrictions remained for 12 years—until 1 May 2016.[386]

On 30 April 2016, just before these restrictions expired, a new act introduced significant changes to agricultural land legislation. The amendment aimed to protect and support family farms, ensure proper land management, and promote sustainable agriculture and rural development, as reflected in the act's preamble. It also emphasised preventing speculative land purchases and encouraged long-term leasing of state-owned agricultural land over outright sales. Further amendments in 2019 added objectives such as supporting rural development and implementing agricultural policies. These changes have sparked academic debate regarding their compatibility with the Polish Constitution and EU law.[387]

Currently, Poland maintains specific regulations governing the acquisition of agricultural land by natural and legal persons, including pre-emption rights held by the State Treasury. The legal framework also covers inheritance and co-ownership issues related to agricultural land, regulated primarily by the ASAS and the Civil Code.

It is important to underline that under the general provisions governing land acquisitions, and in line with the provisions of the ASAS, agricultural real estate may generally be acquired only by an individual farmer,[388] except where the act provides otherwise.[389] The total area of agricultural land intended for acquisition, including land already part of the acquirer's family farm, may not exceed 300 hectares.[390]

The legal concept of such acquisition encompasses the transfer or obtaining of ownership rights to agricultural real estate through legal transactions, court or public administration authority decisions, or other legal acts.[391] In Polish law, the provisions primarily govern the right of perpetual usufruct of agricultural real estate rather than the acquisition of full ownership. The term 'acquisition of agricultural real estate' is broadly defined and encompasses more than just the typical sale agreement for real property.[392]

As mentioned, the ASAS refers to the Civil Code for the definition of agricultural real estate, describing it as land classified as agricultural under the Civil

[386] Strzała, 2024, pp. 134–135. See also Blajer, 2016, pp. 65–79.
[387] Strzała, 2024, pp. 135–141.
[388] The operation of a family farm is reserved exclusively for a natural person.
[389] ASAS, Article 2a
[390] Ibid., Article 2a points 1 and 2.
[391] Ibid., Article 2 point 7.
[392] Ledwoń, 2022, p. 203.

Code, excluding those areas designated for non-agricultural purposes in zoning plans.[393]

According to the Civil Code, agricultural real estate is „*real estate which is or may be used for conducting manufacturing activity in agriculture within the scope of plant and animal production, not excluding horticultural, orchard, and fishery production.*"[394] The ASAS further defines agricultural farms but limits its scope to those with at least one hectare of agricultural real estate.[395]

While the mentioned act governs the transfer of ownership rights to agricultural real estate, it also states that these provisions should be applied *mutatis mutandis* to the transfer of agricultural farms.[396] However, the legal status of agricultural farms in Poland remains somewhat unclear, and it is uncommon for entire agricultural farms as organisational units to be the direct subject of ownership transfers.[397] There is an ongoing lack of consensus in both Polish legal doctrine and jurisprudence regarding whether an agricultural farm can constitute an independent object of legal transactions, or whether it may only be transferred through the individual components that comprise it.[398]

The act also outlines several exceptions to the acquisition restrictions. These exceptions include, for example, acquisition by close relatives of the vendor, territorial self-government unit, the State Treasury or the National Agricultural Support Centre (hereinafter referred to as the NASC) acting on its behalf, national parks, and religious legal persons. Additionally, the restrictions do not apply to acquisitions via inheritance, bankruptcy or enforcement proceedings, the dissolution of joint ownership, or the acquisition resulting from business restructuring such as mergers, divisions, or transformations. Finally, the rules regarding the status of individual farmers and the maximum land acquisition limit do not apply to the transfer of agricultural real estate plots smaller than one hectare.[399,400]

However, the Polish legislator allows for the acquisition of agricultural land by individuals who do not qualify as individual farmers and who are not covered by

[393] ASAS, Article 2 point 1.
[394] Civil Code, Article 46^1
[395] ASAS, Article 2 point 2.
[396] Ibid., Article 4a
[397] Zombory, 2020, p. 289.
[398] See, for example, Pawlak, 2018, Chapter 4; Klat-Górska, 2013, Chapters 1 and 2.
[399] Previously 0.3 hectares before amendments made in 2019.
[400] ASAS, Article 2a point 3.

specific legal exemptions. In such cases, the acquisition of ownership of agricultural land is contingent upon obtaining an official administrative permit (commonly known as a land acquisition permit).[401] This permit is issued by the Director-General of the NASC only when all statutory requirements are fulfilled. These requirements mainly concern restrictions on land concentration and the commitment to actively cultivate the land. The approval process is not initiated automatically but begins exclusively upon the applicant's request.[402]

According to the ASAS, a person acquiring agricultural land is required to operate the agricultural farm—which the acquired land becomes part of—for a period of five years from the date of acquisition. In the case of a natural person, this operation must be carried out personally.[403] During this five-year period, the acquired property may not be sold or given possession to others.[404] However, the mentioned act provides several exceptions to this rule. It does not apply, for example, in cases of transfers to the State Treasury or local government units, nor in instances of inheritance or transfers between close family members. Additionally, the requirement does not extend to agricultural real estate smaller than one hectare, provided the land is located within urban administrative boundaries. However, the Director-General of the NASC, at the request of the purchaser of agricultural real estate, shall give permission, by means of an administrative decision, for the transfer ownership or granting of use of the land to another before the expiration of the period of 5-year period from the date of transfer of ownership of this real estate, if justified by the purchaser's important interest or the public interest.[405]

It should be added that, pursuant to the ASAS, any acquisition of ownership or usufruct rights over agricultural land that contravenes statutory requirements is deemed null and void.[406] The sanction of nullity is particularly applicable where statutory pre-emption rights have been infringed, the required administrative approval has not been obtained, or the transaction is based on false declarations or forged documentation. The right to initiate proceedings for a declaration of nullity is vested

[401] Ibid., Article 2a point 4.
[402] Zombory, 2020, p. 290.
[403] ASAS, Article 2b point 1.
[404] Ibid., Article 2b point 2.
[405] ASAS, Article 2b point 3.
[406] This nullity extends not only to direct land acquisitions but also to the transfer of shares or business interests in commercial entities holding agricultural land exceeding five hectares, provided such transactions were concluded in violation of the act's provisions.

in any party with a legitimate legal interest, as well as in the Director-General of the NASC.[407]

In addition to the sanction of nullity, the act provides for a separate remedy: the NASC may petition the court to compel the transfer of ownership of the agricultural land to the state in exchange for compensation equal to its market value, which may be applied in the event that the acquirer fails to operate the agricultural holding for the required five-year period.[408] By contrast, the sanction of nullity applies in the event of a breach of the prohibition on disposing of or transferring agricultural property to other subjects within five years of acquisition.[409] It is also worth emphasising that a purchaser of agricultural real estate smaller than one hectare does not need to have the status of an individual farmer or obtain an administrative permit. Public-law control over transactions in such properties still exists, but it is enforced through civil-law instruments, such as the pre-emption right or the so-called right to purchase.

Under the ASAS, the applicability of statutory conditions for acquiring agricultural land depends primarily on the size of the agricultural land within a given property. It should be highlighted that the act does not apply to agricultural real estate where the area of agricultural land is less than 0.3 hectares. Consequently, such land may be acquired by any individual without being subject to the statutory conditions and restrictions stipulated by the mentioned act.[410] For agricultural land exceeding 0.3 hectares or more, the ASAS applies in full, and the acquisition is subject to the statutory requirements, including restrictions on eligible purchasers and oversight by the NASC. As a general rule, only individual farmers may acquire ownership of such land, unless one of the statutory exceptions applies. In the absence of such exceptions, acquisition by a non-farmer requires the prior consent[411] of the Director-General of the NASC.[412]

Under the special land acquisition regime, the general rule[413] requires that foreign persons[414] obtain prior authorisation from the competent minister to acquire

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[407] Zombory, 2020, p. 291.
[408] ASAS, Article 2b(1)
[409] Ibid., Article 2b(2)
[410] Ibid., Article 1a(1b)
[411] On obtaining approval for acquisition of agricultural property, see Moreu-Żak and Dawidczyk-Bełc, 2025.
[412] ASAS, Article 2a(3)–(4)
[413] Set out in the AAREF.
[414] According to Article 1 point 1 of the the AAREF, the following are considered ‘foreigners’ for the purposes of land acquisition in Poland: any natural person who is not a Polish citizen; any legal person with its registered office located outside of Poland; an entity without legal personality or entity

property in Poland (commonly referred to as a real estate acquisition permit). An exception to this rule applies to natural and also legal persons of the EEA Member States and Switzerland. However, during a 12-year transitional period following Poland's accession to the EU in 2004, this permit requirement also extended to natural and legal persons from the EEA who intended to acquire ownership of agricultural or forestry land.[415]

Pursuant to the provisions of the AAREF, any transaction involving the acquisition of property that violates its requirements is deemed null and void. This legal consequence reflects the Polish legislator's intent to rigorously control foreign access to real estate—particularly agricultural land—in view of national concerns related to food security, land management, and sovereignty.

In the following analysis, legal restrictions on the eligibility of natural and legal persons to acquire ownership of agricultural land are examined through a dual classification. First, the framework distinguishes between natural and legal persons. Within each category, further distinctions are made based on the territorial and legal status of the acquirer—specifically, between domestic (Polish) and EU/EEA nationals and entities, on the one hand, and third-country nationals and foreign legal persons established outside the EU, on the other. This structured approach facilitates a comprehensive analysis of how the applicable legal regime differentiates access to agricultural property rights according to the acquirer's legal status and nationality. In doing so, it also sheds light on the underlying principles of national land policy and the extent to which these align with supranational legal obligations.

A) Domestic and EU Member State nationals

In accordance with the ASAS, the individual farmer holds a privileged position within the framework governing the acquisition of agricultural land. Such individuals are permitted to obtain ownership of agricultural land without the need for prior approval from administrative authorities. The aim of the regulation is to establish an agricultural

established under foreign law by the persons listed in points 1 and 2, with its registered office abroad; any legal person or an entity without legal personality based in Poland that is directly or indirectly controlled by the persons or entities referred to in points 1 through 3. On the concept of foreigners, see, for example, Blajer, 2022a, p. 11.

[415] AAREF, Article 8 point 2.

system in the country based on family farms owned and operated by individual farmers.[416]

A natural person who does not qualify as an individual farmer under Polish law is only permitted to acquire ownership of agricultural land smaller than one hectare without prior authorisation. The acquisition of larger plots of land by such persons is subject to administrative approval, unless one of the statutory exemptions—explicitly listed in the legislation—applies to their case.[417]

In situations where the acquisition of ownership occurs through the authorisation of the Director-General of the NASC, the acquirer is not required to meet the agricultural qualifications or demonstrate a personal commitment to farming, as would be the case for recognised individual farmers. Nevertheless, in such instances, the granting of the permit is conditional upon the purchaser's formal undertaking to cultivate the land.[418] Where the natural person intends to establish a new family farm or to expand an existing family farm, the law imposes an additional condition. Beyond the obligation to engage in farming activity, the natural person must also undertake to maintain their habitual residence for a period of five consecutive years in the municipality where at least one of the agricultural parcels forming part of the holding is located.[419]

When it comes to the nationals of EEA states and Switzerland, as a general principle, these persons are exempt from the obligation to secure official permission when acquiring real estate in Poland.[420] However, if these individuals do not fulfil the legal requirements to qualify as individual farmers, the acquisition of agricultural land is governed by the general legal framework, which mandates obtaining prior authorisation in accordance with the provisions of the ASAS.[421]

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[416] Czech, 2020b, Chapter 4.
[417] Zombory, 2020, p. 293.
[418] ASAS, Article 2a point 4 (1)
[419] Ibid., Article 2a point 4 (2) and (3)
[420] A notable exception to this liberalisation concerned agricultural and forestry real estates, which remained subject to a transitional regime requiring prior authorisation for a twelve-year period, ending on 30 April 2016. See Łobos-Kotowska, 2018, p. 28.
[421] Zombory, 2020, p. 293,

B) Nationals from outside the European Union

The acquisition of agricultural real estate by nationals of non-European Union countries[422] is governed by the AAREF. According to its provisions, foreign nationals must obtain a permit from the Minister of the Interior in order to acquire ownership of real property in Poland. This permit may be subject to objection by the Minister of National Defence, and in the case of agricultural real estate, by the Minister of Agriculture and Rural Development.[423] It can be seen that the permit requirement applies broadly, encompassing not only ownership transfers but also the acquisition of rights such as lifelong usufruct. Notably, intestate succession is exempt from this requirement, meaning that property acquired through such succession does not necessitate prior authorisation.[424] In addition, the law provides for limited exemptions from the permit obligation for certain categories of foreign nationals.[425] However, these exemptions do not apply to the acquisition of agricultural land exceeding one hectare in area, nor to the purchase of real estate located in designated border zones.[426]

A permit for the acquisition of real estate by a foreign national may be granted, provided that the acquisition does not pose a threat to national defence, state security, or public order, and is not precluded by social policy or public health considerations. Additionally, the issuance of such a permit requires the existence of circumstances demonstrating a meaningful connection between the foreign national and the Republic of Poland. Such circumstances may include, for example, Polish descent, marriage to a Polish citizen, possession of a permanent or temporary residence permit, long-term EU resident status, or engagement in economic or agricultural activity within Polish territory.[427] Once issued, the permit remains valid for two years.[428]

Where a foreign national seeks to acquire ownership rights over agricultural real estate with an area of 0.3 hectares or more, the transaction becomes subject not only to the general regulatory scheme under the ASAS but also to the specific provisions governing foreign ownership under the AAREF. Accordingly, Poland's dual-layered legal framework may necessitate that such acquisitions be preceded by

[422] See also Wereśniak-Masri, 2019.
[423] AAREF, Article 1 point 1.
[424] Ibid., Article 7 point 2.
[425] Ibid., Article 8 point 1.
[426] Ibid., Article 8 point 3.
[427] Ibid., Article 1a point 2.
[428] Ibid., Article 3 point 2.

the issuance of two distinct authorisations: one from the Minister of the Interior, as stipulated in the AAREF, and a second from the Director-General of the NASC, pursuant to the ASAS.[429] This dual authorisation requirement arises when the acquisition does not fall within the scope of either the personal or material exemptions provided under the respective acts.[430]

C) Domestic and EU-based legal persons

Under Poland's general regulatory framework governing the acquisition of agricultural land, individual farmers enjoy a privileged legal status. This means that they are prioritised in acquisition rights, reflecting the legislator's policy objective to support active agricultural producers.

Legal persons established in Poland or in other EU Member States may acquire agricultural land without prior authorisation under specific circumstances. This applies, first, when the land is excluded from the scope of the ASAS; second, where the statutory requirements concerning individual farmer status and land acquisition limits do not apply. Additionally, Polish law expressly designates certain categories of legal persons that are exempt from the restrictions on agricultural land acquisition.[431]

Under Polish law, the acquisition of agricultural land exceeding one hectare by legal persons established in Poland or other EU Member States, including commercial companies, foundations, and cooperatives, is subject to a permit requirement.[432] This permit is granted by the Director-General of the NASC following a procedure initiated by the seller of the agricultural real estate. The permit will only be issued if it is demonstrated that the land could not have been sold to an individual farmer, unless the ownership transfer does not arise from a sales contract. Additionally, the acquiring legal person must undertake to continue agricultural activities on the property, and the

[429] See Wereśniak-Masri, 2019 on complications from overlapping ministerial and sectoral approvals in foreign real estate acquisitions in Poland.
[430] Zombory, 2020, pp. 294–295.
[431] These include ecclesiastical legal persons, state-controlled enterprises involved in fuel transmission, and energy sector operators (electricity, natural gas, petroleum) acquiring land under statutory mandates tied to public utility functions. Exemptions also cover agricultural cooperatives and the State Treasury. Legal restrictions do not apply to ownership changes arising from corporate restructuring, such as mergers, demergers, or transformations of commercial entities. See, for example, ASAS, Article 2a point 3 (11). On the acquisition of agricultural real estate by legal person of churches and other religious organisations, see Wojciechowski, 2021, pp. 495–514.
[432] ASAS, Article 2a point 4.

acquisition must not result in an excessive concentration[433] of agricultural land ownership.[434]

D) Legal persons from outside the European Union

The AAREF establishes a unified legal regime for both foreign natural and legal persons with respect to real estate acquisition. As a result, the same authorisation requirements and statutory exemptions applicable to non-EU nationals also extend to foreign legal persons operating under the act.[435]

The personal scope of the AAREF extends not only to foreign natural persons but also to foreign legal persons, including foundations, associations, cooperatives, and religious institutions, provided that their registered office is located outside Poland.[436] The act also applies to legal persons and unincorporated commercial partnerships established in Poland if they are directly or indirectly controlled by a foreign national or a foreign legal person, or by a foreign-controlled unincorporated entity established under the laws of another country.[437]

Importantly, the act distinguishes between Polish-registered legal persons that are under foreign control and those that are domestically owned and controlled. To enhance transparency, the 2016 amendment to the Act of 20 August 1997 on the National Court Register introduced a requirement that all applications for company registration—and, in certain cases, amendments involving share transfers or changes in the shareholder register—must be accompanied by a declaration stating whether the entity qualifies as a 'foreign-controlled person' under the AAREF.[438]

In principle, foreign legal persons must obtain two separate permits to acquire land in Poland: a permit pursuant to the AAREF and a permit under the ASAS, which generally requires authorisation for legal persons acquiring agricultural land.[439]

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[433] The ASAS does not define excessive concentration. Experts generally agree that all land held under various legal titles—ownership, perpetual usufruct, usage rights, lease, or tenancy—should be considered. In assessing excessive concentration, considerable discretion is granted to the Director-General of the NASC. In connection with this, see Zombory, 2020, p. 296.; Czech, 2020b, Chapter 180.; Hełka, 2019, p. 112.; Łobos-Kotowska and Stańko, 2020, Chapter 2.
[434] ASAS, Article 2a point 4 (1).
[435] For the personal scope, see AAREF, Article 1 point 2 subpoint and also Article 1 point 2 subpoint (4).
[436] Wereśniak-Masri, 2019, p. 64.
[437] AAREF, Article 1 point 2 subpoint 4.
[438] Zombory, 2020, p. 297.
[439] Ibid.

Moreover, the AAREF mandates ministerial approval not only for direct acquisition of real estate but also for the transfer of shares or membership interests to foreign legal persons in Polish companies that own or hold usufruct rights over real estate located in Poland. Such approval is required when the transfer would result in the company becoming a controlled entity. In practice, during the notarisation of share or membership interest transfer agreements, the notary public is obliged to verify compliance with the legal requirements and must refuse to act if the transaction violates any provisions.[440] Furthermore, the notary must transmit the notarised deed to the Minister of the Interior within seven days when a foreign person acquires shares or membership interests in a company holding real estate in Poland.[441]

3. 4. 2. Agricultural holding

It should be highlighted that the ASAS governs not only the acquisition of agricultural land but also extends to agricultural holdings.[442] Generally, only individual farmers are permitted to purchase agricultural real estate. Exceptions to this rule include acquisitions by close relatives, local government units, the State Treasury, the NASC, certain commercial companies, or acquisitions involving parcels under one hectare, as well as transfers resulting from inheritance, partition, restructuring, or bankruptcy. Legal persons outside these categories must obtain prior authorisation from the Director-General of the NASC, granted through an administrative procedure.[443]

In cases where agricultural land or holdings are acquired via inheritance, any legal heir with capacity to inherit may take ownership, without being subject to the individual farmer criteria or the usual land area limitations. The NASC retains a pre-emption right in some inheritance cases, although this is waived if the heir is a close relative or qualifies as an individual farmer.[444]

Moreover, purchasers of agricultural land or holdings are generally required to personally operate the holding for a minimum of five years following acquisition.

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[440] In connection with this, see the relevant provisions of the Act on Notaries – for example Article 92 para. (1) point 4a), or Article 95c. para. 2. point 9), or Article 99. para 3.
[441] Zombory, 2020, pp. 297–298.
[442] ASAS, Article 4.
[443] Ibid., Article 2a para. 4.
[444] Ledwoń, 2022, pp. 203–206.

Certain exceptions exist, including cases of transfers to relatives or property received through inheritance.[445]

3. 4. 3. Acquisition of ownership of agricultural land and holding by inheritance

3. 4. 3. 1. Agricultural land

First of all, it can be stated that in Poland,[446] there are no specific regulations that differentiate the inheritance of agricultural real estate or farm from any other types of property.[447] It is worth mentioning that, previously, the Civil Code contained such regulations. Still, they were deemed unconstitutional by the Constitutional Tribunal for violating, *inter alia*, the principle of equality[448] enshrined in the 1997 Constitution.[449]

The Polish Civil Code regulates the inheritance of agricultural real estates (and farms) only when the opening of the inheritance took place before 14 February 2001, that is, before the day the above-mentioned judgment of the Polish Constitutional Court came into force.[450]

When a person inherits[451] agricultural land, it does not necessarily mean that they will retain it because of the NASC's right to acquire such property. The NASC can purchase agricultural land resulting from inheritance or legacy by making a declaration of acquisition against the payment of its market value.[452] It should be emphasised that this right of the NASC is not absolute and is subject to certain exceptions. For instance, it does not apply if agricultural real estate is acquired by a close relative of the seller or an individual farmer owing to a windup bequest. In addition, the NASC's right to acquire agricultural real estate is excluded in the case of statutory inheritance, in which the designated testamentary heir is an individual

[445] Ibid., p. 205.
[446] On the Polish legislation, see, for example, Zombory, 2020, pp. 282–305. and Zombory, 2021, pp. 174–190.
[447] Kubaj, 2020, p. 123.
[448] See the Judgement of the Constitutional Tribunal of January 31, 2001, No. P. 4/99.
[449] On the constitutional issues, see Blajer, 2022b.
[450] Szinek Csütörtöki, 2023, p. 134.
[451] According to the Polish law, an estate may be inherited through intestate succession or testate. On this issue see further Oleśkowska, 2023.
[452] ASAS, Article 4.

farmer.[453] This regulation protects family holdings and ensures the appropriate management of agricultural land.[454]

The NASC's right to acquire agricultural real estate has been a subject of much uncertainty. However, it is noteworthy that the Constitutional Tribunal has examined Article 4 of the act in question. According to the Constitutional Tribunal's ruling,[455] this provision is in line with the 1997 Constitution, and does not violate the principle of a democratic state of law[456] and the right to property.[457]

Concerning tax issues, it can be seen that in Poland, a common way for young farmers to obtain their first agricultural land is through inheritance from their family members. The Polish government provides tax remissions if certain conditions are met to incentivise farmers to continue running farms. An essential act in connection with this subject matter is the Act of 28 July 1983 on Tax on Inheritance and Donations, which states that the acquisition of agricultural land by natural persons is typically subject to an inheritance tax. However, it can be tax-free if the acquisition in the creation or enlargement of a farm has an area between 11 and 300 hectares, and the successor manages the farm for at least five years.[458] The Act of 26 July 1991 on Personal Income Tax provides further tax relief by exempting the revenue from agricultural activities from personal income tax. Additionally, young farmers can take advantage of exemptions under the Act of 15 November 1984, on Agricultural Tax, which exempts land intended for creating or extending a farm up to 100 hectares from agricultural tax for five years. According to the Act of 9 September 2000 on Tax on Civil Law Transactions, the sale of land constituting a farm is also tax-free if the buyer of land that includes a farm creates or expands a farm with an area between 11 and 300 hectares and manages it for at least five years from the date of purchase.[459]

3. 4. 3. 2. Agricultural holding

Under Polish law, the acquisition of agricultural holdings through inheritance is governed by the ASAS, supplemented by the provisions of the Civil Code and, in the

[453] Ledwoń, 2022, pp. 204–205.
[454] Kubaj, 2020, p. 124.
[455] Judgment of 18 March 2010, signature K 8/08
[456] Constitution of the Republic of Poland of 2 April 1997, Article 2.
[457] Ibid., Articles 21 and 64.
[458] Act of 28 July 1983 on Tax on Inheritance and Donations, Article 4 para. 4 point 1.
[459] Kubaj, 2020, pp. 124–125.

case of foreign heirs, the AAREF applies.[460] It should be recalled that acquisition of agricultural real estate is broadly defined under the ASAS as encompassing not only transfers of ownership through sale agreements but also acquisition by means of legal transactions, court rulings or administrative measures, co-ownership shares, perpetual usufruct, and participation in commercial companies owning agricultural land of at least five hectares.[461] Compliance with the formalities stipulated in the ASAS, is essential for the validity of such acquisitions, since any acquisition of agricultural real estate or holdings that contravenes these provisions is null and void.[462]

'Ordinary acquisitions', that is, acquisitions by individual farmers under the general framework of the ASAS, are subject to restrictions on maximum land area, generally limiting ownership of not just agricultural land but also holdings to 300 hectares.[463] However, statutory exceptions allow non-farmer entities, including close relatives of the vendor, territorial self-government units, the State Treasury, the NASC acting on its behalf, certain commercial companies, or national parks acquiring land for nature protection purposes, to acquire ownership without being bound by these limits.[464]

In the context of intestate succession or testamentary disposition, the rules diverge from ordinary acquisitions. Any person or entity with legal capacity to inherit may acquire ownership of agricultural land or holdings, irrespective of whether it is an individual farmer, a legal person, or a non-farmer heir, and without regard to the 300-hectare threshold.[465] The NASC retains a statutory pre-emption right to purchase agricultural land acquired through intestate succession or testamentary disposition, paying the market value to the inheritor, though this right is excluded where the heir is a close relative of the deceased or where the acquisition arises from intestate succession or testamentary disposition to an individual farmer.[466]

Furthermore, the purchaser of agricultural land under ordinary acquisition rules must operate the agricultural holding for at least five years, personally in the case of natural persons, unless the NASC grants consent for transfer or lease due to significant

[460] Ledwoń, 2022, pp. 204–205.
[461] ASAS, Article 2 point 7, 4a, and 9 para. 1.
[462] Ledwoń, 2022, pp. 204–205.
[463] Ibid., Article 2a para. 1–2.
[464] Ibid., Article 2a para. 3.
[465] Ibid., Article 2a para. 3.
[466] Ibid., Article 4.

personal or public interest.[467] These obligations do not apply to acquisitions arising from inheritance, division of inheritance, or legacy. In addition to the ASAS, general provisions of the Civil Code govern inheritance, with outdated or unconstitutional provisions repealed or disregarded following Constitutional Tribunal judgments, ensuring that only general inheritance rules are applicable to agricultural holdings.[468]

In conclusion, while ordinary acquisitions of agricultural real estate by individual farmers are strictly regulated by the ASAS and subject to quantitative limits, the inheritance of agricultural holdings allows for broader acquisition rights, including acquisition by legal persons and non-farmers, subject only to the NASC's pre-emption right and the general rules of inheritance under the Civil Code.

3. 4. 4. Acquisition of shares in a company that owns agricultural land

As *Ledwoń* highlighted, Polish law, in principle, does not generally impose specific requirements on who may hold shares or be a partner in a company that owns agricultural real estate.[469] In particular, such persons are not required to be individual farmers or have any direct connection to agriculture.[470]

However,[471] the AAREF establishes restrictions for foreigners from outside the EEA and the Swiss Confederation acquiring shares or stocks in commercial companies with their registered office in the territory of the Republic of Poland.[472] The acquisition or taking up of shares, as well as any other legal action concerning shares or stocks, requires a permit from the minister competent for internal affairs if the company that owns or perpetually uses real estate in Poland becomes a 'controlled' entity.[473]

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[467] Ibid., Article 2b. On legal issues concerning the obligations of the purchaser of agricultural real estate under Article 2b of the ASAS, see, for example, Blajer, 2021, pp. 33–58.
[468] Civil Code, Articles 922–1057 and 1058 etc.
[469] Ledwoń, 2022, p. 207.
[470] Czech, 2020.
[471] Cf. Czubik, 2021, pp. 5–19. For more information (including procedural, legal, and practical analysis of how NASC controls acquisitions of shares in companies owning agricultural land, including pre-emption rights, right to purchase, exemptions, conditional contracts, and administrative procedures), see Blajer, 2022c, pp. 48–56.
[472] Łobos-Kotowska, 2018, p. 30. Additionally, notaries are required notify the Minister of Internal Affairs of any share or stock purchase in companies owning or holding perpetual usufruct rights in Poland (Act on Notarial Services, Article 99(3); AAREF, Article 8a). However, they cannot verify actual ownership or usufruct of agricultural land (Czubik, 2017a, pp. 9–19). This notification requirement seems inconsistent with NASC's pre-emption right under Article 3 of the ASAS. To ensure effective exercise of this right, notifications should be submitted for every foreign acquisition of shares or stocks (Brożyna and Pijanowska, 2019, p. 16).
[473] AAREF, Article 3e para. 1.

Moreover, a permit is also required if a foreigner acquires or takes up shares in such a company and is not already a shareholder, provided the company owns or perpetually uses immovable property in Poland.[474] Certain exceptions exist; for example, a permit is not required if the company's shares are admitted to trading on a regulated market.[475] Importantly, the AAREF provides the sanction of absolute nullity for acquisitions of real estate or shares made contrary to the provisions of the act.[476]

With regard to companies owning agricultural land, the ASAS grants the NASC, acting on behalf of the State Treasury, a pre-emption right to acquire shares or stocks in capital companies[477] that are owners or perpetual usufructuaries of agricultural real estate with an area of at least 5 hectares.[478] This right also extends to parent companies holding shares in such companies. This right covers acquisitions arising from donations, contributions in kind, or increases in share capital.[479] Exceptions to the NASC's pre-emption right include sales to relatives or sales conducted by the State Treasury.[480] The ASAS further grants the NASC the right to acquire, against payment, agricultural real estate previously subject to trade under legal bases other than sale agreements.[481] It should added that all shares of commercial companies acquired by the NASC for the State Treasury form part of the Agricultural Property Stock.[482] If the NASC does not exercise its pre-emption right, companies may manage their shares within the limits of the law and their statutes.[483]

3. 4. 5. Acquisition of other rights

The ASAS governs the acquisition of ownership rights to agricultural real estate and, by extension, to agricultural holdings.[484] Notably, the legislative scope is not limited to full ownership. The statute applies *mutatis mutandis* to the acquisition of the right of perpetual usufruct of agricultural land or a share therein. Consequently, the

[474] Ibid., Article 3e para. 2.
[475] Ibid., Article 3e para. 3.
[476] Ibid., Article 6.
[477] i.e., limited liability or joint-stock companies
[478] Strzała, 2024, pp. 156–157.
[479] ASAS, Article 4 para. 6.
[480] Ibid., Article 3a para. 2 and 3.
[481] Ibid., Article 4 para. 1.
[482] Ledwoń, 2022, p. 208. See also ASAS, Article 8 para. 1.
[483] Ledwoń, 2022, p. 208.
[484] As reflected in Article 4a of the ASAS.

acquisition of perpetual usufruct is subject to the same legal controls as the acquisition of ownership, thereby extending the reach of the regulatory framework beyond classic property transfers.[485]

With respect to land owned by the State Treasury, a distinction is drawn based on the land's location and functional designation. Land situated within the administrative boundaries of cities and towns, as well as land located outside these boundaries but incorporated into urban planning schemes and allocated to municipal tasks, may be granted in perpetual usufruct to both natural and legal persons. Similarly, property owned by local government entities or their associations may also be subject to perpetual usufruct arrangements. Furthermore, pursuant to Article 232 of the Civil Code, specific legal provisions may authorise perpetual usufruct over other categories of state or municipal land.[486]

Perpetual usufruct is typically granted for a term of 99 years, though in exceptional cases—where justified by particular circumstances—the right may be established for a shorter term, not less than 40 years.[487] The usufructuary is entitled to exclusive use of the land within the legal limits and may dispose of the usufruct right under the same constraints.[488] However, the exercise of this right must remain within the bounds prescribed by public law regulations, including the ASAS, which imposes restrictions in the interest of shaping agricultural policy. Therefore, any legal limitations imposed by the ASAS, in respect of the acquisition of agricultural land apply equally to the acquisition of perpetual usufruct.[489]

In contrast, the ASAS does not extend its application to limited property rights as defined under Polish civil law. These include usufruct (in its limited, not perpetual, form), easements, pledges, cooperative ownership rights to premises, and mortgages.[490] The acquisition of such rights is governed by general civil law principles and, in specific cases, by special regulations—for instance, those concerning cooperative rights or mortgages.[491] Therefore, even when such limited rights are established over agricultural land, their acquisition is not subject to the controls found in the ASAS. Accordingly, acquirers of limited rights in rem do not face the additional

[485] See ASAS, Article 2c (1).
[486] Ledwoń, 2022, p. 208.
[487] Civil Code, Article 236 para. 1.
[488] Ibid., Article 233.
[489] Ledwoń, 2022, p. 208.
[490] As enumerated in Article 244 para. 1. of the Civil Code.
[491] Civil Code, Article 244 para. 2.

obligations imposed on purchasers of ownership, co-ownership, or perpetual usufruct rights to agricultural property.[492]

A similar exclusion from the ASAS applies to contractual obligations, particularly long-term agreements for the use of agricultural land, such as leases or tenancies. While the act remains silent on these types of arrangements—aside from the inclusion of a pre-emption right for tenants—it is the general provisions of the Civil Code that govern their formation and enforcement. Nevertheless, given the important role that tenancy arrangements play in the Polish agricultural sector, the legal regime surrounding agricultural leases warrants careful examination.

A lease agreement is characterised as a consensual and bilateral contract, wherein the lessor commits to granting the lessee the use of an object and the right to collect its fruits for a specified or unspecified duration, in exchange for a monetary or in-kind rent.[493] The parties enjoy contractual freedom to determine the nature, amount, and form of the rent. Payment may consist of a monetary sum, a share of the produce, or another form of consideration. Where rent is stipulated as a portion of the yield[494] and the harvest fails through no fault of the lessee, the obligation to pay rent is extinguished. In such cases, the contract assumes the form of a partly aleatory (fortuitous) agreement.[495] Furthermore, if external events—beyond the lessee's control and not arising from personal circumstances—cause a substantial reduction in the income ordinarily derived from the leased property, the lessee may petition for a reduction of rent for the affected period.[496] Examples include natural disasters, pest outbreaks, or adverse shifts in the agricultural commodities market.

Where a lease is concluded for a fixed term exceeding one year, written form is required; otherwise, it is deemed to be a contract of indefinite duration.[497] Additionally, a lease extending beyond 30 years is, after the expiration of that period, treated as a lease for an indefinite term.[498] The lessee is expected to manage the property in accordance with principles of proper economy and is prohibited from altering the use of the land without the lessor's consent.[499] In the agricultural context,

[492] Ledwoń, 2022, p. 208.
[493] Civil Code, Article 693 para. 1.
[494] e.g., one-quarter of the harvest
[495] Ciepła, 2017.
[496] Civil Code, Article 700.
[497] Ibid., Article 660 in conjunction with Article 694.
[498] Ibid., Article 695 para. 1.
[499] Ibid., Article 696.

this standard includes adherence to good farming practices and the maintenance of existing land use, e.g., avoiding the conversion of meadows into agricultural lands.[500]

While the ASAS does not govern agricultural lease contracts *per se*, it does refer to tenancy in the context of pre-emption rights. As provided in Article 3(1) of the ASAS, when agricultural land is sold, its lessee enjoys a statutory right of pre-emption, provided certain cumulative conditions are met. The formal condition requires that the lease agreement be in writing, bear a fixed date, and have been in force for at least three years from that date. The subjective condition requires that the lessee be a natural person operating an individual agricultural holding, in which the subject land is included. Furthermore, the vendor is obliged to notify the lessee of the intended sale, assuming the lease meets the above duration threshold.[501]

If the pre-emption right is not applicable or not exercised, the NASC, acting on behalf of the State Treasury, acquires the right of pre-emption.[502] However, this right is waived where the transaction results in the expansion of a family holding (within the 300-hectare statutory limit) and the land is located within the same municipality or a neighbouring one in which the purchaser resides. The pre-emption regime also contains exceptions—such as when the purchaser is a local government unit, the State Treasury, or a close relative of the vendor.[503]

3. 5. Re-codification efforts and the future of land law

Land law in Europe has developed along distinct legal paths, influenced by broader jurisprudential traditions. In civil law systems, particularly those shaped by Roman legal heritage, land law emerged primarily as a subset of private law, especially contract and property law, adapted to the specificities of rural economic relations. In contrast, the German legal tradition has historically treated agricultural law as a component of public law, rooted in land reform movements, state planning, and regulatory control over agrarian property relations.[504]

Poland's approach to land law reflects this dual heritage. Positioned at the crossroads of civil and public law, Polish land law today exists in a transitional form.

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[500] Ledwoń, 2022, p. 209.
[501] ASAS, Article 3(2)
[502] Ibid., Article 3(4)
[503] ASAS, Article 3(5)(1)
[504] Lis, 2024a.

Yet, a discernible shift is underway: modern legal discourse increasingly advocates anchoring agricultural law in civil law structures. This change aligns with the principle of legal equality among private parties, whereby farmers are recognised as autonomous legal subjects entitled to protect their interests through the judiciary. This approach contrasts with administrative law's hierarchical logic, in which public authorities possess decision-making supremacy over individuals, often restricting farmers' ability to defend their interests in legal disputes.[505]

Advocates for a private-law orientation argue that the unequal power dynamic between agricultural producers and administrative institutions necessitates a legal system that genuinely empowers farmers. Although public law contains certain protective mechanisms, the predominance of state power undermines the principle of legal parity. By embedding agricultural relations more firmly within private law, farmers gain enhanced tools for asserting rights and negotiating obligations.[506]

Poland's efforts to codify agricultural law can be traced back to the interwar period. Following the restoration of independence, the country faced the challenge of harmonising a fragmented legal system composed of regulations inherited from partitioning powers. In response, the 1927 Commission for the Organisation of Agrarian Legislation—established by the Minister of Agricultural Reforms—sought to unify agrarian legislation under a coherent framework. The commission, chaired by *Jaworski*, undertook to draft an agrarian code. Rather than transplanting foreign legal models wholesale, *Jaworski* emphasised selectively adapting existing Polish legal norms to reflect ongoing social and economic transformations.[507] The primary objective of this codification was to facilitate the creation of family-supporting farms, which became the central legal and political concept underpinning the draft code. *Jaworski* introduced legal constructs that defined the agricultural farm as a distinct institution, marking a conceptual departure from conventional civil law.[508] Nonetheless, despite these innovations, *Jaworski*'s attempt to frame agricultural law within public law structures was only partially successful. Several provisions ventured deep into the field of private law, regulating land transactions, inheritance of

[505] Ibid.
[506] See, for example, Jaworski, 1928.
[507] Kalinowski, 2019, p. 109. As the author pointed out, the book *Poczet prawników polskich XIX–XX w.* by *Pol* (translated as Gallery of Polish Lawyers of the 19th–20th Centuries) does not even mention *Jaworski*'s contributions to agrarian law, despite his status as a prominent legal scholar and his likely significant role in that field.
[508] Ibid.

indivisible farms, and property rights through mechanisms distinct from standard public law instruments.[509]

In the 1970s, a second wave of codification emerged during a period of centrally planned economic governance. At that time, the prevailing agricultural legal regime was administrative in nature, although elements of civil law—most notably within the 1964 Civil Code—addressed land ownership and land use. The 1971 Inter-Ministerial Commission on Agricultural Legislation explored two competing strategies: the drafting of a comprehensive agricultural code consolidating all relevant norms, versus postponing codification until sufficient harmonisation of existing acts had been achieved.[510] The lack of consensus, combined with the political climate of the era, ultimately stalled these efforts.

Since 1989, there was a very limited interest within Polish legal doctrine in the codification of agricultural law.[511] Although political proposals to introduce an agricultural code have periodically resurfaced, none have resulted in a specific legislative action. This stagnation may largely stem from the absence of a coherent, modern framework for what such a code should entail. A preliminary concept was proposed in 1996 by *Lichorowicz*, who, in the context of regulating the family farm as a central institution of agricultural law, outlined two possible approaches: one narrow and one broad.[512] The narrow version envisioned a standalone law on the family farm, while the broader version proposed a general law on agricultural holdings—effectively a step toward a Polish agricultural code.[513] Given its broad scope, such legislation inevitably had to incorporate specialised provisions from the Civil Code and consolidate various existing acts regarding agriculture. One of its key aims was to establish the legal status of agricultural holdings within the economic system, ensure parity with other business entities, and restore their recognition within the Commercial Code. It also sought to offer a framework for modern internal organisation, relations with state institutions, and guarantees for operational stability.[514]

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[509] See Niewiadomski, 2017.
[510] Lis, 2024a.
[511] Particularly when contrasted with the significant development of such codification in Western Europe, especially in France and Italy. See, for example, Budzinowski, 2008, p. 159.
[512] Lichorowicz, 1996, pp. 31–50.
[513] Kalinowski, 2019, p. 110.
[514] Ibid.

The idea of codifying Polish agricultural law resurfaced in the 2020s,[515] spurred by proposals from the former EU Agriculture Commissioner *J. Wojciechowski* and Polish Member of the Parliament *G. Wojciechowski*.[516] Their initiatives laid the groundwork for renewed legislative interest in establishing a modern Agricultural Code. This prospective codification aims to create a comprehensive legal framework governing agricultural production, land use, family farming, crisis management, rural development, and farmers' legal protections.

According to the Polish Deal[517]—a governmental reform agenda unveiled in 2021 under the thematic pillar 'Poland – Our Land'—the Agricultural Code was positioned as a strategic legislative priority. The code was intended to standardise fundamental legal principles relating to agricultural operations and rural property management. Parallel to this, the Polish Deal also pledged to introduce a law on family farms, aimed at modernising the legal definition of family farms, eliminating retirement-related obligations to sell land, prioritising family farms in subsidy access, and reinforcing their legal status.

Despite initial parliamentary activity, including a July 2021 session by the Family Farms Committee, the Ministry of Agriculture and Rural Development ultimately discontinued work on the family farms law. In contrast, momentum around the Agricultural Code continued to build. Three formal sessions of the Family Farms Committee, alongside contributions from the Parliamentary Committee on Mountain Policy and the Committee on Organic Agriculture, resulted in the drafting of a comprehensive bill.[518]

As of mid-2025, the codification of agricultural law in Poland remains an open and unresolved legislative endeavour. Despite recurrent initiatives and increasing recognition of the fragmented and often inconsistent nature of the current regulatory framework governing agricultural activity, Poland has not yet enacted a

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[515] Prior to this, *Łobos-Kotowska* argued that a codification act should provide a comprehensive legal framework for all key aspects of agricultural law. *Prutis* suggested that the expansion of the ASAS, alongside legislation on family farms, could lay the groundwork for a future code—one that would help resolve agrarian issues. *Blajer*, in his analysis of the individual farmer, drew on *Jaworski*'s concept of building a code around core legal institutions, with the individual farmer as a focal point. For more on this, see Łobos-Kotowska, 2006, p. 166.; Prutis, 2016, p. 57.; Blajer, 2009, pp. 345–346.

[516] Lis, 2024b, p. 654.

[517] Introduced by the former Polish government in 2021, the program aims to boost economic growth, improve public services, and support families, businesses, and agriculture through reforms in taxation, social welfare, healthcare, education, and rural development. Available at: http://polskilad.pis.org.pl/files/Polski_Lad.pdf (Accessed: 11 July 2025)

[518] Lis, 2024a.

comprehensive Agricultural Code. The subject remains under consideration, but the legislative process has thus far been marked by a combination of political hesitation, institutional fragmentation, and the practical challenges of reconciling national legal traditions with the evolving requirements of EU law.

The most substantive and coherent effort toward codification in recent years was initiated through a collaborative academic project culminating in the publication titled The Lublin–Warsaw Debate on the Draft Agricultural Code,[519] edited by *Jeżyńska* and *Niewiadomski*.[520] This publication followed a symposium held on 21 February 2023, organised jointly by the Faculty of Law and Administration at Maria Curie-Skłodowska University in Lublin and the Faculty of Law and Administration at the University of Warsaw. The initiative brought together leading legal scholars and practitioners to critically assess the prospects, methodology, and normative justification for a codified approach to agricultural law in Poland.

The draft, as outlined and debated in the aforementioned publication, was divided into general and specific parts and sought to establish foundational legal principles while harmonising existing acts related to land use, agricultural activity, rural development, agri-environmental measures, and food security. Contributors to the debate underscored the pedagogical and normative advantages of codification, including the simplification of legal interpretation and the resolution of internal inconsistencies within the existing legal system. Nevertheless, the publication also acknowledged significant challenges, such as the dynamic nature of agricultural policy, the overlapping competences between national and EU institutions, and the difficulty of encapsulating the diversity of rural legal relations within a single codified structure.[521]

Despite the academic momentum, the codification process has not progressed to formal legislative deliberation. No consolidated draft has been submitted to the Polish Sejm, and as of this writing, the Ministry of Agriculture and Rural Development continues to pursue a strategy of sector-specific legislative amendments rather than comprehensive codification. The government's approach appears to prioritise immediate regulatory reforms aimed at aligning domestic law with the EU's CAP, rather than engaging in a full-scale legislative codification. For instance, the 2023

[519] For the review on the publication, see Lis, 2024b.
[520] See Jeżyńska and Niewiadomski, 2023.
[521] Lis, 2024b.

amendment to the Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury redefined the scope of agricultural land and introduced procedural changes designed to streamline land leasing and enhance environmental accountability. In addition, further legislative proposals are under discussion to require registration of lease agreements in order to establish clear entitlements for the receipt of CAP subsidies, particularly in situations involving land users who are not the legal owners.[522]

These targeted legislative interventions represent an incremental evolution of the legal framework rather than a systematic or coherent progression toward codification. While they aim to respond to pressing challenges—such as land fragmentation, generational renewal in agriculture, and equitable access to European Union funding—they do not establish a unified, conceptually consistent framework capable of guiding the long-term development of agricultural law in Poland. The continued reliance on a dispersed array of statutory instruments further complicates both legal education and judicial interpretation, as practitioners must contend with an increasingly dense and, at times, contradictory network of overlapping provisions.

In conclusion, while the idea of codifying agricultural law in Poland remains attractive and has garnered substantial academic support, its practical implementation continues to encounter both structural and political obstacles. The absence of a comprehensive Agricultural Code reflects broader tensions within Polish law-making, including the difficulty of coordinating sectoral policy with legal coherence, and the ongoing challenge of balancing national legislative autonomy with the supranational regulatory framework of the EU. Unless a shift occurs in legislative priorities or political commitment, the codification of agricultural law in Poland is likely to remain an aspirational rather than a realised objective.

[522] Cf. Suchoń, 2023, pp. 510–534.

4. Slovakia

4. 1. Introductory remarks

The current structure of agricultural land ownership in the Slovak Republic is the result of a protracted historical evolution marked by radical political change, collectivisation, and the gradual dismantling of state-controlled agriculture after 1989.[523] During the socialist period, collectivisation effectively stripped owners of control over their land, which was managed by unified agricultural cooperatives or state farms. While formal private ownership often persisted, the functional attributes of ownership—possession, use, and disposal—were transferred to collective entities, thereby decoupling legal title from economic exploitation.[524]

The political and legal transition after the Velvet Revolution set in motion a dual process of restitution and privatisation.[525] Restitution, governed primarily by Act No. 229/1991 Coll. on Regulation of Ownership Relations to Land and Other Agricultural Property, sought to restore ownership rights to persons (or their heirs) dispossessed after 25 February 1948. Where restitution *in natura* was not possible, the law provided for substitute land or compensation. This framework was supplemented by Act No. 330/1991 Coll. on Land Arrangements, Settlement of Land Ownership Rights, District Land Offices, the Land Fund, and Land Associations, which facilitated redistribution but also introduced mechanisms for land consolidation.[526] The restitution process in Slovakia was particularly constrained by an exceptionally high degree of co-ownership, incomplete cadastral records, and a legacy of unresolved titles—factors that both delayed implementation and generated a substantial role for the Slovak Land Fund, established to manage state-owned and owner-unknown parcels.[527]

Privatisation of state-owned agricultural assets proceeded concurrently but was neither as rapid nor as comprehensive as in the Czech Republic. Transfers of state land prioritised restitution claimants and local agricultural users, in line with policy

[523] Cf. Sombati, 2019, pp. 179–194.
[524] Ibid.
[525] See, for example, Blaas, 1995, pp. 93–95.
[526] Peráček, Srebalová and Srebala, 2022, p. 4.
[527] For the detailed overview on the process of restitution of agricultural land, see Sudzina, 2025, pp. 385–415.

objectives to support rural livelihoods and preserve the agricultural character of the land. However, systemic issues—fragmentation, overlapping claims, and cadastral deficiencies—continued to limit the development of a fluid agricultural land market.[528]

Land fragmentation, largely a historical product of inheritance customs and collectivisation-era reallocation, remains one of the most acute structural challenges.[529] Parcels are frequently co-owned by dozens of individuals, creating significant obstacles to market transactions, effective management, and investment.[530] Legislative responses, most notably in Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, have sought to curb further fragmentation, but comprehensive consolidation remains incomplete and administratively demanding.[531]

Market liberalisation following Slovakia's accession to the European Union in 2004 introduced additional dynamics into the agricultural land market. While EU citizens ultimately obtained the right to acquire agricultural land after the expiry of transitional restrictions in 2014, concerns about speculative acquisitions and excessive land concentration prompted the adoption of Act No. 140/2014 Coll. on the Acquisition of Ownership of Agricultural Land.[532] This legislation established conditions favouring persons actively engaged in agricultural production thereby prioritising those with an established connection to the land over non-farming investors. Certain provisions were later amended to ensure compliance with EU internal market rules, illustrating the ongoing tension between national regulatory objectives and supranational legal obligations.[533]

To sum up, Slovakia's post-communist land policy reflects a complex yet often contested effort to balance restitution as a mechanism for redressing historical property deprivations, privatisation as a driver of economic transformation, and regulatory safeguards designed to preserve the agricultural land base against further fragmentation and speculative acquisition.

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[528] Ibid.
[529] Peráček, Srebalová and Srebala, 2022, p. 4.
[530] Palšová, 2019, pp. 72–76.
[531] Palšová, Bandlerová and Ilková, 2022, p. 132. See also Palšová, Bandlerová and Machničová, 2021, p. 873.
[532] Hereinafter referred to as the Act on Land Acquisition.
[533] In connection with this, see Lazíková, Rumanovská, Takáč and Lazíková, 2017, pp. 559–568.

4. 2. Sources of national land law

In the Slovak Republic, the legal regulation of agricultural land operates within a multifaceted framework of constitutional, environmental, and property law, reflecting the land's unique status as both a productive resource and a vital element of national heritage.[534] At this point it should be noted, as in the case of sources of land law of countries previously described, that providing an exhaustive list of all applicable legal sources is beyond the intended scope of this dissertation, and only those legal provisions that are of key relevance to the topic will be described in detail.[535]

The Slovak legal system approaches agricultural land not merely as an object of ownership or economic exchange but as a non-renewable natural resource, the management and protection of which bear significant environmental, social, and intergenerational implications.[536] Central to this framework[537] is the recognition, embedded in the Constitution of the Slovak Republic,[538] that the state bears an affirmative duty to ensure the responsible and sustainable use of natural resources, with particular emphasis on agricultural (but also forest) land. This constitutional imperative was considerably strengthened through the adoption of Constitutional Amendment No. 137/2017 Coll.,[539] which entered into force on 1 June 2017. Prior to this amendment, the Constitution addressed land protection only in general environmental terms, most notably in Articles 4 and 44, which affirmed the right to a favourable environment and the obligation of the state to care for natural heritage. However, the 2017 amendment significantly elevated the status of agricultural and forest land within the constitutional order by expressly classifying them as non-renewable natural resources and subjecting them to a heightened regime of legal protection.[540] This reform reflected a paradigmatic shift in the legislative and policy approach to land, positioning it not simply as a tradable commodity but as an

[534] Szilágyi and Szinek Csütörtöki, 2022, p. 267.
[535] For the most essential sources of Slovak land law, see Szilágyi and Szinek Csütörtöki, 2022, footnote 5.
[536] Szilágyi and Szinek Csütörtöki, 2022, p. 268.
[537] Cf. Potásch, 2009, pp. 271–291.
[538] Constitution No. 460/1992 Coll. Hereinafter referred to as the Slovak Constitution.
[539] Constitutional Act of 16 May 2017 amending and supplementing the Constitution of the Slovak Republic, No. 137/2017 Coll.
[540] As highlighted by *Illáš*, land—especially that legally designated as such—forms an essential pillar for a State's food production, justifying its treatment as a strategic resource that is both finite and in need of safeguarding. See Illáš, 2019, pp. 8–15.

irreplaceable foundation of food security, ecological stability, and rural sustainability.[541]

At this point, it should be added that the constitutional provisions[542] establish a dual normative framework that connects environmental rights and duties with property law principles. While the right to a favourable environment is articulated as a fundamental human right,[543] it is classified within the category of third-generation or solidarity rights, which, though constitutionally guaranteed, are not directly actionable in the same manner as classical civil or political rights.[544] Rather, Article 44(6) of the Slovak Constitution provides that these rights are to be operationalised through specific legislative instruments, thereby imposing on the state a positive obligation to adopt and enforce laws that enable their realisation. The legal interpretation of this provision emphasises the collective and intergenerational nature of environmental rights, underscoring that the right to a healthy environment extends beyond individual entitlements and functions primarily to preserve environmental quality for present and future generations.[545]

In this context, the constitutional emphasis on agricultural land protection assumes critical importance. The amendment of Article 20(2) of the Constitution introduced a legal basis for differentiating the ownership regime applicable to certain types of property. It explicitly authorises the legislator to determine that specific category of land, essential for meeting public needs, safeguarding food security, or promoting the development of the national economy, may be owned exclusively by the state, municipalities, or designated individuals and legal persons. Furthermore, the provision permits the imposition of ownership restrictions favouring citizens and residents of the Slovak Republic, thereby creating a constitutional foundation for limiting foreign or speculative acquisitions of agricultural land.[546] The Explanatory Memorandum[547] accompanying the amendment confirms that the objective was not only to ensure sustainable land use and environmental protection but also to prevent

[541] Dufala, Dufalová and Šmelková, 2017, p. 157.
[542] Particularly those enshrined in Chapter Two, Part Two and Part Six of the Slovak Constitution.
[543] Slovak Constitution, Article 44 paras. (1)–(3)
[544] Pavlovič, 2020, p. 63.
[545] Szinek Csütörtöki, 2022b, p. 129.
[546] Ibid., p. 129.
[547] Available at: https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=399288 (Accessed: 2 February 2024)

market-driven land speculation and to preserve the traditional rural character of Slovak territory.[548]

It is particularly noteworthy that the constitutional designation of agricultural land as non-renewable natural resource contributes to a reconceptualization of land ownership itself. Ownership in this context is no longer perceived solely as a collection of private entitlements but is framed within a broader matrix of public interest,[549] sustainability, and environmental responsibility. The state's role, therefore, is not merely regulatory but also fiduciary, as it must safeguard land resources through legislation, monitoring mechanisms, and the enforcement of compliance standards. In this sense, constitutional land protection introduces a layer of normative complexity whereby land rights are conditioned by environmental obligations and public policy considerations.[550]

The 2017 amendment was also shaped by broader governmental strategies, notably the Program Declaration of the Government of the Slovak Republic for 2016–2020, which explicitly identified agriculture, food production, and forestry as strategic sectors integral to national economic policy. Recognising Slovakia's predominantly rural character, the government committed itself to supporting rural development and improving the living conditions of rural populations. The constitutional entrenchment of land protection is thus aligned with the broader economic and social development agenda, reinforcing the notion that land governance must balance private autonomy with public responsibility.[551]

It can be concluded that the constitutional and legislative reforms adopted in Slovakia since 2017 represent a deliberate and far-reaching effort to redefine the legal status of agricultural (and forest) land. By elevating these resources to the category of non-renewable natural resources subject to enhanced protection, the Slovak legal system articulates a comprehensive vision of land governance that integrates environmental protection, food security, intergenerational equity, and national economic policy.

When it comes to the level of acts, in the Slovak legal system, the protection and use of agricultural land are primarily governed by Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, which defines agricultural land as land

[548] Pavlovič and Ravas, 2017.
[549] See, for example, Potásch, 2018a, p. 5. and Potásch, 2018b, p. 58.
[550] Cf. Szilágyi and Szinek Csütörtöki, 2022, p. 274.
[551] Szinek Csütörtöki, 2022b, p. 128.

registered in the Real Estate Register for productive use, including arable land, vineyards, hop fields, orchards, gardens, and permanent grasslands. Agricultural land also includes areas covered with woody plants that form part of an agroforestry system for the utilisation of agricultural land, or areas covered with woody plants that constitute agricultural-purpose greenery.[552] This act focuses on the sustainable management of agricultural land and its environmental functions, while preventing unauthorised conversions for non-agricultural purposes. Acquisition of ownership of agricultural land is regulated by Act on Land Acquisition, which also defines agricultural land and stipulates specific exceptions where the law does not apply—such as gardens or plots smaller than 2,000 m² under certain conditions.[553]

Territorial protection of land is further reinforced through Act No. 543/2002 Coll. on Nature and Landscape Protection, particularly for environmentally significant areas. Broader issues like land fragmentation are addressed in Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, which, together with Act No. 330/1991 Coll. on Land Arrangements, Settlement of Land Ownership Rights, District Land Offices, the Land Fund, and Land Associations, provides tools for land consolidation to resolve fragmentation. As Slovakia lacks a unified Land Code, agricultural leases are regulated by multiple acts, including the Act No. 40/1964 Coll, the Civil Code and Act No. 504/2003 Coll. on the Lease of Agricultural Land, Agricultural Holdings, and Forest Land, which also touches upon agricultural holdings, though no standalone legislation exists for holdings themselves.

At this point it is also necessary to mention the issues of measures and the prohibition of land fragmentation, which are contained in Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land. This fragmentation is mostly caused by the past, from the period of different legal regulations. However, the measures and the ban on land fragmentation represent a tool to prevent further fragmentation, which is one of the most significant problems of Slovak land law and needs to be solved by comprehensive land consolidation at the state level.[554] Moreover, it is necessary to mention the possibility of conducting land consolidation in terms of Act No. 330/1991 Coll. on Land Arrangements, Settlement of Land Ownership Rights, District Land Offices, the Land Fund, and Land Associations.[555]

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[552] Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, para. 2(b)
[553] Act on Land Acquisition, para. 2.
[554] Muchová and Raškovič, 2020, p. 104644.
[555] For more on this subject see, for example, Máčaj, 2021, pp. 117–126.

4. 3. Key terms and concepts

4. 3. 1. Agricultural land

Within the framework of Slovak land law, the term 'agricultural land' *(poľnohospodárska pôda)* holds a central position and is comprehensively defined primarily by Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land. It should be recalled that this legislation conceptualises agricultural land as land with productive potential that is officially registered in the Real Estate Register. It includes various categories such as arable land, hop fields, vineyards, orchards, gardens, and permanent grasslands. Agricultural land also includes areas covered with woody plants that form part of an agroforestry system for the utilisation of agricultural land, or areas covered with woody plants that constitute agricultural-purpose greenery.[556] The mentioned act emphasises the need to safeguard the characteristics and functions of agricultural land by promoting sustainable land use, preserving its environmental roles, and preventing its unauthorised conversion to non-agricultural purposes.[557]

In turn, the Act on Land Acquisition provides a further elaboration of the term. This act regulates the legal processes involved in the transfer of ownership and sets forth the competencies of public administrative authorities in overseeing such processes.[558] The legal definition adopted here builds on the definition provided in Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, extending its scope to include land that, prior to 24 June 1991, was developed with structures intended for agricultural use.[559] However, the act also delineates specific exceptions where its provisions do not apply. These exceptions encompass gardens irrespective of their location; plots located within the built-up area of a municipality regardless of their official land type; land outside built-up areas that is designated for non-agricultural use, or where regulations limit agricultural use, provided the area is smaller than 2,000 m^2; and plots functionally connected to adjacent constructions forming a single operational unit.[560]

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[556] Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, para. 2(b)
[557] Dufala, Dufalová and Šmelková, 2017, p. 160.
[558] Act on Land Acquisition, para. 1,
[559] This term (both positive and negative) is defined in the Act on Land Acquisition, para. 2(1).
[560] Act on Land Acquisition, para. 2.

Importantly, the legislative definition of agricultural land deliberately excludes forest land and land situated within nature conservation areas. These exclusions underscore the distinct legal regimes applicable to different categories of land based on their designated use and ecological significance.

In conclusion, the concept of agricultural land in Slovak law is not only grounded in its productive function but is also embedded in a broader legal and ecological context.

4. 3. 2. Agricultural holding

As mentioned earlier, the Slovak law does not provide a single, unified definition of an agricultural holding; rather the term appears in various legal acts, most notably in Act No. 504/2003 Coll. on the Lease of Agricultural Land, Agricultural Holdings, and Forest Land. Additionally, despite the significance of agricultural holdings, Slovak legislation lacks a special legal regime governing their creation, succession,[561] or transfer. Instead, such issues are regulated under the general provisions of civil law.

4. 3. 2. 1. Family farm

Slovakia has faced similar challenges as other countries regarding the absence of a clear legal definition of a 'family farm'.[562] This gap was addressed with the adoption of the amendment to Act No. 112/2018 Coll. on Social Economy and Social Enterprises[563] at the end of 2022,[564] which introduced an official definition of a 'family enterprise'. According to the amendment, it may be a commercial company, cooperative, or a natural person–entrepreneur operating in the business sphere.[565] In all cases, the fundamental criterion is that the entity in question qualifies as an entrepreneur pursuant to the applicable legal definitions. However, the classification

[561] In Slovakia, a substantial share of agricultural land is managed by the state and legal persons, which has weakened incentives to address succession challenges. Consequently, Slovakia remains one of the few EU Member States without specific legislation on the succession of agricultural holdings. See Palšová, Bandlerová and Ilková, 2022, p. 132.
[562] See, for example, the Czech Republic, which recently adopted an amendment to the relevant act allowing family farms to be established from 1 January 2026.
[563] For the related documentation, see the website of the National Council of the Slovak Republic. Available at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8925 (Accessed: 1 August 2025)
[564] The amendment came into effect on 1 July 2023.
[565] Act No. 112/2018 Coll. on Social Economy and Social Enterprises, para. 15a.

of a business as a family enterprise is further conditioned by the specific involvement of members of the same family in both ownership and governance structures, as well as in the distribution of economic benefit derived from the enterprise's activities.[566] In my view, this clarification is expected to accelerate decision-making processes and other related procedures within family-run businesses. Furthermore, the legislator stipulated that a family enterprise engaged in agricultural activities, including fish farming, or involved in the production, processing, and trade of agricultural raw materials and products, shall be regarded as a 'family farm'.[567]

Furthermore, the National Council of the Slovak Republic has expressed its commitment to continue supporting family farms and enterprises by preparing additional legislative proposals aimed at strengthening their position in the national economy.[568]

4. 4. Acquisition of ownership of agricultural land and holding

4. 4. 1. Agricultural land

In Slovakia, the acquisition of ownership of agricultural land[569] is primarily governed by general civil law, with almost no special legal restrictions applying exclusively to such land.[570]

The legal framework applies uniformly to both Slovak and foreign natural and legal persons, reflecting the liberalised approach adopted after the country's accession to the European Union. The only restriction is that agricultural land cannot be owned by a citizen, resident, or legal person of a state whose legal system does not permit Slovak citizens, residents, or legal persons to acquire such land (principle of reciprocity). This rule does not apply to inheritance or to Member States of the European Union, the EEA, Switzerland, or countries bound by an international treaty that is also binding on Slovakia.[571]

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[566] See Ibid., para. 15a(1) points a) and b)
[567] Para. 15a(6) of the Act No. 112/2018 Coll. on Social Economy and Social Enterprises
[568] For the related documentation, see the website of the National Council of the Slovak Republic. Available at: https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=8925 (Accessed: 1 August 2025)
[569] Cf. Bandlerová, Lazíková and Palšová, 2017, pp. 98–103.; Lazíková and Bandlerová, 2011.; Palšová, Bandlerová, Melišková and Schwarcz, 2017, pp. 64–72.
[570] Ptačinová, 2019.
[571] Act on Land Acquisition, para. 7.

As can be seen, the current framework governing the agricultural land ownership in the Slovak Republic is the product of a dynamic and often contested legal evolution, influenced not only by domestic legislative initiatives but also by the imperatives of European integration. Whereas today both domestic and foreign natural and legal persons may acquire agricultural land subject to only limited restrictions, the historical development was markedly different.[572] The transition from a protectionist to a more liberal regulatory model unfolded in successive stages, shaped by constitutional court decisions, the requirements of European Union law and its enforcement mechanisms, as well as by persistent domestic political debates.

So, prior to the expiry of the transitional period granted to Slovakia,[573] the legal framework governing agricultural land was marked by relatively restrictive provisions designed to shield such land from foreign acquisition. At its core, the legislation-imposed conditions that included, *inter alia*, a requirement of at least ten years of permanent residence or a registered office in the Slovak Republic, coupled with a minimum of three years of demonstrable engagement in agricultural production. The most controversial of these criteria—explicitly identified by the European Commission[574]—was the long-term residence requirement, which attracted significant criticism for constituting, in the context of EU law, indirect discrimination against nationals of other Member States and for undermining the fundamental principles of the internal market.[575]

The national legal framework soon came into conflict with the EU's fundamental freedoms—most notably the free movement of capital and the prohibition of discrimination on grounds of nationality—making it increasingly difficult to justify within the EU legal order.

In response to domestic pressures and European Commission oversight,[576] Slovakia undertook comprehensive reforms, most notably through amendments to the Foreign Exchange Act,[577] abolishing discriminatory criteria and liberalising the

[572] Szilágyi and Szinek Csütörtöki, 2022, pp. 281–282.
[573] But also, other newly acceded Member States of the European Union.
[574] See part II, Chapter 3, subchapter 3. 3. 4. of the thesis.
[575] Szilágyi and Szinek Csütörtöki, 2022, pp. 280–281.
[576] See the press release of the European Commission: 'Financial services: Commission requests Bulgaria, Hungary, Latvia, Lithuania and Slovakia to comply with EU rules on the acquisition of agricultural land'. Available at the website of the European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1827 (Accessed: 14 January 2021)
[577] See Act No. 202/1995 Coll. on the Foreign Exchange Act, para. 19a: *"A foreigner can acquire ownership of real estate in the country if there are no restrictions on the acquisition of such property in special laws."*

agricultural market for both EU and third-country nationals, thereby aligning its legal framework with EU obligations.[578] Concurrently, the Act on Land Acquisition was enacted to mitigate speculative land acquisition while preserving the social function of agricultural land. The mentioned act introduced a mandatory pre-sale notification and competitive bidding process, requiring registration with the Ministry of Agriculture and public announcement at the municipal level. A tiered preference system prioritised purchasers with established local residence and agricultural experience, followed by neighbouring municipalities, and ultimately national-level purchasers. In the absence of an eligible purchaser, transfers were permissible to long-term Slovak residents or citizens within a six-month period. All transactions remained subject to district office oversight to ensure statutory compliance.[579]

Despite its ostensibly protective objectives, the Act on Land Acquisition became the focal point of widespread political and legal contention. Several of its provisions faced sustained criticism from both professional and political stakeholders, ultimately resulting in a constitutional challenge. In its landmark judgment,[580] the Constitutional Court of the Slovak Republic[581] held that the restrictive provisions were incompatible with constitutional guarantees of property rights, as they disproportionately limited the freedoms of both sellers and prospective purchasers.[582] This decision triggered a fundamental shift in the legal regime governing land ownership. The legislator subsequently adopted a markedly liberal framework, allowing virtually any natural or legal person—regardless of nationality—to acquire ownership of agricultural land, subject only to the condition of reciprocity with the purchaser's home state. As mentioned earlier, this reciprocity requirement, however, did not apply to succession, nor to nationals of EU Member States, the EEA, Switzerland, or other states bound to Slovakia by international treaty.[583]

Subsequent regulatory developments reflected both the persistence of national priorities in land policy issues and the increasing need to adapt legal mechanisms to address ongoing challenges such as land fragmentation, generational renewal in

[578] Lazíková, Bandlerová and Lazíková, 2020, p. 100.
[579] For a detailed overview on the legislation previously in force, see, for example Kollár, 2019.; Szilágyi and Szinek Csütörtöki, 2022, p. 281.; Strapáč, 2015, p. 15.; Szinek Csütörtöki, 2021a, pp. 160–177.
[580] Decision of the Constitutional Court of the Slovak Republic, no. PL. ÚS 20/2014, p. 1 and 2.
[581] Szinek Csütörtöki, 2022a, pp. 126–143.
[582] For a detailed subscription of the case, see Szinek Csütörtöki, 2022b, pp. 126–143.
[583] Szilágyi and Szinek Csütörtöki, 2022, pp. 272–279.

agriculture, and speculative acquisition. In October 2020, the Slovak Ministry of Agriculture and Rural Development introduced a legislative proposal that aimed to amend the Act on Land Acquisition further, invoking an abbreviated legislative procedure.[584] Submitted for inter-ministerial consultation, the draft legislation contained two major innovations:[585] the codification of pre-emption rights in land transactions and the establishment of quantitative limits on the acquisition of agricultural land.[586]

Although presented mechanisms to safeguard public interest and ensure equitable access to land, measures provoked significant controversy, particularly regarding their constitutional compatibility.[587] The Slovak Chamber of Agriculture and other stakeholders criticised the proposals for failing to address the persistent problem of unknown or unidentifiable landowners, which hampers the functioning of the land registration system and raises questions about the enforceability and hierarchy of pre-emption rights, especially where ownership is fragmented or legally indeterminate.[588] Further criticism concerned the neglect of young and small-scale farmers, who risk exclusion from land markets except through inheritance,[589] and the potential or widespread legal disputes where statutory pre-emption rights conflict with existing contracts.[590]

The Chamber also advocated differentiated acquisition limits, proposing a 50% increase for registered animal husbandry operators and recommending that the Slovak Land Fund lease land of uncertain ownership exclusively to Slovak nationals or legal persons ultimately controlled by Slovak citizens. Despite these concerns, the legislative initiative has remained dormant, leaving the future trajectory of Slovak land law uncertain.[591]

Adding a further layer of complexity to the regional issues of land acquisition was the Hungarian government's attempt to establish the so-called Private Capital Fund for Arable Land in July 2021. This initiative, formalised through a government

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[584] The proposal and the whole documentation were published on the Slov-Lex, the legislative and information portal of the Ministry of Justice of the Slovak Republic. The entire package is available in Slovak at:
https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2020-504 (Accessed: 10 May 2025)
[585] Szinek Csütörtöki, 2021a, pp. 160–177.
[586] Csirszki, Szinek Csütörtöki and Zombory, 2021, p. 38.
[587] Szinek Csütörtöki, 2021a, pp. 160–177.
[588] Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 38–39.
[589] Dirgasová and Lazíková, 2017, p. 372.
[590] Szinek Csütörtöki, 2021a, footnote no. 76.
[591] Ibid., 2021, pp. 160–177.

resolution[592] published in the Hungarian Official Gazette,[593] aimed to facilitate the acquisition of arable land across Central and Eastern Europe. The fund was to be capitalised at EUR 400 million, 70 % percent of which would be financed through the Hungarian central budget. The Hungarian Minister of Foreign Affairs and Trade was designated to oversee the establishment and operation of the fund, in cooperation with the Hungarian Export-Import Bank Zrt., which would also be responsible for selecting the fund's manager.[594]

The explicit objective of the fund was to support the regional expansion of Hungarian agricultural enterprises by creating the legal and financial infrastructure necessary to secure access to foreign agricultural land.[595] Unsurprisingly, this announcement elicited strong opposition from the Slovak government, which viewed the initiative as a direct challenge to its national sovereignty over land resources. The underlying concern was not merely economic, but also political: the acquisition of Slovak agricultural land by a fund explicitly supported and subsidised by a foreign government[596] raised significant questions about the adequacy of Slovakia's legal safeguards for agricultural land and rekindled longstanding anxieties over foreign ownership.[597]

The response was immediate and pronounced. Slovak authorities voiced their objection not only to the potential loss of control over agricultural land but also to the symbolic implications of a neighbouring state actively financing land acquisitions within Slovak territory. The episode highlighted the fragility of the prevailing legal framework and the unresolved tensions between liberalised market access, national sovereignty, and the socio-political significance of land. Confronted with sustained pressure and widespread criticism, the Hungarian government ultimately abandoned the initiative; nevertheless, the controversy left a lasting mark on the regional discourse regarding agricultural land governance.[598]

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[592] Government Resolution No. 1484/2021. (VII. 16.) on the Establishment of the Private Capital Fund for Arable Land
[593] See no. 135 of the year 2021.
[594] Government Resolution No. 1484/2021. (VII. 16.) on the Establishment of the Private Capital Fund for Arable Land, point 2.
[595] Ibid., point 3.
[596] It is worth noting, however, that Western investors—such as those from Denmark, the Netherlands, the Czech Republic, Germany, Austria, and Belgium—have been successfully investing in various types of land in Slovakia for years. In connection with this, see Pavlovič, 2021.
[597] Szinek Csütörtöki, 2022b, pp. 157–158.
[598] Ibid., p. 165.

4. 4. 2. Agricultural holding

In Slovakia, there is currently no specific legislation governing the acquisition of ownership of agricultural holdings.

4. 4. 3. Acquisition of agricultural land and holding by inheritance

4. 4. 3. 1. Agricultural land

In the Slovak Republic, the inheritance of agricultural land is not governed by a separate act[599] but it falls under the general legal regime[600] established by the Civil Code, which provides a unified framework for succession[601] and governs the transfer of agricultural land in accordance with the general principles of succession law.

Although there are no rules exclusively governing the inheritance of agricultural land in the Slovak Republic, specific provisions indirectly affect such inheritance by imposing constraints on the fragmentation of land. In particular, Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, which establishes a prohibition against issuing inheritance decisions that would result in the fragmentation of land situated outside the built-up area of a municipality,[602] if such division would create parcels smaller than the legally prescribed minimum sizes. Specifically, the act prohibits the division of agricultural land into parcels smaller than 3,000 m² and forest land into parcels smaller than 5,000 m².[603]

Further restrictions stem from Act No. 97/2013 Coll. on Land Associations, which regulates the management and ownership of common property, particularly land held in undivided co-ownership. According to this act, any transfer of ownership of a share in such common property is invalid if it results in a co-ownership interest that corresponds to less than 2,000 m² of land. This rule applies not only to transfers *inter vivos*, such as sales or donations, but also to acquisitions *mortis causa* through inheritance. Even the consolidation of multiple inheritance claims into a single share

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[599] Regarding the detailed rules on the succession of agricultural land in the Slovak Republic, see Szinek Csütörtöki, 2023, pp. 91–104. See also Szilágyi and Szinek Csütörtöki, 2022, p. 271.
[600] Civil Code, Part 7.
[601] Ibid., paras. 460–487.
[602] Except for vineyards. On the exception, see Martvoň, 2021, p. 104.
[603] Act No. 180/1995 Coll. on Certain Arrangements for the Holding of Land, para. 23(1). It should be noted that the amendment has been in force since 1 September 2022. Until 31 August 2022, the limit—as regards the agricultural land—was 2000 m².

cannot result in a portion that is below this statutory threshold. These limitations are of great practical importance, as they directly affect the distribution of agricultural land in inheritance proceedings and may necessitate the co-ownership of heirs or the compensation of co-heirs in lieu of physical land division.[604]

From a fiscal perspective, Slovakia does not impose an inheritance tax, as such taxation was abolished with effect from 1 January 2004. Furthermore, in accordance with Act No. 595/2003 Coll. on Income Tax, income derived from the sale of immovable property acquired by inheritance in direct lineal succession (e.g., from parents) is exempt from personal income tax, provided the sale occurs after the expiration of a five-year holding period measured from the date of acquisition of ownership or co-ownership by the deceased.[605]

4. 4. 3. 2. Agricultural holding

In Slovakia, similarly to the inheritance of agricultural land, no special rules exist for the inheritance of agricultural holdings.

4. 4. 4. Acquisition of shares in a company that owns agricultural land

The acquisition of shares in companies owning agricultural land is not subject to specific or additional legal restrictions beyond the general rules applicable in the country.

4. 4. 5. Acquisition of other rights

In this context, one important point should be noted. It should be recalled that, since Slovakia does not have a uniform Land Code, the legal framework governing the lease of agricultural land is set out in several sources of law. These include the Civil Code, Act No. 229/1991 Coll. on the Arrangement of Ownership of Agricultural Land and Other Agricultural Property, as amended, and Act No. 504/2003 Coll. on the Lease of Agricultural Land, Agricultural Holdings and Forest Land, as amended. The Civil

[604] Act No. 97/2013 Coll. on Land Associations, para. 2(3)
[605] Act No. 595/2003 Coll. on Income Tax, para. 9(1) point b)

Code contains the general provisions on leases, which apply only where no specific regulation exists in other legislation.[606]

5. Summary

After presenting the national land laws of the countries examined in detail, the following conclusions are drawn in a manner that preserves the established structure.

A) With respect to the legal sources governing agricultural land, it is essential to identify the laws in each country that are most relevant to the topic of this thesis. Not all sources will be cited—only those of particular importance. Moreover, the *expressis verbis* provisions concerning agricultural land and holding contained in the highest legal sources of each country are summarised in the table below.[607]

Aspect	Czech Republic	Hungary	Poland	Slovakia
Constitutional level	Constitution of the Czech Republic Charter of Fundamental Rights and Freedoms No *expressis verbis* provisions	Fundamental Law of Hungary Article P) Article 38	Constitution of the Republic of Poland of 2 April 1997 Article 23	Constitution of the Slovak Republic Article 44 (4) and (5)
Level of acts	Agriculture Land Fund Act Agriculture Act Civil Code *(lex specialis)*	Land Transfer Act Implementation Land Act Family Farms Act Co-ownership Land Act Farm Transfer Act Civil Code *(lex specialis)*	ASAS AAREF AMARE Civil Code *(lex specialis)*	Act on Land Acquisition Civil Code *(lex specialis)*

table no. 1.

Sources of land law

[606] Lazíková, Bandlerová and Palšová, 2017, pp. 101–102.

[607] Cf. Szinek Csütörtöki, 2021b, pp. 83–87.

Regarding constitutional level, Hungary and Slovakia provide the strongest constitutional recognition and protection of agricultural land.

Hungary constitutionalises the protection of agricultural land within its Fundamental Law,[608] recognising this resource as part of the nation's common heritage.[609] Its significance lies in establishing, through cardinal acts, the foundational rules of Hungarian land law, including the conditions and limitations governing the transfer of agricultural lands and holdings. Moreover, the Fundamental Law[610] grants property rights while simultaneously authorising legislative restrictions on acquisition and use to protect national natural resources.[611] Additionally, under Article 38 of the Fundamental Law, property held by the state and local authorities is considered national property.

Pursuant to Slovakia's 2017 constitutional amendment, agricultural land is expressly classified as a non-renewable natural resource. The Slovak Constitution imposes a duty on the state to ensure its cautious use, a mandate operationalised through the Act on Land Acquisition and other legislation.[612]

Poland's 1997 Constitution acknowledges property rights and economic freedoms, but its explicit treatment of agricultural land is largely indirect, most notably through Article 23, which recognises family farms as the basis of the agricultural system. This norm is operationalised through acts such as the ASAS, Civil Code, AAREF, and AMARE, which impose acquisition restrictions, pre-emption rights, and eligibility criteria, while remaining consistent with EU principles.

The Czech Republic, by contrast, provides no specific constitutional protection. Agricultural land is governed by 'ordinary' legislation—principally the Civil Code, Agricultural Land Fund Act, and Agriculture Act.

When it comes to the level of acts, Hungary stands out with a highly integrated framework; Slovakia and the Czech Republic operates through a fragmented system; while Poland through a mix of general and special laws.

[608] It does not explicitly use the term 'agricultural land' but 'arable land'.
[609] Fundamental Law of Hungary, Article P)
[610] See Articles XIII and P) of Fundamental Law of Hungary
[611] These constitutional provisions are implemented through cardinal acts, notably the Land Transfer Act, the Family Farms Act, and the Co-ownership Land Act
[612] Constitution of the Slovak Republic, Article 44 (4) and (5)

B) The table below presents an overview of how the concept of agricultural land is evolving in the countries examined in this thesis.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Denomination	agricultural land	agricultural and forest land	agricultural real estate agricultural land	agricultural land
Definition	✓	✓	✓	✓
Legal basis	Agricultural Land Fund Act para. 1(2)	Land Transfer Act para. 5 point 17.	ASAS article 2 point 1. Civil Code article 46[1]	Act on the Protection and Use of Agricultural Land para. 2(b) Act on Land Acquisition para. 2(1)

table no. 2.

Concept of agricultural land

As observed, all countries analysed in this thesis employ the term 'agricultural land' and provide a corresponding legal definition. Nevertheless, the following points merit particular attention.

It can be stated that in the Czech Republic, agricultural land is defined and protected through legislation that views it both as a productive asset and an element of environmental value. The relevant legal framework includes not only arable land but also orchards, vineyards, and grasslands, with ancillary non-cultivated land included where it serves agricultural functions.[613]

Hungarian law goes further by embedding the significance of agricultural land within the constitution itself,[614] treating it as part of the nation's common heritage and regulating transfers through cardinal acts. The Land Transfer Act defines agricultural and forestry land broadly, with entitlements extending to ownership, possession, and use.

[613] Vomáčka and Leichmann, 2022, p. 129.
[614] Although using the term 'arable land'.

In Poland, the legislator distinguishes between the concepts of agricultural real estate and agricultural land. Agricultural real estate is defined primarily under private law and encompasses land intended for agricultural production. In contrast, agricultural land is treated as a public law category, subject to specific regulations governing acquisition and ownership.[615]

In Slovak law, agricultural land is a central legal concept, primarily defined by Act No. 220/2004 Coll., covering arable land, vineyards, orchards, gardens, permanent grasslands, and agroforestry areas. The Act on Land Acquisition further elaborates the term, including land previously developed for agricultural purposes, while also specifying exceptions, such as small plots under 2,000 m², gardens, municipal built-up areas, non-agricultural land, and plots linked to adjacent constructions.[616]

C) The legal regulation of agricultural holdings within the Visegrád countries varies.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Recognition	—	✓	✓	✓
Definition	✓	✓	✓	✓
Types	family farm	personal farm family farm farm	agricultural farm family farm	family enterprise family farm
Components	—	✓	✓	—

table no. 3

Concept of agricultural holding and its subtypes

Across the V4, Poland, Hungary and Slovakia provide explicit definitions and requirements of agricultural holdings or its subtypes.

Currently, only Czech law does not formally recognise agricultural holdings as a separate legal category, nor does it define or their specific components.[617] Although it has no formal legal categories, a 2025 amendment proposed defining family farms

[615] Ledwoń, 2022, p. 201.
[616] Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land, para. 2(b), Act on Land Acquisition, para. 2.
[617] Szilágyi and Szinek Csütörtöki, 2022, p. 351.

up to 1,000 hectares. Importantly, the mentioned amendment was signed by President *Pavel* on 21 August 2025. Thus, family farms may be established from 1 January 2026. Hungary distinguishes personal farms, family farms, and farms under the Farm Transfer Act; Poland recognises agricultural and family farms—the latter also constitutionally[618]—not just under the Civil Code[619] or the ASAS; and Slovakia formally defines family farms and family enterprises,[620] with operations regulated primarily by general civil law.

D) Regarding the acquisition of agricultural land, two contrasting models emerge within the V4 countries: a liberal approach, and a restrictive approach.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Acquirer	domestic and foreign natural and legal persons	natural persons (exceptions – legal persons)	domestic and foreign natural and legal persons	domestic and foreign natural and legal persons
Foreign ownership restrictions	principle of reciprocity	legal persons generally prohibited	non-EU/EEA foreigners require special permits	principle of reciprocity
Acquisition caps	—	land acquisition limit (300 ha) land possession limit (1,200–1,800 ha)	land acquisition limit (300 ha)	—

table no. 4

Acquisition of ownership of agricultural lands

The research shows that the Czech Republic and Slovakia follow a liberal model: after EU accession, most restrictions on foreign ownership were lifted, allowing both domestic and foreign natural and legal persons to acquire land. The only significant limitation is reciprocity, excluding nationals of states that do not grant equivalent rights to Czech or Slovak citizens, while EU, EEA, Swiss, and treaty-state nationals remain exempt. A 2024 Czech amendment reaffirmed reciprocity and reinforced

[618] 1997 Constitution, Article 23
[619] Civil Code, Article 55^3
[620] Act No. 112/2018 Coll. on Social Economy and Social Enterprises, para. 15a., especially 15a(6)

ecological and food-security considerations, but neither state imposes substantive size limits, cultivation duties, or categorical bans on legal persons.[621]

Poland and Hungary, by contrast, apply restrictive regimes. In Poland, the 2016 ASAS reform entrenched the primacy of the individual farmer, imposing a 300-hectare limit, a five-year personal cultivation duty, and broad NASC pre-emption and supervisory powers; foreigners from outside the EU require ministerial permits. Hungary goes further: the Land Transfer Act generally prohibits legal persons from acquiring agricultural land, save for narrow exceptions, and restricts natural persons—domestic or EU—to 300 hectares under the acquisition cap (land acquisition limit) and 1,200–1,800 hectares under land possession limit.[622]

Thus, while Czech and Slovak law reflects a market-oriented approach moderated only by reciprocity, Poland and Hungary prioritise the protection of family farming, the prevention of excessive land concentration, and safeguards against speculation, underscoring the tension between EU free movement principles and national assertions of sovereignty over agricultural land as a strategic resource.

E) With regard to the acquisition of agricultural land and holdings through inheritance, the following points should be highlighted. First, the table below summarises the acquisition of agricultural land through inheritance.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Special rules	—	✓	✓	—
Legal framework	Civil Code	Land Transfer Act Co-ownership Land Act Farm Transfer Act	Civil Code ASAS	Civil Code
Testamentary disposition	—	✓	✓	—
Intestate succession	—	✓ (partial)	✓	—

table no. 5

Acquisition of ownership of agricultural lands by inheritance

[621] Regarding the Slovak legislation, see Act on Land Acquisition, para. 7. Regarding the Czech legislation, see Agricultural Land Fund Act, para. 3d.

[622] Regarding the Hungarian legislation, see the Land Transfer Act, para. 16(2) and (3). Regarding the Polish legislation, see ASAS, Article 5 para. 1.

In the Czech Republic, agricultural land inheritance is governed by the Civil Code without a distinct regime, applying general succession rules subject to anti-fragmentation concerns.[623]

In Hungary, the Land Transfer Act and the Co-ownership Land Act impose rules to prevent undivided co-ownership, requiring consolidation or transfer within five years, while testamentary dispositions face quantitative limits, family relationship requirements, and administrative approval.[624] Poland, after the 2001 Constitutional Tribunal ruling, applies general succession law but subjects inherited land to NASC pre-emption rights, with obligations to farm for five years applying only to acquisitions *inter vivos*.[625] In Slovakia, inheritance is regulated by the Civil Code, supplemented by legislation prohibiting excessive fragmentation and limiting co-ownership shares.[626]

Regarding the second issue, i.e., inheritance of agricultural holdings, the table below provides a summary.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Special rules	—	✓	✓	—
Legal framework	Civil Code	—	Civil Code ASAS	Civil Code
Testamentary disposition	—	—	✓	—
Intestate succession	—	—	✓	—

table no. 6

Acquisition of ownership of agricultural holdings by inheritance

[623] See Chapter 1, subchapter 1. 4. 3. 1. of this part of the thesis.
[624] See Chapter 2, subchapter 2. 4. 3. 1. of this part of the thesis.
[625] See Chapter 3, subchapter 3. 4. 3. 1. of this part of the thesis.
[626] See Chapter 4, subchapter 4. 4. 3. 1. of this part of the thesis.

It can be stated that neither the Czech Republic nor Slovakia has formulated such special rules.

In Hungary, although the Land Transfer Act contains detailed provisions governing the succession of agricultural land, there are no specific rules for the inheritance of agricultural holdings as distinct legal entities, meaning that such cases fall under the general provisions of the Civil Code. In contrast, Polish law expressly formulates some *lex specialis* rules regarding the inheritance of agricultural holdings.

F) When examining the specific rules for acquiring shares in companies that already own agricultural land in the countries under examination, the table below provides a summary.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Special rules	—	—	NASC's pre-emption rights authorisation by the ministry	—
Framework	—	—	AAREF ASAS	—

table no. 7

Acquisition of shares in companies owning agricultural land

It can be stated that in the Czech Republic it is generally unrestricted, with no special conditions for domestic or foreign legal persons. By contrast, Hungary prohibits land acquisition by legal persons (with a few exceptions), so no special rules exist for the acquisition of shares in companies that own agricultural land. Polish law generally imposes no personal or professional requirements on shareholders in companies owning agricultural land. Restrictions arise chiefly under the AAREF, which requires ministerial consent for acquisitions by non-EEA or non-Swiss investors that would result in foreign control of companies holding Polish real estate. The ASAS, in turn, grants the NASC a pre-emption right over shares in companies owning at least five hectares of agricultural land, subject to specified exceptions, thereby ensuring state

supervision of agricultural property ownership.[627] In Slovakia, such acquisitions are not subject to specific or additional legal restrictions beyond the general rules applicable to share transfers.

G) Turning to the acquisition of other rights, the table below aims to summarise the most important information regarding the issue.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Agricultural land	acquisition of limited rights *in rem*: — acquirement of use: —	acquisition of limited rights *in rem*: ✓ acquirement of use: ✓	acquisition of limited rights *in rem*: — acquirement of use: —	acquisition of limited rights *in rem*: — acquirement of use: ✓
Agricultural holding	acquisition of limited rights *in rem*: — acquirement of use: —	acquisition of limited rights *in rem*: — acquirement of use: ✓	acquisition of limited rights *in rem*: — acquirement of use: ✓	acquisition of limited rights *in rem*: — acquirement of use: ✓

table no. 8

Acquisition of other rights

In the Czech Republic, there are no special rules concerning limited rights *in rem* or rights of use over agricultural land; these matters are governed exclusively by general civil law.[628] In Slovakia, leasing of agricultural land is subject to several specific acts, with the general lease provisions of the Civil Code applying only where no special regulation exists.[629] In Poland, the legislator provides detailed regulation of perpetual usufruct and recognises other categories of limited rights *in rem*, but without a *lex specialis* for agricultural land.[630] In Hungary, land law imposes restrictions not only on rights *in rem*, such as usufruct and use *in rem*, but also on land possession under any valid legal title, establishing one of the most restrictive regimes in the region.[631]

[627] For more information, see Chapter 3, subchapter 3. 4. 4. of this part of the thesis.
[628] Szilágyi and Szinek Csütörtöki, 2022, p. 345.
[629] Ibid.
[630] Zombory, 2020, p. 302.
[631] Land Transfer Act, para. 16 (8)

With regard to the agricultural holdings, it should be noted that the Hungarian legislators adopted specific provisions in this area. Hungarian land law extends beyond the acquisition of agricultural land to encompass the acquisition of agricultural holdings, covering various modes of acquiring ownership, certain limited rights *in rem*, and a narrower form of the so-called right of use *in rem*, as well as other means of use, such as lease agreements.[632] Slovakia does not have a separate, comprehensive law exclusively for agricultural holdings; leases of holdings are treated under Act 504/2003 Coll., supported by Civil Code provisions.

I also carried out a comparative analysis based on another criterion—specifically, the Commission Interpretative Communication.[633] In this document, the European Commission examined measures adopted by Member States, focusing mainly on intra-EU issues. The document outlines the benefits and challenges of foreign investment in farmland, summarises the relevant EU legal framework and CJEU case law, and explains how Member States may pursue legitimate public interests within the limits of EU law. Its purpose is to foster discussion on foreign investment in agricultural land, support Member States in revising their legislation, and promote the exchange of best practices in this complex area. It also provides guidance on regulating land acquisition, highlighting key features of national land market laws. Drawing from CJEU case law, the Commission offers general recommendations for aligning national regulations with EU law while balancing rural capital needs and policy objectives.[634]

The following table presents the situation in the countries examined, based on the Commission's document. Detailed discussion of each measure follows in the subsequent sections.

[632] Szilágyi and Szinek Csütörtöki, 2022, p. 351–352.
[633] Cf. Varga, 2022b, pp. 202–204.
[634] Commission Interpretative Communication, 2017.

Aspect	Czech Republic	Hungary	Poland	Slovakia
prior authorisation	—	✓	✓	—
pre-emption rights and rights to first refusal	✓	✓	✓	—
price controls	—	—	✓	—
self-farming obligations	—	✓	✓	—
qualifications in farming	—	✓	✓	—
residence requirements	—	—	✓	—
prohibition on selling to legal persons	—	✓	✓	—
acquisition caps	—	✓	✓	—
privileges in favour of local acquirers	—	✓	✓	—
condition of reciprocity	—	—	—	—

table no. 9

National measures – Commission Interpretative Communication

A) prior authorisation

As indicated in the table, a prior authorisation mechanism exists only in Hungary and Poland.

In Hungary, prior authorisation applies not only to contracts transferring ownership but also to acquisitions through other legal mechanisms and agreements granting third-party use. The exercise of pre-emption and pre-lease rights is closely integrated into these procedures, forming a core element of the land approval process.[635] In Poland, acquiring agricultural land typically requires prior approval from

[635] Szilágyi, 2022, subchapter 2.1.

the Director-General of the NASC unless the buyer is an individual farmer or another entity explicitly exempted by law. Nationals of the EEA and the Swiss Confederation are generally exempt from additional restrictions if they meet the requirements of the ASAS, while non-EEA and non-Swiss buyers must obtain a special permit under the AAREF.[636]

B) pre-emption rights and rights to first refusal

In this section, attention should be given to two key legal concepts: the right of pre-emption and the right of pre-lease, because the research revealed that in one of the countries under examination, legislation covers not only pre-emption but also pre-lease rights. Both may arise from law or contractual agreement. While pre-emption generally concerns the sale and acquisition of ownership, pre-lease pertains specifically to leasing agricultural land.[637]

Among the examined countries, Slovakia is the only one where no provisions exist regarding farmers' pre-emption rights. In Czech law, such rights are granted exclusively to the State.[638] In Poland, the pre-emption right belongs to the lessee of agricultural land; if this right is not exercised, it passes to the NASC acting for the State Treasury.[639] In Hungary, compared to the general rules of civil law, the Land Transfer Act introduces special pre-emption and pre-lease rights related to agricultural land transactions—specifically, for acquisition by sale or lease. In addition, Hungarian legislation contains further detailed provisions on these rights in separate acts and establishes a clear hierarchy for their application.[640]

C) price controls

Among the analysed countries, only Poland has introduced price regulation mechanisms for the acquisition of agricultural land. Generally, land may be purchased by individual farmers or by entities expressly authorised under the ASAS. Other buyers must obtain prior approval from the Director-General of the NASC, after which the sale can be announced and offers submitted. The Polish legislator has also adopted detailed rules concerning land prices. Notably, if the agreed price of a property

[636] Ledwoń, 2022, p. 214.
[637] See also Szilágyi and Szinek Csütörtöki, 2022, p. 357.
[638] Vomáčka and Leichmann, 2022, subchapter 3.3.
[639] ASAS, Article 3.
[640] Szilágyi and and Szinek Csütörtöki, 2022, p. 358. See also Land Transfer Act, para. 35(3)–(4)

significantly deviates from its market value, the person entitled to exercise the pre-emption right may request a court review within 14 days, allowing the court to determine the correct price. These and related measures enable effective price control in Polish land transactions.[641] In contrast, Hungarian land law does not provide a direct instrument for price control, although land prices[642] are indirectly considered within the broader regulatory framework.[643]

D) self-farming obligations

The self-farming obligation appears in the land laws of Poland and Hungary. In Poland, owners of agricultural holdings are generally required to personally manage their farms, though certain exceptions apply.[644] In Hungary, the obligation is not defined as a single rule but rather as a set of general principles and exceptions governing both ownership transfer and land-use contracts, reflecting a more complex and flexible regulatory system.[645]

E) qualifications in farming

Only Polish and Hungarian land laws impose qualification requirements for farming. In Hungary, with few exceptions, only natural persons may acquire ownership of agricultural land, reflecting the legislator's aim to ensure that land is cultivated by individuals with appropriate agricultural qualifications. This requirement, however, may be substituted with sufficient professional experience.[646] In Poland, the concept of an individual farmer likewise includes the obligation to possess relevant agricultural education or qualifications.[647]

[641] ASAS, Article 2 para. 4c point 1.
[642] See Fekete and Varga, 2024, pp. 79–98.
[643] Szilágyi, 2022, subchapter 2.3.
[644] Ledwoń, 2022, chapter 4.
[645] Szilágyi, 2022, subchapter 2.4.
[646] Land Transfer Act, paras. 5(7), 10–12.
[647] ASAS, Article 6(1)

F) residence requirements

Among the countries examined, only Poland maintains a residence requirement for acquiring ownership of agricultural land. Under the ASAS,[648] ownership may, as a rule, be acquired only by individual farmers. According to Article 6(1) of the ASAS, this status is granted to persons who have resided for at least five years in the municipality where the land is located. Thus, Polish law explicitly includes residence as a general condition for land acquisition. While Hungarian law does not impose a formal residence condition for acquiring agricultural land, local residence and personal attachment are still advantageous when exercising pre-emption or pre-lease rights.[649]

G) prohibition on selling to legal persons

Both Polish and Hungarian legislation contain relevant provisions regarding the mentioned issue. In Poland, the ASAS generally restricts the acquisition of agricultural land by legal persons, although the law does not impose an explicit prohibition. Legal persons may still acquire land if they meet certain statutory conditions set out in the ASAS.[650] In Hungary, the situation is more restrictive. A long-standing feature of Hungarian land law is the prohibition—subject to limited exceptions—on the sale of agricultural land to legal persons. Earlier regulations in force for two decades also maintained this restriction, though the scope of exceptions was frequently amended depending on the political orientation of the government. Under the current Land Transfer Act, only a narrow group of legal persons is permitted to acquire ownership of agricultural land.[651]

H) acquisition caps

Only the Polish and Hungarian legislators have introduced such restrictions. In Poland, the law sets a land acquisition limit, defining the maximum area of agricultural land that an individual or legal persons may own.[652] Hungary, however, applies a dual system: a land acquisition limit, which restricts property rights and certain limited rights *in rem*, and a land possession limit, which applies to all land held under any valid legal title, including ownership, use, and other rights *in rem*. These limits do not

[648] Ibid., Article 2a(1)
[649] Szilágyi, 2022, subchapter 2.6.
[650] ASAS, Articles 2a(3)–(4) and 8(2)
[651] Land Transfer Act, para. 6(1), 9(1) point c)
[652] ASAS, Article 2a para. 2. See also AMARE, Article 28a para. 1.

apply to specific legal persons authorised to own agricultural land, nor to public or higher education institutions in the agricultural sector or to state-owned forestry enterprises.[653]

I) privileges in favour of local acquirers

In Poland, national land law grants preference to local acquirers by defining the criteria for individual farmer status, which also affects the eligibility of other organisations to acquire agricultural land.[654] In Hungary, the legislation provides resident farmers with advantages in acquiring land through barter and gives them a preferential position in both pre-emption and pre-lease procedures. Additionally, resident legal persons benefit from a favourable position in the pre-lease order under Hungarian land law.[655]

J) condition of reciprocity

As the focus here is on intra-EU issues, reciprocity is irrelevant in this context.[656]

After undertaking the analysis, I have formulated a set of *de lege ferenda* proposals which, in my view, merit consideration in the reform of land law legislation in the V4 countries.

In evaluating potential reforms in connection with the Polish land law, especially regarding the ASAS, several aspects emerge as particularly significant. The overall objective should be to enhance the clarity, coherence, and functionality of the legal framework, which at present is characterised by overlapping definitions, redundant provisions, and sanctions that in certain cases appear disproportionate. As also noted by *Strzała*, a primary step in this direction would be the simplification of the structure of the ASAS and its closer alignment with established definitions in the Civil Code. For example, the definition of 'agricultural real estate' in the ASAS should correspond directly to the meaning provided in the Civil Code,[657] while issues relating to spatial development plans would be more appropriately regulated in other provisions. Similarly, the definition of 'agricultural holding' in ASAS should

[653] Ibid., paras. 16(7) and 16(8)
[654] See ASAS, Article 2(1) and Articles 6–9.
[655] Land Transfer Act, paras. 12 (1) point b), 18. and 45–46.
[656] This principle applies in Slovakia and the Czech Republic, excluding nationals from third countries that do not provide equivalent rights, while EU, EEA, Swiss, and treaty-state nationals are exempt.
[657] See ASAS, Article 2(1) and Civil Code, Article 46^1

primarily refer to the Civil Code, with requirements concerning minimum land area placed in separate provisions addressing the scope of the ASAS.[658] Certain technical amendments would also improve internal consistency: the reference to 'agricultural holding' in ASAS[659] is unnecessary since the provision concerns agricultural real estate alone, while the citation of the ASAS in the Civil Code[660] is redundant, given that the situation in question is already covered by the ASAS itself.[661]

Beyond these structural matters, attention must also be directed to substantive reforms. The rules on acquisitive prescription, which allow ownership to be acquired through long-term, peaceful, and uninterrupted possession, would benefit from refinement. In order to preserve the agricultural character of the land and ensure consistency with ASAS[662] and the Civil Code,[663] acquisitive prescription should apply only to agricultural land exceeding one hectare. Placing this minimum threshold within the Civil Code[664] itself appears appropriate, since the same provision also introduces the maximum surface for acquisitive prescription of agricultural land. In addition, inheritance law requires greater coherence, particularly in the treatment of ordinary and specific legacies. In its present form, Article 2a(3)(2) ASAS excludes ordinary legacies from its scope, thereby imposing unnecessary restrictions that limit acquisition of agricultural land through inheritance to individual farmers only. Extending the provision to cover ordinary legacies would ensure equal treatment and align succession rules with fundamental principles of fairness. Finally, the current sanction of automatic nullity for contracts concluded in violation of the ASAS appears excessively severe and insufficiently proportionate. A more differentiated sanctioning system would improve legal certainty while avoiding outcomes that are unnecessarily punitive or economically disruptive.[665]

Similar concerns emerge in Hungary, where the regulation of agricultural holdings remains conceptually uncertain. The legislator, preparatory works, and scholarship present divergent interpretations, describing holdings alternately as management structures, production communities, forms of operation, or sets of

[658] ASAS, Article 2(2) and Civil Code, Article 55^3 e)
[659] ASAS, Article 4(1)(4)(a)
[660] Civil Code, Article 210(2) e)
[661] Cf. Strzała, 2024, pp. 166–168.; Bender, 2019a; Bender, 2019b; Bender, 2020.
[662] In particular, ASAS, Article 2a(3)(1)(a)
[663] In particular, Civil Code, Article 1058 e)
[664] Civil Code, Article 172(3)
[665] See Strzała, 2024, pp. 166–168.

assets.[666] This mirrors the Polish situation, where multiple definitions, categories of holdings coexist.[667] Both jurisdictions would benefit from the introduction of a clear and uniform definition of agricultural land and agricultural holdings, with the possibility of identifying certain subcategories such as family farms. Such harmonisation would provide a coherent basis for legislation and allow the integration of land transfer rules within a comprehensive holding framework. Following earlier scholarly proposals, I agree with the statements found in the scientific literature that the establishment of a comprehensive regime for the transfer of agricultural holdings, including succession, is necessary, within which rules on land transfer and inheritance would be situated in their proper context.[668]

Succession presents a further challenge. The repeal of Poland's special regime in 2001 left only fragmentary provisions, undermining legal certainty. A comprehensive system is needed in which both testamentary and intestate succession of holdings, and of agricultural land as part of them, are regulated by consistent principles. This system should prevent excessive fragmentation of holdings and ensure that succession benefits individuals with the requisite skills and qualifications for agricultural management. In Hungary, particular problems arise from the Co-ownership Land Act, especially regarding intestate succession. *Hornyák* proposed a solution that would be to introduce into the general acquisition rules a clause permitting the Land Transfer Act to apply when co-heirs jointly sell agricultural land, thus reconciling succession with broader property policy, and I fully endorse this proposal.[669]

Extending the analysis to Slovakia and the Czech Republic reveals further parallels and contrasts. Slovakia continues to grapple with the legacies of collectivisation and post-socialist restitution, which left behind fragmented ownership, undivided co-ownership shares, and numerous plots with 'unknown owners'. While the Slovak Land Fund provides mechanisms for administration, the framework remains overly complex and incoherent. Moreover, a codified and uniform definition of agricultural holding would provide legal clarity and help rationalise succession and transfer rules. While some progress has been made by distinguishing subtypes such as family farm and family enterprise, a comprehensive definition of agricultural holding

[666] Hornyák, 2024, p. 118.
[667] Cf. Strzała, 2024, p. 143.
[668] Cf. Hornyák, 2024, pp. 117–118.
[669] Hornyák, 2024, pp. 116–120.

remains missing, and additional rules are needed to regulate its ownership, transfer, and succession effectively. Under the relevant amendment, family enterprise may take the form of a commercial company, cooperative, or a natural person–entrepreneur operating in the business sphere.[670] In all cases, the fundamental criterion is that the entity in question qualifies as an entrepreneur pursuant to the applicable legal definitions. However, the classification of a business as a family enterprise is further conditioned by the specific involvement of members of the same family in both ownership and governance structures, as well as in the distribution of economic benefit derived from the enterprise's activities.[671] In my view, this clarification is expected to accelerate decision-making processes and other related procedures within family-run businesses. Furthermore, the legislator stipulated that a family enterprise engaged in agricultural activities, including fish farming, or involved in the production, processing, and trade of agricultural raw materials and products, shall be regarded as a 'family farm'.[672]

At the same time, Slovak succession law continues to permit excessive land fragmentation, threatening both legal certainty and agricultural efficiency. A more consistent framework, requiring consolidation of holdings or their transfer to qualified farmers, would represent a significant improvement.

The Czech Republic presents a different path. Its legal system has tended towards liberalisation, prioritising property rights over agricultural policy goals. Unlike Hungary or Poland, Czech law lacks a distinct concept of agricultural holding, relying instead on general property and succession rules of the Civil Code supplemented by specific legislation. While this simplicity has advantages, it also leaves unresolved the problems of land fragmentation and continuity of agricultural management. The Czech framework would benefit from a more balanced approach: the introduction of a coherent definition of agricultural holding and measures that protect agricultural land as a public good.

Taken together, the experiences of V4 countries demonstrate that land law remains fragmented, conceptually ambiguous, and at times disproportionately restrictive or permissive. Effective reform must aim at simplification and harmonisation. Clear definitions of term, tailored succession rules designed to prevent

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[670] Act No. 112/2018 Coll. on Social Economy and Social Enterprises, para. 15a.
[671] See Ibid., para. 15a(1) points a) and b)
[672] Para. 15a(6) of the Act No. 112/2018 Coll. on Social Economy and Social Enterprises

fragmentation, and sanctioning mechanisms that balance certainty with fairness are essential. While each jurisdiction faces distinct challenges—Poland with overlapping definitions, Hungary with conceptual ambiguity, Slovakia with unresolved restitutional fragmentation, and the Czech Republic with over-liberalisation—the overarching lesson is that sustainable agricultural policy requires not merely restrictive controls but coherent, functional, and fair legal frameworks. Moreover, it can be confirmed that the first hypothesis is supported, namely that the national land law frameworks of the Visegrád countries adopt distinct approaches to the acquisition, transfer, and inheritance of agricultural land, reflecting each country's legal traditions and policy priorities.

This comparison thus underscores a broader normative point: that the preservation and rational use of agricultural land in the examined countries cannot be secured solely by defensive or prohibitive measures. Rather, it requires legislative clarity, systemic consistency, and carefully proportioned restrictions that both respect property rights and secure the long-term viability of agricultural structures. Without such reforms, the region's land law risks remaining formalistic, fragmented, and poorly adapted to the realities of contemporary agricultural production.

As we have seen, the regulation of agricultural land in the Visegrád countries varies significantly, reflecting each country's legal traditions, political priorities, and socio-economic context. Based on the analysis, it is, in my opinion, practically impossible to develop a unified, optimal model of public-law control over agricultural land transactions in these countries.

For example, the differences in definitions, rules on acquisition and succession, and sanctioning mechanisms are so context-dependent that a common model could not adequately accommodate national legal traditions, economic realities, or cultural considerations. Moreover, the regulation of agricultural land raises issues of sovereignty, as control over land and access to ownership are strategically important for states, and the scope of national decision-making may be constrained by EU law or IIAs.

Therefore, in my view, while *de lege ferenda* proposals can be formulated on the basis of comparative analysis—and I have formulated such proposals—their purpose should not necessarily be to create a unified model. Rather, it should be to improve the internal consistency, transparency, and functionality of national legal frameworks. Ensuring the sustainable use of agricultural land requires not only

restrictive controls but also coherent, well-structured, and proportionate regulation that respects state sovereignty and takes into account the specific circumstances of each country.

PART II: THE LAW OF THE EUROPEAN UNION AND CROSS-BORDER AGRICULTURAL LAND ACQUISITIONS

The European Union has played a key role in international economic cooperation over the past five decades, with the internal market and its four fundamental freedoms[673]—free movement of goods, services, capital, and persons—at its foundation. Among these, the free movement of capital[674] and the freedom of establishment[675] are particularly relevant for this research, especially in the context of acquisition of ownership of agricultural land.

Cross-border land acquisitions are essential to the functioning of the EU's internal market.[676] Restrictions that hinder EU citizens from purchasing property in another Member State risk violating the Treaties and impeding fundamental freedoms. Therefore, any national legislation affecting land ownership must be justified, proportionate, and compatible with EU law.[677]

At this point it should be highlighted that this thesis does not aim to provide an exhaustive list of EU and national laws concerning land legislation. Instead, it focuses on the legal interaction between rules of national land law—often designed to protect domestic interests—and EU integration goals.

Firstly, this part of the thesis outlines the development of EU economic integration, from the Treaty of Rome to the Single European Act, emphasising the European Commission's role in enforcing internal market rules.[678,679] It also considers both the benefits of integration and the regional inequalities that have arisen as a result.

Secondly, it examines the extent of Member States' margin of appreciation in shaping national land law,[680] particularly in light of the free movement of capital and the freedom of establishment. This part also discusses the role of the CJEU and the influence of so-called soft law documents.

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[673] Zlinszky, 2013, pp. 231–246.
[674] In this respect, see TFEU, Articles 63–66.
[675] In this respect, see Ibid., Articles 49–55.
[676] The requirements laid down by the internal market apply not only to the acquisition of land by EU citizens but, as a general rule, also to legal persons; moreover, internal market law applies not only to ownership but also to the use of agricultural land.
[677] Godžirov, 2020, p. 848.
[678] Halmai, 2020, pp. 12–13.
[679] The roles through which the European Commission has contributed to the development of the internal market in this area are discussed in Section 1.1 of this Part of the thesis.
[680] For more on this topic, see Korom, 2014, pp. 445–454.

Thirdly, the thesis analyses infringement proceedings initiated by the European Commission against the Visegrád countries, focusing on 'conflicts' between national land laws and EU legal obligations.[681]

Fourthly, it discusses the preliminary ruling procedure as a critical mechanism for ensuring uniform interpretation and application of EU law by national courts, especially in land-related issues.

Fifthly, the research addresses the ongoing challenges surrounding agricultural land acquisition in the Visegrád countries. It explores the ongoing struggle to reconcile national land 'protection measures' with the EU's market freedoms.

Finally, the thesis synthesises its findings by highlighting the dynamics between national interests over land and the EU's internal market principles. It underscores the need for harmonised legal approaches that safeguard natural resources while balancing the Union's economic objectives with the national interests of Member States. In this part of the thesis, the analysis revolves around the second hypothesis, which asserts that the EU legal framework provides a coherent, comprehensive, and suitable framework, enabling Member States to regulate agricultural land acquisitions while ensuring compliance with EU law and safeguarding legitimate national objectives.

1. Economic integration and the internal market

The European Union, originally conceived as a project of economic cooperation to secure lasting peace in post-war Europe, has evolved over the past five decades into a highly integrated political and legal union. At the core of this development lies the establishment of the internal market, which seeks to ensure the four freedoms.[682]

In the aftermath of World War II, many European countries adopted protectionist policies aimed at safeguarding domestic industries. However, these measures fragmented national markets, restricted trade, and hampered growth. European integration emerged in response,[683] with the aim of consolidating markets and fostering economic resilience through liberalisation and shared governance.[684] Protectionist policies tend to fragment national economies by limiting cross-border

[681] Petrašević and Dadić, 2013, pp. 77–98.
[682] Zlinszky, 2013, pp. 231–246.
[683] See, for example, Van Paridon, 1996.
[684] Halmai, 2020, pp. 12–13.

trade, effectively isolating markets from one another. In such confined economic environments, businesses encounter reduced sales potential and diminished prospects for achieving economies of scale. Economic integration seeks to overcome these limitations by promoting liberalisation—removing trade barriers and regulatory obstacles between countries. This process facilitates broader market access, enabling firms to operate more efficiently and competitively across national boundaries.[685]

Economic integration entails the transformation of autonomous national economies into a unified system characterised by deep institutional cooperation.[686] This process surpasses mere coordination by requiring states to pool certain sovereign powers within a supranational institutional system. In the European context, this integration is primarily economic in nature, structured around the four fundamental freedoms of the internal market. As smaller and medium-sized national markets gradually converge into a broader continental economy, competitive pressures intensify, compelling market actors to enhance efficiency. As efficiency improves at the micro level, it enhances macroeconomic efficiency and contributes to overall national economic performance.[687] The successful functioning of this mechanism for market integration fosters ongoing prosperity.[688]

The competitiveness among individual Member States, particularly within various regions, varies significantly. To ensure smooth integration based on market principles, less competitive regions must be afforded opportunities for advancement. Competitiveness in the internal market stands as a crucial prerequisite for successful integration. Achieving economies of scale becomes challenging in a financially fragmented market where consumer preferences and necessary capital goods lack uniformity in composition and/or technological standards.[689]

Economic integration can take various forms, as outlined by *Balassa*,[690] who differentiates levels of integration based on the degree to which independent economic entities merge into a unified system.[691] It typically begins with preferential trade

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[685] Ibid.
[686] For a comprehensive analysis of the economic impact two decades after the major enlargement—particularly regarding integration within the single market—, see Pasimeni, 2024, pp. 222–230.
[687] Halmai, 2020, p. 13.
[688] The idea of European economic integration aligns closely with the principles of ordoliberalism, particularly the theoretical foundations of the social market economy. In connection with this, see Röpke, 1942.
[689] Halmai, 2020, p. 14.
[690] On the relationship between location theory and the theory of economic integration, see Balassa, 1961, pp. 1–17.
[691] Ibid., p. 2.

agreements, in which Member States grant each other trade advantages to facilitate market access. Historically, these arrangements were reciprocal, as in trade between the United Kingdom and its former colonies, though unilateral preferences—such as the EU's preferential access for developing countries—have become increasingly common.[692]

A deeper level of integration is the free trade area, where participating countries eliminate tariffs and quantitative restrictions among themselves while retaining independent trade policies toward non-members. This framework marks progress toward integration but does not yet constitute complete economic unification. A more advanced stage is the customs union, which builds upon this by not only liberalising internal trade but also adopting a common external tariff and a shared trade policy *vis-à-vis* third countries.[693]

Advancing beyond the customs union, the common market ensures not only the free movement of goods but also encompasses the broader fundamental freedoms of the EU. Nevertheless, despite the removal of trade barriers, certain economic boundaries persist, as national legislation continues to shape the conditions of competition. The single internal market represents a further evolution, systematically eliminating non-tariff barriers such as administrative, financial, and technical restrictions that hinder the free flow of goods, services, capital, and persons. This framework creates the conditions for true continental-scale competition.[694]

The subsequent stage in the integration process is the economic union, which advances beyond mere market unification by aligning economic policies across Member States. This stage necessitates the harmonisation of national economic strategies to create a cohesive policy framework operating at the supranational level. A defining feature of economic union is monetary integration, which is characterised by a common currency and the establishment of a central monetary authority responsible for exchange rate and monetary policy at the supranational level.[695]

At the highest level, full economic integration involves monetary unification and coordinated fiscal policies, while the most advanced stage—political integration—encompasses unified governance, common foreign and security policies, shared judicial systems, and supranational institutions. The internal market, bridging the

[692] Halmai, 2020, p. 14.
[693] Ibid.
[694] Ibid.
[695] Balassa, 1961, p. 2.

common market and economic union, advances the four fundamental freedoms by removing non-tariff barriers. Economic union builds on this through coordinated policymaking, but complete integration requires harmonisation across monetary, fiscal, and social domains, reinforcing supranational authority.[696]

1. 1. The internal market

The Treaty of Rome, signed in 1957, laid the foundation for a common market among Member States, aiming to remove trade barriers, stimulate economic recovery, and promote closer unity among European nations. The Single European Act of 1986 reinforced this goal by formally incorporating the establishment of the internal market into the Treaty framework,[697] defining it as an area without internal borders that guarantees the free movement of goods, persons, services, and capital.[698]

The establishment of the single market, a key objective set forth in the Treaty of Rome, achieved notable advancements by 1968, including the formation of a customs union, the elimination of quotas, the facilitation of free movement for residents and workers, partial tax harmonisation, and the introduction of value-added tax in 1970. Despite these developments, the freedoms related to trade in goods and services, as well as the freedom of establishment, remained limited due to persistent anti-competitive practices by national authorities.[699]

The primary objective of the single (internal) market, formerly known as the common market until 1993, is to establish and safeguard the mentioned freedoms. The legislation supporting these freedoms forms a key part of the *acquis communautaire*. Achieving this objective relies on two principal approaches: negative integration, which focuses on eliminating barriers to free movement, and positive integration, which involves creating harmonised rules and common policies across Member States.[700]

Eliminating non-tariff barriers posed significant challenges. The internal market sought to remove physical obstacles, fiscal barriers, and technical restrictions arising from divergent national legislation. Free movement of goods has been

[696] Cf. Jovanović, 2015.
[697] Halmai, 2020, p. 22.
[698] For more information on this subject, see Militaru, 2018.
[699] Halmai, 2020, p. 22.
[700] Ibid., p. 23.

advanced through a customs union, which abolishes internal tariffs while enforcing a common external trade policy. The Treaty further prohibits charges equivalent to customs duties and any quantitative restrictions on trade between Member States.[701]

The free movement of services became a focal point with the development of the single internal market program. The significance of this sector is evident, as a substantial portion of the working population is employed within it. Over time, most service industries, including banking, financial services, air transportation, and information technology, have been liberalised within the European Union, allowing for greater cross-border access and competition.[702]

The concept of free movement also extends to individuals.[703] Initially, the Treaty guaranteed the right of workers—including employees, self-employed individuals, and service providers, along with their family members—to move freely across Member States. However, the Maastricht Treaty, also known as the Treaty on European Union, expanded this right beyond economic participation, recognising freedom of movement as a fundamental right for all EU citizens. This primarily applies to three main groups: employed individuals and their families, self-employed professionals, and others who wish to move freely within the EU.[704]

The free movement of capital was initially regarded as a complementary freedom alongside the free movement of goods, services, and persons. However, the establishment of a single internal market led to significant changes. Between 1988 and 1992, several directives were adopted, fully liberalising all forms of monetary and capital movement within the European Community. By 1 January 1993, the free movement of capital was fully implemented.[705]

Finally, the EU Treaty not only outlines the single market's foundational principles but also empowers EU institutions to adopt binding legislation—including regulations, directives, and decisions—that take precedence over national law. At the core of this legal framework is the European Commission, which initiates legislation,

[701] On the customs union, see Pelkmans, 2006.
[702] Halmai, 2020, pp. 23–24.
[703] It is appropriate to distinguish between the rights deriving from EU citizenship and the economic fundamental freedoms, since the case law demonstrates that EU citizenship becomes applicable primarily in situations where the economic fundamental freedoms do not apply in the given case.
[704] Halmai, 2020, pp. 23–24.
[705] Ibid.

monitors the implementation of the Treaties, and ensures that EU laws are correctly applied by Member States, individuals, and other institutions.[706]

2. Fundamental freedoms of the EU and Member States' margin of appreciation

2. 1. Four freedoms and cross-border acquisition of agricultural land

Cross-border property acquisitions are important in fostering the European Union's internal market. To effectively achieve the EU's objectives, such transactions should generally face minimal restrictions. Consequently, frameworks governing cross-border issues adhere to both primary[707] and secondary EU laws,[708] specifically addressing fundamental freedoms within the EU, such as the freedom of establishment[709] and the free movement of capital.[710] At this point, it's important to note that any limitations on cross-border transfers of property within the EU, which could hinder EU citizens from purchasing property in another Member State and thereby restrict their fundamental rights as outlined in the Treaties, are prohibited.[711]

The research topic of the present thesis is closely related to several fundamental freedoms within the European Union.

From the viewpoint of this thesis, 'less relevant' ones include the free movement of persons, which grants each EU citizen the right to work and reside in other EU countries, facilitating their access to the real estate market.[712] Additionally, the freedom to provide services ensures non-discrimination in property ownership, as interpreted by the CJEU. Notably, the 'prohibition of obstacles' concept originates from CJEU interpretation rather than the Treaty's text.[713] While the Treaties do not explicitly guarantee EU citizens providing services abroad the right to real property,[714]

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[706] Barnard, 2022. See also Szegedi, 2019, pp. 207–234.
[707] Siman and Sľašťan, 2010.
[708] On the implementation of such sources, see, for example, Potásch, 2019a, pp. 86–122.
[709] In this respect, see TFEU, Articles 49–55.
[710] Ibid., Articles 63–66.
[711] Godžirov, 2020, p. 848.
[712] As mentioned earlier, it is important to emphasise that rights derived from EU citizenship should be clearly distinguished from the fundamental economic freedoms, as case law indicates that EU citizenship applies only when the fundamental economic freedoms do not.
[713] Kurucz, 2015, p. 133. As regards the related case law, see, for example Case C-415/93, *Union royale belge des sociétés de football association ASBL v Jean-Marc Bosman, Royal Club Liégeois SA v Jean-Marc Bosman and others, and Union des associations européennes de football (UEFA) v Jean-Marc Bosman*.
[714] Unlike those exercising the freedom of establishment, for whom this right is explicitly recognised.

the Court has determined that such individuals cannot be excluded from non-discrimination principles regarding property ownership.[715] This interpretation aligns with Regulation No. 492/2011 on Freedom of Movement for Workers within the European Union,[716] which recognises[717] housing rights for workers employed in other Member States.[718]

In turn, 'more relevant' freedoms include the freedom of establishment and the free movement of capital.

The freedom of establishment represents an explicit extension of the prohibition of discrimination based on grounds of nationality, as outlined in Article 18 of the TFEU, to encompass the right to conduct business. National regulations that restrict the purchase or use of immovable property by nationals of other Member States, without applying the same restrictions to their own nationals, contravene the principle of freedom of establishment.[719] Article 49 of the TFEU guarantees the primary right of establishment. At the same time, the second sentence is concerned with assuring the secondary right of establishment and directly links the provisions of this fundamental freedom to the freedom of movement of capital. Both direct and indirect discrimination are prohibited under this freedom, ensuring access to properties and premises necessary for work without any restrictions.[720] Additionally, Article 50(2)(e) of the TFEU grants the European Parliament (hereinafter also referred to as the EP), the European Council, and the European Economic and Social Committee (hereinafter referred to as the EESC), the authority to issue directives permitting nationals of any Member State to acquire and use land and buildings in the territory of another state. This provision addresses regulations concerning the establishment of companies and nationals, but it also extends to matters related to land ownership and acquisition.[721]

Last but not least, the free movement of capital should be mentioned, as this stands as a cornerstone of the European Union's internal market, fully liberalised[722] by

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[715] Case C-305/87, *Commission of the European Communities v Hellenic republic*, para. 26. Cf. Varga, 2020, pp. 1–9.
[716] Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, Official Journal L 141/1
[717] See Article 9 of the mentioned regulation.
[718] Godžirov, 2020, p. 849.
[719] For further, see Zlinszky, 2013, pp. 231–246.
[720] Ibid.
[721] Tattay, 2015, p. 82.
[722] The 1995 White Paper advocates near-complete liberalisation to prepare Central and Eastern European countries for integration into the EU's single market, categorising real estate investment—

Directive No. 88/361/EEC.[723] It encompasses immovable property transactions, including land ownership, for residential, business, and agricultural purposes. This freedom is particularly relevant for cross-border agricultural land acquisitions within the EU, involving movements of capital among EU Member States and third countries.[724]

Furthermore, *Tattay* emphasises the particular significance of the prohibition of discrimination.[725] In this regard, it is essential to highlight Article 49 of the TFEU, which prohibits restrictions on the freedom of establishment of nationals from one Member State within the territory of another Member State, subject to certain provisions. This prohibition also applies to limitations on the establishment of agencies, branches, or subsidiaries by nationals of any Member State within the territory of another Member State. The freedom of establishment encompasses the right for individuals to engage in self-employment activities and establish and manage businesses, including companies or firms, under the conditions set forth by the laws of the host country, with regard to the provisions concerning capital outlined in the relevant chapter.[726]

2. 2. Margin of appreciation of the Member States

The margin of appreciation of EU Member States has been a longstanding subject of academic and legal discourse.[727] A central issue within this context concerns the extent to which Member States may lawfully restrict the ownership and use of land—particularly agricultural land—under the constraints of EU law. This issue is particularly significant for former socialist Member States but also holds relevance for the founding members of the EU.[728]

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including land acquisition—as part of capital movements. The 1997 general programme on freedom of establishment further addresses land ownership, recognising property purchase in another Member State as essential to this freedom. Additionally, Commission Communication 97/C/1220/06 calls for eliminating restrictions on property acquisition and guarantees freedom to acquire housing, sites, and agricultural land. See Tattay, 2015, p. 82.

[723] Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty. Hereinafter referred to as the Capital Liberalisation Directive.

[724] Ibid.

[725] In this regard, see TFEU, Article 49. See also Tattay, 2015, p. 81.

[726] See also Ibid., p. 83.

[727] Bartha, 2017, p. 409.

[728] Korom, 2023, pp. 84–85.

The margin of appreciation granted to European Union Member States defines the scope of their regulatory autonomy over land ownership and use, while remaining constrained by the overarching principles of EU law.[729] According to *Tattay,* this margin is shaped by a variety of factors, including the protection of property rights,[730] the principle of subsidiarity, the objectives of the CAP,[731] public interest[732] considerations versus freedom of establishment and free movement of capital,[733] as well as the interpretative guidance provided by the jurisprudence of the CJEU.[734]

Despite the absence of a unified 'EU land policy', unlike the CAP, Member States retain regulatory autonomy in this area.[735] Nonetheless, this autonomy operates within the boundaries of EU law, meaning that national measures remain subject to scrutiny and potential constraints under EU law, even in the absence of direct EU competences in land law.[736] At this stage, it should be noted that certain EU institutions—most prominently the EESC,[737] the EP,[738] and, subsequently, the European Commission (hereinafter also referred to as the EC)[739]—have demonstrated a growing engagement with the relationship between national land law and EU law by

[729] For more on this topic, see Korom, 2014, pp. 445–454.
[730] In this regard, see Article 345 of the TFEU.
[731] It remains one of the most debated and financially demanding components of European integration. Despite substantial differences in agricultural conditions and socio-economic structures among the six founding members, the CAP was established, initially relying on common market organisations to regulate agricultural markets. Community preference fostered protectionism and international trade tensions, but successive reforms have reduced market intervention, introduced direct payments—which now comprise over 90% of market-related subsidies—and incorporated rural development as a second pillar in 2000. These changes have partially renationalised the CAP, though further reform is necessary to address ongoing challenges. For more information, see Halmai, 2020, p. 17. On the pillars of the CAP, see, for example, Pálfay, 2025, pp. 61–62.
[732] The EU's interpretation of public often diverges from that of its Member States, prioritising the unrestricted exercise of fundamental freedoms, including land acquisition. Under the Gebhard test (Case C-55/94, *Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*), national measures restricting such freedoms must be non-discriminatory, justified by public interest, appropriate for achieving the intended goal, and proportionate. Yet, the CJEU has been reluctant to recognise MS' interest in land, as seen in *Alfredo Albore* (Case C-423/98), *Commission v Greece* (Case C-305/87), and *Uwe Kay Festersen* (Case C-370/05) (hereinafter referred to as *Festersen*). See Tattay, 2015, pp. 83–85; Kurucz, 2015, p. 131. This strict review limits margin of appreciation of Member States, making the enactment of enduring, less restrictive legislation challenging. See Zlinszky, 2013, p. 244.
[733] In this regard, see Articles 45 and 52(1) of the TFEU.
[734] Tattay, 2015, p. 85.
[735] Korom, 2023, pp. 84–85. See also Hornyák, 2019b, p. 47.
[736] Korom, 2022a, p. 78.
[737] European Economic and Social Committee: Land grabbing – a warning for Europe and a threat to family farming. Opinion, NAT/632 – EESC-2014-00926-00-00-AC-TRA (EN)
[738] European Parliament (EP): State of play of farmland concentration in the EU: how to facilitate the access to land for farmers. Resolution, P8_TA (2017)0197, 27 April 2017
[739] Commission Interpretative Communication, 2017, pp. 5–20.

issuing certain soft law documents.[740] This trend reflects the Union's increasing willingness to frame land law within its legal and policy framework. While these developments highlight the importance of soft law in shaping the debate, this dissertation does not seek to provide a detailed determination of soft law,[741] or address all related issues, given the limited scope of this research. Nevertheless, the aspects outlined in this chapter indicate that a more thorough analysis of the EU documents could provide a valuable avenue for future research.

It is essential to note that all measures implemented by Member States that could potentially hinder the functioning of the internal market are subject to EU scrutiny. The Court has developed a practice of reviewing Member States' measures that may impede the free movement of factors of production, such as capital or goods. While the CJEU does not presume that such measures are intended to infringe internal market rules, it has nevertheless developed consistent case law to prevent national legislation from undermining their effectiveness.[742]

Simon's insights into the negative and positive aspects of integration are relevant in this context.[743] Negative integration, enshrined by law, stands as the cornerstone of integration, ensuring the smooth functioning of the internal market. However, positive integration is equally essential;[744] negative integration cannot be sustained without it. Therefore, the internal market balances the disparities caused by its operation.[745] Additionally, it should be noted that the CAP is one of the most significant policies of the European Union. However, its material scope does not extend to legislation on agricultural and forestry land in the Member States, nor does it cover property relations.[746] It is worth emphasizing that, although the CAP does not

[740] Soft law documents have emerged not only within the EU but also internationally. A landmark example is the VGGT, adopted by the FAO as the first comprehensive global soft law framework on land tenure. Although non-binding, its normative function warrants attention: soft law can shape policy, guide legislation, and influence judicial reasoning, particularly when explicitly referenced in court decisions or policy documents. For more on this subject, see, for example, Szilágyi, 2024, pp. 31–32.
[741] On this issue, see, for example Láncos, 2018a; Láncos, 2018b; Láncos, 2018c; Láncos, 2018d; Láncos, 2019; Szilágyi, 2018b.
[742] Korom, 2022a, p. 78.
[743] For more information, see Simon, 1991, p. 92.
[744] Although the length limitations of this thesis prevent a full comparison, it is valuable to highlight how Member States' margin of appreciation in land policy intersects with case law in which agricultural producers cannot meet obligations under positive integration due to national land policy or land consolidation measures. For related publications, see, for example Temesi and Korom, 2025a, pp. 457–473; Temesi and Korom, 2025b, pp. 1–8.
[745] Simon, 1991, p. 92.
[746] Korom, 2022a, p. 78. It is worth emphasising that, although the CAP does not extend to Member States' land ownership policies, the case law has recognised that the objectives of the CAP may nevertheless be taken into account and given effect in this field.

extend to Member States' land ownership policies, case law has recognised the enforceability of its objectives in this area. The CAP forms part of the internal market within the EU Member States. Consequently, it follows that the land ownership legislation of the Member States must be compatible with the EU legal framework governing the internal market. Article 345 of the TFEU[747] provides that the treaties shall not affect the rules relating to the system of property ownership in the Member States. Therefore, as a general rule, matters concerning property ownership and related legislation fall within the competence of the Member States.[748]

It should be added that *Korom* underscores the significant role that cross-border elements play in shaping the application of EU law within the internal market. Although most cases concerning EU law typically involve cross-border elements, it is noteworthy that not all infringement proceedings initiated by the European Commission depend on such elements. In certain exceptional cases, the CJEU has addressed matters relating to the free movement of capital even in the absence of an explicit cross-border element. The CJEU's jurisprudence concerning national land laws and the permissible scope of the Member States' margin of appreciation reflects a high degree of consistency. Its rulings provide authoritative interpretations of EU law that exert considerable influence over national judicial decisions. Furthermore, the Court generally seeks to preserve the coherence of its established internal market case law, refraining from significant departures except under narrowly defined circumstances.[749]

As already indicated, the analysis of EU law in this context focuses on how local interests may be accommodated within the existing legal framework. In this regard, particular attention must be paid to the role of the cross-border element requirement in shaping the margin of appreciation of the Member States. This requirement significantly reduces the number of cases that reach the CJEU, thereby indirectly facilitating the enforcement of local interests. This remains the case even though, in infringement proceedings, the absence of a cross-border element does not preclude a finding of infringement by the Court. At the same time, it cannot be overlooked that, due to the predominance of negative integration, local interests have ultimately failed to prevail in the majority of the Court's decisions. Consequently, the

[747] Ex Article 295 of the Treaty establishing the European Community. See also Article 222.
[748] Kurucz, 2015, pp. 120–121.
[749] Korom, 2022a, pp. 78–79.

greater the number of disputes brought before the Court, the more certain the predominance of internal market considerations becomes.

The margin of appreciation granted to Member States in national land law frameworks encompasses two layers. Firstly, it encompasses discretion in regulating specific aspects of land ownership and use, as well as in the application of EU fundamental rights principles. Secondly, it involves scrutiny by the CJEU of Member States' national land law measures against EU law, ensuring alignment while acknowledging contextual differences. EU law significantly shapes internal market legislation, establishing key rules governing Member States' margin of appreciation in land issues. Breaches may arise if EU law unreasonably restricts the margin of appreciation or if Member States' administrative practices impede investments from other legal entities.[750]

The CJEU rigorously examines Member States' regulatory frameworks, administrative procedures, and judicial practices to ensure alignment with EU law. In instances of non-compliance, where Member States' actions conflict with EU law, the CJEU may deem a rule unlawful. This process of scrutiny and enforcement upholds the integrity and coherence of the EU legal framework, reinforcing the primacy of EU law within Member States' jurisdictions.

At this point, one further issue needs to be examined, namely the issue highlighted by *Korom* and *Somogyvári*: the relationship between national rights *in rem* and their potential conflict with EU law in light of Article 345 TFEU.[751] It is worth distinguishing the effects of Article 345 TFEU from the perspective of private law and public law: while in land policy this provision has no practical effect—meaning that the provisions of the internal market generally prevail over the objectives of positive integration—in the field of rights *in rem*, the CJEU's case law strikes a genuine 'compromise' between the objectives pursued by national regulation and those pursued by EU law.

As they pointed out, the classical doctrine underscores their defining characteristics: their absolute *erga omnes* effect, their static nature, and their function as instruments ensuring legal certainty, the stability of legal relationships, and the effective exercise of the power of disposition.[752] As *Grosschmid*, *Szladits*, and *Vékás*

[750] Ibid.
[751] Korom and Somogyvári, 2025, pp. 71–79.
[752] Cf. Barzó and Papp, 2019; Sándor, 2022, pp. 51–70.; Vékás, 2021, pp. 101–112.

have noted, these attributes confer upon rights in rem a particularly resistant status against external regulatory interference, reflecting the core of national private law autonomy.[753]

Within the legal order of the EU, however, Member State autonomy is not unlimited. According to case law, even in areas that remain within national competence, Member States are required to exercise that competence in compliance with EU law. Article 345 TFEU, which provides that the Treaties shall in no way prejudice the rules in Member States governing the system of property ownership, does not establish a general immunity from the application of EU law. Rather, it confirms the absence of harmonisation of ownership structures at EU level, while leaving open the possibility of indirect effects arising from other EU legal instruments.[754]

This interaction is illustrated in the CJEU's case law concerning consumer protection and property rights. In *Condominio di Milano, via Meda v Eurothermo SpA* [755] the Court addressed whether Directive 93/13/EEC on Unfair Terms in Consumer Contracts could apply to a condominium association, even though such an entity does not qualify as a natural person under EU law.[756] The Court confirmed that Member States may extend the directive's personal scope to entities that fall outside its formal definition, while explicitly respecting the national classification of the condominium within property law. This judgment demonstrates how EU consumer protection may influence property-related relationships without directly altering the structure or autonomy of rights *in rem*.[757]

The tension between EU consumer law and property law is further exemplified in *Banco Santander*[758] and *Ibercaja Banco*[759]. In both cases, the CJEU held that the protections afforded by Directive 93/13/EEC on Unfair Terms in Consumer Contracts cannot be invoked to challenge ownership rights that have been validly acquired following mortgage enforcement. Once property rights have been lawfully transferred, consumer protection rules cannot undermine the stability of ownership. These judgments confirm that while EU law can regulate contractual relationships leading to

[753] Korom and Somogyvári, 2025, pp. 71–72.
[754] Ibid., p. 71.
[755] C-329/19, *Condominio di Milano, via Meda v Eurothermo SpA*
[756] See Article 2 of the Directive 93/13/EEC on Unfair Terms in Consumer Contracts.
[757] Korom and Somogyvári, 2025, pp. 73–74.
[758] C-598/15, *Banco Santander SA v. Cristobalina Sánchez López*
[759] C-600/19, *Ibercaja Banco SA*

the creation of property rights, it cannot retroactively invalidate rights in rem. Consumers retain the possibility of pursuing financial remedies arising from unfair contract terms, but the legal certainty of completed property transfers is preserved. This line of case law illustrates the principle of private law autonomy in practice: national property law remains largely insulated from EU law, except where exceptional intervention is justified.[760]

A different dimension arises in succession law under Regulation (EU) No. 650/2012 on Succession and Matrimonial Property Regimes, as seen in *Kubicka.*[761] In that case, the Court addressed the recognition of a proprietary legacy governed by the applicable succession law, even where the institution was unknown to the property law of the Member State where the immovable property was situated. The Court held that the transfer of ownership resulting from such a legacy must be recognised to preserve the unity of the estate and the effectiveness of the Regulation, while narrowly interpreting exclusions relating to rights in rem. The Court emphasised that this does not constitute harmonisation of national property law but represents a limited, context-specific exception in order to uphold the objectives of EU succession law.[762]

Taken together, the analysed case law demonstrates that the relationship between EU law and national rights *in rem* is context-dependent and carefully balanced. While rights *in rem* are generally protected by private law autonomy, EU law may influence their application indirectly through consumer protection directives or succession regulations. The CJEU consistently seeks to reconcile the effectiveness of EU law with the structural stability and legal certainty inherent in property law. Rather than harmonising rights *in rem*, EU law selectively interacts with them, respecting their autonomy while ensuring that key EU objectives are achieved where necessary.

2. 3. The relevant case law

Primarily, it must be recalled that secondary EU legislation does not explicitly regulate the margin of appreciation that Member States possess in land policy matters. However, the CJEU has developed key principles through its case law that delineate

[760] Korom and Somogyvári, 2025, p. 75.
[761] C-218/16, *Kubicka*
[762] Korom and Somogyvári, 2025, pp. 75–76.

this margin.[763] The jurisprudence indicates that, apart from the Capital Liberalisation Directive, secondary legislation generally lacks direct applicability in this context. Despite its formal repeal by the Treaty of Amsterdam, this directive remains a significant point of reference in CJEU rulings. The Court has recognised the objectives underpinning the Directive as legitimate public interests capable of justifying restrictions on the free movement of capital.[764]

It is important to note that the CJEU has defended Member States' land law provisions in several rulings. Considering the constraints within this thesis, the focus will centre on land acquisition decisions, where three cases will be briefly presented.

2. 3. 1. The Ospelt case[765]

The underlying facts of the case concern Margarethe Ospelt, a citizen of Liechtenstein, who owned approximately 43,532 square meters of agricultural land in the Austrian province of Vorarlberg. Her property included several agricultural plots—largely leased to local farmers—as well as forested areas and a castle, which served as her residence.[766]

Vorarlberg spans approximately 260,144 hectares. Of this, 47% is designated for agricultural use, with 94.58% of the area classified as 'mountain area' and a further 3.55% designated as 'disadvantaged area.' Under Austrian legislation, 98.13% of the cultivated land is classified as 'less-favoured agricultural land,' rendering it particularly suitable for dairy farming. Alternative agricultural uses are limited due to geographical and climatic constraints. In line with traditional practices and landscape conservation efforts, dairy farming is concentrated in the valleys during spring and summer, with livestock seasonally moved to higher altitudes in the summer months—a practice that supports the preservation of the cultivated Alpine landscape.[767]

In 1998, Ms. Ospelt established the *Schlössle Weissenberg Familienstiftung*, a foundation based in the Principality of Liechtenstein, with the aim of ensuring the long-term preservation of her property by keeping it 'in one hand' following her death. Her intention was to transfer ownership of the land to the foundation, which would, in

[763] Korom, 2023, p. 88.
[764] Korom, 2022a, p. 81.
[765] Case C-452/01, *Margarethe Ospelt and Schlössle Weissenberg.* Hereinafter referred to as *Ospelt*.
[766] Ibid., para. 16.
[767] Tattay, 2015, p. 88.

tur, continue leasing the land to the same local farmers who had previously cultivated it.[768] However, under Austrian law, such transfer required prior authorisation from the Regional Land Transfer Commission of the Province of Vorarlberg. The commission rejected the application on the grounds that the conditions for acquisition by foreign persons had not been met.[769] Ms. Ospelt and the foundation lodged an appeal with the Independent Administrative Tribunal, which upheld the commission's refusal. They subsequently challenged this decision before the Austrian Constitutional Court. By its decision of 26 September 2000, the Constitutional Court declined jurisdiction and referred the matter to the Supreme Administrative Court of Austria.[770]

The CJEU was called upon to consider two questions submitted by the Supreme Administrative Court of Austria by way of a preliminary ruling. The first concerned whether the acquisition of property could be made subject to a requirement of prior administrative authorisation without infringing Articles 12 and 56 of the EC Treaty. The second question was about whether, in cases where such prior authorisation was required, the imposition of additional conditions—such as the purchaser's obligation to reside on and personally cultivate the land—was compatible with EU law, particularly in the context of registering ownership in the land register.[771]

In various parts of the judgment, the CJEU stated that the requirement of prior administrative authorisation for property acquisition is not contrary to community law, provided that the assessment is based on objective criteria known to the applicant in advance, that there is a possibility of legal remedy against the decision,[772] and that it contributes to landscape preservation, serving the public interest and providing a sufficient basis for preventing land speculation.[773]

The Court nonetheless considered it disproportionate for the competent authority to insist on requirements of self-cultivation and residence on the land, particularly in circumstances where neither the seller nor the prospective buyer personally cultivates the land, and the buyer's intention is to maintain the existing lease arrangements with the same farmers. Such conditions, the Court observed, place local farmers—especially those lacking the financial capacity to acquire and develop land—

[768] *Ospelt,* para. 17.
[769] Ibid., para. 18.
[770] *Ospelt*, paras. 19 and 20.
[771] Ibid., Opinion of AG *Geelhoed*, para. 1.
[772] Ibid., para. 34.
[773] Tattay, 2015, p. 89.

at a disadvantage. In effect, this regulatory outcome runs counter to the stated public interest and is therefore incompatible with both the public interest objectives invoked and the requirements of community law. In reaching this conclusion, the CJEU invoked Articles 49 and 56 of the EC Treaty.[774]

It should also be added that, examining the Austrian Land Act, the CJEU briefly noted that the systematic application of its provisions effectively excludes legal persons engaged in agricultural activities from farming.[775] The Court acknowledged the unique characteristics of the Vorarlberg region and recognised that the legislative objectives of the legislation were consistent with the principles underpinning the CAP.[776] However, it highlighted that Austrian legislation deprived legal persons, such as foundations, of the right to acquire ownership of agricultural land.[777] The CJEU concluded that such exclusion of legal persons from acquisition was incompatible with the requirement of free movement of capital and, thus, contrary to community law.[778]

2. 3. 2. The Festersen case[779]

In 1998, Mr. Festersen, a German national, acquired a property in southern Jutland, Denmark. According to the land register, the property is classified as agricultural land, and it comprises two distinct plots: one spanning 0.24 hectares located within an urban zone and containing buildings, while the other, meadow plot spanning 3.29 hectares located within an agricultural zone.[780]

Under to the Danish Act on Agriculture, ownership acquisition is conditional upon the purchaser transferring their permanent residence[781] to the land within six months and personally cultivating the land.[782] Additionally, according to the act

[774] Ibid., p. 89.
[775] Kurucz, 2015, p. 152.
[776] *Ospelt*, para. 40.
[777] Ibid., para. 51.
[778] Kurucz, 2015, p. 152.
[779] i.e., Case C-370/05.
[780] Ibid., para. 13.
[781] Decree No. 627 of 26 July 1999 on training and residence requirements under the Act on Agriculture clarifies that permanent residence on agricultural property entails settled and continuous stay, including overnight presence, unless temporarily excused. The individual must also be registered in the local population registry and designate the property as their primary tax residence [para. 4(1)]. See also *Festersen*, para. 11.
[782] In this respect, see Article 16 of the mentioned act.

mentioned above,[783] acquisition of agricultural property in an agricultural zone requires prior approval[784] from the Minister of Food, Agriculture, and Fisheries.[785]

As Mr. Festersen failed to fulfil the residency requirement, the Agricultural Committee for Southern Jutland issued a notice on 8 September 2000, instructing him to rectify the situation. He was ordered to sell the property within six months unless he had obtained an exemption from the agricultural-use obligation or complied with the residency criterion.[786] Subsequently, on 16 July 2001, the Committee granted an additional six-month extension, contingent upon either reducing the property size below two hectares and applying for an exemption, or establishing residency.[787]

When Mr. Festersen did not comply with the Committee's directive, the District Court of Gråsten imposed a fine of DKK 5,000 for August 2003, increasing monthly by the same amount. In response, Festersen relocated to the acquired property within the municipality of Bov and appealed the decision.

The Western Regional Court of Denmark referred two questions to the CJEU for a preliminary ruling: first, whether the requirement under Danish law that a purchaser of agricultural property must establish permanent residency on that property is compatible with Articles 43 and 56 of the EC Treaty; and second, whether this requirement applies where the property lacks self-sustainability and the residential building is situated in an urban area?[788]

Notably, the Danish Act on Agriculture treats Danish citizens and nationals of other EU or EEA Member States equally, avoiding direct discrimination. However, the residency requirement—exemptible only at the Minister's discretion—constitutes a restriction on the free movement of capital. Such a restriction may nonetheless be justified if it pursues a legitimate public interest, is non-discriminatory, and respects the principle of proportionality—meaning it is appropriate and necessary to achieve the intended objective without exceeding what is required.[789]

The Danish government argued that the residency condition aligns with legitimate public interest goals, consistent with the CAP. These include ensuring the welfare of the agricultural community and addressing regional agricultural disparities.

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[783] In this respect, see Article 18 of the mentioned act.
[784] Except in cases specified under Articles 16, 17, and 17a of the mentioned act.
[785] *Festersen*, para. 7.
[786] Ibid., para. 14.
[787] Ibid., para. 15.
[788] For the precise formulation of the questions, see *Festersen*, para. 20.
[789] Concerning this, see the Gebhard test.

From a proportionality perspective, the requirement aims to maintain the rural population and limit speculative acquisitions, thereby alleviating market pressures on agricultural land. Nevertheless, the condition primarily burdens agricultural producers, who must also comply with resource usage regulations under the mentioned act.[790]

Furthermore, this requirement significantly impacts the free movement of capital and interferes with individuals' right to freely choose their residence, as protected by the ECHR. Thus, while serving valid public interest objectives, the residency condition imposes a substantial restriction, particularly regarding fundamental rights under the ECHR.[791]

Overall, from *Ospelt* and *Festersen* analysed above, it becomes clear that the CJEU acknowledges the potential conflict between the objectives of land policy and fundamental economic freedoms while also recognising their alignment with the goals of the CAP. However, the constraints imposed by negative integration, i.e., fundamental economic freedoms, along with the requirements of general principles of EU law and fundamental rights derived from the case law of the ECtHR, hinder the enforcement of land policy objectives.[792]

2. 3. 3. The "KOB" SIA case[793]

In considering the facts of the case, it is important to emphasise that KOB is an agricultural company established in Latvia but owned and directed by German nationals. Furthermore, shares in KOB are held by several other companies, which are likewise owned by German nationals.[794]

As a result, KOB brought proceedings before Latvian courts, asserting that the national rules governing approval for land acquisition discriminate based on nationality and infringe upon the free movement of capital and freedom of establishment, as protected under EU law. The Latvian legal framework permits legal persons to acquire agricultural land;[795] however, additional requirements are imposed if the legal persons are directed or represented by nationals from another Member

[790] Tattay, 2015, p. 92.
[791] Ibid.
[792] Korom, 2023, p. 88.
[793] Case C-206/19, *SIA "KOB" v Madonas novada pašvaldības Administratīvo aktu strīdu komisija*. Hereinafter referred to as the *KOB SIA.*
[794] Ibid., para. 12.
[795] Ibid., paras. 13. and 14.

State. Specifically, such individuals must register their residence in Latvia—implying physical presence for more than three months—and demonstrate conversational proficiency in the Latvian language.[796]

In light of this, the referring national court requested a preliminary ruling from the CJEU on whether such provisions are compatible with Articles 18, 49, and 63 TFEU, which enshrine the principles of non-discrimination, freedom of establishment, and the free movement of capital, respectively.

While Article 345 TFEU preserves Member States' autonomy over property ownership systems, this does not permit derogation from the core principles of the internal market. National legislation regarding property—particularly agricultural land—must comply with EU principles, including the prohibition of nationality-based discrimination and the safeguarding of fundamental freedoms.[797] The facts of the case suggest that the primary concern falls under the freedom of establishment, given that the company sought to carry out agricultural operations in Latvia—a permanent and continuous economic activity. As such, the case also came within the scope of Directive 2006/123/EC on services in the internal market,[798] which governs the freedom of establishment for service providers.[799]

Upon analysis, the CJEU found that the Latvian legislation imposed direct discrimination based on nationality by applying additional requirements (residence and language proficiency) to nationals of other EU Member States acting as representatives of legal persons. Such requirements did not apply to Latvian nationals, thereby contravening the principles laid out in Articles 9, 10, and 14 of Services Directive. As a result, the Court concluded that the legislation was incompatible with EU law, making further examination under Article 63 TFEU (free movement of capital) unnecessary.[800]

Notably, the Court acknowledged its consistent jurisprudence that the free movement of capital extends to property transactions. Since the 1980s, the CJEU has reinforced the primacy of this freedom in cases involving land acquisition.[801] However, in this case, the Court clarified that the national legislation regulated not

[796] Korom, 2023, p. 83.
[797] *KOB SIA*, para. 20.
[798] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. Hereinafter referred to as the Services Directive.
[799] *KOB SIA*, para. 31.
[800] Ibid., para. 41.
[801] Korom, 2023, p. 84.

only the ownership but also the continued economic use of the land, thereby implicating the freedom of establishment.

Given the dual nature of the legislation, the CJEU analysed the underlying facts to determine which freedom should take precedence.[802] Ultimately, it concluded that the freedom of establishment was the predominant consideration,[803] as seen in its earlier ruling in *Van der Weegen and Others*.[804] This distinguished the case from prior rulings such as *SEGRO and Horváth*,[805] which were decided primarily under the free movement of capital.[806]

The introduction of the Services Directive prompts a crucial inquiry: has the CJEU's jurisprudence undergone a fundamental shift due to this legislative intervention, particularly in the context of national restrictions on the acquisition of agricultural land? The temporal proximity between landmark cases like *Ospelt* and *Festersen*—decided before the directive—and newer rulings like *KOB SIA* suggests a potential change in the Court's interpretative approach. As noted by *Korom*, there appears to be a move away from analysing land-related cases solely through the lens of the free movement of capital toward applying the freedom of establishment,[807] especially when the acquisition of land is tied to agricultural or business activities.[808]

However, this doctrinal development raises complex questions.[809] Although the *KOB SIA* judgment places emphasis on Services Directive, it remains unclear whether this jurisprudential shift alters the margin of appreciation previously afforded to Member States in regulating land use.[810] The Services Directive does not explicitly address public interest objectives long recognised by the CJEU in its case law—such as maintaining rural populations, limiting speculative land acquisitions, or pursuing CAP objectives aimed at improving the living standards of farmers. It is likely that the drafters of the directive did not anticipate its application to land policy.

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[802] *KOB SIA,* para. 25.
[803] Korom, 2023, p. 84.
[804] Case C-580/15, *Van der Weegen and Others*
[805] Joined cases C-52/16 and C-113/16, *SEGRO Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala and Günther Horváth v Vas Megyei Kormányhivatal* (hereinafter referred to as the *SEGRO and Horváth*).
[806] Korom, 2023, p. 96.
[807] Szilágyi, 2024, p. 18.
[808] Ibid.
[809] Korom, 2024, p. 157.
[810] Korom, 2023, p. 96.

Indeed, in *Commission v Hungary*,[811] Advocate General (hereinafter also referred to as the AG) *Bot* argued that the directive entails complete harmonisation, precluding Member States from invoking public interest justifications not explicitly listed in Article 14. However, this view is contested in the academic literature, particularly with reference to Article 15, which allows Member States to justify regulatory measures based on overriding reasons of public interest as recognised by the CJEU and reflected in Article 4 para. 8 of the Services Directive.[812]

Given this uncertainty, it appears that the *KOB SIA* judgment—while ground-breaking—does not necessarily significantly reduce the margin of appreciation that Member States enjoy in regulating land acquisition through non-discriminatory and proportionate measures. Nonetheless, the ruling introduces an important development: the use of secondary legislation to assess national restrictions on land acquisition—an approach not previously typical in the CJEU's jurisprudence.[813] It is plausible that the free movement of capital will continue to govern transactions unrelated to agricultural land. However, where the acquisition is linked to a business activity, the freedom of establishment—and consequently, the Services Directive—may be applicable.

2. 3. 4. Post-KOB SIA developments

As mentioned, the *KOB SIA* ruling represents a potential turning point in CJEU case law, with the freedom of establishment supplanting the traditional reliance on the free movement of capital in land acquisition cases involving ongoing economic activity. The judgment also introduces the application of Services Directive to land issues—a novel move in the context of EU law. However, the extent to which this jurisprudential shift will persist or evolve remains uncertain.[814] While the decision does not appear to drastically reduce Member States' margin of appreciation in land policy, it underscores the growing importance of secondary EU legislation in shaping the interpretation and application of internal market freedoms. As such, the *KOB SIA* opens a new chapter in the legal discourse on land policy, market integration, and the evolving balance between national autonomy and EU harmonisation.[815]

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[811] Case C-235/17
[812] Korom, 2023, p. 96.
[813] See also Korom, 2024, pp. 153–162.
[814] Ibid.
[815] Cf. Korom, 2023, p. 97.; Varga, 2024, pp. 147–165.

Additionally, it also raises questions about how strict EU oversight will be under this 'new legal framework'. Notably, the Court did not undertake a substantive assessment of the contested national measure, as it involved direct discrimination on the basis of nationality.[816] However, the judgment's reliance on the freedom of establishment and Services Directive, rather than the traditional application of the free movement of capital, marks a significant doctrinal development.[817] In turn, the post-KOB SIA case law—although not directly connected to the acquisition of ownership of agricultural lands—reflects a degree of uncertainty.

In *Commission v Spain*,[818] the Court assessed national measures that imposed restrictions on the location, size, and licensing conditions for large-scale retail establishments. The European Commission argued that these measures disproportionately affected operators from other Member States, thereby infringing Article 49 TFEU. The Court agreed, concluding that the Spanish legislation failed to satisfy the principle of proportionality, as the public interest justifications—namely environmental and zoning concerns—were not supported by sufficient evidence, nor were the restrictions shown to be necessary or the least restrictive means available. This case illustrates that national measures impacting the freedom of establishment are subject to intense judicial scrutiny, potentially constraining Member States' margin of appreciation more than under the free movement of capital framework.[819]

By contrast, in *Visser*,[820] the Court adopted a more expansive and arguably more permissive interpretation of the Services Directive. The central question was whether Chapter III of the mentioned directive applies in purely internal situations, i.e., in the absence of a cross-border element?[821] The Court answered in the affirmative, relying on both the wording of Articles 53(1) and 62 TFEU and the legislative history of the directive, which expressly rejected proposals to limit its scope to cross-border cases. The CJEU reasoned that full implementation of the internal market for services requires the removal of obstacles that affect not only cross-border activity but also service provision within a Member State's own territory. This approach departs from the traditional requirement of a cross-border element under

[816] Árvai, 2025, p. 48.
[817] Temesi and Korom, 2024, pp. 215–234.
[818] C-400/08, *Commission v Spain*
[819] Temesi and Korom, 2024, pp. 221–225.
[820] C-31/16, *Visser Vastgoed Beleggingen BV v Raad van de gemeente Appingedam*. Hereinafter referred to as the *Visser*.
[821] See also *Visser*, Opinion of AG *Szpunar*, para. 30 (4).

primary law and potentially broadens the reach of EU internal market rules, mitigating concerns about reverse discrimination and extending EU oversight into areas previously governed solely by national law.[822]

In *Cali Apartments*,[823] the Court upheld a French prior authorisation scheme regulating short-term residential lettings in urban areas experiencing significant rental pressure. The CJEU found the measure to be compatible with the Services Directive,[824] as it pursued an overriding reason relating to the public interest—namely, the right to housing—and was limited in both scope and territorial application. Importantly, the Court accepted the argument that *ex post* enforcement mechanisms would be insufficient to prevent rapid market distortions caused by short-term rental conversions. This ruling suggests a growing judicial willingness to accept prior authorisation schemes for immovable property, even outside the agricultural context, provided that such measures are proportionate and clearly linked to a recognised public interest objective.[825] It can be stated that the admissibility of a prior authorisation scheme in the present judgment marks a significant shift in the Court's approach to property regulation. Following this ruling, the traditional specificity of land policy—including the distinctive treatment of agricultural land in prior authorisation schemes—has effectively ceased to play a role in the assessment of Member State measures concerning immovable property. Urban policy objectives, such as the protection of tenants and the regulation of housing markets, are now considered alongside CAP objectives, including the quality of life of farmers, in determining the legitimacy of such measures.[826]

Taken together, these judgments indicate that the application of EU internal market to national land law frameworks is currently undergoing an evolutionary process. As can be seen, the traditional distinction between agricultural land and other forms of immovable property is gradually diminishing. Moreover, the Court's retreat from requiring a cross-border element as a precondition for the application of internal market rules is likely to result in an increase in proceedings and, potentially, further constraints on Member States' margin of appreciation. Nonetheless, these cases also

[822] Temesi and Korom, 2024, pp. 221–225.
[823] C-724/18, *Cali Apartments SCI and HX v Procureur général près la cour d'appel de Paris and Ville de Paris.* Hereinafter referred to as *Cali Apartments*.
[824] See Article 9(1)(b) and (c) of the mentioned directive.
[825] Temesi and Korom, 2024, pp. 221–225.
[826] Ibid., pp. 232–233.

demonstrate that Member States retain a certain margin of appreciation, provided that their regulations are carefully crafted to satisfy EU law criteria of proportionality, non-discrimination, and legitimate public interest justification. In my opinion, the strategic formulation of national measures remains essential to safeguarding Member States' margin of appreciation within the evolving framework of EU integration.[827]

3. Infringement procedure

3. 1. General overview

Effective enforcement of decisions is essential to the proper functioning of any legal system. As such, the establishment of mechanisms that ensure implementation is vital for maintaining both the efficiency and stability of the system. One key enforcement tool within the EU legal framework is the infringement procedure, which empowers the CJEU to review the actions of Member States and assess their compliance with EU law. Notably, this procedure serves as the primary means by which the CJEU can directly examine the validity of national legislation in light of EU law.[828]

Originally envisioned by the EU's founding fathers, the infringement procedure has become a cornerstone in ensuring the consistent and uniform application of EU law. Its evolution reflects a market transformation—from a seldom-used, opaque, and politically influenced process to a widely utilised, transparent, and technically sophisticated mechanism for enforcement. This development highlights the procedure's vital role in safeguarding the foundational principles of the European Union and promoting legal coherence across Member States.[829]

While scientific literature generally indicates that infringement procedures effectively promote compliance with EU Treaty obligations and secondary law,[830] their adequacy for enforcing the EU's fundamental values and addressing challenges such as rule of law backsliding in Member States remains a matter of debate. Some argue that the instrument's scope is too limited to address the underlying structural issues of backsliding.[831] They express concern that relying on infringement procedures

[827] Cf. Ibid., p. 233.
[828] Petrašević and Dadić, 2013, p. 77.
[829] Prete and Smulders, 2020, pp. 9–61.
[830] Börzel, 2003, pp. 9–61.
[831] Scheppele, 2016, p. 109.

may lead the European Commission to misinterpret rule of law challenges as mere instances of non-compliance with EU secondary law.[832]

It's important to acknowledge that Member States have committed to incorporating EU legal rules into their national legal systems as part of their accession to the European Union. Consequently, each Member State must take measures to facilitate the application of EU legal rules within their internal legal framework, ensuring compliance with EU regulations and their proper implementation.[833] The Treaty establishing the European Community outlines various mechanisms for ensuring adherence to EU law, typically initiated through legal proceedings, often by the European Commission and occasionally by individual Member States.[834]

Given that Member States undertake extensive obligations, including the faithful and comprehensive transposition and application of EU law within their domestic legal systems, it is essential that these commitments are upheld. Failure to comply activates the enforcement mechanism under Article 258 TFEU, which provides a structured procedure for holding Member States accountable for breaches of their obligations under EU law.[835]

As the custodian of treaties, the European Commission oversees the integration and proper application of EU law within Member States' legal systems. When necessary, the European Commission can initiate legal proceedings against a Member State before the CJEU upon identifying instances where a state has failed to uphold the treaties' obligations.[836]

According to doctrine, identifying breaches of obligations constitutes a unique control instrument specific to the European Commission within its authority over Member States, reflecting the inherent dualism between Member States and the institutions of the European Union. Through this mechanism, the Commission ensures that Member States do not wield powers they have voluntarily relinquished in favour of the Communities.[837]

The TFEU outlines that the European Commission is empowered to initiate infringement procedures if it believes that a Member State has failed to fulfil an

[832] Pech and Kochenov, 2019, p. 5.
[833] Otel, 2006, p. 55.
[834] Popescu, 2010, p. 59.
[835] Cf. TEC, Article 226.
[836] Popescu, 2010, p. 59.
[837] Fábián, 2008, p. 359.

obligation under the Treaties.[838] This process typically begins with the Commission issuing a letter of formal notice to the Member State, indicating the alleged breach of obligation. Following this step, if the state does not respond satisfactorily or fails to rectify the situation within the specified period, the Commission may issue a reasoned opinion outlining its concerns. Should the state fail to comply, the Commission may bring the case before the CJEU.[839]

Although the Treaty mentions the infringement of obligations, it does not explicitly define the concept within the articles governing the procedure. In such cases, the Court is tasked with delineating the term. The Court has determined that a breach of obligations encompasses any violation of mandatory rules and principles of EU law committed by any state authority, regardless of its constitutional status. This includes actions, inactions, or omissions, whether related to constituent or modifying treaties, secondary legislation, international agreements, or general principles of law guaranteed by EU law. Additionally, the Court has ruled that failure to comply with a decision of the CJEU constitutes an infringement, albeit a 'special infringement'[840] subject to referral to the Court.[841]

To summarise, the infringement procedure involves informal consultations between the Commission and the suspected 'violator' of EU rules. Subsequently, the Commission may issue a letter of formal notice to the concerned Member State. If the response is unsatisfactory, the Commission can issue a reasoned opinion and, if non-compliance persists, escalate the case to the CJEU. Preferring informal consultations and persuasion, the Commission aims to address non-compliance early in the procedure, thus minimizing open conflicts with non-compliant Member States.[842] Notably, a significant number of cases are resolved during the initial stages of the procedure,[843] underscoring the generally effective nature of the Commission's enforcement actions in ensuring compliance with EU law.[844]

[838] TFEU, Article 258.
[839] Cf. TFEU, Article 258.
[840] In this regard, see Barav and Philip, 1993, p. 639.
[841] Popescu, 2010, p. 60.
[842] For further, see Closa, 2019.
[843] Börzel, 2003, pp. 9–61.
[844] Panke, 2010, pp. 799–817.

3. 2. Land laws of the Visegrád countries and the EU law

As part of the largest enlargement round[845] in the EU's history, countries joining the European Union in or after 2004 were required to align their national legislation with EU law. Upon their accession, these new Member States were granted the opportunity, through their Accession Treaties, to maintain their existing national land law frameworks regarding the acquisition of ownership of agricultural land[846] for a transitional period.[847] While this period typically lasted seven years, some countries managed to negotiate extensions.[848] Regarding the Visegrád Countries, Hungary[849] and Slovakia[850] negotiated additional three years beyond the standard seven, giving it a total of ten years to harmonise its land laws with EU legislation, while the Czech Republic, which also had a transition period of seven years, did not take the opportunity to extend the deadline.[851] Given that Poland managed to negotiate a much longer transition period of 12 years instead of the typical 7 years, it did not have the possibility to request the extension.[852]

After the transitional period ended, the European Commission undertook a thorough assessment of the national land laws of newly accessed Member States, and specific provisions within their legislation were identified as obstructing the fundamental economic freedoms of the European Union.[853] Notably, restrictions on the free movement of capital and the freedom of establishment raised concerns, potentially hampering cross-border agricultural investments. Consequently, the Commission initiated infringement proceedings against several Member States in 2015, including Hungary and Slovakia.[854] It is worth noting that such proceedings

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[845] A specific feature of the 'enlargement process' is that the issue of agricultural land acquisition has consistently been a priority in Accession Treaties. Unlike 'older' EU members, countries that joined in 2004 or later had agricultural land acquisition explicitly addressed in their Accession Treaties, making it a key part of their legislative frameworks. For further details on this topic, see Szilágyi, 2017, p. 151.
[846] But also, forestry land. Cf. Siman, 2025, pp. 152–154.
[847] Szilágyi 2017, p. 158.
[848] More details on the negotiations between the new Member States and the EU can be found here: Swinnen and Vranken, 2009, p. 11. See also: Mihaljek, 2024, p. 192.
[849] Bartha, 2017, p. 410.
[850] See, for example, Lazíková and Bandlerová, 2014, p. 121. See also Nociar, 2016.
[851] See the EU Commission press release report: *Frequently asked questions, Extension of transitional periods for the acquisition of agricultural land*, *14 April 2011, MEMO/11/244* Available at: https://ec.europa.eu/commis-sion/ presscorner/detail/en/MEMO_11_244 (Accessed: 28 January 2025)
[852] Godžirov, 2020, p. 854.
[853] Cf. Szilágyi and Szinek Csütörtöki, 2023a.
[854] See the press release of the European Commission: *"Financial services: Commission requests BULGARIA, HUNGARY, LATVIA, LITHUANIA and SLOVAKIA to comply with EU rules on the*

related to land transfers were relatively rare in the past, with preliminary ruling procedures having been initiated instead.[855] Furthermore, the Commission's investigation and subsequent actions were focused exclusively on Member States that joined the EU in 2004 or later. This is significant because these countries had typically based their land laws on those of the 'older' Member States. This selective approach of the Commission was criticised by a Hungarian expert, suggesting it could be discriminatory.[856] In light of this, it is worth conducting further investigations, and as some authors highlighted, it would be worth bringing the matter to the European Ombudsman for clarification.[857]

3. 3. Infringement procedures and the countries under examination

As noted, this part of the thesis does not examine the land law regimes of the Visegrád countries in detail but evaluates their alignment with EU law. The recently celebrated twenty-first anniversary of accession highlights the continued significance of this analysis.

3. 3. 1. Czech Republic

In the land law cases examined, the Czech Republic has not been the subject of infringement proceedings concerning agricultural land acquisition, nor has the European Commission or the CJEU challenged its legislation.[858] Although the Czech Republic has been involved in various infringement proceedings, none have pertained to land law (or directly to the acquisition of ownership of agricultural land).[859]

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acquisition of agricultural land." Available at: https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_1827 (Accessed: 14 January 2021)

[855] Szilágyi, 2018, p. 185.

[856] Korom and Bokor, 2013, pp. 266–267. See also Papik, 2017, p. 155.

[857] See Szilágyi, 2018, p. 186. Hungarian scholarship has advanced various proposals to address the challenges posed by usufruct rights. The issue was prominently debated at the 2015 CEDR Congress in Potsdam and a 2017 conference in Budapest. For further analysis, see Raisz, 2017, p. 441.

[858] Vomáčka and Leichmann, 2022, p. 137.

[859] See the website of the European Commission. Available at: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/ (Accessed: 20 May 2025)

3. 3. 2. Hungary

The investigation into Hungary's land law regime by the EU led to the initiation of two infringement proceedings. Firstly, the Commission commenced a case[860] regarding the *ex lege* termination of usufruct rights established by contract between non-relatives, known as the usufructuary case.[861] Additionally, apart from infringement proceedings, requests for preliminary rulings were also submitted in relation to the usufructuary case, which will be elaborated further. Secondly, a separate infringement proceeding was launched concerning the entirety of Hungary's land law regime, referred to as the global case.[862]

3. 3. 2. 1. The global case

In the context of the global case, it's important to note that Hungary, in response to proceedings initiated by the European Commission, successfully defended several provisions, thereby demonstrating compliance with EU law. Consequently, various conditions, such as the procedural role of the local land commission, land acquisition and possession limits, the system of pre-emption and pre-lease entitlements, and the duration of leases, were removed from the scope of the infringement procedure.[863] While these measures are now considered compliant with EU law, they remain integral components of Hungary's land law regime. However, the European Commission continues to contest the legality of other instruments under the EU law in ongoing infringement proceedings.[864] These include, for example, the prohibition on legal persons acquiring ownership of agricultural land, the ban on land transformation, the requirement of professional qualification for agricultural producers, the non-recognition of practices reached abroad, the self-farming obligation, and the objectivity of conditions for prior authorisation of sales contracts.[865]

Among these, the restriction on legal persons acquiring ownership of agricultural land stands out as a cornerstone of Hungary's current land law regime.

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[860] Infringement No. INFR(2014)2246, decision date 18 June 2014.
[861] For more on the topic, see Andréka and Olajos, 2017, pp. 410–424.
[862] Infringement no. INFR(2015)2023, decision date 26 March 2015
[863] Andréka and Olajos, 2017, pp. 410–424.
[864] Szilágyi and Szinek Csütörtöki, 2023a, p. 321.
[865] Szilágyi, 2018b, pp. 193–194.

Dating back to 1994, this provision predates the introduction of the new land regime and is a distinctive feature of Hungary's land laws in the Central European region.[866] It's worth mentioning that this restriction applies not only to the acquisition of land by foreign legal persons but also, with some exceptions, to domestic legal persons.[867] Furthermore, it's essential to clarify that this restriction pertains to land acquisition, not land use.[868]

Andréka and *Olajos* emphasise the significance of the mentioned provision, highlighting its role in preventing the emergence of an ownership structure that would be difficult to control. Such a structure could undermine efforts to maintain the population and vitality of rural areas, as it would complicate the regulation of land ownership limits and other acquisition conditions.[869]

If the Hungarian legislator were to lift the ban on legal persons acquiring ownership of agricultural land, it could potentially impact other laws considered lawful by the EU. This ban represents a fundamental aspect of Hungary's land law regime, and its removal would necessitate significant revisions to acts enacted in (or after) 2014.[870] Moreover, if the case were to be reviewed by the CJEU, it could establish a precedent at the EU level.[871]

3. 3. 2. 2. The usufructuary case

In the context of the second infringement proceeding, a joint decision was reached during the preliminary ruling procedure in the usufruct cases. Consequently, the subsequent subchapter will delve into the specific instances concerning matters within Hungarian land law related to the *ex lege* termination of usufruct rights established by contracts between non-close relatives. Notably, it will explore the ruling of 21 May 2019 in Case C-235/17, *European Commission v Hungary*.

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[866] Szilágyi and Szinek Csütörtöki, 2022, pp. 362–363.
[867] Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 29–52.
[868] Szilágyi, 2022b, p. 189.
[869] For more on this topic, see Andréka and Olajos, 2017, pp. 410–424.
[870] Szilágyi and Szinek Csütörtöki, 2023a.
[871] Szilágyi, 2022b, p. 190. However, in the *Ospelt* judgment, the CJEU found this restriction to be contrary to EU law. Nonetheless, it's essential to recognise that this ruling is not directly applicable to the Hungarian land law regime, as the underlying case differed in principle.

3. 3. 3. Poland

In the case of Poland, the European Commission has initiated numerous proceedings for infringement of its EU Treaty obligations. However, none of these cases pertained to the cross-border acquisition of agricultural land or farms, such as those related to the environment, energy, taxation, customs union, justice, fundamental rights, and citizenship.[872] While two agricultural and rural development decisions were addressed in Poland, they were concerned about the failure to notify measures transposing the Unfair Commercial Practices Directive.[873,874] First, a letter of formal notice under Article 258 TFEU[875] was announced on 23 July 2021, while the second, closing the case, was announced on 9 February 2022. Therefore, it can be concluded that Poland has complied with its EU obligations regarding the cross-border acquisition of land or farms.[876]

3. 3. 4. Slovakia

Slovakia is one of the Member States against which the Commission has initiated infringement proceedings relevant to this research, the reasons for which are discussed below.

As mentioned earlier,[877] the European Commission has formally requested certain countries, including Slovakia, to amend[878] their legislation concerning the acquisition of ownership of agricultural lands, as it violated not only the freedom of establishment but also the free movement of capital.[879] To be precise, the request concerned the legal regulation of Act on Land Acquisition.

It should be recalled that specific provisions of the Act on Land Acquisition granting preferential rights to individuals engaged in agricultural activity within the municipality—requiring ten years of residence or a registered office and at least three years of commercial agricultural activity—were subject to scrutiny. The long-term

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[872] Ibid.
[873] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market
[874] Infringement number INFR(2021)0318
[875] To be precise, Article 260(3) of the TFEU.
[876] Ledwoń, 2022, p. 213.
[877] See Part I, 4., 4.4 of this thesis
[878] In connection with this, see the letter no. C(2015) 3060 final.
[879] See the press release of the European Commission. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1827 (Accessed: 22 June 2021)

residence requirement was deemed incompatible with EU law as discriminatory against other EU nationals. While mechanisms such as the publication system[880] for land offers and the certification process for acquisition eligibility were upheld, the prohibition on non-EU, EEA, and Swiss nationals acquiring agricultural land remained in force.[881]

In response, the Slovak legislator amended a specific paragraph of the Foreign Exchange Act,[882] thereby opening the agricultural land market not only to EU citizens but also to nationals of third countries. Furthermore, the country implemented also several new regulations concerning the acquisition of agricultural land.[883]

Even prior to European Commission involvement, the Act on Land Acquisition generated significant professional and political debate. The Constitutional Court of the Slovak Republic subsequently reviewed specific provisions, reflecting EU concerns[884] and identifying inconsistencies with domestic and EU legal standards. The Commission's infringement proceedings against Slovakia were closed on 10 October 2019. Although Slovakia initiated domestic reforms before EU intervention, the process remained complex and extended over approximately four years.[885]

As it is clear from the information mentioned above, the ruling of the Constitutional Court of the Slovak Republic prompted significant changes, easing restrictions on agricultural land acquisition for both natural and legal persons. However, this has sparked concerns about the state's ability to protect land, despite ongoing efforts to strengthen regulations. Therefore, the legislative challenge involves finding a balance between compliance with EU law and upholding fundamental rights and freedoms outlined in the Constitution of the Slovak Republic and the ECHR.[886]

[880] For more information, see Szilágyi and Szinek Csütörtöki, 2022.
[881] Szinek Csütörtöki, 2022b, pp. 156–171.
[882] Act No. 202/1995 Coll., the Foreign Exchange Act, para. 19a.
[883] Lazíková, Bandlerová and Lazíková, 2020, p. 100.
[884] Drábik and Rajčániová, 2014, p. 84.
[885] Szilágyi and Szinek Csütörtöki, 2022, p. 287.
[886] Ibid.

4. Preliminary ruling procedure

4. 1. In general

Over the past decades, the preliminary ruling procedure has significantly influenced the development of EU law. Fundamental legal principles defining community law, including its autonomy, primacy, the doctrine of direct effect, and the state's responsibility for damages resulting from acts contrary to EU law, have evolved through such procedures.[887]

Notably, the preliminary ruling procedure is the most specialised and common procedure of the CJEU and falls within its exclusive jurisdiction. It consists of the binding interpretation or ruling on the validity of a provision of EU law by the CJEU, on the initiative of a national court, when a national court applies EU law to a question of interpretation or validity of EU law.[888]

The preliminary ruling procedure stands as a cornerstone in fostering cooperation between the CJEU and national courts across EU Member States, facilitating the consistent and efficient application of EU law. Rooted in Article 267 of the TFEU, this mechanism empowers the Court to provide authoritative interpretations of EU law and adjudicate the validity of Union institutions' acts. Its significance is particularly pronounced in competition law, where Articles 101 and 102 of the TFEU hold direct legal force. National competition authorities and courts are endowed with the jurisdiction to enforce these provisions at the domestic level, thereby reinforcing the EU's antitrust framework and promoting fair competition across Member States.[889]

Since its establishment alongside the CJEU in 1952, the preliminary ruling procedure has served a fundamental purpose: to foster a cohesive interpretation and application of EU laws. Acting as the judicial arm of the European Union, the Court collaborates with national courts to ensure the consistent adherence to EU legislation and the Treaties. The essence of this procedure lies in its facilitation of harmonised legal principles across Member States.[890]

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[887] Somssich, 2019, p. 99.
[888] Ibid.
[889] da Cruz Vilaça, 2019.
[890] Gombos, 2017.

National courts overseeing individual cases are responsible for the preliminary ruling procedure. Based on the specific circumstances of each case, these courts determine whether a referral to the CJEU is necessary to adjudicate the matter. Additionally, they assess the relevance of the questions posed to the Court in light of the issues before them. This underscores the decentralised nature of the EU legal system, highlighting the autonomy of national courts in applying EU law within their respective jurisdictions.[891]

In recent years, various in-depth assessments and analyses have surfaced, exploring the preliminary ruling procedures initiated by national courts. Some of these evaluations are tied to the commemoration of specific countries' EU accession anniversaries, while others are conducted independently.[892] Additionally, a substantial body of domestic and international scholarship critically examines individual cases. Given the scope of the topic, it does not aim for comprehensive coverage but rather provides a focused overview of preliminary rulings affecting the countries under examination, emphasising the most recent procedures, as earlier cases are already extensively analysed in the literature.[893]

4. 2. Czech Republic

The research indicates that no preliminary ruling procedures have been initiated concerning the land law regime of the Czech Republic.

4. 3. Hungary

In contrast, several preliminary ruling procedures concern Hungary's land law regime.

4. 3. 1. SEGRO and Horváth case

First of all, regarding the *SEGRO and Horváth*, it's important to note that SEGRO is a Hungarian commercial company whose shareholders, residing in Germany, are

[891] Virág, 2019.
[892] Somssich and Fehér, 2019, p. 8.
[893] See, for example, Szilágyi and Szinek Csütörtöki, 2023b, pp. 145–172.; Szilágyi, 2017, pp. 165–181.; Szilágyi, 2018, pp. 69–90.

nationals of other EU Member States.[894] Conversely, Horváth is an Austrian citizen living in Austria. Both parties hold usufructuary rights over agricultural land in Hungary, which were terminated by Hungarian authorities without compensation under new national legislation. This legislation stipulates that such rights can only be granted to the landowner's close relatives. Believing these provisions contravene the free movement of capital principle, SEGRO and Horváth brought an action before the Administrative and Labour Court of Szombathely. Subsequently, the court referred the matter to the CJEU for a preliminary ruling.[895]

The questions referred to the CJEU encompassed a range of complexities. Firstly, the 2013 laws[896] resulted in the deprivation of legally established contractual rights. The Administrative and Labour Court of Szombathely sought clarity on whether this national requirement, which tied the need for a close family relationship to usufruct rights, complied with EU law. Secondly, the referring court questioned the conformity of the national legislation with the fundamental freedoms enshrined in EU law. Additionally, concerns were raised regarding potential conflicts between the national provisions and the Charter of Fundamental Rights of the European Union (hereinafter referred to as the Charter), particularly regarding the right to a fair trial and the right to property. Lastly, although the laws affected Hungarian nationals and nationals of other Member States, there was an element of discrimination due to the likelihood that close family relationships would primarily benefit Hungarian nationals, leading to indirect discrimination.[897]

Concerning this, attention must be paid to the AG's opinion,[898] where he reached five key conclusions.[899] First, he determined the admissibility of the request for a preliminary ruling. Second, he asserted that the free movement of capital should apply to cases involving usufruct land rights. Third, the AG examined whether there was a breach of the free movement of capital despite the existence of Article 345 of the TFEU. Fourth, the AG addressed the challenging question of whether the laws were justified. Finally, the opinion presented a compelling argument for why the Court

[894] Ibid., para. 15.
[895] Szilágyi and Szinek Csütörtöki, 2023a, p. 323.
[896] In this respect, see Land Transfer Act and Implementation Land Act.
[897] *SEGRO and Horváth*, para. 37.
[898] Cf. Varga, 2019c, pp. 540–541.
[899] *SEGRO and Horváth*, Opinion of AG *Øe*.

should refrain from addressing whether there is a violation of Article 17 and Article 47 of the Charter.[900]

The AG concluded that the Court would have jurisdiction regardless of whether the usufruct rights were established before Hungary acceded to the EU on 1 May 2004.[901] This determination was based on the fact that the case pertained to administrative decisions made after the date of accession. Furthermore, any national court has the authority to refer questions of EU law for preliminary rulings.[902] Despite the Hungarian government's argument that the judgment of the Constitutional Court of Hungary binds the referring court, the AG emphasised that national courts retain broad discretion in referring questions to the CJEU, as stipulated in Article 267 of the TFEU.[903] Thus, the stance of the Constitutional Court of Hungary did not render the request inadmissible.[904]

It should also be added that the AG found a restriction on the free movement of capital despite the principle of neutrality towards ownership rules outlined in Article 345 of the TFEU. According to the AG, Article 345 of the TFEU does not exempt national measures concerning the acquisition of agricultural land from the fundamental rules of the EU's legal system, particularly the fundamental freedoms and non-discrimination rules. The AG considered the national measures to constitute indirect discrimination based on the origin of the capital, as Hungarian nationals could more easily meet the conditions set out in Hungarian law compared to citizens of other Member States. The AG determined that public interest objectives cannot justify discriminatory measures.[905]

Moreover, regarding the applicability of the Charter to this case, the AG suggested that the Court should refrain from addressing this question when the measures in question do not implement provisions of EU secondary law but infringe economic freedoms. It can be observed that the AG distinguished between two situations: one where a fundamental right serves as a justification for the restriction and another where the breach of a fundamental right nullifies the justification for the restriction. The AG determined that SEGRO's case fell within the latter category.

[900] Groussot, Kirst and Leisure, 2019, p. 73.
[901] *SEGRO and Horváth*, Opinion of AG *Øe*, para. 47.
[902] Cf. Varga, 2019c, pp. 540–541.
[903] Ibid., para. 45.
[904] Groussot, Kirst and Leisure, 2019, p. 73.
[905] *SEGRO and Horváth*, Opinion of AG *Øe*, paras. 90–118.

However, interpreting the Charter to assess its violation apart from economic freedoms independently would potentially broaden the scope for challenging national legislation, which could conflict with Articles 6(1) of the TEU and 51(2) of the Charter.[906]

In connection with the AG's opinion, *Szilágyi* pointed out two key aspects. Firstly, the AG's reliance on the provisions of the negative integration model within the relevant EU rules when proposing a ruling suggests a disregard for the favourable integration provisions evident in CJEU case law.[907] This approach implies that AG *Øe* views agricultural land solely as a commercial asset. Secondly, upon scrutinising the arguments presented in the mentioned opinion, it becomes apparent that there may be a conflation between the legal instruments of usufructuary rights *(haszonélvezet)* in Hungarian law and lease agreements *(haszonbérlet).* Consequently, the AG evaluated the Hungarian legislation as if it pertained to leasehold, leading to an assessment of indirect discrimination that appears unfounded. In Hungarian jurisprudence, parties involved in usufruct relationships typically have a familial connection. However, the AG interpreted this situation as indirect discrimination, defining it as a circumstance where a condition stipulated by national legislation, while not formally discriminating based on origin, is more readily met by nationals of the Member State concerned than by nationals of other Member States. In his assessment, this interpretation represents a fundamental misapplication of usufruct law.[908]

Moving towards to the Court's decision, it should be highlighted that in the current case, the CJEU scrutinised specific clauses within the Land Transfer Act and the Implementation Land Act. These provisions sought to nullify usufruct rights *(ex lege)* concerning Article 49 of the TFEU (freedom of establishment), Article 63 of the TFEU (free movement of capital), and Articles 17 (right to property) and 47 (right to a fair trial) of the Charter.[909]

Given the CJEU's jurisprudence over the past 15 years, it's unsurprising that the ruling primarily delves into the free movement of capital[910] within the EU's land acquisition framework. This framework operates within the nexus of positive and

[906] Groussot, Kirst and Leisure, 2019, pp. 73–74.
[907] Korom, 2022a, p. 78 and 81.
[908] Szilágyi, 2017, p. 161. See also the AG's opinion, paras. 71–81.
[909] Cf. Varga, 2019c.
[910] *SEGRO and Horváth*, Opinion of AG *Øe*, para. 58.

negative integration models,[911] with a present emphasis on the negative integration model.[912] Consequently, the Court determined that the Hungarian legislation encumbers the free movement of capital and fails to meet the criterion of proportionality.[913]

Additionally, the ruling in *SEGRO and Horváth* concerning the termination of Hungarian usufruct rights should not be regarded merely as a matter of the Member States' margin of appreciation in land policy. Instead, the decision is closely connected to the derogation period and its expiration on the Hungarian land market.[914]

There was anticipation regarding the CJEU's stance on the pertinent provisions of the Charter. However, the outcome[915] did not bring about significant change or a breakthrough in case law. The CJEU determined that since it had already identified a breach of the free movement of capital, it deemed further examination of the national legislation under Articles 17 and 47 of the Charter unnecessary to resolve the primary proceedings.[916] At this point, it should be added that in recent judgments, the Curia of Hungary (hereinafter referred to as the Curia)[917] has ruled that a specific statutory provision violates EU law, aligning with the CJEU's position in the *SEGRO and Horváth*. Upholding the principle of the EU law's supremacy, the Curia has thus invalidated the application of conflicting national legislation. Moreover, the Curia has broadened this principle to encompass situations not directly governed by EU law, as demonstrated in Administrative Principle Decision No. 11/2019.[918]

4. 3. 2. Bán and Kovács case[919]

In 1993, Ms. Kovács sold a plot of arable land located in a peripheral area of the municipality of Polgárdi (Hungary) to KP 2000. Since the sale could not be recorded in the land register due to changes in the provisions governing land contributions to corporate assets, KP 2000 did not become the owner of the land, although it has been

[911] Korom, 2021, pp. 101–125.
[912] Szilágyi, 2022b, p. 190.
[913] *SEGRO and Horváth*, paras. 81–126. and 127.
[914] Korom, 2023, p. 88
[915] On the amendment of the rules on the transfer of agricultural land in light of the judgment in question, see, for example, Varga, 2019a, pp. 33–39.; Varga, 2019b, pp. 270–276.
[916] Szilágyi and Szinek Csütörtöki, 2023a, p. 324.
[917] The highest judicial authority in the country.
[918] Szilágyi and Szinek Csütörtöki, 2023a, p. 324.
[919] Case C-24/18, *István Bán v KP 2000 kft. and Edit Kovács*

farming it since 1993. On 20 May 2003, Ms. Kovács and KP 2000 concluded a lease agreement for the same land.[920]

It should be added that Mr. Bán acquired the same land through a public sale procedure, and this acquisition was recorded in the land register on 3 March 2016. Subsequently, Mr. Bán applied to the Court of the Second and Third Districts of Budapest with a request, primarily, for a declaration of the invalidity of the lease agreement that was concluded between KP 2000 and Ms. Kovács, and, subsidiarily, for a declaration of nullity. As an alternative, he requested a declaration that the lease agreement had been terminated under para. 137/A of the Judicial Execution Act six months after the public sale date.[921]

Although Mr. Bán withdrew his final claim during the proceedings, the referring court contends that it cannot rule on the lease contract without considering the legislative provisions leading to its automatic termination, specifically Articles 137 and 137/A of the Act on Judicial Execution.[922]

Furthermore, the court leans towards the opinion that these national provisions may discourage nationals of other EU Member States from exercising their rights under the free movement of capital and freedom of establishment. This concern arises from the potential premature revocation of usage rights over immovable property in Hungary without adequate compensation during compulsory execution proceedings against the lessor. Additionally, given the historical restrictions or prohibitions on foreign nationals acquiring ownership of arable land in Hungary, they are more inclined than Hungarian nationals to enter into lease agreements to secure usage rights over such land. Consequently, they may be disproportionately impacted by these national provisions.[923]

Given these concerns, the national court decided to suspend proceedings and referred a question to the Court for a preliminary ruling. It asked whether national legislation, similar to that reviewed in the main proceedings, should be considered a restriction contrary to Articles 49 and 63 of the TFEU. This legislation automatically terminates land use rights for agricultural or forestry purposes without providing financial compensation. It does do when a new owner acquires the property through enforcement proceedings and when the land user has not received aid for agricultural

[920] Ibid., para. 6.
[921] Ibid, paras. 7 and 8.
[922] Ibid., para. 9.
[923] Ibid., para. 10.

or rural development related to that land. Such aid must be funded by the EU or the national budget and subject to the obligation of using the land for a particular time as established by law.[924]

As a result, the CJEU dismissed the application as manifestly inadmissible and closed the case by order. It asserted that all aspects of the primary legal dispute were confined to Hungary, involving the nullity of a land lease between a Hungarian national and a locally established company. Furthermore, it highlighted that the referring court had not specified the extent to which the internal dispute was linked to TFEU provisions[925] regarding freedom of establishment and free movement of capital. This would necessitate the interpretation sought in the preliminary ruling context.[926]

4. 3. 3. Grossmania case[927]

The preliminary ruling judgment,[928] dated 10 March 2022, also revolves around the 2013 Hungarian legislation. The amendment to this act, effective 1 May 2014, stipulated that usufruct rights and rights of use established by a contract between non-relatives, whether indefinite as of 30 April 2014 or definite with an expiration after 30 April 2014, would be nullified.[929]

First of all, it should be stated that Grossmania, a company registered in Hungary and whose members are nationals of other EU Member States, had its rights of usufruct[930] cancelled in the land register under this legislation—these rights were automatically terminated by law on 1 May 2014, according to the mentioned legislation, leading to their removal from the land registry.[931] Despite lacking a legal

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[924] For the exact formulation of the question, see the request for a preliminary ruling from the Court of the Second and Third Districts of Budapest, lodged on 8 January 2018.

[925] *Somssich* and *Fehér* noted that the reason for an order finding lack of competence may be that the question raised relates to a factual situation which arose before accession or in which no EU dimension can be identified, for example a cross-border element as regards fundamental freedoms. See Somssich and Fehér, 2019, p. 16.

[926] Case C-24/18 *István Bán v KP 2000 kft. and Edit Kovács*, paras. 16 and 19. See also Szilágyi and Szinek Csütörtöki, 2023a, p. 325.

[927] Case C-177/20, *Grossmania Mezőgazdasági Termelő és Szolgáltató Kft v Vas Megyei Kormányhivatal*. Hereinafter referred to as *Grossmania*.

[928] A detailed and comprehensive analysis of the judgment is provided, for example, by Arzoz, Szilágyi and Szinek Csütörtöki.

[929] Szilágyi and Szinek Csütörtöki, 2023a, p. 325.

[930] The company had obtained these rights over specific agricultural parcels in Jánosháza and Duka.

[931] In connection with this, see the Press release no. 44/22. Available at: https://curia.europa.eu/jcms/upload/docs/application/pdf/20022-03/cp220044hu.pdf (Accessed: 24 March 2025)

remedy against the cancellation, the commercial company applied to Hungarian authorities to reinstate its usufructuary rights in the land registry.[932] Nevertheless, its application was rejected based on existing legislation.[933]

Following this, the commercial company pursued legal action by contesting the administrative decision in the Administrative and Labour Court in Győr. The court, in its query to the CJEU, sought clarification on whether a legislative provision previously deemed incompatible with EU law in a prior preliminary ruling by the CJEU could still be applied in subsequent national administrative or judicial proceedings, even if the factual circumstances of the following proceedings differed from those of the prior ruling.[934]

So, it should be highlighted that the essence of this case lies not in determining whether the provision of the Implementation Land Act contravenes EU law, but rather in examining whether a national court may misinterpret a provision of national law, found to be incompatible with EU law in a previous CJEU decision, based on differing contextual circumstances. While the specific circumstances of the two cases differ, the legal provision under scrutiny remains the same.

In connection with the present case, an opinion of an AG was also delivered,[935] wherein the AG provided a brief overview of two judgments: firstly, the *SEGRO and Horváth*, and secondly, *Case C-235/17*, which was connected to an infringement proceeding.[936] The AG emphasised the facts of the issue and the questions referred for preliminary ruling. He highlighted that Hungarian authorities must misapply para. 108 of the Implementation Land Act, which remains in force according to Hungarian legislation.[937] *Tanchev* criticised Hungary for failing to comply with the Court's judgments and for introducing new provisions that impede the full implementation of EU law, particularly making it more challenging to re-register usufruct rights after their illegal cancellation.[938,939]

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[932] Varga, 2022a, pp. 30–36.
[933] Szilágyi and Szinek Csütörtöki, 2023a, p. 324.
[934] In this respect, see the decision of the Administrative and Labour Court of Győr, reference no. 10.K.27.809/2019/7.
[935] AG *Tanchev* delivered his opinion on 16 September 2021.
[936] Varga, 2022a, pp. 30–36.
[937] *Grossmania*, Opinion of AG *Tanchev*, para. 15.
[938] Szilágyi and Szinek Csütörtöki, 2023a, p. 327.
[939] *Grossmania*, Opinion of AG *Tanchev*, paras. 16 and 17.

The AG expressed uncertainty about whether the administrative decisions denying the reinstatement of terminated usufruct rights were genuinely final.[940] However, he argued that if these decisions were indeed considered final, the *Byankov*[941] should be applied if these decisions were considered final. According to *Tanchev*, EU law, guided by the principle of effectiveness, would prevent national laws from enforcing the finality of a decision that hasn't been challenged in court, especially if it conflicts with EU laws, despite its legal consequences for the individual involved.[942]

Tanchev contended that a Member State such as Hungary cannot cite the principle of legal certainty to evade compliance with EU law. He suggested that any uncertainties regarding the principle of legal certainty could be resolved by adhering to the Court's rulings and EU legal obligations. He proposed that the Hungarian government should introduce legislation to compensate individuals whose beneficial rights were unlawfully revoked, consider reinstating those rights, and provide suitable financial compensation where necessary. Noting the absence of such measures and the emphasis placed by the European Commission during the hearing, it is reasonable to mitigate that Hungarian authorities sought to minimize the legal consequences of the Court's judgments.[943]

Furthermore, the AG argued that Hungary's claim of adhering to the principle of legal certainty is compromised when it maintains provisions in its legal system that have previously been deemed to violate EU law by the Court. He proposed that if the reinstatement of usufruct rights faced practical obstacles and Hungarian legislation did not include provisions for financial restitution, applying the principles established in the *Brasserie du pêcheur and Factortame*[944] would be essential. This would require the state to compensate Grossmania for any damages arising from its breach of EU law.[945]

However, his analysis extended beyond its initial scope. It provided broader perspectives and criticisms of the Court's previous rulings on the irrevocability of

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[940] Varga, 2022a, pp. 30–36.
[941] Case C-249, *Hristo Byankov v Glaven sekretar na Ministerstvo na vatreshnite raboti*
[942] *Grossmania*, Opinion of AG *Tanchev*, paras. 45–47. See also Szilágyi and Szinek Csütörtöki, 2023a, pp. 327–328.
[943] *Grossmania,* Opinion of AG *Tanchev*, para. 48.
[944] Cases C-46/93 and C-48/93, *Brasserie du Pêcheur SA v Bundesrepublik Deutschland and The Queen v Secretary of State for Transport, ex parte: Factortame Ltd and others*, paras. 21, 22, 31 and 36.
[945] Arzoz, 2022, p. 68.

administrative decisions conflicting with EU law and their potential for reversal. Through the preliminary reference, he also scrutinised the *Kühne & Heitz* judgment, which he believed lacked a coherent rationale for its stance. He introduced ambiguity in interpreting conditions laid down in the *Kühne & Heitz* judgment.[946] The AG championed a uniform approach in weighing the principles of legality and legal certainty, irrespective of whether the annulment relates to unlawful actions under EU law or national legislation.[947]

It can be concluded that while various aspects of the Court of Justice's judgment are noteworthy, the focus here is on the compensation provisions. The Court emphasised that Hungarian authorities and courts must take all necessary steps to rectify the unlawful consequences of national legislation. This may include reinstating unlawfully extinguished usufructuary rights in the land register. Suppose reinstatement is not possible due to the rights acquired in good faith by third parties following the cancellation. In that case, the former holders of the extinguished rights should receive adequate compensation, either monetary or otherwise, to cover the economic loss resulting from the termination of their rights. Furthermore, they should also be compensated for any additional losses incurred due to the termination, provided they meet the conditions established in the CJEU's case law.[948]

4. 3. 4. Commission v Hungary case[949]

Regarding this case, it should be highlighted that on 21 May 2019, the CJEU's Grand Chamber rendered its judgment in the mentioned case. The European Commission brought an action against Hungary under Article 258 of the TFEU for failure to fulfil its obligations. More precisely, the Commission sought a ruling from the Court stating that Hungary had breached Articles 49 and 63 TFEU, along with Article 17 of the Charter, due to its enactment of restrictive legislation regarding usufruct rights over agricultural and forestry land since 1 January 2013.[950]

Specifically, the Commission requested a declaration stating that Hungary breached its obligations under Articles 49 and 63 TFEU and Article 17 of the Charter

[946] Case C-453/00, *Kühne & Heitz NV v Produktschap voor Pluimvee en Eieren*
[947] Ibid.
[948] Szilágyi, 2022b, pp. 192–193.
[949] Case C-235/17, *Commission v Hungary*
[950] Grégoire, 2019, p. 269.

by enacting para. 108(1) of the Implementation Land Act. This provision automatically cancels usufruct rights over agricultural land previously established between individuals who are not closely related family members. The cumulative effect of these measures was the loss of usufruct rights previously granted to European investors over agricultural land in Hungary. This scenario exemplifies a typical situation where an investor might seek compensation under the non-expropriation or fair and equitable treatment[951] provisions of a relevant BIT. Hence, this case presented an ideal opportunity to examine whether EU law safeguards investors against indirect expropriation or violations of fair and equitable treatment akin to the protections offered by BITs. The Court's rulings could provide some reassurance for investors.[952]

In *Commission v Hungary*, the CJEU addressed legislation previously examined in the SEGRO case. This ruling is particularly significant because, besides analysing Article 63 TFEU concerning the free movement of capital, the CJEU also assessed Article 17 of the Charter of Fundamental Rights concerning the right to property. The CJEU concluded that this legislation violated Article 17 of the Charter. It interpreted the right of usufruct, regulated by Hungarian law, as falling under Article 17 of the Charter and considered it a 'lawfully acquired' right. The CJEU determined that the annulment of usufructuary rights constituted property deprivation under Article 17(1) of the Charter, requiring prompt and fair compensation. However, the contested provision failed to meet this requirement, leading the CJEU to find the deprivation unjustifiable based on public interest.[953] Moreover, the CJEU observed the absence of arrangements for timely and fair compensation, further asserting that the provision violated the right to property as guaranteed by Article 17(1) of the Charter.[954]

Notably, the Compensation Act, the Act CL of 2021, was enacted to comply with the judgment in *Commission v Hungary*. Article 128 of this act, amending the Implementation Land Act, introduces the possibility of providing adequate compensation for the *ex lege* termination of usufructuary rights.[955]

As in *SEGRO and Horváth*, the ruling in *Commission v Hungary* concerning the termination of Hungarian usufruct rights should not be regarded merely as a matter

[951] In connection with the development of international investment law by arbitral tribunals and the strange case of the fair and equitable treatment standard, see Ortino, 2025.
[952] Grégoire, 2019, p. 270.
[953] Varga, 2020, pp. 6–7.
[954] See para. 129 of the mentioned judgment.
[955] Szilágyi, 2022b, p. 192.

of the Member States' margin of appreciation in land policy, but rather as being closely connected to the derogation period and its expiration on the Hungarian land market.[956]

4. 3. 5. Nemzeti Földügyi Központ[957]

The case of *Nemzeti Földügyi Központ* represents the latest development in a series of legal challenges surrounding usufruct rights in Hungary.[958] The CJEU was asked to rule on the validity of restoring a previously annulled usufruct right, following Hungary's 2021 legislation adopted in response to a prior CJEU ruling. The dispute centred on whether a usufruct right originally granted to a German national had been lawfully registered. This case is particularly interesting because, unlike previous cases where applicants sought reinstatement of their usufruct rights, the German-resident applicant in *Nemzeti Földügyi Központ* challenged the restoration of the previously deleted right.[959]

4. 3. 5. 1. Background of the case

The events leading up to the dispute began on 30 December 2001, when the company Readiness Kft. and GW entered into a contract establishing a usufruct right over a plot of agricultural land in Kőszeg, Hungary. This usufruct right was duly entered into the Hungarian Real Estate Register on 29 January 2002 without any immediate objections, nor was it contested.[960]

Years later, in 2012, CN registered her ownership of the same agricultural land, and her ownership was officially recorded in the registry.[961] In 2015, the Hungarian authority—the Szombathelyi District Registry, Vas Region Administrative Department—deleted GW's usufruct right from the register. This decision was based on the Hungarian legal provision that required the usufruct holder to be a close relative of the landowner for the usufruct right to be upheld.[962] Since GW was not a close relative of the landowner, the usufruct right was deleted from the register, in line with

[956] Korom, 2023, p. 88.
[957] C-419/23, *Nemzeti Földügyi Központ*
[958] Concerning this, see, for example, Fehér and Somssich, 2024, pp. 37–66.
[959] Szinek Csütörtöki, 2025, pp. 289–310.
[960] *Nemzeti Földügyi Központ*, para. 20.
[961] Ibid., para 21.
[962] Ibid., para. 22.

the provisions of Para. 108(1) of the 2013 Act on Transitional Measures, as well as para. 94 of the Act on the Land Register.[963,964]

However, the case took a significant turn in 2018 when the CJEU ruled on *SEGRO and Horváth*, clarifying that Article 63 TFEU[965] precludes national legislation that automatically extinguishes usufruct rights over agricultural land held by non-nationals of the Member State. This ruling emphasised that national laws that cancel usufruct rights solely because the holder is not a close relative of the landowner are incompatible with EU law.[966] It should be recalled that in 2019, the CJEU issued a further judgment in *Commission v Hungary*, where it found that Hungary had violated EU law by adopting legislation that cancelled usufruct rights held by non-Hungarian nationals, affirming yet again that such measures were contrary to the principles of the European Union, particularly the free movement of capital and the protection of property rights.[967]

In response to these rulings, Hungarian law was amended, and on 30 November 2022, the National Land Centre issued an order to reinstate GW's usufruct right in the real estate registry. This decision was based on the provisions of paras. 108/B and 108/F of 2013 Act on Transitional Measures, as amended by a 2021 law[968] aimed at aligning Hungarian law with EU legal requirements. This reinstatement was crucial because, according to Hungarian law, the deletion of the usufruct right could only be undone if the usufruct holder was not considered to have proceeded in bad faith. CN, the current owner, was deemed to have proceeded in bad faith because she was the owner of the land when GW's usufruct right had been deleted and, therefore, could not claim good faith in the context of the reinstatement process.[969]

Nevertheless, CN contested the decision of the National Land Centre, arguing that the original registration of the usufruct right in 2002 had been unlawful. The argument was based on para. 11(1) of the Act on Arable Land, which prohibited the registration of usufruct rights over agricultural land in favour of non-Hungarian nationals after 1 January 2002. Although the usufruct right was granted in 2001, it was not registered into the land register until 29 January 2002, when the law was already

[963] Until 31 January 2023 Act CXLI of 1997. From 1 February 2023 Act C of 2021.
[964] *Nemzeti Földügyi Központ*, para. 22.
[965] i.e., the free movement of capital
[966] *Nemzeti Földügyi Központ*, para. 23.
[967] Ibid., para. 24.
[968] Act CL of 2021
[969] *Nemzeti Földügyi Központ*, para. 25.

in force, rendering the registration unlawful in her view. Despite this, the registration decision had become final as it was not contested at the time, which complicated the legal situation.[970]

The National Land Centre and GW argued that the reinstatement of the usufruct right was valid and that there was no need to examine the lawfulness of the original registration. They pointed to the fact that the 2013 Law on Transitional Measures, as amended by the 2021 Law, did not require an examination of whether the original registration of the usufruct right was lawful, and that the relevant legislation allowed for the reinstatement of rights that had been unlawfully deleted, provided certain conditions were met.[971]

The national court, Győr High Court, found itself grappling with the conflict between Hungarian national law and the EU law, particularly the provisions of Article 63 TFEU and Article 17 of the Charter, which guarantees the right to property. The court noted that CN, a resident of Germany, was involved in an investment in agricultural land located in Hungary, which was subject to the EU rules governing the free movement of capital. Additionally, it highlighted that GW's usufruct right, created by a contract signed in 2001 but registered only in 2002, occurred after Hungarian national law prohibited such registrations for non-Hungarian nationals. Although the court acknowledged the potential unlawfulness of the registration under Hungarian law, the decision became final due to the fact that it had not been contested at the time.[972]

The key issue raised at the Győr High Court was whether Hungarian legislation, which mandates the reinstatement of usufruct rights without examining the lawfulness of their original registration, is in compliance with EU law. The court sought clarity from the CJEU on whether Articles 63 TFEU and 17 of the Charter preclude national laws allowing the reinstatement of usufruct rights in the land registry without a mandatory consideration of their (original) lawfulness. It also raised concerns about the principle of legal certainty and the compatibility of the reinstatement process with the EU's principles of effectiveness and sincere cooperation.[973]

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[970] Ibid., para. 26.
[971] Ibid., para. 27.
[972] Ibid., paras. 28–37.
[973] Ibid., para. 37.

4. 3. 5. 2. Opinion of AG Kokott

The Opinion of the AG in the present case was delivered on 11 July 2024. Her opinion emphasises that previous case law has established that national laws that violate EU principles—particularly those that annul usufruct rights to the detriment of EU nationals—are incompatible with EU law. In this case, the National Land Centre of Hungary reinstated the usufruct right following legislative changes adopted after a ruling declared the original law incompatible with EU law. However, the landowner, a German resident, challenged the reinstatement, arguing that the original usufruct registration was unlawful under Hungarian law at the time. The landowner asserted that the National Land Centre should have assessed the legality of the original registration before reinstating the usufruct to protect her property rights and the free movement of capital. This causes a conflict between the landowner's fundamental freedoms and the usufruct holder's rights. The key issue was whether the landowner can invoke EU law principles to demand the deletion of the usufruct despite the Court's prior ruling that protects the usufruct holder.[974]

The AG's Opinion delved deeply into the admissibility and substance of the preliminary ruling request, particularly the interpretation of Article 63 TFEU and Article 17 of the Charter. The case involves the reinstatement of a usufruct right after Hungary was found to have breached EU law. The Hungarian government argued that the preliminary ruling request was inadmissible, contending that the reinstatement of the usufruct promoted the free movement of capital and did not warrant a review of the original registration.[975]

However, the AG disagreed with the Hungarian government, stating that there is a clear link between the case and EU law, justifying the referral.[976] The applicant, a legal person residing in Germany, is protected under EU law, particularly Articles 63 TFEU and 17 of the Charter, guaranteeing the free movement of capital and the right to property. The reinstatement of the usufruct is directly tied to rectifying Hungary's previous violation of EU law, necessitating the referral to the CJEU.

On the substantive point, the AG assessed whether national authorities are required to examine the lawfulness of the original registration of the usufruct before

[974] *Nemzeti Földügyi Központ*, Opinion of AG *Kokott,* paras. 1–4.
[975] Ibid., para. 35.
[976] Ibid., para. 38.

its reinstatement. The main question was whether such an examination is mandated by EU law, even if the original registration was initially considered valid under national legislation. The AG emphasised that, in this case, the rights of the usufruct holder may prevail over those of the landowner, as long as this aligns with EU law and internal market principles.[977]

The AG further discussed whether the landowner, a non-resident of Hungary, can rely on EU law protections. The landowner benefits from the free movement of capital under Article 63 TFEU and the right to property under Article 17 of the Charter. However, protecting these rights are not absolute and can be restricted if they conflict with the rights of others, such as the usufruct holder. In this case, the reinstatement of the usufruct is necessary to comply with EU law and rectify a previous infringement. The rights of the usufruct holder are equally protected under EU law, limiting the landowner's ability to exercise their right to property fully.[978]

The AG concluded that, in this context, the reinstatement of the usufruct is justified and proportionate under EU law. While the landowner's rights are safeguarded, the overriding objective is to ensure compliance with EU law and protect the usufruct holder's rights. The Court has consistently held that EU law must take precedence in situations like this, where national laws conflict with EU obligations.[979]

In conclusion, the AG affirmed that the request for a preliminary ruling is admissible and that the reinstatement of the usufruct, in compliance with the judgment establishing Hungary's failure to fulfil its EU obligations, is consistent with EU law. The rights of the usufruct holder take precedence, given the need to uphold EU law and protect the free movement of capital and property rights. Additionally, the AG underscored that a landowner whose property is encumbered by a usufruct right that was originally lawfully registered but later deleted in violation of EU law cannot successfully invoke their rights under Article 63 TFEU and Article 17 of the Charter to compel the competent authority to delete the usufruct once again. This is particularly the case if the original registration of the usufruct infringed Hungarian national rules that were in effect at the time.[980]

[977] See Ibid., paras. 35., 40., 61. and 67.
[978] Ibid., paras. 63 and 70.
[979] Ibid., para. 76.
[980] See Ibid., paras. 77 and 78.

4. 3. 5. 3. The decision itself and the justification

The CJEU issued its judgment on 12 December 2024. It should be recalled that in this case, the CJEU was asked to assess whether EU law, specifically Article 63 TFEU and Article 17 of the Charter, prevented Hungarian national legislation from requiring the reinstatement of a usufruct right in a land register after it had been unlawfully deleted.[981]

As mentioned earlier, the case is related to a plot of agricultural land in Hungary, which had been subject to a usufruct right created by a contract between a foreign national and a Hungarian company. The usufruct was initially registered in the land register in 2002. Still, it was later deleted in 2015 following Hungarian national legislation introduced in 2013 that prohibited non-Hungarian nationals from holding usufruct rights over agricultural land.[982]

The referring court sought guidance from the CJEU on whether the reinstatement of GW's usufruct right, which had been unlawfully deleted, was compatible with EU law. The Hungarian government disputed the admissibility of the question, arguing that the EU law provisions cited by the referring court were unrelated to the facts of the case and that the applicant's conduct was in bad faith.[983] However, the Court found that the question referred was admissible, emphasising that it was not for the Court to assess the merits of the instant case or the applicant's conduct but to interpret EU law concerning the substantive issues raised.

The Court first considered whether the national legislation involved a restriction on the free movement of capital under Article 63 TFEU. It reaffirmed that transactions involving non-residents investing in real estate, including agricultural land, fall within the scope of Article 63 TFEU. A national provision that imposes limitations on such investments could restrict the free movement of capital if it affects the position of investors from other Member States, particularly if it discourages investment. The Court found that the legislation requiring the reinstatement of the usufruct rights, which was detrimental to the land's value and reduced the owner's ability to enjoy their property, constituted a restriction on the free movement of capital.[984]

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[981] For the exact formulation of the question, see *Nemzeti Földügyi Központ*, para. 37.
[982] Ibid., paras. 20–22.
[983] Ibid., para. 38.
[984] Ibid., paras. 54–58.

However, such a restriction may still be justified under EU law if it is based on overriding reasons of public interest and complies with the principle of proportionality.[985] The Court noted that the Hungarian legislation in question aimed to implement a previous judgment[986] in which Hungary had been found to violate EU law regarding the unlawful deletion of usufruct rights.[987] The Hungarian legislator's objective was to rectify this infringement and ensure that rights previously unlawfully cancelled were reinstated in the land register. The Court found that this objective constituted an overriding reason in the public interest.[988]

The Court then examined whether the national legislation complied with the principle of proportionality, which requires that measures do not exceed what is necessary to achieve the legitimate objective. It determined that the Hungarian legislation was proportionate, as it sought to ensure compliance with EU law by reinstating usufruct rights, even if the original registration had been considered unlawful under national law. The Court also noted that Hungary had amended its legislation in 2021 to allow for such reinstatement, reinforcing compliance with EU law. Additionally, the CJEU acknowledged that when reinstatement is impossible due to objective obstacles, compensation could serve as an alternative remedy. However, in this case, reinstatement was deemed feasible and did not disproportionately affect the property rights of the landowner, CN, who had acquired full ownership of the land after the usufruct was cancelled. Moreover, the Court found that the technical illegality of the initial usufruct registration, based on an interpretation of Hungarian case law, did not constitute an insurmountable obstacle to reinstatement.[989] It emphasised that the principle of legal certainty and the protection of legitimate expectations played a crucial role in the assessment.[990] The usufruct contract had been concluded in compliance with the law just before the 'restrictive' Hungarian legislation took effect. While the registration was technically unlawful, it remained uncontested for over 13 years, further supporting GW's position under the principle of legal certainty. The Court stressed that technical illegality should not result in disproportionate

[985] Ibid., para. 59.
[986] i.e., *Commission v Hungary*
[987] The case at hand concerns a recent amendment to Hungarian law, which implements the judgment in *Commission v Hungary*, while previous case law focused on the Implementation Land Act.
[988] *Nemzeti Földügyi Központ*, paras. 59–62.
[989] Ibid., para. 69.
[990] Ibid., para. 68.

consequences, particularly when the usufruct had been exercised without objection for an extended period.[991]

Regarding the right to property under Article 17 of the Charter, the Court observed that reinstating the usufruct right did not undermine CN's ownership rights.[992] Although the original registration of the usufruct may have been contrary to national law, CN's full ownership of the land could not be considered 'lawfully acquired,' as it resulted from the unlawful cancellation of the usufruct.[993] The Court emphasised that reinstatement merely restored the legal situation that existed before the infringement and did not impose an excessive burden on CN. Therefore, reinstating the usufruct did not infringe upon CN's property rights under Article 17 of the Charter.[994]

In conclusion, the CJEU ruled that EU law does not prevent national legislation requiring the reinstatement of a usufruct right in the land register, even if the original registration was contrary to national law. Such a measure must comply with EU law and the principle of proportionality, aiming to remedy past violations and uphold EU principles.[995] The Court found Hungary's legislation justified, [996] as it sought to restore the legal situation after the unlawful cancellation of the usufruct right. Notably, the judgment emphasised that restitution should take precedence over financial compensation where feasible, reinforcing the obligation of Member States to fully rectify breaches of EU law. Furthermore, the Court acknowledged that longstanding and uncontested usufruct rights, even if technically unlawful under national law, may still be protected under the principles of legal certainty and legitimate expectations. In my view, this case underscores the primacy of EU law and the binding nature of CJEU judgments, affirming that national authorities must ensure full and effective compliance. It also sets an important precedent for future cases concerning the enforcement of EU law in the field of property rights.

[991] Ibid., para. 70.
[992] Cf. Ibid., para. 35.
[993] Ibid., para. 76.
[994] Ibid., para. 68.
[995] Ibid., para. 78.
[996] See also Ibid., paras. 59–77.

4. 3. 5. 4. Comments and proposals

Human rights are inherently linked to land tenure, with property rights being the most relevant. A significant development in this area is the growing influence of the European Union's human rights framework,[997] which now exists alongside the long-established Strasbourg system under the ECHR.[998] This shift is evident in recent rulings by the CJEU, where the Charter of Fundamental Rights has been applied in Hungarian land acquisition cases. This highlights that Member States must also align their land policies with the Charter's requirements beyond the legal frameworks shaped by negative and positive integration. This underscores a key issue concerning the relationship between the EU's human rights framework and the ECHR in matters of land ownership. As the legal landscape evolves, Member States must stay vigilant and monitor these developments closely.[999] Regarding the specific case analysed in this thesis, the judgment represents a significant development in the jurisprudence of the CJEU, as it offers an autonomous interpretation of the phrase 'lawfully acquired' within the meaning of Article 17 of the Charter. Notably, this phrase does not appear in the ECHR,[1000] which is interpreted and applied by the ECtHR. As such, the CJEU is engaging with a legal concept that lies outside the established case law, thereby contributing to the evolution of European human rights law by clarifying the scope of property protection under EU law independently of the ECHR framework.[1001]

Furthermore, the central issue in the present case was whether, from the perspective of the free movement of capital and the right to property, it is permissible to consider the unlawful nature of the original registration when deciding on the reinstatement of a usufruct right. The Court answered this question in the negative, which aligns well with the established practice of the CJEU. At the same time, this decision did not resolve the remaining concerns regarding paras. 108/F(6) and (7) of the Implementation Land Act. This is evidenced by the fact that a constitutional complaint procedure is currently pending before the Constitutional Court of

[997] Cf. Siman, 2007, pp. 301–304.
[998] Szilágyi, 2024, p. 71.
[999] Ibid.
[1000] Cf. Article 1 of Protocol 1 to the ECHR.
[1001] Leisure and Vincze, 2025.

Hungary,[1002] which – among other things – seeks to establish the unconstitutionality of these provisions.[1003]

It is also important to note that Hungarian law lacks provisions on liability for damages caused by legislative actions, raising the question of whether legislators can be held responsible for damages resulting from laws and the implementation of laws.[1004] This also invites consideration of whether law-making itself can be unlawful.[1005] It should be added that legislative actions are protected by state immunity and considered part of the state's legitimate authority. Moreover, no legal framework establishes a private legal relationship between the state and individuals harmed by legislative acts or omissions.[1006] Judicial practice[1007] has long hesitated to recognise liability for damages caused by legislation. However, two exceptions are widely accepted: when a law is deemed unconstitutional or conflicts with EU law as determined by the CJEU.[1008]

Bodzási pointed out that case law recognises two scenarios in which liability for damages may arise from legislative acts. In a case related to damages caused by para. 108 of the 2013 CCXII Act, which led to the removal of usufruct rights, the Budapest Court of Appeal ruled that the state is not exempt from liability for harm resulting from legislation, as no legal provision grants such immunity. However, additional factors, such as a ruling from the Constitutional Court of Hungary or the CJEU declaring the law unconstitutional or in breach of EU law, are required for the legislation to be deemed unlawful. *Bodzási* also highlighted that even if the Constitutional Court does not annul a law but finds it unconstitutional due to omissions, this deficiency can still render the legislation unlawful. In this instance, the state failed to correct the identified shortcoming retroactively. While the Constitutional Court and CJEU decisions confirmed the unlawfulness of para. 108, the necessary conditions for establishing liability for damages were not entirely fulfilled.[1009]

Moreover, *Bodzási* also pointed out that on the occasion of the reform of the Civil Code the proposal put forward by the Civil Code Committee aimed to establish

[1002] No. IV/02518/2024.
[1003] Simon, 2025.
[1004] Bodzási, 2025.
[1005] Fuglinszky, 2015, p. 579.
[1006] Menyhárd, 2013, pp. 400–401.
[1007] Particularly that of the Supreme Court.
[1008] Fuglinszky, 2015, p. 582.
[1009] Bodzási, 2025. See also Court of Appeal No. 5.Pf.20.405/2019/8/II.

rules on liability for damages caused by legislative acts. Under this proposal, the legislator would have been held responsible if the Constitutional Court of Hungary annulled an unconstitutional law *ex tunc*. If the annulment took effect later, liability would have applied only to damages occurring after that point. Furthermore, the proposal stipulated liability for damages arising from unconstitutional legislative inaction, precisely when the legislator failed to meet a deadline set by the Constitutional Court of Hungary. However, these provisions were ultimately not included in the Civil Code.[1010]

Under EU law, compensation may be sought from a Member State if a directive is incorrectly transposed, leading to damages.[1011] The ECtHR has also found Hungary liable in cases involving deficiencies in its legislative framework. Based on this, experts believe compensation for damages caused by legislation is possible, with para. 6:519 of the Civil Code as a potential basis.[1012] However, applying this provision is challenging, as the Curia's decision shows.[1013] In this case, although the violation and breach of EU law were established, state liability for damages was not established. The court had to verify the causal connection between the unlawful conduct and the damage, which could not be established, leading to the rejection of the claim.[1014]

Bodzási noted that *Menyhárd* proposes an objective liability framework, rather than a fault-based one, to solve damages caused by legislation. This framework should be outlined in a separate legal provision.[1015]

In practice, the legislator has taken steps toward objective liability, notably by introducing provisions to compensate beneficiaries of cancelled usufruct rights.[1016] As a general rule, the provision states that compensation is based on the annual value of the cancelled usufruct right. This annual value is defined as one-twentieth of the market value of the property encumbered by the usufruct right at the time of its deletion from the land registry. Importantly, in connection with this compensation, additional elements typically required under the Civil Code do not have to be evidenced—such as actual damage or a causal link between the legislative act and the harm suffered.[1017]

[1010] Bodzási, 2025.
[1011] See *Joined Cases C-46/93 and C-48/93, Brasserie du Pécheur and Factortame*.
[1012] Bodzási, 2025.
[1013] See Case No. Pfv.VI.20.837/2022/9.
[1014] Fuglinszky, 2015, p. 585.
[1015] Bodzási, 2025.
[1016] Implementation Land Act, para. 108/K (1).
[1017] Bodzási, 2025.

4. 4. Poland

During my research, I found that there are no known preliminary ruling procedures specifically focused on Poland's rules on the acquisition of ownership of agricultural land.

4. 5. Slovakia

Regarding the land law regime itself, especially acquisition of ownership of agricultural lands, Slovakia has not been the subject of preliminary ruling procedures, even though infringement proceeding concerning land acquisition restrictions has occurred.

5. Summary

In 2004, the European Union experienced its most significant enlargement, with the Czech Republic, Hungary, Poland, Slovakia, and six other countries joining the European Union. This expansion was not only geographically transformative but also carried significant political, economic, and legal implications, particularly for agricultural land acquisition rules in newly acceded Member States.[1018] At this point, it is important to recall that as part of the accession process, these countries were required to harmonise their laws with EU regulations. This process inevitably led to a tension between the need to protect local agricultural sectors, a priority for many of these countries, and the overarching goal of the EU to ensure the free movement of capital, persons, goods and services within its single market.[1019]

In my view, the issue of agricultural land acquisition became one of the most sensitive topics during the negotiations between the 'new' Member States and the European Union. The EU's legal framework, which 'promotes' the free movement of capital, posed a challenge to the national land legislation of these countries, many of which had established protective measures to prevent large-scale land acquisitions by foreigners. The EU allowed for transitional periods during which these 'new' Member

[1018] Szilágyi, 2024, p. 57.
[1019] Ibid.

States could maintain national restrictions on land acquisitions. Still, the pressure to fully align with EU policies intensified as the transitional periods expired.[1020] Following the expiration of this period, the European Commission launched infringement proceedings against several new Member States for violating EU principles such as the free movement of capital. In parallel, preliminary ruling procedures were initiated to assess the compatibility of relevant national legislation with EU law.

As the above information shows, Hungary has taken a particularly restrictive approach to agricultural land acquisition to protect national interests. Following its accession to the European Union, Hungary implemented strict regulations prohibiting legal persons from acquiring agricultural land. Its legal framework governing acquisition of ownership of agricultural land exemplifies the broader tension between national margin of appreciation and the European Union's legal framework. Hungary enforced strict controls on agricultural land acquisitions during the transitional period, particularly concerning foreign legal persons. The government justified these restrictions on public interest grounds, emphasising the need to protect food security, preserve rural development, and prevent excessive land concentration in the hands of multinational corporations. The Hungarian authorities feared that allowing foreign persons to acquire ownership of agricultural land would undermine local farmers, disrupt traditional rural communities, and threaten the long-term sustainability of the agricultural sector.[1021]

So, the jurisprudence of the CJEU concerning Hungarian land law legislation has become a significant body of EU case law on land issues. This development is mainly attributable to the stringent regulatory framework enacted by Hungary, which is among the most restrictive in the region.[1022] However, it remains open whether comparable legal constraints exist in the 'older' EU Member States—either justifying infringement proceedings against them or, conversely, supporting the argument that Hungary should not be singled out to face such proceedings alone.[1023]

The table below presents information on the infringement procedures initiated against the countries under examination.

[1020] Szilágyi, 2018b, p. 185.
[1021] Cf. Prugberger, 2016, pp. 69–106.
[1022] Szilágyi and Szinek Csütörtöki, 2022, p. 370.
[1023] Szilágyi, 2024, pp. 52–70.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Infringement procedures	—	✓	—	✓
Number of procedures	—	two (general and special)	—	one (general)
Scope	—	global case – the entirety of the land law regime usufructuary case – *ex lege* termination of rights of usufruct established by contract between non-close relatives	—	restrictions in the national land law previously in force

table no. 10

Infringement procedures

The table below presents information on preliminary rulings initiated against the countries under examination.

Aspect	Czech Republic	Hungary	Poland	Slovakia
Preliminary ruling procedure	—	✓	—	—
Number of procedures	—	five joined cases No. C-52 and No. C-113/16 No. C-24/18 No. C-177/20 No. C-419/23	—	—
Scope	—	*ex lege* termination of rights of usufruct established by contract between non-close relatives	—	—

table no. 11

Preliminary ruling procedures

It can be stated that the role of the CJEU in these cases has been pivotal. The Court has consistently reinforced the EU's commitment to the free movement of capital, ruling that public policy reasons must justify national laws restricting land acquisitions by foreign persons and must not exceed what is necessary to achieve those goals. In several landmark cases, the Court ruled that while Member States may regulate land transactions to protect local agricultural sectors, these legislations must comply with the EU's core principles.[1024] However, the *KOB SIA* judgment marks a significant shift in CJEU jurisprudence, prioritising the freedom of establishment over the traditional reliance on the free movement of capital in land acquisition cases. By applying the Services Directive to land-related matters, the Court expanded the interpretive framework of internal market law, signalling a growing influence of secondary EU legislation on national margin of appreciation. While Member States' margin of appreciation remains, these decisions underscore the heightened judicial scrutiny of legislations that affect internal market freedoms. Subsequent cases—although not directly connected to acquisition of ownership of agricultural land—, including *Commission v Spain, Visser*, and *Cali Apartments*, illustrate this evolving approach, as the Court continues to require that national measures meet the criteria of proportionality, non-discrimination, and legitimate public interest, even in situations with limited cross-border relevance. This trend indicates a diminishing distinction between agricultural land and other immovable property in EU law and a broader application of internal market rules.

The ongoing legal challenges faced by the Visegrád countries, especially Hungary, illustrate the tensions between national interests and the EU's legal framework. The countries seek to protect their agricultural land and rural structures from the effects of globalisation and speculative investment, while the EU insists that the free movement of capital remains a fundamental principle not easily restricted. The Hungarian experience is especially illustrative: despite strong pressure to maintain restrictions on foreign ownership of agricultural land, the country has faced repeated infringement proceedings and legal challenges compelling compliance with EU internal market principles. This reflects a broader dilemma within the Union—how to balance market liberalisation with the preservation of local agricultural traditions and economic resilience.

[1024] See also Korom, 2022a.

At the heart of this issue is the question of whether it is reasonable for Member States to regulate land ownership in ways that reflect their unique historical, economic, and cultural contexts. Under the prevailing negative integration model, the EU promotes uniformity and the free movement of capital, and the Visegrád countries' issues related to agriculture face specific challenges that require tailored national policies. Calls for greater flexibility in the EU's approach to agricultural land acquisition have emerged, particularly in countries still grappling with the legacies of communist-era agricultural policies and the pressures of market liberalisation.[1025]

In response to these challenges, various reform proposals have been suggested. Notably, the European Council for Rural Law, through Commission II and its general reporter *Szilágyi*, has identified a range of potential approaches to reconcile EU integration with national land policy objectives.[1026] These include the suspension of EU fundamental freedoms in the context of agricultural land policy, thereby easing the constraints imposed by the negative integration model; the liberalisation of national land markets, which, while compliant with EU law, carries the risk of facilitating land-grabbing and undermining the interests of domestic citizens; the resolution of regulatory tensions through political compromise or informal agreements, which, although expedient, lacks the stability and predictability required for sound legal governance; and, finally, the development of further EU regulation aimed at clarifying the legal framework and potentially embedding positive integration principles. While the latter approach may reduce interpretive uncertainty, it simultaneously entails a cession of certain elements of national sovereignty.[1027]

Beyond these, *Szilágyi* advocates a conceptual shift toward positive integration model. whereby EU law would explicitly recognise agricultural land as a special category of property linked to public interest objectives rather than as a purely commercial asset. Under this model, Member States would retain the ability to impose restrictions on land acquisition where necessary to pursue legitimate socio-economic and environmental goals. To operationalise this, *Szilágyi* proposes detailed normative guidance defining acceptable public interest justifications, proportionality standards, and criteria governing land acquisitions by legal entities. He further suggests the introduction of reservations within primary EU law, analogous to those in international

[1025] Szilágyi, 2024.
[1026] Ibid., pp. 67–68.
[1027] Szilágyi, 2015, p. 93.

legal practice, granting Member States a structured margin of appreciation to regulate land tenure while ensuring compliance with human rights standards under the ECHR and the EU Charter of Fundamental Rights.[1028]

Complementing these ideas, *Kurucz* and *Andréka* have proposed partial renationalisation of the CAP or the introduction of stricter rural development regulations to indirectly control land transactions. These measures, they argue, would enable Member States —particularly in Central and Eastern Europe—to preserve greater control over agricultural land without breaching EU law.[1029] By contrast, *Korom* contends that the existing legal framework is sufficient, though he calls for a reinterpretation of its scientific and jurisprudential foundations to better accommodate the socio-economic realities of newer Member States.[1030] Some experts have gone further, suggesting an amendment to the TFEU introducing an explicit reservation clause granting Member States greater autonomy over agricultural land regulation, provided that non-discrimination and human rights principles are respected.[1031]

From my perspective, this reveals that the regulation of agricultural land in the EU remains a complex and evolving challenge rooted in the tension between supranational integration and national sovereignty. The uniform application of internal market rules fails to fully reflect the socio-economic vulnerabilities of rural areas in post-communist Member States. For these countries, land is not merely an economic asset but a cultural, environmental, and strategic resource. The protection of smallholder farms, the prevention of excessive land concentration, and the preservation of rural livelihoods constitute legitimate policy objectives that should be more clearly recognised within EU law.

Although current jurisprudence allows for certain public interest exceptions, the high threshold for justifying restrictions—combined with uncertainty surrounding proportionality and non-discrimination assessments—often deters Member States from implementing necessary protective measures. As a result, governments are forced to choose between risking infringement proceedings or relinquishing control over their agricultural sectors. To overcome this dilemma, the EU should adopt a more differentiated legal framework that explicitly recognises the specific challenges faced

[1028] Ibid.
[1029] Kocsis, 2014, pp. 105–106.
[1030] Szilágyi, 2024, p. 57.
[1031] Cf. Ibid.

by Member States with post-socialist agricultural systems or pronounced regional disparities. This could involve clearer criteria for invoking public interest justifications, more consistent interpretive guidance from the Commission, and a context-aware approach from the CJEU.

In this regard, *Szilágyi*'s proposals represent the most coherent solution to the challenge of agricultural land acquisition in the EU. By combining the mechanism of reservations with a positive integration model, this approach enables Member States to exercise margin of appreciation to protect rural communities, small-scale producers, and long-term socio-economic objectives, while remaining firmly within the framework of EU law and human rights obligations. I particularly endorse the emphasis on structured, principled guidance for land regulation, as it allows for context-sensitive policymaking that accounts for the historical, social, and economic specificities of individual Member States without undermining the integrity of the internal market. From my perspective, this approach is compelling because it reconciles the tension between EU market liberalisation and the preservation of national policy space, ensuring that regulatory interventions are both legally defensible and socially meaningful. In this context, I consider that no fundamentally new theoretical proposals are necessary; rather, the focus should be on reaffirming and operationalising the insights already advanced. The mentioned framework remains particularly relevant for current debates, as it underscores that the sustainable governance of agricultural land depends less on generating new models and more on effectively implementing and refining the conceptual foundations already established in earlier scholarship. I believe that, especially for the Visegrád countries, such a framework is essential to safeguard agricultural land in a manner that is proportionate, non-discriminatory, and sustainable over the long term.

In conclusion, the issue of agricultural land acquisition epitomises the broader challenge of reconciling market integration with the diversity of Member States' historical and socio-economic contexts. A flexible, contextually grounded approach—anchored in positive integration and the recognition of legitimate public interests—would allow countries such as Hungary to safeguard rural communities and sustainable farming without breaching EU law. The findings of this research indicate that while the CJEU has consistently upheld the fundamental freedoms of the internal market, a carefully structured framework for national discretion remains essential. The future of

EU land policy should thus aim not for uniformity but for a principled balance between integration, subsidiarity, and social sustainability.

Thus, the findings of this research do not confirm hypothesis 2. The case of the Visegrád countries, and Hungary in particular, demonstrates that the EU legal framework significantly constrains Member States' margin of appreciation in regulating agricultural land ownership. The fundamental freedoms of the internal market—most notably the free movement of capital, and increasingly the freedom of establishment—have been consistently upheld by the CJEU as overriding principles, against which national measures must be strictly justified. While Member States may invoke public interest objectives, the proportionality and non-discrimination tests applied by the Court leave only a limited margin of appreciation, as Member States' choices are strictly constrained by EU law.

The infringement procedures launched against Hungary, Slovakia, and other new Member States, as well as the jurisprudence arising from preliminary ruling references, confirm that national legislation which imposes restrictions on foreign acquisitions of agricultural land is unlikely to withstand EU scrutiny. Even transitional periods granted at accession were only temporary, and their expiry triggered immediate pressure from the Commission to dismantle protective frameworks. Moreover, the evolution of CJEU jurisprudence—particularly in cases such as *KOB SIA*—has expanded the interpretive scope of internal market law by applying the Services Directive and freedom of establishment to land acquisitions, thereby further narrowing the margin of appreciation in regulation such acquisitions.

At the same time, the analysis also reveals that this conflict is not absolute. The CJEU has acknowledged the legitimacy of certain public interest justifications, and the jurisprudence leaves open a limited margin for carefully tailored regulatory measures. Nonetheless, the threshold remains high, and the overall trend is toward prioritising market liberalisation over national protective measures. Consequently, the EU's internal market framework does indeed constrain Member States' ability to 'tailor' land policies that reflect their specific historical, cultural, and socio-economic contexts, producing a structural tension between supranational integration and national sovereignty in agricultural land legislation.

PART III: INTERNATIONAL INVESTMENT LAW AND AGRICULTURAL LAND ACQUISITIONS

From the early 2000s onwards, there has been a significant rise in the number and scale of cross-border acquisitions of agricultural land. This shift can be largely attributed, *inter alia*, to the growing interest of well-capitalised countries and multinational corporations in securing long-term access not only to agricultural goods as tradable commodities, but also to the resources required for their production—namely agricultural land but also related water resources.[1032] These actors are increasingly motivated by concerns over food security and the desire to maintain stable production capacities for their domestic populations and global consumers.[1033]

For the purposes of the dissertation, a distinction must be drawn between intra-EU acquisitions—transactions between Member States and their nationals—and extra-EU acquisitions, which involve land transactions between EU Member States and third-country actors.[1034] The present chapter is concerned with the latter, whereas intra-EU acquisitions were examined in the previous part of the thesis.

In light of the foregoing, the chapter examines the challenges surrounding cross-border land acquisitions, with a particular focus on the implications of IIAs for agricultural land in the Visegrád countries. Owing to space limitations, the analysis does not seek to provide an exhaustive account of the subject. Rather, it pursues the following objectives.

First, it is important to recall that the key concepts most relevant to this thesis—i.e., investment, cross-border agricultural investments, IIAs—were introduced in the introductory part of this dissertation. These concepts reappear in this chapter, although they will not be discussed in detail here. Second, the chapter builds on this conceptual foundation to explore the broader legal context shaping cross-border land acquisitions

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[1032] Szilágyi, 2018a, p. 194.

[1033] De Schutter, 2022, pp. 511–513.; Cotula, Vermeulen, Leonard and Keeley, 2009, pp. 4–5.; Dooly, 2014, pp. 306–307.

[1034] In its interpretative communication on extra-EU land acquisitions, the European Commission stressed that such transactions fall within a distinct legal framework. The CJEU has similarly observed that capital movements involving third countries are subject to broader justifications for restrictions than intra-EU movements. Importantly, Article 64(1) TFEU preserves pre-liberalisation restrictions, with cut-off dates of 31 December 1993 for most Member States, 31 December 1999 for Bulgaria, Estonia, and Hungary, and 31 December 2002 for Croatia. Consequently, such restrictions are preserved under Article 64(1) TFEU and cannot be challenged on the basis of the free movement of capital. In connection with this, see Commission Interpretative Communication, 2017, point 2.b. See also Szilágyi, 2024, p. 39.

in the V4 countries. Third, leveraging the author's discretion in topic selection, the chapter offers an analysis of certain key EU investment agreements specifically examining provisions that may be relevant to cross-border land acquisitions. It should be noted, however—at the time of finalising this manuscript[1035]—, that while these agreements have been largely concluded and are in force or provisionally applied, some investment-related provisions may still be subject to ongoing ratification processes in certain EU Member States. Consequently, any conclusions drawn should be understood within this evolving legal context.

In connection with the third point, it is essential to highlight that since the Treaty of Lisbon came into force in December 2009, FDI[1036] has been placed under the exclusive competence of the EU as part of its CAP.[1037] Despite this shift in competence, jurisdictional complexities remain, particularly concerning foreign investments. The CJEU has addressed some of these issues[1038]—especially in relation to the proposed free trade agreement with Singapore. Historically, Member States of the EU concluded approximately 1,400 BITs,[1039] which continue to remain in effect unless and until they are superseded by EU-level agreements.[1040]

Meanwhile, the EU has undertaken substantial reforms of its international investment policy. One of the cornerstone elements of this reform process is the creation of a new 'Investment Court System',[1041] features of which are already embedded in the finalised agreements with Canada and Vietnam.[1042] The EU's approach to investment law is also heavily influenced by the international organisations to which it belongs.[1043]

Given these developments, it is worth noting in closing that within the EU legal framework, the TFEU classifies real estate investment—including the purchase of

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[1035] 2 September 2025.
[1036] i.e., extra-EU FDI type agreements that often include cross-border acquisitions of agricultural land
[1037] Articles 206–207 of the TFEU. See on this point: European Commission, Towards a comprehensive European international investment policy, COM(2010) 343 final, July 7, 2010.
[1038] In Opinion 2/15 (16 May 2017), the CJEU held that provisions on non-direct foreign investment and investor–state dispute settlement fall outside the Union's exclusive competence under Articles 218 and 207 TFEU, requiring Member State participation.
[1039] See the website of the EC. Available at: http://ec.europa.eu/trade/policy/accessing-markets/investment/ (Accessed: 19 July 2025)
[1040] Council Regulation (EU) No 1219/2012 on transitional arrangements concerning bilateral investment agreements between Member States and third countries.
[1041] EC, 2015.
[1042] Szilágyi, 2018a, p. 195.
[1043] Cf. Organisation for Economic Co-operation and Development, United Nations Conference on Trade and Development, World Trade Organisation, United Nations Commission on International Trade Law, International Centre for Settlement of Investment Disputes, Energy Charter Treaty.

agricultural land—as a form of direct investment falling under the free movement of capital.[1044] This is particularly relevant because, as it will later examined, many international investment treaties regulate land acquisitions—including agricultural land—under various legal headings, such as the freedom to provide services or the rules governing the right of establishment.

1. A brief introduction into international investment law

Unlike the structured and centralised framework of the multilateral trading system under the World Trade Organisation (hereinafter referred to as the WTO),[1045] international investment law[1046] (hereinafter referred to as the IIL) regime is an atomized system characterised by a fragmented framework composed mostly of BITs and TIPs. These agreements, collectively referred to as the IIAs, are central instruments designed to promote and safeguard FDI. Through BITs, two states reciprocally agree to extend certain protections to investors from each other's jurisdictions, granting those investors rights and remedies within the territory of the host state. Here, the host state is where the investment is made, while the investor's home country is their country of origin.[1047]

The proliferation of IIAs has been accompanied by the increasing use of their associated dispute resolution mechanism—so-called investor-state dispute settlement (hereinafter referred to as the ISDS). This system, though widely adopted, has sparked both criticism and praise due to its various implications.[1048] The present work will briefly explore key features of ISDS, with particular reference to its impact on land issues in the Visegrád countries.

Developing countries, in their pursuit of greater FDI inflows[1049]—often seen as a cornerstone of economic development—have tended to prioritise investment

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[1044] Articles 63 and 64 TFEU regulate capital movements. Article 63(1) prohibits restrictions between Member States and with third countries, while Article 64(1) preserves pre-1994 restrictions on direct investments—including real estate, establishment, financial services, and securities—*vis-à-vis* third countries. For Bulgaria, Estonia, and Hungary, this transitional period lasted until 31 December 1999.
[1045] On the effects of the WTO agreements in the EU legal order, see, for example, Siman, 2018, p. 35.
[1046] *Sornarajah* critiques IIL's investor-centric structure, highlighting challenges from states and civil society and calling for reforms to recalibrate investment protection and the public interest. See Sornarajah, 2015 and Sornarajah, 2021.
[1047] Szilágyi and Kovács, 2022, pp. 55–56.
[1048] Ibid.
[1049] For a comprehensive overview of the main issues, see, for example Nagy, 2020, pp. 899–900. and Pohl, 2018.

attraction without always fully appreciating the socio-political and environmental implications. These states frequently enter into IIAs with capital-exporting developed countries, thereby granting protections to foreign investors that extend beyond traditional domestic frameworks. Core among these protections are guarantees against expropriation,[1050] commitments to fair and equitable treatment,[1051] the prohibition of discrimination, legitimate expectations and access to effective remedies through arbitration. These provisions have become widespread in modern IIAs and are pivotal in shaping investor confidence.[1052]

It should be pointed out that one of the most notable developments within ISDS has been the rise of investment treaty arbitration,[1053] which allows private investors to bring claims directly against host states. This mechanism provides a path that bypasses national courts and enables international adjudication, making foreign investors effectively recognised actors in international law. In this way, IIAs have transformed the traditional dynamics of diplomatic protection, allowing claims to proceed without state-to-state intermediation—unless the host state fails to implement the arbitral award.[1054]

Another important dimension of IIAs lies in their interaction with domestic investment contracts. When such treaties include 'umbrella clauses', they elevate state obligations under individual investment contracts to the level of international commitments. In practice, this means that contractual breaches by a host state may also constitute treaty violations, providing foreign investors with enhanced legal avenues for protection. One contractual tool frequently used in this context is the stabilisation clause, which aims to protect investors from legal or regulatory changes by effectively 'freezing' the legal environment applicable at the time of the investment. Such clauses shield investors from political risk, albeit at the expense of regulatory flexibility for host states.[1055]

However, ISDS mechanisms are not without their downsides. One well-documented concern is the financial burden of arbitration, which can deter states—

[1050] Víg, 2019.
[1051] Paparinskis, 2014.
[1052] Szilágyi and Kovács, 2022, p. 56.
[1053] See the statistics of the United Nations Conference on Trade and Development (UNCTAD) on the number of ISDS cases: https://unctad.org/system/files/official-document/diaepcbinf2021d7_ en.pdf (Accessed: 12 July 2023)
[1054] Szilágyi and Kovács, 2022, p. 57.
[1055] Schreuer et al., 2009, p. 588.

especially those with limited resources—from implementing new measures that might provoke claims. This dynamic, referred to as 'regulatory chill',[1056] can impede necessary policy reforms in areas such as environmental protection, public health, or social welfare.[1057] Critics argue that such chilling effects undermine democratic governance and limit states' policy space, particularly when treaty commitments entered into by one administration bind future governments.[1058] Despite these concerns, arbitral tribunals have acknowledged the need for balance.[1059]

Another pressing issue is the longevity and rigidity of IIAs. Once concluded, these treaties often remain in force for decades, regardless of subsequent political shifts or evolving national priorities. As a result, newly elected governments may find themselves constrained by the treaty obligations of their predecessors, with little scope for renegotiation or reform.[1060] In some cases, this has led to a 'race to the bottom',[1061] where countries dilute environmental, labour, or human rights protections to appear more investor-friendly. This short-term strategy may secure capital inflows but often comes at the cost of long-term sustainable development.[1062]

In addition to this, FDI is often treated as a crucial engine for economic growth, and international institutions like UN Conference on Trade and Development and the World Bank have traditionally supported treaty-based investment protections as a way to incentivise capital flows. However, empirical evidence regarding the actual developmental benefits of FDI is mixed, especially when local communities face displacement, environmental degradation, or worsening labour conditions. The procedural strength of ISDS is reinforced by a robust enforcement framework, primarily rooted in two conventions: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter referred to as the New York Convention) and the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (hereinafter referred to as the ICSID Convention), which established the International Centre for Settlement of Investment Disputes

[1056] Víg and Hajdu, 2018, pp. 44–54.
[1057] Miles, 2013, p. 178.
[1058] Szilágyi and Kovács, 2022, p. 58.
[1059] In *Electrabel S. A. v Hungary* (ICSID case No. ARB/07/19), the tribunal affirmed that, while legal stability is important, host states may adjust their regulatory frameworks in the public interest, so long as such changes are transparent, fair, and non-arbitrary.
[1060] Szilágyi and Kovács, 2022, p. 58.
[1061] It describes states lowering regulatory standards to attract foreign investment, potentially compromising public interest, sustainable development, and social protections.
[1062] Szilágyi and Kovács, 2022, p. 58.

(hereinafter referred to as the ICSID). These conventions have contributed to the perceived reliability of investment arbitration, making it a preferred dispute resolution avenue for investors.[1063]

1. 1. A structured overview of international investment agreements

IIAs may be classified and examined in multiple lenses. This chapter concentrates on those legally binding agreements that hold particular significance for the Visegrád countries. The analysis is structured around their geographical scope—distinguishing between universal,[1064] regional, and bilateral frameworks.[1065]

1. 1. 1. Universal investment agreements

Instead of binding multilateral treaties, a variety of draft texts and non-binding soft law instruments have emerged from different international forums. These documents provide important guidance and frameworks for the regulation of foreign investments.[1066] Nevertheless, some agreements[1067] are relatively well-established, with the ICSID Convention serving as a prime example.[1068]

In addition, two agreements, while not comprehensive in scope, significantly influence substantive rules on foreign investment: first, attention must be drawn to the Organisation for Economic Co-operation and Development (hereinafter referred to as the OECD). Although not a universal international organisation, its Code of Liberalisation of Capital Movements[1069] has, since 2012, been open to non-Member States as well.[1070] While not yet multilateral, it holds the potential to evolve into such a framework. The mentioned code provides a legal structure for the gradual elimination of restrictions on capital movements.[1071] Measures supporting this process

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[1063] Ibid., pp. 58–59.
[1064] To date, there is no single agreement that comprehensively governs all aspects of foreign investment. Nevertheless, mechanisms for resolving investment disputes are relatively well developed.
[1065] Cf. Szilágyi, 2018a, p. 200.
[1066] See, for example, Ball, 2012, pp. 1756–1757.; Hodgson, Cullinan and Campbell, 1999, pp. 2–4.; Kreuzer, 1990, pp. 4–5.; Sornarajah, 2010, pp. 79–82., 236–242., 257–262.
[1067] Particularly those governing dispute settlement mechanisms.
[1068] *Cotula*'s work provides a detailed analysis of ICSID cases, highlighting the operation and implications of this dispute settlement mechanism. See Cotula, 2016, pp. 201–211.
[1069] Binding for Member States.
[1070] Szilágyi, 2018a, p. 201.
[1071] OECD, 2017, Article 1.

are referred to as liberalisation measures.[1072] A Member State may enter reservations concerning the obligations under the liberalisation measures listed in List A and List B of the Code. These lists are set out in Annex A, while the specific reservations of Member States are recorded in Annex B.[1073] In particular, cross-border land acquisitions appear under the chapters on direct investments[1074] and real estate transactions.[1075] Several states have opted to enter reservations in these areas, thereby preserving the ability to enforce national-level constraints on the acquisition of land by foreign investors. Second, the WTO legal framework plays a significant role in the universal regulation of investment, especially through agreements with investment implications. These include the Agreement on Trade-Related Investment Measures; the Agreement on Trade-Related Aspects of Intellectual Property Rights; the General Agreement on Trade in Services (hereinafter referred to as the GATS).[1076] Of these, the latter one is particularly relevant in the context of agricultural land. This is evidenced by the appearance of national restrictions on cross-border land acquisitions in several IIAs,[1077] both in terms of cross-border service provision and establishment.[1078] Some of these restrictions explicitly reference the GATS framework.

Similar to the OECD Code of Liberalisation of Capital Movements discussed above, the GATS also adopts a gradualist approach to liberalisation in the services sector. Rather than imposing blanket liberalisation, GATS relies heavily on the voluntary commitments of WTO Member States. It primarily governs the provision of services by foreign legal persons and distinguishes four modes of supply. Of particular relevance is Mode 3, which involves the supply of a service through the commercial presence of a foreign service provider within the territory of a host Member State.[1079] This typically entails the establishment of a legal person or branch through which the foreign provider delivers services locally, thereby creating a regulatory interface between trade in services and foreign direct investment.[1080] The fundamental

[1072] Ibid.
[1073] Ibid., Article 2.
[1074] Annex A, Chapter I.
[1075] Annex A, Chapter III; Annex B, Chapter III.
[1076] Sornarajah, 2010, 263.
[1077] e.g., the EU–Singapore FTA, EU–Korea FTA.
[1078] See, for example, the Korea–EU Free Trade Agreement (Articles 7.5–7.7 and 7.11–7.13) and Annexes 7-A-1, 7-A-2, 7-A-4.
[1079] GATS, Article I. 2. point (c).
[1080] Sornarajah, 2010, pp. 263–264. See also Szilágyi, 2018a, p. 202.

principles of the GATS include the prohibition of discrimination and the obligation of national treatment. However, these principles are not applied universally or without exception, as Member States of the WTO are permitted to adopt specific exemptions, particularly with regard to the most-favoured-nation treatment standard.[1081]

1. 1. 2. Regional investment agreements

At the regional level, the regulatory landscape differs considerably from the global framework. In the case of the Visegrád countries, particular attention must be paid to the EU's regulatory regime, especially the four fundamental freedoms. Within this structure, investment in real estate, including agricultural land, is primarily governed under the provisions relating to the free movement of capital.[1082]

Beyond the EU, a regional framework of growing relevance is the Eurasian Economic Union (hereinafter referred to as the EAEU), which seeks to establish a common market ensuring the free movement of goods, services, capital, and persons.[1083] This model of integration, although institutionally and doctrinally distinct, nevertheless reflects certain foundational principles comparable to those underpinning the European Union and, as such, provides a useful point of comparison. Of particular significance is the manner in which the EAEU addresses foreign investment, including rules governing the acquisition and transfer of agricultural land—an area that remains highly sensitive in both legal orders. Examining these regulatory approaches offers valuable insights into broader debates on the development and reform of regional economic integration regimes, including that of the EU.

Concerning the above-mentioned, it is essential to refer to the Treaty on the Eurasian Economic Union (hereinafter referred to as the TEAEU). The present analysis draws upon the 2014 version of the mentioned treaty, which established the EAEU. This foundational agreement was initially signed by Russia, Belarus, and Kazakhstan, and entered into force on 1 January 2015. Armenia joined shortly thereafter, on 9 October 2014, followed by Kyrgyzstan in August 2015, both becoming full members. As of mid-2025, the EAEU includes five Member States: Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia. In addition to full members, the EAEU

[1081] Szilágyi, 2018a, p. 202.
[1082] Ibid. See also the Capital Liberalisation Directive, Annex I.
[1083] TEAEU, Article 4.

also maintains relations with several observer states. Moldova was granted observer status in April 2017, followed by Uzbekistan and Cuba on 11 December 2020.[1084] Most recently, Iran was formally admitted as an observer state on 26 December 2024.[1085]

The mentioned treaty regulates investment-related matters primarily under Part III, which deals with the Common Economic Space. In particular, Chapter XV provides general provisions on the trade in services, the establishment and acquisition of legal persons, the conduct of business activities, and investment rules. More detailed technical provisions are set out in Annex No. 16.[1086] According to its provisions, the investment-related rules apply generally to all regulatory measures adopted by EAEU Member States. However, two categories of exceptions are permitted under the treaty. First, there are horizontal limitations, which apply across all sectors and types of investment; second, national lists of reservations, approved by the Supreme Eurasian Economic Council, allow individual Member States to retain specific exemptions.[1087]

Regarding land-related investments, several founding states of the EAEU have included explicit limitations within their horizontal reservations. These pertain directly to cross-border land acquisitions, including those involving agricultural property. While this does not preclude the existence of similar restrictions in the national lists, those have not been analysed in this part of the thesis due to space constraints.[1088]

This situation invites a broader reflection: given the current institutional and political challenges in the European Union, could the explicit incorporation of comparable land acquisition restrictions into the TFEU help reinvigorate the European integration process? The EAEU experience may serve as a model for exploring this possibility.

It is also worth noting that the lack of progress on multilateral investment frameworks within the WTO has prompted states to pursue alternative approaches through so-called mega-regional trade and investment agreements.[1089] Notable among these is the Comprehensive Economic and Trade Agreement (hereinafter referred to

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[1084] See the website of the Eurasian Economic Commission. Available at: https://eec.eaeunion.org/en/comission/department/dep_razv_integr/mezhdunarodnoe-sotrudnichestvo/o-statuse-gosudarstva-nablyudatelya.php? (Accessed: 23 July 2025)

[1085] See the website of the Teheran Times. Available at: https://www.tehrantimes.com/news/507955/Iran-gains-observer-status-in-Eurasian-Economic-Union? (Accessed: 23 July 2025)

[1086] TEAEU, Protocol No. 16.

[1087] Ibid., Annex 16. para. 2. See also Szilágyi, 2018a, pp. 202–203.

[1088] Szilágyi, 2018a, pp. 202–203.

[1089] Sornarajah, 2017, p. 322.

as the CETA) between the EU and Canada, as well as other large-scale negotiations that will be examined in detail in the next subchapter.

Of particular interest—due to its symbolic and potential systemic relevance—is the Transatlantic Trade and Investment Partnership (hereinafter referred to as the TTIP) between the EU and the United States. Although negotiations were suspended by the *Trump* administration, and no official text was published, some draft materials became available through leaks (notably by Greenpeace).[1090]

Negotiations of a similarly large scale between the European Union and China led to a political consensus on the Comprehensive Agreement on Investment (hereinafter referred to as the CAI) in December 2020. By early 2021, the agreement's text was still under technical scrutiny. However, the ratification process has since been suspended due to mounting political frictions between the parties,[1091] and as of mid-2025, the agreement has not entered into force. Despite its stalled status, the CAI continues to prompt important lines of inquiry. First, what substantive protections and regulatory commitments would it offer for foreign investments? Second, if the agreement were to be revived, how would it interact with or potentially diverge from China's global infrastructure and investment strategy—the Belt and Road Initiative.[1092]

1. 1. 3. Bilateral agreements

In light of the foregoing, it is evident that investment-related matters within the EU are, in many cases, governed by bilateral agreements—particularly in the context of the V4 countries. A historically salient example is the Europe Agreements concluded in the early 1990s between the European Community and the Central and Eastern European states, which served as a preparatory framework for eventual EU accession. These agreements established mechanisms for political dialogue and economic cooperation, but did not impose an immediate obligation to harmonise national laws

[1090] A European Citizens' Initiative was launched in response to the proposed TTIP. In this context, the General Court's judgment in *Efler and Others v Commission* (T-754/14) clarified the admissibility of such initiatives and offered a significant interpretation of what constitutes an 'act' subject to a citizens' initiative. For a detailed analysis, see Kecsmár, 2017, pp. 77–84.
[1091] It concerns the reciprocal sanctions between the EU and China following alleged human rights violations against Uyghur Muslims in Xinjiang. In March 2021, the EU sanctioned Chinese officials, prompting China to retaliate against EU institutions, MEPs, and European scholars. See Bounds, 2025.
[1092] Szilágyi, 2018a, p. 203.

governing agricultural land ownership with EU legal standards.[1093] Importantly, issues relating to property acquisition were addressed not through the free movement of capital, but under the freedom of establishment, itself intrinsically linked to the free movement of persons.[1094] Moreover, some IIAs address the issues in the context of the freedom of establishment and also in connection with services.[1095]

The origins of intra-EU BITs can be traced to this period of post-communist transition. Encouraged by the European Community, newly sovereign Central and Eastern European countries adopted legal frameworks aimed at attracting foreign capital—viewed at the time as essential to the structural transformation of their economies. BITs were promoted as tools to facilitate such investment and to signal a commitment to the rule of law, market liberalisation, and economic stability—criteria integral to EU accession. Consequently, numerous BITs were concluded between candidate countries and existing Member States. For instance, by the mid-1990s, Hungary had entered into BITs with nearly all EU Member States (excluding Ireland), and similar patterns were observed across the region.[1096]

As these states acceded to the EU in successive waves,[1097] their pre-existing BITs—nearly 200 in total—became intra-EU BITs. While the Commission conducted compatibility reviews of BITs with third countries during the enlargement process, it did not undertake a systematic review of intra-EU BITs.[1098] These agreements remained in force post-accession, as they lacked sunset or automatic termination clauses linked to EU membership. Consequently, they continued to provide a legal basis for claims by EU investors seeking redress, often for significant sums, against host states within the Union.[1099]

Over time, the proliferation of investor–state arbitration under intra-EU BITs prompted growing criticism. Governments and civil society actors argued that such treaties undermined core principles of the EU legal order, including mutual trust, regulatory autonomy, and democratic accountability.[1100] The European Commission

[1093] However, with respect to land use rights, obligations such as the principle of national treatment were already applicable.
[1094] See, for example, the European Agreement with Hungary.
[1095] Szilágyi, 2024, p. 41. See, for example, the free trade agreements with South Korea, Singapore and Vietnam.
[1096] Korom, 2020, p. 56.
[1097] i.e., 2004, 2007, and 2013.
[1098] See *Eastern Sugar B.V. v Czech Republic* (ICSID Case No. ARB/03/9), para. 119.
[1099] Korom, 2020, p. 57.
[1100] Olivet, 2013.

echoed these concerns, characterising intra-EU BIT arbitration as a structural anomaly within the internal market.[1101] It warned that arbitral awards based on such treaties risked circumventing EU law, breaching the principle of non-discrimination, and undermining the exclusive jurisdiction of the CJEU over the interpretation of EU law.[1102]

In response, the Commission employed a multifaceted strategy to discourage recourse to intra-EU arbitration. First, it urged Member States to voluntarily terminate their intra-EU BITs; while some complied, others resisted. This led the Commission to initiate infringement proceedings against several Member States whose BITs had given rise to prominent disputes. Second, it systematically intervened as *amicus curiae* in arbitration proceedings to challenge the validity of intra-EU BITs and the jurisdiction of the tribunals. Despite these interventions, arbitral tribunals consistently upheld the treaties' validity, citing the absence of formal termination. Third, the Commission sought to obstruct the enforcement of arbitral awards in domestic and international fora.[1103,1104]

Despite these efforts, arbitral practice remained largely unaffected until the CJEU intervened in the landmark *Achmea*[1105] judgment.[1106] Triggered by a request from the German Federal Court of Justice, the CJEU ruled that the investor-state arbitration clause in an intra-EU BIT was incompatible with EU law. The Court found that such clauses violate the principle of autonomy of the EU legal order and infringe on the CJEU's exclusive interpretative competence.[1107]

The compatibility of BITs concluded between EU Member States with EU law has become an increasingly pressing issue. While these BITs do not strictly constitute FDI under EU law, their coexistence with the EU legal framework raises significant challenges. Under the principle of primacy, EU law prevails in the event of conflict, rendering incompatible treaty provisions unenforceable. However, international law complicates the picture: the Vienna Convention on the Law of Treaties[1108] does not

[1101] EC, 2010.
[1102] Korom, 2020, p. 57.
[1103] Ibid., pp. 58–59.
[1104] In *US Steel v Slovakia* (PCA Case No. 2013-6), Commission pressure led the investor to abandon its claim. In *Micula v Romania* (ICSID Case No. ARB/05/20), the Commission blocked enforcement of the award across multiple jurisdictions, citing unlawful state aid. Since then, it has taken similar actions in other intra-EU BIT enforcement cases.
[1105] Case C-284/16, *Slowakische Republik v Achmea BV*. Hereinafter referred to as the *Achmea*.
[1106] For more on this, see Kovács, 2022.
[1107] Moravcová, 2023, pp. 55–58.
[1108] Particularly, Article 59.

automatically allow EU treaties to supersede existing BITs without formal termination. This tension is particularly visible in ICSID and other arbitration proceedings under intra-EU BITs, where tribunals have generally upheld the validity of BITs unless properly terminated. The *Achmea* judgment by the CJEU ultimately resolved this conflict, holding that investor–state arbitration clauses in intra-EU BITs are incompatible with EU law because they undermine the autonomy of the EU legal order.[1109]

Turning to the BITs related to land acquisitions, it is worth mentioning that a BIT—specifically the one concluded between Cyprus and Hungary—served as the international legal basis for the case *Vigotop Limited v Hungary*[1110] brought before the ICSID.[1111] Domestically, this dispute is commonly referred to as the *Sukoró*. The case, which essentially began in 2008, also gave rise to proceedings before Hungarian courts, including both civil and criminal matters. It is worth noting that disputes of this nature may have significantly influenced the Hungarian legislator's approach in 2011 when drafting the legal framework concerning national assets, which established a general rule limiting investment dispute resolution to Hungarian courts.[1112] A foreign investor challenged the state's decision to 'terminate a concession agreement', alleging that the revocation was carried out in bad faith. The case centred around a controversial transaction in which the investor had acquired state-owned land through a restructuring of property rights—commonly referred to as a 'land swap'. This reallocation of land, which the government deemed questionable, ultimately led to the withdrawal of the concession. Upon review, the arbitral tribunal rejected the investor's claims, finding no evidence of abuse of rights by the Hungarian authorities and concluding that the circumstances did not amount to unlawful expropriation.[1113]

A similar investment-related legal dispute arose under the BIT between the United Kingdom and Hungary (known as the *Inícia case*).[1114] In this case, foreign investors challenged the non-renewal of a long-term lease agreement.[1115] The land,

[1109] Szabó, 2020, p. 12.
[1110] ICSID Case No. ARB/11/22
[1111] On the Hungarian cases before ICSID Tribunals, see Nagy, 2017, pp. 291–310.
[1112] Szilágyi, 2018a, pp. 203–204.
[1113] For a more detailed summary of this and other cases concerning Hungary, see, for example, Nagy, 2017.
[1114] *Inicia Zrt, Kintyre Kft and Magyar Farming Company Ltd v Hungary* (ICSID Case No. ARB/17/27)
[1115] See Budapest-Capital Regional Court, No. 44.Pf.633.704/2017/14.

originally leased by a Hungarian company[1116] later acquired by UK-based Magyar Farming, covered over 669 hectares.[1117] Although the investors held statutory pre-lease rights, legislative changes in 2011[1118] removed these rights for state land reallocated via public tender. When the lease expired in 2014, the land was reallocated to local farmers through a public tender.[1119] The investors claimed this amounted to expropriation without compensation. However, Hungary argued that the changes applied equally and were legally enacted. The ICSID tribunal ultimately ruled in favour of the investors, awarding €7.1 million, finding that the removal of the pre-lease right breached investment protections under the UK–Hungary BIT.[1120]

In Poland, a similar dispute arose when foreign investors contested the termination of a farmland lease in the country's northwest.[1121] They alleged the move was politically motivated, aiming to reassign the land to Polish nationals. However, Poland argued the termination followed multiple serious breaches of contract by the lessee, including neglect of the property and non-compliance with official warnings. The arbitral tribunal ultimately sided with the state, confirming the lease was lawfully ended and finding no evidence of bad faith.[1122]

Although not analysed in depth, the above-cases sufficiently demonstrate how land-related disputes are handled under IIAs and investment arbitration. The application of customary international law and treaty principles may lead to outcomes that diverge from those reached by domestic courts. Importantly, success in such proceedings is not assured for investors, highlighting the need for both investors and states to pursue mechanisms that ensure a fair and balanced investment environment.

Although Slovakia has not been subject to arbitration over agricultural land specifically, it was central to one of the most consequential developments in investment law—*Achmea*—in which the CJEU declared intra-EU investment arbitration clauses incompatible with EU law. This judgment has had profound implications for ongoing and future land-related disputes in the region.[1123]

[1116] i.e., *INÍCIA Mezőgazdasági, Termelő, Szolgáltató és Kereskedelmi Zártkörűen Működő Részvénytársaság*
[1117] Budapest-Capital Regional Court, 44.Pf.633.704/2017/14.
[1118] i.e., Act LXXXVII of 2010
[1119] Szilágyi and Andréka, 2020, p. 101.
[1120] Ibid., pp. 102–103.
[1121] *Mr. Kristian Almås and Mr. Geir Almås v The Republic of Poland* (PCA Case No. 2015-13)
[1122] Treder and Sadowski, 2019, pp. 345–348.
[1123] For more on this topic, see Korom, 2020, pp. 53–74.; Nagy, 2019.

Additionally, in *EuroGas and Belmont v Slovakia,*[1124] foreign investors challenged the revocation of mining rights—an area that, like land use, involves questions of sovereign control over natural resources and regulatory change.

In the Czech Republic, while there have been no known ICSID cases directly concerning agricultural land or its acquisitions, tribunals have addressed broader issues of jurisdiction, treaty abuse, and investor protection in cases such as *Phoenix Action v Czech Republic*,[1125] which emphasised the limits of investment treaty coverage in the face of bad faith or treaty shopping.

Together, these cases demonstrate the diversity of approaches to land and property disputes within the Central and Eastern European region under IIL. They also highlight recurring tensions between domestic legal developments and BIT-based investor expectations, especially in the aftermath of *Achmea* and the EU's efforts to assert legal primacy over intra-EU investment disputes.

I think, the BITs concluded in the past between EU Member States—the so-called intra-EU BITs—have increasingly become a source of legal conflict and complexity. As such, addressing their legal status and implications has become a priority issue within the European Union.

2. International investment agreements of the European Union

In this part of the thesis, the analysis addresses several IIAs of the EU in the context of cross-border land acquisitions, a matter of particular importance. The focus is on the 'new generation' IIAs applicable within the Union and, in certain instances, at the level of its Member States. The agreements examined are the Comprehensive Economic and Trade Agreement with Canada[1126] (hereinafter referred to as the CETA),[1127] the EU-Japan Economic Partnership Agreement[1128] (hereinafter referred to as the EU-Japan EPA),[1129] the EU-United Kingdom Trade and Cooperation

[1124] *EuroGas Inc. and Belmont Resources Inc. v Slovak Republic* (ICSID Case No. ARB/14/14)
[1125] *Phoenix Action, Ltd. v The Czech Republic* (ICSID Case No. ARB/06/5)
[1126] Applied since 2017.
[1127] CETA between Canada, of the one part, and the European Union and its Member States, of the other part, published at Official Journal of the EU, 14 January 2017, L 11
[1128] In force since 2019.
[1129] Agreement between the European Union and Japan for an Economic Partnership, published at Official Journal of the EU, 27 December 2018, L 330

Agreement[1130] (hereinafter referred to as the EU-UK TCA),[1131] the EU-Korea Free Trade Agreement[1132] (hereinafter referred to as the EU-Korea FTA),[1133] the EU-Singapore Free Trade Agreement[1134] (hereinafter referred to as the EU-Singapore FTA),[1135] the EU-Viet Nam Free Trade Agreement[1136] (hereinafter referred to as the EU-Viet Nam FTA),[1137] Association Agreement with Georgia (hereinafter referred to as the EU-Georgia Agreement),[1138] Comprehensive and Enhanced Partnership Agreement between the European Union and its Member States, of the one part, and the Republic of Armenia, of the other part[1139] (hereinafter referred to as the CEPA), and EU-Mercosur Partnership Agreement (hereinafter referred to as the EMPA)[1140]. These IIAs reveal a number of similarities, particularly in their treatment of the acquisition of agricultural land.

2. 1. CETA

The CETA is particularly relevant to cross-border land acquisitions[1141] as it addresses international investments.[1142] The agreement explicitly includes 'immovable property and related rights' within its denomination of investments.[1143] Additionally, the relevant chapter is accompanied by annexes—Annex I, which details reservations on existing measures and liberalisation commitments, and Annex II, which covers

[1130] Effective since 2021.
[1131] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, published at Official Journal of the EU, 31 December 2020, L 444
[1132] In force since 2015.
[1133] Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, published at Official Journal of the EU, 14 May 2011, L 127
[1134] Implemented in 2019.
[1135] Free Trade Agreement between the European Union and the Republic of Singapore, published at Official Journal of the EU, 14 November 2019, L 294
[1136] In force since 2020.
[1137] Free Trade Agreement between the European Union and the Socialist Republic of Viet Nam, published at Official Journal of the EU, 30 March 2020, L 186
[1138] Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, published at Official Journal of the EU, 30 August 2014, L 261/4
[1139] Comprehensive and Enhanced Partnership Agreement between the European Union and its Member States, of the one part, and the Republic of Armenia, of the other part, published at Official Journal of the EU, 26 January 2018, L 23/4
[1140] Partnership Agreement between the European Union and its Member States, of the one part, and the Mercosur countries (Argentina, Brazil, Paraguay and Uruguay), of the other part.
[1141] See especially Chapter 8.
[1142] CETA, Article 8.1., points (f) and (h)
[1143] Szilágyi, 2018a, p. 204.

reservations on future measures. These annexes specify exemptions made by both Canada and EU Member States, excluding certain investment rules such as national treatment,[1144] market access,[1145] most-favoured-nation treatment,[1146] performance requirements,[1147] and measures related to senior management and boards of directors.[1148,1149]

Canada's reservations generally focus on domestic laws regulating 'land' and 'agricultural land,' while EU Member States tend to frame their reservations more broadly under categories like 'acquisition of real estate.' Although these national regulations restrict land purchases by foreign natural and legal persons relative to domestic actors, they are formally acknowledged as valid exceptions under CETA. Consequently, contracting parties do not regard these measures as unlawful restrictions under the agreement's investment chapter.[1150]

CETA also clarifies its relationship with the GATS, explicitly stating that the reservations do not infringe upon the parties' GATS rights and obligations.[1151] There is a notable legal distinction between reservations in Annex I and Annex II: the latter permits broader space by allowing states to maintain or introduce future restrictions.[1152]

The Czech Republic's reservation concerning the 'acquisition of real estate' is included in Annex I of the CETA. The country has made on reservation stating that agricultural and forest land may be acquired only by foreign natural persons with permanent residence and by enterprises established under Czech law. Additional restrictions limit who can acquire such land, including rules for certain categories like public institutions and municipalities.[1153]

[1144] Article 8.6 of CETA is accompanied by a set of reservations detailed in the annexes.
[1145] Article 8.4 of CETA is accompanied by various reservations set out in the annexes.
[1146] Article 8.7 of CETA is subject to reservations listed in Annex I, notably those submitted by Latvia and Romania.
[1147] Article 8.5 of CETA is subject to reservations in Annex I, including the Canadian provincial and territorial reservations I-PT-183 and I-PT-184.
[1148] Article 8.8 of CETA is subject to annexed reservations. Annex I includes the Canadian provincial and territorial reservations I-PT-183 and I-PT-184, while Annex II records an EU reservation from Hungary regarding restrictions on acquiring state-owned real estate. See also Szilágyi, 2024, pp. 43–44.
[1149] Szilágyi, 2018a, pp. 204–205.
[1150] Szilágyi, 2024, p. 44.
[1151] Note 2 to Annexes I and II of CETA.
[1152] Szilágyi, 2018a, p. 205.
[1153] These limitations are grounded in domestic legislation, notably Act No. 95/1999 Coll. on the Conditions for the Transfer of Agricultural and Forestry land and Act No. 503/2012 Coll., on the State Land Office.

Hungary has made three distinct reservations concerning the 'acquisition of real estate' under CETA.[1154] The first, included in Annex I, pertains to the purchase of non-agricultural real estate by foreigners, requiring prior authorisation from the relevant administrative authority. The second and third reservations are listed in Annex II, covering agricultural land and public property, respectively. For agricultural land, Hungary's Annex II reservation allows the state to maintain or introduce measures governing the acquisition of arable land by foreign legal persons and non-resident natural persons, including the authorisation process. This reservation raises important questions about the scope of Hungary's regulatory autonomy, particularly if the state were unable to defend its position in disputes before the CJEU. Annex II also applies to state-owned real estate, enabling Hungary to retain or implement measures affecting acquisition of such properties, including those related to market access, national treatment, and governance provisions.[1155]

As it can be seen, the term 'arable land', appears in the text. In connection with this tied to the mentioned reservation, *Raisz* have pointed out that using the term 'agricultural land' instead of 'arable land' might have been more accurate. Furthermore, extending the scope of the reservation to cover additional investment protections, such as most-favoured-nation treatment, could better safeguard Hungarian interests.[1156] A further consideration is how Hungary's ability to exercise this policy space might be affected if it fails to defend its land-related legislaation before the CJEU.

Poland's reservation is found in Annex I and pertains to the 'acquisition of real estate' by foreigners. It refers explicitly to the AAREF, according to which foreign acquisition of real estate, direct or indirect, requires a permit issued by the competent minister, with the consent of the defence minister and, in the case of agricultural real estate, the agriculture minister.[1157]

Slovakia's reservation on 'acquisition of real estate', citing specific legislations[1158] are listed in Annex II of CETA, which stipulates that foreign companies and natural persons are not permitted to acquire agricultural land or forest land located

[1154] For example, for Hungary, relevant reservations are listed in the EU schedules. Annex I cites Government Decree No 251/2014 (X.2.), while Annex II refers to Land Transfer Act.
[1155] Cf. Szilágyi, 2024, pp. 45–46.
[1156] Raisz, 2017, p. 443.
[1157] Relevant reservations are listed in the EU schedules. Annex I cites AAREF.
[1158] Foreign Exchange Act, para. 19 and Act No. 229/1991 on Regulation of Ownership Relations to Land and Other Agricultural Property

outside the boundaries of built-up areas of municipalities, as well as certain other categories of land (e.g., natural resources, lakes, rivers, public roads, etc.).[1159]

From a legal perspective, the reservations listed above play a crucial role. In the absence of such reservations, states may face the possibility that CETA's dispute settlement mechanisms could, in the future, be invoked in relation to the regulation of agricultural land transactions, even if these matters were originally intended to remain under national control.[1160]

2. 2. EU-Japan EPA

Moving forward, the EU-Japan EPA adopts a comparable structure to CETA in addressing cross-border land acquisition. The agreement includes a specific chapter[1161] on investment and services, complemented by annexes where both the EU Member States and Japan list their respective reservations. Similar to the CETA, the EU-Japan EPA provides a framework for listing reservations in two categories: Annex I includes reservations related to existing national regulatory measures, while Annex II permits the inclusion of reservations covering both current and future national measures, offering greater regulatory flexibility for the parties involved.[1162]

The Czech Republic adopts a similar approach in the EU-Japan EPA to that taken under CETA. In Annex 8-B, Annex I, Reservation No. 1, which applies across all sectors, the Czech Republic basically has reiterated its CETA provisions by stating that agricultural and forest land may be acquired only by foreign natural persons holding permanent residence and by companies incorporated under Czech law. Additional restrictions apply to acquisitions by certain legal persons, including municipalities and public institutions, reflecting a broader policy of limiting access to land to actors with a demonstrable connection to the domestic legal order.[1163]

Hungary's approach to listing its reservations in the EU-Japan EPA mirrors its strategy under CETA. In the EU's Annex I, Reservation No. 1, which applies across

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[1159] Relevant reservations are listed in the EU schedules. Annex II refers to Foreign Exchange Act, para. 19 and Act No. 229/1991 on Regulation of Ownership Relations to Land and Other Agricultural Property.

[1160] Cf. Szilágyi, 2018, p. 206.

[1161] Chapter 8 of the EU-Japan EPA – Trade in Services, Investment Liberalisation, and Electronic Commerce

[1162] Cf. Szilágyi, 2024, p. 46.

[1163] These limitations are grounded in domestic legislation, notably Act No. 95/1999 Coll. on the Conditions for the Transfer of Agricultural and Forestry land and Act No. 503/2012 Coll., on the State Land Office.

all sectors, Hungary refers to domestic rules that restrict the acquisition of non-agricultural real estate, using identical wording and legislative references as found in the CETA schedule.[1164] When it comes to agricultural land, Hungary has invoked Annex II, Reservation No. 1, which enables the government to maintain or implement future restrictions on cross-border acquisitions of such land.[1165] This, again, closely follows the structure and content of Hungary's CETA reservations. It is worth noting that Japan, similarly to Hungary, extended its own reservations on cross-border land acquisition[1166]—listed as Reservation No. 12 in its schedule—to cover future measures as well. These are included in Annex II of Japan's schedule. Unlike Hungary, however, Japan has applied this reservation not only with respect to national treatment and market access, but also in relation to most-favoured-nation treatment.[1167]

Poland has essentially reiterated its CETA reservation concerning national treatment and market access for real estate acquisitions in the corresponding Annex I of the EU-Japan EPA.[1168]

Slovakia's reservation prohibits foreign natural and legal persons from acquiring agricultural and forest land outside municipal areas, as well as land containing natural resources, lakes, rivers, and public infrastructure. Existing land-use provisions under Act No. 44/1988 on Protection and Use of Natural Resources are preserved for transparency. By placing this in Annex II, Slovakia secures broad control over rural land and strategic resources despite EPA liberalisation.[1169]

[1164] Annex 8-B, Annex I, Reservation no. 1 (all sectors), point (b) (acquisition of real estate) cites Government Decree No. 251/2014 (X.2.) and Act LXXVIII of 1993, para. 1/A.

[1165] Annex 8-B, Annex II, Reservation no. 1 (all sectors), point (b) (acquisition of real estate) cites Land Transfer Act (especially Chapters II paras. 6–36. and IV paras. 38–59.) and Implementation Land Act (Chapter I.V paras. 8–20.).

[1166] Relevant reservations are listed in the Schedule of Japan. Annex 8-B, Annex II, Reservation No. 12, land transactions.

[1167] Cf. Szilágyi, 2024, p. 47.

[1168] Annex 8-B, Annex I, Reservation no. 1 (all sectors), point (b) (acquisition of real estate) cites the AAREF.

[1169] Annex 8-B, Annex II, Reservation no. 1 (all sectors), point (b) (acquisition of real estate) cites Act No. 229/1991 Regulation of Ownership Relations to Land and Other Agricultural Property; Constitution of the Slovak Republic; Act No. 180/1995 on Certain Arrangements for the Holding of Land; Foreign Exchange Act; Act No 503/2003 on Restitution of Ownership to Land; Act No. 326/2005 on Forests; Act on Land Acquisition.

2. 3. EU-Singapore FTA

Regarding the EU-Singapore FTA, the agreement addresses cross-border land acquisitions through a framework[1170] that mirrors the structure of the earlier EU-Korea FTA.[1171] Within this agreement, 'acquisitions of immovable property' are not treated as a distinct investment category but are instead regulated under the chapters on services and establishment. Specifically, such transactions fall within the scope of provisions governing the cross-border supply of services and the right of establishment, thereby ensuring that national measures affecting land and real estate remain subject to the treaty's liberalisation commitments only to the extent expressly permitted.

So, within the EU–Singapore FTA, cross-border land acquisitions are regulated under the chapters on services and establishment.[1172] Member States retain the possibility of listing reservations in these chapters to preserve domestic legal control over real estate transactions.

The Czech Republic has made reservations concerning the acquisition of agricultural and forest land by foreign natural and legal persons, limiting such acquisitions to those holding permanent residence in the country. Additional restrictions apply to land under state ownership, ensuring that these domestic rules remain exempt from the liberalisation obligations of the mentioned FTA.[1173]

Hungary has adopted similar reservations as in the previously mentioned agreements, maintaining restrictions on foreign acquisition of land and real estate.[1174]

Poland, for instance, has made reservations in the corresponding annexes requiring foreign investors to obtain prior authorisation for both direct and indirect acquisitions of real estate, while transactions involving state-owned property are governed separately under the domestic privatisation regime.[1175]

[1170] Chapters on trade in services, establishment, and electronic commerce vary across EU FTAs. For instance, Chapters 7 of the EU-Korea FTA and 8 of the EU-Singapore FTA explicitly include 'establishment,' whereas Chapter 8 of the EU-Viet Nam FTA—titled Trade in Services, Investment and Electronic Commerce—does not. Relevant reservations on cross-border land acquisitions are nonetheless included in Annex 8-A (Establishment) and Annex 8-C (Cross-border Supply of Services).
[1171] See, for example, Articles 7.5 and 7.11 of the EU-Korea FTA and Articles 8.5 and 8.10 of the EU-Singapore FTA. Regarding national treatment obligations, see Articles 7.6 and 7.12 of the EU-Korea FTA and Articles 8.6 and 8.11 of the EU–Singapore FTA).
[1172] Chapter 8 of the EU-Singapore FTA (Services, Establishment and Electronic Commerce)
[1173] See Annexes 8-A-1 and 8-A-2 in the EU-Singapore FTA.
[1174] Ibid.
[1175] Ibid.

Slovakia has imposed restrictions on the acquisition of real estate by foreign natural and legal persons. Such acquisitions are permissible only indirectly, either through legal persons incorporated under Slovak law or by holding a stake in such legal persons. Land owned by the state or designated public property is explicitly excluded from these restrictions.[1176]

2. 4. EU-Viet Nam FTA

The EU-Viet Nam FTA addresses cross-border land acquisitions in a manner that follows the conceptual approach of the earlier EU–Korea and EU-Singapore FTAs. The agreement in focus does not include a dedicated chapter on establishment; instead, these transactions are regulated under Chapter 8, which covers both investment liberalisation and trade in services, including electronic commerce.

Reservations on real estate acquisitions appear in Annex 8-A of the agreement, within two appendices: one relating to 'cross-border provision of services' and the other to 'investment liberalisation'.[1177] All the four countries under examination have listed reservations in both appendices, using almost the same wording.

The Czech Republic has reiterated its reservations under EU-Singapore FTA word by word.[1178]

Hungary has entered corresponding reservations in both Appendices 8-A-1 and 8-A-2, reflecting the same approach taken in its reservations under the EU-Korea and EU–Singapore FTAs. These reservations impose limitations on the acquisition of land and real estate by foreign investors. Across all three agreements—the EU-Korea, EU-Singapore, and EU-Viet Nam FTAs—it is explicitly stated that, with respect to the services sector, these limitations do not exceed the commitments already undertaken under the GATS.[1179]

Poland has entered two distinct reservations under the EU-Viet Nam FTA. In Appendix 8-A-1, it provides that the acquisition of real estate—whether direct or indirect—by foreign natural or legal persons requires prior authorisation, a reservation largely consistent with its commitments under the EU-Korea and EU-Singapore FTAs. In Appendix 8-A-2, Poland requires permits for both real estate acquisitions and the

[1176] Ibid.
[1177] More precisely, Annex 8-A-1 and Annex 8-A-2.
[1178] Ibid.
[1179] See Annex 8-A-1, footnote 2 and Annex 8-A-2, footnote 3.

acquisition of shares or other rights in companies owning property in Poland, with approvals issued by the minister responsible for internal affairs, the Minister of National Defence, and, for agricultural property, the Minister of Agriculture and Rural Development.[1180]

The same applies to Slovakia, as it has reiterated the previously listed reservations.[1181]

2. 5. EU-Korea FTA

The EU-Korea FTA addresses the issue of cross-border land acquisitions primarily within the frameworks of the 'cross-border provision of services and establishment'.[1182] In both cases, the agreement incorporates specific provisions that permit EU Member States to implement reservations.

In particular, the mentioned FTA allows Member States to make reservations under the chapters pertaining to services and establishment. These reservations safeguard national control over sensitive sectors, such as land and real estate, by limiting the acquisition of property by foreign investors.

All countries within the V4 countries have included such reservations in both Annex 7-A-1, which relates to the cross-border provision of services, and Annex 7-A-2, concerning establishment. They have made the same reservations in both annexes.

The Czech Republic's reservation states limitations on real estate acquisition by foreign natural and legal entities. Moreover, that foreign entities may acquire real property through establishment of Czech legal entities or participation in joint ventures. Acquisition of land by foreign entities is subject to authorisation.[1183]

Hungary's reservations focus on limitations on acquisition of land and real estate by foreign investors.[1184]

Regarding Poland, the country's reservations require permission for both direct and indirect real estate acquisitions by foreign entities, including purchases of state-

[1180] It differs from its earlier FTA reservations.
[1181] See Annex 8-A-1 and Annex 8-A-2. See also reservations in EU-Singapore FTA.
[1182] See Chapter 7 of the EU-Korea FTA.
[1183] EU-Korea FTA, Annexes 7-A-1 and 7-A-2.
[1184] Ibid.

owned properties and shares in land-owning companies, though exemptions apply to certain privatisation processes.[1185]

Slovakia imposes comparable restrictions on real estate acquisition by foreign individuals and legal entities. Foreign investors may acquire property indirectly by establishing Slovak legal entities or participating in joint ventures. However, these restrictions do not apply to land.[1186]

2. 6. EU-UK TCA

The EU-UK TCA sets out the post-Brexit legal framework for trade and investment. The mentioned agreement includes Annexes I and II[1187] as found, for example, in CETA. Cross-border land acquisitions are linked to the market access and national treatment in these agreements through the listing of certain Member States' land laws as reservations. The V4 countries maintain such reservations on 'acquisition of real estate'.[1188]

The Czech Republic has included a reservation[1189] on the list of existing national measures, specifically targeting state-owned agricultural land. Such land can only be acquired by Czech nationals, citizens of other EU or EEA Member States, or Swiss Confederation nationals. Legal entities may purchase land only if they are recognised as agricultural entrepreneurs operating within the Czech Republic or hold equivalent status in another EU or EEA country or Switzerland.[1190]

Hungary reiterated its reservations in both lists. In the list of existing national restrictions, the country maintained a reservation concerning the liberalisation of investment and the application of national treatment and market access rules for non-agricultural property acquisitions, mirroring the position it had taken under CETA.[1191] Regarding agricultural land, Hungary placed a reservation on the list covering future measures, which provides greater regulatory flexibility. Alongside its general

[1185] Ibid.
[1186] Ibid.
[1187] Precisely, Annex SERVIN-1, Annex SERVIN-2
[1188] See Annex SERVIN-1, Reservation No. 1 – All sectors, covering investment liberalisation, cross-border trade in services, and the regulatory framework for legal services.
[1189] Based on Act No. 503/2012 Coll. on State Land Offices.
[1190] Annex SERVIN-1, Schedule of the European Union, Reservation No. 1 point (b).
[1191] Ibid. Hungary's reservation relies on Government Decree No. 251/2014 (X.2.) and Act LXXVIII of 1993, para. 1/A.

reservation on the acquisition of state-owned property,[1192] this reservation[1193] functions as an exception to the liberalisation of investment and to the principles of national treatment and market access for real estate acquisitions, specifically addressing measures related to the purchase of agricultural land by foreign legal persons and non-resident natural persons.[1194]

Poland has included a reservation on the list of existing national restrictions, framing it as an exception to the principle of national treatment concerning the liberalisation of investment in real estate. Poland requires foreigners to obtain a permit for acquiring real estate, whether direct or indirect. The permit is issued by the minister responsible for internal affairs, with additional consent from the Minister of National Defence. For agricultural real estate, approval from the Minister of Agriculture and Rural Development is also necessary.[1195]

Slovakia, in the list of future national measures, has maintained a reservation according to which foreign companies or natural persons are prohibited from acquiring agricultural and forest land outside the built-up areas of municipalities, as well as certain other categories of land.[1196]

2. 7. EU-Georgia Agreement

The agreement constitutes a fundamental pillar of the EU's Eastern Partnership policy. It explicitly addresses capital movements under Article 138, Chapter 7. From the moment the agreement entered into force, the Parties have committed to guaranteeing the free movement of capital related to direct investments, including the acquisition of real estate, in accordance with the laws of the host country and the provisions of Chapter 6 concerning Establishment, Trade in Services, and Electronic Commerce.

The implementation of the mentioned agreement is subject to Member State-specific reservations, as outlined in Annex XIV-A, which contains the list of reservations on establishment, particularly the horizontal reservations applicable to all

[1192] See Annex SERVIN-2, Schedule of the European Union, Reservation No. 1 (all sectors), point (b).
[1193] Ibid. The cited legislation contains Land Transfer Act (Chapters II paras. 6–36. and IV paras. 38–59.) and Implementation Land Act and related provisions (Chapter IV, paras. 8–20).
[1194] Szilágyi, 2024, pp. 47–48.
[1195] Annex SERVIN-1, Schedule of the European Union, Reservation No. 1 point (b).
[1196] In connection with this, see Act No. 44/1988 Protection and Use of Natural Resources; Act No. 229/1991 Regulation of Ownership Relations to Land and Other Agricultural Property; Constitution of the Slovak Republic; Act No. 180/1995 on Certain Arrangements for the Holding of Land; Foreign Exchange Act; Act No 503/2003 on Restitution of Ownership to Land; and Act on Land Acquisition.

sectors. Regarding the types of establishments and the acquisition of 'land and real estate', the following reservations have been made by all V4 countries.

The Czech Republic, reiterating its EU-Japan EPA reservations, restricts the acquisition of agricultural and forest land by foreigners to permanent residents. State-owned land is reserved mainly for Czech nationals, municipalities, and public universities, while legal entities may acquire it only under specific use-related conditions.[1197]

Hungary has maintained stringent reservations. Subject to the limited exceptions provided in arable land legislation, foreign natural and legal persons are prohibited from acquiring arable land. The purchase of real estate by non-residents is generally subject to prior authorisation from the competent public administration authority based on the location of the property.[1198]

Poland has reiterated its EU-UK TCA reservations almost word-by-word.[1199] Slovakia prohibited the acquisition of agricultural and forest land by foreign natural and legal persons. Specific rules apply to other categories of real estate. Foreign entities may acquire property through the establishment of Slovak legal entities or participation in joint ventures. In addition, any acquisition of land by foreign entities is subject to prior authorisation.[1200]

2. 8. CEPA

The CEPA is a key treaty that strengthens political, economic, and sectoral cooperation between the EU and Armenia. Annex VIII-A specifies the economic activities in which the European Union applies reservations to the principles of national treatment and most-favoured-nation treatment, as established in Article 144 para. 2 of the CEPA.

The mentioned annex is organised into two primary sections. The first comprises horizontal reservations, which are general restrictions or conditions that apply across all sectors or subsectors. The second section details sector- or sub-sector-specific reservations, which identify targeted restrictions applying to particular sectors or subsectors. For each listed sector or subsector, specific limitations or conditions are

[1197] See Annex XIV-A of the agreement.
[1198] Ibid.
[1199] Ibid.
[1200] Ibid.

outlined regarding the establishment or investment activities of Armenian entrepreneurs or companies within the EU.

Focusing on horizontal reservations related to 'real estate acquisition', the V4 countries made the following reservations.

The Czech Republic, reiterated its EU-Japan EPA reservations, while Hungary and Poland its EU-Georgia agreement reservations.[1201]

Slovakia's reservation concerns land acquisition: while it is formally unbound under modes 3 and 4,[1202] foreign companies and natural persons may not acquire agricultural or forest land located outside the built-up areas of municipalities, nor certain other categories of property (such as natural resources, lakes, rivers, and public roads).[1203]

2. 9. EMPA[1204]

The EMPA represents one of the EU's most recent and significant trade initiatives and encompasses the four founding members of MERCOSUR: Argentina, Brazil, Paraguay, and Uruguay.[1205]

Negotiations began in 1999 and extended over nearly two decades due to the complexities of aligning divergent regulatory frameworks, agricultural policies, and environmental standards. On 29 June 2019, the EU and MERCOSUR reached an agreement in principle on the core trade components (establishing a foundation for deeper economic integration),[1206] which was complemented on 18 June 2020 by the conclusion of negotiations on the cooperation and political dialogue pillars of the broader Association Agreement.[1207] Further momentum was added in December 2024, when the political agreement on the overall Partnership Agreement was renewed, including sustainability clarifications.[1208]

[1201] See Annex VIII-A of the agreement.
[1202] Ibid.
[1203] Ibid.
[1204] Date of finalisation of this subchapter: 15 January 2026.
[1205] See the website of MERCOSUR. Available at: https://www.mercosur.int/en/about-mercosur/mercosur-countries/ (Accessed 11 January 2026)
[1206] Blenkinsop and Kihara, 2019.
[1207] European Commission, 2019.
[1208] Ibid., 2025.

Despite these developments, the agreement has not yet entered into force, as the final texts have not been fully ratified. Supporters emphasise its potential to diversify trade relations, reduce strategic dependencies, and expand export opportunities for EU industrial and agricultural products. By contrast, opposition—particularly from the agricultural sector—has been pronounced in several Member States, notably France, Italy,[1209] Hungary, and Poland,[1210] while Germany, Spain, and a number of Nordic countries have remained consistently supportive.[1211] In response, the European Commission has proposed mitigating measures, including the expansion of emergency support mechanisms for farmers affected by market disruptions and legal instruments allowing for the temporary suspension of trade concessions where material harm can be demonstrated.

On 9 January 2026, a qualified majority of Member States approved the agreement at the Council level, enabling its signature and submission to the European Parliament for consent.[1212]

The agreement is envisaged as comprising two interrelated instruments: the EMPA, covering the full spectrum of political, trade, and cooperation issues, and an Interim Trade Agreement (hereinafter referred to as the iTA), designed to provisionally govern trade relations until the full agreement is ratified. On 3 September 2025, the European Commission proposed Council decisions authorising the signature and conclusion of both instruments, with the objective of allowing provisional application of the trade components following the European Parliament's consent, and full entry into force following ratification by all EU Member States.[1213]

The political development of the agreement underscores the dynamics between EU-level ambitions and the concerns of individual Member States. S everal countries, including Hungary, France, and Poland, have expressed significant reservations regarding the potential impact on domestic agricultural sectors, reflecting concerns over market access and competitive pressures for EU farmers. Despite these objections, the European Commission emphasised that finalising the agreement is

[1209] Cf. Gijs, 2025.
[1210] Blenkinsop, 2026.
[1211] Shelton, 2025.
[1212] Verhelst, 2026.
[1213] Corlin, 2026.

essential for Europe's strategic economic positioning, framing it as a decision that would 'shape the EU's future'.[1214]

From a legal perspective, it does not contain a standalone investment chapter, nor does it establish a comprehensive investment protection regime. Instead, issues relevant to the cross-border acquisition of agricultural land arise indirectly under the rules governing 'establishment and services', as set out in Chapter 10 (Trade in services and establishment) of the draft.[1215]

As of 15 January 2026, the draft version of the agreement includes several Annexes. Cross-border land acquisitions are provisionally linked to market access and national treatment provisions through the listing of certain Member States' land laws as reservations. The V4 countries are reported to maintain such reservations regarding the acquisition of 'real estate'.[1216]

All the four countries made reservations in both Annexes, i.e., in Annexes 10-A and 10-B.

For instance, the Czech Republic has included almost identical reservations in both annexes governing trade in goods and trade in services, specifying that agricultural and forest land may only be acquired by foreign natural and legal persons with permanent residence in the Czech Republic. Additional rules apply to agricultural and forest land held in state ownership.[1217]

Hungary's reservations in Annex 10-A concern the acquisition of state-owned properties, with limitations applying to the acquisition of land and real estate by foreign investors.[1218] In Annex 10-B, additional restrictions on the acquisition of land and real estate by foreign investors are also specified.[1219]

Poland's reservations in Annex 10-A specify that the acquisition of real estate, whether direct or indirect, by foreign natural or legal persons requires prior permission. The acquisition of state-owned property remains unbound, for instance in cases governed by regulations on the privatisation process.[1220] Similarly, in Annex 10-B, the

[1214] Mandiner, 2026.
[1215] European Commission, 2025.
[1216] See Annexes 10-A and 10-B, which contain EU list of commitments on cross-border supply of services and commitments on establishment. See also Annex 10-E, which contains Mercosur list of commitments on services on establishment.
[1217] Annexes 10-A and 10-B of the iTA, p. 5.
[1218] Annex 10-A of the iTA, p. 6.
[1219] Annex 10-B of the iTA, p. 7.
[1220] Annex 10-A of the iTA, p. 7.

acquisition of real estate by foreign natural or legal persons also requires permission, while state-owned property is not bound by these restrictions.[1221]

With regard to Slovakia's reservations, Annex 10-A and Annex 10-B contain almost identical wording on the acquisition of real estate by foreign natural and legal persons: foreign entities may acquire property only through the establishment of Slovak legal entities or participation in joint ventures. Land, including natural resources, lakes, rivers, and public roads, is explicitly marked as unbound, preserving Slovakia's ability to regulate foreign acquisition of land and related domestic laws.[1222]

3. Summary

The aim of this chapter was to examine cross-border land acquisitions in the context of IIL, focusing on the legal frameworks established by the IIAs and related trade and partnership agreements.

The agreements analysed in this thesis encompass a variety of treaty types that include international investment provisions but differ in scope and structure. Some, such as the CETA, and the EU-Japan EPA, feature dedicated investment chapters with comprehensive protections typical of classical IIAs. Others adopt broader trade or partnership frameworks with embedded investment-related provisions. Specifically, the EU-Singapore, EU-Viet Nam, and EU-Korea FTAs incorporate investment protections within chapters on services and establishment, effectively functioning as IIAs within broader FTAs. These agreements maintain investor protections and market access commitments consistent with customary IIA standards. Conversely, agreements such as the EU-UK TCA, the EU-Georgia Association Agreement, the CEPA and the EMPA primarily pursue comprehensive political and economic cooperation objectives, including trade liberalisation and regulatory alignment. While these instruments include important provisions on capital movements and investment, they do not constitute traditional standalone IIAs, often lacking dedicated investment dispute resolution mechanisms or the full scope of investor protections typical of classical investment treaties.

[1221] Annex 10-B of the iTA, p. 8.
[1222] Annex 10-A of the iTA, p. 7. and Annex 10-B of the iTA, p. 9.

Accordingly, this thesis refers to these instruments collectively as IIAs or agreements with international investment components, acknowledging variations in their legal frameworks and investment-related commitments.

Through comparative analysis of the mentioned agreements, several key findings emerge.

First, cross-border land acquisitions represent a complex and sensitive issue that balances economic liberalisation with states' sovereign control over strategic natural resources, especially land. This tension is evident in the careful balance struck by EU IIAs through detailed reservations and exceptions.

Second, these agreements typically integrate land acquisition provisions within broader chapters on investment, services, and establishment rather than addressing land-related issues separately.

Third, reservations in annexes play a critical role in preserving 'space' for contracting parties. These annexes allow states—particularly EU Member States—to maintain or introduce restrictions on land acquisitions by foreign investors, safeguarding national interests related to, for example, investment.

Fourth, Member States of the V4 consistently maintain robust restrictions on foreign land ownership across the agreements analysed. These restrictions typically require permits, limit acquisitions to certain categories of investors (e.g., residents or locally established companies), or prohibit foreign ownership of specific land types altogether. Such measures are formalised as valid exceptions within investment chapters, reflecting a broad consensus on protecting land sovereignty.

Fifth, the EU's approach demonstrates legal coherence and respect for multilateral obligations by clarifying the interaction between IIAs and other frameworks like the GATS, ensuring that land-related reservations do not exceed existing commitments.

Finally, post-Brexit developments, exemplified by the EU-UK TCA, confirm that cross-border land acquisition remains a critical regulatory area, with Member States reinforcing national control mechanisms amid evolving political and economic relationships.

In sum, the EU's IIAs embody a nuanced and pragmatic legal framework that facilitates international investment while respecting states' legitimate regulatory prerogatives over land ownership. This framework ensures that, while cross-border investments are encouraged, they do not undermine states' sovereign capacity to

regulate and protect their land resources. This thesis contributes to a broader understanding of how international economic law balances liberalisation with interests concerns, offering valuable insights for policymakers, legal practitioners, and scholars interested in the governance of land investments in a globalised world.

While only a selection of IIAs has been discussed, several other agreements with major trading partners remain under negotiation. Given the approaches V4 countries have applied in existing IIAs, it is imperative that policymakers in these countries continue to adopt these practices in future agreements, with particular attention to explicitly incorporating reservations on land tenure. In my analysis, such reservations serve not only as essential tools for protecting national interests but also provide necessary flexibility to reconcile international commitments with domestic political and social considerations. In light of the mentioned information, and as *Szilágyi* highlighted, the key question is whether, among the various types of reservations, they can secure provisions that allow sufficient room for political discretion in future agreements. Equally important is the design of dispute settlement mechanisms: national interests must be assertable within these systems, which should not evolve into purely investor-friendly regimes. These forthcoming investment frameworks may profoundly influence the future development paths of these nations, underscoring the need to prioritise the representation of national interests in the formulation of new IIAs.[1223]

From my perspective, the effectiveness of these reservations in safeguarding regulatory autonomy will largely depend on their clarity and enforceability within the treaty frameworks. Moreover, the design of dispute settlement mechanisms in new IIAs demands critical scrutiny. Historically, ISDS mechanisms have exhibited an inherent bias favouring investors, potentially limiting states' capacity to pursue legitimate public policy objectives. It is therefore crucial that the V4 advocate for dispute resolution systems that balance investor protections with states' rights to regulate in the public interest, thereby ensuring that national sovereignty is not unduly compromised.

From a broader perspective, the evolving extra-EU investment regime will have significant implications for the long-term economic development paths of these countries. Without deliberate efforts to preserve regulatory space, there is a significant

[1223] Szilágyi, 2024, pp. 51–52.

risk that these agreements may prioritise investor interests at the expense of sustainable development goals and socio-economic priorities. Consequently, I think that the preservation and assertion of national interests within IIAs should be regarded not merely as defensive measures but as strategic imperatives. They are integral to fostering an investment climate conducive to equitable growth and the rule of law.

In conclusion, I maintain that Poland and Hungary have both the opportunity and the responsibility to shape their IIAs in a manner that safeguards their regulatory capacities while promoting fair and sustainable investment. This balance is critical to ensuring that IIAs serve as instruments of national development rather than constraints upon it. Similarly, Slovakia and the Czech Republic face significant challenges and opportunities in this regard, and the adoption of coherent land acquisition reservations, clear definitions of investor eligibility, and precise succession or transfer rules will be essential to preserving national control over strategic land resources while enabling responsible foreign investment.

Finally, the research confirms the third hypothesis, namely that EU and Member State IIAs strengthen legal protections for foreign investors in land-related issues. However, their impact on host states' regulatory autonomy remains limited. Extensive reservations and exceptions—particularly regarding land ownership—preserve important policy space, enabling states to maintain control over strategic natural resources.

CONCLUSIONS

The aim of the thesis was to examine the cross-border acquisition of agricultural lands, with particular emphasis on the evolving legal frameworks governing such acquisitions in the Visegrád countries, and within the broader context of European Union law and international investment law. It can be stated, that the regulation of cross-border agricultural land acquisitions remains one of the most contested and sensitive areas of land governance.

The aim of the introductory part was to provide the foundation for this thesis by explaining the relevance of cross-border agricultural land acquisitions, outlining the national, EU, and international legal frameworks, clarifying key concepts, and presenting the hypotheses. It also described the methodology and structure of the dissertation, thereby setting the stage for the detailed analysis.

Part I of the thesis has undertaken a comprehensive comparative analysis of the land law legislation of the Visegrád countries, with particular emphasis on agricultural land, examining their constitutional foundations, legislative frameworks, and key terms, concepts, and mechanisms governing acquisition, succession, and use. The research has confirmed that, despite shared historical experiences, the four systems have displayed distinct orientations and varying degrees of regulatory intervention.

At the constitutional level, Hungary and Slovakia provide the strongest recognition of agricultural land protection. Hungary elevates agricultural land to the level of a constitutional value, defining it as part of the nation's common heritage and authorising the legislator to impose restrictions on its acquisition and use. Slovakia's 2017 constitutional amendment classifies agricultural land as a non-renewable natural resource, obliging the state to ensure its rational use. Poland, though lacking an explicit constitutional reference to agricultural land or agricultural real estate, acknowledges the family farm as the basis of its agricultural system. The Czech Republic, by contrast, provides no specific constitutional protection, relying instead on general property guarantees. This divergence already indicates two broad tendencies: a public-law-oriented, protective approach, and a private-law, market-oriented approach.

In terms of level of acts, Hungary's framework has proven to be the most integrated, with cardinal acts establishing a coherent hierarchy of legislation governing land transfer, holdings, and succession. Slovakia remains fragmented, operating through a combination of distinct acts. Poland employs a hybrid model combining

general private law with specialised legislation, while the Czech Republic relies mainly on the Civil Code and a limited number of specific acts, reflecting a minimalist approach. This comparative mapping confirms that the degree of legislative integration correlates with the extent of state intervention—the more consolidated the sources, the more regulated the market.

Regarding the legal concept of agricultural land, all V4 countries define it, yet the scope and classification vary. As for agricultural holdings, the divergence is even more pronounced. Hungary distinguishes between personal farms, family farms, and farms; Poland recognises both agricultural and family farms, the latter enjoying constitutional protection. Slovakia has recently introduced the concepts of the family farm and the family enterprise, aligning agricultural entrepreneurship with family-based ownership structures. The Czech Republic, however, does not explicitly recognise agricultural holdings as a distinct legal category. However, a subtype of agricultural holdings, namely the family farms, is recognised.

In relation to the acquisition of ownership of agricultural land, two models have emerged. The Czech Republic and Slovakia follow a liberal approach, allowing acquisition by domestic and foreign persons, subject mainly to reciprocity. Poland and Hungary, by contrast, adopt restrictive regimes, limiting acquisitions and imposing strict restrictions not only on natural persons but also on legal persons.

The succession rules regarding agricultural land (but also agricultural holdings) show similar divergence. The Czech Republic and Slovakia apply general civil law without special provisions, while Hungary and Poland have developed specialised frameworks to prevent excessive fragmentation and to ensure the continuity of family farming.

When examining acquisition through shares in companies, the Czech Republic and Slovakia impose no special limitations. In Hungary, this question is largely irrelevant, as legal persons cannot acquire ownership of agricultural land (with a few exceptions), while in Poland, acquisitions of shares in companies holding agricultural assets are regulated: foreigners from outside the EEA/Switzerland require a permit under the AAREF, and the NASC has a pre-emption right under the ASAS for companies owning agricultural land of at least five hectares.

Regarding other rights, it appears that in Czechia these issues are governed by general civil law, whereas in the other three countries the legislator has enacted specific rules.

The comparative evaluation of national measures under the Commission's Interpretative Communication has further clarified the regulatory landscape. For example, Hungary and Poland employ prior authorisation, pre-emption rights, self-farming obligations, and qualification requirements; the Czech Republic limits itself to state pre-emption, while Slovakia applies none of these measures. Poland uniquely regulates land prices and residence conditions, and both Poland and Hungary favour local acquirers.

The analysis has thus confirmed significant divergence across the Visegrád countries at each level. The protective models of Hungary and Poland contrast with the liberal regimes of the Czech Republic and Slovakia, yet all four share challenges of internal incoherence, definitional ambiguity, and the need for balanced reform. *De lege ferenda* proposals formulated in the thesis emphasise the clarification and harmonisation of legal definitions and concepts, especially concerning agricultural holdings; the refinement of succession rules; and the tailoring of restrictions and sanctions to achieve a balanced yet functional legal environment.

In Part II of the thesis the author highlighted the European Union's crucial role in economic cooperation over the past half-century, with a central focus on establishing the internal market. The research has demonstrated that the EU internal market, rooted in the free movement of goods, services, persons, and capital, remains a cornerstone of European integration. Conceived to overcome post-war fragmentation and stimulate growth, it now embodies both economic cooperation and social cohesion. Yet, the governance of land—particularly agricultural land—represents one of the most sensitive intersections between national sovereignty and EU law. Land is not merely an economic asset but a finite natural resource tied to, *inter alia*, sustainability, and territorial development. This dual character makes its regulation uniquely contentious within the broader project of European integration. The thesis has shown that Member States retain a margin of appreciation in shaping land laws, but this margin is not unlimited. Through its jurisprudence, the CJEU has consistently emphasised that land policy objectives must comply with the principles of non-discrimination and proportionality. Landmark cases including *Ospelt*, *Festersen*, and *KOB SIA* illustrate the delicate balancing act between EU economic freedoms and national objectives. Notably, the evolution of CJEU jurisprudence, particularly in *KOB SIA*, has expanded the interpretive scope of internal market law by applying the

Services Directive and freedom of establishment to land acquisitions, further narrowing the margin of appreciation available to Member States.

Institutional mechanisms further reinforce this balance. Infringement proceedings, increasingly used by the European Commission, ensure that Member States respect Treaty obligations. Slovakia, for instance, adjusted its land acquisition rules following Commission action, while Hungary has been repeatedly scrutinised, notably concerning foreign ownership restrictions and the termination of usufruct rights between non-close relatives. Similarly, the preliminary ruling procedure has proven central to maintaining uniform interpretation of EU law. Hungarian cases such as *SEGRO and Horváth*, *Bán and Kovács*, *Grossmania*, and *Nemzeti Földügyi Központ* reveal the CJEU's pivotal role in clarifying the compatibility of national measures with EU principles.

The findings of the thesis underscore a broader challenge for the EU: balancing market integration with the legitimate interests of Member States. Agricultural land, in particular, sits at the intersection of economic liberalisation, environmental sustainability, and social cohesion. The experience of the Visegrád countries illustrates the persistent tension between safeguarding domestic agricultural structures and complying with EU law. While national legislation often reflects concerns about sovereignty and resource protection, the EU framework requires that such measures align with internal market principles and fundamental rights.

Finally, Part III focused on cross-border agricultural land acquisitions in the context of IIL, with particular emphasis on the legal frameworks established by IIAs and related trade and partnership agreements. The thesis examined a variety of treaty types: some, such as CETA and the EU-Japan EPA, feature dedicated investment chapters with comprehensive protections typical of classical IIAs; others, like the EU-Singapore, EU-Viet Nam, and EU-Korea FTAs, integrate investment protections within broader chapters on services and establishment. Agreements such as the EU-UK TCA, EU-Georgia Association Agreement, CEPA, and EMPA, pursue broader trade and political cooperation objectives. While these instruments include provisions relevant to investment—most notably on establishment, services, and capital movements—they do not constitute standalone IIAs and generally lack a comprehensive investment protection regime or dedicated investor–state dispute settlement mechanisms.

The research highlights the complex nature of cross-border agricultural land acquisitions, which require balancing economic liberalisation with states' sovereign control over strategic resources. EU IIAs address this challenge by incorporating detailed reservations and exceptions, enabling Member States to maintain or introduce restrictions on foreign land ownership while complying with broader investment obligations. These provisions are generally embedded within broader chapters rather than treated separately. Within this framework, the Visegrád countries consistently maintain robust national restrictions: acquisitions often require permits, are limited to specific categories of investors, or prohibit foreign ownership of particular land types. These measures demonstrate how V4 states leverage the flexibility provided by EU IIAs to safeguard national interests while participating in international investment frameworks.

Three hypotheses guided the research. The first one was supported: the comparative analysis of the Visegrád countries confirms that national land law frameworks adopt distinct approaches to the acquisition, transfer, and inheritance of agricultural land, reflecting each country's legal traditions, constitutional arrangements, and priorities. Regarding the second hypothesis, it can be stated that the experience of the Member States demonstrates that EU law constrains their margin of appreciation, limiting their ability to design national measures even when pursuing legitimate public interest objectives. The third hypothesis was confirmed, as IIAs—including IIAs and EU FTAs with investment provisions—strengthen protections for foreign investors and may restrict host states' regulatory autonomy, emphasising the need for carefully designed reservations and dispute settlement mechanisms to preserve national control over strategic land resources.

The regulation of cross-border agricultural land acquisitions has far-reaching implications for legal systems, public policy, and governance. This research highlights how national land laws, EU frameworks, and IIAs intersect, often producing tension between economic liberalisation and the protection of strategic resources. By analysing these interactions, the thesis provides guidance on how states can reconcile obligations under EU law and IIAs with the legitimate objectives of protecting land, rural communities, and sustainable agricultural development.

The thesis is primarily addressed to legal scholars, experts, policymakers, and practitioners engaged in land law, EU law, or IIL. It also offers insights for governments and institutions seeking to design regulatory frameworks that balance the

protection of national resources with participation in global investment regimes. Ultimately, the thesis contributes to a deeper understanding of how law can serve as a tool to manage finite and strategically important resources in a globalised context.

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National land law legislation

The Czech Republic

1. Act No. 95/1999 Coll. on the Conditions for the Transfer of Agricultural and Forestry land *(Zákon č. 95/1999 Sb. o podmínkách převodu zemědělských a lesních pozemků z vlastnictví státu na jiné osoby)*
2. Act No. 503/2012 Coll. on State Land Office *(Zákon č. 503/2012 Sb. o Státním pozemkovém úřadu)*
3. Constitutional Act No. 2/1993 Coll., Charter of Fundamental Rights and Freedoms *(Ústavní zákon č. 2/1993 Sb., Listina základních práv a svobod)*
4. Constitutional Act No. 1/1993 Sb., Constitution of the Czech Republic *(Ústavní zákon č. 1/1993 Sb., Ústava České republiky)*

5. Act No. 139/2002 Coll. on Land Adjustments and Land Offices *(Zákon č. 139/2002 Sb. o pozemkových úpravách a pozemkových úřadech)*
6. Act No. 89/2012 Coll., the Civil Code *(Zákon č. 89/2012 Sb., Občanský zákoník – nový)*
7. Act No. 40/1964 Coll., the Civil Code *(Zákon č. 40/1964 Sb., Občanský zákoník – starý)*
8. Act No. 256/2013 Coll. on Real Estate Register *[(Zákon č. 256/2013 Sb. o katastru nemovitostí (katastrální zákon)]*
9. Act No. 252/1997 Coll., the Agriculture Act *(Zákon č. 252/1997 Sb. o zemědělství)*
10. Act No. 242/2000 Coll. on Organic Agriculture *(Zákon č. 242/2000 Sb. o ekologickém zemědělství)*
11. Act No. 219/1995 Coll., the Foreign Exchange Act *(Zákon č. 219/1995 Sb., devizový zákon)*
12. Act No. 334/1992 Coll., on the Protection of the Agricultural Land Fund *(Zákon č. 334/1992 Sb. o ochraně zemědělského půdního fondu)*
13. Act No. 586/1992 Coll. on Income Tax *(Zákon č. 586/1992 Sb. o daních z příjmu)*

Hungary

1. Act CL of 2016 on General Administrative Procedure *(Az általános közigazgatási rendtartásról szóló 2016. évi CL. törvény)*
2. Act XXX of 1997 on Mortgage Credit Institutions and Mortgage Deed *(A jelzálog-hitelintézetről és a jelzáloglevélről szóló 1997. évi XXX. törvény)*
3. Act C of 2012 on the Criminal Code *(2012. évi C. törvény, Büntető Törvénykönyv)*
4. Act VII of 2014 on the Detection and Prevention of Legal Transactions Aimed at Circumventing Legal Provisions Restricting the Acquirement or Use of Agricultural Land *(A termőföld tulajdonjogának megszerzését vagy használatát korlátozó jogszabályi rendelkezések kijátszására irányuló jogügyletek feltárásáról és megakadályozásáról szóló 2014. évi VII. törvény)*
5. Act LIII of 1996 on Nature Conservation *(A természet védelméről szóló 1996. évi LIII. törvény)*

6. Act CXXIII of 2020 on Family Farms *(A családi gazdaságokról szóló 2020. évi CXXIII. törvény)*
7. Act XXXVII of 2009 on Forests, Forest Protection, and Forest Management *(Az erdőről, az erdő védelméről és az erdőgazdálkodásról szóló 2009. évi XXXVII. törvény)*
8. Act LXXXVII of 2010 on the National Land Fund (*A Nemzeti Földalapról szóló 2010. évi LXXXVII. törvény)*
9. Fundamental Law of Hungary *(Magyarország Alaptörvénye)*
10. Act No CXXII of 2013 on the Transfer of Agricultural and Forest Land (*A mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény)*
11. Act No CCXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act *(A mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény)*
12. Act No LIII of 1994 on Judicial Execution *(A bírósági végrehajtásról szóló 1994. évi LIII. törvény)*
13. Act No CL of 2021 on Compensation *(A kártalanításról szóló 2021. évi CL. törvény)*
14. Act No CXLI of 1997 on Real Estate Register *(Az ingatlan-nyilvántartásról szóló 1997. évi CXLI. törvény)*
15. Act C of 2021 on Land Register *(Az ingatlan-nyilvántartásról szóló 2021. évi C törvény)*
16. Civil Code *(2013. évi V. törvény, Polgári Törvénykönyv)*
17. Act LXXI of 2020 on the Termination of Undivided Co-ownership of Land *(A földeken fennálló osztatlan közös tulajdon felszámolásáról és a földnek minősülő ingatlanok jogosultjai adatainak ingatlan-nyilvántartási rendezéséről szóló 2020. évi LXXI. törvény)*
18. Act LV of 1994 on Arable Land *(A termőföldről szóló 1994. évi LV. törvény)*
19. Act CXLIII of 2021 *(Az agrárgazdaságok átadásáról szóló 2021. évi CXLIII. törvény)*
20. Act No. CXXIX of 2007 on the Protection of Arable Land *(A termőföld védelméről szóló 2007. évi CXXIX. törvény)*

21. Constitutional complaint No. IV/02518/2024 *(Alkotmányjogi panasz, sz. IV/02518/2024)*
22. Government Decree No. 474/2013. (12.XII.) [*474/2013. (XII. 12.) sz. Kormányrendelet*]
23. Government Decree No. 38/2014. (24.II.). [*38/2014. (II. 24.) sz. Kormányrendelet*]
24. Government Decree No. 47/2014. (26.II.). [*47/2014. (II. 26.) sz. Kormányrendelet*]
25. Government Decree No. 191/2014. (31.VII.). [*191/2014. (VII. 31.) sz. Kormányrendelet*]
26. Government Decree No. 504/2013 (29.XII.) *[504/2013. (XII. 29.) Kormányrendelet]*
27. Government Decree No. 251/2014 (2.X.) *[251/2014. (X. 2.) Kormányrendelet]*
28. Government Resolution No. 1484/2021. (VII. 16.) *[1484/2021. (VII. 16.) Kormányhatározat]*

Poland

1. Act of 17 March 1921, Constitution of the Republic of Poland, Journal of Laws of 1921, No. 44, item 267 *(Ustawa z dnia 17 marca 1921 roku, Konstytucja Rzeczypospolitej Polskiej, Dz. U. z 1921 r. Nr 44, poz. 267)*
2. Constitutional Act of 23 April 1935, Journal of Laws of 1935, No. 30, item 227 *(Ustawa Konstytucyjna z dnia 23 kwietnia 1935 r., Dz. U. z 1935 r. Nr 30, poz. 227)*
3. Constitution of the Polish People's Republic, adopted by the Legislative Sejm on 22 July 1952, Journal of Laws of 1952, No. 33, item 232 *(Konstytucja Polskiej Rzeczypospolitej Ludowej uchwalona przez Sejm Ustawodawczy w dniu 22 lipca 1952 r., Dz. U. z 1952 r. Nr 33, poz. 232)*
4. Constitution of the Republic of Poland of 2 April 1997, Journal of Laws of 1997, No. 78, item 483 *(Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Dz. U. z 1997 r. Nr 78, poz. 483)*
5. Decree of the Polish Committee of National Liberation of 6 September 1944 on the Implementation of Agrarian Reform, Journal of Laws of 1945, No. 3, item 13 *(Dekret Polskiego Komitetu Wyzwolenia Narodowego z dnia 6*

września 1944 r. o przeprowadzeniu reformy rolnej, Dz. U. z 1945 r. Nr 3, poz. 13)

6. Act of 11 April 2003 on the Shaping of the Agricultural System, Journal of Laws of 2003, No. 64, item 592 (*Ustawa z dnia 11 kwietnia 2003 r. o kształtowaniu ustroju rolnego, Dz.U.z 2003 r. Nr 64, poz. 592.)*
7. Act of 23 April 1964, Civil Code, Journal of Laws of 1964, No. 16, item 93 (*Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, Dz.U. z 1964 r. Nr 16, poz. 93.)*
8. Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners, Journal of Laws of 1920, No. 31, item 178 *(Ustawa z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców, Dz. U. z 1920 r. Nr 31, poz. 178)*
9. Act of 19 October 1991 on the Management of Agricultural Real Estate of the State Treasury, Journal of Laws of 1991, No. 107, item 464 *(Ustawa z dnia 19 października 1991 r. o gospodarowaniu nieruchomościami rolnymi Skarbu Państwa, Dz. U. z 1991 r. Nr 107, poz. 464)*
10. Act of 20 August 1997 on the National Court Register, Journal of Laws of 1997, No. 12, item 769 *(Ustawa z dnia 20 sierpnia 1997 r. o Krajowym Rejestrze Sądowym, Dz.U. z 1997 r. Nr 12, poz. 769)*
11. Act of 14 February 1991 on Notaries, Journal of Laws of 1991, No. 22, item 91 *(Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie, Dz. U. z 1991 r. Nr 22, poz. 91)*
12. Act of 28 July 1983 on Tax on Inheritance and Donations, Journal of Laws of 1983, No. 45, item 207 *(Ustawa z dnia 28 lipca 1983 r. o podatku od spadków i darowizn, Dz. U. z 1983 r. Nr 45, poz. 207)*
13. Act of 26 July 1991 on Personal Income Tax, Journal of Laws of 1991, No. 80, item 350 *(Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz. U. z 1991 r. Nr 80, poz. 350)*
14. Act of 15 November 1984 on Agricultural Tax, Journal of Laws of 1984, No. 52, item 268 *(Ustawa z dnia 15 listopada 1984 r. o podatku rolnym, Dz. U. z 1984 r. Nr 52, poz. 268)*
15. Act of 9 September 2000 on Tax on Civil Law Transactions *(Ustawa z dnia 9 września 2000 r. o podatku od czynności cywilnoprawnych, Dz. U. z 2000 r. Nr 86, poz. 959)*

16. Regulation of the Minister of Agriculture and Rural Development of 17 January 2012 on Agricultural Qualifications Held by Persons Engaged in Agricultural Activity, Journal of Laws of 2012, item 109 *(Rozporządzenie Ministra Rolnictwa i Rozwoju Wsi z dnia 17 stycznia 2012 r. w sprawie kwalifikacji rolniczych posiadanych przez osoby wykonujące działalność rolniczą, Dz. U. z 2012 r., poz. 109)*

Slovakia

1. Act No. 229/1991 Coll. on the Regulation of Ownership Relations to Land and Other Agricultural Property *(Zákon č. 229/1991 Z. z. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku)*
2. Act No. 180/1995 Coll. on Specific Measures for Land Ownership Arrangements *(Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom)*
3. Act No. 504/2003 Coll. on the Lease of Agricultural Land Plots, Agricultural Holdings, and Forest Plots *(Zákon č. 504/2003 Z. z. o nájme poľnohospodárskych pozemkov, poľnohospodárskeho podniku a lesných pozemkov)*
4. Act No. 330/1991 Coll. on Land Arrangements, Settlement of Land Ownership Rights, District Land Offices, the Land Fund, and Land Associations *(Zákon č. 330/1991 Zb. o pozemkových úpravách, usporiadaní pozemkového vlastníctva, pozemkových úradoch, pozemkovom fonde a o pozemkových spoločenstvách)*
5. Act No. 162/1995 Coll. on Cadastre of Real Estate and on Registration of Ownership and Other Real Estate Rights *(Zákon č. 162/1995 Z. z. o katastri nehnuteľností a o zápise vlastníckych a iných práv k nehnuteľnostiam)*
6. Act No. 220/2004 Coll. on the Protection and Use of Agricultural Land *(Zákon č. 220/2004 Z. z. o ochrane a využívaní poľnohospodárskej pôdy)*
7. Act No. 40/1964 Coll., Civil Code *(Zákon č. 40/1964 Zb., Občiansky zákonník)*
8. Act No. 202/1995 Coll. on Foreign Exchange *(Zákon č. 202/1995 Z. z., Devízový zákon)*
9. Act No. 136/2000 Coll. on Fertilizers *(Zákon č. 136/2000 Z. z. o hnojivách)*
10. Act No. 405/2011 Coll. on Plant Medicine Care and on the Amendment of Act of the National Council of the Slovak Republic No. 145/1995 Coll. on

Administrative Fees *(Zákon č. 405/2011 Z. z. o rastlinolekárskej starostlivosti a o zmene zákona Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch v znení neskorších predpisov)*

11. Act No. 151/2002 Coll. on the Use of Genetic Technologies and Genetically Modified Organisms *(Zákon č. 151/2002 Z. z. o používaní genetických technológií a geneticky modifikovaných organizmov)*
12. Act No. 140/2014 Coll. on the Acquisition of Ownership of Agricultural Land *(Zákon č. 140/2014 Z. Z. o nadobúdaní vlastníctva poľnohospodárskeho pozemku)*
13. Act No. 543/2002 Coll. on Nature and Landscape Protection *(Zákon č. 543/2002 Z. z. o ochrane prírody a krajiny)*
14. Constitutional Act of 16 May 2017 amending and supplementing the Constitution of the Slovak Republic, No. 460/1992 Coll., No. 137/2017 Coll. *(Ústavný zákon zo 16. mája 2017, ktorým sa mení a dopĺňa Ústava Slovenskej republiky č. 460/1992 Zb. v znení neskorších predpisov, č. 137/2017 Z. z.)*
15. Act No. 97/2013 Coll. on Land Associations *(Zákon č. 97/2013 Z. z. o pozemkových spoločenstvách)*
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