| Chapter 6 |

Hungary: Strict Agricultural Land and Holding Regulations for Sustainable and Traditional Rural Communities

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ABSTRACT

Hungarian land law is a dynamically changing area of Hungarian law. In the first few years after the regime change of 1989–90, the legislator reregulated this area—which had previously been, in a sense, underregulated—with the Arable Land Act of 1994, thus creating a regulatory environment in which many elements of the current national land law, such as the restrictions on the acquirement of land by legal persons and the system of preemption and prelease rights, were already present. Meanwhile, in parallel, the process of restitution for Hungarian agricultural lands and holdings, which was an important element in the restructuring of former large-scale socialist enterprises to capitalist conditions, was taking place. The restitution process settled many things, but it also became the source of many problems, the effects of which are still felt today. The next major change in Hungarian land law was linked to Hungary's accession to the EU. For 10 years after the accession in May 2004, Hungarian land legislation was temporarily allowed to maintain its previous national rules. The central element in the creation of EU-compliant regulation is Act CXXII of 2013 on Land Transfer, based on the Hungarian Constitution (the so-called Fundamental Law), and many other laws and regulations supplementing it. In designing this regulatory model, the legislator has sought to ensure both to guarantee the right to property and protect agricultural land as a priority natural resource and national asset protected by the Constitution. It has brought a major change to the Hungarian land law that, in addition to agricultural land, agricultural holding has become one of the central subjects of regulation, and the legislator has now moved toward a special regime for intestate succession of agricultural land. In relation to the regulation of agricultural land, important judgments have now been handed down by both the Hungarian Constitutional Court and the Court of Justice of the European Union. The regulatory framework provided by regional investment protection agreements is an important benchmark in Hungarian land law.

KEYWORDS

acquirement of agricultural land, acquirement of agricultural holdings, case law of the Constitutional Court, case law of the Court of Justice of the European Union

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1. Theoretical background and introduction to Hungarian land law

The main framework of the Hungarian land law applicable[1] as of May 1, 2014[2] is set out in the Hungarian Constitution, known as the Fundamental Law. On this constitutional basis, Hungarian land law is a complex body of law containing numerous restrictions and based on several pieces of legislation, including so-called cardinal acts passed by the affirmative vote of at least two-thirds of the Hungarian MPs, (ordinary) acts passed by the affirmative vote of at least half of the Hungarian MPs, and numerous decrees issued by the government. Hungarian land law, as a special body of law governing the acquirement of so-called "agricultural and forest land" (hereinafter: agricultural land or land) and "agricultural holdings," can only be interpreted and applied in conjunction with the general rules of the Hungarian legal system. In Hungarian land law, the category of agricultural holding[3] is a basic organizational and management unit that is a collection of assets (e.g., land, agricultural equipment). Concerning the acquirement of agricultural land and agricultural holdings, Hungarian land law includes or concerns the most varied forms of acquisition of ownership and certain limited rights *in rem* (such as the "usufruct" and a more limited form of it, the so-called "right of use *in rem*") and also the acquirement of the use of agricultural land or holdings by other means (such as a lease contract). In the case of the acquisition of ownership of agricultural land by inheritance, in addition to acquirement by testamentary disposition, Hungarian land law has recently included a number of special rules for acquirement by intestate succession.[4] An important formal feature of Hungarian land law is that, following certain common rules, it regulates in separate parts, on one hand, the rules concerning the acquisition of ownership and other rights *in rem*, and on the other hand, the law of obligations, such as the acquirement of use based, for example, on a lease contract. (For the purposes of this chapter, due to space constraints, we will concentrate primarily on the rules concerning the acquisition of ownership and will only refer to the acquirement of use as a supplementary matter.) Recently, Hungarian land law has also provided for a special option to facilitate the transfer of agricultural holdings between certain living persons (typically—but not exclusively—relatives). It is a central provision of Hungarian land law that, as a general rule, the ownership

1 This study has been written based on the legislation in force on February 1, 2022. However, because several essential legal provisions of Hungarian land law (Land Transfer Act, Implementation Land Act, etc.) have recently been amended, the new rules that will enter into force after the study's end (i.e., after February 1, 2022) will also be presented in connection with the essential legal provisions that are currently being amended.

2 Hungary has been a member state of the European Union since May 1, 2004, but under the Treaty of Accession governing it, it was entitled to apply transitional rules on land ownership for 7 years and then, as allowed by the European Commission, for a further 3, like many other newly acceded countries. See Szilágyi, 2010, pp. 48–52 and Szilágyi, 2017, p. 150–153.

3 Cf. Kurucz, 2010, pp. 151–176; Kurucz, 2012, pp. 118–130.

4 Cf. Hornyák, 2019; Hornyák, 2021, pp. 86–99; Hornyák and Prugberger, 2016, pp. 47–58.

of agricultural land cannot be acquired by domestic or foreign legal persons.[5] Legal persons are not, however, excluded from acquiring the use of agricultural land on other legal bases (such as through a lease).

The general introduction to Hungarian land law[6] is presented in this subsection in three points: first (1.1), we outline the most important legal foundations of Hungarian land law; then (1.2), we briefly introduce the organizations involved in the operation of Hungarian land law; finally (1.3), we review the key concepts of the system, including what is meant by acquirement.

1.1. The legal basis of Hungarian land law

I. Hungarian land law has been adopted respecting the specificities and requirements of human rights[7] (in particular, the right to property) and EU law.

II. Hungarian land law is, to a great extent, affected by the provisions of the Fundamental Law.[8] Three are worth mentioning: the right to property (Article XIII), the special protection of natural resources (Article P), and the protected status of national assets (Article 38). In addition to their analysis, relevant cardinal acts[9] are also discussed.

II.1. The *right to property* enshrined in Article XIII of the Fundamental Law has shaped the whole concept of Hungarian land law to a significant extent. In particular, according to the interpretation of both the European Court of Human Rights (ECHR)[10] and the Hungarian Constitutional Court,[11,12] the content of the right to property does

5 Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 29–52.

6 Cf. Hegyes, 2017.; Hornyák, 2015, pp. 88–97; Hornyák, 2018, pp. 107–131; Raisz, 2017, pp. 68–74; Olajos, 2017b, pp. 409–417; Olajos, 2017c, pp. 91–103.

7 See Marinkás, 2018, pp. 99–134.

8 Csák, 2018a, pp. 5–32; Hojnyák, 2019, pp. 58–76; Orosz, 2018, pp. 178–191; Olajos, Csák and Hornyák, 2018, pp. 5–19.

9 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.

10 ECHR, Gasparetz v. Slovakia, inadmissibility decision, June 28, 1995, No. 24506/94. In the context of this case, Anikó Raisz rightly drew attention to the (rather unsavory) application of all this by the ECHR in the case of the Beneš decrees; Raisz, 2010, pp. 244–245.; Téglási, 2010, pp. 22–47.; Téglási, 2015, pp. 148–157.

11 "…the fundamental right to property does not extend to the acquisition of property. The right to acquire property is not a fundamental right… On the side of the 'purchasers', no limitation of fundamental right can be established, as the ability to acquire property and the freedom of contract are not fundamental rights. A restriction on these rights, which are not fundamental rights, would be unconstitutional if there were no reasonable justification for the restriction on the basis of an objective assessment." Decision No. 35/1994 (24.VI.) of the Constitutional Court, III/3. Lately: "The Constitutional Court stated in Decision No. 3387/2012 (30.XII.) (Explanatory Memorandum [16]): 'According to the interpretation of the Constitutional Court, the constitutional protection of property refers to existing property, the right to property does not confer the right to acquire property [Decision No. 35/1994 (24.VI.), ABH 1994, 201].' {See also Decision No. 3021/2014 (11.II.), Explanatory Memorandum [14]}." Decision No. 17/2015 (5.VI.), Explanatory Memorandum IV. [67.]. For an analysis of the relevant Constitutional Court practice, consult Bobvos et al., 2016, pp. 31–40.; Kocsis, 2014, p. 125.; Téglási, 2009, pp. 20–21; etc.

12 The right to property is also included in Article 17 of the Charter of Fundamental Rights of the European Union.

not imply that anyone has a fundamental right to acquire property. In essence, it is due to this fact that Hungarian land law (and even the previous land legislation of 1994[13]) does not impose restrictions on an existing property but on new land acquirements, thus not infringing the right to property.

II.2. Article P) Para. (1) of the Fundamental Law refers to natural resources such as arable land,[14] forests, and water resources as the "*common heritage of the nation*." The word "*heritage*" in the category of the nation's common heritage implies that the natural resources referred to in the Fundamental Law are not regarded by the legislator as mere objects of commercial transactions (goods, capital, etc.) but are also taken into account in their other *vital* functions and that *intergenerational* considerations are also taken into account, namely that they must be exploited by each generation in the interests of future generations.

Article P) Para. (2) of the Fundamental Law calls for a *cardinal act regulation* on (a) *the limits and conditions for the acquisition of ownership and for use of arable land and forests*, (b) *the organization of integrated agricultural production*, and (c) *agricultural holdings* and one type of agricultural holding, the *family farm*. Of the three issues requiring cardinal legislation, only the organization of integrated agricultural production has not yet been the subject of a cardinal act.[15] The cardinal acts adopted so far under Article P) Para. (2), which are of great importance for Hungarian land law, are described below.

II.2.1. Pursuant to the provisions of Article P) of the Fundamental Law, Act CXXII of 2013 on the Transfer of Agricultural and Forest Land (Land Transfer Act), which replaced the previous Act LV of 1994 on Arable Land (Arable Land Act),[16] was adopted as cardinal act, and Act CCXII of 2013 on Certain Provisions and Transitional Rules in Connection with the Land Transfer Act (Implementation Land Act) was adopted as a *partially cardinal act*.[17] In essence, these two laws form the basis of Hungarian land

13 Cf. Csák and Nagy, 2011, pp. 541–549.; Prugberger, 1999, pp. 81–116.

14 Although Article P) of the Fundamental Law does not use the term "agricultural land" but "arable land," taking into account the jurisprudence of the Constitutional Court, this different designation has not caused any difficulties of interpretation; in other words, the Hungarian Constitutional Court assesses the national rules on agricultural land in harmony with the category of arable land in the Fundamental Law.

15 See Csák, 2018b, pp. 6–21.

16 We consider it important to mention that the *entry into force* of the Land Transfer Act has been gradual (12.15.2013, 01.01.2014, 03.01.2014, 05.01.2014), and the provisions of the Land Transfer Act concerning the transitional period are of particular importance. In the Land Transfer Act, the relationship with other areas that also require cardinal act regulation pursuant to Art. P) Para. (2) of the Fundamental Law has been settled:
(a) On the basis of these, the act regulating *agricultural holdings* may also lay down different rules from the Land Transfer Act for the *acquisition of ownership* and *use* of land and related agricultural equipment for the purpose of commercial use; Land Transfer Act Art. 1(2)
(b) The future Act regulating *integrated agricultural production management* may lay down different rules from the Land Transfer Act for the acquisition of the *use* of land for the purpose of utilization in integrated production management; Land Transfer Act Art. 1(3)

17 In addition, certain provisions of the Implementation Land Act are not only cardinal under Article P) of the Fundamental Law but also under Article 38 of the National Property Act; Implementation Land Act Art. 107.

law. The Land Transfer Act and the Implementation Land Act cover a broad category of acquirement, which includes, on the one hand, the acquisition of ownership and, on the other hand, the acquirement of the use of land based on the law of obligations.

II.2.2. Family farm is a subtype of agricultural holding in the Hungarian land law. Its regulation, Act CXXIII of 2020 (Family Farms Act), entered into force as a cardinal act on January 1, 2021. By amending the Land Transfer Act and the Implementation Land Act, the Family Farms Act grants the so-called primary agricultural producer's[18] family farm[19] and the so-called family agricultural company[20] a preemption right[21]

18 A *primary agricultural producer* is [a] a natural person [b] over the age of 16, [c] registered as a primary agricultural producer, who [d] carries out primary agricultural activities [e] on their personal farm [e]; Family Farms Act Art. 3(1)–(2). One of the essential elements of the concept is the *primary agricultural activity*: agricultural, forestry, and supplementary agricultural activities *entered in the register* of primary agricultural producers; Family Farms Act Art. 2, point g). (The definition of agricultural and forestry activities is based, with some deviation, on the similarly named concept in Art. 5[18] of the Land Transfer Act; Family Farms Act Art. 2, point e)). The other essential element of the concept is *the personal farm*: *land* used for agriculture and forestry purposes by a natural person or jointly used by members of primary agricultural producer's family farm and *the means of agricultural production* (the latter being the totality of the assets used to conduct the activity of the primary agricultural producer, namely real estates, buildings and structures, and movable property), in respect of which the person or persons concerned have the right to organize the production and to use the results of the production; Family Farms Act Art. 2 points f) and h). As can be seen from the above concepts, a primary agricultural producer may carry out their farming activity either independently or as a member of a family farm. The annual income of a primary agricultural producer from their supplementary farming activity may not exceed one quarter of their annual income from their primary agricultural producer activity; Family Farms Act Art. 3(3)–(4). The Hungarian Chamber of Agriculture, Food Economy, and Rural Development (hereinafter: the Chamber of Agriculture) decides on the application for *registration*; Family Farms Act Art. 4(1).

19 A *family farm of primary agricultural producers* is [a] a production community established by [b] at least two [c] primary agricultural producers [d] who are relatives of each other [e] having neither legal personality nor assets separate from those of its members, within the framework of which [f] the primary agricultural producers conduct their agricultural activities *collectively* on their own holdings, [g] based on the *personal contribution* of all members and in a coordinated manner. A primary agricultural producer may be a member of *only* one family farm at the same time; Family Farms Act Art. 6(1) and 6(3). *Relatives*: a group of natural persons in a close family relationship within the meaning of the Civil Code as well as relatives and lineal relatives of these persons; Family Farms Act Art. 2, point b). For the purpose of setting up a family farm, the *members shall enter into a written contract*; Family Farms Act Art. 7(1). The background regulation of this formation beyond the Family Farms Act is provided by the provisions of the Civil Code on *civil law partnership contracts*; Family Farms Act Art. 6(2). The family farm of primary agricultural producers is established by *registration*; decided by the Chamber of Agriculture; Family Farms Act Art. 7(2)–(3).

20 A *family agricultural company* is a [a] company, cooperative, or forest management association [b] registered in the register of family agricultural companies, [c] exclusively engaged in agricultural, forestry, or additional activity defined by the Land Transfer Act, [d] with at least two members [e] who are related to each other. A person may be a member of only one family agricultural company at a time. A legal person may not be a member of a family agricultural association, except in the case of the acquisition of an own share or own stock; Family Farms Act Art. 14. Family agricultural companies are registered with the Chamber of Agriculture; Family Farms Act Art. 15(1).

21 Land Transfer Act Art. 18(4).

and a prelease right,[22] creating a favorable position for the selection of the person designated for regulatory use of lands.[23] In addition, the transfer of land use has further advantages for family farm associations,[24] and in some cases, they are allowed to transfer the use of land as gratuitous land use.[25]

II.2.3. Article P) of the Fundamental Law also provides the cornerstone for Act LXXI of 2020 on the Termination of Undivided Co-ownership of (Agricultural and Forestry) Land (Co-ownership Land Act), the provisions of which are *lex specialis* compared to those of the Land Transfer Act.[26] The creation of a clear and transparent land ownership structure for all public and privately owned land is a fundamental condition for the development of a Hungarian agricultural economy that is competitive at the European level. A major obstacle to the development of Hungary's agriculture is undivided co-ownership of land that is caused, to a great extent, by restitution following the regime change. Given that undivided co-ownership is unfavorable, legislation should play a key role in remedying the situation. Considering this, it is important that the legislator should offer the possibility of abolishing all undivided co-ownership of land, in the creation of which the state and regulation played a role.[27] However, this Act is also of great importance in other respects, and for the purposes of our topic, we will only deal with these aspects in detail. A future amendment of the Act will also regulate the *termination of undivided community property in the case of intestate succession*, laying down a special rule for cases where the object of the succession is immovable property[28] or ownership interest in immovable property.[29] As regards immovable property,[30] the rules of the Act provide that where the immovable property, which is the sole property of the deceased, is jointly inherited by several heirs in accordance with the rules of intestate succession, and the heirs shall, in order to avoid the creation of undivided co-ownership, (a) enter into an allocation agreement, (b) divide the property by assigning to each of the joint heirs a specific part of the property, (c) sell the property as a whole, or (c4) donate it to the state. Any one of the heirs may *declare their intention* to inherit the property on one hand and the share of another heir in the property on the other hand, if the creation of a property that meets the territorial minimum[31] outlined in the Co-ownership Land Act is not ensured. If

22 Land Transfer Act Art. 46(4).
23 Implementation Land Act Art. 91(9).
24 Land Transfer Act Art. 13(2) and Art. 42(2).
25 Land Transfer Act Art. 38(3a).
26 Land Transfer Act Art. 2(7); Co-ownership Land Act Art. 2.
27 General justification of the Co-ownership Land Act. Another aspect of the problem was to be regulated by Act XL of 2020 on The Regularization of Ownership of Land under the Right of Use of Land by Producer Cooperatives and Amending Certain Laws on Land.
28 Co-ownership Land Act Art. 18/A.
29 Co-ownership Land Act Art. 18/B.
30 Co-ownership Land Act Art. 18/A.
31 The property to be created as a result of the termination of the undivided common property may not be less than 3,000 m^2 in the case of vineyards, gardens, orchards, and reeds or less than 10,000 m^2 in the case of arable land, meadows, pastures, forests, and wooded areas; Co-ownership Land Act Art. 11(1)–(2).

several heirs declare so, the estate may be inherited by the heir who is professionally engaged in agricultural production or, in the absence of such or in the case of several heirs meeting this condition, it may be inherited by an heir who agrees to take into account the value of the property at a higher amount in the calculation of their share of the inheritance, or in the case of the same amount of undertaking, by the eldest of the heirs. If the value of the property inherited by the heir based on the declaration exceeds their share of the inheritance, they must pay the difference to the other heirs.

II.2.4. Article P) of the Fundamental Law also provides the cardinal act status for several provisions of Act CXLIII of 2021 on the Transfer of Agricultural Holdings (Farm Transfer Act), which will enter into force on January 1, 2023. The provisions of the Farm Transfer Act are *lex specialis* compared to those of the Land Transfer Act.[32] The Farm Transfer Act covers the transfer of the farm of a primary agricultural producer and an agricultural individual entrepreneur,[33] and its "farm" corresponds to a broad concept of an agricultural holding. Thus, the concept of the Act's *farm* includes the transferor's (a) real estate (including both agricultural and non-agricultural real estate necessary for agricultural activity), (b) movable property necessary for or related to agricultural and forestry activity, (c) rights *in rem*, (d) shares in a business partnership (cooperative, forestry management association), and (e) rights and obligations related to all these assets.[34] Both the transferor and the transferee must be *primary agricultural producers* or *self-employed* persons engaged in farming or forestry. A *transferee* under 50 years of age who is at least 10 years younger than the *transferor* who has reached the retirement age or will reach it within 5 years from the conclusion of the contract must either (a) be a *relative* of the transferor as defined in the Family Farms Act or (b) *have been employed or have been in other employment relationship with the transferor for at least 7 years*.[35] There are several main or subtypes of farm transfer contracts: (a) *property transfer contracts*,[36] such as (a1) farm transfer sale contracts, (a2) farm transfer gift contracts, (a3) farm transfer maintenance contracts, (a3) farm transfer annuity contracts; (b) *farm transfer land use contracts*,[37] which may be, for example, (b1) lease contracts and (b2) gratuitous land use contracts; (c) the law also recognizes *mixed* types of these contracts.[38] Based on the content of the farm transfer contract, the relevant provisions of the Land Transfer Act apply accordingly—for example, the obligation to make a declaration (in detail, see below);[39] in the case of a contract of use, the maximum term of land use;[40] land acquirement and land posses-

32 Land Transfer Act Art. 2(5).
33 Farm Transfer Act Art. 1.
34 Farm Transfer Act Art. 2, point a).
35 Farm Transfer Act Art. 2, points b–c).
36 Farm Transfer Act Art. 3(2).
37 Farm Transfer Act Art. 3(3).
38 Farm Transfer Act Art. 3(4).
39 Farm Transfer Act Art. 6(1).
40 Farm Transfer Act Art. 6(4)–(5).

sion limit.[41] A farm transfer contract as a gift, maintenance, or annuity contract may be concluded *only by close relatives* if the farm transfer contract provides for the transfer of ownership of agricultural and forest land; the provisions of the Land Transfer Act on gifts, maintenance, or annuity contracts shall apply to such a contract.[42] In the farm transfer contract, the parties may agree to cooperate in the *joint management of the farm* for a maximum period of 5 years.[43] The farm transfer contract *must be approved* by the agricultural administration body.[44] The transferee replaces the transferor in the *civil law contracts* relating to certain elements of the farm, as defined in the farm transfer contract, without the need for consent of the third party remaining in the contract.[45] The transferee shall, by means of the farm transfer contract, replace the transferor as the holder of any prior authorization required for the pursuit of the economic activity related to the farm, as defined in the contract of transfer of the holding, provided that they comply with the legislation laying down the conditions for pursuing that activity.[46]

II.3. Pursuant to Article 38 of Fundamental Law, "*the property of the state and local authorities is national property.*" Act LXXXVII of 2010 on the *National Land Fund* (National Land Fund Act) derives its cardinal act status not from Article P) of the Fundamental Law but from Article 38 of the Fundamental Law.[47] The National Land Fund Act regulates the so-called National Land Fund, which is linked to national property. The *National Land Fund* includes, as part of the Treasury's assets, (Hungarian) sate-owned lands that are registered in the land register (a) in one of the nine classes of agricultural zoning[48] or as a fishpond; and (b) *in certain cases,* land registered as withdrawn from cultivation. The National Land Fund Act implements special regulations in several aspects concerning the turnover of land belonging to the National Land Fund. The *purpose* of the National Land Fund[49] is specified in the National Land Fund Act, as are the *land tenure policy directives,* regarding which the land parcels belonging to the National Land Fund are to be utilized.[50] The rights and obligations of ownership of the National Land Fund on behalf of the Hungarian state shall be exercised by the minister responsible for the agricultural policy through the National Land Centre; in civil law relations relating to the National Land Fund, the state shall be represented by the National Land Centre, unless otherwise provided by law.[51]

41 Farm Transfer Act Art. 6(6)–(7).
42 Farm Transfer Act Art. 9(2).
43 Farm Transfer Act Art. 10(1).
44 Farm Transfer Act Art. 12(1).
45 Farm Transfer Act Art. 13(1).
46 Farm Transfer Act Art. 14(1).
47 National Land Fund Act Art. 48.
48 These are: arable land, vineyard, orchard, garden, meadow, pasture (grassland), reed, forest, wooded area.
49 National Land Fund Act Art. 1(3).
50 National Land Fund Act Art. 15(2)–(3).
51 National Land Fund Act Art. 3(1).

III. In addition to the Fundamental Law and the cardinal acts of Hungarian land law, there are several (ordinary) acts that form an important part of Hungarian land law, the adoption of which requires the support of a simple majority of half of the members of Parliament. Some of them are mentioned below.

III.1. A special case of *state property* is protected sites, for which special provisions are laid down in the Nature Conservation Act.[52] The alienation of a protected natural area owned by the State under the Nature Conservation Act *is not possible*, except in the case of an exchange with a protected natural area of at least equal conservation value or other cases specified by law, with the consent of the minister responsible for nature protection.[53] In the case of protected natural areas, the Nature Conservation Act lays down special preemption law rules for the state and, in the case of protected natural areas of local importance, for municipalities.[54]

III.2. The Hungarian national land transfer regime imposes several restrictions and conditions on land transfer to achieve its objectives. The *control and sanctioning* of all these regulations are an important element of the Land Transfer Act and Implementation Land Act rules. In addition to these, however, the legislator has taken other important legislative measures to protect the concept of the land transfer regime as enshrined in the Land Transfer Act. Thus, 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* was adopted, and a new criminal offense, the *unlawful acquirement of arable land*, was introduced in Act C of 2012 on the Criminal Code,[55] which did not exist in the Hungarian legal system until before. The two laws are, to a large extent, linked to abuses known colloquially as "fraudulent contracts."[56]

III.3. Regarding the legal basis of Hungarian land law, it is important to point out that it is an integral part of several other laws that form the basis of the Hungarian legal system, among which we consider it particularly important to mention the Civil Code, the Civil Procedure Code, the Real Estate Register Act,[57] and the General Administrative Procedure Act.[58] Some authors (such as *Zoltán Nagy*)[59] also firmly emphasize the *financial legislation* related to the land transfer regime.

52 Act LIII of 1996 on Nature Conservation. See Olajos, 2018, pp. 157–189.
53 Nature Conservation Act Art. 68(8).
54 Nature Conservation Act Art. 68(6).
55 Criminal Code Art. 349.
56 On fraudulent contracts, see, in particular, the following pioneering works in the literature: Bányai, 2014, 62–71.; Keller, 2013, pp. 191–198.; Kocsis, 2015, pp. 241–258.; Kozma, 2012, pp. 350–360; Olajos and Szalontai, 2001, pp. 3–10.; etc.
57 Until January 31, 2023, Act CXLI of 1997; from February 1, 2023, Act C of 2021. See Olajos and Juhász, 2018, pp. 164–193.
58 Act CL of 2016. It is cited by, for example, Art. 27(1) of Implementation Land Act.
59 Nagy, 2010, p. 187.

III.4. In addition to these, many other laws contain specific provisions on land transfer (Forestry Act,[60] Interbranch Organization of Wine Act,[61] Forestry Management Association Act,[62] etc.), several of which will be mentioned later in this paper.

IV. In addition to laws, other legislation, such as government decrees, are also important elements of Hungarian land law. Without wishing to be exhaustive, we only refer to the designation of the administrative bodies involved in the operation of land law,[63] the procedure for the exercise of preemption and prelease rights,[64] special registers,[65] security documents,[66] or even the regulations on auctions.[67]

1.2. The organizational foundations of Hungarian land law

One of the major innovations of the new Hungarian land regime adopted in 2013 was that, *as a general rule*, the acquirement of agricultural land and land use contracts were subject to *prior authorization*. It is important to note that this prior authorization and its procedure are not equivalent to the procedure of the Real Estate Register, which is intended to register the ownership of land in the Real Estate Register; nor is it equivalent to the procedure of the land use register,[68] which is intended to provide a certified record of land use. The special administrative approval of Hungarian land law precedes both the land register and the land use register stages.

The organization of the Hungarian land transfer regime, and as part of it the procedure for prior authorization, in addition to some actors of the state and the local government administration, also includes special status organizations, such as local land commissions.

I. Within the state administration, the county government office responsible for the location of the land (hereinafter: agricultural administration body) acts in the procedure for prior authorization for the acquisition of ownership[69] and also in the procedure for prior authorization for land use contracts.[70] It is also the body designated to monitor compliance with the acquirement conditions, restrictions, and prohibitions laid down in the Land Transfer Act and to apply the related legal consequences.[71]

II. *Municipalities* also play an important role in the land transfer regime—in particular, the notary of the affected local (municipal) government, which has been

60 Act XXXVII of 2009 on Forests, Forest Protection, and Forest Management.
61 Act CCXIX of 2012 on Interbranch Organization of Wine.
62 Act IL of 1994 on Forestry Management Association.
63 See Government Decree No. 383/2016. (2.XII.).
64 Government Decree No. 474/2013. (12.XII.).
65 Government Decree No. 38/2014. (24.II.).
66 Government Decree No. 47/2014. (26.II.).
67 Government Decree No. 191/2014. (31.VII.).
68 The land use register is an independent public official register of land use and land users kept separately from the land register, which is of certified authenticity (i.e., the data recorded therein shall be presumed as existing and true); for detailed rules of the register, see Articles 93–99 of the Implementation Land Act and Government Decree No. 356/2007. (23.XII.).
69 Government Decree No. 383/2016 Art. 43(3).
70 Government Decree No. 383/2016 Art. 43(5).
71 Government Decree No. 383/2016 Art. 43(2).

given an important role in the procedure for exercising the preemption and prelease rights.[72]

III. An organization of our land transfer regime, specifically created to fulfill certain objectives of land policy, is the local land commission.[73] Originally, local land commissions were to be organized as a sui generis institution, but from the beginning, their functions were performed by the competent territorial bodies of the Chamber of Agriculture, a solution that was considered temporary but remained final. The local land commissions have an advisory role in relation to the acquisition of certain types of land ownership. However, they do not have such a role concerning the transfer of the use or exploitation of the land.[74]

1.3. The conceptual foundations of Hungarian land law

We are presenting the concepts of Hungarian land law grouped around four conceptual categories.

I. *The concepts of agricultural activity and complementary activities*. One of the main objectives of the land transfer regime is to ensure that agricultural land in Hungary is owned and farmed, as far as possible, by persons who are skilled in agriculture and forestry and who conduct such activities in person. Consequently, what is considered an agricultural activity is a concept of fundamental importance for the regulation of Hungarian land law. In this respect, two concepts of the Land Transfer Act deserve to be highlighted: one is the term "*agricultural and forestry activity*"[75] and the other is "*complementary activity*."[76] The acquisition of ownership of agricultural land or the right to use it may be based on either of these two concepts. Examining the two concepts, it can be concluded that the Hungarian legislator has made it possible to recognize a wide range of activities as agricultural, forestry, or complementary activities, in line with the developing legal trends in the EU law.

II. *The concepts of agricultural holdings and agricultural land*. The other important conceptual area in Hungarian land law concerns the subject of land transfer. In this context, we have pointed out that Hungarian land law is now able to look beyond the category of agricultural land to a broader framework, namely agricultural holdings,

72 See, for example, Land Transfer Act Art. 21–23, 49–50.

73 Similar institutions can be found in other EU countries, as *Zsófia Hornyák* points out; see Hornyák, 2014, p. 75.

74 Land Transfer Act Art. 23/A.

75 *Agricultural and forestry activity*: crop production, horticulture, animal husbandry, animal breeding, fish farming, reproductive material production, game management, forestry, and farming mixed with additional activities as defined in Art. 5, point 14 of the Land Transfer Act, if the income from the additional activity does not exceed the income from other agricultural and forestry activities; Land Transfer Act Art. 5, point 18.

76 *Complementary activity*: rural and agrotourism, handicraft activities, processing of timber, production of fodder, production of food from agricultural products, processing of tobacco, production of biofuels, the recovery of byproducts of agricultural and forestry activities, plant and animal waste, its non-food processing and the direct sale of products derived from these products, agricultural and forestry services, and the recovery and sale of production factors belonging to the agricultural holding; Land Transfer Act Art. 5, point 14.

in regulating land transactions. That is why the Land Transfer Act defined the concept of *agricultural holding*[77] and, relevant to it, that of the *agricultural holding center*.[78] Previously, the concept of a subtype of an agricultural holding, the family farm, was also included in the Land Transfer Act (and its transitional rules were regulated by the Implementation Land Act), but since January 1, 2021, the concept and many detailed rules of this have been included in the Family Farms Act; however, the detailed rules on land transfer of family farms are still regulated in the Land Transfer Act and the Implementation Land Act. Similarly important in relation to agricultural holdings is the *farm* concept of the Farm Transfer Act, which will enter into force on January 1, 2023 and has already been detailed above, where the legislator has harmonized the detailed rules on the transfer of farms with the Land Transfer Act. Many of the concepts of farm are also reflected in the two other specific categories of the Land Transfer Act, namely the concepts of *farmstead*[79] and *livestock holding*.[80] According to the Land Transfer Act, unless otherwise provided for, a parcel of land classified as a farmstead under the Act shall also be regarded as land.[81] The operator of a livestock holding is entitled to several advantages in land transfers. Thus, in the case of the so-called land possession maximum, the operator of a livestock holding may also be entitled to the *preferential land possession maximum*[82] (i.e., 1,800 hectares instead of the 1200 hectares applicable as a general rule). The operator of the livestock holding is also in a favorable position in the order of persons eligible for exercising the right of preemption[83] and prelease.[84] The fundamental subject of Hungarian land law is agricultural land. This category replaced the concept of arable land, which was the subject of our previous legislation before May 1, 2014. The concept of agricultural land covers all land, irrespective of its location (urban or rural), which is registered in the land register as arable, vineyard, orchard, garden, meadow, pasture (grassland), reed, forest, and wooded land as well as land declared as set-aside, which is registered with a legal nature of a forest in the land register's National Forest Inventory Data Base.[85] Regarding the concept of agricultural land, it is also important to mention the definition of estate in the Land Transfer Act. The category of estate is intended to

77 *Agricultural holding*: the basic organizational unit of agricultural production factors (land, agricultural equipment, other assets) operated for the same purpose, which is also the basic unit of management through economic cohesion; Land Transfer Act Art. 5, point 20.
78 *Agricultural holding center*: owned or used by an agricultural producer or an agricultural producer organization, a property with a commercial, residential or office building or a farmstead for the purpose of agricultural and forestry or complementary activities, which serves as a place for the performance or organization of agricultural activities, as registered with the agricultural administration body; Land Transfer Act Art. 5, point 21.
79 Land Transfer Act Art. 5, point 25.
80 Land Transfer Act Art. 5, point 1.
81 Land Transfer Act Art. 3(1).
82 Land Transfer Act Art. 16(3).
83 Land Transfer Act Art. 18(2) point a). Also see: Art. 19(4).
84 Land Transfer Act Art. 46(3) point a). Also see: Art. 47(4).
85 Land Transfer Act Art. 5, point 17.

express all agricultural land owned, usufructuary, or otherwise used by the holder under any other valid title.[86]

III. *The concepts of agricultural producer and agricultural producer organization*. The typical—but not exclusive—subjects of Hungarian land law are the agricultural producer and the agricultural producer organization, on the side of those who gain the right to own or use land. While an agricultural producer can appear as such in relation to both property rights and land use rights, an agricultural producer organization can only acquire land use rights. Both categories are intended to ensure that the person involved in land transfer is preferably someone experienced in farming and forestry and who actually exercises such an activity.

The important elements of the *agricultural producer*[87] category are summarized below. An agricultural producer can only be a natural person who is a Hungarian *citizen* or a citizen of a member state of the European Union, of a state of the European Economic Area, or of a state treated as such by an international treaty. Agricultural producers must either have an appropriate agricultural or forestry *vocational training* or a *qualification* or, alternatively, at least 3 years' *experience* in a specific (possibly complementary) agricultural or forestry activity.[88]

The county government office keeps a register of agricultural producers. In the order of the exercise of the right of preemption and prelease, an agricultural producer who is a *local resident*[89] or a *local neighbor*[90] is granted preferential status (for the latter, the category of *adjacent land*[91] is relevant, for which category the adjacency is independent of the administrative boundary of the municipality). In addition to the right of preemption and prelease, the category of local resident may also be relevant

86 Land Transfer Act Art. 5, point 3.

87 *Agricultural producer*: A domestic natural person or a national of a member state registered in Hungary who has a vocational training or qualification in agriculture or forestry as defined by law or, alternatively, has been engaged in for at least 3 years continuously (a) agricultural, forestry, or complementary activities in Hungary in their own name and at their own risk, and it has been proven that they have generated revenue from this activity or that the revenue has not been generated because the investment in agriculture or forestry could not yet be used, or (b) they are a member of an agricultural producer organization registered in Hungary and in which they hold at least 25% of the shares, and they carry out agriculture, forestry, or complementary activities as a personal contribution; Land Transfer Act Art. 5, point 7.

88 Government Decree No. 383/2016 Art. 43(1).

89 *Local resident*: a natural person who has had their habitual residence for at least 3 years in the municipality in the administrative territory of which the land subject to the contract of sale, exchange, or lease is situated; Land Transfer Act Art. 5, point 9.

90 *Local neighbor*: (a) who is a local resident and owns or uses land adjacent to the land that is the subject of the sale, exchange, or lease, or (b) whose habitual residence has been for at least 3 years in the municipality adjacent to the municipality where the land that is the subject of the sale, exchange, or lease is situated and the land they own or use is adjacent to it; Land Transfer Act Art. 5, point 10.

91 *Adjacent land*: land which, irrespective of the administrative boundary of the municipality, is in direct contact with the land subject of the legal transaction or indirectly in contact with it by means of a road, ditch, or canal registered under a separate parcel number; Land Transfer Act Art. 5, point 23.

for the exchange of land. A special category of the agricultural producer is the *young farmer*,[92] who also enjoys a preferential status in the order of the exercise of the preemption or prelease rights. Although *new agricultural producers*[93] are not considered to be agricultural producers, the provisions applicable to agricultural producers should, as a general rule, also apply to them.[94] New agricultural producers have a preferential position in the order of preemption and prelease lease rights and are subject to additional obligations under the prior declaration system.[95]

The agricultural administration body registers all legal persons (or unincorporated organizations) based in an EU member state whose principal activity, revenue, or the activity of their executive officer is linked to an agricultural (complementary) activity as an *agricultural producer organization*.[96] Similar to the resident (neighbor) category of the agricultural producer, there is also a *locally registered entity*[97] and a *locally registered neighbor*[98] category for agricultural producer organizations, which provide preferential ranking in the order of exercise for prelease rights.

IV. *The concept of acquirement*. The new Hungarian land law created from 2013 does not seek to revolutionize the land ownership structure established after the regime change by the amendment of Act I of 1987 and the subsequent Arable Land Act. The new Hungarian land law aims to transform land ownership and land use for the future through land acquirements after its entry into force (fully implemented on May 1, 2014) in accordance with the right to property. The Land Transfer Act and the Implementation Land Act, which form the basis of Hungarian land law, cover a broad category of acquirement, which includes both the acquisition of ownership and

92 *Young farmer*: an agricultural producer who is over 16 years of age at the time of exercising the right of preemption and prelease but has not yet reached the age of 40; Land Transfer Act Art. 5, point 6.

93 Land Transfer Act Art. 5, point 22.

94 Land Transfer Act Art. 3(2).

95 See Land Transfer Act Art. 15 and Art. 42(4).

96 *Agricultural producer organization*: a legal person or an unincorporated organization *based in a member state* and registered by the agricultural administration body under conditions laid down by law, (a) whose (aa) *primary activity* is an agricultural, forestry, or complementary activity that it has pursued *continuously for at least three years* preceding the legal transaction; (ab) *more than half of its annual sales net revenue* is derived from agricultural, forestry, or complementary activities; and (ac) at least one of its executive officers or the company manager conducts agricultural, forestry, and complementary activities in connection with their *membership of the organization* and with an agricultural or forestry *vocational training* or *qualification* as defined in the decree implementing this Act or has at least *3 years' experience* certified by the agricultural administration body, or (b) which is considered a newly established agricultural producer organization, or (c) which is considered a national park management board, or (d) which is considered a forestry management company authorized to manage forests; Land Transfer Act Art. 5, point 19.

97 *Locally registered entity*: a legal person or other unincorporated organization the agricultural holding center of which is located for at least 3 years in the municipality in the administrative territory of which the land subject to the lease agreement is situated; Land Transfer Act Art. 5, point 11.

98 *Locally registered neighbor:* a locally registered legal person or other unincorporated organization, the land owned or used by which is adjacent to the land subject to the lease; Land Transfer Act Art. 5, point 12.

the acquirement of use of land based on the law of obligations. In the following, we will examine how Hungarian land law defines these two types within the category of acquirement in the general sense.

IV.1. *The acquisition of ownership of land.* The rules of land law on the acquisition of ownership shall be applied in some respects more broadly and in some respects more narrowly, as a set of all the ways of acquisition or titles which are defined by Hungarian private law on a doctrinal basis.

IV.1.1. Land law rules on acquisition shall also apply to limited rights *in rem*, such as usufruct and the right of use *in rem*. Both these rights are regulated primarily in the Civil Code and secondarily in the Land Transfer Act.

According to the general rules of the Civil Code,[99] the *right of usufruct* allows the holder to possess, use, exploit, and benefit from the property of another person. The usufruct continues to exist irrespective of any change in the person of the owner of the property. The usufruct of a natural person may last for a limited period, until the death of the beneficiary at the latest. For a usufruct to be created, in addition to a contract or other legal title, in the case of a usufruct established on immovable property, the usufruct must be registered in the land register. The usufructuary may not transfer the usufruct but may transfer the right of possession, use, and benefit.

Under the Civil Code,[100] the *right of use in rem* differs from the usufruct in that the rightsholder may use the property and receive its benefits only to the extent that it does not exceed their own needs and those of the members of family members living with them. Another difference is that the right of use *in rem* cannot be transferred to another person and is otherwise subject to the rules of usufruct.

The Land Transfer Act[101] restricts the above rules of usufruct and right of use *in rem* (hereinafter together: usufruct) of the Civil Code in the case of agricultural land by excluding (specifically: declaring null and void) the creation of such rights by contract or testamentary disposition, unless the contract or testamentary disposition creates such a right in favor of a *close relative*.

In the case of a usufruct created by contract or testamentary disposition between close relatives, the provisions of the Land Transfer Act on the acquisition of property apply, with the following exceptions: (a) the usufruct may be established for a maximum period of 20 years; (b) the validity of the contract or testamentary disposition establishing the usufruct does not require the approval of the agricultural administration body; (c) the provisions on land acquisition limit and land possession limit shall be applied to the extent of the permitted acquisition of the usufruct, with the notion that the right of ownership shall be understood as the usufruct and when setting the permitted extent, the area of land owned by the recipient shall be taken

99 Civil Code Art. 5:146–155.
100 Civil Code Art. 5:159.
101 Land Transfer Act Art. 37.

into account; (d) the ownership of the land may be transferred by retention of the usufruct only to a close relative.[102]

IV.1.2. The rules of the Land Transfer Act on the acquirement of property do not cover all titles and methods of it, since they do not cover (a) acquirement by intestate succession, (b) donation to the state during the inheritance procedure, (c) expropriation (including sale and exchange in lieu of expropriation), and (d) acquirement by auction for restitution.[103] It is also considered acquirement by intestate succession if the *testamentary inheritor,* considering a lack of testament and the exclusion of other intestate inheritors from inheritance, *becomes intestate inheritor.*[104] In other words, in these cases, not the special rules of the land transfer regime but the general rules set out in the Civil Code[105] should be applied.

IV.1.3. Certain types of the acquirement of property, namely exchange, gift, maintenance, and annuity contracts, are covered by the Land Transfer Act, but their application in the context of the transfer of agricultural land is subject to significant restrictions.

Ownership of land may be acquired by *exchange*[106] if the parties to the exchange contract undertake to transfer ownership of the land to each other and (a) one of the parcels of land exchanged is situated in the same municipality as the parcel of land already owned by the acquiring party, or (b) one of the exchange partners (ba) is considered a local resident, or (bb) one of them has had their residence or their agricultural holding center for at least 3 years in a municipality the administrative boundary of which is situated at a distance of 20 km or less (by road or private road not closed to public traffic) from the administrative boundary of the municipality in which the land is situated.

Ownership of land may be transferred by *gift* only to (a) a close relative, (b) a registered church or its internal ecclesiastical legal entity, (c) a municipality, and (d) the state.[107]

Ownership of land may be transferred by way of *maintenance and annuity* only to a close relative, a registered church or its internal ecclesiastical legal entity, a municipality, and the state, except that the state may only establish an annuity relationship.[108]

IV.2. *The acquirement of the use of land on the basis of the law of obligations.* The owner of the land or the usufructuary in the case of a usufruct right (hereinafter collectively referred to as the lessor) may transfer the use or exploitation of the land to a natural person or a legal person as defined in the Land Transfer Act only in certain

102 Land Transfer Act Art. 37(5).
103 Land Transfer Act Art. 6(2).
104 Land Transfer Act Art. 6(3).
105 Land Transfer Act Art. 12(4).
106 Land Transfer Act Art. 12(1).
107 Land Transfer Act Art. 12(2).
108 Land Transfer Act Art. 12(3).

ways[109]: (a) lease; (b) gratuitous land use; (c) use of the land for so-called recreational purposes[110]; and (d) in case of a forest, only on the basis of the legal title defined by the Implementation Land Act.

The provisions of the Land Transfer Act, the Implementation Land Act, and the Civil Code also apply to lease contracts.[111] A lease can be concluded for a fixed term of at least 1 financial year and up to 20 years.[112]

Under the gratuitous land use contract, the lessor grants the use of the land to their close relative or, in the case defined in the Land Transfer Act, to the family agricultural company free of charge.[113] A gratuitous land use contract may also be concluded for an indefinite period.[114]

For the use of land classified as forest under the Implementation Land Act and for the acquisition of the right to use land not classified as forest for the purpose of planting a forest[115]: (a) a forestry lease contract (up to 10 years after the end of the production period, also known as cutting maturity),[116] (b) a forest management integration contract (which may be concluded for a fixed term of at least 10 years but not more than 50 years), (c) a forest management contract (which may be concluded for an indefinite period), and (d) a gratuitous land use contract may be concluded.

2. Some institutions of national land law in the light of the Commission's Interpretative Communication on land acquisition

In the following, the detailed rules of Hungarian land law will be reviewed in the light of the aspects set out in the Commission's Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05).[117] Due to space constraints, we will focus on the analysis of the rules on the acquirement of property,

109 Land Transfer Act Art. 38(1).
110 A recreational land use contract is a contract between the municipal government as the lessor and a domestic natural person or a national of a member state who is not an agricultural producer or a nongovernmental organization not qualified as an agricultural producer organization as a lessee, on the basis of which the lessee uses the land owned by the municipal government, up to a maximum area of 1 hectare, for their own needs and those of their family members living with them, and receives the benefits of the land. A recreational land use contract may be concluded for a fixed term of at least 1 financial year and up to 5 years. If the lessee of the recreational land use contract is liable to pay compensation for the use of the land, the provisions on termination of lease contract shall apply to the termination of the contract. Land Transfer Act Art. 38(1a).
111 Land Transfer Act Art. 38(2).
112 Land Transfer Act Art. 44(1).
113 Implementation Land Act Art. 68(1).
114 Cf. Land Transfer Act Art. 38(3) and Art. 44, Implementation Land Act Art. 68.
115 Implementation Land Act Art. 68/B(1). For more details see: Implementation Land Act Art. 68/B–68/E.
116 Land Transfer Act Art. 44(2).
117 Cf. Bányai, 2016, pp. 5–15.

and in the subsections, we will only refer to the rules on the acquisition of use of land on the basis of the law of obligations.

2.1. Prior authorization

As a general rule, Hungarian land law requires prior authorization—on the one hand, for contracts on the transfer of ownership and acquisition of ownership by means other than transfer,[118] and on the other hand, for contracts on third-party use. The model contract for property acquisition cases is the sales contract. This means that the legislator has regulated the detailed rules for prior authorization for this contract and for other acquisitions of property, only special features, and derogations in comparison with the sales contract have been regulated. In the case of the acquisition of use of land based on the law of obligations, the legislator has regulated the lease contract as the basic case and has defined the specific features of other land use contracts in relation to it. As regards the prior authorization of both the acquisition of property and the land use contracts, the procedural rules for the exercise of the right of preemption and prelease are an integral part of these authorization procedures. A significant difference between the prior authorization of sales and lease contracts is that local land commissions only have a substantive role in the authorization of sales contracts. In the following, the detailed rules on the prior authorization of property acquisitions, and primarily of sales contracts, are examined in detail.

According to the provisions of the Land Transfer Act, as a general rule, the contract for the transfer of ownership is authorized by the agricultural administration, and similarly, the acquisition of ownership of land by means other than transfer requires the *authorization of the agricultural administration body*. The authorization of the agricultural administration body is not a substitute for the other conditions and requirements for validity laid down by law, nor is it a substitute for the prior authorization or approval of other authorities, which are also necessary for the conclusion or validity of the legal transaction.[119]

Compared with the above main rule of the Land Transfer Act, *the approval of the agricultural administration body is not required for*[120] (a) the acquirement of land by the state and other legal persons who may acquire land, (b) the alienation of land owned by the state or by the municipality, (c) the transfer of ownership of land via gift, (d) the transfer of ownership between close relatives, (e) the transfer of land by farm transfer contract, (f) and the acquisition of land in the context of land consolidation.

It is important to emphasize that the procedure of authorization of the agricultural administration body for the acquisition of property is not identical to the land

118 The Land Transfer Act lays down special rules for transactions other than sale, such as exchange, adverse possession, testamentary disposition, auction; see Land Transfer Act Art. 31–35/A.

119 Land Transfer Act Art. 7.

120 Land Transfer Act Art. 36(1), On request, the agricultural administration body shall issue a certificate that the validity of the contract on the transfer of ownership does not require authorization under the provisions of this Act; Land Transfer Act Art. 36(2).

registration procedure (important: the transfer of property ownership in Hungary is subject to the registration of the property right in the land register) but is separate from it, and the so-called land use registration procedure takes place only after the decision of the agricultural administration body authorizing the acquisition of the property. However, the land register and the land use register will not be discussed further in this paper.[121]

In the following section, the process of obtaining prior approval of a sales contract, which is the basic model for the prior authorization procedure, is presented.

I. The first step in the acquirement of property through a sales contract is *the incorporation of the purchase offer accepted by the owner into a sales contract*. The sales contract must include the declarations of the prior declaration scheme (these are dealt with in more detail in the section detailing the self-farming obligation).[122]

II. An interesting feature of the Hungarian land regime is that the owner of the land does not communicate the purchase offer to the persons entitled to preemption, but the *sales contract itself*, within 8 days of the signing of the contract, and this is only communicated indirectly (i.e., through another party).[123] Either forwarded directly by the buyer or by the agricultural administration body, the sales agreement, as specified in the ordinance issued for this purpose,[124] must be notified to the parties entitled to preemption, after a preliminary examination, (including, in addition to the Land Transfer Act, the parties entitled to preemption under other acts or agreements) by means of a notice published by the notary of the municipality in which the land is located.[125]

II.1. In the case of the sales contract subject to prior authorization, a *preliminary examination procedure* has been introduced as of January 1, 2022, prior to the notification of the sales contract to the preemption right holders by the notary. The preliminary examination procedure is conducted by the agricultural administration body, and if it does not refuse to authorize the sales contract, it will issue an order declaring the contract suitable for publication and ordering ex officio its publication by the notary (the declaration of suitability for publication does not constitute prior authorization of the sale contract).[126] Within 15 days of receipt of the documents, the agricultural administration body shall either decide not to approve the sales contract or shall issue an order declaring the contract suitable for publication and ordering its publication.[127] The agricultural administration body shall, on the basis of the preliminary examination, decide not to authorize the sales contract if it finds, for example, that (a) the sales contract is not concluded or is null and void because of a breach of

121 See also Bábits, 2016, pp. 54–60.
122 Land Transfer Act Art. 13–15.
123 Land Transfer Act Art. 21(1).
124 Government Decree No. 474/2013 (12.XII.) on the procedural rules for the exercise of the right of preemption and prelease.
125 Land Transfer Act Art. 21(1)–(1c).
126 Land Transfer Act Art. 21(1a).
127 Land Transfer Act Art. 23(1).

the legal provisions, (b) the sales contract does not contain the declarations of the buyer with the required content, and (c) the legal basis for the right of preemption or certain details thereof cannot be clearly established from the declarations made by the buyer in the sales contract.[128]

II.2. If the sales contract is not subject to prior authorization, the seller sends the contract to the notary directly after signing the contract, in order for the notary to notify persons entitled to preemption of the contract, as provided for in the Land Transfer Act.

III. Whether the sales contract is sent directly or indirectly to the notary for preemption right holder to be notified, the sales contract is communicated by means of a notice published on the government website.[129]

The holder of the right of preemption[130] may, within a limitation period of 60 days, either accept the sales contract or renounce the right of preemption.[131] The person entitled to preemption shall deliver their declaration to the notary personally.[132] The notary shall verify the identity of the holder of preemption right upon personal receipt of the declaration of acceptance.[133]

The declaration of acceptance must at least be made in a specific (so-called *private) document (representing conclusive evidence)*. The declaration of acceptance *must indicate* the legal basis for the preemption right, further details (legislative basis, ranking, etc.), and declarations of self-farming.[134] The seller is bound by a declaration of acceptance, which is made within the time limit by the holder of preemption right and in which they accept the sales contract in full.[135] In the event of a breach of the above rules, the declaration of the right of preemption shall be deemed as if the entitled has decided not to exercise it.[136]

Within 8 days after the expiry of the deadline for the submission of declarations, the notary shall draw up a register of the declarations duly received and send it (a) in the case of a contract subject to prior authorization, an anonymized sales contract, and a copy of the declarations to the agricultural administration body by electronic means,[137] or (b) if the contract is not subject to prior authorization, the original copy of the sales contract and the declarations to the seller.[138] In the latter (b) case, the buyer under the sales contract shall be replaced by the holder of preemption right on the

128 Land Transfer Act Art. 23(2).
129 Land Transfer Act Art. 21(2).
130 A person entitled to preemption under other legislation may also make a declaration of acceptance within the time limit set out in and in accordance with the Land Transfer Act. Land Transfer Act Art. 21(3a).
131 Land Transfer Act Art. 21(3).
132 Land Transfer Act Art. 21(3).
133 Land Transfer Act Art. 21(4).
134 Land Transfer Act Art. 21(5).
135 Land Transfer Act Art. 21(8).
136 Land Transfer Act Art. 21(9).
137 Land Transfer Act Art. 22(3).
138 Land Transfer Act Art. 22(1).

day of the communication of the declaration of acceptance to the seller. In the case of acceptance by more than one preemptor, the person replacing the buyer under the sales contract is the first in order of priority, and in the case of multiple preemptors with the same ranking, the seller can decide who should replace the buyer.[139]

IV. The *agricultural administrative body* receives the documents forwarded by the notary and, in the framework of *an intermediate procedure*, decides within 15 days of receipt of the documents to refuse to authorize the sales contract if it finds (a) on the basis of the documents sent by the notary, that the procedural rules governing the exercise of the right of preemption have been infringed or that (b) based on the preliminary examination procedure, the sales contract should not have been approved.[140] The agricultural administration body shall first examine and check the declarations of acceptance sent to it by the notary for compliance with the conditions of validity and effectiveness.[141]

If the agricultural administration body does not refuse to authorize the sales contract, the agricultural administration body shall rank the person or persons entitled to preemption and the buyer under the sales contract in the order laid down by law and shall draw up a list thereof.[142] The agricultural administration body shall, without delay, by electronic means, contact the local land commission for its opinion by forwarding the documents at its disposal, the declaration of acceptance of all the preemption right holders on the list, and the list it has drawn up.[143]

V. The *local land commission*, within 30 days of receiving the request from the agricultural administration body, issues its *opinion* required for refusing or granting authorization for the sales contract.[144] The local land commission shall take a position, *based on the facts known to the public and its best knowledge*,[145] on whether the sales contract is in accordance with general agricultural and land policy interests, such as (a) transparency of land tenure, (b) prevention of speculative land acquirements, (c) establishment and preservation of viable and competitive landholdings under working cultivation with a single tenure, (d) promotion of the interests of the local farming community, (e) assistance to agricultural producers who are local residents, and (f) promotion of generational change in agriculture.[146] In assessing the compliance of the sales contract with these criteria, the local land commission shall take into account (a) how much and what kind of land is owned or used by the buyer or the preemption right holder and their close relatives (hereinafter: examined persons) in the municipality where the land is located, or within a 20 km radius of it; (b) size of the land area used by the agricultural producer organization in the municipality where

139 Land Transfer Act Art. 22(2).
140 Land Transfer Act Art. 23(3).
141 Land Transfer Act Art. 23(4).
142 Land Transfer Act Art. 23(5)–(6).
143 Land Transfer Act Art. 23/A(2)–(3).
144 Land Transfer Act Art. 23/A(1), 24(1).
145 Land Transfer Act Art. 24(2).
146 Land Transfer Act Art. 23/A(1) and (4).

the land is located, or within a 20 km radius of it, in which the examined persons have an ownership share; (c) whether the buyer or the person entitled to preemption has entered into a legal transaction concerning land with a close relative within 3 years preceding the sales contract and by whom the land is used; (d) whether the buyer or the person entitled to preemption has made a declaration of acceptance in a preemption for land located in the municipality where the land in question is located or within a 20 km radius of it within the 5 years preceding the conclusion of the sales contract, but the transaction has not been completed due to their breach of contract; (e) the extent to which the sale of the land serves the acquisition of property in connection with the transfer of the holding to a young farmer; (f) whether the preemption right holder regularly makes a declaration of acceptance for lands where they have a right of preemption, while the size of their holding does not justify its acquirement; (g) owned by the buyer under the sales contract or the preemption right holder (g1) have a difference of magnitude in size, and (g2) there is a difference of magnitude in size in the average size of holdings of the municipality; (h) the price for the land under the transaction does not, without due justification, exceed (h1) in the case of land that is not forest, the income-producing capacity of the land over a 20-year production period, determined by indexation, and (h2) in the case of land that is forest, the income-producing capacity of the land over a 50-year production cycle.[147] These circumstances must be provided in writing within 15 days of the request of the local land commission by the buyer or the preemptor on the list.[148]

The local land commission shall conduct its evaluation in the same manner for all listed preemption right holders and the buyer under the sales contract, and in the evaluation, the local land commission may support more than one preemption right holder. If the local land commission does not support authorization of the sales contract for any of the preemption right holders based on the evaluation, it must take a position on whether to support authorization of the sales contract with the buyer under the sales contract.[149]

VI. After the resolution of the procedure of the local land commission, a *substantive assessment* is conducted by the agricultural administration body.

VI.1. During this, the body will reevaluate the aspects already evaluated during the intermediate procedure and will also evaluate new aspects, as a result of which it *must refuse* to authorize the sales contract if it finds that there are grounds for doing so. Such a situation, which goes *beyond the assessment in the intermediate procedure*, is a further ground for *mandatory refusal*: (a) if the local land commission, on the basis of its resolution, does not support the authorization of the sales contract with any of the persons entitled to preemption and the buyer under the sales contract; (b) if the agricultural administration body establishes against the person supported by the local land commission that (b1) the land in their possession has been definitively imposed

147 Land Transfer Act Art. 24(3).
148 Implementation Land Act 101(1).
149 Land Transfer Act Art. 25(1)–(3).

a land protection fine by the land authority for unlawful use for other purposes or for breach of the obligation to use the land within 5 years prior to the notification of the sales contract; (b2) a legally established land use fee is owed; (b3) a final fine for negligence has been imposed by the agricultural administration for breach of the obligation to acquire the land within 5 years before the notification of the sales contract.[150]

VI.2. In addition to the mandatory cases of refusal above, the agricultural administration body may *optionally refuse* to authorize the sales contract, notwithstanding the resolution of the local land commission supporting the authorization of the sales contract (or exchange contract).[151]

VI.3. If the agricultural administration body could decide to authorize in favor of *more than one preemption right holder of the same rank,* then the seller can choose from this pool, or if the seller does not make a statement within a 15-day time limit (and does not request an extension of this time limit), the agricultural administration body shall appoint a preemption right holder to replace the buyer under the contract of sale.[152] If the agricultural administration body could decide to authorize in favor of both the buyer under the contract and the preemption right holder in the same rank, the agricultural administration body shall approve the contract with the buyer under the contract of sale.[153]

VI.4. If the agricultural administration body authorizes the sales contract with a preemption right holder, the *buyer under the sales contract is replaced by the preemption right holder.* The agricultural administration body shall take an independent decision on the authorization within 15 days of the day following the date of receipt of the resolution of the local land commission and at the same time issue a clause to the sales contract. If there are no preemption right holders with whom the agricultural administration body would authorize the contract and there no grounds for refusal for the authorization of the sales contract with the buyer, the agricultural administration body shall authorize the sales contract *between the seller and the buyer* and at the same time issue the clause to the sales contract.[154]

VI.5. In administrative proceedings, the court cannot change the decision of the agricultural administration body.[155]

2.2. Preemption rights and rights of prelease in favor of farmers

Compared to the general rules of civil law,[156] prior to the general rights of preemption and right of prelease provided for therein, the Land Transfer Act provides for a special right of preemption in the case of the acquisition of agricultural land by means of a

150 Land Transfer Act Art. 27(1)–(2).
151 Land Transfer Act Art. 27(3)–(4).
152 Land Transfer Act Art. 29.
153 Land Transfer Act Art. 28/A.
154 Land Transfer Act Art. 30(1)–(2).
155 Land Transfer Act Art. 30(4)–(5).
156 See, for example, Article 5:81 of the Civil Code on the right of preemption or prelease entitled to the co-owners.

sales contract,[157] and a special right of prelease in the case of the acquisition of the use or exploitation of agricultural land by a lease contract. In both cases, it can be said that in addition to the special rules on the right of preemption and the right of prelease based on the Land Transfer Act, Hungarian law and Hungarian land law know special rules on the right of preemption[158] and the right of prelease[159] even compared to the Land Transfer Act.

The rules of the Land Transfer Act on the right of preemption and the right of prelease have many similarities; however, they differ in that, while the rules on the right of preemption in the Land Transfer Act provide for a uniform order of preemption, the rules on the order of prelease for a land that is classified as forest (Art. 45) and land that is not classified as forest (Art. 46) are sharply different. Unlike the right of preemption, the local land committees have no role in the procedure for exercising the right of prelease. In the following, we will only present the rules of the Land Transfer Act concerning the right of preemption, but due to space constraints, the right of prelease will not be examined in detail.

In Hungarian law, the right of preemption in the context of a sales[160] contract is a unilateral, conditional (i.e., that the owner of the thing wants to sell it), formative right of the prospective buyer.[161] The right of preemption can be based on law or contract. A statutory right of preemption precedes a *contractual right of preemption*.[162] This part of the book deals with statutory preemption rights regarding agricultural land. Based on the rules on preemption rights laid down in the Land Transfer Act, we consider it important to highlight the following provisions.

I. In the case of the *sale* of agricultural land, the Land Transfer Act sets out a strict *order of preemption*, which may, however, be overridden by the provisions on the right of preemption in more specific laws than the Land Transfer Act (see above). The order of preemption in the Land Transfer Act itself is as follows:

First, the state has the right to preemption.[163]

157 The right of preemption may also be exercised by the holder of the right of preemption at an auction held in the context of an enforcement, liquidation or municipal debt settlement procedure; Land Transfer Act Art. 35(3)–(4).

158 Such a right of preemption, which is more specific than the right of preemption in the Land Transfer Act, exists under the following laws: Act CCXIX of 2012 on Interbranch Organization of Wine, Act IL of 1994 on the Forestry Management Association, Act LIII of 1996 on the Protection of Nature, Act CXXVIII of 2003 on the Expressway Network, Act LXXVIII of 1993 on Certain Rules for the Rent and Disposal of Dwellings and Premises, Act CII of 2013 on Fish Farming and Fish Conservation.

159 Such a more specialized right of preemption exists under Act CCXIX of 2012 on Interbranch Organization of Wine.

160 Civil Code Art. 6:221–223, and Art. 6:226.

161 Bíró, 1999, p. 36. On the role of preemption rights in relation to agricultural land, see Bobvos 2004, pp. 1–25; Hegyes, 2009, pp. 199–207; etc.

162 Civil Code Art. 6:226(3).

163 Land Transfer Act Art. 18(1), point a). The state's right of preemption is exercised by the land fund management body; Land Transfer Act Art. 19(1).

Second, in the case of a co-owner selling jointly owned land, *the agricultural producer co-owner* who had co-ownership of the land for at least 3 years at the time of the conclusion of the sales contract is entitled to priority.[164]

Third, the right of preemption is granted to an *agricultural producer using land*,[165] (a) who is a local neighbor, (b) who is a local resident, or (c) whose residence or agricultural holding center has been located in the municipality for at least 3 years, the administrative boundary of which is situated at a maximum distance of 20 km from the administrative boundary of the municipality where the land is located, by a public road or a private road not closed to public traffic (hereinafter: locally related, using a term of our own devising, for the farmer referred to in point [c]).[166]

Fourth, the right of preemption is granted to an agricultural producer who is *a local neighbor*.[167]

Fifth, the right of preemption[168] shall be granted to a *locally residing agricultural producer*, who has been *operating a livestock farm*[169] for at least 3 years prior to exercising their right of preemption in the municipality where the land is located, whose purpose of acquiring the property is to ensure the necessary and proportionate supply of fodder for livestock farming and who has the livestock density specified in the decree implementing this act.

On the other hand, in the case of the sale of land registered as *arable or horticultural land, vineyard, or orchard*, preemption shall be granted to an *agricultural producer* who is locally related and for whom the purpose of the acquirement is the production and processing of a product with a *geographical indication* or a *designation of origin* or *organic farming*.[170] Thirdly, in the case of the sale of land registered as a *horticultural land, vineyard, or orchard*, preemption shall be granted to the *locally residing agricultural producer* who is acquiring the land for the pursuit of *horticultural activities*. Fourthly, in the case of the sale of land registered as *arable land*, preemption shall be granted to the *agricultural producer residing locally* for the purpose of acquiring the land for the production of seeds.

Sixth, the right of preemption shall be granted to an agricultural producer residing locally.[171]

164 Land Transfer Act Art. 18(3).

165 *An agricultural producer using land* is someone who has been using the land for at least 3 years according to the land use register or the forestry register, including someone who has been designated as a compulsory user of the land. Land Transfer Act Art. 19(2).

166 Land Transfer Act Art. 18(1), point b).

167 Land Transfer Act Art. 18(1), point c).

168 Land Transfer Act Art. 18(2).

169 The operation of the *livestock farm* must be certified. The official certificate for this purpose shall be issued by the food chain inspection body at the request of the operator; Land Transfer Act Art. 19(4).

170 To avoid misuse of *organic farming*, the legislator later introduced detailed rules for organic farming as § 18/A of the Implementation Land Act.

171 Land Transfer Act Art. 18(1), point d).

Seventh, the right of preemption shall be granted to an agricultural producer who is locally related.[172]

With the exception of the agricultural producer using the land and the state, there might be more than one claimant on the same level of other ranks.

In this case, the order of preemption within the groups of beneficiaries is as follows (a) member of a family agricultural company or member of a family farm of primary agricultural producers; (b) young farmer; (c) career entrant farmer.[173]

II. *Several plots of land can be sold at a unified price* if they are adjacent to each other. A sale at a unified price may also take place if the lands are located in the same or adjacent districts and the registered user of the lands is (a) the seller; or (b) the buyer for at least 3 years.[174] In such a case, the sales contract may only be accepted in its entirety by the preemption right holder. In this case, the relevant provisions of the Land Transfer Act shall apply to the order of the preemption right holders as if the circumstance giving rise to the preemption right of the preemption right holder who has made the declaration of acceptance existed in respect of the entirety of land covered by the sales contract as a whole.[175]

There is *no right of preemption* in the following cases[176]: (a) a sale between close relatives, (b) a sale by a buyer who has owned the land for at least 3 years resulting in the termination of common ownership, (c) a transfer of land by means of a farm transfer contract, (d) a sale by municipalities for a specific purpose, (e) acquisition of land for recreational purposes, (f) acquisition by the state, (g) acquisition of land by the exercise of an option right by a share-owner, and (h) transfer to a registered church or its internal ecclesiastical legal entity to establish or extend a cemetery.

We have already dealt in detail with the issue of the *exercise of the right of preemption* in the context of the prior authorization of the contract for the transfer of ownership of land and will therefore not deal with it in this section.

The circumstance giving rise to the right of preemption must exist at the time the declaration to exercise the right of preemption is made.[177]

2.3. Price controls

In our view, Hungarian land law does not have a direct price control instrument. However, this does not mean that Hungarian land law does not take land prices into account and that it does not address the issue of land prices in certain situations.[178]

172 Land Transfer Act Art. 18(1), point e).
173 Land Transfer Act Art. 18(4).
174 Land Transfer Act Art. 19(5).
175 Land Transfer Act Art. 19.
176 Land Transfer Act Art. 20.
177 Implementation Land Act Art. 20.
178 We do not consider the sale of several plots of land at a unified price (Land Transfer Act Art. 19) or the issue of a unified rent in connection with a lease (Land Transfer Act Art. 47) to be a price regulation issue; therefore, we will not deal with it in detail here.

When land is sold, the local land commissions must, in their prior authorization procedure, examine whether the sales contract is in line with the general agricultural and land policy interests of preventing speculative land acquirements, among other things.[179] In assessing whether the sales contract meets this criterion, account should also be taken, *inter alia*, of the fact that the consideration for the land under the transaction does not, without good reason, exceed (a) in the case of land not classified as forest, the income-producing capacity of the land over a 20-year production period, as determined by indexation, and (b) in the case of land classified as forest, the income-producing capacity of the land over a 50-year production cycle.[180] Moreover, the examination of the former aspects is not only the responsibility of the local land commissions but also of the agricultural administration body, which plays a key role in the prior authorization procedure, and the result of the examination may lead to the refusal to authorize the sales contract.[181]

In the procedure for the prior authorization of lease contracts, the agricultural administration body shall refuse to approve the lease if the value of the consideration under the lease (hereinafter: the rent) or other consideration provided for in the lease is disproportionate.[182] For the purposes of this provision, the value of the rent shall be considered disproportionate if the land concerned does not possess any advantageous characteristics justifying a deviation from the normal local rent. The location of the land, its quality (gold crown value), its irrigability, its arable land, and its accessibility by road may be taken into account as an advantageous feature, but not uncertain future events and circumstances that depend—at least in part—on the decision of the tenant to take risks. In the event of a deviation from the average rent, the reasons for this must be justified in the contract. In the procedure for the authorization of a lease contract, the lessor shall, at the request of the agricultural administration body, prove the proportionality of the value of the rent.[183]

2.4. Self-farming obligation

The self-farming obligation is not present in Hungarian land law in absolute form but as a complex system of general rules and exceptions. The relevant parts of Hungarian land law are relevant both for contracts on the transfer of ownership and for contracts on the transfer of the right to use land.

I. In the context of contracts for the transfer of ownership, the right to acquire ownership is subject to the condition that the contracting party (or the person with the right of preemption) undertakes in the contract for the transfer of ownership (and the person with the right of preemption in the declaration of acceptance)[184] (a) not to transfer the use of the land to another person and to use it themselves; (b) to fulfill

179 Land Transfer Act Art. 23/A.
180 Land Transfer Act Art. 24(3), point h).
181 Land Transfer Act Art. 27.
182 Land Transfer Act Art. 53(1), point g).
183 Land Transfer Act Art. 53(2a). See further Land Transfer Act 53(2b).
184 Land Transfer Act Art. 21(5).

their obligation to use the land; and (c) not to use the land for other purposes for a period of 5 years from the date of acquisition.[185] Hungarian land law provides for a number of exceptions to the above general rule, which are described below.

This obligation does not apply (a) to legal persons who may acquire ownership of land; (b) to transfers of ownership between close relatives; (c) and in cases of expropriation, termination of joint ownership, termination of the marital community of property, and exchange of land that was already owned on May 1, 2014.[186]

Under the Land Transfer Act, it is not deemed to be a transfer of use if the party acquiring the right of ownership[187] (a) transfers the use of the land by virtue of a valid title to (a1) a close relative who is considered an agricultural producer,[188] or (a2) an agricultural producer organization owned by them or their close relative in at least 25%, or (a3) a family agricultural company in which they are a member; (b) is engaged in associated forestry or transfers land considered as forest to forest management; (c) transfers the use to another person for the purpose of providing land for seed production under a valid title; or (d) transfers the use under a farm transfer contract; (e) transfers the use after the expiry of the period of use granted under the farm transfer contract. If the land which is the subject of the contract of transfer of ownership is already in the use of a third party, the contracting party must undertake (a) not to extend the duration of the existing land use relationship and (b) to assume the obligations detailed above for the period after its termination.[189]

The self-farming obligation is not governed by the Land Transfer Act but by the Arable Land Protection Act, which stipulates that the land user is obliged, as a general rule by their choice, to use the land for production in accordance with the type of cultivation or to prevent the appearance and spread of weeds without continuing production while complying with the soil protection regulations. This type of choice is not available to the land user in the case of vineyards and orchards, where the land can only be used in one way, by means of production corresponding to the type of cultivation.[190]

In certain cases, the Land Transfer Act allows the land to be used for other purposes, such as the construction of an irrigation facility, irrigation canal, water supply canal for landscape management, water storage facility, soil protection facility, agricultural road, farm building, residential building, or greenhouse.[191]

185 Land Transfer Act Art. 13(1), for the purposes of the Act, the temporary or permanent withdrawal of forest from production is also considered as the use of land for other purposes; Land Transfer Act. 13(1a). If it is transferred to a close relative within 5 years, on the conditions for this, see Land Transfer Act Art. 13(6).

186 Land Transfer Act Art. 13(1), For the specific case of exchange, see a Land Transfer Act Art. 17(2).

187 Land Transfer Act Art. 13(2).

188 For further conditions, see Land Transfer Act Art. 13(5).

189 Land Transfer Act Art. 13(4).

190 Act CXXIX of 2007 on The Protection of Arable Land Art. 5(1)–(2).

191 Land Transfer Act Art. 13(3).

In addition to these, career entrant farmers or other persons contracting under other laws[192] must also take on additional obligations.[193]

The prior declarations of the contracting party or the preemption right holders will be examined during the official procedure, and their absence will be an obstacle to the acquisition of ownership.

II. In the case of contracts on the transfer of the right to use land, the acquisition of the right to use land is conditional on the party acquiring the right to use land agreeing in the contract on the transfer of the right to use land (and the right of prelease holder in the declaration of acceptance)[194] not to transfer the use of the land to another party, to use it themselves, and to fulfill their self-farming obligation. This obligation does not apply to certain persons, such as forestry associations, public education, and higher education establishments belonging to the agricultural sector and established churches.[195]

It shall not be considered a transfer of use if the party acquiring the right to use (a) transfers the use of the land by virtue of a valid title to (a1) a close relative who is considered an agricultural producer, or (a2) an agricultural producer organization owned by them or their close relative in at least 25%, or (a3) a family agricultural company in which they are a member; (b) is engaged in associated forestry or transfers land considered as forest to forest management; (c) transfers the use to another person for the purpose of providing land for seed production under a valid title.[196]

In the procedure for prior authorization, the existence of all these declarations is verified by the agricultural administration body, and their absence is an obstacle to obtaining the right to use the land.

2.5. Qualifications in farming

Only natural persons can acquire ownership of agricultural land, with certain exceptions. Ownership of larger amounts of land can only be acquired by an agricultural producer, with certain exceptions. The requirement for agricultural producers is[197] that they shall have a qualification or vocational training in agriculture or forestry as defined in the Decree implementing the Land Transfer Act[198] or, alternatively, that (a) they have been engaged in agricultural, forestry, or complementary activities in

192 Such additional declaration obligation exists when a *member of an interbranch organization of wine* exercises their right of preemption by committing to establish a vineyard; Act CCXIX of 2012, Art. 20/A(1).

193 Thus, they must undertake (a) to reside in the municipality where the land is located within 1 year of the acquisition of the property (a1) as a permanent registered resident, or (a2) to establish an agricultural center, and (b) to conduct agricultural, forestry, or complementary activities; Land Transfer Act Art. 15.

194 Land Transfer Act Art. 49(4).

195 Land Transfer Act Art. 40(2)–(5), 42(1).

196 Land Transfer Act Art. 42(2).

197 Land Transfer Act Art. 5, point 7, see also the requirements for career entrant farmers with priority for right of preemption of prelease: Land Transfer Act Art. 5, point 22.

198 See Government Decree No. 504/2013 on vocational qualifications in agriculture or forestry.

Hungary for at least 3 years continuously in their own name and at their own risk, and it has been proven that they have generated revenue from this activity or that the revenue has not been generated because the investment in agriculture or forestry could not yet be used, or (b) they are a member of an agricultural producer organization registered in Hungary and in which they hold at least 25% of the shares, and conduct agriculture, forestry, or complementary activities as a personal contribution. In other words, the qualification requirement is apparently not an absolute condition but a condition that can be replaced by other means.

Similar rules apply to the acquisition of the right to use land on a contractual basis. Such use may, with certain exceptions, be acquired by agricultural producers or agricultural producer organizations.[199] There is a similar substitutable requirement for an executive officer or director of an agricultural producer organization, namely, such an executive officer or director must have a qualification or vocational training in agriculture or forestry as defined in the decree implementing the Land Transfer Act or at least 3 years' professional experience, certified by the agricultural administration body.[200]

2.6. Residence requirements

There are no land acquisition requirements for residence in Hungarian law, but local residence or local attachment is an advantage in both the preemption and prelease order, the details of which are given earlier in this chapter.

2.7. Prohibition on selling to legal persons

I. It is a characteristic feature of Hungarian land law that the Land Transfer Act[201] only allows the acquisition of ownership of agricultural land by legal persons in relation to a narrow group of legal persons.[202] The EU Commission considers this narrow scope as a general prohibition on legal persons to acquire land (see below for details).

The exceptional group of legal persons who can acquire ownership of agricultural land in Hungary under the Land Transfer Act can be divided into two groups based on the degree of restriction. On the one hand, the Hungarian state may acquire ownership of land *without restriction*.[203] On the other hand, the following persons may

199 Land Transfer Act Art. 40(1).

200 Land Transfer Act Art. 5, point 19, see also the requirements for a newly created agricultural producer organization benefiting from certain advantages: Land Transfer Act Art. 5, point 26.

201 The Arable Land Act, which had been in force for 20 years, also restricted the acquisition of land by legal persons as a general rule, but the scope of the relevant exceptions—for example, whether a legal person could acquire the land of its predecessor—was frequently amended, the direction of these changes depending largely on the political orientation of the government in power. For example, under the last concept of the Arable Land Act in force (after the change of government in 2010), even public foundations were allowed to acquire land, and municipalities had more freedom to acquire land.

202 Land Transfer Act Art. 6(1); cf. Land Transfer Act Art. 9(1), point c).

203 Land Transfer Act Art. 11(1).

acquire ownership of agricultural land *subject to restrictions*:[204] (a) A *registered church* or its internal ecclesiastical legal person may acquire ownership of agricultural land only by means of a testament, maintenance, annuity, care, gift contract, and by transfer to establish and expand a cemetery, i.e., there is a restriction by title in the case of registered churches and a restriction by purpose in the case of cemeteries. (b) A *mortgage credit institution* may acquire ownership of land subject to the restrictions (title restriction) and for the duration (time restriction) provided by the law[205] applicable to it. According to the provisions of said law, agricultural land may only be owned by a mortgage credit institution temporarily, for a maximum period of 1 year from the date of acquisition, by means of liquidation or executory proceedings. If the mortgage credit institution is unable to sell the land it has acquired within 1 year of the date of acquisition, the land becomes the property of the state and is transferred to the National Land Fund. The National Land Fund Management Organization shall pay the mortgage lending institution the collateral value of the land within 90 days of the date of registration of the state's ownership in the land registry. For the purposes of this paragraph, the date of acquisition shall be deemed to be the day following the date of registration of the title in the land register.[206] (c) The *local government of the municipality* in which the land is located may acquire it for the purposes of public employment, social land program, and municipal development, and, if the land is a protected natural area of local importance, for the purposes of protecting the land as defined in the Law on the Protection of Nature; in other words, in the case of local governments, the legislator imposes both a territorial restriction (namely the area of jurisdiction) and a purpose restriction, which in our view is general and difficult to interpret in the long term.

Considering that, prior to the entry into force of the Land Transfer Act, a group of legal persons may have acquired land at certain times, which may no longer acquire land under the Land Transfer Act, it is important to highlight, once again, that this group of persons did not lose their previously acquired land by force of law after the entry into force of the Land Transfer Act as their acquired rights could not be infringed with regard to the right to property, and also with regard to the present group of beneficiary legal persons, the legislator had to take a position on the question of the *transformation and succession of legal persons* and the impact of all this on land ownership. In view of this, the Land Transfer Act contains the following important provision: a legal entity established by division, spin-off, consolidation (merger, takeover), and change of organizational form (organizational transformation), not including a registered church or its internal ecclesiastical legal entity, may not acquire ownership of land acquired by its predecessor under the Arable Land Act (in force before the Land Transfer Act) or acquired before the entry into force of the Arable Land Act.[207]

204 Land Transfer Act Art. 11(2).
205 Act XXX of 1997 on Mortgage Credit Institutions and Mortgage Deed.
206 Act XXX of 1997 Art. 10(4)–(5).
207 Land Transfer Act Art. 9(2).

II. Legal persons have wider rights to acquire the right to use land based on the law of obligations. In addition to the wide range acquisition of land use of the so-called agricultural producer organizations, forestry associations, churches, and public and higher education establishments in the agricultural sector may acquire the use of land.[208]

2.8. Acquisition caps on the land

Restrictions on agricultural land acquired by a person, *typically*[209] measured in hectares, in Hungarian land law can be divided into two types. Firstly, the *land acquisition limit* only provides for restrictions on property rights and on limited rights *in rem* such as usufruct and use *in rem*. The *land possession limit*, on the other hand, applies to land in use by any other valid title in addition to ownership and other limited rights *in rem*. Neither the *land acquisition limit* nor the *land possession limit* applies to the exceptional category of legal persons who may acquire ownership of agricultural land,[210] nor does the *land possession limit* apply to public or higher education institutions in the agricultural sector[211] and to certain forestry[212] undertakings that are 100% state-owned.[213]

I. Under the *land acquisition limit*, (a) *an agricultural producer*, (b) a natural person or a national of a member state who is not an agricultural producer if they are a *close relative* of the person transferring the ownership, and (c) in the case of *land acquisition for recreational purposes*,[214] the person acquiring the land may acquire ownership of up to 300 hectares of land, taking into account the area of land already owned and usufructuarily used by them.[215] It is important to note that other domestic natural persons and nationals of member states who are *not agricultural producers* may acquire ownership of the land if the area of land they *possess*, including the area of land they wish to acquire, does not exceed 1 hectare together.[216] In other words, it is important to emphasize that in this case, the acquisition of ownership of land up to 1 hectare is subject to a stricter land possession limit than the land acquisition limit.

208 Land Transfer Act Art. 40–41.

209 The Arable Land Act set limits in hectares and gold crowns. The limit expressed in gold crowns has disappeared from the provisions of the Land Transfer Act, except for the land acquisition limit for the acquisition of *a share of land*, where the limit is *6,000 gold crowns*; Land Transfer Act 16(4), Cf. new § 6(2), § 24(3) points a) and b).

210 Land Transfer Act Art. 16(7).

211 Land Transfer Act Art. 16(7).

212 "Annex 1 to Act XXXVII of 2009 on Forests, Forest Protection and Forest Management"; Land Transfer Act Art. 16(8).

213 Land Transfer Act Art. 16(8).

214 *Land acquisition for recreational purposes*: the acquisition by a domestic natural person who is not an agricultural producer or a national of a member state of land owned by a municipal authority and designated by a decision for such acquisition, up to a maximum area of 1 hectare, for the purpose of the use and reap the benefits of the land by the acquirer for their own needs and those of their family members living with them; Land Transfer Act Art. 5, point 22a.

215 Land Transfer Act Art. 16(1) and 10(3) and (3a).

216 Land Transfer Act Art. 10(2) and (4).

There are certain cases, all of which apply to agricultural land *already existing on* May 1, 2014 (*the main date of entry into force of the Land Transfer Act*), where the 300 hectares and 1 hectare land acquisition limit may be exceeded (*exceptional land acquisition limit*). Under the provisions of the Land Transfer Act, in each of these cases of exceptional land acquisition limit, the legislator has laid down specific rules on how much the typical limit of the land acquisition limit may be exceeded: (a) by the area of land purchased with the compensation received from the *expropriation* of land, (b) by the area of land corresponding to the share of ownership of the owner in the case of the *termination of co-ownership of land,* or (c) by the area of land acquired by the former spouses in the case of the termination of the *marital community of property* on land, and (d) by the area of land acquired by the transfer of ownership of land by way of exchange.[217]

In addition, the legislator also establishes an exceptional land acquisition limit for the exchange of land acquired by intestate succession, without the time limit of May 1, 2014; namely, the land acquired by exchange of land acquired by intestate succession may exceed the 300 hectares and 1 hectare acquisition limit, respectively.[218]

II. In the context of the *land possession limit*, an agricultural producer, or an agricultural producer organization, as a general rule, may acquire a maximum of 1,200 hectares of land, taking into account the area of land already owned.[219] As a *preferential land possession limit,* the law allows for a maximum of 1,800 hectares in certain cases. These are[220] (a) the *operator of a livestock holding* shall be entitled to the preferential land possession limit if, in the year preceding the conclusion of the contract (or the declaration of acceptance of the right of preemption or prelease) or on average over the preceding 3 years, the average number of livestock units per year on the land already held by them has reached 600 livestock units.[221] (b) A *producer of seeds of arable and horticultural plant species* shall be entitled to the preferential land possession limit if, on average over the 3 years preceding the conclusion of the contract, one-tenth of the arable land already held by him, but not less than 120 hectares, has been used for the production of seeds or propagating material.[222] (c) The land possession limit may also be exceeded up to a maximum of 1,800 hectares *by using land owned by a member of the agricultural producer organization for at least 1 year.*[223]

217 Land Transfer Act Art. 17(1).
218 Land Transfer Act Art. 17(2).
219 Land Transfer Act Art. 16(2).
220 Land Transfer Act Art. 16(3).
221 Implementation Land Act 6(1), To this, the law adds that to acquire land in excess of the land possession limit of 1,200 hectares for the production of fodder for livestock, an average animal density of at least half a livestock unit per hectare is required. For the definition of the *number of livestock units,* see Decree No. 57/2014 (30.IV.) of the Ministry of Rural Development on The Rules for Determining the Average Animal Density. Accordingly, one cattle animal over 2 years old or one equine animal over 6 months old is 1 animal unit, one cattle animal over 6 months old but less than 2 years old is 0.6 animal units, one cattle animal under 6 months old or one equine animal under 6 months old is 0.4 animal units, one sheep or goat is 0.15 animal units, one laying hen is 0.005 animal units. Bee (per hive) 0,2; rabbit 0,002.
222 Implementation Land Act 7(1).
223 Land Transfer Act Art. 43(2).

Some special cases to be taken into account for the *calculation of the land possession limit*: (a) in the case of a person or organization *designated as a compulsory user* of land, the area of land used by them for compulsory use shall be disregarded when determining the land possession limit or preferential land possession limit[224]; (b) in the case of *an agricultural producer organization created by a division or spin-off*, the area of all land held by the predecessor shall be included in the land possession limit for a period of 5 years from the date of its creation.[225]

2.9. Privileges in favor of local acquirers

Hungarian land law allows a local resident agricultural producer, subject to several other requirements, to acquire land by exchange[226] and gives them an advantageous position in the order of preemption[227] or prelease.[228] Hungarian land law provides a favorable position in the prelease[229] order for locally registered legal persons. The right of preemption and prelease was discussed in detail earlier in this chapter.

2.10. Condition of reciprocity

Hungary did not make the purchase of agricultural land by an EU citizen of another member state conditional on the country of origin of the EU citizen of the other member state providing the possibility for Hungarian citizens to buy land.

2.11. Other specific legal institutions of Hungarian land law

A feature of Hungarian land law that is not discussed in detail in this study, but nevertheless worth highlighting, is the many regulations and legal institutions created to counteract legal transactions (colloquially: fraudulent contract) aimed at circumventing Hungarian land law.

3. Constitutional law aspects of Hungarian land law

As we have already mentioned in subchapter 1 of this chapter, three provisions of the Hungarian Constitution, the so-called Fundamental Law, deserve special mention for the purposes of our study. Article XIII, which regulates the right to property, Article P), which guarantees the special protection of natural resources, and Article 38, which guarantees the protected status of national property. In subchapter 1, we briefly described the content of these constitutional provisions, and which Hungarian land laws and legislations are directly based on them. In the present subchapter, we will refer to the case law of the Constitutional Court, supplementing subchapter 1,

224 Land Transfer Act Art. 16(6).
225 Land Transfer Act Art. 43(3).
226 Land Transfer Act Art. 12(1), point b).
227 Land Transfer Act Art. 18.
228 Land Transfer Act Art. 45–46.
229 Land Transfer Act Art. 45–46.

and show how the Constitutional Court has interpreted the acquirement of agricultural land.

I. Among the landmark decisions of the Hungarian Constitutional Court after 2014, Decision 17/2015 stands out, as it can be considered as a kind of comprehensive evaluation of land law and its legal institutions with regard to the acquirement of property.[230] The right to property has significantly determined the whole concept of Hungarian land law. Based on the interpretation[231] of both the ECHR[232] and the Hungarian Constitutional Court,[233] it is clear that the content of the right to property[234] does not imply that anyone has a fundamental right to acquire property. In essence, this is the reason why the new Hungarian land law (but also the previous land legislation of 1994) introduces restrictions not in relation to existing property but concerning new land acquisitions, thus not infringing the right to property.

In its Decision 17/2015, the Constitutional Court, in addition to specifically examining the constitutionality of local land commissions[235] and their procedures[236]

230 A detailed, multi-faceted evaluation of the Constitutional Court Decision No. 17/2015 was conducted by *István Olajos*. The significance of the following analyses lies in the fact that they have changed the procedural system of land transfer and reassessed the role and status of the local land commission: Olajos, 2017a, pp. 284–291.; Olajos, 2015, pp. 17–32. C.f. Holló, Hornyák and Nagy, 2015, p. 78.

231 The right to property is also included in Article 17 of the Charter of Fundamental Rights of the European Union

232 ECHR, Gasparetz v. Slovakia, inadmissibility decision, June 28, 1995, No. 24506/94; Raisz, 2010, pp. 244–245. C.f. Téglási, 2010, pp. 22–47; Téglási, 2015, pp. 148–157.

233 "...the fundamental right to property does not extend to the acquisition of property. The right to acquire property is not a fundamental right... On the side of the 'purchasers', no limitation of the fundamental right can be established, because the ability to acquire property and the freedom of contract are not fundamental rights. Restrictions on these rights, which are not fundamental rights, would be unconstitutional if there were no reasonable justification for the restriction on the basis of an objective assessment." Constitutional Court Decision No. 35/1994 (24.VI.), point III/3. More recently, "the Constitutional Court stated in Decision No. 3387/2012 (30. XII.) (Reasoning [16]) that 'According to the interpretation of the Constitutional Court the constitutional protection of property applies only to existing property, the right to property does not confer the right to acquire property (Decision No. 35/1994 [24.VI.], ABH 1994, 201).' {See also Constitutional Court Decision 3021/2014 (11.II,), Reasoning [14]}." Constitutional Court Decision No. 17/2015. (5.VI.), Reasoning IV [67]; see also IV [71]. For an analysis of the relevant Constitutional Court practice, see Bobvos et al., 2016, pp. 31–40; Kocsis, 2014, p. 125; Téglási, 2009, pp. 20–21; etc.

234 Cf. Constitutional Court Decision No. 3135/2021 in relation to the constitutional complaint against Article 71(6) of Act XXXVIII of 2010 on Probate Procedure in connection with the acquirement of land by the testamentary heir and Article 34(1) and (2) of Act CXXII of 2013 on the Transfer of Agricultural and Forest Land

235 See, in particular, Constitutional Court Decision 17/2015, paragraphs 51–53, 56–58, 66, 68–69, 71–72. Also relevant to the legal nature of the procedure and the resolution of local land commissions is Constitutional Court Decision 18/2016 on the obligation to communicate the decision of the body of representatives based on the resolution of the local land committee. Cf. Constitutional Court Decision 3128/2015 on the resolution of the land commission and legal remedies.

236 See, in particular, paragraphs 74–100 of Constitutional Court Decision No. 17/2015, where the Constitutional Court found several provisions of the Land Transfer Act to be unconstitutional and annulled them.

(the latter in relation to the right to a fair trial and legal remedy), also undertook a conceptual examination of the Hungarian land law in force since 2014, largely in relation to the right to property, essentially adopting the practice of the Constitutional Court established under the previous Constitution. In other words, it concluded that the solution of the new land regime, which is essentially based on the restriction of acquirement of property, is generally in line with the Fundamental Law[237] but that there may still be some unconstitutional provisions in relation to some of its specific provisions (as the Constitutional Court found, both in the current case and during the subsequent proceedings).

II. In addition to the management of state land assets,[238] the Constitutional Court's Decision 16/2015 is also of decisive importance for Hungarian environmental law. In this case, the Constitutional Court ruled that several provisions of an act on the management of state land assets are unconstitutional based on Article P) of the Fundamental Law, which guarantees the special protection of natural resources, and Article 38, which guarantees the protected status of national property, and Article XXI, which guarantees the right to the environment. The contested act would therefore have terminated the nature conservation trusteeship of the national park directorates with respect to the land parcels transferred to the National Land Fund as of April 1, 2016 and would have been replaced by another institution then known as the National Land Fund Management Organization (now the National Land Centre). In this context, the Constitutional Court examined what changes the abolition of this trusteeship would bring about in the specific nature conservation management of the land parcels. To this end, it was necessary to examine the functions and powers of the National Land Fund Management Organization. The Constitutional Court concluded from the economic land policy guidelines of the National Land Fund Act, already presented in subchapter 1 of this paper, that the National Land Fund Management Organization does not specifically perform nature conservation trustee tasks and is not obliged to enforce such nature conservation aspects under the existing legislation. By providing that, under the contested law, the National Land Fund Management Organization would, in certain cases, have been given the task of asset management instead of the national park directorates having reduced the level of protection already provided, since the special expertise and infrastructure of the national park directorates is lacking in the National Land Fund Management Organization.[239]

Constitutional Court Decision 16/2015 confirmed the so-called non-derogation principle of Hungarian constitutional environmental protection; in other words, the legislator may not reduce an already achieved level of environmental protection by a newly adopted substantive or procedural law norm, and the principle of non-derogation has now been clearly extended to amendments made by means of organizational norms. This has been interpreted in the present case in relation to public land.

237 See, in particular, Constitutional Court Decision No. 17/2015, paragraphs 48, 54, 67, 70.
238 See also Constitutional Court Decision 14/2013 on national property and arbitration.
239 See, in particular, Constitutional Court Decision No. 16/2015, paragraphs 106–111.

III. In land acquisition cases, Constitutional Court Decision 11/2020 may be of relevance from the perspective of the relationship between Hungarian national law and EU law. The background of the case was Article 108 Paragraphs (1), (4), and (5) of the Implementation Land Act (i.e., the provisions that declared the *ipso iure* termination of the right of usufruct and use *in rem* between non-close relatives as of May 1, 2014). In addition to Article XIII of the Fundamental Law, which guarantees the fundamental right to property, the Constitutional Court in the present case also examined, *inter alia*, Article B) of the Fundamental Law, which guarantees the rule of law, Article E) of the Fundamental Law, which regulates the shared competences of the European Union and Hungary, and Article 28 of the Fundamental Law, which deals with the interpretation methods of the ordinary courts.

The Administrative and Labor Court of Győr petitioned the Constitutional Court to annul a provision of the Implementation Land Act in an ongoing case concerning a legal dispute on land transfer. The Constitutional Court rejected the judicial initiative but also ruled on its own motion that it is a constitutional requirement for the application of a section of the Implementation Land Act that an ordinary court must apply Hungarian law in the absence of an EU law concern. In the case on which the judicial initiative was based, the applicant had registered rights of use *in rem* in respect of several immovable properties, but the administrative bodies acting on the case had terminated those rights of use under the contested provision of the Implementation Land Act. According to the main points of the petition, the legislator, by making such a decision on the contested provision of the law, which is also disputed in court practice, that the right of use *in rem* established in favor of a legal person is a defect in the law, violated the requirement of legal certainty, the prohibition of retroactive legislation, and the right to property. In its decision, the Constitutional Court stated that the contested provisions do not directly terminate a right and therefore do not infringe the petitioner's right to property; moreover, the law terminated the right of use *in rem* for the future, and therefore, the provision does not infringe the prohibition of retroactivity.[240] The Constitutional Court also found that, although it did not accept the petition, the petitioning judge had nevertheless initiated an examination of the statutory provision for a good cause. The Hungarian supreme judicial forum, the Curia, in its recent decisions, following the so-called SEGRO decision[241] of the Court of Justice of the European Union, declared the application of the relevant statutory provision to be contrary to EU law; thus, following the principle of the primacy of EU law, it excluded the application of the national legislation contrary to EU law and then extended this to situations not affected by EU law by Administrative Principle Decision 11/2019 of the Curia. The Constitutional Court, therefore, considered it necessary to resolve the contradiction between the primacy of EU law and the Fundamental

240 Constitutional Court Decision No. 11/2020, paragraphs 41–46.

241 Joined cases C-52/16 and C-113/16, judgment of the Court of Justice of the EU of March 6, 2018 SEGRO' Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala (C-52/16) and Günther Horváth v Vas Megyei Kormányhivatal (C-113/16).

Law, which had arisen as a result of judicial interpretations.[242] The Constitutional Court has stated that the applicability of a valid and effective Hungarian law, with effect for all—outside a legislative act—can only be terminated by a decision of the Constitutional Court annulling the law, and the Constitutional Court's decision to that effect is excluded by the Fundamental Law. In the Constitutional Court's view, in the absence of a specific legal act of uniform application in the member states of the European Union, and by an extended interpretation of the judgment of the Court of Justice of the European Union, a court cannot disregard the law in force; on the contrary, the Fundamental Law imposes an obligation on all organs of the state, including the courts, to protect the constitutional identity of our country. The unjustified disregard of the application of existing domestic law violates the rule of law, and the arbitrary disregard of existing domestic law is unconstitutional, for whatever reason; therefore, the unjustified application of EU law or the resolution of a supposed but nonexistent conflict of laws does not justify this. The Constitutional Court has thus established as a constitutional requirement that the court may not disapply Hungarian law in the absence of the involvement of European law. Taking this constitutional requirement into account is not only relevant in the case at hand but also for the courts in general, and in case of doubt in this respect, it is justified to submit a judicial initiative concerning the domestic legislation to the Constitutional Court because, only in this case, the Constitutional Court will be in a position to resolve the possible conflict.[243]

IV. In connection with the previous case, several Constitutional Court decisions[244] have been made on the termination of the usufruct by law. Constitutional Court Decision 25/2015 was based on the former Article 108 of the Implementation Land Act, namely the provision according to which contracts for the transfer of the right to use the land by the holder of a usufructuary right between non-close relatives, which was in force on April 30, 2014 for an indefinite period or which is for a definite period expiring after April 30, 2014, shall be terminated by operation of law on September 1, 2014. In this case, among other things, the right to property enshrined in Article XIII of the Fundamental Law was examined. On July 14, 2015, the Constitutional Court ruled that the legislator had failed to lay down rules allowing for the compensation of exceptional pecuniary losses relating to valid contracts that could not be enforced in the settlement of accounts between the contracting parties, in relation to usufructuary rights or rights of use *in rem* terminated under Article 108 of the Implementation Land Act. The panel called on the legislator to remedy the unconstitutional omission by December 1, 2015. In the reasoning of the decision, the panel explained that a statutory modification of a contract should, as far as possible, consider the equitable interests of each party (i.e., such a modification should also seek to achieve a balance of interests). According to the constitutional judges, legislative intervention is a

242 Constitutional Court Decision No. 11/2020, paragraph 53.
243 Constitutional Court Decision No. 11/2020, paragraphs 58–61.
244 See Constitutional Court Decision No. 3199/2013 on the *ex lege* termination of usufruct on agricultural land, Constitutional Court Decision No. 25/2015 on the settlement rules for the termination of usufruct and usufruct rights.

matter of responsibility and must not cause disadvantages that are not justified by its purpose. By contrast, the contested legislation, by its very nature, does not strike the right balance between the restriction in the public interest and the protected rights of the persons concerned.[245] The questions relating to Article 108 of the Implementation Land Act have also been raised in the judgments of the Court of Justice of the European Union and will be dealt with in detail there.

V. In Constitutional Court Decision No. 3242/2017 on the acquisition of property by legal persons, concerning Article XIII of the Fundamental Law guaranteeing the right to property, the Constitutional Court rejected the judicial initiative to declare and annul Article 33(4) and Article 70(7) of the Land Transfer Act unconstitutional. According to Article 33(4) of the Land Transfer Act,

> "if the parties apply to the courts to establish the occurrence of adverse possession, the acquiring party must obtain a certificate from the agricultural administration body that the conditions for the acquirement of the property under this Act are fulfilled before bringing the action."

Under Article 70(7) of the Land Transfer Act, "the provisions [of the Land Transfer Act] shall not apply if the action to establish the occurrence of adverse possession was brought before the court before 30 April 2014." As stated in the initiative, an action was pending before the court to establish the adverse possession of part of the immovable property that is land. The plaintiff in the lawsuit is a legal person, who has indicated a date prior to the entry into force of the Land Transfer Act (i.e., May 1, 2014) as the date on which the acquisition occurred. Part of the respondent's property had been in the plaintiff's possession for a period exceeding the statutory period of adverse possession. The Land Transfer Act prohibits legal persons from acquiring ownership over arable land. The judge proposing the initiative pointed out that if the legal person plaintiff proves the adverse possession in the lawsuit, it is an acquirer of property outside the land register from the date on which the adverse possession occurred. The plaintiff's application for the issue of an official certificate had been rejected by the agricultural administration body, and in addition, the plaintiff brought the action after the date established in the Land Transfer Act. In the view of the judge proposing the initiative, those two provisions, taken together, make it impossible to register in the land register property acquired before their entry into force, thus depriving the owner of the property right acquired earlier by way of adverse possession, which is unconstitutional. The Constitutional Court declared the petition to be unfounded. The legal question raised in the case is that the plaintiff is alleged to have adversely possessed the land concerned under the old legislation, but this was only discovered after the entry into force of the Land Transfer Act. The fundamental difference between the two regulatory environments is that under the current provisions, it is not possible to establish the ownership of the plaintiff as a legal person by way of adverse possession.

245 Constitutional Court Decision No. 25/2015, paragraphs 58–67.

In the panel's view, the Land Transfer Act ultimately limits the protection of acquired property but does so in the public interest, with sufficient time to prepare for and thus in an avoidable way. The Constitutional Court has therefore held that the contested provisions of the Land Transfer Act neither infringe the prohibition of retroactivity nor restrict the fundamental right to property in an unconstitutional manner.[246]

VI. The right to property[247] and the protection of natural resources[248] were examined in Constitutional Court Decision 24/2017, in relation to the inheritance of land by testamentary disposition. The petitioner requested that the Constitutional Court declare the definition of agricultural producer,[249] the land acquisition limit of 1 hectare for non-producers,[250] and the acquisition of land by testamentary disposition[251] unconstitutional. The petitioner inherited three plots of arable land by testamentary disposition. The notary in charge of the case applied to the competent government office for an official certificate, which was refused on the grounds that the land owned by the petitioner (heir in the testament) already exceeded 1 hectare and the petitioner was not an agricultural producer, which means any further acquirement of land would result in a breach of the restriction on the acquisition of property and that the conditions for the acquisition of property under the contested provision of the law were not met. In view of this, the notary transferred the agricultural immovable property to the Hungarian state in accordance with the order of intestate succession. In the petitioner's view, the contested decision infringes the principle of the rule of law, disproportionately restricts fundamental rights, and violates the right to property and the principle of equality.

According to the Constitutional Court, a testamentary heir does not currently receive compensation from the state if they do not acquire the land intended for them because the authority, based on land acquisition restrictions, refused to approve it. The Constitutional Court ruled that this omission of the legislature was unconstitutional and that the right to inheritance may be restricted in the public interest, but the legislator must compensate the testamentary heir who did not acquire the land for this reason. In addition to establishing the legislator's omission, the panel ruled that the testamentary disposition in respect of which the authority refused to approve the acquisition was not invalid; if the testamentary heir is refused official approval, there is a financial disadvantage that is not compensated by law (i.e., the requirement of proportionality provided for by the Fundamental Law is not met). To correct the omission, it is necessary for the testamentary heir to receive pecuniary compensation from the state, which is a necessary heir. The Constitutional Court, therefore, found an infringement of fundamental rights by omission and called on the Parliament to

246 Constitutional Court Decision No. 3242/2017, paragraphs 20–24.
247 Article XIII of the Fundamental Law.
248 Article P) of the Fundamental Law.
249 Article 5(7) of the Land Transfer Act.
250 Article 10(2) of the Land Transfer Act.
251 Article 34(1) and (3) of the Land Transfer Act.

establish a compensatory rule by December 31, 2017; it also annulled the last sentence of Section 34(3) of the Land Transfer Act.[252]

VII. In addition to the above, the Constitutional Court has dealt with several other cases[253] relating to the acquirement of agricultural land, which will not be discussed in detail due to space constraints.

4. Hungarian land law in the light of EU law

4.1. The relationship between Hungarian land law and EU law until the expiry of the land acquisition derogation period

I. Hungary declared its intention to join European integration and then the European Community, as early as after the regime change. In the negotiations on the regulation of agricultural land, which started at that time, the negotiating partners treated the issues of acquisition of ownership and acquisition of use separately from the outset. Thus, while the European Agreement, which was meant to express the country's intention to join the European Union and was promulgated in Hungary by Act I of 1994, applied the principle of national treatment to the use of land by citizens of the member states of the European Community from the very beginning, different provisions were applied to the acquisition of land. In the European Agreement between Hungary and the European Community (later the European Union), which settled several issues, the question of land ownership was defined in relation to the establishment of Community companies and nationals (Article 44). The issue concerning the freedom of establishment has arisen regarding the date by which the applicant country must ensure "national treatment" for companies and nationals in the Community. The ownership, sale, long-term lease, or tenancy of immovable property, land, and natural resources was included in a so-called "perpetual list of exceptions," under which Hungary was not required to introduce national treatment for EU companies and citizens in respect of agricultural land until the date it became a full member of the European Union.[254]

252 Constitutional Court Decision No. 24/2017, paragraphs 34–44.

253 See, in particular, Constitutional Court Decision No. 3353/2021 on the right of prelease, Constitutional Court Decision No. 3297/2019 on the resolution of the local land commission and on legal remedies, Constitutional Court Decision No. 3224/2019 on the regulation of local land commissions, Court Decision No. 22/2018 on the amendment of a lease contract for agricultural lands, Constitutional Court Decision No. 20/2018 on the extension and retroactivity of the lease contract, Constitutional Court Decision No. 18/2018 on the authorization of a sales contract by the public authorities and land protection fine, Constitutional Court Decision No. 3255/2018 on the refusal to authorize a lease contract, Constitutional Court Decision No. 3278/2017 on the cardinal act requirement in connection with the amendment of the Implementation Land Act, Constitutional Court Decision No. 3146/2015, and Constitutional Court Decision No. 1120/2014 on the acquisition of the right to use agricultural land.

254 Cf. Prugberger, 1998, pp. 276–277.

II. In 2003, the Treaty of Accession was signed. In this, the issue of land acquisition was no longer regulated in the context of establishment but in the context of the free movement of capital, and an additional period of exemption was negotiated until the full implementation of the national treatment principle, as was the case with other countries that joined in 2004 and afterwards.[255] Before going into the detailed rules, it is important to note that this area was not included in the Treaty of Accession for countries that joined before 2004; in other words, it has become a permanent feature of the Treaty of Accession for countries that joined in 2004 and afterwards.

Pursuant to the Treaty of Accession and its Annex X, point 3 on the free movement of capital, Hungary has succeeded in obtaining certain exemptions for the acquisition of real estate: (a) the acquisition of ownership of real estate not constituting arable land by nationals of other member states; and (b) the acquisition of agricultural land (i.e., arable land) by natural persons not residing in Hungary or not being Hungarian nationals, or by legal persons.

In the latter case on arable land, Hungary may maintain, for 7 years from the date of accession (i.e., until 2011), the prohibition on the acquirement of agricultural land by natural persons not residing in Hungary or not being Hungarian citizens *as well as by legal persons*, included in its legislation in force at the time of signing the Treaty of Accession. However, even during this transitional period of 7 years (moratorium), certain rules protect the interests of nationals of member states to a certain extent, which means that a national of a member state or a legal person established under the legislation of another member state may not be treated less favorably in respect of the acquisition of agricultural land than they were treated on the date of signature of the Treaty of Accession. Furthermore, nationals of a member state may not be subject to stricter restrictions than nationals of third (i.e., non-EU) countries. While the above text of the Treaty of Accession is similar to the derogation rules of other member states, Hungary's derogation was unique compared to the transitional derogation arrangements of the countries that joined in 2004 and 2007 in that it also applied to legal persons (such accession provisions were later adopted for Croatia). This may be the reason why, while in other new member states, which also had derogations, we often heard of foreigners acquiring land *lawfully* during the derogation period, typically through their interests in domestic legal persons, in Hungary, the acquisition of land by foreigners—with certain exceptions—typically, if not exclusively, meant the *unlawful* acquisition of land, and these transactions were most often referred to by the common name of "fraudulent contract."

During the 7-year moratorium, however, nationals of member states had the possibility to acquire ownership of Hungarian arable land. Under this provision, nationals of another member state who wished to establish themselves in Hungary as self-employed agricultural producers and who had been legally resident and engaged in agricultural activities in Hungary for at least 3 years continuously were allowed to acquire ownership of Hungarian arable land and were not subject to any different

255 Cf. Szilágyi, 2010; Szilágyi 2017.

rules and procedures from those applicable to Hungarian nationals. This possibility was also regulated in detail in the Arable Land Act, which was in force from our accession until May 2014, by transposing and supplementing this provision of the Treaty of Accession. However, it should be noted that, especially after 2010,[256] few people made use of this land acquisition option.

Annex X to the Treaty of Accession also provided for the possibility of extending the 7-year moratorium. Under the rules, with sufficient evidence that there will be a serious disturbance or threat of serious disturbance on the agricultural land market in Hungary at the end of the transitional period, the Commission shall, at the request of Hungary, decide to extend the transitional period for a maximum of 3 years. On the basis of the Parliament's decision,[257] Hungary has attempted to extend the 7-year moratorium, taking into account, *inter alia*, that (a) the EU agricultural support to Hungary has only reached the average of the old EU member states from 2013 onwards; (b) average land prices in Hungary are still significantly below those of most EU member states, threatening to seriously disrupt the agricultural land market after 2011; (c) the land consolidation processes that started after the regime change was not (and still is not) completed. The Commission finally agreed[258] to extend the land moratorium until April 30, 2014; this was a good reflection of the fact that Hungary took over the rotating presidency of the EU Council at the beginning of 2011.

III. However, before the moratorium expired, the legislator now had to create the concept of a new land regime. In developing the legal basis for this concept, the Hungarian legislator had three sources, in particular, to draw on. Firstly, the primary and secondary sources of law of the European Union (mainly primary sources of law for land acquisition rules); secondly, the case law of the Court of Justice of the European Union; and thirdly, the national land law of the member states that had already joined the EU. The following can be said of these three sources: (a) the Treaty on the Functioning of the European Union (TFEU) is a key source of primary EU law, but its provisions on land acquisition are principles and objectives (free movement of capital and persons, CAP objectives) that lack detail (i.e., are too generic); (b) although the case law of the Court of Justice of the European Union interprets the aforementioned principles, very few concrete cases exist on land acquisitions, and the case law of the Court of Justice of the European Union is constantly changing. Consequently, even in the light of the case law of the Court of Justice of the European Union, it is not always clear how the principles of the TFEU should be applied when drafting new legislation; (c) *the national legislation of the previously acceded member states* serves as a model for

256 Personal statement by *Attila Simon*, Deputy State Secretary of the Ministry of Rural Development, at the conference 'Hungarian wine as an object of legal protection' organized by MTA-MAB, the Hungarian Lawyers' Association and ME-ÁJK on November 11, 2011 at the MTA-MAB Headquarters in Miskolc.

257 Decision No. 2/2010 (18.II.) of the Hungarian Parliament on the need to extend the prohibition on the acquisition of agricultural land by non-Hungarian natural persons and legal entities.

258 See EU Commission Decision 2010/792/EU (12.20.2010)

the new member states,[259] but it is worth pointing out that, on the one hand, the legislation of other member states cannot be taken over one by one due to the differences in their legal systems (i.e., the legislation of the new member states will necessarily be different from that of the model country when using a model)[260]; on the other hand, it is far from certain that the legislation of the model country conforms with EU law. The latter situation may arise for several reasons. For example, the legislation of the model country may never have been examined by the Commission of the European Union or may not have been referred to the Court of Justice of the European Union, or, if it has been, the case law of the Court of Justice of the European Union may have changed in the meantime.[261]

4.2. The relationship between Hungarian land law and EU law after the expiry of the land acquisition derogation period

In connection with the Hungarian land law legislation adopted at the end of the land acquisition derogation, the Commission of the European Union has initiated infringement proceedings, and, separately, preliminary ruling proceedings have also been initiated before the Court of Justice of the European Union.[262] The following points are worth highlighting in this context.

In the context of the EU's investigation of the Hungarian land use regime, it is worth noting that Hungary has so far been subject to two infringement procedures. Firstly, the Commission of the European Union initiated proceedings in a well-defined segment of the land regime, namely the *ex lege* termination of usufructuary rights established by contract between non-close relative (hereinafter: the usufructuary case)[263] and then infringement proceedings were initiated in respect of the Hungarian land regime as a whole[264] (as in the case of the other countries that joined the EU in 2004; hereinafter: the global case). It is important to note that in the meantime (i.e., in parallel to the infringement proceedings), preliminary rulings were also issued in the usufruct case, which is also worth mentioning in the context of the presentation of the usufruct case.

259 Prugberger and Szilágyi, 2004, pp. 38–41.
260 In applying the previous case law of the CJEU to the present case, we must be cautious "because the laws of the Member States on land acquisition differ in form and in the objectives pursued"; Opinion of the Advocate General in Case C-370/05 (Reported October 3, 2006), paragraph 23. See also: Korom, 2009, p. 15.
261 For similar reasons, *Ágoston Korom* speaks of "land policy uncertainties"; Korom, 2013, pp. 22–23.
262 See Korom, 2021, pp. 101–125.
263 The usufructuary case (Infringement 2014/2246, i.e. INFR(2014)2246) is described in detail: Andréka and Olajos, 2017, pp. 410–424. Press releases on the case:
https://ec.europa.eu/commission/presscorner/detail/hu/IP_14_1152
https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_2102
264 Infringement No 2015/2023; i.e. INFR(2015)2023. Press releases on the case:
https://ec.europa.eu/commission/presscorner/detail/hu/IP_15_4673
https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_1827

I. As regards the global case, the following should be highlighted, based mainly on the scientific paper by Tamás Andréka.[265]

In the global case, first, it is worth noting that in the procedure initiated by the Commission of the European Union, Hungary succeeded in having its arguments accepted regarding several concerned Hungarian provisions that the measures comply with EU law. This is how the scope of the provisions on (a) the procedural role of the local land commission, (b) the land acquisition and land possession limit, (c) the system of preemption and prelease entitlements, and (d) the duration of the lease was finally excluded from the infringement procedure, among others.[266]

All these measures—now considered EU law compliant—are critical elements of Hungarian land law. However, in the ongoing infringement proceedings, the Commission of the European Union continues to challenge their legality under EU law of institutions such as (a) the prohibition on legal persons to acquire and the prohibition of transformation, (b) the requirement of professional competence of agricultural producers, (c) the non-recognition of practice acquired abroad, (d) the self-farming obligation, and the Commission of the European Union also questions (e) the objectivity of the conditions for the prior authorization of sales contracts.[267] Among the issues challenged, the prohibition on legal persons to acquire land is one of the pillars of current Hungarian land law.

In relation to the inability of legal persons to acquire land, it is important to point out that (a) current land law applies not only to the acquisition of land by foreign legal persons but also, with certain exceptions, to domestic legal persons; (b) the general prohibition on legal persons applies only to the acquisition of land and not to the use of land.

The prohibition on legal persons to acquire land was already part of Hungarian land law before the new land regime, from 1994, and is one of the unique features of Hungarian land law in the region. The importance of the institution is summarized by Tamás Andréka:

> "The aim is to prevent the development of a complex chain of ownership that is in practice uncontrollable, which would contradict the aim of preserving the population retention capacity of the countryside, as it would be impossible to control the land possession limit and other acquisition conditions."[268]

In this sense, in our opinion, if the Hungarian legislator were to lift the prohibition on legal persons acquiring land, several other Hungarian provisions that the Commission of the European Union has otherwise deemed to be lawful would become "permeable" (so to speak, a kind of unwanted gap would be created in the strict web

265 Andréka and Olajos, 2017, pp. 410–424.
266 Andréka and Olajos, 2017, pp. 410–424.
267 Andréka and Olajos, 2017, pp. 410–424.
268 Andréka and Olajos, 2017, pp. 410–424.

of rules); in other words, this legal institution is not merely one of the fundamental institutions of the Hungarian land regime but a kind of conceptual framework, its spirit. Its possible abolition would entail a major rethinking of the Hungarian land law in force from 2014. The case would also set a precedent at the EU level[269] if the Court of Justice of the European Union were to rule on the issue.

II. It is important to point out, regarding the infringement proceedings of the usufruct case, that the judgment was preceded by the combined judgment in the preliminary ruling procedure in usufruct cases. With this in mind, among the cases on Hungarian land law concerning the *ex lege* termination of usufructuary rights based on a contract between non-close relatives, we first present in detail Joined Cases C-52/16 and C-113/16 (i.e., the SEGRO and Horváth judgments),[270] which was decided in a preliminary ruling procedure, and then briefly refer to an order of May 31, 2018 in Case C-24/18,[271] also decided in a preliminary ruling procedure, and Case C-235/17, a usufruct case,[272] decided in infringement proceedings. Finally, the most recent preliminary ruling case, C-177/20, the so-called Grossmania case,[273] is analyzed. Before describing the cases, it ought to be pointed out that this provision of Hungarian land law is also the subject of a decision of the Hungarian Constitutional Court, which has already been described in detail in subchapter 3 of this chapter.

II.1. In the Joint Cases C-52/16 and C-113/16 (i.e., the SEGRO and Horváth judgments), the provisions of the Land Transfer Act and the Implementation Land Act, which *ex lege* abolish usufructuary rights, as described above, were examined by the Court of Justice of the European Union in the light of Article 49 TFEU (freedom of establishment), Article 63 TFEU (free movement of capital), and also Article 17 (right to property) and Article 47 (right to a fair trial) of the Charter of Fundamental Rights of the European Union. In light of the case law of the Court of Justice over the last decade and a half, it is not surprising that the Court has delivered its judgment essentially in the context of the free movement of capital within the EU legal concept of land acquisition, which is situated at the intersection of positive and negative integration models,[274] and within that, nowadays, more toward the negative integration model.[275] In particular, in light of this approach of the Court of Justice, it was decided

269 In the Ospelt case, the CJEU found that an Austrian (concretely: Vorarlbergian) regulation restricting the acquisition of property of a Lichtenstein foundation (i.e., a legal person) is contrary to the EU law; however, the case was so different in principle that its application to the Hungarian land regime is not straightforward.

270 Joined cases C-52/16 and C-113/16, judgment of the Court of Justice of the EU of 6 March 2018, SEGRO' Kft. v Vas Megyei Kormányhivatal Sárvári Járási Földhivatala (C-52/16) and Günther Horváth v Vas Megyei Kormányhivatal (C-113/16).

271 Case C-24/18, order of the Court of Justice of the EU of 31 May 2018, István Bán v KP 2000 kft., Edit Kovács.

272 Case C-235/17, judgement of Court of Justice of the EU of 21 May 2019, European Commission v Hungary.

273 Case C-177/20, judgement of the Court of Justice of the EU of 10 March 2022, Grossmania v Vas Megyei Kormányhivatal.

274 Korom, 2021, pp. 101–125; Szilágyi, 2017; etc.

275 Korom, 2021, pp. 101–125; Szilágyi, 2017; etc.

that the Hungarian legislation constitutes an obstacle to the free movement of capital and that it cannot be justified on the basis of the principle of proportionality.[276] More interesting, however, was the position of the Court of Justice on the two provisions of the Charter of Fundamental Rights referred to. In this respect, it may be noted that no particular breakthrough in the case law has been made, with the Court of Justice stating that, having found an infringement of the free movement of capital, it was now "not necessary, in order to resolve the dispute in the main proceedings, to examine the national legislation in question in the light of Articles 17 and 47 of the Charter."[277]

II.2. With regard to the order of May 31, 2018 in reference to a preliminary ruling, Case C-24/18, the Court of Justice of the European Union ruled that the application was inadmissible. The question referred by the national court for a preliminary ruling was the following:

> "Does it infringe Articles 49 and 63 TFEU if a legislation of a Member State which, by operation of law, terminates, without compensation, the right of use of land for agricultural and forestry purposes in cases where the property to which the right of use relates is acquired by a new owner by way of execution and the user of the land has not benefited from agricultural rural development support from EU or national sources linked to land, which is subject to a statutory obligation to use the land for a certain period?" The Court of Justice, considering the application manifestly inadmissible, closed the case by order, arguing that "it appears from the order for a preliminary ruling in the present case that all elements of the main legal dispute are confined to Hungary. The dispute in question concerns the invalidity or nullity of a lease of land situated in Hungary concluded between a Hungarian national and company established in that Member State." [278] It added that "in the present case, the referring court does not indicate to what extent the dispute before it, despite its exclusively internal nature, is connected with the provisions of the TFEU concerning freedom of establishment and the free movement of capital, a connection which, for the purposes of the resolution of that dispute, requires the interpretation requested in the context of the reference for a preliminary ruling."[279]

II.3. In its preliminary judgment in Case C-235/17 on usufruct, the Court of Justice of the European Union ruled against Hungary in relation to the Hungarian legislation already known from the SERGO judgment. The interesting aspect of the case is that, this time, in addition to Article 63 TFEU on the free movement of capital the Court of Justice also assessed the merits of Article 17 of the Charter of Fundamental Rights on

276 Joined Cases C-52/16 and C-113/16, paragraphs 81–126 and 127.
277 Joined Cases C-52/16 and C-113/16, paragraph 128.
278 Case C-24/18, paragraph 16.
279 Case C-24/18, paragraph 19.

the right to property and found that it had been infringed. The Court of Justice held that the right of usufruct governed by Hungarian law fell within the scope of Article 17 of the Charter of Fundamental Rights, basing its interpretation on the case law of the European Court of Human Rights.[280] The Court of Justice also considered the right of usufruct to be a "lawfully acquired" right[281] and held that "the cancellation of usufructuary rights brought about by the contested provision constitutes a deprivation of property within the meaning of Article 17(1) of the Charter."[282] The Court of Justice also added that

"although that provision [of the Charter of Fundamental Rights] does not lay down an absolute prohibition on persons being deprived of their possessions, it does, however, provide that such deprivation may occur only where it is in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss."[283] "In any event, the contested provision does not satisfy the requirement laid down in the second sentence of Article 17(1) of the Charter, according to which fair compensation must be paid in good time for a deprivation of property such as the loss of the rights of usufruct concerned,"[284] which is why the Court of Justice found that "it must be held that the deprivation of property affected by the contested provision cannot be justified on the ground that it is in the public interest; nor are any arrangements in place whereby fair compensation is paid in good time. Accordingly, that provision infringes the right to property guaranteed by Article 17(1) of the Charter."[285]

To execute the judgment in C-235/17, Act CL of 2021 was enacted, commonly referred to as the Compensation Act, Article 128 of which, largely by amending the Implementation Land Act, created the possibility of appropriate compensation for *ex lege* termination of usufructuary rights.

II.4. The preliminary ruling judgment of March 10, 2022 in the so-called Grossmania case, C-177/20, is one of the most recent judgments on the subject. The case is again based on the 2013 Hungarian legislation which, as of May 1, 2014, abolished usufructuary rights in favor of persons who are not closely related to the owners of agricultural land located in Hungary. Such a right of usufruct was cancelled in the land register in the case of Grossmania, a company owned by nationals of other EU member states, which, although it did not appeal against the cancellation, requested the Hungarian authorities to reregister its right of usufruct on the property concerned following the SEGRO judgment. Since the Hungarian authority concerned was unable to do so under the rules in force at the time, Grossmania challenged the administrative decision

280 Case C-235/17, paragraphs 69–72 and 81.
281 Case C-235/17, paragraph 73.
282 Case C-235/17, paragraphs 82, 85–86; In paragraph 85, the Court of Justice repeatedly refers to the case law of the European Court of Human Rights.
283 Case C-235/17, paragraph 87.
284 Case C-235/17, paragraph 125; In paragraph 128, the Court of Justice repeatedly refers to the case law of the European Court of Human Rights.
285 Case C-235/17, paragraph 129.

before the competent Hungarian court, which referred the matter to the Court of Justice. Several points of the judgment of the Court of Justice may be important and interesting; however, in the present study, we consider it important to highlight the provisions relating to compensation, namely that, according to the Court of Justice, it is the duty of the Hungarian authorities and courts to take all measures capable of eliminating the unlawful consequences of national legislation. Such measures may consist, in particular, in the reregistration of usufructuary rights which have been unlawfully extinguished in the land register. Should such reregistration prove impossible because it would prejudice rights acquired in good faith by third parties following the cancellation of the usufructuary rights concerned, the former holders of the extinguished usufructuary rights should be granted a right to monetary or other compensation of a value sufficient to compensate for the economic loss resulting from the termination of those rights. In addition, those former holders should also be entitled to compensation for the loss suffered as a result of that termination, provided that the conditions laid down in the case law of the Court of Justice are met.[286]

286 Case C-177/20, paragraphs 67–75.

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