

Czech Republic: An Open Market Dominated by Large Owners

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ABSTRACT

This chapter focuses on the acquisition of agricultural land in the Czech Republic. It aims to describe this topic in its historical and property law context since the privatization of agricultural land after 1989 still concerns its transfer from the state to private individuals. Furthermore, transfers of agricultural land were restricted on the basis of nationality until being gradually abolished after the Czech Republic joined the European Union in 2004.

First, the chapter describes the Czech concept of agriculture and agricultural land and the general legal framework of both protection and transfer of agricultural land. Then, restrictions on the cross-border acquisition of agricultural land are analyzed in the context of land restitution and specific measures toward foreign investors. A separate subchapter is devoted to the application of the preemption right of the state. The last part introduces the general requirements on the transfer of agricultural land, with a particular focus on the evidence in the Real Estate Register. Additional requirements for the transfer of state-owned land are described with details on priority transfers of agricultural land, sales by public offer, and public tender.

The authors conclude that, currently, the only major obstacle to the cross-border acquisition of agricultural land in the Czech Republic is the state's preemption right, which applies only to selected land, particularly in protected natural areas. Transfers of state-owned agricultural land are governed by special rules, which, however, do not in principle restrict interested parties from other states within the EU or the European Economic Area. Neither do they distinguish between persons residing or established in the Czech Republic and in another member state, nor do they differentiate between the requirements for conducting agricultural activities.

KEYWORDS

Czech land law, acquisition of land, agricultural land, restitution, preemptive right

1. Introduction

This chapter describes the rules on the acquisition of agricultural land in the Czech Republic. Until recently, fundamental differences existed between the acquisition of agricultural land by Czech citizens or companies and foreign investors. As these

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differences have been basically eliminated, the Czech agricultural land market can be described as open and nondiscriminatory, and not only in relation to other member states. Czech legislation does not differentiate substantially between nationals of member states or third countries. On the other hand, a prospective buyer must be aware of the restrictions on the transfer of certain agricultural land applicable in the Czech Republic—in particular based on the state’s preemption right—as well as the specific requirements governing the transfer of the land itself.

At the same time, Czech agriculture differs in many respects from other EU countries. The main differences are the larger average size of agricultural enterprises, a high share of leased land, and the high representation of corporations.¹

Unfortunately, no up-to-date literature that would sufficiently describe the legal regulation of agricultural land transfers in the Czech Republic is available in foreign languages. For foreign lawyers, investors, and ecologists, it may not even be clear how and why the ownership and economic structure of Czech agriculture has evolved to its present state, which is specific even in European terms. At least a brief historical excursus, including the overview of land restitution after the 1989 revolutions, is provided in this chapter.

2. Theoretical backgrounds and summary of national land law regime

2.1. *Concept of agriculture and agricultural land*

The concept of agriculture is not defined in the Czech legal system. Agriculture is perceived as an activity tied to agricultural land, which is not only an object of property rights but also an essential component of the environment.² Then, agriculture is also a business activity aimed at the production of agricultural products, especially foodstuffs, in line with the definition of the agricultural production provided by Act no. 252/1997 Coll. on agriculture (hereinafter: the Agriculture Act): “an activity encompassing crop and livestock production, including the production of breeding animals and plant propagating material, as well as the processing and sale of own agricultural production, and further forest and water management.”³

Agricultural issues are not directly addressed by the Czech Constitution (hereinafter: the Constitution), the Charter of Human Rights and Freedoms (hereinafter: the Charter), constitutional laws, and other sources of constitutional law, which together form the Constitutional Order of the Czech Republic.

The definition of agricultural land in the Czech legal system is closely related to the definition of the agricultural land fund, which is conceived by Act no. 334/1992 Coll. on the protection of the Agricultural Land Fund (hereinafter: the Agricultural Land Fund

1 Zdeněk and Lososová, 2020, p. 55.

2 Such a concept is well established in Czech legal science. See Tkáčiková, Vomáčka, Židek et al., 2020.

3 Section 2e(4) of the Agriculture Act.

Act), as an essential natural resource, a means of production, and a component of the environment. According to Section 1(2) of the Agricultural Land Fund Act, the agricultural land fund consists of land under agricultural cultivation, such as arable land, hop-growing areas, vineyards, gardens, orchards, permanent grassland, and land that has been and continues to be under agricultural cultivation but not under temporary cultivation. For these two basic categories, the Agricultural Land Fund Act introduces the legislative abbreviation “agricultural land.” According to Section 1(3) of the Agricultural Land Fund Act, the agricultural land fund also includes ponds with fish or waterfowl farming and non-agricultural land needed for agricultural production, such as dirt roads, land with equipment important for field irrigation, irrigation reservoirs, drainage ditches, dikes used to protect against waterlogging or flooding, technical anti-erosion measures, and so on. In cases of doubt as to whether a piece of land is part of the agricultural land fund, the agricultural land fund protection authority at the level of the municipal authority of the municipality with extended competence shall decide.

The additional legislation governing the use of agricultural land—for example regarding rules on fertilizer use⁴—is based on the general definition of agricultural land in the Agricultural Land Fund Act and does not provide its own definition.

A separate act on forests (Act no. 289/1995 Coll., Forest Act) provides the definition of forests (“forest stands with their environment and land fulfilling forest functions”⁵), the standards of their protection, and the requirements for their use for other purposes. In particular, withdrawal or restriction proceedings shall be conducted.⁶

For the purposes of registration in the Real Estate Register, Act no. 256/2013 Coll. on the Real Estate Register (hereinafter: the Real Estate Register Act) defines the categories of land—also using the subcategory of agricultural land, which is similar to the one in the Agricultural Land Fund Act. Pursuant to Section 3(2) of the Real Estate Register Act, land is divided by type into arable land, hop-growing areas, vineyards, gardens, orchards, permanent grassland, forest land, water areas, built-up areas, and courtyards and other areas. Arable land, hop-growing areas, vineyards, gardens, orchards, and permanent grassland are agricultural land. The following information is available in the land register for agricultural land: type of land; type of use (e.g., tree planting, borders, photovoltaic power plant); type of land protection (i.e., national park or protected water management area); and the bonitated (evaluated) soil ecological units (BPEJ), which reflect the quality of the soil.

2.2. National legal framework

Although the Constitution has no *expressis verbis* norm concerning agricultural lands/holdings, the Czech legislation of the highest legal force is relevant to agriculture mainly because of protection of property and entrepreneurship and protection of

4 Act No 156/1998 Coll. on fertilisers, soil auxiliaries, plant biostimulants, and substrates and on agrochemical testing of agricultural soils (Fertiliser Act).

5 Section 2 (a) of the Forest Act.

6 Section 15 and 16 of the Forest Act.

the environment, particularly soil. The Constitutional Court interprets the constitutional requirements related to agricultural activities in the context of the obligations arising from the Czech Republic's membership in the European Union.⁷ In particular, it reflects the principles arising from EU law, including the principle of protection of fundamental rights.⁸ The constitutional protection of property in Art. 11 of the Charter is based on a general guarantee and equal protection. Therefore, any interference with real estate ownership, possession, or management can be brought before the Constitutional Court after exhausting the ordinary remedies available in the ordinary courts, provided it reaches a certain degree of seriousness.⁹ Similarly, the landowners affected by agricultural activities may seek remedies before the civil or administrative courts and then file a constitutional complaint invoking their property rights protected under the same provision of the Charter. Article 11(4) of the Charter provides the conditions for expropriation and states that this is only permitted in the public interest, based on law, and for compensation.¹⁰

According to the Constitutional Court, the state may determine which property may be owned only by it to secure the needs of society, the development of the economy, or public interest.¹¹ The state may take care of the careful use of its natural resources and protect its natural wealth, even if it does not confiscate private property in favor of the interests of other private entities.¹² This corresponds, for example, to the statutory concept of land adjustments,¹³ which are conducted in the interest of the public as defined in Section 2 of Act no. 139/2002 Coll. on land adjustments and land offices.¹⁴ Nevertheless, no comprehensive guidance has been provided by the Constitutional Court on the acquisition of agricultural land.

The Agricultural Land Fund Act is a key regulation for the protection of agricultural land, and its provisions are based on a special law adopted for the same purpose

7 The Czech Republic has been a member of the European Union since 2004. Therefore, the regulation of agriculture must comply with the obligation arising from Art. 10a of the Constitution, on the basis of which an international treaty may delegate certain powers of the Czech Republic's authorities to an international organisation or institution.

8 In the *Sugar Quota* case, for example, the Constitutional Court assessed the compatibility of the national legislation with the principle of legitimate expectation, the principle of legal certainty and the prohibition of retroactivity, the prohibition of discrimination and the principle of equality, and finally also the principle of protection of the right to entrepreneurship and to operate other economic activities. For detail, see ruling of the Constitutional Court of March 8, 2006, No. Pl. ÚS 50/04.

9 For more details, see Vomáčka and Tomoszek, 2020.

10 For more details, see Hanák, Židek and Černocký, 2020.

11 See the ruling of the Constitutional Court of September 25, 2018, No. Pl. ÚS 18/17, para. 128.

12 See the dissenting opinion of Judge Šimáčková in the resolution of the Constitutional Court of August 5, 2014, No. Pl. ÚS 26/13.

13 Land adjustments should ideally also lead to an improvement in the functions of the landscape in terms of the water regime, soil erosion, and biodiversity, but the result may not always be only soil protection; it may also lead to a negative change in terms of maintaining the overall ecological functions of the land concerned.

14 See the ruling of the Constitutional Court of May 27, 1998, No. Pl. ÚS 34/97 and the resolution of the Constitutional Court of March 31, 2011, No. III ÚS 2187/10.

in 1959, which was replaced in 1966 and in 1992 (after the Velvet Revolution) by the Agricultural Land Fund Act. It ensures the protection of agricultural land from erosion, pollution, and non-agricultural use, and it further protects non-agricultural land that is essential for agricultural production (e.g., dirt roads, irrigation reservoirs, or drainage ditches) and ponds for fish farming.

Act no. 252/1997 Coll. on agriculture (hereinafter: the Agriculture Act) is a fundamental regulation governing the conditions for entrepreneurship in agriculture, the support for agriculture, and the implementation of the Common Agricultural Policy and the European Union's rural development policy. The conditions of ecological (organic) farming are mainly regulated by Act no. 242/2000 Coll. on organic agriculture.

The evidence of the immovables is covered by the Real Estate Register Act. The registration of the ownership in the Real Estate Register is compulsory. The Register includes a set of data on immovable property, including its inventory, description, its geometric and positional determination, and the registration of rights to such property.¹⁵

Furthermore, the registration is crucial in terms of private law requirements governing the transfer or disposal of agricultural land. Act no. 89/2012 Coll. on the Civil Code (hereinafter: the Civil Code) does not define agricultural land in any way. Therefore, the public law definition applies if, for example, it provides that

“agricultural land may be divided only in such a way that the division results in land that is effectively cultivated both in terms of area and the possibility of permanent access. This does not apply if the land is to be divided for the purpose of erecting a building or for such a purpose for which the land may be expropriated.”¹⁶

This general requirement is, of course, relevant for transfers of agricultural land because, if the whole land is not transferred or is to be divided, the possibility of efficient agricultural management is taken into account.

Unfortunately, the entry in the land register often does not correspond to reality, either because of historical inaccuracies or because landowners usually do not report changes. Any doubts about the nature of the land are resolved by the municipal authorities. The nature of the land had to be investigated retrospectively in the restitution process (most often since June 1991, when Act no 229/1991 Coll. on land came into force). For these transfers, it was necessary to interpret the definition of agricultural land as broadly as possible.¹⁷

Farmers in the Czech Republic still farm predominantly on rented land, although the proportion of rented land has fallen from 92% to less than 73% over the last 20

15 Section 1 of the Real Estate Register Act.

16 Section 1142(2) of the Civil Code.

17 Judgment of the Supreme Court of November 18, 2009, Ref. No. 28 Cdo 2969/2009.

years.¹⁸ However, although land tenure relations are registered in the Real Estate Register on a voluntary basis, in practice, this does not happen for financial reasons. Fortunately, information on agricultural land users can be obtained from the public land register (LPIS),¹⁹ which was created primarily to provide European subsidies.

In 1993, 4,283,010 hectares of agricultural land were registered in the Real Estate Register. In 2020, the hectares were only 4,200,204.²⁰ Thus, almost 8.5 hectares of fields, meadows, or gardens have disappeared every day since the Czech Republic was founded. Agricultural land has mostly been converted into building land, and some of it has been reforested. The price of agricultural land in the Czech Republic, on the other hand, has been rising steadily. From 2004, the earliest data available from the Czech Statistical Office, to 2020, it has increased almost fivefold: from CZK 4.98 per square meter to CZK 24.2 (approx. EUR 1) per square meter.²¹

The inheritance of agricultural land is governed by general civil law.²² The inheritance rules are relevant to agriculture as far as they do not prevent the continuous fragmentation of agricultural land, which is arguably one of the main reasons that the owners do not farm the land themselves but rent it out. The law does not prevent in any way the land from being inherited cross-border by a foreign citizen based on the legal hierarchy of succession or the inheritance agreement concluded within the course of the testator's lifetime.

3. Restrictions on the acquisition of agricultural land and forests

Czech law does not apply special restrictions on transfers of agricultural land, except for the preemption right for certain land in favor of the state (see below). The rules for the acquisition of agricultural land are basically the same for both Czech and foreign persons—natural and legal. Czech law also does not restrict, in principle, the acquisition or disposal of other rights *in rem* relating to the use of agricultural land (e.g., usufruct, lease arrangement). Furthermore, no special regulation exists regarding the lease of agricultural lands and holdings.

18 Czech Statistical Office. Integrated Agricultural Survey (2020). [Online]. Available at <https://www.czso.cz/csu/czso/integrated-farm-survey-2020> (Accessed: December 6, 2021).

19 Available at <https://eagri.cz/public/app/lpisext/lpis/verejny2/plpis/> (Accessed: December 6, 2021).

20 Information available at <https://cuzk.cz/Periodika-a-publikace/Statisticke-udaje/Souhrnne-prehledy-pudniho-fondu.aspx>. (Accessed: December 6, 2021).

21 Czech Statistical Office. *Table 7.1 The average agricultural land prices*. [Online]. Available at: https://www.czso.cz/csu/czso/ipc_ts (Accessed: December 6, 2021).

22 Czech inheritance law follows the principle on the universal succession of heir into the position of the deceased person. The heir is therefore liable for all the debts of the deceased person irrespective of the value of the acquired inheritance. The heir may relinquish the right to the inheritance or any part thereof in favor of another heir. This heir, however, cannot waive its right to the inheritance in favor of a person who is not an heir to any assets of the inheritance. See Section 1475 et seq. of the Act No. 89/2012 Coll., Civil Code. For more details, see Elischer, Frinta and Pauknerová, 2013.

However, until recently, there existed fundamental differences between the acquisition of agricultural land by Czech citizens or companies and foreign investors; now, these differences have been basically eliminated. The Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05) is therefore not of a high relevance to the Czech legal regulation, aside from the general preemption rights, as it indicates no acquisition caps, price controls, residence requirements, or privileges in favor of local acquirers. Furthermore, it does not stipulate any prior authorization, self-farming obligation, prohibition on selling to legal persons, or condition of reciprocity.

In general, legal persons do not have to meet any special conditions when purchasing agricultural land compared to natural persons, and no specific national rules exist on the acquisition of shares in a company that already owns agricultural land. It was not always so; with Act no 95/1999 Coll. on the conditions for the transfer of agricultural and forest land from state ownership to other persons (hereinafter: the Act on Transfer from State), the legislator excluded the possibility for legal entities to acquire agricultural land sold by the state, due to fears that legal persons might buy larger amounts of land and speculate on it. This measure led to an increase in the area of land farmed by natural persons: more than 100,000 hectares between 2000 and 2005. During this period, the state, through the Land Fund, transferred 276,000 hectares of agricultural land to individuals.²³ Later on, the Act on Transfer from State was replaced by Act no. 503/2012 Coll. (see below). Still, as a result of the transformation of state-owned enterprises and agricultural cooperatives, land in the Czech Republic is managed mainly by legal entities—business corporations. In 1997, they managed 74.9% of the land; in 2005, 70.7%; in 2011, 70.1%; and in 2020, still 70.1%.²⁴

As regards the requirements for qualifications in farming, the agricultural entrepreneur must meet several requirements in the case of a natural person: (a) to be fully competent, (b) to have permanent residence in the territory of the Czech Republic or present a document proving that a visa for a stay of more than 90 days or a long-term residence permit has been issued, unless they are a citizen of the Czech Republic or a citizen of a member state of the European Union, (c) by an interview before a municipal authority of a municipality with extended competence, to demonstrate basic knowledge of the Czech language, unless they are a citizen of the Czech Republic or a citizen of a member state of the European Union.²⁵

The acquisition of forests is not restricted, with the exception of state-owned forests. In principle, state forests cannot be sold. Such rule does not apply to exchange, sale of a co-ownership share of the state, sale of a separated forest land, sale in the public interest protected by the Forest Act or other acts, restitution of property, the

23 Soil: situation and outlook report. December 2006, p. 26 and p. 34. [Online]. Available at <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: December 15, 2021).

24 Czech Statistical Office. Integrated Agricultural Survey (2020). [Online]. Available at <https://www.czso.cz/csu/czso/integrated-farm-survey-2020> (Accessed: December 6, 2021).

25 Section 2e of the Agriculture Act.

transfer of forests to municipalities and the transfer of forest land in recognized farms to other owners of land in these recognized farms.²⁶ In this respect, the forests share a similar regime as agricultural land under the Act on Transfer from State and later regulations. Forests in the selected protected natural areas are also burdened with the same preemption right in favor of the state as agricultural land (see below). The same rules also apply to the transfer of the forests and their evidence in the Real Estate Register.

3.1. Land restitution and privatization after 1989

The current structure of land ownership and size is the result of a complex historical development. Between 1948 and 1989, the communist regime effectively nationalized land (both agricultural land and forests). Owners were often illegally deprived of their farmland or left with bare ownership (land was used by agricultural cooperatives). After the Velvet Revolution (as early as 1990 and 1991, while still in Czechoslovakia), legislation was adopted to regulate land restitution. Its aim was not only to alleviate the property injustices and wrongs committed by the communist regime. Former owners were given back their confiscated agricultural land or replacement land if the original land could no longer be returned (e.g., due to urban development); however, restitution was also considered a form of privatization.²⁷ By privatizing businesses and land, the state sought to establish a market economy.

Restitution and privatization are therefore intertwined. This link was also reinforced by the possibility for former owners (*restituents*) to sell their claims to replacement land. However, this was only valid until 2005 as, afterward, only the original restitution holders and their heirs were entitled to acquire land (this decision is the so-called “first restitution dot”).²⁸ Neither the constitutional order nor the international obligations of the Czech Republic imply an obligation to redress historical wrongs: in other words, there is no constitutional right to restitution, which was therefore a benefit provided by the state.²⁹

In the 1990s, buildings, technological equipment, livestock, and movable property were privatized. Transfers of agricultural land were sporadic in this period. Until 1998, transfers of state land were conducted by the Land Fund of the Czech Republic at the discretion of the state on the basis of the demands of former owners, which was extremely non-transparent.³⁰ Laws regulating the privatization mechanism in other areas were also not aimed at the de-nationalization of agricultural property.³¹ Privatization and restitution of agricultural land, therefore, began only after the adoption of Act on Transfer from State in 1999.

26 Section 4 of the Forest Act.

27 Judgment of the Constitutional Court of June 4, 1997, Ref. No. Pl. ÚS 33/96.

28 Judgment of the Constitutional Court of December 13, 2005, Ref. No. Pl. ÚS 6/05.

29 For example, Judgment of the Constitutional Court of November 19, 1999, Ref. No. IV ÚS 432/98.

30 Zeman, 2013, p. 242. and p. 252.

31 Adamová et al., 2020, p. 766.

The state originally intended to privatize 500,000 hectares of land, subsequently increasing the scope to 600,000 hectares (i.e., about 14 % of the total agricultural land area). Already in 2005, approximately 276 thousand hectares were transferred; 3 years later, 452 thousand hectares were transferred, and in 2011, 547 thousand hectares. Thus, the restitution process was almost completed in 10 years. The latest figures (as of December 31, 2019) show that only a few particularly complex cases remain to be resolved, and 99.79% of restitution applications have been decided.³²

Unfortunately, the Land Fund often gave priority to applications of farmers over those of former owners, which was considered a violation of the law. These practices were also criticized by the Supreme Audit Office.³³ After a great struggle and a search for a fair solution,³⁴ the following order of applicants was finally legislated after several years: (1) former owner (*restituent*); (2) a tenant who has been using the offered land for at least 36 months; (3) farmers who have been using at least 10 ha of the offered land for 36 months, or owners using at least 10 ha of agricultural land in the place of the offered land who have been farming on the territory of the Czech Republic for 36 months.

If no one expressed interest, the land was offered in a commercial tender to any natural person (citizen of an EU country or a country of the European Economic Area and Switzerland). Priority was thus given to former owners and farmers who actually farmed the land. The price was also more favorable as the land was sold at below-market prices—an approach intended to encourage private farmers. The income from the sale was not decisive for the state.³⁵ The advantage of the privatization process was that the beneficiaries could obtain replacement land outside their place of residence and outside the original location of the unjustly confiscated property.³⁶ However, the possibility to use agricultural land was often prevented by the fact that the land was located within larger blocks or that there was no access to it; this obstacle is still being removed today through land consolidation. On the other hand, former owners competed for the land offered, effectively reducing the value of their restitution claims. Although they could use the restitution claim to pay the price, they had to offer a higher price than others.

Church property restitution was also almost completed, covering approximately 33,000 hectares of agricultural land³⁷; however, it took much longer. In fact, they only started with the adoption of Act no 428/2012 Coll. property compensation of churches and religious societies—a law that also led to the separation of Church and State.

32 Green report on agriculture, 2019, p. 123.

33 Sale of state-owned real estate managed by the Land Fund of the Czech Republic (2008). Audit conclusions [Online]. Available at <https://www.nku.cz/informace/informace-08-12.pdf> (Accessed: April 15, 2022).

34 Hálová and Doležal, 2012, p. 892.

35 Explanatory memorandum to the Act on Transfer from State.

36 Zeman, 2013, p. 251.

37 Explanatory Memorandum to Act No. 428/2012 Coll.

The sale of state-owned land had a significant impact on the land market. Privatization, as mentioned above, effectively started in 2001 and continued until approximately 2012. At that time, 99% of the allocated land had already been transferred; by contrast, in the 1990s, transfers of agricultural land were limited because agriculture was not profitable, and it was more convenient for farmers to rent land than to buy it. Agricultural land was mainly sold where it could be converted into building land (mostly around the larger towns).³⁸ The current Czech land market corresponds, in its scope, to European conditions.

The restitution disputes (return of confiscated property under the former regime) have been of high importance for agriculture. At their core, they have been somewhat technical, relating to proving that the conditions for restitution had been met—in particular, citizenship and permanent residence.³⁹ The Constitutional Court also reviewed and accepted the conditions for returning property to the churches, including extensive agricultural land.⁴⁰ Later on, it rejected an attempt to retroactively tax church restitution.⁴¹

3.2. Historical restrictions toward foreigners

For more than two decades, the rules for the acquisition of agricultural and other land by foreigners were regulated by the Act no. 528/1990 Coll., Foreign Exchange Act, replaced by Act no. 219/1995 Coll. with the same name (hereinafter: the Foreign Exchange Act). Before the Czech Republic's accession to the EU (i.e., until April 30, 2004), foreigners could acquire agricultural land in principle only by inheritance, and foreigners with permanent residence in the Czech Republic were not considered foreigners for these purposes.

The same rules applied to legal persons with their registered office in the Czech Republic, which, much like Hungary, Slovakia, and Lithuania, negotiated a 7-year transitional period restricting the acquisition of agricultural and forest land.⁴² The main reason for the transitional period was the concern that Czech citizens and farmers would not be able to compete with offers from foreign bidders for agricultural land. Eventually, the income of foreign investment could lead to higher prices, land speculation, and consequently, a threat to the competitiveness of the agricultural sector. Foreign entities could not even participate in the privatization of agricultural land under the Foreign Exchange Act.

However, serious bidders could acquire agricultural and forest land relatively easily by setting up a commercial corporation or buying it.⁴³ In fact, Czech legal enti-

38 Soil: situation and outlook report. December 1999, p. 17. [Online]. Available at <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: December 15, 2021).

39 Ruling of the Constitutional Court of July 12, 1994, No. Pl. ÚS 3/94.

40 Ruling of the Constitutional Court of May 29, 2013, No. Pl. ÚS 10/13.

41 Ruling of the Constitutional Court of October 1, 2019, No. Pl. ÚS 5/19.

42 Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia (2003).

43 Fráňa, 2007, p. 840. and Gala, 2010.

ties owned by foreign capital could acquire agricultural land in the Czech Republic without restrictions.

The Czech Statistical Office or the cadastral authorities do not record the share of agricultural land owned by foreigners or Czech companies owned by foreigners; therefore, it is difficult to estimate the total size of foreign investment in Czech land. However, no significant foreign acquisitions have been announced before the end of the transition period,⁴⁴ and the farmland prices remain significantly lower in Czechia than in Western Europe. Therefore, the fears that agricultural land would fall victim to (foreign) speculation proved to be unfounded. For this reason, unlike other countries, the Czech Republic did not request an extension of the transition period, and no later proposals have been tabled in the Czech Parliament to restrict the acquisition of agricultural land by foreigners.

Another reason for not extending the transition period may be the fact that land has been gradually captured by large local agricultural entrepreneurs—and most recently, even by investment groups and banks. The structure of agricultural land ownership in the Czech Republic thus differs significantly from the situation in other countries in that land is concentrated in the hands of “big landowners” (such as Agrofert, Spearhead, Forestlaan, Rhea Holding, or Úsovsko). This is not only pushing land away from small farmers who actually farm it, but small farmers no longer have a chance to buy the land. Experts warn that the continued concentration of farmland also poses a security risk because it can put strong pressure on the government.⁴⁵

The concentrated land holdings can only be bought by large companies. As a consequence, a foreign investor can buy a small amount of land or a huge amount, but hardly anything in between. The land market is therefore open but at the same time divided between strong players. It appears to us that the legislator is no longer under pressure to protect market from foreign investment since the current regulatory playfield suits the large owners well.

The European Commission and/or at the Court of Justice of the EU (CJEU) have not initiated any proceedings in connection with the cross-border acquisition of agricultural lands/holdings concerning Czech legal regulation or practice. Similarly, no case law of the Constitutional Court has dealt with the issues of the acquisition of agricultural land by foreigners before or after the expiry of the EU derogation period.

3.3. Preemption right

No legal regulation that would establish a preemption right for agricultural land for any entity other than the state exists in the Czech Republic. The most notable is the state’s preemption right to vacant land (including agricultural land) located outside the built-up areas of municipalities in national parks, national nature reserves, and

44 Soil: situation and outlook report. December 2012, p. 47. [Online]. Available at <https://eagri.cz/public/web/mze/puda/dokumenty/situacni-a-vyhledove-zpravy/> (Accessed: April 20, 2022).

45 Vejvodová, 2021.

national natural monuments.⁴⁶ Pursuant to Section 61 of Act no. 114/1992 Coll. on nature protection, the owner of such land is obliged to offer such land for purchase first to the nature protection authority. According to the Constitutional Court, the state has a positive obligation under the Constitution (Article 7) to protect the environment, which it can fulfill by, *inter alia*, centralizing the ownership of land in national parks. The right of preemption restricts only one of the components of the ownership triad (*ius disponendi*).⁴⁷

Unlike the contractual preemption right, the preemption right established directly by law is not registered in the Real Estate Register. The buyer should be aware of its existence because the consequence of a breach of the preemption right is that the beneficiary (the state) can demand that the new owner transfer the property to them for an appropriate remuneration.⁴⁸ This appropriate remuneration, however, does not consider speculation, which could significantly increase the purchase price.

The state has had a preemption right for a relatively long time in respect of land that it privatized under the Act on Transfer from State, unless it was transferred to the former owners. Since 2013, however, the existence of this right has been limited to the period until the purchase price for the land has been paid in full or for a period of 5 years from the date of registration of the ownership right in the Real Estate Register.⁴⁹ The purpose of the restriction was to support the agricultural land market and improve the position of farmers.⁵⁰ The gradual repayment of the purchase price (approximately half of the land was privatized, with the possibility of installments) leads to the termination of this preemption right. However, the state rarely uses the preemption right (only 84 cases between 2013 and 2020),⁵¹ despite the scarcity of agricultural land. Discussions have been conducted regarding the possible preemption right concerning agricultural land, but none have materialized.

4. Transfer of the land

The fundamental difference in the process of transferring agricultural land stems from who owns the land. In the case of state-owned land, specific requirements apply in addition to the general requirements, which may be perceived as an obstacle to

46 The Czech law also provides other preemption rights, usually in favour of the person entitled to certain activities. Most notably, pursuant to Section 20(2) of the Mining Act (Act No. 44/1988 Coll.), an entity that has been granted a mining permit has priority over other applicants for the lease or sale of state-owned land located in a designated protected deposit area. For more details, see Vícha, 2017, p. 117–128.

47 Judgment of the Constitutional Court of September 25, 2018, Ref. No. Pl. 18/17.

48 Section 2144 of the Civil Code.

49 Section 15 of Act No. 503/2012 Coll. on the State Land Office.

50 Fialová, 2012.

51 Final accounts of the organisational unit of the State for 2020. [Online]. Available at <https://www.spucr.cz/statni-pozemkovy-urad/povinne-zverejnovane-informace/ekonomika/rozpocet> (Accessed: April 20, 2022).

the cross-border transfer of agricultural land, but not within the EU as persons from other member states are treated—in principle—in the same or in very similar way as Czech persons.

4.1. General requirements

The transfer of ownership of immovable property is regulated by Section 1105 et seq. of the Civil Code. The transfer agreement (e.g., a purchase, gift, or exchange contract) must meet several requirements. Most importantly, it must be in writing, with the parties' signatures on one document. Another requirement is that the property to be transferred must be sufficiently defined. In the case of land, this will primarily involve specifying the municipality, the parcel number, and the cadastral area in which the land is located.

If the immovable property is registered in the Real Estate Register (agricultural land in the form of parcels), the transfer of ownership takes place only by constitutive entry in the Register. The ownership right to real estate is entered in the Real Estate Register on application. The application for registration must be submitted on an approved form and must contain all the required information.⁵² As a minimum requirement, the application must also be accompanied by the deed of registration, based on which the right is to be registered in the land registry. Most often, this is a contract of sale or gift, in which the parties express their intention to transfer ownership of the land.⁵³

The entry is made based on a final decision by the Real Estate Register Office. It has a retroactive effect to the date of the application for registration, so that the transfer of ownership takes place at the time of the application. Rights to land other than ownership may be registered by registration or by note. The registration is used to record rights deriving from the ownership right, while the notation is used to record significant data relating to the registered property.⁵⁴

If all the conditions for registration are fulfilled, the Real Estate Register shall authorize registration but not before 20 days have elapsed since the legal status has been indicated to be affected by the change. The reason for the introduction of the protection period was to limit possible undesirable—and in particular, illegal—changes to immovable property.

When deciding whether to allow registration, the Real Estate Register Office examines the details of the transfer contract (i.e., the contract for the transfer of ownership), but this examination does not preclude any judicial review of the contract by the ordinary courts.⁵⁵

The data contained in the Real Estate Register is burdened with material publicity and a presumption of correctness. Consequently, there is a rebuttable presumption

52 Section 14 of the Land Registry Act.

53 Adamcová, 2019, p. 138.

54 Barešová, 2019, p. 89.

55 Barešová, 2019, p. 224–268, Pavelec, 2021, p. 194–264.

that the person registered may, in principle, also dispose of the land. This enables the individuals consulting that public register to rely on the correctness of the information entered and to draw legal conclusions from it.⁵⁶ This rule is particularly important for the purchase of real estate as it is usually checked before the acquisition, whether the seller and registered in the land register person are identical.

4.2. Additional requirements for state-owned land and forests

Agricultural land owned by the Czech Republic is managed, in particular, by the State Land Office, which was established in 2013 by Act no. 503/2012 Coll. on the State Land Office (hereinafter: the State Land Office Act) and is subordinated to the Ministry of Agriculture.

The State Land Office acts on behalf of the state in transfers of agricultural land owned by the state, and it also exercises the state's preemption right and administers restitution claims.⁵⁷ The law requires that the land reserve designated for the exercise of the State Land Office's powers should not fall below 50,000 ha.⁵⁸

The State Land Office Act also lays down the conditions for the disposal of agricultural land by the state, including its transfer. It also defines the real estate that cannot be transferred from state ownership to other persons (agricultural land intended for public utility buildings or transport infrastructure, in protected natural areas or in military areas). With the exception of land for public utility buildings, such land also cannot be transferred to regions or municipalities.

The list of the persons to whom the State agricultural land can be transferred is limited. Section 9 of the State Land Office Act provides it is only (a) a natural person who is a citizen of the Czech Republic, another member state of the European Union, a state which is a Contracting Party to the Agreement on the European Economic Area or the Swiss Confederation; (b) a legal person who is an agricultural entrepreneur in the Czech Republic; or (c) a legal person who is an agricultural entrepreneur or has a similar status (1) in another member state of the European Union, (2) in a State which is a Contracting Party to the Agreement on the European Economic Area, or (3) in the Swiss Confederation.

The State Land Office Act provides for certain specific situations where transfers of agricultural land take precedence over sales by public offer.

The transfers of the state-owned land to municipalities, regions, and the owner of the building located on the land are prioritized.⁵⁹ A specific approach in the form of preemption rights is applied to persons establishing permanent crops on agricultural land under the jurisdiction of the authority.⁶⁰ The condition is that the permanent crop has been established with the consent of the authority and the person uses the land on the basis of a lease agreement for a period longer than 5 years. The preemption

56 Adamová, 2019, p. 141.

57 About the State land office. Available at <https://www.spucr.cz/#> (Accessed: April 24, 2021).

58 Section 3 of the Act No. 503/2012 Coll. on the State Land Office.

59 Section 10 of the State Land Office Act.

60 Section 10a of the State Land Office Act.

right to such land lasts only for the duration of the lease agreement. Permanent crops include, for example, forest, fruit trees, vineyards, and so on. The price at which such land is transferred shall be the price determined in accordance with the price code but excluding any fixtures and fittings that the tenant has established at their own expense. Priority for the transfer of agricultural land may also be given to authorized users of land situated in garden or cottage settlements established under a building permit or already in existence before October 1, 1976.⁶¹ However, this was only possible for users until the end of 2018.

In the case of concurrent “priority” applications for the transfer of agricultural land, the highest priority is given to an application for the transfer of land in a garden or cottage settlement, followed by the owner or co-owner of an immovable building on agricultural land, followed by the founder of permanent vegetation, the municipality, and the region.⁶² The time of application is not decisive for the order, but the reason for which they apply is.⁶³

Aside from the preferential methods of transfer, the authority may transfer agricultural land on the basis of a public offer.⁶⁴ It addresses an unspecified number of addressees with a proposal to conclude a purchase contract for the agricultural land under its management.⁶⁵ The price for the land is determined according to its quality, and it is usually lower than the normal market price, since the purpose of the transfers of agricultural land is to promote the management of agricultural land.⁶⁶ A condition for the transfer of agricultural land by public offer is that the potential buyer must be an agricultural entrepreneur. The transfer of land by public offer almost never takes place, however—primarily because of the long-running restitution claims and secondly because of the obligation to ensure a sufficient reserve of state land.

The last way of transferring agricultural land is to announce a public tender for the most suitable offer.⁶⁷ Only agricultural land without built-up areas, buildings or groups of buildings (if they are separate immovable property and related immovable property), and agricultural land with built-up areas and related immovable property may be sold by public tender. Agricultural land without built-up areas may be sold by the authority by public tender only if it has been unsuccessfully offered in public tender. Buildings or groups of buildings and related property situated on land owned by another owner may be sold by the authority by public tender if the owner of the land does not exercise their preemption right over the property. The authority may

61 Section 10b of the Act No. 503/2012 Coll. on the State Land Office.

62 Section 10c of the Act No. 503/2012 Coll. on the State Land Office.

63 Judgment of the Supreme Court of the Czech Republic of January 28, 2015, No. 22 Cdo 3876/2012.

64 Section 12 of the State Land Office Act.

65 Hanák, 2020, p. 82.

66 Ibid.

67 Section 13 of the State Land Office Act.

offer agricultural land with built-up areas and related assets for sale directly by public tender without first having to launch a public tender.⁶⁸

The authority shall first publish the tender on its official notice board. The notice must contain information on the properties offered and the purchase price. The purchase price shall be the normal price. The authority will then select the most suitable bid offering the highest purchase price. A deposit of 5% of the published price is a condition for submitting a bid.

5. Conclusion

The current structure of land ownership in the Czech Republic is the result of a complex historical development. Agricultural land that had been nationalized was returned to private ownership, but restitution processes took a long time and were accompanied by fears that agricultural land would fall victim to speculation of the foreign investors. These fears were strengthened with the accession to the European Union, but they proved to be false. On the other hand, agricultural land became concentrated in the hands of “big landowners,” which, from our perspective, effectively prevents small and mid-sized Czech and foreign investors from entering the market. At the same time, the property market is considerably separated from agricultural land management. The Czech specificity is the prevailing share of farmers farming on rented land rather than their own. Currently, the only major legal obstacle to the cross-border acquisition of agricultural land in the Czech Republic is the state’s pre-emption right, which applies only to selected land, particularly in protected natural areas. Transfers of state-owned agricultural land are governed by special rules; however, these do not (in principle) restrict interested parties from other states within the EU or the European Economic Area. Neither do they distinguish between persons residing or established in the Czech Republic or in another member state, nor do they differentiate between the requirements for conducting agricultural activities.

68 Hanák, 2020, p. 90.

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