

Conclusions on Cross-border Acquisition of Agricultural Lands in Certain Central European Countries

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This comparative analysis focuses on national land law and related case law¹ of eight countries:² Poland, the Czech Republic, Slovakia, Romania, Slovenia, Croatia, Serbia, and Hungary. In this respect, we consider highlighting the following observations.

The comparison of national land laws is based on their status as of February 1, 2022, while two national land law regimes – namely the Slovenian and Hungarian – have undergone significant changes, which have also been taken into account in the present analysis.

One basis for the comparison was the document called “Commission Interpretative Communication on the Acquisition of Farmland and European Union Law,”³

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2 On current issues of Czech legislation, see in particular: Vomáčka and Leichmann, 2022, pp. 127–143.; Vomáčka and Tkáčiková, 2022, pp. 157–171. On current issues of Hungarian legislation, see in particular: Szilágyi, 2022, pp. 145–197.; Hornyák, 2021, pp. 86–99.; Csák, 2018, pp. 5–32.; Csák, 2017, pp. 1125–1136.; Raisz, 2017, pp. 68–74; Udvarhelyi, 2018, pp. 294–320.; Olajos, 2017, pp. 91–103. On current issues of Polish legislation, see in particular: Ledwoń, 2022, pp. 199–217.; Blajer, 2022a, pp. 7–26.; Blajer, 2022b, pp. 9–39.; Zombory, 2021, pp. 174–190.; Kubaj, 2020, pp. 118–132.; Wojciechowski, 2020, pp. 25–51. On current issues of Slovak legislation, see in particular: Szilágyi and Szinek Csütörtöki, 2022, pp. 267–292.; Szinek Csütörtöki, 2022, pp. 126–143.; Szinek Csütörtöki, 2021, pp. 160–177. On current issues of Croatian legislation, see in particular: Josipović, 2022, pp. 93–125.; Staničić, 2022, pp. 112–125.; Josipović, 2021, pp. 100–122. On current issues of Romanian legislation, see in particular: Veress, 2022, pp. 219–248.; Sztranyiczki, 2022, pp. 144–156.; Veress, 2021, pp. 155–173. On current issues of Serbian legislation, see in particular: Živković, 2022, pp. 249–266.; Dudás, 2021, pp. 59–73. On current issues of Slovenian legislation, see in particular: Avsec, 2022, pp. 293–334.; Avsec, 2021, 24–39. o.; Avsec, 2020, 9–36. o. Regarding the Visegrád cooperation countries, see Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 29–52.

3 Hereinafter referred to as Commission’s Interpretative Communication or document.

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published by the European Commission, which analyzed the measures applied by the member states of the European Union (EU), mainly concerning intra-EU land transactions between the EU member states. However, applying this document to the national land laws of the two countries covered in this book was only possible with the following reservations. Serbia is not yet a member state of the EU and has only candidate status, whereas Croatia is a member state of the EU but has the legal possibility to maintain its previously adopted non-EU-compliant land law regulations until June 30, 2023. In the case of these two countries, we have therefore analyzed these provisions in the light of the Interpretative Communication, which in practical terms meant that we did not take as a basis the rules currently in force for EU citizens, but mainly those applicable to their nationals or legal entities.

The so-called “national land law” referred to in the comparative analysis is the body of laws or regulations of a country that contains the rules on the transfer of ownership or use of agricultural or forestry land and, where they exist, of agricultural holdings. It should also be stressed that, although national land laws may contain substantial special rules for state (or possibly municipally) owned land, in the present comparison, the specific land rules for such land are only mentioned and not dealt with in detail.

At this point, we think it is essential to clarify what we mean by “acquisition” and “acquisition” in this book. While “acquisition” covers a broader category, which includes ownership, limited rights *in rem*, and use of lands via the law of obligations, “acquisition” is a narrower category that includes ownership and limited rights *in rem*.

We consider it essential to highlight – as was stated in the introduction of this book – what we mean in this book by the term “acquisition”. The concept of acquisition includes the different ways of acquisition of ownership; the acquisition of limited rights *in rem*; the acquisition of the use of land; indirect acquisition; intestate succession and testamentary disposition; and last but not least other cases of farm-transfers *inter vivos* or in the event of death.

1. Special legal sources of national land law

We consider it essential to answer the question of which laws in a given country contain specific rules directly and explicitly referring to the transfer of agricultural and forestry land and agricultural holdings (ownership, other rights *in rem*, use of land).

It is important to note, however, that we do not specifically mention constitutions in this chapter – even though there are provisions in the constitutions of the countries covered by the book that specifically address this issue.

Moreover, the civil codes of the countries concerned (or the acts that exist in their place) are not included in the table below – but for some countries, we have done

otherwise. This is because, in some countries, these acts contain special, *expressis verbis* legal rules on the current issue.

Furthermore, the rules on land registration are not mentioned below.

We have also not highlighted specific legislation that includes, for example, special preemption rights for agricultural or forestry land.

As far as forestry land is concerned, we have not included in the table the acts on forests in question if it only contains transfer rules for state-owned forestry land but no other rules.

The specific legislation for each country is summarized in the table below.

Table no. 1.

Country	Special legal sources of national land law
Poland	Act on shaping the agricultural system, Act on the acquisition of real estate by foreigners, Civil Code (which also includes <i>lex specialis</i> land law regulations), National Land Fund Act.
Czechia	Agricultural Land Fund Act, Agriculture Act.
Slovakia	Land Ownership Act, Land Lease Act, Forest Act (transfer of forests), Land Association Act, Act on the protection and use of agricultural land, Land Consolidation Act.
Hungary	Land Transfer Act, Implementation Land Act, Family Farm Act, Farm Transfer Act, Co-ownership Land Act, National Land Fund Act, Fraudulent contract Act, Civil Code (which also includes <i>lex specialis</i> land law regulations).
Slovenia	Agricultural Act, Agricultural Land Act, Inheritance of Agricultural Holdings Act, Management of State Forest Act, Agricultural Communities Act.
Croatia	Agricultural Land Act, Property Act, Obligations Act, Forest Act (transfer of forests)
Serbia	Act on agricultural land, Act on inheritance, Act on transfer of real estate, Forest Act (transfer of forests owned by the state)
Romania	Land Act, Act on sale of agricultural land, Civil Code (which also includes <i>lex specialis</i> land law regulations), State Domains Agency Act.

2. Types of primary legal sources of national land law

In our research, we have also focused on the question of the type of legislation that *formally* contains provisions on agricultural and forestry land and rules on the transfer of agricultural holdings. Our research findings are reflected in the table below.

Table no. 2.

Country	Types of primary legal sources of national land law			
Poland	constitution		acts	
Czechia			acts	decrees
Slovakia	constitution		acts	decrees
Hungary	constitution	cardinal acts	acts	decrees
Slovenia	constitution		acts	decrees
Croatia	constitution		acts	decrees
Serbia	constitution		acts	
Romania	constitution	organic acts	acts	decrees

As seen from the table above, only in the case of the Czech Republic can we not speak of the constitution as the *lex specialis* primary legal source of national land law. However, it should also be noted at this point that in this chapter about Czech law, the term constitution is understood to include the constitution in the narrow sense (i.e., Constitution of the Czech Republic, hereinafter referred to as the Czech constitution) and the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the Charter), which is part of the Czech constitutional order.⁴

As regards Slovakia, Slovenia, Croatia, and Romania, besides the constitution, acts and government/ministerial decrees are of particular importance, whereas in Poland and Serbia, the importance of decrees is not particularly significant in the context of the research topic.

The specificity of Hungarian legislation is that, in addition to the constitution, acts and decrees, we can also find provisions relevant to the research topic in so-called cardinal acts.⁵

3. *Expressis verbis* norms concerning agricultural land, forestry land, and agricultural holdings in the constitutions

The *expressis verbis* inclusion of agricultural land in a country's constitution is particularly noteworthy, given that agricultural land makes an integral part of a country's

4 Examining the constitutional level, both shall be analyzed.

5 A cardinal act is an act that requires a two-thirds majority of the Members of Parliament present to be passed or amended.

territory and, not least, an essential natural resource.⁶ Since it is a unique natural resource that is not available in unlimited quantities, it cannot be reproduced or replaced by others. Its indispensability, its capacity for renewal, its particular sensitivity to risk, and its low profitability, embody the particular social nature of land ownership;^{7,8} its inclusion in the highest legal source of the country reflects, in our opinion, the priority given to this issue by the constitutional authority.

The table below summarizes the countries' highest legal sources that expressly mention agricultural and forestry land and holding.

Table no. 3.

Country	<i>Expressis verbis</i> norms concerning agricultural land, forestry land, and agricultural holdings in the constitutions
Poland	Art. 23 family holding is the basis of the agricultural system of the state
Czechia	No <i>expressis verbis</i> norms
Slovakia	Art. 44 the state looks after a cautious use of natural resources, and protection of agricultural and forestry land; agricultural and forestry land are non-renewable natural resources that enjoy special protection by the state and society
Hungary	Art. P) agricultural land and forests are natural resources that are part of the nation's heritage; transfer of lands and holdings shall be stipulated by the cardinal Act; Art. 38 national assets of state and local government
Slovenia	Art. 71 the law shall establish special conditions for land utilization special protection of agricultural land shall be provided by law
Croatia	Art. 52 land, forests enjoy special protection

6 In connection with natural resources, see Hornyák, 2017, pp. 188–204.; Olajos, 2018, pp. 190–212. For a possible approach to the law of natural resources, see Szilágyi, 2018, pp. 282–293.; Orosz, 2018, pp. 178–191.

7 Bányai, 2016a, p. 2. See also Bányai, 2016b, p. 16.

8 See the Decision of the Hungarian Constitutional Court no. 35/1994 (VI.24.) – although it was repealed by the 4th Amendment of the Fundamental Law of Hungary, it can be found in several legal sources, referring to the decision of the Hungarian Constitutional Court in this question. See, for example, Curia of Hungary, Knk. IV.38.133/2015/3. For the relevant provision of the Fundamental Law of Hungary, see: Fundamental Law of Hungary, Final Provisions, point 5.

Country	<i>Expressis verbis</i> norms concerning agricultural land, forestry land, and agricultural holdings in the constitutions
Serbia	Art. 88 utilization and management of agricultural land, forestry land on private assets shall be permitted however, the law may restrict them
Romania	No <i>expressis verbis</i> norms (but see Artt. 44 and 135)

I. In connection with agricultural land, we can make two main groups. The first group includes the constitutions of countries that do not contain *expressis verbis* provisions on agricultural land. These are the Czech, Romanian, Croatian and Polish constitutions.

As already mentioned above, in the case of the Czech Republic, there are no constitutional provisions relevant to the research topic, so there are no *expressis verbis* norms in the highest legal source of the country. The Czech constitution only mentions the term “natural resources” and emphasizes that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth.⁹

However, the Romanian and Croatian constitutional legislation, unlike the Czech legislation, can be described as specific since, in the constitutions of these two countries, there are no *expressis verbis* norms on agricultural land, only on “land”. In the case of Romania, it is clear from the constitutional provisions that “Foreign citizens and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania’s accession to the EU and other international treaties. Romania is a party to, on a mutual basis, under the terms stipulated by an organic law and a result of lawful inheritance.”¹⁰ Furthermore, the constituent is defined as a state’s task to exploit natural resources in conformity with national interests.¹¹ In the case of Croatia, the country’s constitution mentions land as one of the natural resources. However, the country’s constitution also allows for exceptional protection of natural resources.¹²

In addition, the Polish constitution also falls into this group. However, it should be pointed out that, although agricultural land is not mentioned *expressis verbis* in the highest legal source of the country, we can find it in Art. 23 of the constitution that the basis of the agricultural system of the state, which means family farms.¹³

The second group forms the Hungarian, Slovak, Slovenian, and Serbian legislation because their constitutions contain *expressis verbis* norms regarding agricultural land.

9 Constitution of the Czech Republic, Art. 7

10 Constitution of Romania, Art. 44 (2) second sentence

11 Constitution of Romania, Art. 135 (2) point d)

12 Constitution of the Republic of Croatia, Art. 52

13 Constitution of the Republic of Poland, Art. 23

The Fundamental Law of Hungary refers to natural resources such as arable land, forests, and water resources as the nation's common heritage.¹⁴ Therefore, Art. P) of the Fundamental Law does not use the term agricultural land, but an older terminology, arable land. Art. P) is also of great importance in that it provides for the regulation of the crucial foundations of Hungarian land law in a cardinal act, namely, it provides for the regulation in a cardinal act of, inter alia, the limits and conditions for the acquisition and use of the ownership of agricultural land (and forests).¹⁵

Regarding the Slovak Constitution, the Slovak state shall ensure the cautious use of natural resources and give special attention to protecting agricultural land (and forestry land).¹⁶ Furthermore, these two natural resources have been recorded as non-renewable natural resources and enjoy special protection by the state and society.¹⁷

According to the wording of the Slovenian constitution, the law shall lay down special conditions for land utilization, and also special protection of agricultural land shall be provided by law.¹⁸

Furthermore, the Constitution of Serbia stipulates that the utilization of management of agricultural land and forestry land on private assets shall be permitted but may be restricted by law.¹⁹

II. As far as the forestry land is concerned, the Croatian, Hungarian, Slovakian and Serbian constitutions contain *expressis verbis* provisions. In the case of Croatia, the county's constitution mentions forests as a natural resource;²⁰ the Fundamental Law of Hungary designates natural resources such as forests as the common heritage of the nation;²¹ the Slovak Constitution explicitly mentions the protection of forestry land – with agricultural land – among the natural resources;²² whereas the Serbian constitution lays down rules on using and utilizing privately owned forestry land.²³

III. *Expressis verbis* norms on agricultural holdings are found only in the Polish and Hungarian constitutions. The Polish constitution provides for family holding as the basis of the agricultural system of the state,²⁴ whereas the Hungarian constitutionalist in Art. P) of the Fundamental Law of Hungary lays down the regulation of the essential foundations of Hungarian land law in a cardinal law, namely, the regulation

14 Fundamental Law of Hungary, Art. P) (1)

15 Fundamental Law of Hungary, Art. P) (2)

16 Constitution of the Slovak Republic, Art. 44 (4)

17 Constitution of the Slovak Republic, Art. 44 (5)

18 Constitution of the Republic of Slovenia, Art. 71 (1) and (2)

19 Constitution of Serbia, Art. 88

20 Constitution of the Republic of Croatia, Art. 52

21 Fundamental Law of Hungary, Art. P)

22 Constitution of the Slovak Republic, Art. 44

23 Constitution of Serbia, Art. 88

24 Constitution of the Republic of Poland, Art. 23

of, among other things, agricultural holdings and one type of agricultural holding, the family farm.²⁵

4. Legal concept of agricultural lands and forests in national land law

In our research, we also addressed whether there is a specific category of “agricultural land” or “forestry land” in the sense of whether they also constitute a land unit.

However, before presenting the results of our research, conceptual clarification is necessary to be made.

It should be noted that the common element of “agricultural land” and “forestry land” is the category of “land”. It is essential to distinguish this category from other categories with similar names. These are a) plot – used in this chapter as a basic unit of land registration, and b) real estate or immovable property – which is considered to be a unit of real estate registration and also a civil law instrument.

It should also be highlighted that, concerning the category of “real estate”, it is worth distinguishing three sub-categories, which better describe the regulation of the countries in our chapter: 1. land real estate, 2. building real estate, and 3. other real estates.

In the table below, an attempt is made to identify how the concept of agricultural land is evolving in the countries in the focus of this book and whether or not forestry land is included in this category. Information on forestry land has been included in the table below only in so far as the transfer of forestry land is governed by specific, separate legislation in the countries concerned (and not by the general rules of civil law, and not only by state property).

Table no. 4.

Country	The legal concept of agricultural lands and forests in national land law
Poland	denomination: agricultural land, agricultural real estate definition: yes (exemplary) the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: no potential overlap with nature conservation areas: yes
Czechia	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: no potential overlap with nature conservation areas: yes

25 Fundamental Law of Hungary, Art. P) (2)

Country	The legal concept of agricultural lands and forests in national land law
Slovakia	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: special rules are laid down in a separate act potential overlap with nature conservation areas: yes
Hungary	denomination: agricultural and forestry land definition: yes the category includes forests: yes <i>lex specialis</i> regulation on transfer of forests: yes potential overlap with nature conservation areas: yes
Slovenia	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: a special act regulates the preemption rights on forests; for other aspects of the acquisition of forests, general provisions of the Agricultural Land Act on legal transactions are applicable potential overlap with nature conservation areas: yes
Croatia	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: no potential overlap with nature conservation areas: yes
Serbia	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: a forest is stipulated in a separate act concerning the transfer potential overlap with nature conservation areas: yes
Romania	denomination: agricultural land (without forestry land) definition: yes the category includes forests: no <i>lex specialis</i> regulation on transfer of forests: yes potential overlap with nature conservation areas: yes

It can be seen that almost all the countries we examined in this book use the term agricultural land, for which a definition is provided. In the case of Poland, the Polish literature considers it essential to distinguish between the categories of “agricultural land” and “agricultural real estate.” While agricultural real estate is a category based

essentially on a private law approach, agricultural land is a category based on a public law approach.²⁶

Hungary has a special status in this respect because it can be stated that this is the only country that governs the acquirement of so-called “agricultural and forest land.”

Regarding forestry land, it should be noted that it is typical in several countries that the legislator lays down relevant provisions for the transfer of forestry land in a separate act, typically in the forest act of a country (see, for example, the Slovak, Slovenian, Croatian, Serbian, or Romanian legislation).

5. Legal contents of national land law in connection with agricultural lands

One of the key elements of this work is undoubtedly the acquisition of ownership of agricultural land. The table below summarizes the information on this.

Table no. 5.

Country	Legal contents of national land law in connection with agricultural lands
Poland	acquisition of ownership: yes (including perpetual usufruct) acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: yes intestate succession: yes
Czechia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Slovakia	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no
Hungary	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : yes acquirement of use: yes testamentary disposition: yes intestate succession: partial

²⁶ Ledwoń, 2022, subchapter 1.3.

Country	Legal contents of national land law in connection with agricultural lands
Slovenia	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no
Croatia	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : yes acquirement of use: yes testamentary disposition: no intestate succession: no
Serbia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: yes (only on state lands) testamentary disposition: yes (foreigners shall not inherit agricultural land) intestate succession: yes (foreigners shall not inherit agricultural land)
Romania	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no

It should be noted that the Czech Republic does not have any special rules on the acquisition of ownership of agricultural land, nor on the acquisition of limited rights *in rem* or rights of use.

In the case of Slovakia, rules on the acquisition of agricultural land are laid down in the Act on land acquisition, while the legal regime of leasing agricultural land is regulated by several acts. The Civil Code contains general rules within the provisions on the issue of leases, but these rules apply only if the issues are not regulated by a specific law.

Both foreign and domestic, natural and legal persons can acquire ownership of agricultural land in these two countries.²⁷ In the present cases, acquisitions are governed by the general rules of civil law. No specific provisions on inheritance have been implemented for these two countries either.²⁸

27 In the case of Slovakia, the legislator introduced some exceptions based on the principle of reciprocity (but these do not apply to EU citizens).

28 It should be noted, however, that in the case of Slovakia, specific rules concerning the prohibition of the fragmentation of agricultural (and forestry) land must be respected in succession proceedings under Art. 23 of the Act no. 180/1995 Coll. on certain arrangements for the holding of land, as amended (*Zákon č. 180/1995. Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom*). For more on this subject, see Paľšová, Bandlerová and Ilková, 2022 (in press).

Regarding the acquisition of ownership of agricultural land in other countries, and taking into account the length limits of this chapter, we consider it necessary to highlight the following.

The Polish legislator lays down important detailed rules on the perpetual usufruct about acquiring agricultural land. Polish law also recognizes other categories of limited rights *in rem*, but there is no *lex specialis* rule for agricultural land. Even though the country's land law focuses on the acquisition of real estate by individual farmers, the legislator has not expressly laid down any restrictions on acquiring real estate by legal persons. However, those non-individual farmers may acquire agricultural land only based on an official permit. In addition, the relevant legislation provides for a right of preemption for the state in the case of the transfer of agricultural land and in the case of the transfer of shares. It should be stressed that the Polish legislator acquires real estate by foreign legal and natural persons subject to a ministerial authorization, except for EU/EEA nationals.²⁹

A specific feature of the Hungarian land law is that, as a general rule, neither domestic nor foreign legal persons may acquire ownership of agricultural land. However, it is essential to note that the Land Transfer Act allows the acquisition of ownership of agricultural land only to a narrow group of legal persons.³⁰ It is also worth noting that restrictions on agricultural land acquired by a person in the country's land law can be divided into two types: the land acquisition limit provides for restrictions on property rights and on limited rights *in rem* such as usufruct and use *in rem*. In contrast, the land possession limit applies to land in use by any other valid title in addition to ownership and other limited rights *in rem*.³¹

In Slovenia, since 2004, there have been certain restrictions on intra-EU land acquisitions, such as prior authorization, preemption rights, and privileges for local acquirers.³²

The Romanian legislator has formulated strict rules on preemption rights. However, it should be emphasized that ownership by legal persons in connection with large agricultural estates is predominant in the country. Through the new system of preemption rights, the country is tending to move toward a solution that seeks to discourage legal persons from owning agricultural land and to favor legal persons controlled by natural persons and not by other legal persons.³³

About the two countries covered in this book – Serbia and Croatia, as already mentioned in the introduction of this chapter, it is necessary to note that Serbia is not yet a member of the EU but rather a candidate, and Croatia, although a member of the EU, has the legal possibility to maintain its previously adopted non-EU-compliant land law regulations until June 30, 2023. In light of this, the table refers to the provisions applicable to nationals while examining land law regulations in these two countries.

29 Zombory, 2020, p. 302.

30 See Land Transfer Act, para. 6 (1); see also Land Transfer Act, para. 9 (1) point c)

31 Land Transfer Act para 16 (8).

32 Avsec, 2022, subchapters 4.1., 4.2. and 4.9.

33 Veress, 2022, subchapter 4.3.

In Croatia, all natural and legal persons are equated when it comes to the acquisition of rights on private agricultural land.³⁴

Serbian law is inconsistent on this issue: on the one hand, it can be stated that the constitutional provisions are very liberal and impose very few restrictions on acquiring agricultural land by foreigners, and the legal provisions are very restrictive. On the other hand, these restrictive measures are not enforced in practice. Concerning the acquisition of ownership of agricultural land by Serbian citizens or legal entities, the legislator has not formulated any provisions.³⁵

Only the Polish and Hungarian legislatures contain specific provisions concerning the inheritance of agricultural land.³⁶

6. Legal contents of national land law in connection with forests

The table below summarizes the provisions concerning the acquisition of ownership of forestry land, the acquisition of limited rights *in rem*, rights of use, and issues regarding inheritance.

Table no. 6.

Country	Legal contents of national land law in connection with forests
Poland	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no
Czechia	acquisition of ownership: no (but they also stipulate that state forests cannot be sold) acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no

34 Josipović, 2022, subchapter 1.3.2.

35 Živković, 2022, chapter 2.

36 In the case of Slovakia, even though no special provisions on inheritance have been included in the table – which is justified by the fact that the general rules of civil law apply to the inheritance of agricultural land, we have to pay attention to the provision included in the Act no. 180/1995 Coll. on certain arrangements for the holding of land, as amended. Art. 23 of this Act prohibits the inheritance decision resulting in the division of existing land to land that is smaller than 2000 m² in the case of agricultural land (due to an amendment in force from September 1, 2022, it is going to be 3000 m²), and less than 5000 m² in the case of forest land. For more information, see Paľšová, Bandlerová and Ilková, 2022 (in press).

Country	Legal contents of national land law in connection with forests
Slovakia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no
Hungary	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : yes acquirement of use: yes testamentary disposition: yes intestate succession: partial
Slovenia	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Croatia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Serbia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Romania	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : yes acquirement of use: yes testamentary disposition: no intestate succession: no

Croatia, Serbia, and the Czech Republic do not have specific rules on the acquisition of ownership of forests, acquisition of limited rights *in rem*, and rights of use, nor are there any rules on inheritance in their national land laws. Also, in the case of Romania, general rules on inheritance govern the case of forests. In the Czech Republic, it should be pointed out that, despite the absence of specific legislation on forests, the Czech legislator has laid down a prohibition on the sale of state forests.

As regards Slovakia, special rules on the acquisition of use (lease) are laid down in the Forest Act.

In the case of Slovenia, the Forest Act also contains some special provisions on statutory preemption rights in connection with forests. The preemption right, which, due to specific characteristics of the forest, belongs to the state, local community, or legal entity managing state forests, is enforced in a special procedure prescribed by the Forest Act. In cases where forest owners enforce the statutory preemption right, general procedural provisions of the Agricultural Land Act apply.³⁷

As regards Poland, neither the Civil Code nor the Act on shaping the agricultural system explicitly regulates the issue of the acquisition of forests. A different act governs them, the Forest Act of September 28, 1991.

Regarding the Hungarian legislation, it should be pointed out that the rules on the acquisition of forestry land are part of national land law, given that it is treated in the same way as agricultural land and is subject to the same *lex specialis* rules as agricultural land. Certain other specific rules supplement these rules. Moreover, in addition to these, there are additional special rules for the acquisition of forests.

7. Legal concept of national land law in connection with agricultural holdings

For this work, the category of agricultural holding is understood as a set of agricultural assets operated for the same economic purpose and treated as a single legal unit for the acquisition and transfer of rights.

In the majority of the countries, the category of agricultural holding is known. Some of these countries have special land transfer regulations for this category, but there are also countries where the legislator has created this legal institution for other social reasons, such as subsidies.

Table no. 7.

Country	The legal concept of national land law in connection with agricultural holdings
Poland	denomination: different types in different acts (agricultural holding, family agricultural holding) definition: yes components: agricultural and forest land, buildings, equipment, livestock, rights connected to agricultural holding
Czechia	denomination: no definition: no components: no
Slovakia	denomination: agricultural holding definition: no components: no

37 In this respect, the Slovenian Agricultural Land Act (*Zakon o kmetijskih zemljiščih, 1996*) does not apply.

Country	The legal concept of national land law in connection with agricultural holdings
Hungary	denomination: different types in different acts (agricultural holding, personal farm, farm) definition: yes components: real estate, movable property, rights <i>in rem</i> , shares in a business partnership, rights and obligations related to all these assets
Slovenia	denomination: different types (agricultural holding, farm, protected farm) definition: yes components: production units
Croatia	denomination: family agricultural holding definition: yes components: use of their own or leased agricultural/productive assets and the work, knowledge, and skills of the household members
Serbia	denomination: farm definition: no components: no
Romania	denomination: farm, agricultural holding definition: yes components: agricultural land buildings, machinery, livestock and poultry, associated utilities, etc.

As seen from the table, the national regulations on agricultural holding vary from country to country. This can be seen from the name itself since all the countries we have examined, except for the Czech Republic, have some form of this category in their national legislation. It should be noted that in some countries, several types of agricultural holdings are recognized, as seen in the examples of Poland, Hungary, Slovenia, and Romania.

In connection with regulating agricultural holdings, we can make three groups.

The first group includes countries where several categories of agricultural holding are recognized and defined. This includes the Polish, Hungarian, Slovenian and Romanian regulations. The Polish legislator defines a holding as agricultural land (including forestry land), buildings or parts thereof, equipment and livestock, provided that they form or may form an organized economic unit, and rights related to the holding operation. In addition, Polish law also defines the category of the family farm. In Hungarian legislation, the concepts of agricultural holding, personal farm, and farm are defined, whereas in Slovenia, in addition to agricultural holding and farm, the concept of the protected farm is also defined. In Romania, the concepts of holding and farming are regulated. A common feature of the countries mentioned above is that the concepts and their components are clearly defined. However, of the four countries listed, there is no detailed rule on the specific transfer in Romania, but this legal category is applied only concerning other living situations.

The second group includes countries where only one category of agricultural holding is known, such as Slovakia, Croatia, and Serbia. Although the category of agricultural holding is recognized in Slovakia and Serbia, no specific definition nor specific provisions have been laid down by the legislator. Croatian law defines family farms by defining their components.

The third group includes the Czech Republic, where the category of agricultural holding is not mentioned, and therefore neither a definition nor components are laid down by the legislator.

8. Legal contents of agricultural holdings in national land law

In the table below, the answers collected to the question of whether the national land laws of the countries examined contain special provisions on the transfer or acquisition of agricultural holdings concerning ownership, limited rights *in rem* or usufruct, and whether or not the legislator has formulated special provisions on the inheritance of agricultural holdings, are recorded.

Table no. 8.

Country	Legal contents of agricultural holdings in national land law
Poland	acquisition of ownership: yes (including perpetual usufruct) acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: yes intestate succession: yes
Czechia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Slovakia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Hungary	acquisition of ownership: yes acquisition of limited rights <i>in rem</i> : no acquirement of use: yes testamentary disposition: no intestate succession: no

Country	Legal contents of agricultural holdings in national land law
Slovenia	acquisition of ownership: yes (as to protected farm) acquisition of limited rights <i>in rem</i> : no acquirement of use: yes (prelease right) testamentary disposition: yes (as to protected farm) intestate succession: yes (as to protected farm)
Croatia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Serbia	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no
Romania	acquisition of ownership: no acquisition of limited rights <i>in rem</i> : no acquirement of use: no testamentary disposition: no intestate succession: no

Concerning the acquisition of ownership of agricultural holdings, it can be noted that only the Polish, Hungarian and Slovenian legislatures have drafted relevant provisions. The Polish legislation also provides for the right of usufruct about the acquisition of ownership, whereas the Slovenian legislation only provides for this issue concerning protected farms.

Regarding the question of use, the Hungarian and Slovenian legislation is relevant, with the difference that the Slovenian legislation provides for a special prelease right concerning agricultural land and agricultural holding.

Hungarian land law covers and affects not only the acquisition of agricultural land but also the acquisition of agricultural holdings, including the various forms of acquisition of property and certain limited rights *in rem* and a more limited form of so-called “right of use *in rem*,” as well as the acquisition of the use of agricultural holdings by other means (such as leases).³⁸

Concerning the succession of agricultural holdings, whether by testamentary disposition or intestate succession, the Polish and Slovenian legislation contains the most relevant provisions. Unlike Polish legislation, Slovenian legislation lays down rules on the succession of a holding only in respect of the protected farm.

38 For more on this topic, see Szilágyi, 2022, subchapter 1.1.

9. Special regulations concerning acquiring shares in a company that already owns agricultural land

In countries where legal entities can acquire agricultural land, the question arises: if a company or legal entity already owns agricultural land, how can its shares be acquired? This is particularly important because it is essentially an *indirect* land acquisition. The table below shows the relevant national legislation.

Table no. 9.

Country	Special regulations concerning acquiring shares in a company that already owns agricultural land
Poland	acquisition of shares in a company owning agricultural land: the right of preemption and acquisition by NASC is regulated acquisition of shares by non-EU foreigners in a company owning real estate: authorization by the Minister of the Interior is required
Czechia	no special regulation
Slovakia	no special regulation
Hungary	no special regulation (due to general prohibition on the acquisition of land by legal persons)
Slovenia	no special regulation (note: if a foreign investor acquires a 10% or more stake or voting rights in a Slovenian company (FDI) and the activities of the target company indicate risk factors, this must be reported to the Ministry of Economy)
Croatia	no special regulation
Serbia	no special regulation (on the contrary: foreigners can acquire land through a legal entity established by a foreign person)
Romania	no special regulation (but special tax rules apply if the company has acquired agricultural land that represents more than 25% of its assets in the last eight years)

When looking at the specific rules for the acquisition of shares in companies already owning agricultural land in the countries in the research focus, it can be concluded that the vast majority of them do not have specific rules on this topic. This can be seen in the Czech, Slovak, Slovenian, Croatian and Serbian legislation. Concerning the Hungarian legislation, because of the general prohibition on the acquisition of land by legal persons, this issue is therefore not even raised as a regulatory subject here.

In Romania, there are no specific special rules regarding the subject, but rather special tax rules are relevant.³⁹

In principle, the Polish legislator only imposes certain restrictions on foreigners from outside the EEA and the Swiss Confederation in respect of their shareholdings in commercial companies established in the Republic of Poland – the authorization of the Minister of the Interior is required if this results in the company owning or permanently using real estate in the Republic of Poland becoming a controlled company. Concerning the acquisition of shares in companies owning agricultural land, the legislator provides for the right of preemption and acquisition of shares by the NASC,⁴⁰ acting on behalf of the State Treasury.⁴¹

10. National measures by Commission’s Interpretative Communication in general (intra-EU focus)

The Commissions Interpretative Communication, published by the European Commission on October 18, 2017,⁴² sets out the benefits and challenges of foreign investment in farmland, describes the applicable EU law and the relevant case law of the Court of Justice of the European Union (CJEU), and finally, draws general conclusions from the case law on how legitimate public interests can be pursued under EU law.⁴³ This document is intended to provide a basis for the debate on foreign investment in agricultural land, support the member states that are in the process of amending their legislation or are about to do so, and help disseminate best practices more widely in this complex area.⁴⁴

The document also concludes the regulation of the acquisition of agricultural land, given that the legislation governing land markets has some features that deserve particular attention. In this document, the Commission draws some conclusions from case law which can serve as a guide for the member states on how to regulate their land markets in a way that is consistent with EU law and balances the capital needs of rural areas with the pursuit of legitimate policy objectives.

In this context, the following table illustrates the regulatory situation in the countries under review, based on the points outlined in the Commission’s document. It should be noted, however, that the Commission has essentially analyzed the measures

39 Veress, 2022, subchapter 1.5.

40 National Support Centre for Agriculture (*Krajowy Ośrodek Wsparcia Rolnictwa*). Hereinafter referred to as: NASC.

41 Ledwoń, 2022, subchapter 1.6.

42 For more information, see the Official Journal of the European Union, no. 2017/C 350/05. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018\(01\)&from=HU](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC1018(01)&from=HU) [Accessed: July 10, 2022]

43 Commission Interpretative Communication on the Acquisition of Farmland and European Union Law, Section 3.

44 Commission Interpretative Communication on the Acquisition of Farmland and European Union Law, Section 3.

applied by each EU member state concerning the so-called intra-EU land transport relations between the EU member states. For two of the countries examined, however, the application of this interpretative communication was possible only with reservations, given that Serbia is not yet a member of the EU but merely a candidate country, and Croatia, although a member of the EU, has the legal possibility to maintain its previously adopted land law provisions which do not conform to EU law until June 30, 2023. Therefore, these two countries' rules were analyzed in the light of the Commission's document, which meant, in practical terms, that they were subject to the agricultural land acquisition rules applicable to their nationals or legal entities.

The national measures for each country are listed in the table below. However, given that each point will be outlined and presented separately in the following sub-chapters, we will not go into a detailed analysis of each feature in this part.

Table no. 10.

	National measures by Commission's Interpretative Communication in general (intra-EU focus)							
countries	PL	CZ	SK	HU	SLO	HR	SRB	RO
prior authorization	✓			✓	✓			✓
preemption rights and rights of first refusal	✓	✓		✓	✓	✓	✓	✓
price controls	✓							
self-farming obligations	✓ (non-absolute)			✓ (non-absolute)				
qualifications in farming	✓			✓ (non-absolute)				
residence requirements	✓							
prohibition on selling to legal persons	✓ (partial)			✓				
acquisition caps	✓			✓				
privileges in favor of local acquirers	✓			✓	✓	✓		✓
condition of reciprocity								

10.1. Prior authorization

Among the national specificities identified by the Commission’s Interpretative Communication, the institution of prior authorization is at the top of the list. It was therefore examined which countries’ national legislation provides prior authorization in connection with agricultural land.

It should be noted here that the information in the table is only given where the land law of the country concerned contains special rules compared with the land registration procedure.

Table no. 11.

Country	Prior authorization
Poland	✓
Czechia	-
Slovakia	-
Hungary	✓ (strict rules)
Slovenia	✓ (administrative control)
Croatia	-
Serbia	-
Romania	✓ (just in specific circumstances)

As seen from the table, some prior authorization system exists only in Poland, Hungary, Slovenia, and, in specific cases, Romania.

Regarding Poland, the acquisition of agricultural land has been limited by the obligation to obtain the prior consent of the Director General of the NASC in case the entity is not an individual farmer or another entity that may also acquire agricultural land without prior authorization by way of a statutory exception. It should also be stated that the possibility of purchasing agricultural land by foreigners from the EEA and the Swiss Confederation Polish is not limited as they only need to meet the requirements of a.s.a.s., however, foreigners from outside the EEA and the Swiss Confederation must apply for the permit referred to in a.a.r.e.f.⁴⁵

In the case of the land law of Hungary, prior authorization is required in connection with contracts on the transfer of ownership and acquisition of ownership by means other than transfer, furthermore in connection with contracts for third-party use. It should be noted that the procedural rules for exercising the preemption and

45 Ledwoń, 2022, chapter 4.

prelease right make an integral part of these previously mentioned authorization procedures.⁴⁶

In the case of Slovenia, we have to highlight that compliance with special provisions in connection with the legal transfer of agricultural land, forests, and agricultural holdings is ensured through preventive administrative control.⁴⁷

Prior authorization is required just in exceptional cases in Romania, for example, for agricultural land assets situated in the state border areas, in the vicinity of particular sites pertinent to national security, or which might contain archaeological remains.⁴⁸

10.2. Preemption and first refusal rights

In this subchapter, we need to draw attention to two important legal terms: preemption right and prelease right. In the course of our research, it became clear that there are some countries where, in addition to the preemption right, the legislator also regulates provisions on the prelease right.

At this point, it should be stressed that both the preemption and prelease rights may be established by contract or law. The preemption right is essentially linked to the acquisition of property and the sale, while the prelease right is a special right typically linked to the lease of agricultural land.

In the table below, we have examined the rights established by law for preemption and prelease rights.

Table no. 12.

Country	Preemption and prelease right
Poland	special preemption rights
Czechia	special preemption rights (state)
Slovakia	-
Hungary	special preemption rights special prelease rights
Slovenia	special preemption rights special prelease rights
Croatia	special preemption rights
Serbia	special preemption rights
Romania	special preemption rights

46 Szilágyi, 2022, subchapter 2.1.

47 Avsec, 2022, subchapter 4.1.

48 Veress, 2022, subchapter 4.2.

Slovakia is the only one where no provision is found in connection with the preemption rights of farmers.

The Czech national land law only lays down rules on the preemption right of the Czech State,⁴⁹ whereas the Polish legislation lays down the preemption right of the lessee of agricultural land; if no one is entitled to the preemption right or does not use it, the preemption right is granted to the NASC acting on behalf of the State Treasury. The Romanian legislation also establishes the preemption right in a specific order, but the author of the country chapter points out that the legislation is far from perfect.⁵⁰

Compared to the general rules of Hungarian civil law⁵¹, prior to the general preemption rights and prelease rights set out therein, the Land Transfer Act lays down a special preemption right in connection with the acquisition of agricultural land through a sales contract and also a special prelease right is established for the acquisition of use or exploitation of agricultural land by a lease contract.⁵² It can be stated that in both cases mentioned previously, besides the special preemption and prelease proper rules based on the Land Transfer Act, the Hungarian legislator introduced rules on special preemption and prelease right in separate acts compared to the Land Transfer Act. Moreover, the Hungarian legislation establishes a specific order in connection with the previously mentioned rules, i.e., the legislation is clear.

In Slovenia, two or more different preemption rights may concur with regard to the same agricultural land according to various acts (dealing with agricultural land, protected farms, nature conservation, cultural heritage, etc.). If the relationship or the priority order between the preemption rights concerned in such cases is not regulated explicitly, the legal scholarship has proposed solutions based on general methods of interpretation.⁵³

In Croatia, the legislator also provides a preemption right for farmers with residence in the country to sell state land.⁵⁴

Regarding Serbia, the only instrument contained in the Commission's Interpretative Communication that exists in the country as a condition for all acquirers, not only foreigners, is the preemption right of the owner of the neighboring agricultural land.⁵⁵

10.3. Price controls

Price regulation regarding agricultural land is considered to be in line with EU law if it is designed to prevent excessive speculation in land and maintain the viability of existing farmers, provided that it is based on transparent and clear criteria. Our research findings in this respect are set out in the table below.

49 Vomáčka and Leichmann, 2022, subchapter 3.3.

50 Veress, 2022, subchapter 4.3.

51 See, for example, the Hungarian Civil Code, para. 5:81.

52 Szilágyi, 2022, subchapter 2.2.

53 Avsec, 2022, subchapter 4.2.

54 Vranken, Tabeau, Roebeling and Ciaian, 2021, p. 113.

55 Živković, 2022, subchapter 1.4.

Table no. 13.

Country	Price controls
Poland	✓
Czechia	-
Slovakia	-
Hungary	-
Slovenia	-
Croatia	-
Serbia	-
Romania	-

As seen from the table above, only Poland has introduced some kind of price regulation to acquire agricultural land. It can be noted that, generally, agricultural land can be purchased by individual farmers or by organizations explicitly designated in the Act to shape the agricultural system (i.e., a.s.a.s.). However, the purchase of agricultural land by other entities requires the approval of the Director General of the NASC, and after obtaining such approval, the intention to sell agricultural land can be announced, and a response can be submitted by potential buyers. In connection with this process, the Polish legislator has also laid down specific detailed rules concerning the price.⁵⁶ In Poland, there are also relevant provisions concerning the preemption rights, according to which, if the price of the sold real estate grossly deviates from its market value, the person exercising the preemption right may, within 14 days of the submission of the declaration of exercise of the preemption right, apply to the court to have the price of the real estate determined. Thanks to this and other legal mechanisms, it is possible to control the price of real estate in Poland.⁵⁷

Regarding Hungary, it should be pointed out that although Hungarian land law does not provide a direct price control instrument, this does not mean that the country's land law does not take into account the issue of land prices.⁵⁸

10.4. Self-farming obligation

The Commission's Interpretative Communication identifies national specificities as including self-farming obligations. This issue has also been given particular attention in our research, and the results of our research are illustrated in the table below.

⁵⁶ Ledwoń, 2022, chapter 4.

⁵⁷ Ledwoń, 2022, chapter 4.

⁵⁸ Szilágyi, 2022, subchapter 2.3.

Table no. 14.

Country	Self-farming obligation
Poland	✓ (strict rules with numerous exceptions)
Czechia	-
Slovakia	-
Hungary	✓ (strict rules with numerous exceptions)
Slovenia	-
Croatia	-
Serbia	-
Romania	-

The self-farming obligation is in force in the national land laws of two countries: Poland and Hungary.

The Polish legislation lays down the obligation to manage the agricultural holding personally. Certain exceptions to this obligation are also provided.⁵⁹

The obligation to manage the farm on a self-employed basis is not present in Hungarian land law in a final form but as a complex system of general rules and exceptions. It is important to note that certain parts of Hungarian land law are relevant for contracts on the transfer of ownership and for contracts on the transfer of the right to use land.⁶⁰

10.5. Qualifications in farming

For the countries in the research focus, exploring the condition of qualification in farming has also proved to be a key issue. The table below provides an overview.

Table no. 15.

Country	Qualifications in farming
Poland	✓
Czechia	-
Slovakia	-

59 For more information, see Ledwoń, 2022, chapter 4.

60 Szilágyi, 2022, subchapter 2.4.

Country	Qualifications in farming
Hungary	✓ (can be replaced by professional practice)
Slovenia	-
Croatia	-
Serbia	-
Romania	-

Only the Polish and Hungarian national land laws contain a qualification requirement for farming.

A characteristic feature of Hungarian land law is that, with certain exceptions, only natural persons can acquire ownership of agricultural land. It should be stated that the main objective of the Hungarian legislator is to ensure that agricultural land is cultivated only by persons with appropriate qualifications. However, this requirement is not absolute but can be replaced by a sufficient period of experience. In the case of Poland, the definition of the term “individual farmer” refers to the obligation to have qualifications in the field of agriculture.⁶¹

At this point, we would like to comment on two more land law legislation in force. On the one hand, concerning Romania, although the Romanian legislator has not formulated a general qualification requirement for farming, it has done so concerning preemption rights. On the other hand, regarding Slovakia, given that the legislation previously in force contained provisions concerning qualifications.

10.6. Residence requirements

The table below illustrates which country’s land law legislation sets out the provisions on residence requirements for the acquisition of agricultural land.

Table no. 16.

Country	Residence requirements
Poland	✓ (numerous exceptions)
Czechia	-
Slovakia	-
Hungary	-

61 Ledwoń, 2022, chapter 4.

Country	Residence requirements
Slovenia	-
Croatia	-
Serbia	-
Romania	-

Only in the case of Poland, the legislator introduced such a “restriction”. No residence requirement exists in the national land laws of the other countries examined in this book.

Concerning Poland, the a.s.a.s.⁶² as a general rule stipulates that only individual farmers may acquire ownership of agricultural land. The status of the individual farmer, according to Art. 6 (1), is granted only to persons who have been resident for at least five years in the municipality where the agricultural land is located;⁶³ therefore, it can be stated that Polish law stipulates as a general rule the residence requirement as one of the conditions for acquiring ownership of agricultural land.

As regards Slovakia, it should be noted that the legislation previously in force explicitly provided that the ownership of agricultural land could only be acquired by a natural or legal person who had been resident or had registered office in the country for at least ten years.⁶⁴

Although Hungarian law does not contain any land acquisition requirements for residence, it is important to highlight that local residence and attachment are advantageous in the preemption and the prelease order.⁶⁵

In the case of Romania, the local residence is relevant in the context of the preemption rights.⁶⁶

10.7. Prohibition on selling to legal persons

The issue of selling to legal persons is also a national characteristic of the Commission’s Interpretative Communication. This aspect has also been given particular attention in our research, and the results of our research are illustrated in the table below.

Table no. 17.

Country	Prohibition on selling to legal persons
Poland	✓ (partial with exceptions)

62 See Art. 2a (1) of the Act on shaping the agricultural system.

63 Ledwoń, 2022, chapter 4.

64 Szilágyi and Szinek Csütörtöki, 2022, chapter 4.

65 Szilágyi, 2022, subchapter 2.6.

66 Veress, 2022, subchapter 4.7.

Country	Prohibition on selling to legal persons
Czechia	-
Slovakia	-
Hungary	✓ (strict rules with exceptions)
Slovenia	-
Croatia	-
Serbia	-
Romania	-

It is clear from the table that the Polish and Hungarian legislatures lay down relevant rules on this issue.

Polish legislation does not contain explicit provisions on the prohibition on selling to legal persons when purchasing agricultural land. However, the Act on shaping the agricultural system (i.e., a.s.a.s.) does, in principle, restrict the acquisition of agricultural land by legal persons. It should be noted, however, that this restriction is not absolute and that legal persons may acquire agricultural land if they fulfill other criteria laid down by the a.s.a.s.⁶⁷

A long-standing characteristic feature of Hungarian land law is the prohibition on selling agricultural land – with some exceptions – to legal persons. The Hungarian land law, which was previously in force for twenty years, also restricted the acquisition of agricultural land by legal persons, while the scope of the relevant exceptions was frequently amended; the direction of these changes depended mainly on the political orientation of the government in power. The current Land Transfer Act allows the acquisition of ownership of agricultural land by legal persons only concerning a narrow group of legal persons.⁶⁸

At this point, the Slovenian legislation should also be mentioned since, although the relevant legislation in force does not prohibit the sale of agricultural land to legal persons, in the case of protected farms, private individuals can only own them; the relevant Slovenian legislation prohibits legal persons from inheriting protected farms as testamentary heirs.⁶⁹

67 Ledwoń, 2022, chapter 4.

68 Land Transfer Act, para. 6 (1); see also: Land Transfer Act para. 9 (1) point c). For further information, see Szilágyi, 2022, subchapter 2.7.

69 Avsec, 2022, subchapter 4.7.

10.8. Acquisition caps

The issue of acquisition caps also appears in the Commission’s Interpretative Communication. The table below illustrates whether or not the issue is reflected in the national legislation of the countries examined in this present book, and if so, how.

Table no. 18.

Country	Acquisition caps
Poland	✓ (land acquisition limit)
Czechia	-
Slovakia	-
Hungary	✓ (land acquisition limit and land possession limit)
Slovenia	-
Croatia	-
Serbia	-
Romania	-

Only the Polish and Hungarian legislatures use such a restriction.

Polish legislation sets only a land acquisition limit; whereas in the case of the land law of Hungary, restrictions on agricultural land acquired by a person can be divided into two types: the land acquisition limit, which sets restrictions on property rights, and limited rights *in rem* such as usufruct or use *in rem*; and the Hungarian legislator also provides land possession limit, which – unlike the land acquisition limit – applies to land in use by any valid title in addition to property rights and other restricted rights *in rem*.

According to Hungarian law, it is important to note that none of the limits listed previously apply to the special category of legal persons who may acquire ownership of agricultural land, nor does the land possession limit apply to public education or higher education institutions in the agricultural sector and to certain forestry undertakings which are 100% state-owned.⁷⁰

70 Szilágyi, 2022, subchapter 2.8.

10.9. Privileges in favor of local acquirers

Research has also been carried out into the privileges granted to local acquirers. The results of the research are set out in the table below.

Table no. 19.

Country	Privileges in favor of local acquirers
Poland	✓ (for residents of the municipality where the agricultural land is located)
Czechia	-
Slovakia	-
Hungary	✓ (in the context of preemption rights and prelease rights; in the context of barter)
Slovenia	✓ (in the context of preemption rights)
Croatia	✓ (in the context of preemption rights)
Serbia	-
Romania	✓ (in the context of preemption rights)

The following information should be highlighted regarding the privileges in favor of local acquirers.

First is the national land law of Poland, where the legislator introduces a preference for local acquirers, thus determining the granting of individual farmer status. This also determines the possibility for other organizations to apply for the acquisition of agricultural land.⁷¹

Second, the Hungarian legislation, as Hungarian land law, allows a resident farmer to acquire land in barter,⁷² among other requirements and gives him a beneficial position in the preemption⁷³ or prelease⁷⁴ order. Moreover, the Hungarian land law provides a favorable position in the prelease order⁷⁵ for resident legal persons.

Third, Romania, Slovenia, and Serbia form a group, as they grant privileges to local acquirers in preemption rights.⁷⁶

71 Ledwoń, 2022, chapter 4.

72 Land Transfer Act, para. 12 (1) point b).

73 Land Transfer Act, para. 18.

74 Land Transfer Act, paras. 45–46.

75 Land Transfer Act, paras. 45–46.

76 Veress, 2022, subchapter 4.10.; Avsec, 2022, subchapter 4.9.; Živković, 2022, subchapter 1.4.

10.10. Condition of reciprocity

Among the national specificities identified by the Commission’s Interpretative Communication, we can also find the issue of the condition of reciprocity. The table below sets out all the relevant information concerning this issue.

Table no. 20.

Country	Condition of reciprocity
Poland	-
Czechia	-
Slovakia	-
Hungary	-
Slovenia	-
Croatia	-
Serbia	-
Romania	-

Given that this chapter focuses on intra-EU issues, the condition of reciprocity is not relevant in this respect.

11. Land law in the practice of constitutional courts

In the research, particular emphasis was placed on exploring the practice of the constitutional court. See the table below for a summary.

Table no. 21.

Country	Land law in the practice of constitutional courts
Poland	Right to property: inheritance (NASC) Family holding (Art. 23): dynamic definition of family holding, other types of agricultural holdings are not excluded
Czechia	No relevant case law
Slovakia	Right to property: in general Freedom to conduct a business: permanent residence/registered office (10 years), commercial activity in agricultural production (3 years)

Country	Land law in the practice of constitutional courts
Hungary	Right to property: general structure of the regime, usufruct, acquisition by legal persons, testamentary disposition Right to a healthy environment: competence of authorities Relationship between EU and national law
Slovenia	Right to property and inheritance: other rights <i>in rem</i> , preemption right, official setting of a sale price, self-farming, etc. Social state: owner of the protected farm to conclude a certain contract Free economic initiative: acquisition cap
Croatia	Right to property: compulsory lease of non-cultivated land Discrimination: compensation for conversion of agricultural land to non-agricultural use
Serbia	Only dismissed cases
Romania	Right to property: preemption right, restitution Relationship between EU and national land law

Constitutional courts have a crucial role in interpreting constitutions. It can be concluded that the practice of the constitutional courts in the countries examined in this book – except the Czech Republic⁷⁷ – can be considered significant concerning the protection of agricultural land. In the case of Serbia, the practice of the constitutional court is limited to cases dismissed.

It is worth noting that the constitutional courts of the various countries have mainly examined the right to property concerning our research topic. In the following, given the limitations of this chapter, only those decisions and information that we consider the most relevant are recorded.

The Polish Constitutional Tribunal case law contains several decisions relevant to the research topic. It should be noted, however, that after the end of the transitional period, no decisions of relevance to the research topic can be found in the practice of the Constitutional Tribunal. We consider it essential to mention that the tribunal has adopted a dynamic interpretation of the concept of family holding, whereby a family holding is a holding whose ownership remains in the hands of a single family. However, this concept cannot be interpreted literally. As the author of the national chapter highlights, it includes a situation where a family member owns the holding and other family members carry out the work.⁷⁸

The Slovak Constitutional Court has reached the general interpretation of the right to acquire property. The right to property is considered a fundamental right by the Slovak Constitutional Court, but the right to acquire property is not. It should

77 Vomáčka and Leichmann, 2022, subchapter 3.2.

78 Ledwoń, 2022, chapter 2.

be noted, however, that the court has focused, to a significant extent, on examining certain provisions of the Act on land acquisition previously in force.⁷⁹

The Hungarian Constitutional Court has been particularly active in regulating agricultural land and has issued several important decisions in this area. For example, the focus of the examination has been on issues such as land acquisition, the right to property, and the right to a healthy environment.

The Slovenian Constitutional Court, like the Hungarian one, has been particularly active in land issues. In its several decisions, it has ruled that guaranteed private property includes not only property rights but also, for example, mortgages and other rights *in rem*, rights *in personam*, also corporate rights. Furthermore, this includes the legitimate expectation of acquiring property rights, the right to authorize or prohibit certain activities, and pension rights.⁸⁰

The Croatian Constitutional Court emphasized that the state's obligation to provide exceptional protection for agricultural land stems from the fact that agricultural land is non-renewable and must be protected against unforeseen developments in the free market. Furthermore, the court also pointed out that agricultural land cannot be treated as equivalent to other immovable property, either economically, ecologically, or socially. The fair regulation of agricultural land requires that the general and public interests of the community be taken into account to a greater extent than in the case of other types of immovables.⁸¹

Regarding the Romanian case law, it should be noted that the relationship between the EU and national law will probably be examined in the future to analyze whether the Romanian legislation currently in force is in line with the rules of the EU. A key decision⁸² accompanied by dissenting opinions will undoubtedly contribute to this. In addition, the Commission's document and thorough analysis foresee the need to resolve the non-compliance of Romanian land law with the norms of the EU.⁸³

12. Infringement procedures and preliminary rulings

In the case of the countries that acceded before 2004, agricultural land acquisition was not included as a specific regulatory point in their accession treaties. This issue has become part of the treaties for countries that joined in 2004 and afterward. This leads to the conclusion that agricultural land acquisition as a subject is of particular relevance and is a feature of these countries' legal policies and land regulations.

Generally speaking, those member states that formally became members of the EU in 2004 (and afterward) are legally obliged to harmonize their national rules with

79 In connection with this see the decision of the Slovak Constitutional Court no. PL. ÚS 20/2014.

80 Avsec, 2022, chapter 2.

81 The decision of the Constitutional Court, no. U-I-763/2009.

82 Veress, 2022, chapter 2. For further see the Decision of the Constitutional Court of Romania no. 586/2020.

83 Veress, 2022, chapter 2.

the EU rules. In their accession treaties, they were given the possibility to maintain, for a so-called transitional period, their national rules in force at the time of signature of the accession treaties, which were concerned with restrictions on the acquisition of ownership of agricultural and forestry land.⁸⁴ For the majority of member states, this transitional period was seven years.⁸⁵ Although a few member states made use of the possibility of extending the transitional period. Following the expiry of this period, the European Commission carried out a comprehensive investigation of the national regulations of the member states that joined the EU in 2004,⁸⁶ which found that certain provisions of the new national land regulations of some of the new member states resulted in restrictions on the fundamental economic freedoms of the EU. In this case, the restriction of the free movement of capital and the freedom of establishment should be highlighted as fundamental freedoms, as they could lead to a significant reduction in cross-border agricultural investment.⁸⁷ For the reasons just outlined, infringement procedures were launched against certain member states in 2015.

The present subchapter, therefore, describes the infringement proceedings concerning the land legislation of the new member states at the end of the derogation period and notes that, unlike the previous subchapter, preliminary rulings were also made before the CJEU. An overview is given in the table below.

At this point, however, we would like to reiterate that Serbia is not yet a member of the EU, only a candidate, whereas Croatia, although a member of the EU, has the legal possibility to maintain its previously adopted non-EU compliant land legislation until June 30, 2023. Therefore, in light of the above, this part is not relevant for these two countries in this respect.

Table no. 22.

Country	Infringement procedures and preliminary rulings
Poland	-
Czechia	-

84 Szilágyi, 2017, p. 117.

85 It should be noted that in the case of Poland, for example, this transition period was longer. In fact, for several countries, with the approval of the European Commission, this period could be extended (typically by three years). For example, the exceptions are Romania (and Bulgaria), as their accession treaty did not include the possibility of extending the original seven-year period. See Szilágyi, 2017, p. 117.

86 Except for Poland, given the long transition period.

87 In connection with this, see the press release of the European Commission: *“Financial services: Commission requests BULGARIA, HUNGARY, LATVIA, LITHUANIA and SLOVAKIA to comply with EU rules on the acquisition of agricultural land.”* The press release is available at the European Commission’s website: https://ec.europa.eu/commission/presscorner/detail/hu/IP_16_1827 (Accessed: 30 June, 2022)

Country	Infringement procedures and preliminary rulings
Slovakia	✓ general infringement procedure (No. 2015/2017)
Hungary	✓ general infringement procedure (No. 2015/2023) special infringement procedure (No. 2014/2246, No. C-235/17) preliminary ruling (No. C-52/16, No. C-113/16, No. C-24/18, No. C-117/20)
Slovenia	–
Croatia	– (given the fact that the transitional period lasts until June 30, 2023)
Serbia	– (given the fact that Serbia is not a member state of the EU)
Romania	–

In the case of Slovakia, the restrictions in the national land law previously in force were problematic (the most controversial was the existence of a longer residence criterion).⁸⁸ However, the European Commission’s proceeding against Slovakia became irrelevant due to the Constitutional Court’s ruling on the issue. Consequently, the proceeding against the country was discontinued on October 10, 2019.⁸⁹

In the context of the EU’s examination of the Hungarian land law regime, it is worth noting first of all that two infringement proceedings have been initiated against Hungary so far: one concerning the termination of *ex lege* usufructuary rights established by contract between non-related parties,⁹⁰ and subsequently initiated infringement proceedings in respect of the Hungarian land law regime as a whole as in other countries that joined the EU in 2004.⁹¹ It is important to note that in the meantime, i.e., in parallel with the infringement proceedings, preliminary ruling procedures were also opened in the usufruct case.⁹²

It is worth mentioning that the CJEU⁹³ ruled against Hungary in relation to the Hungarian legislation already known from the SERGO judgment. The reason for highlighting this issue at this point is that this time, in addition to Art. 63 TFEU on the free movement of capital, the CJEU also assessed the merits of Art. 17 of the Charter of Fundamental Rights on the right to property and found that it had been infringed.⁹⁴

As seen from the above-mentioned, of the countries examined in this book, the cases against Hungary definitely stand out.

88 Szilágyi, 2017, p. 176.

89 Szilágyi and SzineK Csütörtöki, 2022, chapter 3.

90 Case no. 2014/2246, INFR(2014)2246.

91 Case no. 2015/2023; INFR(2015)2023.

92 Szilágyi, 2022, chapter 4.

93 In its preliminary judgment in Case C-235/17 on usufruct.

94 Case C-235/17, paragraphs 69–72 and 81.

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