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Croatian land acquisition rules after the expiry of the EU moratorium\*\*

*Abstract*

*The aim of this article is to present the harmonization of the Republic of Croatia in connection with its land acquisition rules. This paper presents the gradual adjustment of Croatian land acquisition rules to EU laws and the final results of the process upon the expiry of the EU moratorium on the acquisition of agricultural land. The paper aims to analyse how the accession to the EU has impacted the development of Croatian land acquisition rules, the development of legal transactions of real property, and the entire economic development of the country.*

**Keywords:** land acquisition, cross-border land acquisitions, moratorium, Croatia.

## 1. Introduction

In the legal and economic systems of any country, immovable property is of particular importance for social and economic development, physical planning, urbanism, environmental protection, national security, and defence, as well as for preserving the national identity. In many countries, there are specific regulations that lay down different positions for foreigners as opposed to domestic persons when acquiring immovables. Except for very general requirements for the acquisition of immovables, foreigners must often fulfil certain conditions such as reciprocity, prior authorisation given by a public authority, statements regarding the use of real property, and a specific length of their stay in the place where the immovable is acquired. Foreigners are often prohibited from buying specific types of real property (agricultural land, forestry land, etc.). Their specific position in the acquisition of immovables and the legal transactions of real property, in general, is explained by the protection of the market, economic, defensive, and cultural interests, or physical planning. However, accession to the European Union (EU) requires the alignment of national land acquisition rules with the laws of the EU and, in particular, with the principles of EU market freedom. The implementation of market freedom must be unlimited and non-discriminatory for both natural and legal persons from all Member States. The same rule applies when, to realise market freedoms and the freedom of movement, natural and legal persons acquire real property in other Member States.

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In the EU, in the cases of cross-border land acquisitions, discrimination based on nationality is prohibited.<sup>1</sup> EU Member States which, prior to their accession, had imposed such land acquisition rules on foreigners from other Member States, had to adjust their land acquisition rules to EU laws.<sup>2</sup> Indeed, some Member States had to significantly change their national rules on the position of natural and legal persons from other Member States when acquiring and using immovables in their territories.<sup>3</sup> Such reforms resulted in the existence of two parallel regimes of land acquisition rules: one (non-discriminatory) for domestic persons and those from other EU Member States and the other (discriminatory) for persons from non EU third countries.

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<sup>1</sup> A basic rule exists in legal transactions between nationals and legal persons of Member States involving real property that they must also be aimed at accomplishing EU goals and the efficient functioning of the internal market. Accomplishing these goals requires that legal real property transactions in every Member State must be in principle unrestricted and non-discriminatory for the nationals and legal persons from other Member States. A non-discriminatory treatment of nationals and legal persons from other Member States, when acquiring land, is of importance for cross-border realisation of the freedom of establishment, freedom of the provision of services, the free movement of capital and, in general, the freedom of movement in the EU. Although this rule is not expressly prescribed in EU law for land acquisition, it ensues from the provisions of primary and secondary EU laws on the content and way of realisation of fundamental rights and market freedoms in the EU. These are, in the first place, the provisions of the Treaty of the Functioning of the European Union (TFEU) on the free movement of workers (Arts 45–48), the right of establishment (Arts 49–55), the freedom to provide services (Arts 56–62) and the free movement of capital (Arts 63–66). Important determinants of legal transactions of real property in EU are also general prohibition of discrimination on the grounds of nationality (Art.18) and the rules on the right to move and freely reside within the territory of the Member States (Art. 21). For more see in Kellerbauer, Klamert & Tomkin 2019, 661; Schulze, Janssen & Kadelbach 2020, 470–471; Glöckner 2000, 600; Pechstein, Nowak & Häde 2017, 750; Schwarze 2019, 839; Calliess & Ruffert 2016, 916; Schwarze 2019, 910; Calliess & Ruffert 2016, 998; Groeben, Schwarze & Hatje 2015, 2008; Kellerbauer, Klamert & Tomkin 2019, 749; Geiger, Khan & Kotzur 2015, 398.

<sup>2</sup> As a rule, it was possible to keep particular discriminatory restrictions on some immovables (agricultural land, forestry land, secondary residences) only temporarily, that is, for a period of time following the accession. An exception was Denmark where it could maintain the existing legislation on the acquisition of second homes (Protocol No. 32, TFEU on the Acquisition of Property in Denmark).

<sup>3</sup> For example, in the Republic of Austria, the competent regional states (Bundesländer) have amended their Laws on the Transfer of Land (Grundverkehrsgesetze, Ausländergrunderwerbsgesetze) several times to harmonise them with EU laws, particularly following the moratorium to the application of the existing legislation regarding secondary residences for five years from the date of accession (Art. 70 of the Treaty concerning the accession of the Republic of Austria to the EU, OJ C 241, 1994, p. 9). In several cases, the Court of Justice of the European Union the alignment of such laws with EU law. See the judgments Konle, C-302/97, ECLI:EU:C:1999:271; Beck and Bergdor, C-355/97, ECLI:EU:C:1999:391; Reisch, joined cases, C-515/99, C-519/99-C-524/99, C-526/99- C-540/99, ECLI:EU:C:2002:135; Trummer and Mayer, C-222/97, ECLI:EU:C:1999 C-222/97; Stefan, C-464/98, ECLI:EU:C:2001:9; Ospelt, C-452/01, ECLI:EU:C:2003:493; Salzmann, C-300/01, ECLI:EU:C:2003:283. See: Ágoston 2022, 65–66

In the process of accession to the EU, the Republic of Croatia was obliged to harmonise its land acquisition rules. In the course of preparations for the accession, an extremely serious challenge for the Croatian legislators was the harmonisation of the country's national rules on legal transactions involving real property to EU laws. The adjustment was necessary because prior to the accession to the EU, Croatian land acquisition rules had been characterised by separate and discriminatory rules for foreign natural and legal persons. Croatia's obligation to liberalise and harmonise its land acquisition rules for nationals of EU Member States and EU companies was assumed by signing the Stabilisation and Association Agreement (SAA)<sup>4</sup> and its provisions on the freedom of establishment and the free movement of capital.<sup>5</sup> Specific obligations regarding agricultural land were subsequently agreed upon by signing the Treaty of Accession of Croatia.<sup>6</sup> The main obligation was to progressively adjust Croatian legislation to remove discriminatory restrictions or prohibitions against the acquisition and use of immovables by citizens and legal persons from other EU Member States. It was necessary to gradually establish the same legal regime when citizens and companies from other EU Member States acquired and used immovables, as was the case with domestic natural and legal persons. In addition, Croatia committed itself to no longer imposing any new discriminatory regulations or restrictions on the right of establishment and free movement of capital on natural and legal persons from other EU Member States. Maintaining temporary restrictions or prohibitions against land acquisition by citizens of other Member States was only possible under the conditions stipulated in the Treaty of Accession.

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<sup>4</sup> The Republic of Croatia signed the SAA with the European Communities and their Member States on 29 October 2001 in Luxemburg. The Act on the Confirmation of the SAA between the Republic of Croatia and the European Communities and their Member States is published in the Official Gazette NN – International Agreements No. 14/01. The Act on the Implementation of the SAA between the Republic of Croatia and the European Communities and their Member States and the temporary Agreement on Trade-Related Aspects between the Republic of Croatia and the European Community is published in the Official Gazette NN- International Agreements No. 15/01. The Stabilisation and Association Agreement entered into force on 1 February 2005 (Official Gazette NN – International Agreements, No. 1/05).

<sup>5</sup> Art. 49/5 and Art. 60/2, SAA.

<sup>6</sup> The Treaty between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the EU), and the Republic of Croatia concerning the accession of the Republic of Croatia to the EU, OJ L 112, 24.4.2012, p. 10–110 (BG, ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV; OJ L 300, 9.11.2013, p. 11–110 (HR).

The Treaty on Accession was signed on 9 December 2011. The Treaty on Accession entered into force on 1 July 2013.

By the time of its accession to the EU, Croatia had already met all its obligations to align its land acquisition rules to EU laws. Discriminatory rules were abolished several years before Croatia became a Member State of the EU. The only area where bans on land acquisition by citizens and legal persons from other Member States still applied was agricultural land. In the Treaty of Accession, a moratorium of seven years was imposed, during which the acquisition of agricultural land by citizens and legal persons from other Member States could still be prohibited. After the moratorium was extended for an additional three years, the transitional period ultimately expired on 30 June 2023 without any possibility of further extension.

After the transitional period concerning the prohibition on acquiring agricultural land by the nationals of other Member States had expired, the situation in the Republic of Croatia was similar to the situation in other Member States which decided, even after accession, to maintain discriminatory land acquisition rules with respect to persons from third countries. In Croatia, two regimes exist for land acquisition: one for its own nationals and persons from other EU Member States and the other for persons from third countries. The first, non-discriminatory regime, was the result of the reforms in Croatian property law following its independence as well as many years of progressive adjustment of the country's legislation to EU laws. The discriminatory regime is based on two pillars. On the one hand, to be able to acquire agricultural land, apart from general requirements, persons from other countries must fulfil specific requirements depending on the title of acquisition. On the other hand, for individual types of immovables, an absolute prohibition against the acquisition by persons from third countries is still prescribed.

This paper presents the gradual adjustment of Croatian land acquisition rules to EU laws and the final results of the process upon the expiry of the EU moratorium on the acquisition of agricultural land. Valid land acquisition rules are applied to foreign persons from third countries. The paper aims to analyse how the accession to the EU has impacted the development of Croatian land acquisition rules, the development of legal transactions of real property, and the entire economic development of the country.

## **2. Land acquisition rules in Croatian property law**

### **2.1. General land acquisition rules**

General rules on land acquisition in Croatian law have been outlined in the Act of Ownership and Other Real Rights (hereinafter, Property Act/PA, in force since 1 January 1997),<sup>7</sup> by which property law reform was carried out. In the Property Act, land acquisition rules are construed on the model of Austrian law and have not been amended. In principle, the land acquisition rules were retained in the PA from the period when the Austrian Civil Code was applied in Croatian territories<sup>8</sup> and were, thus, deeply rooted in

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<sup>7</sup> Official Gazette NN Nos 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 90/10, 143/12, 152/14. The acquisition of ownership is provided for in Articles 114–160 of the PA.

<sup>8</sup> For more see Josipović 2011, 157–174.

the Croatian legal system.<sup>9</sup> The same concept of the acquisition of ownership applied to that of privately owned land in the socialist era.<sup>10</sup> During the property law reform, after abolishing social ownership, the Croatian legislators decided to respect the country's legal tradition and, with a certain level of modernisation, maintain the system of land acquisition, which had been developing in Croatia for more than a hundred years. Such an approach made a faster transition possible from the social to private ownership regime, as well as the tendency to keep the already-established instruments of significance for land acquisition and the publication of rights on immovables (land register and cadastre).<sup>11</sup> The same land acquisition principles apply to the new legal and economic environment based on private ownership and the market economy.

The Property Act specifies the general requirements to be fulfilled prior to any land acquisition. For example, an immovable must be involved, which may be an object of ownership,<sup>12</sup> allowing the acquirer to be the owner of such immovable<sup>13</sup>, and a valid legal basis should exist for the acquisition. The ownership of real property may be acquired based on a contract, court decision, or the decision of another competent authority, as well as by succession or law.<sup>14</sup> Based on any of these legal bases, the ownership of an immovable may be acquired when all the legal requirements are met.<sup>15</sup> When ownership is acquired on the basis of a contract, according to the model of Austrian property law, the principle of causal tradition applies. To acquire land based on a contract, the ownership of the previous owner and a valid contract made in written form, as well as a valid registration in the land register, are required.<sup>16</sup> When a land acquisition occurs under any other title, an entry in the land register is not a constitutive prerequisite for the acquisition of ownership. When dealing with succession, land acquisition occurs at the moment of the decedent's death.<sup>17</sup> Based on a court decision or the decision of some other authority, land acquisition takes place at the time of the final decision.<sup>18</sup>

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<sup>9</sup> See Gavella 1994, 185–186.

<sup>10</sup> See Art. 33 of the Former Act on Basic Ownership Law Relations (1980).

<sup>11</sup> For example, Croatian land registry started developing as early as in the second half of the 19th century, when in the year of 1850, the so-called 'Carska naredba o Privremenom gruntovnom redu' (The Imperial Order on the Temporary Land Register).

<sup>12</sup> The immovables which cannot be objects of ownership are within the regime of public domains. The PA expressly lays down that there can be no ownership or other real property rights of public goods (Art. 3/2). Only maritime domain is now in the legal regime of public domains. See the Maritime Domain and Sea Ports Act, Official Gazette NN No. 3/23.

<sup>13</sup> In principle, any natural and legal person may own immovables unless otherwise established by law (Art. 1/1, PA).

<sup>14</sup> Art 114/1, PA.

The requirements for the acquisition of ownership under any of the aforementioned titles are provided for by Arts 115–160, PA.

<sup>15</sup> Art. 114/2, PA.

<sup>16</sup> Art. 115, Arts 119-121, PA. The land register is provided for by the Land Register Act (Official Gazette NN Nos 63/19, 128/22) replacing the former Land Register Act adopted at the same time when the Property Act was adopted (Official Gazette NN Nos 91/96, 68/98, 137/99, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17).

<sup>17</sup> Art. 128, PA.

<sup>18</sup> Art. 126, PA.

Land acquisition by law (by prescription, by building on another's land, etc.) occurs when specific legal conditions have been fulfilled.<sup>19</sup> In any of these cases, the owner of the real property is authorised to request a declaratory entry in the land register to protect his or her right of ownership against any third person.<sup>20</sup>

When a domestic natural or legal person acquires the ownership of an immovable, all general prerequisites must be met, including those that must be fulfilled for land acquisition based on a particular title. Simultaneously, the notions of a domestic natural person and a domestic legal person are interpreted very broadly.<sup>21</sup> A domestic natural person is a national of the Republic of Croatia,<sup>22</sup> regardless of whether he or she has regular temporary or permanent residence in Croatia at the time of the acquisition. A domestic legal person is any legal person with a registered seat in the territory of the Republic of Croatia. The fact that shareholders, members of management boards, members of boards of directors, executive directors, business shareholders, or similar entities are foreign nationals or foreign legal persons does not impact the status of domestic legal persons. Likewise, a legal person established by foreign capital and with a registered seat in the Republic of Croatia is also considered a domestic legal person. In all of the aforementioned cases, a domestic legal person's registered seat must be in Croatia to uphold their status.

## 2.2. Specific land acquisition rules for foreigners

When reforming the property law (1997), Croatian legislators opted for a restrictive approach to the regulation of land acquisition by foreigners. As this is an exemption from the principle of equal treatment of foreign and domestic persons<sup>23</sup>

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<sup>19</sup> Art. 129, 129/1, PA.

<sup>20</sup> Art.128/2, 127, 130, PA.

<sup>21</sup> The notions of domestic natural persons and domestic foreign persons are not expressly provided for in the PA. Any conclusions are made by way of interpretation of the express provisions of the PA on who is under this Act considered as a foreign domestic person or a foreign legal person (Art. 355, PA).

<sup>22</sup> Under the PA, a domestic person is also a natural person who does not have citizenship of the Republic of Croatia if he or she is an expatriate from the territory of the Republic of Croatia or an expatriate's descendant under the condition that an administrative body authorised to decide on citizenship has established that he or she fulfils all the requirements for acquisition of the citizenship of the Republic of Croatia (Art. 355/2, PA).

<sup>23</sup> In principle, domestic and foreign persons are equated when acquiring ownership and other real property rights (Art. 354/1, PA). An exemption is prescribed only for land acquisition. Specific requirements are prescribed only for the acquisition of immovables by foreigners. In the acquisition of the restricted real rights on immovables, foreign persons are fully equated with domestic persons, unless it is laid down otherwise in separate regulations. Foreign persons may acquire real and personal servitudes, easement, the right of construction, liens under the same conditions as domestic persons (Art. 354/2, PA). Unless it is otherwise prescribed by a regulation or a treaty, foreign persons as holders of real rights on immovables are not treated differently when it comes to factual and legal disposition of the acquired ownership or other real rights on immovables than domestic persons. The principle of equalisation of foreign and domestic persons is also expressed when acquiring obligations regarding real property authorising the holder to use and/or to use real property for economic purposes such as rent, lease, and concessions.

when acquiring property rights, the PA also expressly defines who, in the context of land acquisition, is considered a ‘foreigner’. A foreign natural person is not a national of the Republic of Croatia. Such a person has a registered seat outside the territory of the Republic of Croatia.<sup>24</sup>

Restrictive rules on land acquisition by foreigners are based on two major principles. On the one hand, for any land acquisition by foreigners, apart from the general land acquisition rules valid for domestic acquirers, additional requirements must be fulfilled. These specific requirements differ, depending on the legal basis of the acquisition. The fulfilment of such requirements is a precondition for determining whether a foreign person can acquire ownership of an immovable person in the Republic of Croatia. If these specific requirements are not fulfilled, a foreign person may not become the owner of an immovable in the Republic of Croatia because it will be held that he or she cannot be the holder of ownership of real property. On the other hand, separate laws for particular types of real property (e.g. agricultural land and forests) state that they may not be owned by foreign natural or legal persons. They may not be objects of land acquisition by foreigners, sometimes based on legal titles and sometimes solely based on the legal title for which the acquisition by foreigners is expressly excluded under a separate Act.

The concept of specific land acquisition rules under which foreigners may acquire land has remained intact until today. However, while the general land acquisition rules valid for domestic or foreign persons have not changed, specific land acquisition rules for foreigners have been significantly reformed several times in the course of accession negotiations. Some amendments have led to changes in specific land acquisition rules for all foreigners, whereas others have only changed the position of natural and legal persons from other Member States when acquiring land.

When the SAA entered into force (1 February 2005), it did not distinguish between special requirements for land acquisition depending on whether the acquirer was a person from another Member State or a person from a third country. The same land acquisition rules were valid for all foreigners,<sup>25</sup> which discriminated them from domestic acquirers. Upon the entry into force of the SAA, specific requirements for the acquisition of land by foreigners, regardless of whether they were from other EU Member States or third countries, were provided in the following way: (1) For land acquisition by succession, reciprocity was required.<sup>26</sup> (2) For land acquisition based on other legal grounds (contract, court decision, or decision rendered by other competent bodies by law), two specific requirements were required: 1) reciprocity and 2) prior authorisation by the Minister of Foreign Affairs given upon a prior opinion of the Minister of Justice.<sup>27</sup> Prior authorisation was issued on the request of foreigners who intended to acquire ownership of an immovable or of a person who intended to alienate it. It was issued at discretion

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<sup>24</sup> Art. 355/1, 3, PA.

<sup>25</sup> Arts 356, 357, PA/1997.

<sup>26</sup> Art. 356/1, PA/1997.

<sup>27</sup> Art. 356/2, PA/1997.

because there were no rules on the conditions for the issuance of prior authorisation.<sup>28,29</sup> Without the prior authorisation given by the Minister of Foreign Affairs, a contract for the acquisition of ownership was not legally valid.<sup>30</sup> A denial of giving prior authorisation prevented the person from acquiring ownership of the same immovable in the following five years from the day of the submission of a denied request, that is, to request again for prior authorisation for the acquisition of ownership of the same immovable in favour of the same foreign person;<sup>31</sup> (3) Foreign persons were not able to acquire ownership of immovables on any legal ground in the excluded areas,<sup>32</sup> agricultural land<sup>33</sup>, forestry land, or protected parts of nature.<sup>34</sup>

Such restrictive and specific land acquisition rules were not considered as having been adjusted to EU laws. Therefore, following the entry into force of the SAA (1 February 2005), the deadlines for the Republic of Croatia started to run to fulfil various obligations connected with the liberalisation of legal transactions of real property for natural and legal persons from other Member States. Specific and express obligations regarding the liberalisation of real property transactions were assumed, with the provisions of the SAA providing for the right of establishment and free movement of capital.<sup>35</sup> These obligations envisaged the progressive adjustment of land acquisition rules to EU laws in two phases.

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<sup>28</sup> There were opinions expressed in literature that while assessing whether to give prior authorisation to acquire ownership, the security and economic interests of the Republic of Croatia had to be considered to prevent foreigners from acquiring real property in particular areas. The attention was often drawn to the circumstances that should have been taken into consideration when issuing such authorisation particularly when the legally based acquisition was involved (matrimonial legacy, construction on another person's land). See Jelčić 2002, 256.

<sup>29</sup> When entering into force, the PA stipulated that consent was not considered as an administrative act (Arts 356/5 and 357/5 PA). However, by its decision of 9 February 2000, the Constitutional Court of the Republic of Croatia abolished the provisions of Arts 356/5 and 357/5, PA stating that prior authorisation obtained by the Minister of Foreign Affairs was an administrative act containing all the elements prescribed in the Administrative Disputes Act. After that, in the cases of rejection of prior authorisation, protection could be gained by way of an administrative action. See the decision of the Constitutional Court of the Republic of Croatia No. U-I-1094/1999 of 9 February 2000 (Official Gazette NN No. 22/00).

<sup>30</sup> Art. 357/1, PA/1997.

For example, see the decision of the Supreme Court of the Republic of Croatia, VSRH Rev 570/2005-2, 01/03/2006 (accessible at [www.iusinfo.hr](http://www.iusinfo.hr), accessed on: 31/10/2023).

<sup>31</sup> Art. 357/4, PA/1997.

<sup>32</sup> Art. 358/1, PA/1997.

The excluded areas are sectors for which, to protect the interests and the security of the Republic of Croatia, the law prescribes that foreigners may not acquire ownership of real property in their territories.

<sup>33</sup> The prohibitoin

<sup>34</sup> Art. 1/3 of the former Act on Agricultural Land (2001), Art. 1/3 of the former Forests Act (1983), Art. 194/2 of the former Nature Protection Act (2003).

The prohibition of the acquisition of ownership of forests by foreigners was entered by the amendments to the Forests Act (1983) of 2002 (Official Gazette NN, 13/02), i.e. after the SAA had been signed (2001) but before it entered into force (2005).

<sup>35</sup> See Art. 49/5 and Art 60/2, SAA.



When the SAA entered into force, the first phase began. In certain cases, the principle of equalisation of EU companies with domestic companies in terms of use and land acquisition was established at that precise point in time. Under the rule regarding the right to establish subsidiaries and branches of EU companies, the same treatment was ensured when domestic companies were involved in using and renting privately owned immovables.<sup>36</sup> The subsidiaries of EU companies were equalised with Croatian companies in the acquisition and enjoyment of ownership of immovables<sup>37</sup> when that became necessary for administrating economic activities for which they had been established.<sup>38, 39</sup> In such cases, no separate preconditions for land acquisition were required, which was normally the case when a foreign person acquired immovables in the Republic of Croatia. Similarly, subsidiaries of EU companies were equated with Croatian companies with respect to the right to use public goods/goods of common interest when those rights were necessary to carry out the economic activities for which they had been established.<sup>40</sup> Natural resources, agricultural land, forests, and forestry land (i.e. the so-called ‘excluded sectors’) were exempt from the same treatment.<sup>41</sup> Through the free movement of capital rule, and since the entry into force of the SAA, Croatia committed itself to ensure full and expedient use of its existing procedures for land acquisition by the nationals of EU Member States, except for the excluded areas – agricultural land and protected natural resources.<sup>42</sup> In other words, in the first phase of the accession, Croatia neither assumed the obligation to stipulate specific requirements for the acquisition of

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<sup>36</sup> Art. 49/5/a, SAA.

<sup>37</sup> The subsidiaries of EU companies, although the overwhelming interest over them belonged to EU companies registered in some other Member State, were considered as domestic legal persons because of their registered seats in the Republic of Croatia. Therefore, in legal transactions of real property, such subsidiaries were not considered as foreign but as domestic legal persons. Separate rules on specific requirements for the acquisition of ownership in favour of foreign legal persons did not apply to them. See Jelčić 2002, 251.

<sup>38</sup> Art. 49/5/b, SAA.

<sup>39</sup> The subsidiaries of EU companies, at the moment of entry into force of the SAA, did not have the right of acquiring ownership of immovables under the same conditions as domestic companies because they were not companies seated in Croatia. There was no separate regime for the subsidiaries of EU companies regarding the acquisition of ownership of real property in the Republic of Croatia. For the acquisition of real property ownership of EU companies who were established in Croatia via their subsidiaries, the existing restrictive and discriminatory regime for the acquisition of ownership of immovables was kept under some specific requirements.

<sup>40</sup> Art. 49/5/b, SAA.

<sup>41</sup> Art. 49/5/b, SAA.

<sup>42</sup> Art. 60/2, SAA, Annex II.

In the context of the free movement of capital, forests were not considered as excluded areas. When the SAA was signed, the acquisition of forests and forestry land by foreigners was not prohibited. It was introduced only as late as in 2002. Thus, the EU moratorium established by the Treaty of Accession for agricultural land did not include forests.

ownership<sup>43</sup> nor organised the procedures by which these requirements were realised from the entry into force of the SAA.<sup>44</sup>

However, in the second phase of the accession process, Croatia bound itself to gradually amend its legislation to equate natural and legal persons from other EU Member States with domestic natural and legal persons when realising EU market freedoms and freedom of land acquisition. Within four years following the entry into force of the SAA, within the right to establishment, it was necessary to consider ways to extend the rights of subsidiaries and branches of EU companies to land acquisition in the excluded areas.<sup>45</sup> Under the rule of the free movement of capital, within four years following the SAA, Croatia was bound to gradually align its legislation regarding the acquisition of real property in the country to ensure the same treatment of nationals of other Member States, as is the case with Croatian nationals.<sup>46</sup> Croatia had, thus, actually assumed the obligation to gradually liberalise land acquisition and, until 1 February 2009, was to fully equalise the position of natural and legal persons from other Member States with domestic persons. However, this obligation did not include the excluded areas (i.e. agricultural land and protected national resources). It was stipulated that only upon the expiry of four years following the entry into force of the SAA would the modalities be examined to extend the same treatment of EU citizens and legal persons to the acquisition of immovables in the excluded areas.<sup>47</sup>

### **3. Gradual harmonisation of land acquisition rules with EU laws**

#### **3.1. Full and expedient application of the existing land rules (PA/2006)**

The full and expedient application of existing land acquisition rules for foreigners<sup>48</sup> was accomplished through amendments to the PA of 2006 (PA/2006).<sup>49</sup> These amendments created the conditions for a more efficient implementation of the procedure of issuing prior authorisation for land acquisition by foreigners. At that time, neither the specific land acquisition rules for foreigners nor the rules prohibiting the acquisition of excluded areas, that is, agricultural land, forests, and protected areas of nature, were changed. No legislative interventions to abolish the discriminatory treatment of EU nationals and legal persons acquiring land were made at that point. Simultaneously, the new rules on the expedient application of the existing land acquisition rules did not only apply to nationals and legal persons from EU Member States but also to foreigners from third countries.

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<sup>43</sup> In this regard, see the joint statement on Art. 60 of the SAA, which states that the application of Art. 60 SAA shall in no way impact the regulations by which the parties stipulate the system of ownership except when it is expressly provided for in the SAA.

<sup>44</sup> However, it was still allowed to keep the proportional and non-discriminatory restrictions on the acquisition of ownership justified by public interests. See the joint statement on Art. 60, SAA.

<sup>45</sup> Arts 49/5/b, 49/5/c, SAA.

<sup>46</sup> Art. 60/2, SAA.

<sup>47</sup> Art. 60/2, SAA.

<sup>48</sup> Art. 60/2, SAA,

<sup>49</sup> Act on Amendments to the PA (Official Gazette NN 79/06).

In short, the amendments to the PA of 2006 simplified and shortened the procedure of obtaining prior authorisation for land acquisition by any foreigner.

The procedure for issuing prior authorisation was simplified and shortened by placing it under the exclusive jurisdiction of the Ministry of Justice.<sup>50</sup> All competencies for the issuance of prior authorisation for the acquisition of land by foreign persons were transferred to the Minister of Justice of the Republic of Croatia.<sup>51</sup> Any role of the Minister of Foreign Affairs was excluded.<sup>52</sup> However, all other existing land acquisition rules regarding the content of prior authorisation, the prohibition of submitting any new request for such authorisation within a five-year period in the case of initial denial of consent, or any similar requirements, were kept. The only provision that was amended was one on the legal effects of denying prior authorisation on the contract, on the basis of which a foreign person ought to have acquired ownership of an immovable. Without prior authorisation given by the Minister of Justice, the contract was considered to be null and void.<sup>53, 54</sup>

### **3.2. Equal treatment for the acquisition of land by EU nationals and legal persons (PA/2008)**

Equal treatment for the acquisition of land by EU nationals and legal persons was established before the Republic of Croatia acceded to the EU (1 July 2013). Equal treatment was established on 1 February 2009 when the four-year period expired (as prescribed in the SAA), during which Croatia was obliged to ensure equal treatment for the acquisition of land by nationals and legal persons from other Member States. With amendments to the PA of 2008,<sup>55</sup> specific rules for the acquisition of real property by foreigners ceased to be valid for nationals and legal persons from other Member States. Nationals and legal persons from other Member States were allowed to acquire land ownership under the same conditions as Croatian citizens and legal persons seated in Croatia.<sup>56</sup> Equal treatment was established for EU nationals and legal persons as domestic citizens, regardless of the grounds on which they acquired ownership (e.g. contracts, inheritance, court decisions, and laws).

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<sup>50</sup> Article 357, PA/2006.

<sup>51</sup> Article 356, PA/2006.

<sup>52</sup> The new procedure of the issuance of prior authorisation for land acquisition also applied to any already initiated procedures transferred to the exclusive competence of the Minister of Justice (Art. 11 of the Act on the Amendments to the PA, Official Gazette NN No. 79/06).

<sup>53</sup> Art. 357/1, PA/2006.

<sup>54</sup> However, the PA did not expressly lay down from which point in time a contract was considered as null and void, i.e. whether the contract had been null and void already at the moment it had been signed, or from the moment when the Minister of Justice rejected prior authorisation. The following questions also remained: What was the impact of issuing prior authorisation on the validity of the contract? Did the convalidation of the contract take place? Did it become valid already at the moment it had been entered into, or only upon the issuance of prior authorisation? For more see Jelčić 2002, 30.

<sup>55</sup> Act on Amendments to the PA (Official Gazette NN No.146/2008).

<sup>56</sup> Article 358a/1, PA/2008.

Consequently, since 1 February 2009, only general land acquisition rules have been applied to land acquisition by EU nationals and legal persons. Only agricultural land and protected areas of nature were excluded from equal treatment.<sup>57</sup>

The effects of such equal treatment, applied retroactively to all contracts on land acquisition, as concluded by EU nationals and legal persons prior to amendments to the PA, became effective on 1 February 2009. The aim was to establish the same non-discriminatory treatment for all EU nationals and legal entities who had already entered into contracts on land acquisition, regardless of when the contract was concluded and whether it applied to prior authorisation under previous regulations or whether the authorisation was refused. Such an approach was necessary because, at the time of the entry into force of the PA/2008, a significant number of contracts entered into by EU nationals or legal persons had already existed; in such cases, no prior authorisation by the Minister of Justice was requested, for which the authorisation procedure was pending or where prior authorisation had already been refused. Under the PA/2006, in all the aforementioned cases, the contracts on land acquisition were considered null and void and did not produce any legal effects. However, for all such contracts, the PA/2008 strictly prescribed that they *ex lege* became valid (convalidation) although entered into prior to 1 February 2009.<sup>58</sup> Therefore, any procedures to obtain prior authorisation initiated before the PA/2009 entered into force *ex officio* were terminated.<sup>59</sup> Finally, such an approach resulted in a situation where land acquisition by EU nationals and legal persons, who had entered into contracts prior to 1 February 2009, only general land acquisition rules applied, similar to the case of domestic persons.

### 3.3. Gradual extension of equal treatment of EU nationals and legal persons to the excluded areas

The amendments to PA/2008, by which the same legal regime was established for EU nationals as for domestic persons, did not, however, have any impact on the change of rules on land acquisition in the excluded areas. The prohibition imposed on EU nationals and legal persons for the acquisition of agricultural land and protected parts of

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<sup>57</sup> Article 358a/2, PA/2008.

<sup>58</sup> Art. 6 of the Act on Amendments to the PA of 2008. As the result and in practice, the actions for establishing the nullity of contracts made without prior authorisation with EU nationals prior to the amendments of the PA of 2008 were rejected. See the decision of the Supreme Court of the Republic of Croatia, Rev 4988/2019-2, 19/01/2021; decision of the County Court in Dubrovnik Gž-1073/15, 28/11/2016. In addition, the claims for the issuance of documents necessary for the registration of ownership in favour of EU nationals started to be accepted even without prior authorisation. See the decision of the Supreme Court of the Republic of Croatia, Rev 660/2010-2, 13/07/2011. However, since the entry into force of the PA/2008 (1/2/2009), regarding the contracts entered into with EU nationals, calculating the limitation period for the real property transaction tax was re-started, although from the conclusion of the contract and until that particular point in time, the limitation period for tax due had already expired. See the decision of the Administrative Court in Rijeka, 8 UsI-1454/12-11, 22/07/2013 (accessible at [www.iusinfo.hr](http://www.iusinfo.hr), accessed on: 31/10/2023).

<sup>59</sup> Art. 5 of the Act on Amendments to the PA of 2008.

nature continued to exist.<sup>60</sup> The extension of the equal treatment of EU nationals and legal persons to excluded areas was carried out gradually and started before Croatia acceded to the EU. At the time of the entry into force of the PA/2008, the prohibition against the acquisition of forests and forestry land ceased to exist for EU nationals and legal persons. Starting on 1 February 2009, EU nationals and legal persons were allowed to acquire forest and forestry land under the same conditions as domestic persons.<sup>61</sup> The prohibition against the acquisition of protected areas of nature ceased to exist by the entry into force of the Nature Protection Act (6/7/2013) for any foreign person, including those from third countries.<sup>62</sup>

Following accession to the EU, Croatia was allowed to temporarily maintain the discriminatory rules under which all EU nationals and legal persons were banned from acquiring agricultural land for seven years, with the possibility of prolonging it for an additional three years. The transitional period was stipulated in the Treaty of Accession within the transitional measures for the free movement of capital.<sup>63</sup> The prohibition regarded the acquisition of agricultural land by the nationals of another Member State, by the nationals of the States signatories of the European Economic Area Agreement

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<sup>60</sup> Art. 358a/2, PA/2008.

<sup>61</sup> The prohibition on forests and forestry land was abolished because, under the SAA, forests and forestry land were not considered to be excluded areas (ANNEX VII).

<sup>62</sup> The Nature Protection Act (Official Gazette NN Nos 80/13, 15/18, 14/19, 127/19).

In the process of accession, the Republic of Croatia did not seek a special moratorium for the protected areas, whereby the prohibition on the acquisition introduced by earlier regulations on the protection of nature would continue to be effective. Following the EU accession (1/7/2013), a new Nature Protection Act was adopted abolishing the prohibition of the acquisition of the protected parts of nature by any foreign persons. By the entry into force of the new Nature Protection Act, the preconditions were that foreign persons, having already entered into contracts on the acquisition of real property in the protected parts of nature but not having been allowed to register it in the land register, were, thus, permitted to make the corresponding entries in the land register as the owners. In the *Stephen OGDEN* case against Croatia (Decision of 10/02/2015, Petition No. 27567/13), the European Court of Human Rights held that because of such postponement of the acquisition of ownership, the acquirer was not entitled to indemnification for the infringement of his fundamental rights. The ECHR held that no damage occurred as the acquirer had bought the immovable for his personal needs and was not factually prevented from using it, i.e. he could have always used it for the purpose for which he had bought it.

<sup>63</sup> Annex V to the Accession Treaty. *“The main reason for the transitional period granted at the time of Croatia’s accession to the European Union was the need to safeguard the socioeconomic conditions for agricultural activities following the introduction of the single market and the transition to the common agricultural policy in Croatia. In particular, the transitional period aimed to meet concerns raised about the possible impact on the agricultural sector of liberalising the acquisition of agricultural land. This was due to significant differences in land prices and farmers’ purchasing power in Croatia compared with Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom (hereinafter the EU-15). The transitional period was also designed to: (i) ease the process of restitution and privatisation of agricultural land; (ii) improve the land registers and cadastre and regulate property rights; and (iii) demine agricultural land.”* Taken from point 2 of the Commission Decision (EU) 2020/787 of 16 June 2020 extending the transitional period concerning the acquisition of agricultural land in Croatia, C/2020/3950, OJ L 192, 17/6/2020, pp. 1-3.

(EEAA) and by legal persons formed in accordance with the laws of another Member State or an EEAA State. The prohibition included the acquisition of agricultural land based on a contract and was stipulated in the Agricultural Land Act (2008), which was effective at the time of signing the Accession Treaty. That is, EU nationals and legal persons were still banned from contractually acquiring agricultural land. Regarding other legal bases (i.e. succession, laws, and court decisions), EU nationals and legal persons were permitted to acquire agricultural land. The Agricultural Land Act (2008) prohibits the acquisition of agricultural land only on the basis of contracts/legal transactions.<sup>64</sup> Therefore, additional obligations were stipulated for Croatia. For example, Croatia should not introduce any new restrictions on the acquisition of agricultural land, except for those laid down in the Agricultural Land Act of 2008. Croatia also committed that EU nationals and legal persons, when acquiring agricultural land, would not be treated in a more restrictive way than third-country nationals or legal persons. After all, it was a transitional measure within the principle of the free movement of capital and did not regard the principle of freedom of establishment.<sup>65</sup> It was expressly stipulated that the prohibition on acquiring agricultural land did not include self-employed farmers who were nationals of another Member State and wished to establish themselves and reside in Croatia. During Croatia's accession to the EU, self-employed farmers were allowed to acquire agricultural land when they wanted to start doing business in the country. Upon the expiry of the period of seven years, the European Commission extended the transitional period for the acquisition of agricultural land in Croatia for three years.<sup>66</sup>

The transitional period expired on 30 June 2023. Since then, there have been no prohibitions against EU nationals and legal persons from acquiring real property in the excluded areas. EU nationals and legal persons, when acquiring agricultural land, forests, forestry land, or the protected parts of nature, are fully equated with domestic persons. The principle of equal treatment applies to all the rights and obligations of EU nationals and legal persons as owners of real property. All separate regulations providing specific

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<sup>64</sup> Annex V to the Accession Treaty expressly provides that Croatia “*may keep in force the restrictions laid down in its Agricultural Land Act (Official Gazette 152/08), as in force on the date of signature of the Treaty of Accession.*” Article 2/2 of the Agricultural Land Act (Official Gazette NN No.152/08) expressly stated that foreign natural and legal persons were not allowed to acquire ownership of agricultural land by way of legal transactions unless otherwise set forth in a treaty.

<sup>65</sup> See Dudás 2022, 25–26

<sup>66</sup> Commission Decision (EU) 2020/787 of 16 June 2020 extending the transitional period concerning the acquisition of agricultural land in Croatia, C/2020/3950, OJ L 192, 17/6/2020, pp. 1–3. The main reasons for extending the transitional period were as follows: agricultural land prices in Croatia that were among the lowest in the EU, the noticeable differences in agricultural land prices between Croatia and almost all other Member States, in particular the EU-15 that could hinder smooth progress towards price convergence, the gap in the *per capita* GDP in the purchasing power standards between Croatia and almost all other Member States, relative high agricultural land prices for the purchasing power in Croatia, the predominance of small family farms and the fragmented agricultural land holdings, a still ongoing consolidation process of these small farms, the lower productivity of Croatian farmers compared to other European farmers, a still ongoing project on privatisation and restitution of land, regulation of property rights, putting the land register and cadastral data in order, continuing the process of demining of agricultural land suspected of still containing mines. See points 4–9 of the Commission Decision.

legal regimes for agricultural land, forests, and protected parts of nature apply in the same manner to EU nationals and legal persons as owners of such immovables, as is the case with domestic persons. The rules governing the acquisition, disposal, or protection of real property apply equally to any owner. Separate regulations proclaim that these immovables are considered goods of interest to the Republic of Croatia and, thus, enjoy special protection.<sup>67</sup> Therefore, any real property owner, regardless of whether they are domestic persons, EU nationals, or legal persons, has many obligations and restrictions regarding the use or disposal of their real property.

#### 4. Land acquisition by foreigners from other countries following the accession

The liberalisation of legal transactions to harmonise land acquisition rules with EU laws has only partly changed the legal position of natural and legal persons from other countries when acquiring real property. Even after acceding to the EU, Croatia retained all pre-existing restrictive and discriminatory land acquisition rules. However, major shifts have occurred in favour of foreigners from other countries. The procedure for obtaining prior authorisation for the acquisition of real property is now under the amended version of the PA/2006, which is simplified and much faster. The Minister of Justice is responsible for issuing prior authorisation for land acquisition.<sup>68</sup> In addition, the cancellation of the prohibition on acquiring protected parts of nature includes people from other countries. Separate rules on financial compensation have been introduced for foreigners who cannot acquire immovables by succession in the excluded areas. The position of foreigners from other countries was not impacted in any way by the transitional period during which EU nationals were banned from acquiring agricultural land or upon its expiry.

The most important change in the status of foreigners from other countries when acquiring land following Croatia's accession is manifested in the application of Article 64(1) TFEU amended by Article 12 of the Treaty of Accession.<sup>69, 70</sup> Article 64(1) of the TFEU now reads as follows: *"The provisions of Article 63 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets. In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date shall be 31 December 1999. In respect of restrictions existing under national law in Croatia, the relevant date shall be 31 December 2002."*

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<sup>67</sup> See Art. 52 of Constitution of the Republic of Croatia.

<sup>68</sup> Art. 357/1, PA.

<sup>69</sup> Art. 12 of the Treaty of Accession reads as follows: *"In Article 64(1) of the TFEU, the following sentence is added: 'In respect of restrictions existing under national law in Croatia, the relevant date shall be 31 December 2002'."*

<sup>70</sup> The amendment to Art. 64/1 of the TFEU in connection with a specific date for Croatia is provided for in Art.12 of the Treaty of Accession of the Republic of Croatia, OJ L 112, 24/4/2012, pp. 10-110.

Under Article 64 (1) of the TFEU, Member States in relation to third countries may apply only national restrictions on the movement of capital that existed on the date specified in Article 64(1). It follows from Article 64(1) that Member States, in relation to nationals and legal persons from third countries, are allowed to apply only the national restrictions that existed on a specific date in connection with any transactions involving real property which, according to the TFEU, were considered the free movement of capital. These measures may be applied even when they discriminate against third-country nationals and legal persons. In addition, Article 64/1, in connection with Article 63/1 of the TFEU, sets forth that Member States can no longer introduce any new restrictions on investing in real property, except for those already existing on the date specified in Article 64/1 of the TFEU. Indeed, Member States may not take any new measures against third countries other than those specified in Article 64/1 of the TFEU and, similarly, tighten or aggravate the requirements for investing in real property in their territories. It is important to add, however, that Member States are not obligated to liberalise legal transactions of immovables in relation to third countries; they are only bound to refrain from measures by which the position of nationals or legal persons from third countries, when investing in real property, would in any way become worse than the status they used to enjoy on the date specified in Article 64(1).<sup>71</sup>

Stipulating 31 December 2002 for the Republic of Croatia as the reference date for allowing restrictions on the free movement of capital, including real property, has made it possible that even after acceding to the EU, restrictions on the movement of capital, in relation to third-country nationals, apply to the acquisition of immovables introduced in the Croatian legal system only after 31 December 1993 and 31 December 2002. This is precisely why Croatian law permits the application of specific land acquisition rules to third countries and prohibits the acquisition of agricultural land, forests, and forestry land. These were specific land acquisition rules adopted prior to 31 December 2002 and were valid for nationals and legal persons from third countries. If no specific date was laid down in Article 64/1 of the TFEU (31 December 2002), the rule on the admissibility of restrictions imposed on third countries valid on 31 December 1993 applied also to Croatia. This would exclude the possibility that after the accession, in relation to third countries, separate requirements for the acquisition of ownership of immovables laid down in the Act on Ownership and Other Real Rights, effective since 1 January 1997,<sup>72</sup> would continue to apply, as well as the restrictions on the acquisition of ownership of forests and forestry land introduced as late as in 2002.<sup>73</sup>

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<sup>71</sup> See Calliess & Ruffert 2017, 1065.

<sup>72</sup> If no specific date for Croatia was laid down in Art. 64/1 of the TFEU, only the rules on the acquisition of ownership of real property in favour of foreign persons under Art. 82c of the former Act on the Basic Ownership Relations of 1980 could apply because this Act was valid on 31 December 1993.

<sup>73</sup> The prohibition on the acquisition of forests by foreign persons was prescribed as late as in 2002 (Art. 1 of the Act on the Amendments to the Forests Act, Official Gazette NN 13/02), and it was kept for foreigners from other countries also in the subsequent Forests Acts (e.g. Art. 56/2 of the Forests Act, Official Gazette NN Nos 68/18, 115/18, 98/19, 32/20).



Under Croatian law, no new restrictions can be imposed on the acquisition and use of immovables by third-country nationals, except for those that existed on 31 December 2002. Moreover, the prohibitions against the acquisition of ownership could not be extended to any other type of real property for which no such stipulations existed prior to 31 December 2002. No other measures could be imposed to introduce new direct or indirect discriminatory restrictions on third countries when it comes to investments in immovables, their use and disposal becoming non-existent on 31 December 2002. The imposition of such measures would be contrary to Articles 63 and 64 of the TFEU and would be considered a violation of the obligations specified in the TFEU. The legal position of foreigners from third countries may only change in the days to come if, for them, a more favourable legal regime for land acquisition is established.

Following the accession to the EU and the expiry of the moratorium on agricultural land, the specific requirements for the acquisition of land by natural and legal persons from third countries<sup>74</sup> are regulated as follows: (1) For land acquisition by succession, reciprocity must exist.<sup>75</sup> (2) For land acquisition based on other legal grounds (legal transactions, laws, court decisions, or decisions by other competent bodies), two separate preconditions must be met: 1) reciprocity<sup>76</sup> and 2) prior authorisation by the

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<sup>74</sup> The notions of foreign natural and foreign legal persons are still the same as provided for from the very beginning in Art. 355 of the PA. See 2.1. For foreign acquirers, the applicable rules are those valid at the moment of the acquisition of the right. It arises from the case law that the applicable moment is the conclusion of the contract. Therefore, in the cases where the contract had been entered into prior to the dissolution of the Republic of Croatia from Yugoslavia (8/10/1991), the acquirers of immovables under those contracts were not considered as foreigners under the PA. In such cases, no separate requirements were imposed for land acquisition normally required when a foreigner from another country acquired real property. See the decisions of the High Administrative Court of the Republic of Croatia, Us11613/2011-4 of 12/6/2014 i Us-7721/2011-7, 29/05/2013, Decision of the County Court in Varaždin, Gž Zk 32/2018-2, 16/04/2018 (accessible at [www.iusinfo.hr](http://www.iusinfo.hr), accessed on: 31/10/2023).

<sup>75</sup> Art. 356/1, PA. A foreign person may become the owner of an immovable in the Republic of Croatia by succession only under the condition that a Croatian legal person, or a Croatian national, may acquire ownership of immovables by succession under the law of the country whose national is the foreign person who ought to acquire ownership of an immovable by succession in Croatia. If this specific requirement is fulfilled, a foreign person becomes the owner of the immovable at the moment the procedure of succession is started, i.e. at the testator's death (Art. 128/1, PA). However, this condition of reciprocity must be distinguished from the reciprocity under the Inheritance Act where it is necessary to acquire the status of an heir (Official Gazette NN Nos 48/03, 163/03, 35/05, 127/13, 33/15, 14/19). Under the Inheritance Act, foreigners are, under the condition of reciprocity, equal to Croatian nationals in the matters of succession. The reciprocity is implied unless the opposite is established on the request of the person having legal interest in the matter (Art. 2/2 of the Inheritance Act). When real property is the subject of inheritance, both requirements for reciprocity must be met – the reciprocity of the capacity to inherit (Art. 2/2 of the Inheritance Act) and that of the capacity for acquiring real property by succession (Art. 356/1, PA).

<sup>76</sup> Reciprocity exists if a Croatian national or a Croatian legal person, under the same legal ground, may acquire ownership of an immovable in the country of the foreign person.

Minister of Justice.<sup>77</sup> Prior authorisation is given upon the request of the foreign person intending to acquire ownership of an immovable or the person intending to alienate it.<sup>78</sup> Prior authorisation continues to be issued at discretion but the decision of the Minister of Justice is considered to be administrative in nature, which can be countered with another administrative action.<sup>79</sup> Without prior authorisation by the Minister of Justice, contracts aimed at acquiring ownership are null and void.<sup>80</sup> The same kind of prior authorisation is required for the acquisition of immovable under any other legal ground (court decision, law, etc.).<sup>81</sup> Denying prior authorisation prevents the seeker from acquiring ownership of the same immovable in the next five years following the day of the submission of the subsequently denied request, that is, from repeating the submission of the request for authorisation in favour of the same foreign person.<sup>82</sup> (3) There is no legal basis on which foreign persons may acquire ownership of real property in the excluded sectors, such as excluded areas,<sup>83</sup> agricultural land,<sup>84</sup> forests, or forested land.<sup>85;86</sup> (4) Foreign people who may not acquire ownership of real property in the excluded sectors by inheritance are entitled to monetary compensation based on the regulations governing expropriation.<sup>87</sup>

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In every concrete case, the applicant must prove the existence of reciprocity. See the decision of the High Administrative Court of the Republic of Croatia, Us-2755/2007-5, 22/10/2009 (accessible at [www.iusinfo.hr](http://www.iusinfo.hr), accessed on: 31/10/2023).

<sup>77</sup> Art. 356/1, PA.

<sup>78</sup> Art. 357/2, PA.

<sup>79</sup> Art. 356/3, PA.

<sup>80</sup> Art. 357/1, PA. Therefore, without prior authorisation, a pre-notation in favour of a foreign acquirer cannot even be carried out. See the Decision of the County Court in Varaždin, Gž.586/05-2, 18/08/2005.

<sup>81</sup> Prior authorisation is required even when a spouse or an extra-marital partner ought to acquire co-ownership of an immovable being a matrimonial property acquired during a marital or an extra-marital union. See the Decision of the Supreme Court of the Republic of Croatia, VSRH Rev 1003/2007-2, 19/02/2008.

<sup>82</sup> Art. 357/3, PA.

<sup>83</sup> Art. 358/1, PA. The excluded areas are the areas which, to protect the interests and security of the Republic of Croatia, are proclaimed to be areas where foreigners may not be entitled to any ownership rights.

<sup>84</sup> Art. 2/2 of the Act on Agricultural Land (Official Gazette NN, Nos 20/18, 115/18, 98/19, 57/22).

<sup>85</sup> Art. 56/2, The Forests Act.

<sup>86</sup> Because of the prohibition of acquisition, land register courts reject entries by foreign acquirers as the owners from other countries. See the Decision of the County Court in Varaždin, Gž Zk 469/2018-2, 15/04/2020 (accessible at [www.iusinfo.hr](http://www.iusinfo.hr), accessed on: 31/10/2023). The prohibition against acquisition is also valid when an immovable in the excluded areas is sold in enforcement proceedings. It is not possible to sell it to a foreign person in a public auction. See the Decision of the County Court in Varaždin, Gž.5129/11-2, 22/02/2012. However, regarding the immovables in the excluded areas of the Republic of Croatia, the rules on prior authorisation do not apply. See the Decision of the Administrative Court of the Administrative Court of the Republic of Croatia, Us-11379/2007-4, 09/03/2011.

<sup>87</sup> Article 358b, PA. For example, see the Decision of the Supreme Court of the Republic of Croatia, VSRH Rev 541/2010-2, 17/03/2015.

Compensation is granted based on the final decision regarding the inheritance. The Republic of Croatia is obliged to pay compensation (the market value of the real property in question) by becoming *ex lege* owner of the real property a foreign person may not inherit.<sup>88,89</sup>

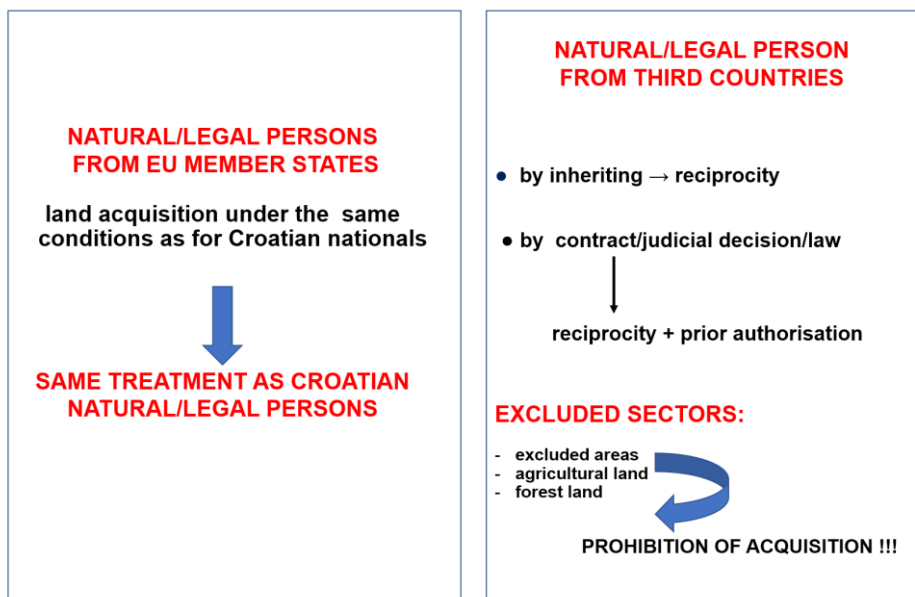


Table no. 1

#### 4. Conclusion

During the process of accession to the EU, the Republic of Croatia fulfilled all its obligations regarding the liberalisation of land acquisition for natural and legal persons from other Member States. The results of the adjustment to EU laws following the moratorium on the acquisition of agricultural land by the nationals of EU Member States (30 June 2023) demonstrate that, in Croatia, two different land acquisition regimes are still valid, depending on whether the land is acquired by domestic citizens and nationals of other EU Member States equated with them or by foreigners from third countries. Such liberalisation of land acquisition has largely increased the acquisition of immovables by nationals from other Member States and, in particular, as their second homes along the Croatian coastal area.

<sup>88</sup> Compensation is determined according to the Expropriation and Compensation Act (Official Gazette NN, Nos 74/14, 69/17, 98/19). The compensation is determined in cash and amounting to the level of the market value of the immovable (Art. 46/1).

<sup>89</sup> Any secured rights on such real estate are transferred to the compensation the heir may claim from the Republic of Croatia (Article 358b/2, PA) while all other encumbrances remain attached to real property (Article 358b/3, PA).

With regard to agricultural land, there are still many obstacles to the acquisition of ownership, particularly because of disorderly ownership relations, small agricultural plots not attractive for foreign investments, dated land register files and small, undeveloped and fragmented agricultural holdings. In the course of the extended EU moratorium, many causes for its introduction, and then also extension, were eliminated. Therefore, various reform measures must be implemented to enhance the use of agricultural land and the development of the entire sector. However, when speaking of EU nationals, such measures may no longer be discriminatory compared to Croatian nationals.

At this point, there are no indications or discussions about the necessity to liberalise land acquisition by natural and legal persons from third countries or to eliminate restrictions and prohibitions against their land acquisition of land. Presumably, specific discriminatory requirements regarding land acquisition will be imposed, and rules banning the acquisition of agricultural and forestry land will not be abolished. This trend has been confirmed by numerous recent amendments to separate the regulations on agricultural land, forestry land, and protected parts of nature. Although such legal regimes involving immovables are frequently amended, the changes do not relate to the legal status of nationals from other countries when acquiring land.

Following accession to the EU, the protection of immovables of special interest for the Republic of Croatia and reforms in the agricultural sector are carried out by non-discriminatory instruments applied in the same way to all owners of such immovables regardless of whether they are domestic or foreign. Separate laws provide for specific owners' obligations and various restrictions for possessing, using, and factually and legally disposing of particular immovables aimed at protecting different economic, cultural, defensive, urbanistic, and other public interests.<sup>90</sup> Violations of such obligations are punished by misdemeanour fines and sometimes by sequestration (dispossessing the owner).<sup>91</sup> There is a growing trend of prescribing specific restrictions on the legal disposal of immovables of interest for the Republic of Croatia (the right of pre-emption)<sup>92</sup> aimed at transferring such immovables to their ownership to ensure their effective protection.

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<sup>90</sup> For example, an obligation was determined for agricultural land suitable for agricultural production, and the obligation to pay compensation for the restructuring of land for the purposes of construction (Arts 4, 23 et al of the Agricultural Land Act). About separate restrictive rules for the dissolution of co-ownership of agricultural land owned by state and private persons see more in Josipovic 2021, 106. Specific obligations for forests and forestry land were established for the use of forestry land, the picking of forest fruits and for the cutting of trees (Arts 36–38 et al of the Forests Act). Regarding the protected parts of nature, the restrictions against the owners are established depending on the type of the protected part of nature (Arts 165–174 of the Nature Protection Act).

<sup>91</sup> For example, see Art. 14 of the Agricultural Land Act, Art. 32/3, PA.

<sup>92</sup> For example, see Art. 165 of the Nature Protection Act.

Croatian Agricultural Land Act does not regulate statutory pre-emption right in a case of legal disposal of agricultural land. In some other Member States separate laws regulate pre-emption right for legal disposal of agricultural land. See for example for Slovenia Avsec 2021, 27–29

These restrictions are often accompanied by banning the further alienation of immovables from state ownership<sup>93</sup> or stipulating separate restrictive rules and procedures for their alienation from state ownership.<sup>94</sup>

However, these trends have revealed several challenges. One major challenge is ensuring the effective management, disposal, and protection of immovables, particularly those owned by the state. While establishing separate regimes for individual types of immovables, a challenging task has been to ensure an optimal balance between public and private interests, which is important for the justification and proportionality of ownership restriction. To answer the question regarding how to respond to all these challenges in the future, it is crucial to determine whether the liberalisation of legal transactions involving immovables will be considered a successful contribution to developing the Croatian legal and economic system, particularly its agricultural sector.

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<sup>93</sup> For example, see Art. 56/1 of the Forests Act.

<sup>94</sup> For example, see Arts 27- 82a of the Agricultural Land Act. For example, see Arts 51–60 of the Forests Act.

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