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Food Sovereignty: Is There an Emerging Paradigm in V4 Countries for the Regulation of the Acquisition of Ownership of Agricultural Lands by Legal Persons?

- **ABSTRACT:** *This study aims to provide an overview of regulation with regard to the acquisition of ownership of agricultural lands by legal persons in four countries: Hungary, Slovakia, Poland, and the Czech Republic. Each state is analysed in separate chapters. The frame of reference for this research is food sovereignty; therefore, regulation in the respective countries is examined in light of this paradigm. Research has shown that even in a group of such closely related countries, there are significant differences in the scrutinised legal regulation. At the end of the study, a conclusion is drawn in light of food sovereignty.*
- **KEYWORDS:** acquisition of ownership, agricultural land, legal persons, comparative analysis, Visegrád Group.

Introduction

This article aims to provide comprehensive and profound insight into the legal regulation of the Visegrád Group states relating to the issue of ownership acquisition by legal persons with regard to agricultural and forestry lands.

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The analysis covers the regulation of Hungary, Slovakia, the Czech Republic, and Poland. Each country is dealt with in separate chapters, followed by a summary chapter. First, the concept of food sovereignty is briefly introduced, which functions as a frame of reference in this study.

The acquisition of agricultural land ownership by legal persons is a highly topical issue. In recent years, not only the European Union (hereinafter referred to as the EU)⁴ but also the Food and Agriculture Organization of the United Nations (hereinafter referred to as the FAO)⁵ issued soft-law documents connected to the problem.⁶

Given that all of the examined countries are EU member states, their legal systems are also determined by EU law. As can be seen in the following chapters, there are several occasions when the free movement of capital is among the pillars of the EU's single market and the national land regulation conflict, at least from the European Commission's viewpoint. There are legal arguments and counterarguments as to whether the national land regulation in question is in conflict with EU law, although we do not aim to join these debates. After presenting the legal regulation of the issue in the four countries examined in this study, in the concluding chapter, we examine the respective regulations in regard to the compatibility of the paradigm of food sovereignty.

This article seeks to answer the question of whether the regulation of examined states can contribute to better realisation of food sovereignty, and if so, what the advantages and disadvantages are with regard to following this approach.

1. Food sovereignty as a frame of reference

This article considers the following definition of food sovereignty as a frame of reference:

“Food sovereignty is the right of peoples to define their own food and agriculture; to protect and regulate domestic agricultural production and trade in order to achieve sustainable development objectives; to determine the extent to which they want to be self-reliant; to restrict the dumping of products in their markets; and to provide local fisheries-based communities the priority in managing the use of and the rights to aquatic resources. Food Sovereignty does not negate trade, but rather it promotes the formulation of trade policies and practices that serve the rights of peoples to food and to safe, healthy and ecologically sustainable production.”⁷

4 (A) Opinion of the European Economic and Social Committee on *Land grabbing – a warning for Europe and a threat to family farming* (own-initiative opinion). Adopted on 21 January 2015 – NAT/632-EESC-2014–00926-00-00-ac-tra; (B) European Parliament resolution of 27 April 2017 on *the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers* (2016/2141(INI)); (C) Commission Interpretative Communication on *the Acquisition of Farmland and European Union Law* (2017/C 350/05).

5 Food and Agriculture Organization of the United Nations (2012) *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*, Rome, FAO.

6 See the analysis of these documents in detail: Szilágyi, 2019.

7 People's Food Sovereignty Network (2002) is cited by Windfuhr and Jonsén, 2005, p. 1.

In this definition, certain elements are of paramount importance for this study. A key to understanding the intention behind this article is to emphasise that one of the constituting elements of the food sovereignty approach conceived as mentioned above is that it aims to protect and regulate domestic agricultural production to achieve sustainable development objectives.

Nonetheless, it is also advisable to conceive food sovereignty in relation to the paradigm of food security. Simply put, we can see the increasing confrontation of two paradigms in the 21st century: the approach of food security based on neoliberal political philosophy and neoclassical economics, which seeks to minimise state intervention^{8,9} and the paradigm of food sovereignty, which seeks to question each inherent feature of the industrialised food system, including the dominance of agribusiness.¹⁰ The neoliberal food system is the consequence of the ongoing structural transformation of agriculture in Europe and North America, which is dominated by large agri-food businesses.¹¹ Additionally, the rise of supermarkets and hypermarkets in the second half of the 20th century, which changed the market entirely following their entry, must be considered. Smaller producers suffer the greatest losses and, in general, may find themselves in a much more difficult commercial environment, given the demands of increased quantities and shorter deadlines.¹²

The question arises as to how legal regulation can reflect the approach of food sovereignty in connection with the ownership acquisition of agricultural and forestry lands by legal persons.

2. Hungary

In the final years before the regime change in 1989, Hungary's land act was Act I of 1987. Its material scope covered all agricultural lands, buildings on agricultural lands, and other installations situated within Hungary, with the exception of forests. These categories were labelled immovable properties. Based on § 6 (1) of the Act of 1987, legal persons could own immovable property, including agricultural land. Pursuant to § 38 (1) foreign legal persons (as well as natural persons) could acquire ownership of immovable property, including agricultural land, with the prior approval of the finance minister. However, the conditions were not coherent. The Decree of the Act of 1987 was the Decree of the Council of Ministers no. 26/1987 (VII. 30). This decree in its § 1 defines the notion of a 'foreign legal person': a legal person with a registered office abroad, as well as a legal person with a Hungarian registered office operating with foreign

8 Johnson, 2018, p. 30.

9 One of the three most important goals of economics (macroeconomics) based on neoliberal political philosophy is financial and trade liberalisation. See more: Martínez-Alier and Muradian, 2015, p. 154.

10 Mann, 2014, p. 3.

11 Andree, Ayres, Bosia, and Massicotte (eds.), 2014, pp. 3–4.

12 Maxwell and Slater, 2003, pp. 535–536.

interests. The Decree of the Finance Minister no. 37/1988. (IX. 5.) on the ownership acquisition of immovable property by foreigners determined the criteria which had to be considered when making the decision on granting permission for the ownership acquisition of the immovable property of foreigners. The next decree adopted on the same subject¹³ maintained these provisions with minor modifications. The Constitutional Court of Hungary found that this latter decree as well as the second part of the definition of the notion of a 'foreign legal person', which referred to legal persons with a Hungarian registered office operating with foreign interests as foreign legal persons, were unconstitutional and annulled them.¹⁴ In a later decision, the Constitutional Court found unconstitutionality in the form of an omission as 11 months had passed since the publication of its earlier judgement, and the government had not adopted new rules on the issue; thus, the acquisition of immovable property by foreigners was still based on the unconstitutional practice, and the legal vacuum resulted in uncertainty.¹⁵ More than half a year after this latter judgement, a specific provision appeared in a new decree which declared that the ownership of arable land could not be acquired by foreigners.¹⁶ Therefore, both foreign natural and foreign legal persons were excluded from the right to acquire ownership of arable land beginning 1 January 1992.¹⁷

We now consider Hungarian legal persons. According to a 2020 judgement of the Constitutional Court, Act I of 1987 followed the concept of distinguishing between general immovable property and agricultural land. Regarding the latter, Hungarian legal persons could acquire ownership. In contrast, the ownership acquisition of agricultural land was not possible for them, not because it was forbidden by law but because new commercial companies could have been established only beginning 1 January 1989; thus, there were and could have been no legal provisions to entitle legal persons to acquire ownership of agricultural land.¹⁸ Evidently, similar to other countries belonging to the Soviet bloc, the ownership of agricultural lands was linked to the state and farmers' cooperatives.

Therefore, the acquisition of agricultural land ownership by legal persons was complicated. In theory, Hungarian legal persons were able to acquire ownership of agricultural lands until the 1994 land act's entry into force, but the issue's regulation with regard to foreign legal persons was contradictory from 1 September 1987¹⁹ to 31 December 1991, as shown above, with the help of Constitutional Court judgments. Beginning 1 January 1992 foreign legal persons were unequivocally deprived of the right to acquire ownership of agricultural land.

13 Decree of the Council of Ministers no. 145/1989 (XII. 27) on the ownership acquisition of immovable property by foreigners.

14 Constitutional Court Judgment no. 12/1990 (V. 23).

15 Constitutional Court Judgment no. 29/1991 (VI. 5).

16 Decree of the Government no. 171/1991 (XII. 27) on the ownership acquisition of immovable property by foreigners, § 1 (5).

17 Szinay, 2020, p. 40.

18 Constitutional Court Judgment no. 11/2020 (VI. 3), [30].

19 This was the day on which Act I of 1987 entered into force.

After the change of regime, Hungary's first and completely new land act was Act LV of 1994 on arable land, which entered into force on 27 July 1994. The rules were straightforward. It was the first legal source to introduce an almost complete ban on land acquisition by legal persons. Foreign legal persons could not acquire the right of ownership of agricultural land at all, while at the same time, several exceptions were determined for specific Hungarian legal persons: the Hungarian state, local governments, associations of forest holders, and public foundations could be owners of agricultural lands. Additionally, ecclesiastical legal persons could also acquire ownership of agricultural land on the basis of disposition of property upon death, donation contract, or personal care agreement.²⁰ The explanatory memorandum of Act LV of 1994 found that Hungary was in a transitional period from a planned to a market economy. The market of agricultural land and its real value had not yet been developed appropriately because of the artificially restrained real estate policy over a long period of time. The memorandum also declares that agricultural land, as a natural resource, is available to a limited extent; it cannot be propagated or replaced by anything else.²¹ The Hungarian Constitutional Court²² ruled that the regulation which excludes legal persons from the right of land acquisition is constitutional.²³

Because of Hungary's accession to the European Union, national rules must be in accordance with EU requirements, although in connection with land regulation, Hungary was granted a transitional period (seven years from the accession), during which it could maintain its existing legislation. The European Commission later accepted Hungary's request to extend the seven-year transitional period by three more years;²⁴ thus, restrictions continued to remain in force until 30 April 2014.

Hungary's new legislation on agricultural and forestry land came into force on 1 May 2014. Despite EU requirements, Act CXXII of 2013 maintained the prohibition of the acquisition of land ownership by legal persons. Similar to the previous regulation, there are some exceptions to the general rule. Evidently, the Hungarian State is entitled to acquire land ownership for the enforcement of land policy objectives determined by law,²⁵ public employment, and other general interest objectives.²⁶ In addition to the state, some churches²⁷ and their internal legal persons can acquire land ownership based on specific titles,²⁸ as can mortgage credit institutions for a maximum period of

20 Act LV of 1994 on arable land, § 6(1)–(2) and § 7 (1).

21 Explanatory memorandum of Act LV of 1994 on arable land.

22 Constitutional Court Judgment no. 35/1994 (VI. 24).

23 Téglási, 2012.

24 Kozma, 2011.

25 More specifically, determined by Act LXXXVII of 2010 on the National Land Fund.

26 Act CXXII of 2013 on the acquisition of agricultural and forestry lands, § 11(1).

27 Currently, 27 churches determined by the Annex of Act CCVI of 2011 on the freedom of conscience and religion, as well as the status of churches, religious denominations, and religious communities, for example, the Hungarian Catholic Church, Hungarian Reformed Church, Hungarian Evangelical Church, etc.

28 On the basis of the disposition of property upon death, donation contract, or different types of personal care agreements.

one year through a winding-up or enforcement proceeding²⁹ and local governments in which the land concerned is situated for the aim of public employment, social land programme, and settlement development as well as in the case that the land in question is considered a protected site of local importance.³⁰

Following an examination of Hungary's land regulation in its entirety, the European Commission launched infringement procedures, arguing that the total ban on legal persons' acquisition of land ownership was not in compliance with the law of the European Union.³¹ Some authors consider the total ban to be one of the most important principles of Hungarian land regulation as it aims to prevent the complex chain of owners that is uncontrollable in practice, which is in sharp contrast to the objective of retaining the population of rural areas.³²

As can be seen, there is significant disagreement between Hungary and the European Union concerning the regulation of land acquisition by legal persons. No other member states regulate this issue in a strict manner. According to the European Commission's position,³³ this categorical ban violates the principle of the free movement of capital.³⁴

3. Slovakia

The accession of the Slovak Republic to the European Union has opened a new chapter in the country's history and has brought about dynamic changes in its land regulations. The member states such as Slovakia that joined the EU on 1 May 2004 were obliged to bring their national legislation in line with EU laws and abolish restrictions on land regulation that were applicable to nationals of the other Member States of the European Union. However, for a certain transitional period, the acceding states were permitted to maintain their national rules related to the restrictions on the acquisition of ownership of agricultural and forestry land in force during their accession period. This was the point at which the most dynamic period of the Slovak land regulation began. This is also emphasised by the fact that in October 2020, the Ministry of Agricultural and Rural Development of the Slovak Republic prepared a proposal to amend the law on the acquisition of ownership of agricultural land which is intended to be adopted in an abbreviated legislative procedure and which would be effective beginning 1 May 2021. In the present article, after defining the main sources of the Slovak land law, we present and analyse the most important

29 Act XXX of 1997 on mortgage credit institutions and mortgage bond, § 10(4).

30 Act CXXII of 2013 on the acquisition of agricultural and forestry lands, § 11(2).

31 Szilágyi, 2018.

32 Olajos and Andréka, 2017.

33 See https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1827: "Hungary has a very restrictive system which imposes a complete ban on the acquisition of land by legal entities and an obligation on the buyer to farm the land himself."

34 Treaty on the Functioning of the European Union, Article 26(2) and Article 63(1).

landmarks of the land regime, focusing particular attention on the reasons for which the European Commission initiated the infringement procedure against the Slovak Republic. The article also focuses on the acquisition of agricultural land by legal and natural persons as well as on the limits of acquisition of the ownership of agricultural land in Slovakia.³⁵

■ 3.1. *The main sources of land law in Slovakia*

Agricultural land as a natural resource is an integral part of every country's natural heritage, and every country is required to protect it. In the Slovak Republic, this legal obligation was declared in the Constitution of the Slovak Republic³⁶ (hereinafter referred to as the Slovak Constitution) on 1 June 2017.³⁷ As the Slovak Constitution is considered to be at the top of the Slovak hierarchy of sources of law, the duty to protect the country's agricultural land is assured at the highest level. Based on the text of the Slovak Constitution, the state focuses closely on the exploitation of natural resources and particularly on the protection of agricultural land and forest soils. These two natural resources were defined as non-renewable³⁸ natural resources, and because of this, the Slovak Constitution provides special protection for them to ensure food security in the country.³⁹

At the constitutional level, the Slovak land regime is a system of complex legal norms. Regarding land law, the most important source of law is Act No. 140/2014 Coll. on the Acquisition of the Ownership of Agricultural Land (hereinafter referred to as the Land Act). This act regulates the process of the acquisition of the ownership of agricultural land by transfer of ownership as well as the powers of public administration bodies regarding this process.

■ 3.2. *The acquisition of the ownership of agricultural land by legal persons*

The accession of Slovakia to the European Union on 1 May 2004 was an important landmark in the history of Slovak land management. In general, member states, including the Slovak Republic, which became a member of the European Union in 2004, were obliged to adapt their national rules in line with EU regulations upon accession. The seven-year transitional period expired in 2011, but the Slovak Republic submitted a request to the European Commission to extend the deadline by three years.⁴⁰ As a result, the European Commission issued Regulation No

35 For further information, see Lazíková–Bandlerová, 2011; Lazíková–Bandlerová, 2014; Ilavská, 2016. For English language literature, see Dufala–Dufalová–Šmelková, 2017; Lazíková–Bandlerová–Lazíková, 2020; Drábik–Rajčániová, 2014; Lazíková et al, 2015; Palšová–Bandlerová–Melišková–Schwarcz, 2017.

36 Act No 460/1992 Coll. The Constitution of the Slovak Republic, as amended. In Slovak: Ústavný zákon č. 460/1992 Zb., Ústava Slovenskej republiky.

37 The amendment to the Constitution was adopted on 16 May 2017.

38 For further see (in Hungarian language): Hornyák, 2017, pp. 188–204.

39 Article 44 (4) and (5) of the Constitution of the Slovak Republic.

40 Lazíková–Bandlerová, 2014.

2011/241/EU approving the application and extended the transitional period until 30 April 2014.⁴¹

Following the extended 10-year-long transitional period, the European Commission conducted a comprehensive review of the national regulations of the newly joined member states. As a result of this procedure, the European Commission found that national legislation in Slovakia was still restricting the fundamental economic freedoms of the European Union. More specifically, among the fundamental freedoms, the restrictions on the free movement of capital and the freedom of establishment were affected; as a result, these restrictions could lead to a significant reduction in cross-border agricultural investment.⁴² Due to these facts, in 2015, the European Commission decided to initiate an infringement procedure against Hungary, Bulgaria, Latvia, Lithuania, and Slovakia.⁴³

In the case of Slovakia, the main issue was the existence of 10 years of permanent residence or registered office in the Slovak Republic and the criterion of at least three years of commercial activity in agricultural production. The most problematic was the existence of a longer residence criterion, which resulted in the discrimination of EU citizens.⁴⁴ The Slovak legislature responded to this situation by amending certain paragraphs of the Foreign Exchange Act,⁴⁵ which resulted in the agricultural land market being opened not only for EU citizens but for third-country nationals as well. In addition, numerous rules concerning the purchase of agricultural land were adopted.⁴⁶ After these amendments were enacted, the Land Act regulated the transfer of agricultural land in detail, ensuring relatively wide contractual freedom. In the explanatory memorandum of the Land Act,⁴⁷ the main objective of the Act is to regulate the acquisition of agricultural land while preventing speculative purchases and thus to create an optimal legal environment that would allow agricultural production in the Slovak Republic as intended. It is clear that the most important objective of the aforementioned act is to utilise agricultural land for its intended agricultural purposes.⁴⁸ The Land Act also introduced a mandatory bidding procedure. On this basis, a seller was obliged

41 2011/241/EU: Commission Decision of 14 April 2011 extending the transitional period concerning the acquisition of agricultural land in Slovakia Text with EEA is available at the EUR-Lex portal: <https://eur-lex.europa.eu/legal-content/HU/ALL/?uri=CELEX%3A32011D0241> (Accessed: 14 January 2021)

42 Szilágyi, 2017, p. 176.

43 See the press release of the European Commission: *‘Financial services: Commission requests Bulgaria, Hungary, Latvia, Lithuania and Slovakia to comply with EU rules on the acquisition of agricultural land’*. Available at the website of the European Commission: https://ec.europa.eu/commission/presscorner/detail/en/IP_16_1827 (Accessed: 14 January 2021)

44 Szilágyi, 2017, p. 176.

45 The Foreign Exchange Act No. 202/1995. Coll., Section 19 (a): *‘A foreigner may acquire the ownership of a domestic real estate property if its acquisition has not been restricted by separate laws’*.

46 Lazíková–Bandlerová–Lazíková, 2020, p. 100.

47 The Explanatory Memorandum to the Act. No. 140/2014 Coll. on the acquisition of agricultural land is available online (in Slovak): <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=399288> (Accessed: 1 February 2021).

48 Kollár, 2019.

to register the selling interest⁴⁹ in a database operated by the Ministry of Agriculture and Rural Development of the Slovak Republic at least 15 days before land transfer. In addition, the landowner had to publish his selling intention on the bulletin board of the territorially competent municipality. The publication on the official bulletin board of the municipality was free of charge; moreover, the municipality was required to cooperate in publishing such offers.⁵⁰ After these conditions were fulfilled, ownership of the agricultural land may have been acquired by a natural or legal person with 10 years of permanent residence or registered office in the Slovak Republic and who had been engaged in agricultural activities for at least three years prior to the conclusion of the contract.⁵¹ If no one indicated their intention to purchase the land offered for sale in this way, the land could be claimed by a person with a permanent residence or domicile in the municipality in which the land was located. In the absence of interest, natural or legal persons residing or having their registered office in a neighbouring settlement had the opportunity to purchase the land.⁵² If there was no interest in purchasing agricultural land from the neighbouring municipality, the offer could be extended to persons who had a permanent residence or seat outside the municipality or the territory of the neighbouring municipality. Furthermore, the law also stated that if no person, regardless of their domicile or registered office, had expressed an intention to purchase land in the bidding procedure, the seller could freely transfer ownership of the land to a third party at the same starting price. However, in this case, only a third party who had been a citizen or resident in the territory of the Slovak Republic for 10 years could acquire ownership of the land. Nevertheless, a transfer was possible no later than six months after the unsuccessful bid.⁵³ The district office was responsible for verifying the existence of legal requirements for the transfer of ownership of agricultural land.

Before the European Commission began the infringement procedure, a number of professional and political debates surrounded the Land Act because of several of its provisions. As a result, two groups of the National Council of the Slovak Republic (hereinafter referred to as the Parliament) submitted a petition⁵⁴ to the Constitutional Court of the Slovak Republic.⁵⁵ The Constitutional Court deemed the limitations excessive because they limited the right to ownership, both of the sellers and of the purchasers.⁵⁶ The decision of the Constitutional Court resulted in a fundamental change, especially with regard to the acquisition of agricultural land. *The decision of the Constitutional Court has resulted in the fact that currently, in Slovakia, both natural and legal persons can*

49 The procedure for the transfer of ownership of land has been outlined in Section 4 of the Land Act.

50 Lazíková–Bandlerová–Lazíková, 2020, p. 101.

51 Kollár, 2019.

52 Land Act, Section 4 (7).

53 Relevans advokátska kancelária: Pravidlá nadobúdania poľnohospodárskych pozemkov a ich pripravované zmeny. <https://www.relevans.sk/pravidla-nadobudania-polnohospodarskych-pozemkov-pripravovane-zmeny/> (Accessed: 29 December 2020).

54 The petition was filed on 2 July 2014.

55 Drabik–Rajčániová, 2014, p. 84.

56 Decision no. PL. ÚS 20/2014 of the Constitutional Court of the Slovak Republic.

*acquire ownership of agricultural land with almost no restrictions.*⁵⁷ *The only restriction is that agricultural land cannot be owned by a citizen, a resident, or a legal person of a state whose legal system does not allow ownership of agricultural land by Slovak citizens, residents, or legal persons.* This rule does not apply to the inheritance of agricultural land or to member states of the European Union, the European Economic Area, Switzerland, and countries bound by an international treaty which is also binding for Slovakia.⁵⁸

The year 2021 will undoubtedly be a year of change for Slovak land management regulations, and at the end of October 2020, the Ministry of Agriculture and Rural Development of the Slovak Republic submitted an amendment proposal for inter-ministerial conciliation and requested its negotiation in an abbreviated legislative procedure.⁵⁹

The two main novelties of the new Land Act are the introduction of a system of pre-emption rights and maximisation of land acquisition limits.⁶⁰ Regarding these novelties, the introduction of land acquisition limits seems to be the most controversial. At the same time, it is almost certain that if the proposed amendment is approved in its original form, its constitutionality will presumably be re-examined by the Constitutional Court of the Slovak Republic.

The bill received 108 comments, of which 56 proposed significant changes. For example, a review was sent by the Slovak Chamber of Agriculture which complained that the proposal did not cover the fact that the majority of plots were, in many cases, owned by a large number of unknown owners. In this context, several questions arise: How can pre-emption rights be enforced in such a case? On what basis would the pre-emption order be determined? Furthermore, it is clear from the proposal that young farmers, who need an adequate amount of land to begin pursuing business activities, were not taken into account. “[Y]oung and small-scale farmers face very serious difficulties in acquiring land.”⁶¹

Because of this, young people may find themselves in a difficult situation unless they inherit agricultural land. In addition, according to the opinion of the Chamber of Agriculture, a plethora of lawsuits will be triggered by placing pre-emption rights ahead of pre-emption contracts. The Chamber of Agriculture would also raise the land acquisition limit by 50 percent for those who are involved in registered animal husbandry, as this would be essential for fodder production. In addition, per the proposal of the Chamber of Agriculture, the Slovak Land Fund could lease the land of unknown

57 Ptačinová, 2019.

58 Land Act, Section 7.

59 The bill and its annexes were uploaded to the „Slov-Lex“- Legislative and Information Portal of the Ministry of Justice of the Slovak Republic. The whole package in the Slovak language is available at <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2020-504> (Accessed: 22 January 2021).

60 These limits would accordingly be introduced differently for natural persons as well as for legal persons: it would mean 300 hectares for natural persons and sole proprietors and 1200 hectares for legal persons. However, it is important to note that if the buyer is involved in animal husbandry, the above-mentioned ceilings will be 50 percent higher.

61 Dirgasová and Laziková, 2017, p. 372.

owners only to Slovak farmers and to legal entities in cases where the final beneficiary is a Slovak citizen.

The topic has not been reopened as of the completion of this manuscript.⁶² Therefore, the most pressing question is what direction the forthcoming regulation will take.

4. The Czech Republic

After joining the European Union, a five-year transitional period was permitted for the Czech Republic to assure the conformity of laws related to residential properties and a seven-year transitional period was given to harmonise laws related to acquiring the ownership of agricultural and forestry land.⁶³ On 1 May 2011 the Parliament of the Czech Republic approved an amendment to the Foreign Exchange Act⁶⁴ which formally removed all of the restrictions for foreigners (both for natural persons and for legal persons based abroad) buying any type of real property in the Czech Republic. The bill entered into force on 19 July 2011. From this date forward, European rules regarding the free movement of capital have to apply to real estate acquisitions in the country. This means that *there is no legal obstacle for a foreign legal entity or investor to buy any type of real estate in the Czech Republic, including agricultural land, forestry land, or residential properties*.⁶⁵ This resulted in the Foreign Exchange Act being in line with the Accession Treaty, and no one was restricted in regard to buying real estate or agricultural land in the country.⁶⁶ This change in the law provided new opportunities for foreigners to acquire ownership of agricultural and forestry land, which is still considered a very good investment because such land is still significantly cheaper in the Czech Republic than in Western European countries. Moreover, investors were reluctant to buy real estate in the Czech Republic long before the Foreign Exchange Act was revised.⁶⁷

According to the Land Fund, only 7% of the agricultural land in the Czech Republic was owned by the state, and more than 90% of agricultural land was already privately owned at that time.⁶⁸ The Foreign Exchange Act expired on 18 October 2016.⁶⁹

Originally, before the problematic restrictions of the Foreign Exchange Act were removed in 2011, agricultural land could be acquired only by residents of the Czech Republic (both legal and natural persons). However, there were some exceptions.

62 The manuscript was finalised on 1 March 2021.

63 Jakub and Syrovátko, 2010, p. 12.

64 Amendment No. 206/2011 proposed to the Act No. 219/1995 Coll., Foreign Exchange Act.

65 Jakub and Syrovátko, 2010, p. 12.

66 Barešová, 2011, pp. I-VII.

67 Humlová and Ueltzhöffer, 2001, p. 2.

68 For further information, see the article on ProfitLine's website: The road was opened before buying Czech agricultural land. [Online]. Available at: <https://profitline.hu/Megnyilt-az-ut-a-cseh-termofoldek-vasarlasa-elott-252961> (Accessed: 4 March 2021).

69 The Foreign Exchange Act was terminated by the Act No. 323/2016 Coll.

Foreigners were able to buy agricultural land if they were married to a Czech citizen, and they could also acquire ownership through inheritance or exercising pre-emptive rights that emerged from co-ownership of the land. Foreigners were also able to exercise pre-emptive rights if the land could not be separated from another asset that was already owned by a foreigner. Farmers with EU citizenship were able to acquire the ownership of agricultural land if they were pursuing agricultural business activities as self-employed farmers and they had been permanently staying in the country for at least 36 months.⁷⁰ These farmers had to prove their professional knowledge of farming as well as their knowledge of the Czech language. This means that before the law was modified, natural persons who were permanently staying in the country and pursuing farming activities for at least 36 months, as well as Czech legal entities combining Czech and foreign capital, were permitted to buy private agricultural land.

In 2019, the Association of Czech Landowners⁷¹ shared up-to-date information on agricultural land ownership. According to this report, there was a continuous decrease in the number of natural landowners. In January 2019, there were 3.19 million agricultural landowners in the Czech Republic who owned a total of 4.2 million hectares of agricultural land. The largest group of owners comprised natural persons. Natural persons, therefore, owned 75% of agricultural land in the Czech Republic (approximately 3.1 million hectares of agricultural land); meanwhile, the legal entities owned 21% (903 thousand hectares) of the agricultural land. The number of legal entities owning agricultural land is approximately 54,000. The average land area per legal entity was 17 hectares. Three% of all agricultural land (134,000 hectares) was owned by the state. Other organisations are of minor importance for agricultural land ownership. Compared to the previous year, the number of natural persons owning land decreased by almost 12,000 hectares, while the number of legal persons increased by approximately 700. The data were based on land registry statistics.⁷²

In the Czech Republic, a number of domestic legal entities (also known as agricultural giants) control agricultural production. As a result, these large companies have a strong influence on real estate sales, thus affecting market prices. They often cultivate agricultural land without the knowledge or consent of landowners. These organisations not only benefit from the crop obtained on land but also receive subsidies for cultivation. According to their own declaration, this is considered to be remuneration received in return for their services because if the lands were not cultivated, they would have been destroyed as a result of inaction. According to statistics for 2019, in the Czech Republic, agricultural holdings farmed a total of 3,456,646 hectares of agricultural land in 2017, of which 2,507 enterprises used 1,720,555 hectares.⁷³

70 Ciaian, Kancs, Swinnen, Van Herck and Vranken, 2012, pp. 9.

71 In Czech: Svaz vlastníků půdy České Republiky (SVP ČR).

72 Press release of the Association of Czech Landowners (available in Czech language). [Online]. Available at: <http://www.svazvlastnikupudy.cz/cs/aktuality/v-ceske-republice-ubyvadrobnych-vlastniku-pudy.html> (Accessed: 6 March 2021).

73 Damohorský and Chaloupková, 2019, pp. 8.

The largest group of agricultural holdings was made up of small farms, which account for less than two-thirds of all agricultural holdings in the Czech Republic. The smallest group of agricultural holdings (approximately 7%) is represented by large agricultural units. Although this is the least represented group, much of the Czech agricultural production is concentrated in large farms. These farms utilise 66% of the total agricultural land. The opposite situation occurs in the case of small farms managed by individuals, for which the largest group utilised only 5% of the agricultural land area in the Czech Republic.⁷⁴

In the Czech Republic, both domestic and foreign legal entities can acquire land ownership. We believe that legal non-regulation in the land market causes significant problems, primarily due to the market situation created by large agricultural giants.

5. Poland

■ 5.1. *Legal framework for the transfer of agricultural real property*

In its Article 23, adopted on 2 April 1997, the Constitution of Poland in force provides for a general principle, according to which the basis of the entire Polish agricultural system shall be the family farm.⁷⁵ According to Polish lawmakers, agricultural real properties are an indispensable means of agricultural production, the primary purpose and function of which is to ensure food security in the country.⁷⁶ Consequently, the transfer of land suitable for food production must be properly regulated, allowing for an even and just distribution of this ‘public good’.⁷⁷

The Polish framework governing the transfer of ownership of agricultural land concerns two main areas, distinguishing between the rules applicable to private property and those applicable to state-owned property. With the adoption of the Act of 14 April 2016 on suspension of the sale of real property from the Agricultural Property Stock of the State Treasury and amendment to certain acts,⁷⁸ the trade of state-owned

74 For more information, see the website of the Czech Statistical Office. Structural survey in agriculture – analytical evaluation 2016 – Structure of agricultural holdings expressed in classes according to economic size. (Strukturální šetření v zemědělství – analytické vyhodnocení 2016. Struktura zemědělských podniků vyjádřená ve třídách ekonomické velikosti) [Online]. Available at: <https://www.czso.cz/documents/10180/79535242/27016818k02cz.pdf/eaf95599-31e7-4865-9dff-2f59fcd59f02?version=1.1> (Accessed: 6 March 2021).

75 The Constitution of the Republic of Poland adopted on 2 April 1997, Journal of Laws [Dz. U.] of 1997 No. 78, item 483 as amended.

76 Explanatory Memorandum of the draft bill on the suspension of the sale of real property from the Agricultural Property Stock of the State Treasury and amendment to certain acts, submitted by the government on 4 March 2016, item nr 293 (hereinafter: Explanatory Memorandum), pp. 1, 12. [Online] Available at: <https://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=293> (Accessed: 17 March 2021).

77 See Blajer and Gonet, 2020.

78 Act of 14 April 2016 on the suspension of the sale of real property from the Agricultural Property Stock of the State Treasury and amendment to certain acts, Journal of Laws [Dz. U.] of 2016, item 585 as amended.

farmland has been withheld for a period of five years beginning 30 April 2016 and is not covered in this paper.⁷⁹ The transfer of privately owned farmland, although not suspended, is subject to various far-reaching limitations outlined in the Act of 11 April 2003 on the Formation of the Agricultural System (hereinafter, the AAS).⁸⁰ It provides for the rules that are *lex specialis* to the Polish Civil Code,⁸¹ with respect to legal transactions resulting in the transfer of ownership of agricultural real property. The AAS has been recurrently amended over the last several years. Substantial changes were introduced in April 2016 (referred to as the 2016 amendment) at the end of the 12-year transitional period provided for by the accession treaty to the EU, with the aim of preventing land speculation and uncontrolled land purchases by foreigners.⁸² Additionally, in the case of the acquisition of farmland by foreign individuals or companies, the provisions of the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners (hereinafter, the AREF)⁸³ shall also apply, providing for further trade-restrictive provisions.

■ 5.2. Acquisition of agricultural land under the AAS

5.2.1. The scope of application of the AAS

For the purposes of the application of the AAS, agricultural real property shall be understood as an agricultural real property within the meaning of the Civil Code, excluding the properties located in areas designated in the local zoning plan for purposes other than agriculture.⁸⁴ The Civil Code, which the AAS refers to, defines agricultural real property as immovable property, which is or may be used for carrying out agricultural production activity within the scope of plant and animal production, not excluding gardening, horticulture, and fishery production.⁸⁵ Not covered by the scope of application of the AAS are *inter alia* state-owned properties, agricultural real properties with an area of less than 0.3 hectares, or, under certain circumstances, the agricultural land situated within the city limits.⁸⁶

The term ‘acquisition’, as defined in Article 2 of the AAS, should be understood broadly to include not only acquisition by sale or donation but also acquisition by virtue of a court ruling or an administrative decision as well as acquisition as a result of other events of legal significance (e.g. by prescription). The AAS also imposes restrictions on

79 For more on the transfer of state-owned farmland, see Suchoń, 2017, pp. 43–47; Iwaszkiewicz, 2020, pp. 29–45.

80 Act of 11 April 2003 on the Formation of the Agricultural System, Journal of Laws [Dz. U.] of 2003 No. 64, item 592 as amended.

81 Act of 23 April 1964 Civil Code, Journal of Laws [Dz. U.] of 1964 No. 16, item 93 as amended.

82 See Explanatory Memorandum, pp. 1–2, 12, 30.

83 Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners, Journal of Laws [Dz. U.] of 1920 No. 31, item 178 as amended.

84 Article 2 point 1 of the AAS. As only 1/4 of the territory of Poland is regulated by local zoning plans, a question arises as to the application of the AAS with respect to agricultural real properties situated in areas with no local zoning plans; see Ilków, 2018, pp. 20–35.

85 Article 46¹ of the Civil Code.

86 See Articles 1a and 1b of the AAS.

the transfer of shares in commercial companies only indirectly, resulting in the transfer of ownership of agricultural land (via share-deal).⁸⁷ The rules for the acquisition of ownership of land provided by the AAS apply equally to the acquisition of ownership and the right of perpetual usufruct.⁸⁸

5.2.2. *The acquisition of farmland under the AAS*

The AAS embodies the constitutional principle that family farming shall constitute the basis of the Polish agricultural system. The preamble sets out the principal objectives of the AAS, which include *inter alia* strengthening the protection and development of family farms, ensuring proper management of agricultural land, ensuring the food security of Polish citizens, and supporting sustainable agriculture.

By virtue of the 2016 amendment, a general principle was introduced into the AAS, according to which agricultural real property can be acquired only by individual farmers, that is, natural persons who meet the statutory requirements.⁸⁹ A 300-hectare threshold was put in place with respect to the maximum area of the arable land acquired by an individual farmer, which shall be calculated together with the arable land already owned by the acquirer.⁹⁰ Although the AAS formally declares in Article 2a that only an individual farmer can acquire agricultural real property, it also provides for several exemptions, which makes it possible for natural persons other than individual farmers as well as various categories of legal persons to acquire agricultural land. The exemptions include relatives, local government units, the State Treasury, churches and registered religious associations, national parks, and commercial companies that carry out specific public objectives or those owned by the State Treasury.⁹¹ Furthermore, the general principle of acquisition by an individual farmer and the 300-hectare threshold do not apply to the acquisition of agricultural land as a result of a transformation, merger, or division of an existing company or that occurs in the course of restructuring or bankruptcy proceedings,⁹² nor do they apply to agricultural real properties with an area of less than one hectare, which can be acquired by any legal person or a non-farmer individual.⁹³

A legal person not covered by statutory exceptions may nevertheless acquire the ownership of agricultural real property upon permission issued by the National

87 Article 3a of the AAS.

88 Article 2c point 1 of the AAS.

89 Article 2a para. 1 of the AAS. According to Article 6 para. 1 of the AAS, an individual farmer is a natural person who is an owner, holder of perpetual usufruct, autonomous possessor, or lessee of agricultural real property whose combined area of arable land does not exceed 300 hectares, who holds agricultural qualifications and has been residing for a period of at least five years in the commune in whose territory at least one of the agricultural real properties forming part of the family farm is located, and who has been running this farm personally throughout that period. See Suchoń, 2017, p. 45; Kurowska, 2017.

90 Article 2a para. 2 of the AAS.

91 Article 2a para. 3 of the AAS.

92 Article 2a para. 3 points 4), 9) and 11) of the AAS.

93 Article 2a para. 3 point 1a) of the AAS.

Support Centre for Agriculture (hereinafter, the NSCA).⁹⁴ Such permission can be requested by the seller of the agricultural land which is to be transferred, provided that the conditions outlined by the AAS have been met. For permission to be granted, the seller is required to demonstrate that it was not possible to sell the land to an individual farmer, while the buyer must undertake agricultural activity on the acquired land.⁹⁵ Permission will not be issued if the acquisition leads to excessive land concentration; however, the AAS does not give any indication as to when land concentration is deemed excessive, leaving a margin of appreciation to the competent authorities.

The AAS provides several instruments allowing the state to exercise control over the agricultural real estate market, one of which is the right of pre-emption, regulated in Article 3 of the AAS. It endows the NSCA with the right of first refusal with respect to the agricultural land for sale, which can be exercised on behalf of the State Treasury on the condition that a tenant (lessee) has not exercised the right of pre-emption in first place.⁹⁶ The sale of farmland results in invalidity if performed unconditionally, without the party entitled to pre-emption being notified.⁹⁷ In the case of acquisition resulting from legal arrangements other than sale (e.g. from the transformation, merger, or division of a company, donation, acquisition by prescription, or court ruling), the NSCA has the right to acquire the land, which shall be exercised against the payment of the purchase price.⁹⁸

As amended in 2016, the AAS has imposed a twofold obligation on the acquirer of agricultural property to ensure the active utilisation of agricultural land and to prevent capital investments in such agricultural land. These have the overall aim of ensuring food security in Poland.⁹⁹ Article 2b para. 1 of the AAS outlines an obligation to run the agricultural holding of which the agricultural real property became a part for a period of at least five years, starting from the day of acquisition.¹⁰⁰ During the same period, the acquirer is obliged to refrain from selling the agricultural real property or transferring its possession. However, neither of these restrictions are absolute in nature. The AAS provides several exemptions when the above-mentioned obligations are not applied. The exemptions refer to the acquirer himself (e.g. a relative), the type of acquisition (e.g. by inheritance), or the location of the agricultural real property (e.g. in the city, if the area of the real property is less than one hectare).¹⁰¹ Even if not covered by statutory exemptions, the acquirer may still sell the farmland or transfer its possession within the prescribed five-year period if allowed by the general director of the NSCA.¹⁰² Such

94 *Krajowy Ośrodek Wsparcia Rolnictwa (KOWR)* – a government agency responsible for the management and development of the Polish agricultural system. See Article 2a para. 4 of the AAS.

95 Article 2a para. 4 point 1) of the AAS. See Kubaj, 2020, pp. 128–129.

96 Article 3 paras. 1 and 4 of the AAS.

97 Article 9 para. 1 of the AAS.

98 Article 4 para. 1 of the AAS.

99 Czech, 2020.

100 Article 2b para. 1 of the AAS.

101 Article 2b para. 4 of the AAS.

102 Article 2b para. 3 of the AAS. The exemption from the prohibition of disposal of land is not accompanied by a similar procedure allowing for an exemption from the obligation to carry out agricultural activity.

exemptions need to be justified by the acquirer's important interests or the public interest. Otherwise, the implementation of the obligations set out under Article 2b paras. 1 and 2 are subject to state control and scrutiny. In the case of non-compliance with the obligation to farm the land or with the prohibition of disposal, the NSCA, on behalf of the State Treasury, may request from the court the buyout of the misused land.¹⁰³

5.2.3. Acquisition of agricultural land via share-deal

The AAS restricts the transfer of shares in a commercial company which owns agricultural real property with an area of at least five hectares (or multiple agricultural real properties with a total area of at least five hectares). These apply equally to commercial companies which hold the right of perpetual usufruct. Pursuant to Article 3a para. 1 of the AAS, the NSCA, acting on behalf of the State Treasury, has a pre-emption right to purchase shares in case of a transfer of shares. This applies even if the agricultural land in question constitutes only a minor portion of the company's assets.¹⁰⁴ The share purchase agreement shall be subject to the condition that the NSCA does not exercise the right of pre-emption; otherwise, the entire acquisition of shares performed unconditionally is null and void.¹⁰⁵ The NSCA has the right of pre-emption only with respect to the shares in a company that owns agricultural real property (or holds the right of perpetual usufruct) directly, and the transfer of shares in a company which is an indirect owner of agricultural land – by holding shares in another company – remains beyond the scope of the NSCA's right of pre-emption.¹⁰⁶ In addition, the right of pre-emption does not apply with respect to the acquisition of farmland resulting from the transfer, merger, or division of a company; in that case, however, the NSCA is entitled to the right of acquisition of the land (see above).

Changes in ownership structure in business entities other than commercial companies are also subject to the restrictions specified in the AAS. According to Article 3b para. 1 of the AAS, in case of a change of partner in a partnership which owns agricultural real property with an area of at least five hectares (or several agricultural real properties with a total area of at least five hectares) or in the case of the admission of a new partner to such a partnership, the NSCA shall have the right to acquire the land against the payment of the purchase price equal to the property's market value. For this reason, a partnership is required to notify the NSCA regarding changes in partnership structure within one month.¹⁰⁷ Failure to comply with this obligation leads to the

103 Article 9 para. 3 point 1 of the AAS.

104 Heřka, 2019, p. 115.

105 Article 9 para. 1 of the AAS. To comply with the AAS, the company whose shares are to be transferred shall notify the NSCA about the share purchase agreement and submit all documents listed in Article 3a para. 4 of the AAS (certificate from the land registry, extract of land and building registration, balance sheet and profit and loss account, list of shareholders, and statement of the board of directors on the value of contingent liabilities).

106 Heřka, 2019, p. 116.

107 Article 3b para. 3 of the AAS.

invalidity of the legal transaction, resulting in changes to the partnership structure.¹⁰⁸ The provisions apply equally to partnerships which hold the right of perpetual usufruct to agricultural land with an area of at least five hectares.

■ 5.3. Acquisition of real estate by foreigners under the AREF

In addition to the provisions of the AAS, the acquisition of agricultural land by foreigners is also governed by the provisions of the AREF. The definition of a foreigner given in Article 1 para. 2 of the AREF refers equally to foreign individuals and to legal persons, the latter including commercial companies as well as foundations, associations, and churches.¹⁰⁹ It is worth mentioning that a company or partnership with its registered seat in Poland and established under the laws of Poland may nevertheless be considered a foreign company if it is controlled, directly or indirectly, by foreign individuals or legal persons.

As a general rule given in Article 1, para 1. of the AREF, the acquisition of all types of real estate by foreigners requires permission from the Minister of Internal Affairs. Such permission is issued if the Minister of National Defence does not object to the acquisition and, in the case of agricultural land, if the minister in charge of rural development does not oppose the acquisition. Permission can be issued, providing that the acquisition of real estate by the foreigner does not pose a threat to the defence and security of Poland or to public order and if it is not contrary to the interests of social policy and social health as long as the foreigner can demonstrate circumstances that confirm his or her links to Poland.¹¹⁰

Similar to the AAS, the AREF provides for a broad definition of the acquisition of real property, encompassing the acquisition of ownership or perpetual usufruct of real estate following any legal event.¹¹¹ Not only is the direct acquisition of real estate controlled by the state, but permission is also required for the acquisition of shares in a Polish commercial company being the owner or perpetual user of real estate located in the territory of Poland if the company becomes a controlled company as a result of such transactions.¹¹² The AREF provides several exemptions to these permission

108 Article 9 para. 1 of the AAS. See Blajer and Gonet, 2020.

109 Article 1 para. 2 of the AREF defines a foreigner as (1) an individual person who does not have Polish citizenship, (2) a legal person whose registered office is located abroad, (3) an unincorporated partnership of the persons referred to in point 1 or 2 whose registered office is located abroad, established in accordance with the legislation of a foreign country, or (4) a legal person and an unincorporated commercial partnership whose registered office is located in the territory of the Republic of Poland, directly or indirectly controlled by the persons or partnerships referred to in points 1, 2 and 3. According to Article 1 para. 3 of the AREF, a controlled company or partnership is a company or partnership in which a foreigner or foreigners hold more than 50 percent of votes at the meeting of partners or the general meeting, as a pledgee or user, or pursuant to agreements with other persons, or are in a dominant position within the meaning of the provisions of the Code of Commercial Companies. For more on the personal scope of application of the AREF, see Wereśniak-Masri, 2019, pp. 63–64.

110 Article 1a para. 1 of the AREF.

111 Article 4 of the AREF.

112 Article 3e para. 1 of the AREF.

requirements. Following the expiration of the transitional period provided for in the accession treaty to the EU, restrictions do not apply *inter alia* to the acquisition of real estate by individuals and legal persons from the European Economic Area (EEA) or Switzerland.¹¹³ As a result, any legal person from outside the EEA wishing to acquire agricultural real property in Poland is required to obtain two separate permissions: one from the Ministry of the Interior (valid for two years) and the other from the NSCA (valid without time limit), the latter being required for all persons who do not qualify as individual farmers. If the agricultural land to be acquired by a non-EEA foreigner falls within the scope of exemptions listed by the AAE (e.g. the area of farmland is less than one hectare), only a permit from the Ministry of the Interior will be required.¹¹⁴

The Minister of Internal Affairs maintains a register of real estate and shares acquired by foreigners both based on the required permit and without it.¹¹⁵ To ensure transparency and accountability, an annual report from the implementation of the AREF was developed by the minister and published on the official website. It comprises detailed statistics on the number of proceedings, granted permissions, and refusals, along with information on the nationality of foreigners (in case of legal persons, on the origin of their capital) and on the types of real estate acquired, along with their area and geographical location. In 2019, 108 permissions were granted to foreigners to acquire agricultural and forestry land, amounting to a total area of 35.32 hectares; however, no permission was issued to any legal persons.¹¹⁶ One permission was issued to a foreigner to acquire shares in a Polish company owning agricultural and forestry land (total area of 2.91 hectares).¹¹⁷ As for the agricultural and forestry land acquired without permission, a total of 703.26 hectares of such land was acquired by legal persons (365 transactions) and 633.25 hectares by individual persons (886 transactions).¹¹⁸ A total of 3,016.62 hectares of agricultural and forestry land was involved in share transfers in companies owning real estate in Poland; the shares were purchased by foreigners (legal or individual persons) primarily from Germany, the Netherlands, Denmark, and Bulgaria.¹¹⁹ These numbers are slightly higher than those reported in 2018 (41 permissions issued to foreign individuals to acquire agricultural and forestry land of the total area of 14.19 hectares, no permission issued to a legal person, one permission was issued to acquire shares in a company owning agricultural and forestry land, a total of 310.54 hectares of such land acquired by legal persons without permission in 198 transactions, 442.61 hectares acquired by individual persons without permission in

113 Article 8 para. 2 of the AREF.

114 For the double permit requirement, see Wereśniak-Masri, 2019, pp. 59–71.

115 Article 8 para. 4 of the AREF.

116 Report of the Minister of the Interior and Administration on the implementation in 2019 of the Act of 24 March 1920 on the acquisition of real estate by foreigners [*Sprawozdanie z realizacji w 2019 r. ustawy z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców*], March 2020, p. 27. [Online]. Available at: <https://orka.sejm.gov.pl/Druki9ka.nsf/0/90FE391901192530C1258536003437B7/%24File/292.pdf> (Accessed: 17 March 2021).

117 *Ibid.* p. 38.

118 *Ibid.* p. 53.

119 *Ibid.* p. 50.

742 transactions, and 3,132.02 hectares of agricultural and forestry land involved in share transfers).¹²⁰

■ 5.4. Summarising remarks on Poland

The Constitution of Poland puts forth a cornerstone principle, according to which the basis of the agricultural system in Poland shall be family farms. For this reason, several restrictions have been imposed on the trade of agricultural land, such as the general rule that only individual farmers may acquire farmland ownership. However, under certain conditions, legal persons and foreigners may also acquire agricultural land in Poland upon receiving permission from competent authorities.

The Polish legal framework applicable to agricultural land transactions is tantamount to introducing serious restrictions on ownership rights. Questions arise as to whether the adopted measures (e.g. the acquisition of farmland by individual farmers, the ban on alienating farmland, the obligation to carry out agricultural activity, pre-emption rights) are not overly restrictive.¹²¹ However, it should be kept in mind that the overall aim of the Polish lawmakers was to ensure the citizens' food security, a principle the implementation of which requires proper regulation of the agricultural land market. The measures adopted by the Polish legislator are designed to prevent excessive concentrations of land and support family holdings and small-scale producers.

6. Conclusions

By analysing the regulation of the acquisition of ownership of agricultural lands by legal persons in the Visegrád Group countries, it has become clear that despite several common features among these countries, such as the Soviet influence on their agriculture in the post-World War II era, as well as despite their geographical proximity and the fact that all are EU member states, their approaches to the issue are in stark contrast to each other.

Considering an imaginary scale, Hungary would be at one end point, and Slovakia and the Czech Republic would be at another. Hungary, with its full prohibition, shows us an enormous difference in relation to the completely free land regimes of Slovakia and the Czech Republic. Poland falls midway to these two end points with its attempt to regulate in detail and handle the acquisition of ownership of agricultural lands by legal persons, going so far as to adopt provisions on share deals.

120 Report of the Minister of Interior and Administration on the implementation in 2018 of the Act of 24 March 1920 on the acquisition of real estate by foreigners [*Sprawozdanie z realizacji w 2018 r. ustawy z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców*], March 2019, pp. 27, 49, 52. [Online]. Available at: <https://www.gov.pl/attachment/876e3da3-f8b5-4b32-9cd7-ecc54c53670a> (Accessed: 17 March 2021).

121 See, for example, Maj, 2019, p. 90; Czech, 2020; Korzycka and Wojciechowski, 2019.

With the emerging paradigm of food sovereignty as our frame of reference, we can see the following: (a) the Hungarian regulation aims to protect domestic agricultural production at all costs, striving to keep foreign capital out of agriculture in the spirit of food sovereignty; (b) Poland has chosen a more moderate approach with its sophisticated and detailed regulation, but there are weaknesses in the system as a consequence of untraceable (indirect) ownership chains which are the immanent features of legal persons and which are beyond the scope of regulation; (c) Slovakia and the Czech Republic are currently offering themselves to the convenience and interests of foreign capital to the detriment of their own food sovereignty.

From the viewpoint of the EU, the current unregulated land regimes of Slovakia and the Czech Republic are prime examples of the “good cops” who follow the guidelines of the EU internal market, while Hungary can be considered a “bad cop” who acts against the principle of the free movement of capital. Poland is moderate in this respect.

Regulating the land market, including the acquisition of ownership of agricultural lands by legal persons, in the spirit of food sovereignty is an open-ended process the outcome of which cannot be guaranteed beforehand. If we accept Georg Jellinek’s attributes of sovereign statehood, one of which is territory (*Staatsgebiet*),¹²² it becomes crucial for each country to manage its land regime, thereby retaining one of the constituting elements of sovereignty. Territory includes agricultural and forestry lands which are essential and indispensable for providing food to another attribute of statehood, that is, to population (*Staatsvolk*).¹²³ If the control over land regulation and, thus, over agricultural production escapes from the control of the third attribute of statehood, that is, from the state power (*Staatsgewalt*),¹²⁴ and comes to be under the control of private entities, such as foreign legal persons with enormous amounts of capital, serious concerns may arise in connection with food sovereignty.

The future of agriculture of EU member states will be largely determined by the EU in regard to whether it adopts the paradigm of food sovereignty and, if so, to what extent. By prioritising positive integration¹²⁵ over negative integration¹²⁶, it may succeed in keeping national agriculture national and providing each member state with the possibility of protecting their own (food) sovereignty.

122 Jellinek, 1905, pp. 381–393.

123 Jellinek, 1905, pp. 393–413.

124 Jellinek, 1905, pp. 413–420.

125 Such as to the provision formulated in the Article 345 of the Treaty on the Functioning of the European Union, which declares that the Treaties shall in no way prejudice the rules in member states governing the system of property ownership.

126 Such as the free movement of capital.

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