

# Introduction to Land Regulation in Central European Countries

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This book examines the rules of acquirement of agricultural and/or forest lands in the Central European region of the Czech Republic,<sup>1</sup> Hungary,<sup>2</sup> Poland,<sup>3</sup> and Slovakia<sup>4</sup> (together the Visegrád Countries or V4 countries<sup>5</sup>), and Croatia,<sup>6</sup> Romania,<sup>7</sup> Serbia,<sup>8</sup> and Slovenia,<sup>9</sup> with a special focus on their cross-border aspects. In addition to each country's national rules, this book also covers some of the specificities of *investment law*<sup>10</sup> in the EU countries of the region,<sup>11</sup> some of the *human rights* issues specific to the region,<sup>12</sup> and the *European Union's* legislation and jurisprudence concerning land acquirement.<sup>13</sup> It is important to note that at the end of the period covered by this book (i.e., February 2022), Serbia was not yet a member of the European Union, and Croatia was still subject to certain transitional rules and exceptions to the main rules of EU

1 On current issues of Czech legislation, see, in particular, Vomáčka and Tkáčiková, 2022, pp. 157–171.

2 On current issues of Hungarian legislation, see, in particular, Hornyák, 2021, pp. 86–99.; Csák, 2018, pp. 5–32.; Hornyák, 2018, pp. 107–131.; Olajos, 2018, pp. 157–189.; Olajos and Juhász, 2018, pp. 164–193.; Udvarhelyi, 2018, pp. 294–320.; Olajos, 2017, pp. 91–103.

3 On current issues of Polish legislation, see, in particular, Blajer, 2022a, pp. 7–26.; Blajer, 2022b, pp. 9–39.; Zombory, 2021, pp. 174–190.; Kubaj, 2020, pp. 118–132.; Wojciechowski, 2020, pp. 25–51.

4 On current issues of Slovak legislation, see, in particular, Szinek Csütörtöki, 2022, pp. 126–143.; Szinek Csütörtöki, 2021, pp. 160–177.

5 See more on these in Csirszki, Szinek Csütörtöki and Zombory, 2021, pp. 29–52.

6 On current issues of Croatian legislation, see, in particular, Staničić, 2022, pp. 112–125.; Josipović, 2021, pp. 100–122.

7 On current issues of Romanian legislation, see, in particular, Sztranyiczki, 2022, pp. 144–156.; Veress, 2021, pp. 155–173.

8 On current issues of Serbian legislation, see, in particular, Dudás, 2021, pp. 59–73.

9 On current issues of Slovenian legislation, see, in particular, Avsec, 2021, pp. 24–39.; Avsec, 2020, pp. 9–36.

10 On the specificities of investment law, see Szilágyi and Andréka, 2020, pp. 92–105.; Szilágyi, 2018b, pp. 194–222.

11 For some of the region's land transfer features, see Hartvigsen and Gorgan, 2020, pp. 85–103.

12 On the human rights aspects, see Marinkás, 2018, pp. 99–134.

13 On the EU law aspects, see Korom, 2021, pp. 101–125.; Szilágyi, 2017b, pp. 148–164.

law in relation to land acquisitions. Two of the countries analyzed in this book were in the process of introducing new national land laws, and the authors of the chapter on these two countries (namely Slovenia and Hungary) have therefore sought to include a chapter on the new legislation that will enter into force after February 2022.

In addition to agricultural land, the book also touches on—but does not go into detail about—the rules for *forest land*. In some respects, it also covers—albeit not exhaustively—the special acquisition rules for *state-owned* agricultural or forest land. In addition to the rules on land, the book also deals with the rules on the acquisition of agricultural holdings, where these exist—a group of assets (such as land, buildings, farm equipment, and rights) operated for the same agricultural purpose and regulated or treated as a single legal category. In the book, the category of *acquisition* has been dealt with in a rather broad way.<sup>14</sup>

The concept of acquisition includes (a) the different ways of acquisition of ownership, (b) the acquisition of limited rights *in rem* (e.g., usufruct), (c) the acquisition of the use of land (e.g., based on a lease), (d) indirect acquisition (i.e., the acquisition of shares in legal entities which already own land or may acquire land), (e) intestate succession and testamentary disposition, and (f) other cases of farm-transfers *inter vivos* or in the event of death.

A significant number of Central European countries attach great importance to their agricultural and (in many cases) forestry land acquisition rules, including cross-border land acquisition rules. The sensitivity of these countries, in this respect, is well illustrated by the fact that when they were negotiating the conditions for EU membership with the European Union (or its predecessor institutions), the rules on the acquisition of agricultural land were a major topic of negotiation and conclusion of the agreements. In other words, we hold the view that the subject of our book reflects a real Central European specificity—a characteristic of the legislative policy and legal culture of the countries of this region. All this is true even if there are significant differences between the national land laws of the various countries, and we can find examples of both more liberal and more restrictive legislation. That is, it seems that in a significant number of these countries, there exists a kind of sovereignty or food sovereignty<sup>15</sup> approach (i.e., to strengthen their freedom of self-determination over and through their land). We see this approach as having been reinforced both by the financial crisis of 2008 and the resulting economic crisis, by the uncertainties arising from the supply chains that broke down during the COVID-19 epidemic, and by the war in Ukraine, which is still ongoing at the time of writing, and the food shortages that it threatens. Below we highlight some of the aspects that could provide an important starting point for national land laws.

<sup>14</sup> See also Szilágyi, 2017a, pp. 229–235.

<sup>15</sup> On the definition of food sovereignty, see Szilágyi, Hojnyák and Jakab, 2021, 75–79.; Szilágyi, Raisz and Kocsis, 2017, p. 160. See also Raisz, 2022, m.a.; Csirszki, 2022.

(a) In order to underline the importance of the topic of our book, we believe that it is worth mentioning, in the introduction, certain non-binding soft law<sup>16</sup> documents related to land acquirement that are linked to the United Nations or certain institutions of the European Union. It is stressed that these do not impose any regulatory obligations on individual countries but may nevertheless be of interest—for example, because these institutions have not previously considered it necessary to speak on the subject in this way. In the regulatory field of agricultural land transfer, several legal documents have been issued in quick succession by EU institutions, including an opinion by the European Economic and Social Committee (EESC),<sup>17</sup> a resolution by the European Parliament (EP),<sup>18</sup> and an interpretative communication by the European Commission (EU Commission).<sup>19</sup> These EU legal documents also include soft law documents of certain international organizations, among which a voluntary guideline of the Food and Agriculture Organization of the United Nations (FAO) entitled “Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security” (hereinafter: VGGT) has been given particular attention.<sup>20</sup> Among these documents,<sup>21</sup> the interpretative communication of the European Commission is of great importance as it has provided an important starting point for the comparative perspective of national land laws in this book. We believe that all these documents underline the relevance and importance of this topic.

(b) In our opinion, national land laws in certain countries of the Central European region are significantly influenced by the way agricultural land prices are developed. Considering the land prices in some EU member states, it can be observed that such prices in the member states of Central Europe that joined in 2004 and afterward (hereinafter: the new member states) are significantly lower compared to the land prices in the countries that joined earlier (see Table 1 for the evolution of agricultural land prices in certain EU countries). This may make the land market in the new member states a good investment target for perfectly understandable reasons as producers in the EU member states are otherwise competing under similar conditions in many respects, such as the volume of EU agricultural subsidies and the homogeneity of the EU agricultural market. Of course, many other factors (such as the existing land tenure structure in a given country) can also influence agricultural land prices.

16 For the interpretation of soft law documents in the context of national land laws, see Szilágyi, 2018a, pp. 189–211.

17 European Economic and Social Committee, 2015

18 European Parliament, 2017

19 European Commission, 2017. One of the initiatives of this interpretative communication was the proposal to amend Directive 2015/849/EU.

20 Food and Agriculture Organization of the United Nations, 2012 (hereinafter: VGGT).

21 For an analysis of these, see Szilágyi, 2018a.

**Table 1** Land prices in certain member states EU27, 2011–2020 (e = estimated), €/ha;  
source: Eurostat, 21.12.2021.

[https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=apri\\_lprc&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=apri_lprc&lang=en)

	State	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
New MSs in or since 2004	Bulgaria	2 112	2 843	3 175	3 620	3 891	4 131	4 622	5 011	5 382	5 328
	Czechia	1 836	3 264	3 662	4 282	4 775	5 463	6 448	7 600	8 561	9 477
	Estonia	1 062	1 265	1 865	2 426	2 567	2 735	2 890	3 174	3 461	3 772
	Croatia	:	:	:	:	2 726	2 835	3 005	3 282	3 395	3 440
	Latvia	2 336	4 475	4 980	2 552	2 654	2 917	2 975	3 856	3 922	4 182
	Lithuania	1 212	1 527	2 009	2 330	3 089	3 516	3 571	3 890	3 959	4 127
	Hungary	2 089	2 380	2 709	3 042	3 356	4 182	4 368	4 662	4 862	4 893
	Poland	4 855	6 080	6 275	7 723	9 220	9 083	9 699	10 414	10 991	10 711
	Romania	1 366	1 666	1 653	2 423	2 039	1 958	2 085	4 914	5 339	7 163
	Slovenia	:	:	15 545	16 009	16 071	17 136	16 876	18 460	18 752	21 451
	Slovakia	11 375	9 650	5 575	11 442	24 175	28 217	3 009	3 432	3 789	3 984
Old MSs before 2004	Belgium			36,591 <sup>(e)</sup>	38,496 <sup>(e)</sup>						
	Denmark	17 476	17 562	15 708	17 209	18 752	17 584	17 328	17 724	17 580	17 491
	Ireland	:	:	26 366	23 449	23 594	18 141	19 903	27 457	28 068	25 724
	Greece	15 393	14 968	13 907	13 276	12 633	12 272	12 264	12 387	12 604	12 599
	Spain	:	12 005	11 910	12 192	12 574	12 522	12 827	13 023	12 926	12 901
	France	5 390	5 440	5 770	5 940	6 000	6 070	6 030	6 020	6 000	6 080
	Italy	34 257	39 342	32 532	39 247	40 153	33 193	31 731	30 569	34 156	:
	Luxembourg	23 648	24 230	26 621	27 438	27 738	26 030	35 590	35 110	37 300	46 500
	Netherlands	50 801	52 716	54 134	56 944	61 400	62 972	68 197	70 320	69 632	:
	Finland	8 210	8 047	8 461	8 090	8 138	8 326	8 718	8 380	8 686	8 524
	Sweden	6 811	7 043	6 797	7 408	7 751	7 921	8 708	8 842	9 056	10 100
	United Kingdom	18 885	21 905	23 283	26 634	30 292	25 730	23 450	23 412		

Another important aspect to consider when assessing the land market situation is that demand for agricultural land has increased significantly worldwide. The main driving force behind this is the dynamic growth in the human population and the corresponding increase in demand for products in which land is used as a means of production (such as food, fodder, and energy). Moreover, the global financial and economic crisis of 2008 has contributed to investors having come to regard land markets in countries such as the EU member states as a “safe haven.”<sup>22</sup> The increase in demand, driven by population growth in our globalizing world, has significantly contributed to the acceleration in cross-border land acquisitions.<sup>23</sup> One manifestation of this process, to the detriment of the countries of investment destination, is the phenomenon known in the literature as “*land grabbing*,”<sup>24</sup> whereby crops are produced on the land of the destination country using the ecosystem services, land, or water available there and are often not consumed by the population of the destination country but by that of a distant location. In other words, the natural resources of some of the world’s peoples are used by people elsewhere in the world, sometimes causing serious and irreversible environmental problems in the country of investment.<sup>25</sup>

(c) In our view, the increase in environmental problems may also justify the special attention given by the countries of the region to their national land laws. Agriculture is a major user of natural resources and environmental services. In the context of agricultural and forest land, we would like to draw attention to the quality, decline, and degradation of this land. At the EU level, including in the countries of the Central European region, the quantitative and qualitative situation of land is rather depressing as “unsustainable land use is consuming [a] fertile soils and [b] soil degradation continues.”<sup>26</sup>

In addition, “the degradation, fragmentation and unsustainable use of land in the Union is jeopardising the provision of several key ecosystem services... Every year more than 1 000 km<sup>2</sup> of land are taken.”<sup>27</sup> In this context, the EU has set an important objective for the quantitative protection of land “to making progress towards the objective of ‘no net land take’, by 2050.”<sup>28</sup> On soil degradation, it is worth noting that “in Europe, the soil is being lost 17 times faster than it is being renewed... On average, each year 1.6 tons of soil is formed and 8 tons of soil is lost per hectare.”<sup>29</sup> We believe it

22 Petetin and Taylor, 2015, p. 13.

23 On the definition and the world and EU aspects of cross-border land acquisitions, see Szilágyi, 2017a, pp. 229–250.

24 See Häberli and Smith, 2014, pp. 189–222.; de Schutter, 2011, pp. 503–559.; Gorman, 2014, pp. 199–235.; Cotula et al., 2009; Deininger et al., 2011; Zageba, 2011; Hall and Lobina, 2012.

25 In essence, this will make it possible for some countries to consume beyond their available biological potential; for an easy way to see the so-called environmental footprint of this process, see (10.12.2016.): [http://www.footprintnetwork.org/ecological\\_footprint\\_nations/ecological\\_per\\_capita.html](http://www.footprintnetwork.org/ecological_footprint_nations/ecological_per_capita.html).

26 European Commission, 2013, point 6.

27 European Commission, 2013, point 23.

28 European Commission, 2013, point 23.

29 National Society of Conservationists, 2012, p. 20.

is important to add that it takes an average of 500 years for 2 cm of humus to form<sup>30</sup> and that land use and land protection issues not only affect agricultural productivity but are closely linked to other elements, processes, and problems in the environment.<sup>31</sup>

In light of the above situation and trends, it can be stated that while the demand for agricultural and forest land and its productive potential is growing worldwide, this demand must be met from increasingly scarce and diminishing natural resources. In other words, land scarcity and soil degradation further justify a legislative approach to regulating the transfer of agricultural and forest land that is cautious and protective of both quantity and quality.

Beyond this introduction, our book is essentially divided into two major sections. The first part deals with the European Union's investment agreements, including land acquisitions, and the position and approach of the individual member states in the Central European region. In the same section, human rights issues related to land acquisitions are addressed, with a special focus on the Council of Europe's system of legal protection and its regional characteristics. This section also covers the implications of European Union law for national land law. The second part of the book analyses the national land laws of eight countries, including their constitutional background and the specificities of the European Union.

30 European Commission, 2010, p. 2.

31 We would like to highlight three issues: (a) *Living environment*: one hectare of land can sustainably support an average of 5 tons of animals. (b) *Water*: in addition to its free contribution to the purification of our water (and air, for that matter), healthy soil plays a critical role in storing water (on average, 3,750 tons of water are stored per hectare of well-functioning soil); this is an important capability in light of the fact that one of the environmental problems of our time is the serious difficulties and damage (e.g. in the form of flash floods) caused by the increasingly accelerating hydrological cycle of human activity. In other words, if the soil is degraded, more water is released into the atmosphere, and the hydrological cycle accelerates even more. (c) *Climate change*: soils store 20% of human-related carbon dioxide emissions. This huge capacity is illustrated by the fact that if just 0.1% of the carbon dioxide stored in European soils were released into the atmosphere, the environmental impact would be the same as if the current European car fleet doubled (i.e., 100 million more cars on the roads). Of course, not all land uses are equally efficient at storing carbon dioxide: Europe's grasslands and forests absorb 100 million tons of carbon per year, while arable land emits between 10 and 40 million tons per year, which is why it is so important to maintain and increase the level of the former. European Commission, 2010, p. 2–3.

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