| Chapter 4 |

Croatia: Agricultural Land as Resource of Interest – Adjustment of Acquisition of Agricultural Land by Foreigners to EU Market Freedoms

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ABSTRACT

This article presents a special property regime for agricultural land in the Republic of Croatia, by which agricultural land, as a resource of interest to the Republic of Croatia, is granted special protection. The author analyzes Agricultural Land Act provisions providing statutory restrictions on the ownership of agricultural land and assesses their alignment with the Constitution of the Republic of Croatia regarding the constitutional guarantee of ownership and freedom of entrepreneurship. Special attention is given to the impact of EU law on the specific property regime of agricultural land. Some aspects of the property regime for agricultural land had to be aligned with EU market freedoms. During the accession negotiations, Croatia was bound to harmonize its national rules on foreigners' property rights with EU market freedoms. Within these processes, the restrictive rules on the prohibition of acquisition of ownership of immovables have been changed in favor of foreigners. The author also analyzes the effects of the changes and their impact on the development of the agricultural land market. She emphasizes that upon the expiry of the transitional period (June 30, 2023), when the application of the discriminatory prohibition of acquisition of agricultural land on nationals and legal persons from other member states will no longer be possible, the development of the market of agricultural land will have to be incited by different, nondiscriminatory, and nonrestrictive measures.

KEYWORDS

agricultural land, private agricultural land, state-owned agricultural land, transitional period, specific property regime, resources of interest of the Republic of Croatia, particular statutory restrictions on ownership

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1. Special property regime for agricultural land

1.1. Legal sources

In the Constitution of the Republic of Croatia, agricultural land[1] is proclaimed a resource of interest for the Republic of Croatia, and it enjoys special protection.[2] The Constitution of the Republic of Croatia establishes that the manner in which resources of interest to the Republic of Croatia may be used and exploited by holders of rights thereto, and by their owners, is regulated by law. In accordance with this constitutional provision, special statutory restrictions on ownership may be prescribed by law, and the owners of specified goods are bound to act in a particular manner to protect the interest and security of the state, nature, human environment, and health.[3,4] In such cases, compensation for restrictions imposed on holders of rights or owners for using and disposing of the resources of interest to the Republic of Croatia are prescribed by law.[5]

Pursuant to Article 52 of the Constitution, a separate law was adopted, which outlined a specific property regime for agricultural land: the Agricultural Land Act (hereinafter: ALA).[6] The ALA also stipulates that agricultural land is a resource of

1 Official Gazette NN Nos 56/90, 135/97, 113/00, 28/01, 76/10, 5/14.
The consolidated text of the Constitution of the Republic of Croatia as of 15 January 2014 published at https:/www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (Accessed: April 20, 2022).

2 See Art. 52/1 of the Constitution of the Republic of Croatia.
In the Constitution, the following goods are specified as resources of interest to the Republic of Croatia: the sea, seashore, islands, waters, air space, mineral wealth, and other natural resources as well as land, forests, fauna, and flora, other components of the natural environment, real estate, and items of particular cultural, historical, economic or ecological significance (Art. 52/1).

3 Ownership is proclaimed in the Constitution to be a fundamental right (Art. 48/1), and it may be restricted or rescinded by law, subject to indemnification equal to the market value (Art. 50/1). It may exceptionally be restricted by law for the purposes of the protection of interest and security of the Republic of Croatia, nature and the environment, and public health (Art. 50/2). In addition, pursuant to Art. 52 of the Constitution, specific restrictions may be imposed on the owners regarding the use of goods of interest for the Republic of Croatia.

4 Specific statutory restrictions on ownership are also based on the provisions of the Constitution of the Republic of Croatia (Art. 48/2), stiputing that ownership implies obligations for its holders (the so-called social component of ownership). Holders of the right of ownership are obliged to contribute to general welfare (Art. 48/2). See Gavella et al., 2007, p. 38, p. 355.
Restrictions on ownership must be proportionate to the principle of proportionality. Article 16/2 of the Constitution establishes that every restriction of freedoms or rights must be proportional to the nature of the necessity for restriction in each individual case. The proportionality of the restriction may be subject to constitutional law review.

5 See Art. 52/2 of the Constitution of the Republic of Croatia.

6 Official Gazette NN nos 20/2018, 115/2018, 98/2019.
The valid Agricultural Land Act is the fifth Act establishing a specific property regime for agricultural land since the independence of the Republic of Croatia. The first Act on Agricultural Land was adopted in July 1991 (Official Gazette NN Nos 34/91, 71/91, 40/92, 26/93, 79/93, 90/93, 29/94., 37/94, 65/94, 21/95, 48/9.4, 19/98, 105/99, 66/01). It was replaced by the Agricultural Land

interest to the Republic of Croatia and is therefore guaranteed special protection.[7] The ALA establishes the maintenance and protection of agricultural land, the use of agricultural land, the change of purpose of agricultural land, the disposal of agricultural land owned by the Republic of Croatia, the rights and obligations of the owners of agricultural land, and the cross-border acquisition of agricultural land. Apart from the Agricultural Land Act, many other separate acts that regulate agriculture, the market of agricultural products, and individual sectors of agricultural activities have been adopted, such as the Family Agricultural Holding Act,[8] the Agricultural Act,[9] the Act on Paying Agency for Agriculture, Fisheries and

Act of 2001 (Official Gazette, NN nos 66/01, 87/02, 48/05, 90/05, 152/08). The third Agricultural Land Act was enacted in 2008 (Official Gazette NN, nos 152/08, 25/09, 153/09, 21/10, 90/10, 39/11, 63/11, 39/13). The following Agriculture Land Act was enacted in 2013 (Official Gazette NN nos 39/13, 48/15, 20/18), which was later also replaced by the Agricultural Land Act of 2018.

7 Art. 2/1 ALA.
In this connection, the Constitutional Court of the Republic of Croatia emphasizes that the state's obligation to provide special protection for agricultural land arises from the circumstance that agricultural land is unrenewable and needs to be protected from unforeseeable developments on the free market. The Court also points out that agricultural land can neither economically nor ecologically—let alone socially—be equated with other immovables. The equitable regulation of agricultural land requires taking into consideration the general and public interests of the community more extensively than other types of immovables. See the decision of the Constitutional Court of the Republic of Croatia no. U-I-763/2009 *et al* of 30/3/2011 (Official Gazette NN, no. 39/11), p. 27.

8 Official Gazette NN nos 29/2018, 32/2019.
A family agricultural holding is defined in the Family Agricultural Holding Act (FAHA) as "an organisational form of agricultural operation of farmers (natural persons) who work to generate their income and independently and permanently perform farming and other linked activities" (Art. 5/1/point a) FAHA). The agricultural activity of family agricultural holdings is based on the use of their own or leased agricultural/productive assets and on the work, knowledge, and skills of the household members. A family agricultural holding, as a specific organizational form of farmers (natural persons) is not recognized as a legal person. Members of a family agricultural holding may be persons of legal age who possess business capacity, as well as their household and/or their family members (Art. 28/1 FAHA). Family agricultural holdings do not acquire any rights or obligations, and the holder of their rights and obligations is always a farmer—in other words, a natural person (the FAH holder). The Family Agricultural Holding Act does not establish any specific rules on the acquisition and succession of agricultural land, and it does not provide any specific rules on the acquisition of other rights (lease, usufruct, and the like) on agricultural land. The general property law and succession law rules referred to in the Property Act and the Succession Act apply to the acquisition of agricultural land owned by FAH holders as well as to the division of agricultural resources owned by the deceased. The Family Agricultural Holding Act only expressly stipulates that upon the death of a FAH holder, the production resources of family agricultural holdings may be inherited. In the case of death of the FAH holder, its members may continue their agricultural economic activity, but another holder must be appointed (Art. 35 FAHA). All rights and obligations connected with the FAH are then transferred from the deceased holder to the new holder (Art. 36/3 FAHA). The new holder takes over the overall business activity of that particular FAH. According to Art. 35 FAHA, lease contracts entered into by the deceased are transferred to the new FAH holder.

9 Official Gazette NN nos 118/18, 42/20, 127/20, 52/21.

Rural Development,[10] the Act on Paying Agency for Agriculture, Fisheries and Rural Development,[11] the Wine Act,[12] and the like. All these acts dealing with agriculture are harmonized with the regulations of the European Union adopted within the agricultural policy.

The Agricultural Land Act is the main legal source[13] for the development of a special property regime for agricultural land. It is considered a *lex specialis* in relation to the Act on Ownership and Other Real Property Rights (hereinafter: the Property Act/PA),[14] which is the main legal source of property law in the Republic of Croatia. The PA generally provides for ownership and other limited property rights; the acquisition, protection, and termination of property rights; as well as the cross-border acquisition of immovables by foreigners.[15] As regards the property regime of agricultural land, the ALA has precedence in application over the general provisions of the Property Act providing for property rights on immovables, including the provisions of the PA on cross-border acquisition of immovables by foreigners.[16] The ALA also has precedence over PA with regard to the restrictions of ownership laid down in a

10 Official Gazette NN nos 63/19, 64/20, 133/20.

11 Official Gazette NN nos 30/09, 56/13.

12 Official Gazette NN no. 32/19.

13 To implement the ALA, a large number of decrees have been adopted: Regulation on the manner for calculation of the initial lease of agricultural land owned by the Republic of Croatia and fees for the use of water for aquaculture activities, NN no. 89/18; Regulation on the necessary documentation needed for the adoption of the Program of agricultural land owned by the Republic of Croatia, NN no. 27/18; Regulation on methodology for monitoring the status of agricultural land, NN no. 47/19; Regulation on the economic program for the use of farmland owned by the Republic of Croatia, NN no. 90/18; Regulation on the protection of agricultural land from pollution, NN no. 71/19; Regulation on agrotechnical measures, NN no. 22/19; Regulation on the method of revaluation of rent or compensation fee for the use of agricultural land owned by the Republic of Croatia, NN no. 65/19; Regulation on the conduction of public tender for the sale of agricultural land owned by the Republic of Croatia by direct agreement, NN no. 94/18; Regulation on the Register of contract and payment collection records for agricultural land owned by the Republic of Croatia, NN no. 12/22; Regulation on the implementation of a public tender for the lease of common pastures owned by the Republic of Croatia, NN no. 36/21; Regulation on the manner for keeping the register of common pastures owned by the Republic of Croatia, NN no. 94/18; Regulation on the manner for keeping the register of fishponds owned by the Republic of Croatia, NN no. 94/18; Regulation on the procedure of public tendering for the sale of agricultural land owned by the Republic of Croatia, NN no. 92/18; Regulation on the manner of keeping records on the change of use of agricultural land, NN no. 22/19; Regulation on the benchmarks for determining the particularly valuable arable agricultural land and valuable arable agricultural land (P2), NN no. 23/19; Regulation on the conduction of public tenders for the lease of agricultural land and lease of fishponds owned by the Republic of Croatia, NN no. 47/19; Regulation on the manner and conditions for the establishment of construction rights and right to use the agricultural land owned by the Republic of Croatia, NN no. 84/19.

14 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.

15 For more see in Gavella et al., 2007, pp. 40–43; Josipović, 2014, pp. 95–96.

16 For more see 2.2; 2.3.

separate Act on the resources of interest to the Republic of Croatia.[17] The PA applies to the property regime of agricultural land if the ALA contains no specific provisions on individual aspects of the property regime governing agricultural land, whose aim is to provide special protection of agricultural land as a resource of interest to the Republic of Croatia. The PA and other general Croatian private law regulations apply to all private law aspects of the property regime governing agricultural land not expressly stipulated in the ALA and in other separate agricultural acts.[18]

The legal definition of agricultural land is broad. It comprises, in addition to the plots used for agricultural production, all other plots that can be converted to be used for agriculture or that can be used for agricultural purposes until they are converted to their original purpose.[19] The use of land for agricultural production has precedence over other uses of land. In the Republic of Croatia, all agricultural areas registered in the cadastre according to their use as plow fields, gardens, meadows, pastures, orchards, olive groves, vineyards, fishponds, reeds, or marshland are considered agricultural land. Any other area that could only begin to be used for agricultural production is also considered to be agricultural land.[20] It is also expressly established that other types of land (woodland, building plots) may be used for agricultural production or must be kept suitable for agricultural production. The land outside the building zone that is a part of a forest (woodland) may be used for agricultural production if it can be adapted for it and if the costs for that purpose are below the market value of the land.[21] The plots located within the boundaries of a building zone larger than

17 In Art. 32, the PA generally provides for the owners' rights and obligations imposed by a separate piece of legislation laying down the restrictions on ownership to protect the interests and security of the state, nature, human environment, and public health. However, these provisions apply only if a separate law (e.g., ALA) does not expressly stipulate the rights and obligations of the agricultural land's owner with regard to its use and cultivation.
Article 33/3 of the PA is of particular importance when the owner's legal position is concerned because it provides for the entitlement to compensation for the restrictions imposed on their right of ownership. The owner is entitled to compensation (similar to expropriation) if they are subject to statutory restrictions that put them in a more difficult situation than with other owners of the same type of immovables. Indeed, Article 33/3 of the PA applies, accordingly, to an owner of agricultural land who is under more stringent restrictions compared to other owners of agricultural land. See Gavella et al., 2007, p. 415.

18 When specific provisions on agricultural land apply, they must be interpreted and applied in the way to enable subsidiary application of the provisions of the general property law. This is important to make the operation of the general provisions of property law possible to ensure the consistency of the system of regulations. See Gavella, 2011, pp. 22–23.

19 See Josipović, 2016, p. 55.

20 Art. 3/1 ALA.

21 Art. 3/2 ALA.
Forests, woodland, and nature conservation areas are also defined in separate acts as the resources of special interest to the Republic of Croatia. The Forest Act provides for forests and woodland (Official Gazette NN nos 68/18, 115/18, 98/19, 32/20, 145/20). Specific stipulation involving nature conservation areas is provided for in the Nature Protection Act (Official Gazette NN nos 80/13, 15/18, 14/19, 127/19). In practice, overlaps are possible between a separate legal regime for agricultural land and a separate legal regime for woodland or nature conservation areas (i.e., the protected parts of nature). It is possible that an obligation exists to cultivate a particular

500 m^2, as well as those marked in the documents for spatial planning as earmarked for construction, must also be kept suitable for agricultural production if they are entered in the cadastre as agricultural land.[22] Special rules also state that conversions in spatial plans from agricultural land to building zones are not possible,[23] and it is prohibited to use valuable agricultural land beyond the boundaries of a building zone for non-agricultural purposes.[24] Due to such broad definition of agricultural land and according to the 2021 data, more than 30% of the total area of the Republic of Croatia is agricultural land, of which 33% (3.0 million ha) is owned by the state.[25, 26]

A significant portion of state-owned agricultural land of the total area of agricultural land is the consequence of the transformation of social ownership on such land conducted under the Agricultural Land Act of 1991.[27] Upon the entry into force of that Act, the socially owned agricultural land became the property of the Republic of Croatia.[28,29] The agricultural land confiscated and transformed to social ownership after May 15, 1945 also became state-owned in 1991, until it was later returned to previous owners.[30] The agricultural land confiscated during the Yugoslav communist rule through the process of nationalization and confiscation, was subsequently returned to previous owners, or their heirs of the first line of descent, in conformity

piece of land, defined as woodland, or a protected part of nature for agricultural production. In every concrete case, it is assessed whether the land, under the ALA, must be cultivated for agricultural production although it is defined as woodland or is located in a nature conservation area.

22 Art. 4/5 ALA.

23 Art. 43/1 of the Physical Planning Act, Official Gazette NN nos 153/1, 65/17, 114/18, 39/19, 98/19.

24 Art. 22/3 ALA.
Only exceptionally is it possible to use valuable agricultural land for non-agricultural purposes (i.e., for building agricultural facilities or objects of interest for the Republic of Croatia, or the like).

25 Data taken from Lisjak, Roić, Tomić and Masatelić, 2021, p. 1.

26 On December 31, 2020, a total of 1,150,353.01 ha of agricultural areas were registered with ARKOD. Of that number, 75% was agricultural land used as plowland (856,8129.16 ha). Data received from the Agency for Payments in Agriculture, Fisheries and Rural Development: Annual Report 2020.

27 Official Gazette NN no. 34/91.

28 Art. 3/1 of the Agricultural Land Act (1991), Official Gazette NN nos 34/91, 71/91, 40/92, 26/93, 79/93, 90/93, 29/9, 37/94, 65/94, 21/95, 48/9, 19/98, 105/99, 66/01).

29 This rule also applied to agricultural land where the right to utilization belonged to socially owned enterprises. The transformation of socially owned companies into stock companies or limited companies was conducted based on the Law on the Transformation of Socially Owned Enterprises of 1991 (Official Gazette NN, nos 19/9, 26/91, 45/92, 83/92, 84/92, 18/93, 94/93, 2/94, 9/95, 42/95, 21/96, 118/99, 99/03, 145/10). The main rule was that a stock company or a limited company became the owner of the movables and immovables that the former socially owned enterprise had been entitled to utilize. However, that rule did not apply to socially owned agricultural land. It was expressly stipulated that agricultural land was not included in the assets of the enterprise (Art. 2/1) because by transformation, it became owned by the state. In such a way, and based on the regulations governing denationalization, it was possible to return agricultural land to previous owners.

30 Art. 3/2 of the Agricultural Land Act (1991).

with the Law on the Compensation/Restitution of Property Taken during the Yugoslav Communist Government (hereinafter: the Restitution Act).[31] However, although the nationalized agricultural land has been given back to previous owners, large areas of agricultural land are still state-owned, which is why the largest portion of the specific property regime for agricultural land continues to be dedicated to models of disposal by the state. These models frequently change to make the procedure of disposal more efficient, faster, and legally more secure.[32]

1.2. Special statutory restrictions of ownership of agricultural land

The Agricultural Land Act provides for different landowners' obligations for special protection of agricultural land as the resource of interest to the Republic of Croatia. These special statutory restrictions on ownership of agricultural land are based on Article 52/2 of the Constitution of the Republic of Croatia and Article 48/2 of the Constitution dealing with the social component of ownership. Special statutory restrictions imply particular obligations in connection with the maintenance, protection, and utilization of agricultural land.[33] They bind every owner, regardless of whether they are a private individual (a natural or legal person) or the state or whether the owner is a Croatian national or a foreigner.

The most important owner's obligation is to maintain the land to keep it suitable for agricultural production.[34] Owners are bound to take measures to prevent perennial weeds from growing, thus diminishing the land' fertility. Owners must also maintain the existing functional underground drainage system.[35] When state-owned agricultural land is involved, the obligation of maintenance binds both legal and natural persons in whose favor the state disposes of such land and who use it as lessees. If state-owned agricultural land has not been given for use to a natural or legal person on the basis of a contract, the obligation of maintenance of state-owned

31 Official Gazette NN nos 92/96, 92/99, 39/99, 42/99, 43/00, 131/00, 27/01, 34/01, 65/01, 118/01, 80/02, 81/02, 98/19.
The confiscated agricultural land was returned to previous owners by natural restitution. They were given both possession and ownership, together with any objects built on the land during the process of nationalization. Only exceptionally, if the land had been excluded from natural restitution, did previous owners receive pecuniary compensation (Art. 20 of the Restitution Act).

32 The organization of efficient procedures of disposition of state-owned land is the main reason why so many frequent amendments have been made to the ALA. Since the independence of the Republic of Croatia, five Agricultural Land Acts have already been adopted. The main reason for the amendments has been the change of the model of disposition of such land and the competences of the state and of the local self-government in the process of disposition. On the amendments to the ALA regarding the disposition of state-owned agricultural land, see Kontrec, 2014, pp. 73–93.
Therefore, the Government of the Republic of Croatia, in February 2022, proposed amendments to this Act again. See the final proposal of the Act on Amendments to the Agricultural Land Act (2002), pp. 29–31.

33 Arts. 4–17 ALA.
See: Belaj, 2011, pp. 109–112.

34 Art. 4/1 ALA.

35 Arts. 4–6 ALA.

agricultural land rests on the local self-government unit in whose territory the relevant agricultural land is located.[36] When farming of agricultural land is concerned, the obligation is prescribed for both the owners and possessors to farm the land by applying the necessary agrotechnical measures not to diminish its value.[37] In addition, both owners and possessors' duty is to grow plantations and crops over many years to prevent erosion.[38]

Failure to fulfill the obligation of maintaining agricultural land and cultivate it in accordance with agrotechnical measures is considered misdemeanor for which a fine is prescribed.[39] Moreover, when private agricultural land is not kept suitable for agricultural production, it may be seized from the owner's possession, and forced administration (sequestration) is imposed by way of lease. When the owner's residence is unknown, or they are inaccessible, agricultural land that is not properly maintained may be leased to a natural or legal person for a period of 10 years to protect the ground, the environment, and the people.[40] The decision to lease such land on the request of a natural or legal person interested in farming is issued by the Ministry of Agriculture. If several persons are interested in the same agricultural land, an invitation to tender for lease is organized. After a period of 5 years in the lessee's possession, the owner of agricultural land may request for it to be returned. The proceeds from the lease belong to the owner of the agricultural land. If the owner seeks the payment of the fee in the 10 years after the lessee's possession of the land, the proceeds from the lease become the revenue of the state budget (25%), the budget of the regional self-government unit (10%), and the budget of the local self-government unit in whose territory the agricultural land is located (65%).

The coercive measure by which forced administration is established by giving the agricultural land in lease must be in line with the constitutional guarantee of ownership. The seizure of the land from the owner's possession and its lease are

36 Art. 4/4 ALA.

37 Art. 4/6 ALA.
Agrotechnical measures are prescribed in the form of an ordinance by the minister competent for agriculture.

38 Art. 11/2 ALA.

39 Art. 91 ALA.

40 Arts 14, 15 ALA.
It is interesting to note that in the ALA, sequestration is allowed only if the residence of the agricultural land's owner is unknown, or if they are not accessible. When the owner is known and accessible, only a fine may be imposed (under Art. 91 ALA) for not maintaining the agricultural land.
The Property Act lays down the possibility of sequestration for failing to fulfill the obligations in a much broader way. Seizing an immovable from the owner's possession and leasing it is possible when the owner does not meet their obligations, even if they are known and accessible. Namely, the Property Act establishes that the owner may not be forced to act in accordance with the obligations specified in the statutory limitations of ownership. Temporary administration can then be established (sequestration), and the immovable may be leased. The owner is entitled to the immovable being returned to their possession after paying all the invested money or after fulfilling the obligations for which the temporary administration was established (Art. 32/3-7, PA). See Gavella et al., 2007, pp. 415–416.

conducted without the owner's consent. By this measure, the owner is dispossessed and thus deprived of the private disposition of ownership. The Constitutional Court of the Republic of Croatia has already been in the position of having to review the constitutionality of the provisions of the Agricultural Land Act of 2008 on compulsory lease. The Constitutional Court held that the legal concept of compulsory lease was in accordance with the Constitution because agricultural land was among the goods of interest to the Republic of Croatia and because of the social component of ownership. However, the Constitutional Court also indicated that this coercive measure must be in line with the principles of proportionality and the rule of law. It must not have the effect of disproportional interference in the owner's rights. In the process of assessing the proportionality of a coercive measure, several circumstances must be considered. It is essential to leave the owner with the possibility to try (within the appropriate period of time) to align the farming of the land with the requirements established in the ALA. If there are no such transitional measures, the compulsory lease may be an excessive burden to the owner. It is important for the owner to have effective legal remedies against the coercive measure to be protected from unlawful or arbitrary interference by the authorities into their own ownership rights. It is also important to know what compensation must be paid to the owner for forced dispossession. In the Court's opinion, in case of such restriction of ownership, the owner should be entitled to a compensation amounting to the market value of the agricultural land. According to the Constitutional Court, it is also important to consider the duration of the compulsory lease. Finally, the owner must know when they are allowed to seek the payment, so that the money does not end up in the state budget.[41] Regarding the criteria for the assessment of proportionality of the measure of compulsory lease, some aspects of the current concept of compulsory lease seem to be disputable from the point of view of the constitutional guarantee of ownership. The ALA contains no specific provisions on legal remedies against the decision of the Ministry of Agriculture on compulsory leases of agricultural land, nor on the owner's rights when their land is leased in such a way. In this segment, only a subsidiary application of the general provisions of administrative procedure is possible, pursuant to which proceedings before the Administrative Court may be initiated. There are also no specific provisions on the acting of the Ministry of Agriculture when the owner's residence is unknown or when the owner is inaccessible; indeed, no provisions exist on any transitional measures that would enable the owner to take the necessary agrotechnical measures prior to forced dispossession. In addition, the provision on the amount of the fee is not sufficiently clear, and it does not guarantee that it will always correspond to the market value. It is disputable whether the provision is in accordance with the Constitution, according to which the owner may as late as after 5 years request their agricultural land to be returned to their possession. Therefore, the provisions on compulsory lease

41 See the Constitutional Court Decision no. U-I-763/2009 *et al* of 30/3/2011 (Official Gazette NN, 39/11), points 27–34.
See Peček, 2011, pp. 1–4; Josipović, 2016, p. 58.

call for additional elaboration and harmonization with the standards of the protection of ownership as the fundamental right defined by the Constitutional Court in connection with the issue of compulsory lease.

Specific restriction on the ownership of agricultural land is also envisaged when the owner wishes to convert agricultural land to non-agricultural purposes.[42] The conversion may be conducted only in accordance with documents on spatial planning and by paying one-time compensation for diminishing the value and the surface area of agricultural land being considered as a resource of interest to the Republic of Croatia. The conversion fee amount depends on the quality of agricultural land and on whether this is considered to be particularly valuable arable land.[43] In addition, the conversion fee depends on whether, at the time of entry into force of the ALA, the agricultural land was within or outside the building zone, taking also into consideration any subsequent changes of spatial plans (after the ALA had become effective). Depending on the quality and location of the agricultural land, the conversion fee ranges from 2.5% to 70% of the average value of land,[44] and it is paid based on the surface area of the plot that used to be agricultural land. The conversion fee amount is specified in the administrative document permitting the construction. At the same time, possible situations where the investor is exempt from paying the conversion fee are expressly stated.[45] These are mostly cases where objects for the protection from floods, facilities for agricultural activities, transport and communal infrastructure, smaller housing objects, and the like are built. Changing the purpose of agricultural land contrary to the existing spatial plans and without any proof that a conversion fee has been paid is considered misdemeanor, and a corresponding fine is prescribed.[46]

Compensation for the conversion of agricultural land must also be in line with the constitutional guarantee of ownership and with the principle of proportionality. When assessing the constitutionality of the provisions of the Agricultural Land Act of 2008 on the compensation for the conversion, the Constitutional Court of the Republic of Croatia indicated that the test of proportionality and the ratio of conversion fee depended on the quality of agricultural land and where it was located prior to the

42 Arts 18–26 ALA.

43 The criteria for the assessment of the quality of land are to establish whether the natural characteristics, the shape, the position, and the surface area enable the most efficient application of agricultural technology and agricultural production (Art. 22 ALA).

44 For example, compensation amounting to 70% of the average value of land is paid for the conversion of particularly valuable arable land or for valuable arable land that had been outside the building zone prior to the entry into force of the ALA and was included in the building zone after the change of the spatial plan (Art. 24/2 ALA). For other agricultural land added to the building zone after the changes of the spatial plan, compensation of 50% of the average value of land is paid (Art. 24/1 ALA). For agricultural land within the building zone where it is allowed to build in accordance with the spatial plan, the compensation amounts to only 2.5% of the average value of land (Art. 24/3. ALA) and to 5% for particularly valuable agricultural land.

45 Art. 26 ALA.

46 Art. 95 ALA.

adoption of the spatial plan (within or outside the building zone).[47] The conversion fee amounts may be different, but they must be proportionate and objectively and reasonably justified. The Constitutional Court also held that it was unacceptable to differentiate between the positions of the owners of agricultural land when it came to paying the conversion fee depending on the area where a particular agricultural land was located at the time when the ALA entered into force or on spatial plans to be adopted or amended in the future. Indeed, these are the facts on which individual owners do not have any direct impact. When agricultural land is converted into a building area after the ALA entered into force, the owner is faced with unreasonably high compensation, and the conversion thus becomes more difficult if compared with those owners whose agricultural land had already been included into building zones before the ALA entered into force. The situations just described result in inequality between different owners of agricultural land.[48] The current rules on conversion fee for altering the purpose of agricultural land can still be considered constitutionally disputed even though the legislator had changed the ratios between them. The main criterion for distinguishing the level of compensation for the conversion continues to be the location of a particular piece of agricultural land at the time that the ALA entered into force, taking into consideration any subsequent changes of spatial plans. In addition, the proportionality, when the ratios between different compensations for the pieces of land of the same quality are involved, and whether they are within or outside a particular building zone, continues to be questionable (70% : 5%, or 50% : 2,5%). There are still substantial inequalities among the owners of agricultural land when it comes to conversion fees to be paid when changing the purpose of their land.

1.3. Property rights on agricultural land

1.3.1. General

In the Republic of Croatia, agricultural land may be private or state-owned. Although in the Constitution it is defined as resource of interest to the Republic of Croatia, the Croatian legislator has not decided to proclaim agricultural land to be common good

47 The main question raised to the Constitutional Court was whether, from the standpoint of the constitutional guarantee of ownership as a fundamental right, it was justified to restrict ownership in the way that the change of use of agricultural land was conditioned by the previous payment of the conversion fee. If such restriction was allowed, a question arose of whether the rules on the conversion fee were in line with the requirement that the restriction of ownership had to be proportionate to the objective (public interest) achieved by such restriction (principle of proportionality).

48 See Decision of the Constitutional Court of the Republic of Croatia no. U-I-763/2009 *et al* of 30/3/2011 (Official Gazette NN, 39/11), points 42, 43.
See Peček, 2011, pp. 4–5.

(public domain) and thus exclude it from the property law regime.[49] The legislation governing the acquisition and disposition of property rights on agricultural land depends on whether such land is privately owned, by a natural or legal person, or state-owned. General provisions on property rights laid down in the Property Act primarily apply to the acquisition, protection, and termination of property rights on private agricultural land.[50] The Agricultural Land Act does not provide for the acquisition of property rights on private agricultural land. The contracts based on which private agricultural land is used and cultivated (e.g., lease contracts) are governed by the Obligations Act.[51] However, when state-owned agricultural land is involved, the state's disposal of agricultural land is governed by particular provisions of the Agricultural Land Act. In that case, the Property Act and Obligations Act apply only as subsidiary legislation.

1.3.2. Property rights on private agricultural land

The Agricultural Land Act contains no specific limitations on the acquisition and disposal of private agricultural land. The legal regime governing the acquisition and disposition of property rights and contract rights on private agricultural land is, in principle, very liberal.[52] Both the acquisition and disposal of private agricultural land are governed by the general provisions of property law and contract law, and there are no specific limitations regarding the types of property rights or contract rights that

49 Common goods (public domain) cannot be considered as objects of ownership and other property rights. They may not be individually owned by natural or legal persons, although they may serve to satisfy public needs and may have the status of common goods of interest to the Republic of Croatia. Under Croatian law, the category of common goods includes water in rivers, lakes, and the sea as well as the seashore. See Gavella et al., 2007, pp.135–137.
The economic utilization of common goods takes place based on a concession contract defined as an administrative contract whose subject is the economic utilization of common goods of interest to the Republic of Croatia as established by law (Art. 3/3 of the Concession Act, Official Gazette NN nos 69/17, 107/20).

50 Since the ALA does not contain any specific rules on the acquisition of ownership of private agricultural land, all general property law provisions apply to the acquisition of ownership. The same applies to the acquisition of contractual rights on private agricultural land.

51 Arts 519–549 of the Obligations Act apply to contracts of lease for private agricultural land (Official Gazette NN nos 35/05, 41/08, 125/11, 78/15, 29/18, 126/21).

52 The only "attempt" to restrict by law the disposal of private agricultural land existed in the Agricultural Land Act of 2008 (Arts 81–85), and its aim was to encourage the consolidation of agricultural land. This Act laid down that sales and leases of private agricultural land were conducted by local self-government units or the City of Zagreb. The procedure of sale or lease included an invitation to tender and the selection of the best bidder to enter into a contract with the owner. Any contracts made contrary to these provisions were null and void. The right of preemption belonged to the state. The Constitutional Court of the Republic of Croatia annulled those provisions because they were contrary to the provisions of the Constitution guaranteeing ownership (Art. 48/1). The CC held that such compulsory mechanism for controlling the sale of private agricultural land was a disproportional measure which excessively restricted ownership. See the Decision of the Constitutional Court of the Republic of Croatia no. U-I-763/2009 et al of 30/03/2011 (Official Gazette NN, 39/11), points 44–54.
See Peček, 2011, pp. 5–6.

would exclude the possibility of acquiring particular rights on private agricultural land. There are also no bans on acquiring certain property rights on specific legal bases. In principle, all natural and legal persons are equated when it comes to the acquisition of rights on private agricultural land. Every domestic natural[53] or legal person may be the owner of private agricultural land and the holder of other property or contract rights on such land. What is important is that it is a person with legal capacity to be the holder of ownership and other real rights.[54] The only exceptions are prescribed for the acquisition of ownership of private agricultural land by foreigners who, except by succession, cannot otherwise acquire ownership of agricultural land. However, foreigners may be holders of all other property rights and contract rights on private agricultural land.[55] There are also no special rules to provide, in a different way, for the acquisition of agricultural land in favor of legal persons depending on how the legal person is organized or who owns it (a stock company or a limited company). The acquisition of ownership of agricultural land by legal persons is also governed by the Property Act. When a legal person acquires ownership of agricultural land, the land becomes the property of that legal person and is entered in the land register as the owner. Any changes of shareholders or members of a company, or its reorganization, do not have any impact on the ownership status of agricultural land, which remains private property of the company even when the shareholders or members of the company are different people. There are also no special rules on the conditions for the acquisition of private agricultural land depending on who the founder of the company is (a domestic or a foreign legal person) or whether a domestic or a foreign legal person, who is already the owner of agricultural land, has acquired shares in the company.[56] A change of the ownership structure of a private company does not have any impact on the changes of the private law status of agricultural land considered as property of a private company.

Private ownership of agricultural land may be acquired on any legal basis on which ownership of immovables can otherwise be acquired. Ownership of agricultural land is acquired by contract, succession, a court decision, or a decision of another competent authority, and by law.[57] The prerequisites for the acquisition of ownership

53 When an agricultural activity is conducted within a family agricultural holding (FAH), and because it is a specific organizational form of farmers not recognized as legal personality, the owner of agricultural land is a natural person—a holder of the family agricultural holding who has all the rights and obligations of the FAH. For more, see Josipović, 2021, pp. 114–116.

54 See Gavella et al., 2007, pp. 60–63.
In this regard, the Property Act, in Art. 1/1 expressly lays down that every natural and legal person may be holder of the right of ownership and other property rights unless otherwise provided by law.

55 For more, see 2.2; 2.3.

56 The establishment, organization, termination of companies, transfer of shares in a company, and the like are laid down in the Company Act (Official Gazette NN nos 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 111/12, 125/11, 68/13, 110/15, 40/19.
The Company Act expressly provides that in legal transactions, companies may acquire rights and assume obligations as well as become the owners of both movables and immovables.

57 Art. 114/1 PA.

on any of these legal bases are laid down in the Property Act.[58] Other property rights on agricultural land (easements, real burdens, the right to build, security rights) are also acquired upon the fulfillment of the preconditions provided for in the Property Act and in other acts laying down the acquisition of particular types of property rights (e.g., the Enforcement Act for judicial and notary security rights on immovables).[59] When the succession of agricultural land is involved, including the land whose owner was a deceased holder of a family agricultural holding, no specific provisions exist on the succession of agricultural land.

Although one of the biggest obstacles to a qualitative and productive use of agricultural land is its fragmentation,[60] Croatian regulations do not contain any special rules on how to organize minimal surface area of agricultural land by imposing restrictions on the landowners when dividing it. No specific rules also exist on the dissolution of co-ownership on private agricultural land to prevent the physical partition of agricultural plots. Keeping the unity of agricultural land in the procedure of division can be achieved only by the application of the general rules on the division of co-ownership community by which the division—instead of geometrical partition or civil partition—is conducted in such a way that agricultural land remains in the ownership of a co-owner who pays to all other co-owners the equivalent value of their shares. This can be done in the court proceedings for dissolution based on the provisions on the so-called civil partition by payment, on the request of a co-owner who has a particularly serious reason to acquire the whole agricultural land (e.g., because they are a farmer). The same will be possible in succession proceedings if an heir, who is a farmer, requests the possession of agricultural land (including all things used in agricultural activities) and if they pay out all the other heirs. In the same way, it is possible in the procedure of dissolution of ownership of agricultural land co-owned by the Republic of Croatia and a third person if the share owned by the state is smaller than 50% of the entire surface area of the agricultural parcel.[61] However, in all these cases, civil partition by payment, avoiding geometrical partition, is provided only as a possibility. It is an option that exists if the co-owner, who is a farmer, has requested such model of partition. In practice, an attempt has been made to solve the problem of fragmentation of agricultural land primarily by the rules on land consolidation. These

58 For more, see Josipović, 2014, pp. 110–115.

59 For more, see Josipović, 2014, pp. 116–131.

60 According to the data from the European Commission, the farm structure in Croatia in 2016 shows that 69.5% of farmers utilized agricultural land of the surface area of less than 5 ha or 11.4% of the total surface area of agricultural land in Croatia (178,670 ha). On average, small farmers used 1.9 ha of agricultural land, and only 1.2% farmers cultivated agricultural land larger than 100 ha. A single farmer utilized on average 11.6 ha of agricultural land. Compared to an average farmer in the European Union, a Croatian farmer uses agricultural land that is by 30% smaller.
See the European Commission (2021), Republic of Croatia – Ministry of Agriculture, Josipović, 2021, p. 119.

61 Art. 51 PA, Art. 143/2 Inheritance Act, Art. 75/3 ALA.
Josipović, 2021, p. 106.

rules are very frequently changed to ensure the efficient execution of highly complex land consolidation procedures.[62] On the other hand, to prevent fragmentation, a specific statutory prohibition of division of agricultural land outside the building zones is proposed for cadastre units smaller than 1 hectare.[63] However, such prohibition of the geometrical division of agricultural land, except for the provision to expressly prohibit it, would also call for the regulation of the legal position of the owner of agricultural land because of the imposed prohibition of the geometrical division. This would constitute a serious restriction on ownership rights that must be in line with the constitutional guarantee of ownership and the principle of proportionality both in relation to the reason for restriction and to the agricultural land to which the restriction is imposed.[64,65] For the same reasons, it will be necessary to regulate any legal relations arising between the co-owners and heirs involving agricultural land that cannot be geometrically divided.

1.3.3. Property rights on state-owned agricultural land

The Agricultural Land Act lays down specific rules on the disposal of state-owned agricultural land regarding all the prerequisites for the establishment of property rights and contractual rights as well as for the acting of the competent public bodies at the time of disposal. To this end, *numerus clausus* of property rights is not increased, and no specific contractual rights for the use of state-owned agricultural land are provided. The rules on the disposal of state-owned agricultural land are based on several special principles by which the better exploitation of agricultural land is ensured, untended agricultural land is brought back to its functionality and

62 The new Consolidation of Agricultural Land Act (Official Gazette NN, no. 46/22) entered into force on April 23, 2022. This Act replaced the Consolidation of Agricultural Land Act of 2015 (Official Gazette NN no. 51/15).
Consolidation is defined as a group of administrative and technical procedures by which agricultural land in one or several cadastral municipalities, fragmented in cadastral units of a small surface area and of very irregular shape, is consolidated and grouped into larger cadastral units whose shape is also more regular. The process of consolidation includes the development of networks of roads and canals as well as the proper development of ownership documentation and other legal relations on agricultural land. (Art. 1/4).

63 See Art. 44/4 of the final Draft of the Act on Amendments to the Agricultural Land Act (2022). The prohibition would not apply to the cases of exclusion of agricultural land to build infrastructural and other objects in accordance with the spatial plan.

64 For example, in the parliamentary discussion on this draft, it was pointed out that the minimum surface area of a cadastral unit of agricultural land was not properly specified. It was emphasized that a geometrical division must be excluded when dealing with too large surface areas of agricultural land regarding the average surface areas of cadastral units existing in practice.

65 The Constitutional Court already explained its position that the prevention of fragmentation of agricultural parcels had its legitimate goal. However, the Court also stated that when laying down possible restrictions of ownership to achieve that goal, the balance between the protection of the owner's rights and the protection of public interest must be taken into account. See the Decision of the Constitutional Court of the Republic of Croatia no. U-I-763/2009 *et al* of 30/03/2011 (Official Gazette NN no. 39/11), points 52, 53.

effectively maintained, the manner of disposal is transparent, and agricultural production is increased.

The main principles on which the disposal of state-owned agricultural land is based are the following: when deciding on property rights on state-owned agricultural land, the protection and enhancement of economic, ecological, and other interests of the Republic of Croatia and its citizens must be ensured[66]; the disposal of state-owned agricultural land is based on the Program of Disposal of State-Owned Agricultural Land[67]; and the legal disposal of state-owned agricultural land is expressly and specifically listed in the ALA. It is a *numerus clausus* of permitted disposals accomplished in the procedures specified in the ALA. They are the following: lease of agricultural land as a piece of land making up a production-technological unit of 100 ha and lease of fishpond for maximum 25 years with the possibility of extension for the same period of time, lease of common pastures for a period of 10 years with a possibility of several extensions, temporary use for a period of 2 years, barter aimed at the consolidation of agricultural land, sale, sale by direct negotiation, transfer of agricultural land for cultivation by direct negotiation, dissolution of co-ownership, establishment of the right to build for maximum 99 years and establishment of servitude[68]; and for some categories of agricultural land, prohibition of alienation of state ownership. This prohibition includes fishponds, common pastures, particularly valuable arable land, and valuable arable agricultural land,[69] and state-owned agricultural land may be disposed for utilization on the basis of an invitation to tender.[70] The main aim of public tenders is to secure the transparency of the procedure, the participation of as many persons as possible, and a large number of bids to be able to choose the most favorable one for lease or sale. Only exceptionally does disposal begin on the basis of direct negotiation (e.g., temporary disposal, barter, sale by direct negotiation, leasing for cultivation by direct negotiation).[71] However, even in these cases, the Agricultural Land Act lists the cases where disposal by direct negotiation is possible, the kind of special purpose that must be achieved by disposal (e.g., consolidation, scientific work) and to whose benefit it is given (e.g., to scientific institutions for cultivation); and participants in the public tender for the lease of state-owned agricultural land to natural and legal persons who have fulfilled all their obligations connected with the use of state-owned agricultural land and with paying the water fee and all public duties and persons against whom no proceedings are conducted for the transfer of state-owned agricultural land to their possession.[72] When an invitation to tender is

66 Art. 28 ALA.
67 Arts 29, 30 ALA.
The adoption of the Program is decentralized. Although it is state-owned agricultural land, the Disposition Program is launched by the unit of self-government in agreement with the Ministry of Agriculture after its draft has been presented to the public.
68 Art. 27/2 ALA.
69 Art. 59/1 ALA.
70 Arts 31/1, 52/1, 56/1, 59/1, 60 ALA.
71 Arts 57, 58, 72, 73 ALA.
72 Arts 35/1, 63/1 ALA.

organized for the lease of state-owned agricultural land, any domestic and foreign natural and legal persons who meet the prescribed conditions may participate. When an invitation to tender is organized for the sale of state-owned agricultural land, any domestic natural or legal persons who are eligible to acquire ownership of agricultural land may participate.[73]

The procedure of disposal of state-owned agricultural land is, as a rule, decentralized. It is conducted by local self-government units in whose territory the respective agricultural land is located. Bodies of local self-government units bring their decisions on invitations to tender, conduct the whole process, decide on the selection of the best bidder, and enter into a lease or sales contract for the agricultural land on behalf and for the account of the Republic of Croatia.[74] To this end, the Ministry of Agriculture, before the contract is made, gives its opinion and consent regarding the selection of the best bid.[75]

Particular groups of natural and legal persons are recognized the right of priority when the agricultural land is leased or sold, under the criteria established by law.[76] As a rule, priority is given to persons already engaged in agricultural production, to previous possessors of the same land, to persons whose permanent residence, seat, or production facility is in the territory of the local self-government unit where the agricultural land is located, or the like[77]; the proceeds from the lease or sale of state-owned agricultural land are divided between the local self-government unit, the regional self-government, and the state. The state budget receives 25% of the amount, the budget of the regional self-government unit 10%, and the largest portion of the amount (65%) is allocated to the budget of the local self-government unit in whose territory the agricultural land is located.[78] The amounts paid to the units of local self-government and regional self-government must be spent for designated purposes: various programs connected with the registration of agricultural land in the land register, land consolidation, rural infrastructure, and the like.[79]

Despite the particularly detailed stipulation of individual disposals of state-owned agricultural land, in practice, numerous barriers make the process of disposal more difficult and slow. Therefore, it is still necessary to simplify and speed up this process. A particular problem is the fact that the programs of disposal of agricultural land are not adopted within the prescribed time and that the implementation of tenders for leases and sales is particularly slow. In practice, state-owned agricultural land is most frequently utilized based on contracts on temporary use and on the basis of

73 For more, see 2.2; 2.3.
74 Arts 31/5, 12, 38, 56/5, 11, 57, 61, 65 ALA.
75 Arts 31/12, 56/8, 65/1 ALA.
76 čl. 36, 53, 56/6, 64 ALA.
77 For more, see 3.
78 Art. 49/1 ALA.
The funds received through a barter system, the establishment of the right to build, or servitude are allocated in their entirety to the state budget (Art. 49/6 ALA).
79 Art. 49/3 ALA.

out-of-court settlements that do not give sufficient security to farmers to be able to plan agricultural production for a longer period of time.[80] This is why the Government of the Republic of Croatia, in February 2022, again proposed amendments to the Agricultural Land Act. The proposal includes the introduction of a new rule according to which the Ministry of Agriculture would take over the disposal of agricultural land if the local self-government unit failed to adopt an adequate program within the statutory time limit. This would result in a situation where proceeds generated from lease or sale will be the revenue of the state budget and will no longer be paid to the local self-government unit. It is also recommended to cancel the uniform statutory maximum of agricultural land that an individual bidder may get through a lease and introduce more flexible rules on the maximum leased surface area determined for every public invitation to tender. There is also a plan to introduce electronic public invitation to tender, and as for the right of priority, a scoring system is proposed.[81]

2. Cross-border acquisition of agricultural land

2.1. General

The Constitution of the Republic of Croatia stipulates that a foreigner may acquire the right of ownership under the conditions established by law.[82] Property rights exercised by foreigners are generally provided for in the Property Act,[83] where it is expressly defined who is, in the context of acquiring property rights, considered a foreign natural or a legal person. A natural person is considered to be a foreigner if they do not have citizenship of the Republic of Croatia.[84] However, persons who do not have Croatian citizenship but have emigrated from the territory of the Republic of Croatia or are the emigrants' descendants, are not considered to be foreigners if the body competent for citizenship has established that they meet the conditions for the acquisition of citizenship of the Republic of Croatia.[85] A foreign legal person is a person whose registered seat is outside the Republic of Croatia.[86] Every legal person whose registered seat is in the territory of the Republic of Croatia is considered to be a domestic legal person regardless of whether it is established by domestic or foreign capital and of its organizational form, or regardless of whether they are shareholders or members of a domestic or foreign legal person's company. To establish whether it

80 See the final Draft of the Act on Amendments to the Agricultural Land Act, 2022, pp. 29–30.
81 See the final Draft of the Act on Amendments to the Agricultural Land Act, 2022, pp. 31–32.
82 Art. 48/3 of the Constitution of the Republic of Croatia.
83 Arts 35-358a PA.
84 Before the authorities of the Republic of Croatia, persons with dual citizenship, Croatian and foreign, are considered Croatian citizens (Art. 2 of the Croatian Citizenship Act, Official Gazette NN nos 53/91, 70/91, 28/92, 113/93, 4/94, 130/1, 110/15, 102/19, 138/21).
85 Art. 355/1 PA.
86 Art. 355/3 PA.

is a domestic or a foreign legal person, it is only decisive whether the legal person is registered in the Republic of Croatia.

In principle, foreign natural and legal persons are equated with domestic persons when acquiring property rights.[87] There is a general rule that when foreigners acquire ownership and limited property rights on movables as well as limited property rights on immovables (servitude, real burdens, the right to build, liens), no special restrictions exist. It is expressly stipulated that the statutory restrictions imposed on foreigners regarding the acquisition of ownership on immovables may not apply accordingly to the right of ownership on movables or to the limited property rights.[88] Cases in which the legal capacity of foreigners for the acquisition of real rights is restricted are expressly provided by law or an international treaty.[89] However, one must distinguish between the legal position of natural and legal persons from EU member states and the legal position of foreigners from third countries. The restrictions regarding the acquisition of ownership of immovables by foreigners are operational in two directions.

a) special prerequisites for the acquisition of ownership of immovables by foreigners
The acquisition of ownership of immovables by foreigners is regulated by special prerequisites that differ depending on the legal basis on which ownership is acquired. A foreigner may acquire ownership of immovables by succession under the condition of reciprocity (i.e., if Croatian nationals and legal persons may also acquire ownership of immovables by succession in the country of the foreigner's citizenship).[90] To be able to acquire ownership of immovables on another legal basis (by contract, by a decision of a court or some other authority, or by law), two preconditions must be met: reciprocity and prior authorization given by the minister of justice.[91] A contract on the basis of which a foreigner may acquire ownership of an immovable is null and

87 See Gavella et al., 2007, pp. 61–62.
88 Art. 354/2 PA.
89 Art. 354/1,2 PA.
Art. 11 of the Croatian Citizenship Act establishes who is considered an emigrant and under what conditions an emigrant and their descendants may acquire Croatian citizenship by birth. An emigrant is a person who emigrated from the territory of the Republic of Croatia prior to October 8, 1991 (i.e., before the proclamation of Croatia's independence with the intention to live abroad forever). An emigrant is also a member of the Croatian people who emigrated from the territory of the former state that included the territory of the today's Republic of Croatia at the time of their emigration (Art. 11/3,4).
90 Art. 356/1 PA.
The reciprocity required for the acquisition of ownership by succession is different from that required under the Succession Act to acknowledge the foreigners' right to inheritance in the Republic of Croatia (Art. 2/2). Under the Succession Act, foreigners may inherit in the Republic of Croatia if Croatian citizens may inherit in the foreigner's country. When the inheritance of immovables by foreigners is involved, the types of reciprocities are two: the reciprocity to acquire the legal position of an heir and the reciprocity for the acquisition of ownership of an immovable by succession.
91 Art. 356/2 PA.

void if no prior authorization was given by the minister of justice[92] on the basis of their discretionary assessment. The minister's authorization is considered an administrative act, and it is possible to start administrative action against it.[93]

These restrictions on the acquisition of ownership of immovables by foreigners apply only to foreigners from third countries. In the process of accession to the European Union, Croatia was bound to gradually liberalize the cross-border acquisition of immovables by foreigners from EU member states.[94] The obligation implied the removal of any obstacles to the cross-border realization of the right of establishment and free movement of capital in conformity with the Treaty of the Functioning of the European Union (TFEU). The provisions of the Property Act by which the acquisition of ownership of immovables by foreigners was conditioned by the prior authorization were considered to be contrary to the EU's market freedoms because they caused direct discrimination based on citizenship.[95] Therefore, in the first phase of harmonization with EU legislation, the procedure of obtaining the authorization for the acquisition of ownership of immovables was simplified and shortened because the issuance of prior authorization was transferred from the Ministry of Foreign Affairs to the Ministry of Justice (2006).[96] The second phase of harmonization included amendments to the Property Act of 2008, which entered into force on February 1, 2009. Following this date, natural and legal persons from all EU member states were fully equated with domestic persons when acquiring ownership of immovables because special rules on reciprocity and prior authorization no longer applied to them.[97] Direct discrimination was thus abolished *pro futuro*, for any future cross-border acquisitions of immovables, but also retroactively, for all legal transactions made with foreigners from EU member states before February 1, 2009. It was expressly regulated that all contracts concluded before February 1, 2009, by which foreigners from EU member states ought to have acquired ownership of immovables, were convalidated *ex lege* if no prior authorization had been issued before that date.[98] On the basis of the existing contract, foreigners from EU member states were thus able to acquire ownership of immovables under the same conditions valid for Croatian citizens. Such equalization of foreigners from the European Union with domestic persons had been established

92 Art. 357/1 PA.
A foreign person deprived of the authorization to acquire the right of ownership may not reapply for the authorization within 5 years following the first application (Art. 357/3 PA).

93 However, since the authorization is given on the basis of discretionary assessment, the administrative court deciding on refusal may examine only the decision's formal deficiencies and not the justification of the decision or the substantial reasons for the refusal.

94 The obligation to liberalize the cross-border acquisition of immovables arising from Art. 49/5/a, b and Art. 60/2 of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and the Temporary Agreement on Trade and other Related Matters between the Republic of Croatia and the European Community (OG -International Agreements, 15/01).

95 See case law cited in Josipović, 2021, p. 109, note 37.

96 Act on Amendments to the Property Act (Official Gazette NN 79/06).

97 For more see in Josipović, 2021, pp. 108–111.

98 See Arts 5, 6 of the Act on Amendments to the Property Act (Official Gazette NN no.146/08)

even before Croatia became a member state of the European Union (July 1, 2013).[99] However, this nondiscriminatory treatment did not include agricultural land[100] and protected natural areas. Discriminatory rules of the then valid special laws prohibiting the acquisition of ownership of the excluded immovables by foreigners before the accession to the European Union could still be applied.[101]

The rules on prior authorization for persons from third countries have continued to be valid after Croatia's accession to the European Union, although they constitute direct discrimination of nationals and legal persons from third countries. Such discriminatory rules are allowed because of the restrictions that existed on December 31, 2002 for third countries and whose application continued under TFEU within the principle of free movement of capital between member states and third countries.[102] The provisions regulating the free movement of capital (TFEU) expressly stipulate that Croatia may continue applying discriminatory rules on third countries, including those on investing in immovables but only if they were effective on December 31, 2002.[103] Namely, in the relations with third countries, there is no obligation of liberalization of legal transactions involving immovables. However, there is no possibility of introducing new and stronger discriminatory restrictions for the acquisition of ownership and other property rights on immovables that would be less favorable than the discriminatory provisions in force on December 31, 2002. Any new rule which would, compared to the existing ones, worsen the position of persons from third countries in the process of cross-border acquisition of immovables would be contrary to the law of the European Union and considered a violation of the obligations stipulated in the TFEU.

b) statutory prohibition of the acquisition of ownership of specific immovables by foreigners

The Property Act expressly stipulates that foreigners may not own immovables located in the area which, because of the protection of interest and security of the Republic of Croatia, is proclaimed to be a protected area.[104] This prohibition also applies to natural and legal persons from EU member states because, in relation to

99 By the Stabilization and Association Agreement, Croatia committed itself, within the time limit of 4 years following the entry into force of the SAA, to fully liberalize the acquisition of immovables by nationals from EU member states (Art. 60/2 SAA). The time limit expired on February 1, 2009 (the SAA entered into force on February 1, 2005).

100 For more. see 2.3.

101 Art. 358 a/2 PA.
The exclusion of the agricultural land and the protected areas of nature was possible because, in Art. 60/2 and in Annex II to SAA, it was expressly concluded that those parcels were excluded from the obligation of liberalization of cross-border land acquisition in accordance with the free movement of capital.

102 See Art. 64/1 TFEU.

103 Art. 12 of the Treaty of Accession of the Republic of Croatia to the European Union (OJ L 112, 24/4/2012, pp. 10–110) expressly establishes that 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."

104 Art. 358 PA.

these immovables, there is an expressly stated exception from the nondiscriminatory regime established on February 1, 2009.[105] After a particular area is proclaimed to be an area of interest of the Republic of Croatia, foreign persons' ownership ceases to exist, and the ownership of the involved immovable is transferred to the state.

To protect particular types of immovables as goods of interest for the Republic of Croatia, separate laws expressly stipulate prohibitions for the acquisition of ownership by foreigners in the Agricultural Land Act for private and state-owned agricultural land. The only exception regarding foreigners is the fulfillment of the condition of reciprocity by way of succession and if it is prescribed accordingly by an international treaty or/and another piece of legislation.[106]

The prohibition of the acquisition of ownership is also established in the Forest Act,[107] unless differently provided by an international treaty.[108] Indeed, the prohibition of acquiring ownership of forests applies only to foreign natural and legal persons from third countries (i.e., natural persons who do not have citizenship of the Republic of Croatia or of another member state of the European Union and legal persons who have a registered seat outside the Republic of Croatia and outside other EU states).[109] Natural and legal persons from third countries cannot acquire ownership of forests in Croatia on any legal basis (not even by succession). Namely, forests were not included in protected areas in the Stabilization and Accession Agreement and had no obligation of liberalization in the process of accession. Forests were not even a subject during accession negotiations, when a derogation period was discussed. The nondiscriminatory status for the acquisition of ownership of forests by natural and legal persons from EU member states was established as early as February 1, 2009, when the general provisions of the Property Act on their equation with domestic persons entered into force.[110] The prohibition of the acquisition of forests by persons from third countries

105 Art. 358a/2 PA.

106 Arts 2/2,3 ALA. For more, see 2.2; 2.3.

107 The Forest Act provides for forests and woodland as the resources of interest to the Republic of Croatia. The FA lays down specific obligations of the owners of forests and woodland to protect them as domains of interest to the Republic of Croatia. However, the FA does not stipulate any specific rules on the acquisition of ownership and other limited property rights or lease rights on woodland by domestic persons, and neither does it provide any specific rules on the succession of woodland. General property and contract law rules apply to the acquisition of ownership and other real rights and lease rights on woodland. General succession law rules apply to the succession of woodland.

108 Official Gazette NN nos 68/18, 115/18, 98/19, 32/20, 145/20.

109 Art. 56 of the Forest Act.

110 In the association process, the Croatian legislator did not decide on any derogation period for the acquisition of the protected areas of nature by foreigners from EU member states, and no derogation period was agreed for the protected areas of nature in the Treaty of Accession. The provisions of the former Act on the Protection of Nature providing for the prohibition of acquisition by foreigners do not apply to persons from the EU since Croatia's accession to the European Union because the derogation period was not specified in the international treaty (Accession Treaty). By the entry into force of the Act on the Protection of Nature of 2013 (Official Gazette NN nos 80/13, 15/18, 14/19, 127/19), the prohibition of the acquisition of ownership of the protected areas of nature was abolished for all foreign persons.

remained in force because it had been introduced before December 31, 2002.[111] Therefore, it is possible to continue its application in relation to third countries according to the TFEU provisions on the free movement of capital between member states and third countries according to the TFEU.

Foreigners whose ownership of an immovable ceased to exist because the area of its location had been proclaimed to be an area of interest and security for Croatia, and who cannot acquire ownership by succession, are entitled to a compensation from the Republic of Croatia, now the owner of such an immovable. The compensation is determined in accordance with the regulations on expropriation.[112]

2.2. Prohibition of the acquisition of ownership of agricultural land

The prohibition of the acquisition of agricultural land by foreigners was introduced into Croatian legal order in 1993.[113] It was then extensively regulated and had a broad personal and substantial scope of application. Foreign legal and natural persons could not acquire agricultural land under any legal bases. It was not possible to acquire a particular agricultural land by capital investment or by buying a domestic legal person who was the owner of agricultural land, unless provided otherwise by an international treaty. However, the Government of the Republic of Croatia could exclude a particular agricultural land from acquisition. Little by little, the prohibition was becoming more lenient, or it was later intensified anew; with the Agricultural Land Act of 2001, it was narrowed, and it was stipulated that foreign legal and natural persons could not be holders of ownership of agricultural land unless otherwise established in an international treaty.[114] The provisions on the prohibition of acquisition by way of capital investments or by buying a domestic legal person were abolished. With the Agricultural Land Act of 2008, the prohibition of acquiring agricultural land was again alleviated, and it was expressly regulated that foreign natural and legal persons could not acquire ownership of immovables on the basis of a contract, unless otherwise stated by an international treaty.[115] What it

111 The prohibition of acquiring forests by foreigners was introduced in the amendments to the Forest Act and they entered into force on 1 March 2002 (Official Gazette NN no. 13/02).
If in Art. 64/1 TFEU (Treaty of Accession for Croatia) the relevant date in respect of the existing restrictions existing under national law had not been determined on December 31, 2002, the prohibition on the acquisition of forests could not have been applied to EU nationals.

112 Art. 358/2,3, Art. 358b PA.

113 Art.1 of the Act on Amendments to the Act on Agricultural Land Act (Official Gazette NN no. 79/93 entered into force on September 7, 1993).
Regarding foreigners who, that date, had acquired agricultural land, it was stipulated that they remained owners of agricultural land. This provision would apply to all cases where all the prerequisites had been fulfilled for the acquisition of ownership of agricultural land before the entry into force of the Act (regardless on the legal basis). See also Milaković, 2015, p. 5.
On the other hand, the prohibition of disposition of agricultural land was expressly stipulated for foreign natural persons—owners of agricultural land from one of the states established in the territory of the former Yugoslavia (Art. 15).

114 Art. 1/3 of the Agricultural Land Act 2001 (Official Gazette NN no. 66/01).

115 Art. 1/2 of the Agricultural Land Act 2008 (Official Gazette NN no. 152/08).

meant was that the acquisition of ownership by foreigners was allowed on other legal bases (by succession, a decision by the court or some other authority, or by law).[116] In the Agricultural Land Act of 2013, the prohibition was again intensified, and foreign natural and legal persons could no longer acquire ownership of agricultural land except by succession and under the condition of reciprocity.[117] The prohibition was thus again broadened to include all other legal bases of acquisition (contracts, decisions rendered by courts or other authorities, statutory). The valid Agricultural Land Act of 2018 also stipulated that foreign legal and natural persons could not own such land unless otherwise provided by an international treaty or by a specific regulation. Exceptionally, and with the fulfillment of the condition of reciprocity, foreign legal and natural persons were again able to acquire ownership of agricultural land by succession.[118] Under current legislation, foreign persons cannot acquire agricultural land based on a contract, by a decision rendered by the court, by other public authority, or by law.

However, the prohibition of acquiring ownership of agricultural land continues to have a wide scope of application. On the one hand, it includes all agricultural land regardless of whether it is private or state-owned. Therefore, foreigners are excluded from the participation in public tenders for the sale of state-owned agricultural land. On the other hand, since the derogation period for natural and legal persons has been extended to June 30, 2023,[119] the prohibition applies to all foreigners, regardless of whether they are the nationals or have their seat in an EU member state or in a third country.[120] Finally, the prohibition, in principle, applies to all legal bases of acquisition of ownership of agricultural land—in other words, for the acquisition on the basis of a contract (*inter vivos* or *mortis causae*), the court decision or a decision rendered by other public authority (e.g., in the process of expropriation), by succession, or by law (e.g., by prescription).[121] An exception is envisaged only for the acquisition by succession but only if Croatian citizens, in the country of an heir, may also acquire

116 See Milković, 2015, p. 5.

117 Arts 2/2,3, of the Agricultural Land Act 2013 (Official Gazette NN no. 39/13).

118 Arts 2/2,3 of the Agricultural Land Act 2018 (Official Gazette NN no. 20/18).

119 For more see 2.3.

120 The courts *ex officio* take into account the prohibition of acquisition of agricultural land. Land register courts reject applications for registration of ownership of agricultural land in favor of a foreigner by invoking the provisions of the ALA on prohibition of acquisition. See, for example, a decision of the County Court in Dubrovnik, Gž 639/13 of 4/2/2015; decision of the County court in Varaždin, Gž- Zk-469/18 of 15/4/2020.
Published at www.iusinfo.hr (Accessed: April 24, 2022).

121 The prohibition of the acquisition of ownership would also include the prohibition of the fiduciary transfer of ownership of private agricultural land. It is a special type of security rights on immovables (Arts 309–327 of the Enforcement Act). For more, see in Josipović, 2013, pp. 204–205.
However, in that case, there is also a transfer of ownership on the creditor. Therefore, it would not be possible to establish this type of security right on private land in favor of a foreign creditor.

agricultural land by succession.[122] Whether, in every concrete case, a foreign person will still be allowed to acquire ownership of agricultural land on any other legal basis will depend on whether it is a person from another member state or from a third country. In such a situation, the relevant provisions are the provisions of the Agricultural Land Act to which the law of the Union refers as the relevant provisions for the restrictions on the acquisition of ownership of agricultural land.[123]

Such a broad scope of application of the restriction on the acquisition of agricultural land is justified by a special protection of such land being a resource of interest to the Republic of Croatia and by the importance of agricultural resources for the Croatian economy, rural development, and environmental protection. Up to now, the prohibition of acquisition of agricultural land has not been the subject of the constitutional law review. This type of prohibition, just like all other national provisions on the cross-border acquisition of agricultural land, has not been a matter of proceedings before the Court of Justice of the EU within the infringement procedures or preliminary ruling procedures.

2.3. Transitional period for agricultural land until June 30, 2023

Agricultural land, as a resource of interest to the Republic of Croatia, has had a special status in the context of free movement of capital within the Union's internal market in the process of the EU accession negotiations and after Croatia became a member state of the European Union. The provisions of EU law on the prohibition of discrimination based on citizenship in cross-border acquisition of ownership do not yet apply. In the Stabilization and Accession Agreement in 2001, agricultural land was already exempt from the obligation of liberalization when acquiring ownership within the cross-border realization of the right of establishment and free movement. Although based on the SAA, during the accession negotiations, the cross-border acquisition of immovables by foreigners from the EU underwent gradual liberalization. The subsidiaries of EU companies, which exercised their right of establishment in Croatia, were not able to acquire ownership of agricultural land to conduct their economic activities. Likewise, the nationals of member states could not acquire agricultural land within the concept of free movement of capital. What resulted from the SAA was only the obligation that the Stabilization and Association Council 4 years after the entry into force of the SAA (February 1, 2005) would examine the modalities for extending the nondiscriminatory treatment to also include agricultural land.[124]

The prohibition of the acquisition of agricultural land by EU nationals remained in force even after Croatia had become an EU member state. In the Treaty of Accession,

122 Reciprocity pursuant to Art. 2/3 ALA must be interpreted narrowly and only in the context of the possibility of acquiring agricultural land by succession. This type of reciprocity is different from the reciprocity as a prerequisite for a foreigner to acquire ownership of any type of immovable by succession (Art. 356/1 PA) and from the reciprocity as a prerequisite that a foreigner is entitled to become an heir (Art. 2/2 ALA).

123 For more, see 2.3.

124 Arts 49/5/b, 60/2 SSA, Annex VII.

a transitional period of 7 years from the date of accession (July 1, 2013) was stipulated for agricultural land, (until June 30, 2020).[125] In addition, a possible extension of the transitional period was agreed for a maximum of 3 years, which was conditioned by the existence of sufficient evidence that there would be serious disturbances, or a threat of serious disturbances, in Croatia's agricultural land market.[126] During the transitional period, for the citizens and legal persons from other member states, the restrictions for the acquisition of agricultural land stipulated in the Agricultural Land Act of 2008 applied.

The transitional period was provided to make it possible for Croatia to remove the deficiencies in the agricultural land market and in the agricultural sector and to enhance its competitiveness in the internal market. The reasons for the transitional period arose from the necessity to protect the socioeconomic aspects of agriculture following the inclusion in the internal market and a transfer to Common Agricultural Policy. The main problem of the Croatian agricultural land market, at the time of accession, concerned the large differences in the prices of land and purchasing power of farmers compared to the old member states, difficulties to use agricultural land caused by unfinished privatization and restitution of land nationalized during the Yugoslav communist rule, unregulated and inconsistent land registers and cadastre, and a huge percentage of non-demined agricultural land after the Croatian War of Independence (1991–1995).[127]

After the expiry of the 7-year period, the prohibition of the acquisition of land was extended for an additional 3 years. Based on the request of the Government of the Republic of Croatia of November 2019,[128] the European Commission, on June 16, 2020, brought a Decision by which the transitional period was extended until June 30, 2023.[129] The request for the extension of the transitional period was justified by the danger of serious disturbances on the agricultural land market, which might be caused by the acquisition of agricultural land by foreigners. Additional moratorium was necessary to continue the structural transformation of Croatian agriculture. It was emphasized that compared to an average farmer in the European Union, an average Croatian farmer was using a smaller surface area of agricultural land by 30% and, on average, accomplished lesser economic results by 56%. The average productivity of agriculture in Croatia is only 30% that of the European Union. It has been pointed out that the prices of agricultural land in Croatia are among the lowest in

125 According to Annex V of the Treaty of Accession, Croatia was allowed to "maintain in force for seven years from the date of accession the restrictions laid down in its Agricultural Land Act (OG 152/08), as in force on the date of signature of the Treaty of Accession, on the acquisition of agricultural land by nationals of another Member State, by nationals of the States which are a party to the European Economic Area Agreement (EEAA) and by legal persons formed in accordance with the laws of another Member State or an EEAA State."

126 Accession Treaty of Croatia, Annex V, item 3, Free Movement of Capital.

127 See the Request for the extension of the transitional period (2019).

128 See the Request for the extension of the transitional period (2019).

129 See Art. 1, Commission Decision (EU) 2020/787 of June 16, 2020 extending the transitional period concerning the acquisition of agricultural land in Croatia, OJ L 192, 17-6-2020, p. 1.

the European Union and that the inflow of foreign capital to the agricultural market in Croatia would increase the trend of the rise of prices of agricultural land. This trend would have a negative impact on the structural transformation of agriculture because of the low purchasing power of Croatian farmers. It is also stressed that more time is needed for the privatization of agricultural land, updating of ownership rights, land consolidation, and demining.[130] To develop agricultural land and transform its agriculture, during the extended transitional period, Croatia has also planned to take a number of various measures, including the registration of property rights in the land register and cadastre, the development of agricultural land to be leased, and the enhancement of technology.[131]

In the course of the extended transitional period referred to in Annex V of the Treaty of Accession for the cross-border acquisition of agricultural land, in the territory of Croatia, the following rules are valid: the national prohibition of acquisition of agricultural land for natural and legal persons from EU member states is in force until June 30, 2023; the national prohibition of the acquisition of agricultural land is valid for the acquisition of both private and state-owned agricultural land; and the prohibition for nationals and legal persons from other member states on the acquisition of agricultural land on the basis of a legal transaction (a contract). The restrictions referred to in the Agricultural Land Act of 2008 apply to foreigners from other member states regardless of the fact that subsequent new acts on agricultural land containing more stringent measures regarding the prohibition of acquisition were adopted. The ALA of 2008 provided for the prohibition of acquisition of agricultural land only on the basis of a legal transaction (a contract), but it did not provide any prohibitions on other bases of acquisition of agricultural land (succession, decision of the court or other public authority, law).

As a result, foreigners from other member states can acquire ownership of agricultural land under other legal bases; for example, during the transitional period, when acquiring agricultural land, nationals of a member state or legal persons from another member state must not have a less favorable treatment than the one they had on the date when the Treaty of Accession was signed. This means that for the acquisition of agricultural land by foreigners from another member state, it is prohibited to apply a more stringent treatment, new restrictions, and new discriminatory rules compared to the ones that were valid at the time of accession under the Agricultural Land Act of 2008.[132] Therefore, more stringent restrictions for the acquisition of agricultural land under the more recent acts of 2013 and 2018 cannot apply to foreigners, by which the prohibition of acquisition was extended to all legal bases of acquiring ownership, such as by contract, decision by the court or other public authority, or by law, excluding the acquisition of ownership by succession; nationals and legal persons from another member state are equated with domestic persons in the acquisition

130 See the Request for the extension of the transitional period (2019).
131 See the Request for the extension of the transitional period (2019).
132 See Josipović (2021), p. 112.

of all other property rights (e.g., servitude, right to build, security rights) and contractual rights on agricultural land (e.g., lease); nationals and legal persons from another member state, when acquiring agricultural land, must not be treated in a more restrictive way than a national or a legal person from a third country[133]; national prohibition for the nationals and legal persons from other member states is allowed only within the concept of free movement of capital referred to in Art. 63 TFEU (i.e., in the context of cross-border acquisition of agricultural land considered as cross-border movement of capital).[134] National prohibition for the acquisition of agricultural land may not apply to cross-border acquisition of agricultural land exercised within the concept of freedom of establishment (Art. 49 TFEU), such as in an economic activity in Croatia. Therefore, self-employed farmers, who are nationals of another member state and who wish to establish themselves and reside in Croatia, are not subject to the prohibition. Since the accession to the EU, when self-employed farmers acquire agricultural land, the rules on nondiscriminatory treatment apply[135]; for natural and legal persons from third countries, the restrictions on the acquisition of agricultural land that were effective on December 31, 2002 apply. Under the Agricultural Land Act of 2001, which was valid on December 31, 2002, foreigners could not acquire ownership on any legal basis. However, the provisions of the TFEU on free movement of capital with third countries do not exclude the possibility that member states subsequently alleviate the discriminatory treatment of foreigners from third countries in the cross-border acquisition of ownership of agricultural land. The provisions of later acts on agricultural land would apply to the nationals from third countries because they contain a "milder" prohibition of the acquisition of agricultural land by opening the possibility for foreigners to be able to acquire ownership under particular legal bases (e.g., by succession)[136]; for natural and legal persons from third countries, the prohibition of the acquisition of ownership of agricultural land is also effective upon the expiry of the transitional period agreed upon for the nationals and legal persons from other member states—for example, until the Croatian legislator cancels the prohibition; it is prohibited to introduce a more stringent treatment, new restrictions, and new discriminatory limitations of the acquisition of ownership and use

133 Ibid.

134 Art. 63. of the TFEU does not expressly provide for the cross-border acquisition of immovables. However, Art. 63. of the TFEU also encompasses various transactions involving immovables, from direct investments, gifts, and succession to usufruct and mortgages. See Korte, 2022, p. 988.; Wojcik, 2016, p. 2008.; Streiblyté and Tomkin, 2019, p. 749.; Kotzur, 2015, p. 398.; Bernard, 2019, p. 524.; Frenz, 2012, p. 1163. The concept of "free movement of capital" is interpreted in EU law by reference to the nomenclature of free capital movements from Annex I (Nomenclature of Free Capital Movements) of the former Council Directive 88/361/EEC of June 24, 1988 for the implementation of Article 67. of the Treaty (OJ L 178, 8.7.1988, pp. 5–18.). This Nomenclature continues to have an indicative value in practice for defining the concept of "free movement of capital." See Judgment of March 6, 2018, *SEGRO*, Joined Cases C-52/16 and C-113/16, ECLI:EU:C:2018:157, point 56.

135 See Josipović, 2021, pp. 112–113.

136 E.g., Agricultural Land Act of 2008, Agricultural Land Act of 2013, and Agricultural Land Act of 2018.

of agricultural land by natural and legal persons from third countries compared to those valid on December 31, 2002[137]; the prohibition of acquisition of agricultural land for natural and legal persons from third countries applies to both private and state-owned agricultural land; natural and legal persons from third countries are equated with domestic persons in the acquisition of all other property rights (servitude, the right to build, security rights) and contractual rights (lease) on agricultural land.

Upon the expiry of the transitional period on June 30, 2023, a nondiscriminatory treatment will have to be applied to nationals and legal persons from other member states for acquiring agricultural land (i.e., the same treatment that applies to domestic persons). After June 30, 2023, the national prohibition of acquisition of agricultural land may apply only to nationals and legal persons from third countries, but only if the restrictions that were valid on December 31, 2002 are involved.[138] Regarding the nationals and legal persons from other member states, from June 30, 2023, it will no longer be possible to apply national discriminatory prohibition for the acquisition of ownership of agricultural land because its application is excluded by an international treaty (TFEU).[139] Nationals and legal persons from other members states will have to be fully equated with domestic persons, regardless of the legal basis on which they acquire ownership, whether they acquire private or state-owned land, and regardless of which EU market freedom they exercise by the cross-border acquisition of agricultural land. Upon the expiry of the transitional period, because it will no longer be possible to request its extension, Croatia will be able to conduct the transformation of agricultural production and enhance the development of the market of agricultural land only by nondiscriminatory measures.

3. Potential discriminatory restrictions on the cross-border acquisition of agricultural land in the context of the Commission Interpretative Communication

Upon the expiry of the transitional period (June 30, 2023), for nationals and legal persons from other member states, the national prohibition for the acquisition of ownership of agricultural land, considered as direct discrimination based on nationality, will no longer be valid. When the transitional period is over, nationals and legal persons from other member states will acquire ownership of agricultural land under the same conditions applied to domestic nationals, and neither will the provisions of the Property Act providing for specific prerequisites for the acquisition of ownership

137 Art. 64/1 TFEU.
See Wojcik, 2015a, p. 2066; Korte, 2022a, p. 1012.; Glaesner, 2019, p. 1115; Sedlaczek and Züger, 2018., p. 809.; Gramlich, 2017, p. 1066.
138 Art. 64/1, UDEU.
139 Even if the Agricultural Land Act did not expressly stipulate that national prohibition applies if not otherwise prescribed in the treaty, national prohibition would not apply because of the principle of primacy of EU law.

of immovable apply to nationals and legal persons from other member states. To acquire ownership of agricultural land, the principle of reciprocity and prior authorization given by the minister of justice will no longer be required since they are both considered to be inadmissible restrictions on the free movement of capital and freedom of establishment.[140]

However, potential discriminatory restrictions on nationals and legal persons from other member states might ensue from the provisions of the Agricultural Land Act providing for specific disposals of state-owned agricultural land. This Act does not expressly exclude foreigners from participation in public invitations to tender for the selling or leasing of agricultural land. Foreigners may already take part in invitation to tender for lease of agricultural land. Upon the expiry of the transitional period, foreigners from other member states will also be allowed to participate in invitations to tender when state-owned agricultural land is leased or sold. Indeed, the Agricultural Land Act stipulates that particular categories of persons have the right of priority in public invitations to tender aimed at leasing or selling state-owned agricultural land, leasing fishponds or common pastures.[141] Some of the reasons for which some categories of persons are recognized as having priority in such public invitations in the context of the Commission Interpretative Communication are held to be indirect discriminations and disproportionate restrictions on the acquisition of ownership of agricultural land. Namely, these are priority rules applying to all participants in a public invitation to tender (both domestic and foreign persons). In addition, some of the reasons for priority are organized in the way that may lead to a different treatment of foreigners when acquiring ownership of agricultural land compared to domestic persons who also participate. Some of the conditions for the recognition of priority may be discriminatory restrictions on foreigners who want to acquire agricultural land or may bring them into an unfavorable position. The right of priority, among others, may also concern those who are already engaged in agricultural production; holders of family agricultural holdings or who have had, for at least 3 years, their permanent residence, seat, or facility for agricultural production in the territory of the local self-government unit where the state-owned agricultural land is located. Among them may also be a possessor, whose primary activity is agriculture and who has utilized a particular piece of agricultural land based on a lease contract, or farmers, cooperatives, and companies who have already been registered in the Register of Farmers for at least 3 years. In addition, subsequent transactions involving bought state-owned agricultural land may be restricted by the prohibition of alienation for a period of 10 years from entering into a contract on sale and establishing the preemption right in favor of the state.[142] It arises from the Commission Interpretative Communication and the jurisdiction of the CJEU that the requirements dealing with the qualifications in farming, residence, and registration requirements and

140 See Commission Interpretative Communication, pp.12–17.
141 Arts 36, 53, 56/6, 64 ALA.
142 Art. 71/1,2 ALA.

privileges in favor of local acquirers[143] undoubtedly constitute restrictions on the free movement of capital and freedom of establishment. Some of these restrictions can be justified under EU law under certain circumstances because of the specific nature of agricultural land and specific public policy objectives in agriculture.[144] However, in some particular circumstances, some of these restrictions may be regarded as highly restrictive and disproportionate (e.g., residence or registration requirements) or even as indirect discrimination based on citizenship (privileges in favor of local acquirers). In further processes of transformation of the agricultural land market, and in particular upon the expiry of the transitional period, it would be useful to reexamine the alignment of the concept of the right of priority when acquiring ownership or lease with the EU law dealing with the prohibition of discrimination and restrictions in the process of acquiring agricultural land.

4. Conclusion

Agricultural land, as a resource of interest to the Republic of Croatia, is in the Croatian legal order regulated in a separate Act which, in accordance with agricultural policy, provides for various aspects of maintenance, use, and protection of such land. In the Agricultural Land Act, special attention is given to the maintenance and preservation of agricultural areas and their efficient cultivation. Agricultural land may be converted into a building site only against a conversion fee.

For a very long time, the national prohibition of the acquisition of ownership of agricultural land by foreigners existed to meet the national goals of agricultural policy. In the last 20 years, the prohibition of acquiring agricultural land by foreigners has assumed an extremely important—perhaps even decisive—role in the further development of the agricultural land market. To achieve this goal, the rules governing the prohibition of alienation have frequently changed. In some periods, the prohibition of acquisition was mitigated or became extremely restrictive. However, the legislation on the prohibition of acquisition of ownership of agricultural land by foreigners has not been properly followed by other activities to ensure the necessary conditions for an efficient development of the agricultural land market (land consolidation, improvement of land register, denationalization, etc.). This is the reason why the transitional period was extended for 3 years following the expiry of the first transitional period of 7 years. Namely, it became clear that the very declaration of the prohibition of acquisition of agricultural land by foreigners, without the corresponding structural changes in agriculture, could not ensure proper development of agriculture in Croatia.

After the accession to the European Union and the inclusion into the EU Common Agricultural Policy, Croatia was confronted with many new challenges for a reform

143 See Commission Interpretative Communication, pp. 15–16.
144 See Commission Interpretative Communication, p. 11.

of agriculture to achieve harmonization with EU law and policies. The inclusion of the national agricultural land market into the internal EU market calls for a removal of the national discriminatory restrictions on the acquisition of agricultural land and adjustment of the country's agricultural land market to EU market freedoms. So far, these processes have largely been postponed by contracting and extending the transitional period for the acquisition. However, Croatia will soon have to accept the fact that discrimination of nationals and legal persons from other member states on the grounds of citizenship and the harsh and disproportional restrictions on the acquisition of agricultural land will no longer be allowed. The prohibition of acquiring ownership of agricultural land, as the main measure for the development of the relevant market, must be replaced by new and different instruments based on modern economic and social principles by which investments in agriculture will be encouraged, agricultural production modernized, and rural development enhanced without discrimination and disproportional restrictions. The implementation of such measures must begin as soon as possible, without waiting for the expiry of the transitional period, to prepare all the answers to possible unfavorable effects following the liberalization of the agricultural land market.

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