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Commission/Kommission II

**Rapport national pour/National report/Landesbericht SLOVENIA.
(état/country/Land)**

**Rapporteur/Berichterstatter (nom, titre, fonction/name, title, function/Name, Titel,
Funktion) : Franci Avsec**

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Questionnaire

1. Characterise the importance of planning instruments to protect agricultural land resources in your country of origin, taking the following issues into account:

- 1.1. Scope of land-use plans (for the whole territory or only certain areas).
- 1.2. Special instruments for the conservation of cultivated land (especially priority areas).
- 1.3. Permissibility of activities on agricultural land (in particular buildings) according to land-use plans (or outside of them).
- 1.4. Instruments in national planning law aimed at limiting changes to the intended use of agricultural land for purposes not related to agriculture.
- 1.5. Consequences of changing the intended use of agricultural land to purposes not related to agriculture in so far as it may alter classification as agricultural land under any regulations of agricultural property transactions.
- 1.6. Evaluation of the adopted instruments for the protection of agricultural land resources in the light of national academic literature.

1.1 According to the Agricultural Land Act (ALA¹), agricultural land is defined as land suitable for agricultural production, which the spatial planning documents of local communities designate as areas of agricultural land and classify in two areas: (1) areas of permanently protected agricultural land and (2) other agricultural land areas.

1.2 On the basis of ALA and taking into account the National Strategic Spatial Document, the Government determined, by a decree, areas for agriculture and food production that are of strategic importance for the Republic of Slovenia due to their cultivation potential, their surface, rounding off, importance for food production, preserving and developing rural areas and preserving the landscape.

The Agricultural Land Act stipulates, that a professional organisation meeting certain requirements and selected by the Ministry of Agriculture, Forestry and Food, prepares, at the expense of this ministry, for each local community an expert proposal of permanently protected agricultural land areas.

The expert proposal for permanently protected agricultural land areas must take into account the surface, rounding and following conditions:

- the rating of agricultural land in accordance with regulations governing the registration of immovable property (from 35 to 100 points),
- a slope of up to 11 percent,
- land consolidation, drying or irrigation,
- the availability of water resources suitable for irrigation,
- existence of permanent crops or
- local characteristics of agricultural production and use of agricultural land (Art. 3.c and 3.f ALA).

The Ministry of Agriculture, Forestry and Food, as national spatial planning institution responsible for agricultural land in the procedures of spatial planning, determines also a detailed content of the expert proposal.

Local communities are obliged to designate areas of permanently protected and other agricultural land on the basis of expert proposal. The ALA as well as the general Spatial

¹ Zakon o kmetijskih zemljiščih ZKZ), Official Journal of the Republic of Slovenia, No. 71/2011 (official consolidated text), 58/2012, 27/2016, 27/2017 – ZKme-1D in 79/2017.

Planning Act² stipulates that local communities are obliged to plan eventual development projects first on the land of non-agricultural use. If this is not possible, such projects are planned in the area of other agricultural land, and only in the last line, on the area of permanently protected agricultural land, starting with the land of lower quality (rating).

Areas of permanently protected agricultural land must not be changed for at least 10 years after the spatial planning document of the local community entered into force.

Exceptions from this rule are exhaustively laid down by the Act. The permanently protected agricultural land should change its purpose at least 10 years after the spatial act came into force only in following cases:

- if the change of purpose is planned by certain compelling needs of local community (for instance, due to construction of indispensable road infrastructure or water infrastructure facilities, relocation of agricultural holdings, Art. 3d),
- if the new state spatial arrangements are planned (for instance, road, railway, water and air-traffic infrastructure, certain energetic infrastructure), besides the extension of the existing ones (Art. 3e).

1.3 Very detailed and exhaustive provisions enumerate agricultural objects which may be erected on the agricultural land if used for purposes related to agriculture (Art. 3.ea) and some other developments in space on agricultural land (Art. 3.č and 3.ča ALA). These provisions are only to limited extent applicable to the best, i. e., permanently protected agricultural land.

A spatial act of the local community may, in the areas of agricultural land, allow the construction of the following structures or interventions in the area:

- a) agrarian operations and water containers for the purpose of irrigation of agricultural land;
- b) simple and non-compliant auxiliary agro-forestry facilities in accordance with the Decree on the classification of structures in terms of complexity, except for the cellar and the wine cellar;
- c) the facilities that are placed on the market in accordance with the Decrees governing technical requirements for products and conformity assessment, and according to the Decree on the classification of structures³, they can be classified as auxiliary agricultural and forestry structures, except for the basement and wine cellars, but do not exceed the size of non-compliant buildings, except for built-in greenhouses, which can exceed the size of non-compliant facilities;
- d) beehive as a wooden one-storey ground-floor facility on point basis, intended for the cultivation of bees, with a floor area of up to and including 40 m²;
- e) standing, this is a wooden one-storey ground-floor facility on a point foundation, intended for sheltering farm animals on pasture, floorplans not exceeding 100 m²;
- f) auxiliary agricultural and forestry equipment (eg, bracelets, rattlesnakes, carcasses, bundles, wire supports, gangway support, bird netting support, pavement, grazing fences, fences and supports for permanent crops, fences for protection agricultural products, mobile tunnel and cover, protective net);
- g) auxiliary facilities for monitoring the state of the environment and natural phenomena;
- g) exploration of groundwater, mineral resources and geothermal energy sources;
- h) temporary facilities and temporary interventions, for the time of the event or during the season:
 - a stage with a roof, consisting of prefabricated elements,
 - a circus if the tent and other objects are prefabricated,
 - a temporary tribune for open-air viewers,
 - mobile facilities for the rearing of animals in a wooden design (eg mobile hoe, mobile poultry, mobile rabbit);

² Zakon o urejanju prostora (ZUreP-2), Official Journal of the Republic of Slovenia, No. 61/2017.

³ Uredba o razvrščanju objektov, Official Journal of the Republic of Slovenia, No. 37/2018.

- i) observatory, that is, an unfinished wooden structure (eg hunting yarn, bird observatory);
- j) temporary arrangements for the needs of defense and protection against natural and other disasters;
- k) access to a building complying with a spatial planning document in the case of an installation which:
 - it is permissible to build on agricultural land,
 - is recognized as dispersed construction (land under a building outside the areas of building land) or
 - it is permissible to build on the surfaces of dispersed settlement;
- l) civil engineering structures that, according to the regulations on the introduction and use of a uniform classification of types of facilities and on the designation of objects of national importance, are classified in the group:
 - remote pipelines, remote (spinal) communication networks and remote (portable) electricity lines, and associated facilities and connections thereto, and
 - local pipelines, local (distribution) electric power lines and local (accessible) communication networks, with associated facilities and connections thereto;
- m) reconstruction of municipal and state roads in accordance with the law governing the roads,
- n) small wind power plant up to a nominal power of 1 MW, in the case of agricultural land with a credit rating of less than 35.

In the areas of permanently protected agricultural land, additional conditions for setting up buildings and other objects may be prescribed by the spatial planning act of the local community, while some types of buildings are excluded (prohibited) by the law (Art. 3č ALA).

In areas of permanently protected agricultural land, it is not permissible to establish areas for mitigation and compensatory measures under the law governing nature conservation.

1.4 According to Art. 3.g of ALA, an investor who submits an application for a permit for the construction of an object whose floor area or part of the ground floor is located on agricultural land the rating of which is more than 50, must pay compensation due to the change of purpose of the agricultural land. The amount of compensation is calculated by multiplying the surface of the land concerned and a factor depending on its rating.

1.5 The legal definition of agricultural land is based on the purpose concerned which is determined for the land by the municipal spatial planning document. Only some provisions of the Agricultural Land Act (namely those relating to duties of owners and other users to cultivate the agricultural land, to prevent its pollution and degradation, to prevent overgrowing and to assure permanent fertility of the soil), are also applicable on the land, which is, according to the spatial planning documents of local communities, intended for non-agricultural purposes, but is actually used as fields and gardens, meadows, permanent crops and other agricultural areas (Art. 1, 4 and 7 ALA). Therefore, changing the intended use of agricultural land to purposes not related to agriculture inevitably alters classification as agricultural land under regulations of agricultural property transactions.

1.6 According to critical evaluations, the agricultural land protection system in Slovenia is not very efficient given the large surface of agricultural land in use which has been decreasing in the last fourty years due to sealing and overgrowing.

Table 1: The surface and structure of agricultural land in Slovenia from 2000-2018

Indicator	Ø 2000-2004	Ø 2005-2009	2010	2011	2012	2013	2014	2015	2016	2017
Utilized agricultural land area (UAA)	504,855	491,693	482,653	458,195	479,653	478,888	482,218	476,862	477,671	481,415
Arable land (%)	34.1	36.0	35.3	36.8	35.8	36.4	36.3	35.9	36.4	36.2
Permanent crops (%)	5.8	5.4	5.6	5.9	5.6	5.7	5.6	5.7	5.8.	5.8
Permanent grassland (%)	60.1	56.8	58.2	57.3	58.6	57.9	58.0	58.4	57.8	58.0
Share of UAA in the total area (%)	24.9	24.3	23.8	22.8	23.7	23.6	23.8	23.5	23.6	23.7
Utilised agricultural area per habitant (ha)	0.25	0.24	0.24	0.22	0.23	0.23	0.23	0.23	0.23	0.23

Source: Slovenian Agriculture in Numbers, 2014, 2016, 2017 and 2018.

The disadvantages of the system are also the lack of active agricultural land policy, the absence of regional level of spatial planning and too little promotion of the importance of agricultural land in public. While the spatial planning is a long-term process and legislative provisions require certain time to be implemented through spatial documents on several levels, the spatial planning legislation changes too often, usually before the impact of the new regulations can be seen in the practice.

2. Characterise the importance of instruments to counteract the degradation and devastation of agricultural land in your country of origin, taking the following issues into account:

2.1. Degree of agricultural land degradation and devastation; issue of erosion and desertification of agricultural land.

2.2. Legal instruments to counteract the degradation and devastation of agricultural land (administrative orders and prohibitions; creation of protected areas surrounding industrial facilities; other).

2.3. Reclamation of degraded or devastated agricultural land (its methods; entities obliged to perform this task).

2.4. Evaluation of instruments adopted to counteract the degradation and devastation of agricultural land and methods for reclamation in the light of academic research.

2.1 Due to its location in the climatic and geomorphologic junction of the Alpine, Mediterranean, Pannonian and Dinaric regions, Slovenia has a very diversified natural landscape and relatively well preserved environment. This finding can be to a great extent confirmed by the last available environmental indicators of Eurostat as shown in Table 2.

Table 2: Some agri-environmental indicators for Slovenia and EU-28

Agri-environmental indicators	Slovenia	EU-28
Percentage of arable land in total UAA	35.9 (2016)	59.8 (2013)
Gross nutrient balance per hectare of UAA (kg)	42 (2015)	51 (2015; estimated)
Percentage of UAA, managed by low-input farms	45.1(2013)	39.3 (2013)
Percentage of total UAA used for organic production (fully converted and in conversion)	9.6 (2017)	7.03 (2017, estimated)
Nitrogen fertilised UAA (kg N/ha)	71.2 (2006)	67.4 (2006)
	68.6 (2015)	74.4 (2015)
Phosphorus fertilised UAA (kg P/ha)	13.1 (2006)	8.7 (2006)
	10.0 (2015)	7.4 (2015)
Percentage of territory under Natura 2000 network	37.9 (2016)	18.2 (2016)
Estimated soil erosion by water (tonnes per hectare)	7.42 (2012)	2.40 (2012)

Source: Agriculture and environment, 2019.

Due to relief, the danger of soil erosion is significant in Slovenia. The erosion of agricultural land is caused by water and wind, being most intensive on arable land.⁴ The risk of erosion can be reduced by implementing more appropriate cultivation methods.

Most soil in Slovenia is not polluted; but some individual areas, burdened with certain metals, as a result of industrial activities in these areas, stand out.⁵ In intensive agricultural areas, residues of plant protection products and their breakdown products may be found, which can leach as nitrates through the soil and contaminate groundwater.⁶

2.2 The *Agricultural Land Act* defines fertile soil as “material of the surface layer of the soil, which due to its physical, chemical and microbiological properties enables the growth of plants and should be protected against permanent loss”. A fertile land abandoned in construction work must be used to improve agricultural land, to regulate public green spaces or to rehabilitate degraded areas, except when a fertile land is used to regulate the surroundings of the building, due to the construction because of which it has been pushed (Art. 9).

4 B. Repe, *Soils of Slovenia*. In: *Slovenia: a geographical overview*, Ljubljana 2004, p. 51-55.

5 N. J. Vidic et al., *op.cit.*, p. 85 et seq.

6 *Ibidem*, p. 86.

A special decree of the Government (*the Decree on limit values, alert thresholds and critical levels of dangerous substances into the soil*⁷) regulates the protection of (all) soil (not only soil on the agricultural land) against pollution.

According to the Agricultural Land Act, agricultural land is considered to be contaminated when soils contain so many harmful substances that their self-purifying ability is reduced, physical, chemical or biological properties are impaired, the growth and development of plants are prevented or inhibited, groundwater or plants are polluted, or soil fertility is otherwise impaired.

Continuous soil fertility is guaranteed if the soil:

- is not exposed to erosion;
- is not confused;
- contains sufficient amount of humus;
- does not limit the smooth growth of plants;
- in the long term, allow the development and quality of agricultural and forest plants (vegetation);
- has the property of decomposing substances such as dead plant and animal origin residues, animal or human excreta and residues of plant protection products and other substances returning to the natural circulation of the substance as secondary raw materials;
- optimally receives, retains and emits water (Art. 4 ALA).

A special Decree (*Decree on burdening of soil with waste spreading*⁸) lays down the conditions for loading of the soil by the introduction of waste and the mandatory rules of conduct for the introduction of earth excavation or artificially prepared soil in order to improve the ecological status of the soil (Art. 1 of the Decree).

Earth excavation is defined as waste, consisting of soil, mineral sediments and stones that occur when excavating or discovering soil or subsoil. Artificially prepared soil is mineral material obtained from the processing of earth excavation and other mineral waste, mineralogical waste, waste debris in accordance with regulations governing waters, or other similar waste, if its characteristics are similar to natural soil or subsoil and can take over all the important tasks of the soil or subsoil.

Improvement of the ecological status of the soil is the introduction of soil excavation or artificially prepared soil into or onto the ground for the purpose of its recultivation, land fill in the establishment of a new soil condition or for filling excavations to restore the original state of the soil.

According to the Decree, soil may be burdened by the introduction of earth excavation if:

- the content of parameters in the excavation of the earth does not exceed the prescribed maximum values of certain parameters,
- the physico-chemical properties of the earth's excavation do not differ from those prescribed by the Decree (Art. 5).

If the soil is burdened with artificially prepared soil, additional requirements, beside values of certain parameters and physico-chemical properties, must be fulfilled:

- biodegradable waste that has been added artificially prepared to the soil must be pre-treated and classified as Class 1 or Class 2 in accordance with the Decree governing the treatment of biodegradable waste, and
- artificially prepared soil may contain up to a maximum of 10% by volume of all waste that is not a land excavation. Wastes that may be added to artificially prepared soil are listed in Annex 5 to the Decree.

7 Uredba o mejnih, opozorilnih in kritičnih imisijskih vrednostih nevarnih snovi v tleh.

8 Uredba o obremenjevanju tal z vnašanjem odpadkov, Uradni list RS, št. 34/08 in 61/11)

According to the *Water Act*⁹, the government establishes the land that is permanently or occasionally under the influence of surface, deep or lateral erosion of water as the erosion zones (Art. 83). The erosion zone comprises land plots that are

1. sediment sources (erosion hot spots),
2. under the influence of torrential waters (surge),
3. composed of rocks, subjected to rinsing,
4. under the influence of sea waves (cliffs).

The Water Act prohibits the following actions in the erosion zone:

1. interference in the space in a way that promotes erosion and the formation of torrents,
2. surface laying,
3. the deforestation of those forest stands which prevent land crawling and snow cover, regulate drainage conditions or otherwise protect lower areas from the harmful effects of erosion,
4. filling the sources,
5. uncontrolled collection or discharge of collected waters by erosive or crawling land,
6. limiting the flow of torrential waters, promoting the erosion power of water and deterioration of balance conditions,
7. the disposal or storage of wood and other materials,
8. filling with excavating or waste material,
9. taking off the debris from the bottom and slopes, with the exception of ensuring the flowability of the torrential riverbed,
10. drawing of wood (Art. 87).

*2.3 The Decree on types of measures for remediation of environmental damage*¹⁰ regulates the types of remedial measures and the method of selecting the most appropriate measures for remedying the environmental damage caused to protected species, their habitats and habitat types, waters or land. The Decree implements Directive 2004/35 / EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage¹¹.

The Decree distinguishes three types of remediation.

Primary remediation involves the implementation of measures that restore the damaged land or its function to the baseline condition.

Complementary remediation comprises measures that complement the primary rehabilitation measures if the primary rehabilitation measures do not achieve the recovery of the status of land or its functions in the baseline condition. The purpose of the complementary remediation is to establish a similar state of the land or its functions as it would have been available if the damaged parts of the environment or their functions were restored to the reference state in the area of environmental damage.

Compensatory remediation includes measures to eliminate temporary losses (Art. 5-7).

In the case of environmental damage caused to the land, remedial measures must be taken to ensure at least that the pollutants are removed, controlled or reduced in quantity so that contaminated land, taking into account the actual use of the land or during the environmental damage with spatial plans, do not pose a greater risk due to adverse effects on human health.

The existence of a risk to human health is assessed by estimating the risk taking into account the characteristics and function of the land, the species and the concentration of harmful

9 Zakon o vodah, Official Journal of the Republic of Slovenia, No. 67/2002, 2/2004 – ZZdrI-A, 41/2004 – ZVO-1, 57/2008, 57/2012, 100/2013, 40/2014 in 56/2015.

10 Uredba o vrstah ukrepov za sanacijo okoljske škode, Official Journal of the Republic of Slovenia, No. 55/2009.

11 OJ L 143 of 30.04.2004, p. 56.

substances, preparations, organisms or micro-organisms, their risk and the dissemination possibilities.

If the use of land in the area of environmental damage is modified on the basis of a spatial plan under the regulations on spatial planning, its draftsman must include all necessary measures in the spatial plan to prevent adverse effects on human health.

If the environmental damage caused to the land directly causes environmental damage to other specific parts of the environment or its functions, or if environmental damage is caused to other specific parts of the environment or their functions indirectly due to the environmental damage caused to the land, the remedial measures must eliminate the consequences of environmental damage to the land and other specific parts of the environment or their functions, regardless of whether there are any effects on human health.

When choosing the most appropriate measures for remediation of environmental damage caused to the land, the possibility of natural soil recovery should also be considered (Art. 16).

When preparing a proposal for measures and in selecting the most appropriate measures for remediation of environmental damage caused to the land, the risk to human health following the remedial measures must also be evaluated, taking into account the actual use of land in the area of environmental damage to the land, or land use, which is determined by the spatial plans of the state or municipality in the area at the time of occurrence of environmental damage.

According to the Art. 9(2) of the Environmental Protection Act, a person responsible for causing a burden shall be responsible for the prevention and remediation of environmental damage.

According to the case law, the costs of unlawfully disposed waste on state-owned or municipal land in the case where the polluter is not known must be borne by the person who is the possessor of the waste, whether it is a landowner or someone else. The courts regularly take the view that only the possession of land does not necessarily mean the possession of waste located on it, although this is normally presumed. If nobody else holds possession of illegal land waste on the state-owned land, the landowner (the Republic of Slovenia) can not avoid the obligation to pay the costs of illegal waste on its land by claiming that it has never taken over the actual power over the waste, since, in accordance with the principle of subsidiary action to cover the cost of removing these consequences, the Republic of Slovenia is also responsible if the responsible party can not be identified (conf. Judgment of the Administrative Court of the Republic of Slovenia, Nr. I U 1711/2015-15, ECLI:SI:UPRS:2016:I.U.1711.2015.15 from 13 October 2016).

In the event of a degradation - pollution of agricultural land, the agricultural inspector is authorized to prohibit pollution of agricultural land and order restoration of the agricultural land on the cost of the polluter.

The aforementioned inspection measure is pronounced to the offender of the law - the polluter or the owner if his liability is found (conf. Judgment of the Administrative Court of the Republic of Slovenia, Nr. I U 108/2011, ECLI:SI:UPRS:2011:I.U.108.2011 from 04 October 2011).

2.4 In order to ensure the achievement of the objectives of the agricultural policy, which includes the permanent preservation of the fertility of agricultural land and the protection of agricultural land against pollution and improper use, the Government recently proposed amendment of the Agricultural Act with provisions on agricultural land monitoring, which is to be mainly carried out on the basis of physico-chemical soil analysis. The persons under obligation to provide soil analysis will be beneficiaries of agricultural policy land-related measures.

3. Are there any specific regulations concerning agricultural property transactions in your country?

If so, characterise them, taking the following issues into account:

3.1. The values and purposes which justify the enactment of the specific regulation which governs agricultural property transactions, for example:

- a. Prevention of excessive concentration of agricultural property
- b. Prevention of unsuitable division of farms (agricultural property)
- c. Assurance that agricultural property is not sold to people without agricultural qualifications
- d. Other (support and protection of family farms, etc.).

3.2. Scope of the specific regulation:

- a. Ownership transactions
- b. Lease transactions.

3.3. Subject of the specific regulation: agricultural property, farms, other specific areas (mountains, coast, etc.), taking their qualifying criteria into account.

3.4. Instruments of the specific regulation concerning *inter vivos* transactions:

- a. Public legal (permits from a public administration body/court; alternatively, the obligation to notify the public administration body/court; competence of authorities; outline of the procedure).
- b. Private legal (rights of pre-emption, repurchase, acquisition, etc.; authorised entities; procedure leading to the execution of these rights).
- c. Entities privileged for the purpose of *inter vivos* transactions; criteria for their individualisation.

3.5. Instruments of the specific regulation concerning *mortis causa* transactions:

- a. At the grant of the legacy (special categories of inheritors, division of inheritance into "agricultural" and "non-agricultural", etc.)
- b. At the distribution of the legacy (preferred beneficiaries in the case of agricultural property, criteria for their individualisation, issue of refunds, etc.).

3.6. Evaluation of the special regulation of agricultural property transactions in the light of agrarian literature:

- a. As regards efficiency
- b. As regards the compliance with EU law.

3.1 Slovenia has an extensive regulation of agricultural property transactions which includes certain restrictions related to transactions *inter vivos* and *mortis causa* and ex ante administrative control of legal transfer of agricultural land.

The Agricultural Land Act defines the turnover of agricultural land, forests or farms as »the acquisition of a property right through legal transactions *inter vivos* and in other cases stipulated by Act« (for instance, gift *mortis causa* or deathbed gift). The special rules for inheritance of certain middle-sized farms are laid down in the Agricultural Holdings Inheritance Act.

The values and purposes justifying the special regulation of inheritance are most explicitly declared in the Agricultural Holdings Inheritance Act, the objective of which are:

- to prevent the fragmentation of protected farms as agricultural or agro-forestry economic units,
- to enable the take-over of a protected farm under conditions that do not burden the sole heir unproportionally,

- to create possibilities for preserving and strengthening the economic, social and ecological function of protected farms (Art. 1).

The regulation of legal transactions *inter vivos* in the Agricultural Land Act (ALA) does not contain detailed objectives, values and purposes, but may be implicitly derived from the overall objectives of the Act:

- preserving and improving the production potential and increasing the volume of agricultural land for food production;
- sustainable management of fertile soil;
- conservation of the landscape and preservation and development of the countryside (Art. 1a ALA).

Some values and purposes may be identified also from other measures connected with certain transactions (for instance, tax measures).

a) Currently, there is no measure in the agricultural land legislation to prevent excessive concentration of agricultural property. However, the Ministry has recently initiated a public discussion relating to the proposed limitation of state-owned agricultural land given on lease to one individual or one legal entity (100 hectares).

b) The ownership structure of agricultural land in Slovenia is extremely fragmented. In order to prevent further fragmentation and to enable gradual improvements of the farm structure, the agricultural land legislation provides several specific rules for the property transaction regime of agricultural land and farms. These rules may be summarized as follows:

- 1) *prohibition of division of certain agricultural holdings*, the so called *protected farms*, with a special regime for intestate or testamentary succession according to the Protected Farms Inheritance Act. This prohibition is, by the Agricultural Land Act, extended to legal acts *inter vivos* (*successio anticipata*). However, both Acts permit certain exceptions from this prohibition,
- 2) *pre-emption right* which certain persons may enforce in case where agricultural land, regardless of its owner, is offered for sale,
- 3) *restrictions relating to the persons who may acquire agricultural land on the basis on donation contract* (deed of gift),
- 4) *restriction of creating new co-ownership shares* (in case of sale of agricultural land or donation of agricultural land to a donee who takes over a farm),
- 5) *prohibition of division of consolidated agricultural land*.

c) Farmers, that is, individuals who per klegal definition comply with minimum qualifications for agricultural activity, have pre-emptive right relating to the agricultural land on sale.

3.2. a) Since the 1970s, Slovenia has introduced several measures to prevent agricultural land fragmentation through legal transactions of agricultural land, forests and farms. The compliance with the rules is ensured through *ex ante* administrative control of legal transactions of agricultural land *inter vivos*.

aa) Protected farms

According to Agricultural Holdings Inheritance Act¹², farms of middle size (having from 5 to 100 hectares of the so called comparable agricultural surface) which belong to an individual,

to spouses or to an ancestor and a descendant, are inherited, as a rule only by one heir. In case of intestate succession, only certain forced heirs inherit shares the value of which are reduced to value of compulsory shares and must be paid, as a rule, in cash.

A similar solution is provided for testamentary succession of a protected farm. As a rule, a protected farm may not be divided *inter vivos* either, although the Agricultural Land Act provides some exceptions from this principle (for instance, transfer of agricultural land from one protected farm to another protected farm, transfer of agricultural land to state or transfer of building land).

Ab) Pre-emption right

If agricultural land is offered for sale, several persons may enforce the pre-emption right in the following order:

1. co-owner (in case where the land is owned by two or more co-owners),
2. a farmer whose land she owns is adjacent to the land for sale;
3. the tenant of the agricultural land offered for sale;
4. another farmer;
5. an agricultural organization or sole proprietor, who needs a land or a farm for the purpose of carrying out an agricultural or forestry activity;
6. Fund of agricultural land and forests of the Republic of Slovenia for the Republic of Slovenia.

Under the same conditions, the pre-emption right among farmers who accepted the offer within each priority class, the buyer is determined in the following order:

1. a farmer to whom agricultural activity represents sole or principal activity;
2. a farmer who cultivates the land himself;
3. a farmer who is designated by the seller, except in the case where agricultural land, forest or farm owned by the state is sold and the seller must determine the buying farmer on the basis of the public auction method (Art. 23 of ALA).

Ac) Prohibition to create new co-ownership shares on agricultural land and prohibition to split agricultural land plots after commassation

In order to reduce the number of co-owners and if possible transform co-ownership into ownership – “*Communio mater rixarum*” – the Agricultural Land Act prohibits owners of agricultural land to create new co-ownership shares on agricultural land through sale contracts and contracts of donation, if the donee is a young farmer who took over the farm and received a support from the rural development program (Art. 17a(2) ALA).

To prevent deterioration of merger of agricultural plots through commassation, the Act forbids also division of agricultural plots shaped through commasation.

Ad) Restrictions for contracts of donation

In order to prevent the circumvention of the statutory pre-emption right through contracts of donation, the Agricultural Land Act permits only following persons to acquire agricultural land by donation *inter vivos*:

- a spouse or extra-marital partner, children or adoptive children, parents or adoptive parents, brothers or sisters, nephews or nieces and grandchildren or granddaughters of the donor;

- a son-in-law, daughter-in-law or the unmarried partners of the child or adoptive child, if they are members of the same farm;
- the person who took over a farm in last five years;
- local community or the State (Article 17a(1) of ALA).

b) Agricultural lease

Certain persons have a priority right to take the agricultural land on lease in the following order:

1. a tenant;
2. a tenant of the land adjacent to the land to be leased and a farmer who owns land bound to the leased land;
3. other farmer, agricultural organisation or individual entrepreneur, who needs land for performing agricultural or forestry activities.

When potential tenants have same pre-lease right, priority is given to that one who deals with agriculture as her only or main activity (Art. 27 ALA).

Written lease agreement must at least contain:

- land registry and land cadastre data of the leased land,
- description and unamortised value of agricultural facilities, plants and plantations,
- the amortization period of permanent crops,
- purpose of the lease,
- price for the lease,
- duration of the lease and determining whether the lease is inherited.

After the conclusion of the lease agreement, an application for the approval of a legal transaction must be submitted at the administrative unit. The administrative unit approves or rejects the approval of a legal transaction by decision, but where no approval is required, it shall issue a certificate.

A lease contract by which the lease is determined in the form of a work on the farmer's farm or in the form of a share of the expected yield or estimated income is null and void (Art. 35 ALA).

The lease period must correspond to the purpose of the use of the leased land and must not be shorter than:

- 25 years if the land is to be used for the establishment of vineyards, orchards or hopfields;
- 15 years, if land is to be used for the establishment of fast-growing deciduous trees;
- 10 years if land is used for other purposes.

The farm land may be leased also for short-term, if the lease relationship is not possible to conclude for the above mentioned years (Art. 28 ALA).

A lease contract may be terminated on the basis of an agreement or in the case where the land ceases to be agricultural land. The lessor may withdraw from the contract, if the tenant does not manage land as a good manager or in contravention of the agreement gives agricultural land in subleasing.

3.3 Status of farmer, agricultural sole trader (entrepreneur) and agricultural organisation

In the previous socioeconomic system, the status of farmer permitted the ownership right on agricultural land and forests to a greater extent (10 hectares of arable land and 20 hectares of

arable land in mountain and hill areas, with a maximum of 45 hectares, as a rule, for all agricultural land and forests per holding) than for non-farmers (1 ha of agricultural land in the lowland and 3 hectares in the hill and mountain areas, with additional restrictions for forests and vineyards). Today, the status of a farmer is important only for the pre-emption and the pre-lease right.

According to the Agricultural Land Act, a farmer is (1) a natural person who, as owner, tenant or other user of agricultural land cultivates the land herself or with the help of others, (2) is appropriately qualified for this activity and (3) obtains a significant part of the income from the agricultural activity (the income from agricultural activity must be at least equal to 2/3 of average gross wage in the Republic of Slovenia in the past year).

In addition, a family member of such person may also be farmer, if he/she performs an agricultural activity on the farm as his or her only or main activity and is appropriately qualified.

The status of farmer is retained by an individual who acquired a significant part of the income from the agricultural activity on the farm, but due to his/her age or work incapacity does not perform agricultural activities on the farm any more, provided that he/she takes care of further cultivation of agricultural land.

Finally, the status of a farmer may be obtained by an individual who makes a statement on the record at the administrative unit that she will, alone or with the help of others, cultivate agricultural land, obtain a significant part of the income from the agricultural activity and demonstrates sufficient qualifications (Art. 24 of ALA).

A *sole trader* as holder of pre-emption right is an individual (natural person) who is registered for an agricultural activity and generates more than 50% of his/her income from the agricultural activity, including income from agricultural policy measures and revenues from state aid.

Similarly, an agricultural organization as holder of the pre-emption right is a company, agricultural cooperative or other legal entity registered for agricultural activity which generates more than 50% of the income from the agricultural activity, including revenues from agricultural policy measures and revenues from state aid.

The fulfilment of the requirement relating to the prevailing income from agriculture is in both cases assessed on the basis of the last audited statement of income and expenses or profit and loss account (Art. 24 ALA).

3.4 See the text under 3.2

3.5

a) The protected farm comprises everything that constitutes an economic whole and is used for regular agricultural or forestry production and related activities. In addition to agricultural land, the protected farm includes also forests, commercial and residential buildings, including land needed for or intended for the regular use of the building (functional land), agricultural tools and livestock, farm related services and similar rights; the rights and duties related to the membership of the owner in the agricultural cooperative, the objects for carrying out the connected activities carried out by the owner on the holding, provided that they do not constitute the main activity and can not be separated from the agricultural or agro-forestry whole or their separation would be economically unacceptable, receivables and debts incurred in connection with the aforementioned real estate, movable property, membership and activities.

b) The protected farm is inherited by that legitimate heir under the general regulations on inheritance, which intends to cultivate agricultural land, and is chosen by all heirs (agreement of intestate heirs).

If the agreement referred to in the preceding indent does not occur, the law gives priority to the heir who is trained or trained for the pursuit of an agricultural or forestry activity.

If more intestate heirs fulfil this requirement, those who grow up or have grown up on the farm, have contributed or contribute to the preservation or development of the farm through their work or earnings have the priority. Under the same conditions, priority is given to the deceased's spouse (Art. 7 Agricultural Holdings Inheritance Act).

The testator may dispose of agricultural land and forests, as well as other immovable and movable property, which *are not part of the protected farm*, by the will, according to the general regulations on inheritance.

However, a testator may determine only one testamentary heir of the protected farm who must be a natural person.

Exceptionally, the testator may appoint two testamentary heirs if they are:

- spouses or
- a parent and a child (including the adopted child) or other descendant, but in this case the protected farm must not be divided into physical parts (Art. 21).

3.5 a) Although the special regulation for the legal transfer of agricultural land and the administrative control have been in place for more than fifty years, the Government only recently proposed amendment to the legislation in force so that the decision-makers of agricultural policy will be able to closely monitor legal transaction of agricultural land through systematically collected, processed and analysed data. Only then, a serious evidence-based analysis of the agricultural land transaction regulation impact will be possible.

b) The special regime of agricultural land transaction seems to be in conformity with the EU law. For instance, also citizens of other EU Member States may fulfil the requirements for a farmer and enforce, on the basis of this status, the pre-emption right.

4. Are there any restrictions as to the acquisition of agricultural property by foreigners in your country?

If so, characterise these rules, taking for example the following issues into account:

4.1. The values and purposes which justify the restriction on foreigners' acquiring agricultural property.

4.2. Objective and subjective scope of the restrictions (definition of foreigner, alternatively various classes of foreigners, taking the prohibition on discrimination provided for in EU law into account; definition of agricultural property, farms, etc. taking criteria for their individualisation into account).

4.3. Instruments for the control of foreigners' acquiring agricultural property:

a. Public legal (permits, etc.)

b. Private legal (pre-emption, repurchase, etc.).

4.4. Evaluation of restrictions on foreigners' acquiring agricultural property in the light of academic discussion of farm law:

a. As regards efficiency

b. As regards the compliance with EU law.

4.1-4.3 The initial text of the Slovenian Constitution from 1991 explicitly regulated acquisition of land ownership by foreigners with a quite restrictive provision:

»(1) Aliens may acquire ownership rights to real estate under conditions provided by law.
(2) Aliens may not acquire title to land except by inheritance, under the condition of reciprocity.« (Article 68).

According to the then commentaries to the Constitution, the reasons for this provision lay not so much a difficult economic situation immediately after Slovenia had gained independence (this fact would not dictate a permanent constitutional restriction of land acquisition through foreigners), but in the geopolitical position and size, »as a matter of fact, small size«¹³ of Slovenia.

The Constitutional provision about the acquisition of real estate through foreigners has been twice amended since then.

For the first time, the the rights of foreigners to acquire real estate in Slovenia were extended immediately before the ratification of the Europe Association Agreement between the European Communities and their Member States, and the Republic of Slovenia.¹⁴ According to Annex XIII to this Agreement, Slovenia granted to citizens of the EU Member States to acquire immovable and movable property on a reciprocal basis in two steps:

- in the first step, the Europe Association Agreement granted those citizens of the Member States who had permanently resided on the present territory of the Republic of Slovenia for a period of three years, the right to purchase property on a reciprocal basis *from the entry into force of the Association Agreement*,
- in the second step, all citizens of the EU Member States, on the other hand, were granted right to purchase property in Slovenia on a non-discriminatory basis *by the end of the fourth year from the entry into force of the Association Agreement* (the so called Spanish compromise).

In order to make the ratification of the Europe Association Agreement conform with the Slovenian Constitution, the Constitutional provision of Article 68 was amended by the Constitutional Act amending the Article 68 of the Constitution (UZS68)¹⁵: After amendment, the Article 68 of the Constitution contained these provisions:

»(1) Aliens may acquire ownership rights to real estate under conditions provided by law or if so provided by a treaty ratified by the National Assembly, under the condition of reciprocity.
(2) Such law and treaty from the preceding paragraph shall be adopted by the National Assembly by a two-thirds majority vote of all deputies.«

For the second time, the Constitutional provision relating to acquisition of real estate through foreigners was changed before the accession of Slovenia to the European Union (UZ3a, 47, 68)¹⁶.

13 Lojze Ude, *Ustava Republike Slovenije s komentarjem*, Ljubljana 1992, p. 53.

14 Europe Agreement establishing an Association between the European Communities and their Member States, acting within the framework of the European Union, of the one part, and the Republic of Slovenia, of the other part, *Official Journal of the Republic of Slovenia, International Treaties*, No. 44/1997.

15 *Ustavni zakon o spremembi 68. člena ustave Republike Slovenije (UZS68)*, (Constitutional Act Amending Chapter I and Articles 47 and 68 of the Constitution of the Republic of Slovenia, 27 February 2003), *Official Journal of the Republic of Slovenia*, No. 42/1997.

16 *Ustavni zakon o spremembi I. poglavja ter 47. in 68. člena ustave Republike Slovenije (UZ3a, 47, 68)*, *Official Journal of the Republic of Slovenia*, No. 24/2003.

Since then, the Article 68 of the Constitution contains only one paragraph and reads as follows:

»Aliens may acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National Assembly.«

According to the present international treaties and legislation of Slovenia, the foreigners may the immovable property on various legal bases.

According to the *Succession Act*¹⁷, the right of foreigners to inherit immovable property in Slovenia is subject to the principle of reciprocity; on the basis of the reciprocity foreigners have the same inheritance rights as citizens of the Republic of Slovenia (Article 6).

The *Reciprocity Act*¹⁸ stipulates that reciprocity as a condition for the acquisition of a property right on immovable property by a foreigner who is either intestate heir or testamentary heir who would be an heir even in the case of intestate inheritance, *is presumed* to proof of the opposite. However, when a heir is an alien who would not be an intestate heir, the reciprocity must be established (Article 4).

According to the *Agreement on the succession issues*¹⁹, citizens of the former republics of the SFR Yugoslavia and legal entities established in these countries, who fulfilled all conditions for the registration of title to immovable property in the land register before 31 December 1990 (however, the entry was not realized or the procedure for registering in the land register was not initiated), in the now initiated procedures for registering property rights in the land register, do not need to apply for a decision establishing the reciprocity.

At the accession to the European Union, neither exceptions nor transitional periods regarding the free movement of capital in the field of real estate were foreseen for Slovenia (unlike for other, mostly larger accession countries).

Therefore, from the day of the Republic of Slovenia's accession to the European Union, citizens of the Member States of the European Union may acquire real estate on the territory of the Republic of Slovenia on all legal bases under the same conditions as for citizens of the Republic of Slovenia. Citizens of the EU Member States of the European Union do not need an administrative decision to establish reciprocity in order to obtain ownership of immovable property in the Republic of Slovenia.

Pursuant to Article 40 of the *Agreement on the European Economic Area*²⁰, there are no restrictions on the movement of capital belonging to persons resident in the EC Member States or EFTA States, and no discrimination on grounds of nationality or the place of residence of those parties or the place of investment of that capital. Citizens and legal entities of the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway can therefore acquire real property in the territory of the Republic of Slovenia without any special restrictions applicable only to foreigners, and therefore they do not need an administrative decision on the establishment of reciprocity in order to obtain ownership of immovable property in the Republic of Slovenia.

From the date of the accession of the Republic of Slovenia to the Organization for Economic Co-operation and Development (OECD) Convention, that is, from 21 July 2010²¹, citizens

17 Zakon o dedovanju, Official Journal of the Socialist Republic of Slovenia, No. 15/1976, 23/1978, Official Journal of the Republic of Slovenia, No. 13/1994 – ZN, 40/1994 – odl. US, 117/2000 – odl. US, 67/2001, 83/2001 – OZ, 73/2004 – ZN-C, 31/2013 – odl. US, 63/2016.

18 Zakon o ugotavljanju vzajemnosti, Official Journal of the Republic of Slovenia, No. 27/2017.

19 Official Gazette of the Republic of Slovenia, International Treaties, No. 20/2002.

20 Agreement on the European Economic Area, official Journal of the Republic of Slovenia, No. 9/2005.

21 Act Ratifying the Convention on the Organization for Economic Co-operation and Development and Supplementary Protocols no. 1 and 2 of the Convention (MCOGSR), Official Journal of the Republic of Slovenia - MP, No. 10/10.

and legal entities of OECD member countries may acquire ownership right on real estate in the territory of the Republic of Slovenia under the same conditions as citizens of the Republic of Slovenia.

According to the *Act on the Conditions for the Acquisition of the Right to Property of Natural and Legal Persons of the Candidate Countries of the European Union*²² natural and legal persons of the candidate and candidate countries may acquire the right to real estate, if there is reciprocity (Article 4). Reciprocity is determined in accordance with the Reciprocity Act.

The condition of material reciprocity is determined by the Ministry of Justice with a decision issued in a manner and according to the procedure regulated by the Reciprocity Act, for each property separately recorded in the land register. According to the first paragraph of Article 7 of the reciprocity Act, reciprocity is given if a citizen of the Republic of Slovenia or a legal entity established in the Republic of Slovenia can acquire a property right to real estate in the alien's under the same or similar conditions under which aliens can acquire a property right in immovable property in Slovenia and the fulfillment of such conditions is not significantly more difficult for a citizen of the Republic of Slovenia or a legal person established in the Republic of Slovenia than the fulfillment of conditions for aliens in the legal order of the Republic of Slovenia (material reciprocity).

The *Act on the Relations of the Republic of Slovenia with Slovenes Abroad*²³ stipulates that a person with the status of a Slovene without Slovenian citizenship in the Republic of Slovenia has the right to acquire title to real estate under the same conditions that apply to citizens of the Republic of Slovenia (Article 66).

These general rules apply for acquisition of all types of real estate, including the agricultural land.

4.5 There have been no reports regarding the efficiency of regulation concerning the acquisition of agricultural land through foreigners or the compatibility of this regulation with the EU legal regime.

5. Given the data available to you, does the issue of the so-called land grabbing exist in your country and are there any regulations concerning it, to counteract this phenomenon?

If so, characterise them, taking following issues into account:

5.1. Scope for land grabbing.

5.2. Instruments to counteract this phenomenon.

5.3. Evaluation of the efficiency of adopted instruments to counteract land grabbing as regards their efficiency.

The currently available data about the ownership structure and legal transactions of agricultural land are incomplete and do not give a picture that would lead to a hypothesis of land grabbing in Slovenia. However, the authorities are aware of these weaknesses and plan to improve the evidence and monitoring of this field.

22 Official Gazette of the Republic of Slovenia, No. 61/06.

23 Official Gazette of the Republic of Slovenia, Nos. 43/06 and 76/10.

Summary

The Slovenian Agricultural Land Act (ALA) defines agricultural land as land suitable for agricultural production, which the spatial planning documents of local communities designate as areas of agricultural land and classify in two areas: (1) areas of permanently protected agricultural land and (2) other agricultural land areas.

Local communities are obliged to designate areas of permanently protected and other agricultural land on the basis of expert proposal, prepared by the professional organisation meeting prescribed requirements criteria. The expert proposal is financed by the Ministry of agriculture, food and forestry as national planning institution responsible for agricultural land. The ALA as well as the general Spatial Planning Act stipulates that local communities are obliged to plan eventual development projects first on the land of non-agricultural use. If this is not possible, such projects are planned in the area of other agricultural land, and only in the last line, on the area of permanently protected agricultural land, starting with the land of lower quality (rating).

In order to ensure the achievement of the objectives of the agricultural policy, which includes the permanent preservation of the fertility of agricultural land and the protection of agricultural land against pollution and improper use, the Government recently proposed amendments to the Agricultural Act with provisions on obligatory monitoring of agricultural soil. This monitoring is to be mainly carried out on the basis of physico-chemical soil analysis. The persons under obligation to provide soil analysis will be beneficiaries of agricultural policy land-related measures.

Slovenia has an extensive special regulation of agricultural land transactions which includes (1) the prohibition of division of certain agricultural holdings, the so called protected farms, (with certain exceptions from this rule), (2) pre-emption right which may be enforced by a (too much) wide circle of persons in case where agricultural land, regardless of its owner, is offered for sale (beginning with coowners, followed by the neighbouring farmers, other farmers, agricultural sole traders and organisations and the State), (3) restrictions relating to donation contracts (this restriction was introduced in order to prevent circumvention of pre-emption right), (4) restriction of creating new co-ownership shares (in case of sale of agricultural land or donation of agricultural land to a donee who takes over a farm), (5) prohibition of division of consolidated agricultural land. In order to ensure compliance with the regulation, the legislation provides for (ex ante) administrative control of legal transfer of agricultural land *inter vivos*.

The Constitutional provisions regarding the acquisition of real estate ownership through aliens are based on a rather restrictive approach and have been twice amended: firstly, before the ratification of the European Association Agreement between EU and Slovenia (1997) and secondly, before the Slovenian accession to the European Union (2003).

According to the actual wording of Art. 68 of Constitution, aliens may acquire ownership rights to real estate under conditions provided by law or a treaty ratified by the National Assembly. The acquisition of agricultural land by foreigners is regulated by international treaties, like Treaty on the Functioning of the European Union (TFEU), Agreement on the European Economic Area, Convention on the Organization for Economic Co-operation and Development, as well as by internal legislation like Succession Act, Act on the Conditions for the Acquisition of the Right to Property of Natural and Legal Persons of the Candidate Countries of the European Union and the Act on the Relations of the Republic of Slovenia with Slovenes Abroad. These legal instruments regulate also the issue in which cases the reciprocity has to be or is not established or it is presumed.