

Commission II

National report

HUNGARY

Protection of Cultivated Land: Rural Planning Law and Agricultural property and Real Estate Law¹

Csilla CSÁK, Prof. Dr.² – Zsófia HORNYÁK, dr. PhD³ – Flóra OROSZ dr.⁴

1. The importance of planning instruments to protect agricultural land resources in Hungary

Provisions relating to land protection⁵ generally can be classified into two groups: a) provisions of environmental protection and nature conservation, b) provisions relating to natural resources and economic factors.⁶ This duality can be observed in the European Union legislation and in the Hungarian legislation as well.

Provisions of the European Union relating to land protection				
Groups of provisions	General land protection provisions	Specific environmental requirements	Rural policy standards	Agricultural market regulations

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² dr. jur., PhD, dr. habil., full professor, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: jogkincs@uni-miskolc.hu

³ dr. jur., PhD, university assistant, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: hozsofi@hotmail.com

⁴ dr. jur., PhD student, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: oroszflora93@gmail.com

⁵ In detail see Fodor László: Umweltschutz und Bodenschätze. In: Oesten, Baller; Petr, Bohata; Tomislav, Boric; Axel, Bormann; Jörn, Brockhuis; Ernst, Giese; Antje, Himmelreich; Stela, Ivanova; Herbert, Küpper; Thomas, Paintner; Stefan, Pürner; Karin, Rogalska; Andreas, Steininger; Judit, Udvaros; Tina, de Vries (ed.): Handbuch Wirtschaft und Recht in Osteuropa 2018, Verlag C. H. Beck, München, 2018., 1-17.

⁶ See more Horváth Gergely: Az élet természeti alapjainak védelmi rendszerei és az agrárgazdaság. In: Gellén Klára (ed.): Honori et virtuti. Ünnepi tanulmányok Bobvos Pál 65. születésnapjára, Iurisperitus Kiadó, Szeged, 2017., 158-174.

<p>Examples for the protection of land</p>	<ul style="list-style-type: none"> • environmental impact assessment • integrated pollution prevention system 	<ul style="list-style-type: none"> • provisions for the protection of waters (nitrates, plant protection, sewage sludge) • environmentally friendly cultivation methods • waste management nature conservation • cross compliance 	<ul style="list-style-type: none"> • environmental development, trainings • protection of afforestation • protection of volunteer environmental commitments 	<ul style="list-style-type: none"> • set-aside • strict administration of cultivated lands • strict authorisation system (e.g. felling and planting plantation)
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Source: István Olajos University of Miskolc Faculty of Law Lecture outline (2017) power point

In the Hungarian legislation the highest source of law of land protection,⁷ in the level of general provisions are the Act LIII of 1995 on the General Rules of Environmental Protection (hereinafter referred to as Environmental Protection Act) and the Act CXXIX of 2007 on the Protection of Arable Land (hereinafter referred to as Arable Land Protection Act); in the level of special provisions are the Act LIII of 1996 on the Conservation of Nature, the Act XLVIII of 1993 on the Mining Activities, the Act XXXVII of 2009 on the Forest, the Protection of Forest and Forestry, etc.⁸

The Environmental Protection Act contains the regulatory framework of land, as environmental element (quantitative and qualitative protection against load and use of land); the Arable Land Protection Act includes the regulation of land and soil. Between 1994-2007 the land act, namely the act on the conditions of land ownership and use encompassed the provisions of land protection. This situation changed in 2007 when the provisions of land protection were separated into a separate act, into the Arable Land Protection Act. This historical background also determined the orientation, the agricultural nature of the act, which can be found in the Act of 2007 on the Arable Land Protection. Land protection can be divided into quantitative protection (land protection) and qualitative protection (soil protection).

⁷ See more Horváth Gergely: Az agrár-környezetvédelmi jog speciális részterületei. Jog Állam Politika, 2009/2, 80-101.

⁸ See more Fodor László: A földvédelemre vonatkozó új szabályokról. Gazdasági Élet és Társadalom, 2014.

Soil protection⁹ includes measures relating to the maintenance of the productivity of the land, which mainly represent environmental protection aspects and apply measures against environmentally harmful activities.

The basic objective of land protection¹⁰ is agricultural, namely to keep arable land under agricultural use. The basic institutions of it are the utilization of land for other purposes, issues relating to land withdrawal and the regulation of land use obligation.

The intention to create the conditions for sustainable land use management and the natural conditions of production (soil, water, habitat communities) also appeared in agricultural legislation.¹¹ Ownership acquisition rights shall exist on condition that the acquiring party undertakes not to permit third-party use of the land, and to use the land himself, and in that context to fulfil the obligation of land use, and agrees not to use the land for other purposes for a period of five years from the time of acquisition.¹² The obligation of land use includes activities relating to the maintenance of soil fertility, but in the case of certain agricultural zoning such as vineyard or orchard it means use appropriate for the agricultural zoning. The land use obligation belongs to authorisation control, in addition to general agricultural administration body the nature conservation authority and forestry authority has competence in this issue. In the case of any breach of the obligation of use, the following sanctions may be used: a) notice for restoring the original status, b) penalty, c) regulatory use, d) option to buy land for the holders of pre-emption right and the state.¹³

According to the Arable Land Protection Act, in the case of lawful behaviour land protection and soil protection contribution shall be paid, in the case of unlawful misconduct penalty shall be paid and the restoration of the original condition can be forced.

2. The importance of instruments to counteract the degradation and devastation of agricultural land in Hungary

⁹ In detail see Zsolt Tóth: Soil protection in the EU: the most important soil-related EU policies and legal sources. *Journal of Agricultural and Environmental Law*, 2017/22.; Németh Tamás – Tóth Gergely –Berényi Üveges Judit: A talajvédelem jelentősége és szabályozása. *Magyar tudomány*, 2016/10, 1184-1191.

¹⁰ See more Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law. In: Smuk Péter (ed.): *The Transformation of the Hungarian Legal System 2010-2013*, Complex Wolters Kluwer – Széchenyi István University, Budapest, 2013., 359-366.

¹¹ See more Szlávik János: Fenntartható környezet- és erőforrás-gazdálkodás. KJK Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2005., *Környezetvédelmi Kiskönyvtár* 14. 72-76.

¹² Act CXXII of 2013 on the Transaction of Agricultural and Forestry Land (hereinafter referred to as Land Transaction Act) 13.§ Section (1)

¹³ See Fodor László: *Környezetjog*. Debrecen, Dupress, 2015., 198-206.

In Hungary 75% of natural resources¹⁴ consists of land, which gives 26% of the general National Assets.¹⁵ The National Rural Strategy shows that the field size of Hungary is 9.3 million hectares, of which 57,4% is arable land and 20,7% is covered by forests.¹⁶ According to these data, it can be concluded that Hungary is rich in agricultural and forestry lands, which utilizes a significant proportion of land for agriculture.¹⁷ The size of land suitable for production per person is ranked among the highest in Europe, thus agricultural land is a particularly important natural resource in Hungary. Due to favourable natural conditions, the proportion of high-quality soil is good and the scope of good productivity soil is significant. However, it cannot be ignored that the proportion of arable land has decreased continuously recently, mainly due to expansion of infrastructure and settlements and the quality of land has also declined due to agricultural practice and land use ignoring natural features.¹⁸

We can talk about two kind of protection in connection with protection of arable land. On one hand, we can talk about quantitative protection, which is called land protection and which means the maintenance of farmland. On the other hand, we can talk about qualitative protection, which is called soil protection. Several Constitutional Court decision stated that according to the features of land ownership, a special management of it is justified.¹⁹

The Environmental Protection Act determines that land protection shall cover the surface and subsurface strata of land, the soil, the rock formations and minerals as well as the natural and transitional forms and processes thereof, furthermore, it shall include conservation of the productivity, structure, water and air balance, and biota of the soil.²⁰ In advance, such activities may be pursued on or beneath the land surface, and such materials may be deposited

¹⁴ According to the Environmental Protection and Nature Conservation Encyclopaedia, natural resources are: „resources available at a given time, period for a certain community, which are either completely independent from human intentionally activities or their existence inseparably and decisively depend on natural factors.” Based on another approach, those natural (geographic) endowments are considered as natural resources, which are used to meet specific financial needs on the development level of production, based on the particular characteristics of the society. Farkas Csamangó Erika: A táj, mint vidéki forrás. In: Csák Csilla (ed.): Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében, Miskolci Egyetem, Miskolc, 2012., 53.

¹⁵ Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: Agrárpolitikai – agrárjogi vektorok és indikátorok a mezőgazdasági birtokstruktúra szemszögéből. Agrár- és Környezetjog, 2015/19, 46.

¹⁶ National Rural Strategy 2012-2020 („the constitution of the Hungarian countryside”) 23.

¹⁷ Szilágyi János Ede: Változások az agrárjog elméletében? Miskolci Jogi Szemle, 2016/1, 31.

¹⁸ Bartus Gábor (ed.): Nemzeti Fenntartható Fejlődési Keretstratégia. Nemzeti Fenntartható Fejlődési Tanács, Budapest, 2013., 129., 135.

¹⁹ Constitutional Court Decison No 16/1991. (IV.20.), about it see Szilágyi János Ede: Az Alkotmánybíróság joggyakorlatának értékelése a mezőgazdasági üzemek tulajdoni kérdéseinek változásában. In: Trócsányi László (ed.): Dikajosz Logosz. Tanulmányok Kovács István emlékére, Pólay Elemér Alapítvány, Szeged, 2012., 266.

²⁰ Act LIII of 1995 14. § Section (1) and (2)

there that do not pollute or damage the quantity, quality and processes of the land and the environmental components.²¹

The Arable Land Protection Act also contains relevant provisions in relation to land protection and soil protection. It states that the land user shall use the land for the purpose consistent with the land's type of use registered in the real estate register, or without production in compliance with the requirements of soil protection shall prevent the growing and spreading of weeds on the land.²² In the case of any other use of land a one-time land protection contribution shall be paid, while in the case of failure land protection penalty shall be paid.²³

The environmental status of soils can be categorized on the basis of soil acidification, salination, physical degradation, extreme water balance, reduction of humus and nutrients, soil erosion and soil contamination.²⁴ According to György Várallyay erosion may affect 15,6% of the total area of Hungary.²⁵ The Arable Land Protection Act details the specific obligations of land user in relation to vulnerable zones to prevent erosion caused by water or wind,²⁶ and requires the adaption of soil protection farming consistent with the ecological circumstances of arable land. Whether the fulfilment of these obligations is not eligible for the prevention of erosion, the land user is required to a) change the land's type of use, or b) establish a zone of grassland, bush or forest, or c) use soil protection interventions and facilities. Soil acidification also causes significant problem, which affects at least 8% of soil and generally caused by improper fertiliser, various industrial by-products and waste. In these cases the act prescribes the use of lime fertiliser or soil improvement.²⁷ The land user shall ensure the preservation of soil organic matter by a) the use of soil-friendly cultivation methods, b) the use of crop rotation, c) the production of secondary or intermediate plant, d) the utilization of stubble, e) the use of organic materials, or f) the preservation of humus topsoil.²⁸ If somebody breaches the above mentioned obligations, the soil protection authority shall impose land protection penalty.²⁹

²¹ Act LIII of 1995 15.§ Section (1)

²² Act CXXIX of 2007 5.§ Section (1)

²³ Act CXXIX of 2007 24.§ Section (1)

²⁴ Szabó Andrea: A termőföld védelme. Infojegyzet. 2018/8, 3. https://www.parlament.hu/documents/10181/1479843/Infojegyzet_2018_8_termofold_vedelme.pdf/13dbe87c-7178-351f-a8c7-2c1cbea20af8 (downloaded: 02.06.2019.)

²⁵ Várallyay György: Talajvédelmi stratégia az EU-ban és Magyarországon. Agrokémia és Talajtan, 2005/1-2, 203-216.

²⁶ Act CXXIX of 2007 36.§ Section (1)

²⁷ Szabó Andrea: cit. 3.

²⁸ Act CXXIX of 2007 39.§ Section (1)

²⁹ Act CXXIX of 2007 56.§ Section (1)

3. Specific regulations concerning agricultural property transactions in Hungary

According to the Accession Treaty (23rd September, 2003) and point 3 of its Annex X – on the free movement of capital³⁰ –,³¹ Hungary may maintain in force for seven years from the date of accession the prohibitions laid down in its legislation existing at the time of the signature of this Act on the acquisition of agricultural land by natural persons who are non-residents or non-citizens of Hungary and by legal persons.³² The European Committee with its Decision 2010/792/EU (20.12.2010.) agreed to the maintenance of the land moratorium till the 30th April 2014,³³ with which end it was necessary to legislate a new act on land transaction in Hungary.³⁴ Thus, the Land Transaction Act³⁵ was adopted, which entered into force on 1st May 2014.

³⁰ See more: Korom Ágoston: Az új földtörvény az uniós jog tükrében. Jogegyenlőség vagy de facto más elbírálás? In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban. Nemzeti Közszerológati Egyetem, Budapest, 2013., 11-24.

³¹ See more: Fodor László: Kis hazai földjogi szemle 2010-ből. In: Csák Csilla (ed.): Az európai földszabályozás aktuális kihívásai. Novotni Kiadó, Miskolc, 2010., 115-130.

³² Benedek Fülöp: „A magyar földügy a XXI. század elején”. In: Fürj Zoltán (ed.): „...a birtokolt föld...a szabadság maga”. Debreceni Egyetem Agrártudományi Centrum, Debrecen, 2005., 13.; Kurucz Mihály: Gondolatok a termőföldjogi szabályozás kereteiről és feltételeiről III. Geodézia és Kartográfia, 2008/11, 12.

³³ Korom Ágoston: A termőföldek külföldiek általi vásárlására vonatkozó "moratórium" lejártát követően milyen mozgásteret tesz lehetővé a közösségi jog?, Európai Jog, 2009/6, 7-16.; See more about the end of land moratorium Téglási András: The constitutional protection of agricultural land in Hungary with special respect to the expiring moratorium of land acquisition in 2014. Jogelméleti Szemle, 2014/1, 155-175.

³⁴ See more about the new Land Transaction Act Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union. Journal of Agricultural and Environmental Law, 2010/9, 20-31.; Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás. Advocat, 2013/1-4, 12-17.; Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary. In: Roland Norer – Gottfried Holzer (ed.): Agrarrecht Jahrbuch – 2013, Neuer Wissenschaftlicher Verlag, Wien – Graz. 2013., 220-224.; Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitantes and their children in the agricultural enterprise in Hungary. Journal of Agricultural and Environmental Law, 2013/15, 52-57.; Kapronczai István: Az új földszabályozás hatása az agrárpolitikára. In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban. Nemzeti Közszerológati Egyetem, Budapest, 2013., 79-92.; Kurucz Mihály: Gondolatok a termőföldjogi szabályozás kereteiről és feltételeiről. Geodézia és Kartográfia, 2008/9, 13-22.; Prugberger Tamás: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához. Kapu, 2012/9-10, 62-65.; Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei. In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban. Nemzeti Közszerológati Egyetem, Budapest, 2013., 110-111.; Vass János: A földtörvény módosítások margójára. In: Vass János (ed.): Tanulmányok Dr. Domé Mária egyetemi tanár 70. születésnapjára. ELTE-ÁJK, Budapest, 2003., 159-170.; Alvincz József: A „Földügyi törvénycsomag” jogszabályainak agrárgazdasági háttere, különös tekintettel az üzemszabályozásra. Polgári Szemle, 2013/3-6.; Mikó Zoltán: A birtokpolitika megvalósulását segítő nemzeti jogi eszközök. In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban. Nemzeti Közszerológati Egyetem, Budapest, 2013., 151-163.; Andréka Tamás: Birtokpolitikai távlatok a hazai mezőgazdaság versenyképességének szolgálatában. In: Csák Csilla (ed.): Az európai földszabályozás aktuális kihívásai. Novotni Kiadó, Miskolc, 2010., 7-19.

³⁵ About the analysis and its history see Csilla – Hornyák Zsófia: Az új földforgalmi törvényről. Östermelő, 2013/4, 7-10.; Csák Csilla – Prugberger Tamás: A termőföld és a mezőgazdasági termelési viszonyok korszerű rendezése. Magyar Közigazgatás 1994/8, 489-497.; Holló Klaudia: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló T/7979. számú törvényjavaslat egyes rendelkezéseinek összehasonlító elemzése. THEMIS, 2013/3, 111-140.; Hornyák Zsófia: Einige neuralgische

The Land Transaction Act was the first implementing act in this sector which was adopted among the others prescribed by the Fundamental Law of Hungary. And the partly implementing act, the Act CCXII of 2013³⁶ (hereinafter referred to as Act on Land) was also adopted, which is on certain provisions and transition rules related to the Act CXXII of 2013 on Transactions of Agricultural and Forestry Land. Additionally, two other implementing acts will be adopted, namely the act on agricultural holdings and integrated agricultural production.³⁷

The preamble of Land Transaction Act determines the purposes of adopting this special act, of which the following deserve to highlight: a) the renewal of villages with a view to maintaining population levels, b) enhancing further the agricultural community through the organization of development production groups within rural family partnerships and through the growth of local businesses, c) facilitating the development of medium-size farms in the agricultural sector, and ensuring the stability and further development of small farms, d) expanding farming operations building on own work and direct production and service activities, e) offering a better potential for farming by way of sustainable land use, f) the creation of estates sufficient in size for viable and economically feasible agricultural production, g) eliminating the detrimental consequences of a fragmented estate structure in terms of ownership, hence to permit farmers to ply their trade without unwarranted obstructions.

Punkte des neuen Grundstückverkehrsgesetzes. In: Stipta István (ed.): Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar szekciókiadványa, Miskolci Egyetem Tudományos szervezési és Nemzetközi Osztály, Miskolc, 2014., 117-121.; Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law. In: Smuk Péter (ed.): The Transformation of the Hungarian Legal System 2010-2013. Complex Wolters Kluwer – Széchenyi István University, Budapest, 2013., 359-366.; Kecskés László – Szécsényi László: A termőföldről szóló 1994. évi LV. törvény 6. §-a a nemzetközi jog és az EK-jog fényében. Magyar Jog, 1997/12, 721-729.; Novotni Zoltán: Az egyetemes és a magyar agrártulajdonjogi és használati viszonyok alakulásának vázlata. In: Prugberger Tamás (ed.): Az agrárjog alapelemeinek vázlata. Miskolci Egyetemi Kiadó, Miskolc, 1992., 30-104.; Olajos István: A termőföldről szóló törvény változásai a kormányváltások következtében: gazdasági eredményesség és politikai öncélúság. Napi Jogász, 2002/10, 13-17.; Olajos István: A termőföldről szóló törvény módosítása – avagy mi fér bele a száz napba?, Napi Jogász 2002/8, 8-12.; Prugberger Tamás: A földjogi szabályozás megújításának egyes kérdései. Állam és Igazgatás 1989/7, 609-617.; Prugberger Tamás: Dilemmák a termőföldtörvény módosítása körül. Magyar Jog, 1995/4, 232-234.; Raisz Anikó: Women in Hungarian Agriculture. In: Esther Muñiz Espada – Leticia Bourges (ed.): Agricultura Familiar, Ministerio de Agricultura, Alimentación y Medio Ambiente, Madrid, 125-142.; Tanka Endre: Történelmi alulnézet a magyar poszt szocialista földviszonyok neoliberais diktátum szerinti átalakításáról. Hírel, 2013/január, 109-136.; Zsohár András: A termőföldről szóló törvény módosításának problémái. Gazdaság és Jog, 2013/4, 23-24.; Olajos István: A földforgalmi jog felelősségi rendszerének magánjogi aspektusai. In: Menyhárd, Attila (ed.): 350 éves az Eötvös Loránd Tudományegyetem Állam és Jogtudományi Kara. ELTE Eötvös Kiadó, Budapest, 2018., 372-384.

³⁶ Certain provisions of the act according to Fundamental Law Article P) Section (2), other certain provisions of the act according to Fundamental Law Article 38 Section (1) are considered to be implementing act. Act on Land 107. §

³⁷ Fundamental Law Article P) Section (2)

The Land Transaction Act governs the acquisition of ownership of and usufructuary rights on agricultural and forestry land (hereinafter referred to as land), the use of land, as well as the monitoring of restrictions on land acquisitions, and contains provisions on local land commissions.³⁸ The scope of this Act shall cover the acquisition of ownership of land under any title and by any means, but not including where ownership is acquired by way of intestate succession, expropriation or through auction for the purpose of indemnification.³⁹

The Land Transaction Act applies to all lands located in the territory of Hungary⁴⁰, however, the rules on agricultural holdings will be governed in a specific act, yet only conceptual definitions relating to agricultural holding⁴¹ can be found in the Land Transaction Act.

In principle the ownership of land may be acquired by domestic natural persons and EU nationals. The Land Transaction Act introduced the concept of farmer, and only those people may take part at the domestic land markets, who meet the criteria.⁴² In the case of land acquisition limit, the size of land, that may be acquired by a farmer and other than a farmer, is a close relative of the person transferring ownership right of the land, may not exceed 300 ha^{43, 44}. Other than farmers, domestic natural persons and EU nationals may acquire the ownership of land if the size of the land does not exceed one hectare (earlier domestic natural persons could acquire the ownership of maximum 300 ha land⁴⁵).

³⁸ Land Transaction Act 1.§ Section (1)

³⁹ Land Transaction Act 6.§ Section (2)

⁴⁰ Land Transaction Act 5.§ Point 17. Agricultural, forestry land: shall mean any parcel of land, irrespective of where it is located (within or outside the limits of a settlement), registered in the real estate register as cropland, vineyard, orchard, garden, meadow, permanent pasture (grassland), reed bank or forest or woodland, including any parcel of land shown in the real estate register as non-agricultural land noted under the legal concept of land registered in the Országos Erdőállomány Adattár (National Register of Forests) as forest.

⁴¹ Land Transaction Act 5.§ Point 20. Agricultural holding: shall mean the basic organization unit of production equipment and other means of agricultural production (land, agricultural equipment, other assets) operated with the same objective, functioning also as a basic economic unit by way of economic cohesion.

⁴² Land Transaction Act 5.§ Point 7. In relation to the concept of farmer see: Olajos István: A termőföldek használata az erdő- és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján. In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban, Nemzeti Közzolgálati Egyetem, Budapest, 2013., 124-125.; Raisz Anikó: Topical issues of the Hungarian land-transfer law Purchasing and renting agricultural land: Legal framework and practical problems, CEDR Journal of Rural Law. 2017/1, 72.

⁴³ About the exceedence of land acquisition limit see: Hegyes Péter: A földforgalmi törvény a gyakorlatban – avagy az utolsó öt oldal. In: Gellén Klára (ed.): Honori et virtuti: Ünnepi tanulmányok Bobvos Pál 65. születésnapjára. Iurisperitus Bt., Szeged, 2017., 116-118.

⁴⁴ According to the Land Transaction Act 5.§ Point 13. close relative shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings.

⁴⁵ Csák Csilla: A termőföld tulajdonszerzés anyagi- és eljárásjogi korlátai. In: Csák Csilla (ed.): Agrárjog: A magyar agrárjog fejlődése az EU keretei között. Novotni kiadó, Miskolc, 2010., 104-105.

In the case of land transaction between living persons,⁴⁶ the approval of the competent authority is a special regulatory instrument, as a public law tool, and we would highlight the pre-emption rights as a civil law tool. Firstly, we would like to discuss the pre-emption right. Apart from detailing the complicated ranking of holders of pre-emption rights, it can be stated, that the Hungarian State is the first in the ranking. The farmer using the land and the farmer has a preferred place in the ranking. Within the category of farmer using the land and the farmer, the local neighbour is the first, the local resident is the second, and on the third place stand those who has been residing or has his centre of agricultural operations for at least three years in a municipality from which administrative boundaries the land in question is located within 20 km. The purpose of the legislator with the ranking of holders of pre-emption rights is to eliminate the fragmented estate structure, to develop a well-functioning estate structure, to promote the land acquisition of people who can and are able to cultivate a land.

Transactions in the case of land acquisition can be classified into three groups in respect of approval of the competent authority. The first group includes the case of acquisition of ownership of land by sales contract, acquisition of ownership of land under other title creates the second group, and the third group consists of land acquisition for which the approval of the competent authority is not required. In this paper we deal in detail only with the approval of the sales contract by the competent authority, which belongs to the first group. In the case of the approval of the sales contract by the competent authority, the sales contract shall be communicated to the holders of pre-emption rights by way of public notice through the notary, then the agricultural administration body shall check and examine the sales contract and the statement of acceptance and shall adopt a decision within fifteen days of receipt of the documents for the refusal of approval of the contract of sale, if one of the cases listed in the act occurs. If the agricultural administration body decided not to refuse the approval of the sales contract, it shall contact the regional body of the Magyar Agrár-, Élelmiszergazdasági és Vidékfejlesztési Kamara (Hungarian Association of Agriculture, Food and Rural Development) where the land affected by the contract is situated, namely the local land commission, to make its opinion. The local land commission shall consider the local situation, the public knowledge and criteria specified in the act. Based on these criteria, the local land

⁴⁶ See more Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése. Magyar Jog 2017/7-8, 410-424.; Szilágyi János Ede – Csák Csilla – Olajos István – Orosz Flóra: The topical situation and issues of agricultural law in Hungary, CEDR Journal of Rural Law 2019/5, 40-50.; Raisz Anikó: A magyar földforgalom szabályozásának aktuális kérdéseiről. Publicationes Universitatis Miskolcensis Sectio Juridica et Politica, 2017/35, 434-443.; Szilágyi János Ede: Magyarország földjogi szabályozásának egyes aktuális kérdései. In: Szalma, József (ed.): Magyar Tudomány Napja a Délvidéken 2017 - Migráció, környezetvédelem - társadalom és természet, Vajdasági Magyar Tudományos Társaság, Újvidék, Szerbia, 2018., 182-196.

commission shall formulate its opinion whether to support the approval of sales contract of the holders of pre-emption rights listed in the protocol or the buyer. The agricultural administration body shall take into consideration the opinion of the local land commission in its decision, shall consider again the conditions of approval or refusal of the sales contract and shall make its resolution, which shall be endorsed.

According to the above mentioned rules we can see, that basically farmers may acquire land in Hungary. Furthermore, favourable rules apply to other than farmers close relatives even in the case of land acquisition limit or pre-emption right and approval of the competent authority, since they have no pre-emption right and in their case the approval of the competent authority is not required. In addition to close relatives, preferential rules apply to the transfer of land ownership between the joint owners of a land provided that the joint ownership will be terminated, because in their case there is no pre-emption right and the approval of the competent authority is not required. The farmer using the land and the farmer has a preferred place in the ranking.

The scope of the Land Transaction Act does not cover the acquisition of ownership of land by way of intestate succession, however, the act contains special rules for the acquisition of ownership of land by testamentary disposition. We consider that specific rules of land succession shall be adopted within the national legislation, on one hand to eliminate the fragmentation of estate structure, while in the case of using the general rules of succession for intestate succession lands may be fragmented easily, and the purpose of introducing sui generis rules of land succession would be to hold the land as a unit. On the other hand it should be considered during the establishment of rules – which is not considered by the general rules of succession – that such person shall be the heir who is competent, has special skills and has practice in land cultivation, thus a proper farming would be done on the land. There are special rules for the acquisition of ownership of land by testamentary disposition,⁴⁷ so in this case the special nature of land was taken into account during the establishment of regulation, and it would be worth to approach the rules of intestate succession to this. In addition, the purpose of principles behind the land transaction is to promote the acquisition of those people who is able and willing to cultivate the land, but it is not provided in the case of using the general rules for intestate succession. The provision of testamentary disposition should be reconsidered in order not to give a chance to speculative land acquisition, and the

⁴⁷ See more Olajos István – Csák Csilla – Hornyák Zsófia: Az Alkotmánybíróság határozata a mezőgazdasági földek végintézkedés útján történő örökléséről. Jogesetek Magyarázata, 2018/1, 5-19.

specific rules should be established in one system in respect of both intestate succession and testamentary disposition.⁴⁸

4. Acquisition of agricultural land by foreigners in Hungary

The new Land Transaction Act excludes land acquisition by foreigners in Hungary, making distinction between EU nationals and non-EU nationals. The restriction is based on several values and objectives.

The Fundamental Law contains several articles relating to arable land, which refers to the importance of constitutional regulation and protection of arable land.⁴⁹ Arable land is specifically mentioned among natural resources in Fundamental Law Article P) paragraph (1), which shall comprise the part of the nation's common heritage and is a national treasure. This regulation is necessary in such a country, where agriculture plays an important role in economy considering the limited amount of arable land, and where agricultural and forestry lands create a large percentage of the total national assets in Hungary (about 26%). Furthermore, Fundamental Law determines in Article P) that arable land shall be preserved for the future generations and their needs shall be met. It is an absolute guideline and an objective requirement against the State and every individual. Article XIII) of Fundamental Law protects the right to property as a fundamental right, including land ownership as well. Fundamental Law however, in the national commitment and belief determines the obligation of careful use of natural resources and the protection of living conditions of the future generation: „We pledge to treasure and preserve our heritage: ... the man-made and natural riches of the Carpathian Basin. We bear responsibility for our descendants; we shall therefore strive to use our material, intellectual and natural resources prudently so as to protect the living conditions of future generations.”

The Land Transaction Act excludes land acquisition by foreigners in Hungary, as the legislator wants to limit the ownership acquisition rights for professional farmers, thus contributing to the satisfaction of land requirements of people working in the agricultural sector and excluding the speculative (non productive but capital investment) land acquisition

⁴⁸ See more Hornyák Zsófia: A mezőgazdasági földek öröklése. Bíbor Kiadó, Miskolc, 2019.; Hornyák Zsófia: Richtungen für die Fortentwicklungen: Beerbung des Grundstückes, Agricultural and Environmental Law 2018/25, 107-131.

⁴⁹ See Orosz Flóra: A termőföld mint nemzeti kincs alkotmányos védelme hazai és nemzetközi vonatkozásban. Publicationes Universitas Miskolciensis Series Juridica et Politica, 2018/1, 178-191.

ambitions. It follows from the appropriate use of the land that the acquisition of arable land means a long-term commitment towards cultivation and production.

According to Tamás Andréka and István Olajos, the significance of the institution as follows: “aim of this institution is to avoid the uncontrollable chain of ownership which would be in contradiction with keeping the population preserving ability of the country, since it would be impossible to check land maximum and the other acquisition limits.⁵⁰

The Land Transaction Act limits the scope of persons who can acquire the ownership of land. The land transaction regime prefers the farmers of land acquisition which shall mean any domestic natural person or EU nationals.⁵¹ Third-country natural person, non EU Member States and legal person shall not acquire the ownership of land (except some exemptions, but foreign legal entity shall not). Third-country natural person shall mean any person who is not EU national,⁵² so every people who live not in a Member State. Foreign legal entity shall mean a legal person or unincorporated organization established in a state other than a Member State.⁵³ According to the Accession Treaty, only for EU nationals are required to provide the same conditions in relation to land acquisition as Hungarian citizens since 1 May, 2014. In respect of third countries the ban so far may be reserved. In the case of legal entities the maintenance of ban is also justified, since the changes in the scope of ownership of the legal entity, so the indirect owner of the land would be uncontrollable and serve as an instrument to circumvent to law. The scope of restriction applies to agricultural and forestry land.⁵⁴

Relating the restriction to be legal, the Hungarian legislator shall take into account the EU law. EU Laws do not regulate the ownership of agricultural land directly, it is basically the competence of Member States. However, the primary and secondary sources of EU law and the judicial practice of the European Court of Justice set frames and orientations for the legislation and implementation of laws. According to them, on one hand, the implementation of the four EU freedoms is required; in connection with the acquisition of agricultural lands the free movement of persons and capital are applicable. On the other hand, TFEU prohibits the discrimination on the basis of nationality. Furthermore, the restriction fill the requirements of the EU law just if it in addition it serves legal public interest objectives, which may be for example: maintaining a permanent population, reaching the objectives of CAP, prevent speculative land acquisition, ensuring that agricultural property be occupied and farmed

⁵⁰ Andréka Tamás – Olajos István: cit. 410-424.

⁵¹ Land Transaction Act 10.§

⁵² Land Transaction Act 5.§ Point 15.

⁵³ Land Transaction Act 5.§ Point 16.

⁵⁴ Land Transaction Act 5.§ Point 17.

predominantly by the owners. In addition, the restriction must be proportional with public interest and satisfy the commutability requirement. This latter means, that a restrictive measure satisfies the EU prescriptions if it cannot be exchanged by a restrictive measure less limiting the free movement of capital.⁵⁵

Several instruments serve the restriction of land acquisition by third-country natural persons. The jurisdiction of CJEU clearly reflects in the choice of some law-institution of the new Hungarian law-regime and substantially determines its conception – supplementing it with some Hungarian speciality (for example the full ban for legal persons to purchase the property of land).⁵⁶

Relating the set of instruments of Land Transaction Act, the first instrument of restriction is the definition of farmer (the personal scope of land acquisition) – see before. The Act determines serious administrative burden and strong state control in relation to the land market, of which one manifestation is that as a rule the consent of the agricultural administrative body is required for the acquisition of ownership of land. Furthermore, the local land commission has also an important role, which considers whether a sales contract meets the criteria set out in the Act.⁵⁷ The Act determines the ranking of holders of pre-emption rights. Apart from the detailed list of the ranking, it can be stated that the farmer using the land and the farmer has a preferred place in the ranking. The Act, regarding the scarce nature of agricultural land, determines a limit of land acquisition in the frame of land acquisition limit and land possession limit.⁵⁸ We can regard as a speciality of the Hungarian land transfer that the residence requirement – de jure banned by the jurisdiction of CJEU – was de facto substituted by a strict hierarchy of the pre-emption rights.⁵⁹

⁵⁵ Csilla Csák: The Regulation of Agricultural Land Ownership in Hungary after Land Moratorium. *Zbornik Radova Pravni Fakultet (Novi Sad)*, 2017., 1127-1128.; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: cit. 50-52.; Anikó Raisz: Topical issues of the Hungarian land-transfer law: Purchasing and renting agricultural land: Legal framework and practical problems. *CEDR Journal of Rural Law*, 2017/1., 69.

See more about the soft law provisions of the EU concerning land acquisition Szilágyi János Ede: *Mezőgazdasági földjog: soft law a soft law-ban. Avagy a FAO önkéntes iránymutatása megváltoztathatja az uniós jog értelmezési kereteit földforgalmi kérdésekben?*, *Iustum Aequum Salutare*, 2018/4, 72-75.

⁵⁶ Szilágyi János Ede: *Az európai jog és a magyar mezőgazdasági földek forgalmazásának szabályozása. Agrár- és Környezetjog* 2017/23, 173-175.

⁵⁷ The tasks of the local land commission shall be performed by the regional body of the Nemzeti Agrárgazdasági Kamara (National Agrarian Chamber) from 1 January 2019. According to the amendments the procedure of the local land commission has changed new criteria for examination appeared. The commission shall examine whether the sales contract is in conformity with overall agricultural and landholding policy considerations for example: with a view to preventing the acquisition of lands of a speculative nature, concerning the enforcement of the interest of the local agricultural community, with a view to providing assistance of locally resident farmers habitually living on and working the land.

⁵⁸ The determination of land acquisition and land possession limit also serves to take the focus on small and medium-sized farms instead of previous large scale structure.

⁵⁹ Land Transaction Act 18-22.§

Among instruments shall be mentioned the so called Act on Fraudulent Contracts,⁶⁰ which specifically serves the discovery and restriction of transactions circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land (fraudulent contracts). Fraudulent Contracts include usufruct or mortgage established unlawful, in addition to the real estate register for third-country natural persons or foreign legal entities, and other obligation that would ensure a future acquisition. According to the Act every contracts circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land shall be null and void, and the resulting claims, obligations shall be not enforced.

The new circumstance of the Act V of 2012 on the Criminal Code (hereinafter referred to as Criminal Code) – 349§ punishes the unlawful acquisition of agricultural land – also serves the restriction of land acquisition by foreigners.

It is well known that the new Land Transaction Act is still criticized both nationally and by the EU. However, the legislators take into account the EU principles and provisions during legislative amendments. The above listed instruments effectively serve the restriction of land acquisition by foreigners.

5. Land grabbing⁶¹ in Hungary

A special type of cross-border acquisition⁶² is land-grabbing⁶³ named in international literature, which is an extreme phenomenon of international land acquisition, and which can

⁶⁰ Act VII of 2014 on the discovery and restriction of transactions circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land

⁶¹ See more about land grabbing Szilágyi János Ede: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzések. Miskolci Jogi Szemle, 2017/1. klszm., 110-14.; János Ede Szilágyi: Acquisition of the ownership of agricultural lands in Hungary, taking the EU's and other countries' law into consideration. Zbornik Radova Pravni Fakultet (Novi Sad), 2016., 1440.

⁶² Cross-border acquisition plays a more and more important role in the ownership and/or the use of agricultural lands and holdings. Cross-border acquisition primarily means the situation in which citizens and legal entities of a country (hereinafter referred to as "foreigners " or "investors ") gain the ownership or long-term use of an agricultural land situated in another country (hereinafter referred to as 'target' country or area). The goals of this acquisition can be various: (a) to produce agricultural products, (b) to speculate on the land market, (c) others, (d) the combination of points (a)-(c). In a wider sense, the situation in which foreigners establish legal entities in the target country and gain the lands of the target country may be regarded as cross-border acquisition as well. In the EU law, this interpretation of a cross-border acquisition could become quite difficult due to the forms of the European Cooperative Society (SCE) and the European Company (SE).). Otherwise, it is worth noticing that in the EU law, the 'cross-border' element with regard to land acquisitions has been typically assessed in the frame of preliminary ruling procedures.

About the cross-border acquisition see Szilágyi János Ede: A határon átnyúló mezőgazdasági földszerzések aktuális kérdései. In: Menyhárd, Attila (ed.): 350 éves az Eötvös Loránd Tudományegyetem Állam és Jogtudományi Kara, Budapest, ELTE Eötvös Kiadó, 2018.; János Ede Szilágyi: Cross-border acquisition of the

be translated in Hungarian as a “foreign land occupation”.⁶⁴ It essentially means large-scale cross-border leases or acquisitions of agricultural lands by private and state investors. In this process, certain countries and regions typically appear as investors, while others as target areas.⁶⁵ Considering Europe, the target area of land-grabbing mainly focuses on the Eastern European countries.⁶⁶

In Hungary, official databases would appear to indicate that farmland grabbing is a statistically insignificant phenomenon. Between 2005 and 2006, foreigners bought only 700 ha of agricultural land, which was less than 0.2% of the total turnover. (This rises marginally when it comes to the buying of farmsteads by foreigners: between 1% and 1.5%.) However, these official records do not take into account land acquired through the use of so-called “fraudulent contracts” (speculative land acquisition).⁶⁷ When these are also taken into account, according to different sources, foreigners owned around 400,000 ha (about 6%) of agricultural land in 2008, rising to an estimated 1 million ha in 2013.⁶⁸

Legislative provisions preventing fraudulent contracts can be categorized into three groups: a) the provisions of Land Transaction Act; b) Act on Fraudulent Contracts; c) and the provisions of Criminal Code.

ownership of agricultural lands and some topical issues of the Hungarian law. Zbornik Radova Pravni Fakultet (Novi Sad), 2017.

⁶³ In 2009, the former Special Rapporteur of the UN on the right to food has determined the phenomenon as follows: „Over the past three to four years, private investors and governments have shown a growing interest in the acquisition or long-term lease of large portions of arable land (above 1,000 ha) in a number of countries, mostly in the developing world. According to an estimate from the International Food Policy Research Institute (IFPRI), between 15 and 20 million hectares of farmland in developing countries has been the subject of transactions or negotiations involving foreign investors since 2006.” Nevertheless, the Special Rapporteur on the right to food mentioned that there are also target countries in Central Europe: Romania, Bulgaria, Lithuania (furthermore, in other non Member States countries such as in: Russia, Serbia, Ukraine). See UN General Assembly: A/HRC/13/33/Add.2. 5-6.

⁶⁴ See more about the definition of land grabbing in the Conclusion of Commission II CEDR Congress Potsdam 2015, part I. 2., which took a position in relation to the issue of land grabbing within the EU: „National rapporteurs of this CEDR Congress took place that inland land transfer is not considered part of land grabbing.” Published Szilágyi János Ede: Conclusions. Journal of Agricultural and Environmental Law, 2015/19, 92.

⁶⁵ János Ede Szilágyi: Conclusion... cit. 92.

⁶⁶ About the actual details see <https://landmatrix.org/data/>? <https://landmatrix.org/data/by-target-country/?more=90>; <https://landmatrix.org/data/by-target-region/>? (Downloaded: 26. 07. 2019.)

⁶⁷ Fraudulent contracts are illegal transactions aiming at evading the land acquisition rules), which are normally false transactions. They appeared numerously after the Act of 1994 on Arable Land, which excluded foreigners from land acquisition. See more Bányai Krisztina: A zsebszerződések ügyészi szemmel. Új magyar közigazgatás, 2014/1, 62-71.; Bányai Krisztina: A zsebszerződések elleni küzdelem új eszközei. Ügyészek lapja, 2013/6, 199-206.; Lányiné Toldi Judit: Harc a zsebszerződések ellen - közjogi korlátok és közjegyzői közreműködés a termőfölddel kapcsolatos jogügyletekben. Közjegyzők közlönye, 2013/2, 16-25.

⁶⁸ Sylvia Kay-Jonathan Peuch-Jennifer Franco: Extent of farmland grabbing in the EU. Brussels, European Union, 2015., 19.

The criminal regulation of fraudulent contracts entered into force on 1 July 2013. 349§ of Criminal Code punishes the unlawful acquisition of agricultural land.⁶⁹

The scope of Act on Fraudulent Contracts specifically serves the discovery and restriction of void contracts, clauses of contracts, other related transactions and procedures circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land. The public prosecutor may bring action for the annulment of such an illegal contract.

More provisions of Land Transaction Act serve the prevention of land grabbing. The Act determines a) farmer status;⁷⁰ b) land acquisition and possession limits;⁷¹ c) arable land ownership and usufruct may be acquired only upon approval of the competent authority; d) personal farming obligation – prevention of speculative land acquisition; e) ranking of holders of pre-emption and first refusal for lease rights; f) a paper-based document with certain security requirements is needed to legal transaction concerning arable land; g) agricultural administration body keeps an official public register of farmers, agricultural producer organizations, and centres of agricultural holdings; h)) limitation of acquisition of ownership or usage of arable land by legal persons with some exemptions^{72, 73}

The above mentioned provisions efficiently serve the prevention of land grabbing. These provisions restrict not only the land acquisition by domestic but by third country natural persons and legal entities which limit foreign land occupation.

⁶⁹ In detail see: Bence Udvarhelyi: Unlawful acquisition of agricultural and forestry land in the criminal law. *Journal of Agricultural and Environmental Law*, 2018/25.

⁷⁰ Farmer shall be a domestic natural person or an EU national who has a degree in agricultural or forestry activities, or who has at least a three-year practice in agricultural or forestry activities. These conditions enable the professional farming and promote the satisfaction of land requirements of people working in the agricultural sector restricting the speculative land acquisition (which aim is not production but capital investment).

Third country natural persons, namely non-EU foreigners shall not acquire the ownership of arable land. However, citizens of the European Economic Area and nationals of other States enjoying similar treatment under an international agreement can acquire the ownership of arable land.

⁷¹ The Land Transaction Act, considering the limited nature of arable land, determines the land acquisition and possession limits. In the case of land acquisition limit, the size of land that may be acquired by a farmer, a close relative or by a person way of acquisition of land for recreational use may not exceed 300 ha. Other than farmers, may acquire the ownership of land if the size of the land does not exceed one hectare. In the case of land possession limit, the size of land that may be held in possession by a farmer or an agricultural producer organization may not exceed 1,200 hectares. And in the case of preferential land possession limit, the Act enables 1,800 ha land possession size.

⁷² The Land Transaction Act restrict not only the acquisition of the ownership of arable land and land use by foreign legal entities but by domestic legal entities – exemptions: the Hungarian State may acquire the ownership of arable land without restriction; a listed church, a mortgage loan company or the municipal government of the community may acquire only with restrictions – as well.

The aim of this restriction is to avoid the uncontrollable chain of ownership, which would be in contradiction with keeping the population preserving ability of the country, since it would be impossible to check land maximum and the other acquisition limits. See: Andr eka Tam as – Olajos Istv an: cit.

⁷³ Cs ak Csilla – Kocsis Bianka Enik o – Raisz Anik o: cit. 48-50.

Conclusion⁷⁴

Csilla CSÁK, Prof. Dr.⁷⁵ – Zsófia HORNYÁK, dr. PhD⁷⁶ – Flóra OROSZ dr.⁷⁷

In Hungary 75% of natural resources⁷⁸ consists of land, which gives 26% of the general National Assets.⁷⁹ The National Rural Strategy shows that the field size of Hungary is 9.3 million hectares, of which 57,4% is arable land and 20,7% is covered by forests.⁸⁰ According to these data, it can be concluded that Hungary is rich in agricultural and forestry lands, which utilizes a significant proportion of land for agriculture.⁸¹ The size of land suitable for production per person is ranked among the highest in Europe, thus agricultural land is a particularly important natural resource in Hungary.

Provisions relating to land protection⁸² generally can be classified into two groups: a) provisions of environmental protection and nature conservation, b) provisions relating to natural resources and economic factors.⁸³ This duality can be observed in the European Union legislation and in the Hungarian legislation as well.

⁷⁴ “The described study was carried out as part of the EFOP-3.6.1-16-00011 “Younger and Renewing University – Innovative Knowledge City – institutional development of the University of Miskolc aiming at intelligent specialisation” project implemented in the framework of the Szechenyi 2020 program. The realization of this project is supported by the European Union, co-financed by the European Social Fund.”

⁷⁵ dr. jur., PhD, dr. habil., full professor, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: jogkincs@uni-miskolc.hu

⁷⁶ dr. jur., PhD, university assistant, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: hozsofi@hotmail.com

⁷⁷ dr. jur., PhD student, University of Miskolc, Faculty of Law, Institution of Civil Law, Department of Agricultural and Labour Law, e-mail: oroszflora93@gmail.com

⁷⁸ According to the Environmental Protection and Nature Conservation Encyclopaedia, natural resources are: „resources available at a given time, period for a certain community, which are either completely independent from human intentionally activities or their existence inseparably and decisively depend on natural factors.” Based on another approach, those natural (geographic) endowments are considered as natural resources, which are used to meet specific financial needs on the development level of production, based on the particular characteristics of the society. Farkas Csamangó Erika: A táj, mint vidéki forrás. In: Csák Csilla (ed.): Jogtudományi tanulmányok a fenntartható természeti erőforrások témakörében. Miskolci Egyetem, Miskolc, 2012., 53.

⁷⁹ Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: Agrárpolitikai – agrárjogi vektorok és indikátorok a mezőgazdasági birtokstruktúra szemszögéből. Agrár- és Környezetjog 2015/19., 46.

⁸⁰ National Rural Strategy 2012-2020 („the constitution of the Hungarian countryside”) 23.

⁸¹ Szilágyi János Ede: Változások az agrárjog elméletében?, Miskolci Jogi Szemle 2016/1., 31.

⁸² In detail see Fodor László: Umweltschutz und Bodenschätze. In: Oesten, Baller; Petr, Bohata; Tomislav, Boric; Axel, Bormann; Jörn, Brockhuis; Ernst, Giese; Antje, Himmelreich; Stela, Ivanova; Herbert, Küpper; Thomas, Paintner; Stefan, Pürner; Karin, Rogalska; Andreas, Steininger; Judit, Udvaros; Tina, de Vries (ed.): Handbuch Wirtschaft und Recht in Osteuropa 2018, Verlag C. H. Beck, München, 2018., 1-17.

⁸³ See more Horváth Gergely: Az élet természeti alapjainak védelmi rendszerei és az agrárgazdaság. In: Gellén Klára (ed.): Honori et virtuti. Ünnepi tanulmányok Bobvos Pál 65. születésnapjára, Iurisperitus Kiadó, Szeged, 2017., 158-174.

Soil protection⁸⁴ includes measures relating to the maintenance of the productivity of the land, which mainly represent environmental protection aspects and apply measures against environmentally harmful activities.

The basic objective of land protection⁸⁵ is agricultural, namely to keep arable land under agricultural use. The basic institutions of it are the utilization of land for other purposes, issues relating to land withdrawal and the regulation of land use obligation.

The intention to create the conditions for sustainable land use management and the natural conditions of production (soil, water, habitat communities) also appeared in agricultural legislation.⁸⁶ Ownership acquisition rights shall exist on condition that the acquiring party undertakes not to permit third-party use of the land, and to use the land himself, and in that context to fulfil the obligation of land use, and agrees not to use the land for other purposes for a period of five years from the time of acquisition.⁸⁷ The obligation of land use includes activities relating to the maintenance of soil fertility, but in the case of certain agricultural zoning such as vineyard or orchard it means use appropriate for the agricultural zoning.

In principle the ownership of land may be acquired by domestic natural persons and EU nationals. The Land Transaction Act introduced the concept of farmer, and only those people may take part at the domestic land markets, who meet the criteria.⁸⁸ In the case of land acquisition limit, the size of land, that may be acquired by a farmer and other than a farmer, is a close relative of the person transferring ownership right of the land, may not exceed 300

⁸⁴ In detail see Zsolt Tóth: Soil protection in the EU: the most important soil-related EU policies and legal sources. *Journal of Agricultural and Environmental Law*, 2017/22.; Németh Tamás – Tóth Gergely – Berényi Üveges Judit: A talajvédelem jelentősége és szabályozása. *Magyar tudomány*, 2016/10, 1184-1191.

⁸⁵ See more Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law. In: Smuk Péter (ed.): *The Transformation of the Hungarian Legal System 2010-2013*, Complex Wolters Kluwer – Széchenyi István University, Budapest, 2013., 359-366.

⁸⁶ See more Szilágyi János: Fenntartható környezet- és erőforrás-gazdálkodás. *KJK Kerszöv Jogi és Üzleti Kiadó Kft.*, Budapest, 2005., *Környezetvédelmi Kiskönyvtár* 14. 72-76.

⁸⁷ Act CXXII of 2013 on the Transaction of Agricultural and Forestry Land (hereinafter referred to as Land Transaction Act) 13.§ Section (1)

⁸⁸ Land Transaction Act 5.§ Point 7. In relation to the concept of farmer see: Olajos István: A termőföldek használata az erdő- és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján. In: Korom Ágoston (ed.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Nemzeti Közszolgálati Egyetem, Budapest, 2013., 124-125.; Raisz Anikó: Topical issues of the Hungarian land-transfer law Purchasing and renting agricultural land: Legal framework and practical problems. *CEDR Journal of Rural Law* 2017/1, 72.; Csilla Csák: The Regulation of Agricultural Land Ownership in Hungary after Land Moratorium. *Zbornik Radova Pravni Fakultet (Novi Sad)*, 2017., 1127-1128.; Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: i. m. 50-52.; Anikó Raisz: Topical issues of the Hungarian land-transfer law: Purchasing and renting agricultural land: Legal framework and practical problems. *CEDR Journal of Rural Law*, 2017/1, 69.

See more about the soft law provisions of the EU concerning land acquisition Szilágyi János Ede: Mezőgazdasági földjog: soft law a soft law-ban. Avagy a FAO önkéntes iránymutatása megváltoztathatja az uniós jog értelmezési kereteit földforgalmi kérdésekben?, *Iustum Aequum Salutare*, 2018/4, 72-75.; Szilágyi János Ede: Az európai jog és a magyar mezőgazdasági földek forgalmazásának szabályozása. *Agrár- és Környezetjog* 2017/23, 173-175.

ha⁸⁹.⁹⁰ Other than farmers, domestic natural persons and EU nationals may acquire the ownership of land if the size of the land does not exceed one hectare (earlier domestic natural persons could acquire the ownership of maximum 300 ha land⁹¹).

In the case of land transaction between living persons,⁹² the approval of the competent authority is a special regulatory instrument, as a public law tool, and we would highlight the pre-emption rights as a civil law tool. Firstly, we would like to discuss the pre-emption right. Apart from detailing the complicated ranking of holders of pre-emption rights, it can be stated, that the Hungarian State is the first in the ranking. The farmer using the land and the farmer has a preferred place in the ranking. Within the category of farmer using the land and the farmer, the local neighbour is the first, the local resident is the second, and on the third place stand those who has been residing or has his centre of agricultural operations for at least three years in a municipality from which administrative boundaries the land in question is located within 20 km. The purpose of the legislator with the ranking of holders of pre-emption rights is to eliminate the fragmented estate structure, to develop a well-functioning estate structure, to promote the land acquisition of people who can and are able to cultivate a land.⁹³

⁸⁹ About the exceedence of land acquisition limit see: Hegyes Péter: A földforgalmi törvény a gyakorlatban – avagy az utolsó öt oldal. In: Gellén Klára (ed.): *Honori et virtuti: Ünnepi tanulmányok Bobvos Pál 65. születésnapjára*, Iurisperitus Bt., Szeged, 2017., 116-118.

⁹⁰ According to the Land Transaction Act 5.§ Point 13. close relative shall mean spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings.

⁹¹ Csák Csilla: A termőföld tulajdonszerzés anyagi- és eljárásjogi korlátai. In: Csák Csilla (ed.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*. Novotni kiadó, Miskolc, 2010., 104-105.

⁹² See more: Erről lásd még: Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése. *Magyar Jog*, 2017/7-8, 410-424.; Szilágyi János Ede – Csák Csilla – Olajos István – Orosz Flóra: The topical situation and issues of agricultural law in Hungary. *CEDR Journal of Rural Law* 2019/5, 40-50.; Raisz Anikó: A magyar földforgalom szabályozásának aktuális kérdéseiről. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 2017/35, 434-443.; Szilágyi János Ede: Magyarország földjogi szabályozásának egyes aktuális kérdései. In: Szalma, József (ed.): *Magyar Tudomány Napja a Délvidéken 2017 - Migráció, környezetvédelem - társadalom és természet*, Vajdasági Magyar Tudományos Társaság, Újvidék, Szerbia, 2018, 182-196.

⁹³ About it see more Csák Csilla: Die ungarische Regulierung der Eigentums- und Nutzungsverhältnisse des Ackerbodens nach dem Beitritt zur Europäischen Union. *Journal of Agricultural and Environmental Law*, 2010/9, 20-31.; Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat* 2013/1-4, 12-17.; Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary. In: Roland Norer – Gottfried Holzer (ed.): *Agrarrecht Jahrbuch – 2013*, Neuer Wissenschaftlicher Verlag, Wien – Graz, 2013, 220-224.; Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitantes and their children in the agricultural enterprise in Hungary. *Journal of Agricultural and Environmental Law*, 2013/15, 52-57.; Kapronczai István: Az új földszabályozás hatása az agrárpolitikára. In: Korom Ágoston (ed.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Nemzeti Közszerkesztési Egyetem, Budapest, 2013., 79-92.; Kurucz Mihály: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről. *Geodézia és Kartográfia*, 2008/9, 13-22.; Prugberger Tamás: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához. *Kapu*, 2012/9-10, 62-65.; Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei. In: Korom Ágoston (ed.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Nemzeti Közszerkesztési Egyetem, Budapest, 2013., 110-111.; Vass János: A földtörvény módosítások margójára. In: Vass János (ed.): *Tanulmányok Dr. Domé Mária egyetemi tanár 70. születésnapjára*, ELTE-ÁJK, Budapest, 2003., 159-170.; Alvincz József: A „Földügyi törvénycsomag” jogszabályainak agrárgazdasági háttere, különös tekintettel az üzemszabályozásra. *Polgári*

Transactions in the case of land acquisition⁹⁴ can be classified into three groups in respect of approval of the competent authority. The first group includes the case of acquisition of ownership of land by sales contract, acquisition of ownership of land under other title creates the second group, and the third group consists of land acquisition for which the approval of the competent authority is not required.

The scope of the Land Transaction Act does not cover the acquisition of ownership of land by way of intestate succession, however, the act contains special rules for the acquisition of ownership of land by testamentary disposition. We consider that specific rules of land succession shall be adopted within the national legislation, on one hand to eliminate the fragmentation of estate structure, while in the case of using the general rules of succession for intestate succession lands may be fragmented easily, and the purpose of introducing sui general rules of land succession would be to hold the land as a unit. On the other hand it should be considered during the establishment of rules – which is not considered by the that general rules of land succession – that such person shall be the heir who is competent, has special skills and has practice in land cultivation, thus a proper farming would be done on the land. There are special rules for the acquisition of ownership of land by testamentary

Szemle, 2013/3-6.; Mikó Zoltán: A birtokpolitika megvalósulását segítő nemzeti jogi eszközök. In: Korom Ágoston (ed.): Az új magyar földforgalmi szabályozás az uniós jogban, Nemzeti Közszerzői Társaság, Budapest, 2013., 151-163.; Andréka Tamás: Birtokpolitikai távlatok a hazai mezőgazdaság versenyképességének szolgálatában. In: Csák Csilla (ed.): Az európai földszabályozás aktuális kihívásai. Novotni Kiadó, Miskolc, 2010, 7-19.

⁹⁴ About the analysis and its history see Csilla – Hornyák Zsófia: Az új földforgalmi törvényről. *Östermelő*, 2013/4, 7-10.; Csák Csilla – Prugberger Tamás: A termőföld és a mezőgazdasági termelési viszonyok korszerű rendezése. *Magyar Közigazgatás*, 1994/8, 489-497.; Holló Klaudia: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló T/7979. számú törvényjavaslat egyes rendelkezéseinek összehasonlító elemzése. *THEMIS*, 2013/3, 111-140.; Hornyák Zsófia: Einige neuralgische Punkte des neuen Grundstückverkehrsgesetzes. In: Stipta István (ed.): Miskolci Egyetem Doktoranduszok Fóruma: Állam- és Jogtudományi Kar szekciókiadványa, Miskolci Egyetem Tudományos szervezési és Nemzetközi Osztály, Miskolc, 2014., 117-121.; Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law. In: Smuk Péter (ed.): The Transformation of the Hungarian Legal System 2010-2013, Complex Wolters Kluwer – Széchenyi István University, Budapest, 2013., 359-366.; Kecskés László – Szécsényi László: A termőföldről szóló 1994. évi LV. törvény 6. §-a a nemzetközi jog és az EK-jog fényében. *Magyar Jog*, 1997/12, 721-729.; Novotni Zoltán: Az egyetemes és a magyar agrártulajdonjogi és használati viszonyok alakulásának vázlata. In: Prugberger Tamás (ed.): Az agrárjog alapelemeinek vázlata, Miskolci Egyetemi Kiadó, Miskolc, 1992., 30-104.; Olajos István: A termőföldről szóló törvény változásai a kormányváltások következtében: gazdasági eredményesség és politikai öncélúság. *Napi Jogász*, 2002/10, 13-17.; Olajos István: A termőföldről szóló törvény módosítása – avagy mi fér bele a száz napba?, *Napi Jogász*, 2002/8, 8-12.; Prugberger Tamás: A földjogi szabályozás megújításának egyes kérdései. *Állam és Igazgatás*, 1989/7, 609-617.; Prugberger Tamás: Dilemmák a termőföldtörvény módosítása körül. *Magyar Jog*, 1995/4, 232-234.; Raisz Anikó: Women in Hungarian Agriculture. In: Esther Muñoz Espada – Leticia Bourges (ed.): *Agricultura Familiar, Ministerio de Agricultura, Alimentación y Medio Ambiente, Madrid*, 125-142.; Tanka Endre: Történelmi alulnézet a magyar posztzocialista földviszonyok neoliberális diktátum szerinti átalakításáról. *Hitel*, 2013/január, 109-136.; Zsuhár András: A termőföldről szóló törvény módosításának problémái. *Gazdaság és Jog*, 2013/4, 23-24.; Olajos István: A földforgalmi jog felelősségi rendszerének magánjogi aspektusai. In: Menyhárd, Attila (ed.): 350 éves az Eötvös Loránd Tudományegyetem Állam és Jogtudományi Kara, ELTE Eötvös Kiadó, Budapest, 2018., 372-384.

disposition,⁹⁵ so in this case the special nature of land was taken into account during the establishment of regulation, and it would be worth to approach the rules of intestate succession to this.⁹⁶

A special type of cross-border acquisition⁹⁷ is land-grabbing⁹⁸ named in international literature, which is an extreme phenomenon of international land acquisition, and which can be translated in Hungarian as a “foreign land occupation”.⁹⁹ It essentially means large-scale cross-border leases or acquisitions of agricultural lands by private and state investors. In this process, certain countries and regions typically appear as investors, while others as target areas.¹⁰⁰ Considering Europe, the target area of land-grabbing mainly focuses on the Eastern European countries.¹⁰¹

In Hungary, official databases would appear to indicate that farmland grabbing is a statistically insignificant phenomenon. Between 2005 and 2006, foreigners bought only 700 ha of agricultural land, which was less than 0.2% of the total turnover. (This rises marginally when it comes to the buying of farmsteads by foreigners: between 1% and 1.5%.) However,

⁹⁵ See more Olajos István – Csák Csilla – Hornyák Zsófia: Az Alkotmánybíróság határozata a mezőgazdasági földek végintézkedés útján történő örökléséről. Jogesetek Magyarázata, 2018/1, 5-19.; Orosz Flóra: A termőföld mint nemzeti kincs alkotmányos védelme hazai és nemzetközi vonatkozásban. Publicationes Universitatis Miskolciensis Series Juridica et Politica, 2018/1, 178-191.

⁹⁶ More details see Hornyák Zsófia: A mezőgazdasági földek öröklése, Bíbor Kiadó, Miskolc, 2019.; Hornyák Zsófia: Richtungen für die Fortentwicklungen: Beerbung des Grundstückes, Agricultural and Environmental Law, 2018/25, 107-131.

⁹⁷ Cross-border acquisition plays a more and more important role in the ownership and/or the use of agricultural lands and holdings. Cross-border acquisition primarily means the situation in which citizens and legal entities of a country (hereinafter referred to as “foreigners “ or “investors “) gain the ownership or long-term use of an agricultural land situated in another country (hereinafter referred to as ‘target’ country or area). The goals of this acquisition can be various: (a) to produce agricultural products, (b) to speculate on the land market, (c) others, (d) the combination of points (a)-(c). In a wider sense, the situation in which foreigners establish legal entities in the target country and gain the lands of the target country may be regarded as cross-border acquisition as well. In the EU law, this interpretation of a cross-border acquisition could become quite difficult due to the forms of the European Cooperative Society (SCE) and the European Company (SE).). Otherwise, it is worth noticing that in the EU law, the ‘cross-border’ element with regard to land acquisitions has been typically assessed in the frame of preliminary ruling procedures.

⁹⁸ In 2009, the former Special Rapporteur of the UN on the right to food has determined the phenomenon as follows: „ Over the past three to four years, private investors and governments have shown a growing interest in the acquisition or long-term lease of large portions of arable land (above 1,000 ha) in a number of countries, mostly in the developing world. According to an estimate from the International Food Policy Research Institute (IFPRI), between 15 and 20 million hectares of farmland in developing countries has been the subject of transactions or negotiations involving foreign investors since 2006.” Nevertheless, the Special Rapporteur on the right to food mentioned that there are also target countries in Central Europe: Romania, Bulgaria, Lithuania (furthermore, in other non Member States countries such as in: Russia, Serbia, Ukraine). See UN General Assembly: A/HRC/13/33/Add.2. 5-6.

⁹⁹ See more about the definition of land grabbing in the Conclusion of Commission II CEDR Congress Potsdam 2015, part I. 2., which took a position in relation to the issue of land grabbing within the EU: „National rapporteurs of this CEDR Congress took place that inland land transfer is not considered part of land grabbing.” Published Szilágyi János Ede: Conclusions. Journal of Agricultural and Environmental Law, 2015/19, 92.

¹⁰⁰ János Ede Szilágyi: Conclusion... cit. 92.

¹⁰¹ About the actual details see <https://landmatrix.org/data/>; <https://landmatrix.org/data/by-target-country/?more=90>; <https://landmatrix.org/data/by-target-region/> (Downloaded: 26. 07. 2019.)

these official records do not take into account land acquired through the use of so-called “fraudulent contracts” (speculative land acquisition).¹⁰² When these are also taken into account, according to different sources, foreigners owned around 400,000 ha (about 6%) of agricultural land in 2008, rising to an estimated 1 million ha in 2013.¹⁰³

The scope of Act on Fraudulent Contracts¹⁰⁴ specifically serves the discovery and restriction of void contracts, clauses of contracts, other related transactions and procedures circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land. The public prosecutor may bring action for the annulment of such an illegal contract.

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More provisions of Land Transaction Act serve the prevention of land grabbing. The Act determines a) farmer status; b) land acquisition and possession limits; c) arable land ownership and usufruct may be acquired only upon approval of the competent authority; d) personal farming obligation – prevention of speculative land acquisition; e) ranking of holders of pre-emption and first refusal for lease rights; f) a paper-based document with certain security requirements is needed to legal transaction concerning arable land; g) agricultural administration body keeps an official public register of farmers, agricultural producer organizations, and centres of agricultural holdings; h)) limitation of acquisition of ownership or usage of arable land by legal persons with some exemptions^{105 106}.

¹⁰² Fraudulent contracts are illegal transactions aiming at evading the land acquisition rules), which are normally false transactions. They appeared numerously after the Act of 1994 on Arable Land, which excluded foreigners from land acquisition. See more Bányai Krisztina: A zsebszerződések ügyészi szemmel, Új magyar közigazgatás, 2014/1, 62-71.; Bányai Krisztina: A zsebszerződések elleni küzdelem új eszközei, Ügyészek lapja, 2013/6, 199-206.; Lányiné Toldi Judit: Harc a zsebszerződések ellen - közjogi korlátok és közjegyzői közreműködés a termőfölddel kapcsolatos jogügyletekben, Közjegyzők közlönye, 2013/2, 16-25.

¹⁰³ Sylvia Kay-Jonathan Peuch-Jennifer Franco: Extent of farmland grabbing in the EU. Brussels, European Union, 2015., 19.

¹⁰⁴ Act VII of 2014 on the discovery and restriction of transactions circumventing the statutory provisions limiting the acquisition of the ownership of land or the use of land

¹⁰⁵ The Land Transaction Act restrict not only the acquisition of the ownership of arable land and land use by foreign legal entities but by domestic legal entities – exemptions: the Hungarian State may acquire the ownership of arable land without restriction; a listed church, a mortgage loan company or the municipal government of the community may acquire only with restrictions – as well.

The aim of this restriction is to avoid the uncontrollable chain of ownership, which would be in contradiction with keeping the population preserving ability of the country, since it would be impossible to check land maximum and the other acquisition limits. See: Andréka Tamás – Olajos István: cit.

¹⁰⁶ Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó: cit. 48-50.

The above mentioned provisions efficiently serve the prevention of land grabbing. These provisions restrict not only the land acquisition by domestic but by third country natural persons and legal entities which limit foreign land occupation.