

# Tensions in land policy between EU-15 and the accession states of 2004

## *Tenze v oblasti půdní politiky mezi EU a novými členskými zeměmi EU v roce 2004*

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**Abstract:** The ownership of land has always been the important precondition for lasting socio-economic situation and the development of the country. Despite that, there is a process of learning going on in practically all the new member countries, which are still learning that productive ability of the agriculture depends in a big degree on the stability of ownership of land and its tranquil farming. Despite many fundamental and substantial differences, we can say that hitherto development in land law was tremendous. But it also follows that significant social and economic divergences have not made full liberalisation of the land market possible without “yes, but”.

**Key words:** land policy, land market, land law, selling of land to foreigners

**Abstrakt:** Vlastnictví půdy bylo vždy důležitým předpokladem pro trvalé sociálně ekonomické poměry a vývoj země. I přesto stále ještě prakticky všechny nové členské země prochází procesem poznávání, že produkční schopnost zemědělství v obzvláštní míře závisí na stabilitě vlastnictví půdy a na jejím nerušeném obhospodařování. Přes mnoho zásadních a podstatných rozdílů však lze konstatovat, že dosavadní vývoj v zemědělském právu byl ohromující. Je však také nasnadě, že závažné sociální a ekonomické divergence dosud neumožnily plnou liberalizaci trhu s půdou bez „ano, ale“.

**Klíčová slova:** půdní politika, trh s půdou, pozemkové právo, prodej půdy cizincům

## INTRODUCTION

There has been a very strong interest of foreigners in some areas including legally suspicious and even illegal deals with plots of land and real estate in recent years. Transitional phase required by new member countries (and, for other reasons, supported by old member countries of the EU) is basically understandable. The problems of this kind concern especially western Poland and western Czech border areas, western Hungarian komitats and also south Moravian border regions. It is also clear that restrictions and transitional phases are detrimental to the

investment climate. But there is also a common understanding that low prices of land in it do not make agricultural production attractive to farmers. It is the whole complex comprising cheap land, low labour costs, low construction costs and partially also advantageous prices of inputs.

In discussion on the situation on the land market in new member states of the EU, there are only seldom mentioned the consequences of rising land prices for companies that (de facto or as a consequence of law) are not owners but renters of their production plots. These could surely expect rising lease prices after the joining of the EU, albeit not immediately.

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## THE REFORMS BETWEEN THE WARS – STARTING POINT OF COLLECTIVISATION

When we speak about “restoration” of former practices in land law, the land reforms implemented in all the succession states of Austria-Hungary naturally deserve a special attention. In these countries, predomination of agricultural production was the biggest hurdle on their way to modern industrial societies. It is necessary to distinguish three categories of countries

- “fully industrialised” countries like Czechoslovakia (28% of agricultural population), and also Slovenia,
- “partially industrialised” countries like Hungary (54%) and Poland (65% of agricultural population),
- industrially “backward” countries like Romania (75%), Yugoslavia (79%) and Bulgaria (80% of agricultural population),

## COLLECTIVISATION AND CONSEQUENT DE-COLLECTIVISATION AFTER 1990

### Development of land estate law

With the political changes after the World War II, the disputes over land ownership and agricultural structure broke out in practically all countries of today’s “eastern block”. The epochal changes were brought over by the reforms in the first years after 1945. In the times of mass collectivisation (in individual countries up to 1960), the atmosphere in the individual production was fundamentally changed again. Nearly in all the countries, the private plots were socialised and they were farmed collectively and “under command”. The viability of the co-operatives did not depend on fertility of the land and the ability of farmers but on grants distributed in connection with fulfilment of plans.

### “The problematical potential” of political upheaval

The political, social and economic turnaround of 1989/1990 confronted agricultural policy in central Europe with a difficult decision. There were two possibilities:

- a) Sustaining relatively stronger big production structures and letting the gradual change of ownership relationship take roots in accordance with individual national social development; the idea being that

this way it will be possible to preserve advantages of big production in individual localities – the hope that is still actively kept alive and followed by some big enterprises in the border areas (e.g. in western Hungary) with 10 000 and more hectares.

- b) Adoption of land ownership structure predominant in Western Europe and at the same time to implement quick and “radical” restitution and privatisation to create civic relationship into the land ownership. The transitional phases of any kind were not supposed.

### *The problems of restitution processes*

The restitution processes were accompanied by all kinds of contradictions caused by fussy and confused rules and regulations, premature measures that run into numerous instances of speculations and other forms of “individual protection of own benefit”; cases like that were common in Hungary and Baltic states. Here are some of the more important ones:

- In many countries, there were not enough assets to get for restitution coupons; for that reason, the use of coupons focused on buying land in auction.
- The course of coupons went through temporal deep fall because of the lack of property to buy. People from cities and speculators were buying off coupons with the help of various schemes (for example faulty contracts) and obtained the cheap land this way.
- The process of privatisation led (partially) to the strong fragmentation of land ownership.
- Privatisation in itself does not mean that new owners at the same time obtain the necessary knowledge of farming. Private entrepreneurs also suffered from the shortage of capital, frequently caused by the lamentable paying morale of processing industry.
- In places where co-operatives lost their (collective) ownership of land, the enterprises were left in the

Table 1. Hungarian example of the distribution of land among land owning households (%)

Owned land (ha)	Land owning households	Area
Below 0.2	57.0	3.4
0.2 up to 1	22.4	7.5
1 up to 10	18.3	41.2
10 up to 50	2.1	29.4
50 and more	0.3	18.5
Total	100.0	100.0

Source: KSH (Central Statistical Office, Budapest) 1997

state of uncertainty concerning property rights, so the potentially modern big-production capacities are to large extent non-utilised so far.

- The agricultural production slumped, fertility of land went quickly down and the share of fallow land and neglected areas went up in practically every country, the extremes being Poland and Baltic states.

### *Land acquiring by foreigners*

Before transformation, it was hardly possible to speak about land market. In this sense, most transactions comprised buy-out of land from the members of co-operatives, who died without heirs, directly by the co-operative. The law also stipulated buy-outs of land ownership of external members of unified farmer's co-operative living in distant cities (mostly for symbolic compensation). The unity of ownership and using of land by farmer's co-operatives was to be preserved. With the exception of Poland, the ownership of land by foreigners was excluded. In Poland, there was although a compulsory duty from the beginning.

The fundamental and at the same time specific change in the Hungarian structure of land ownership was implemented by Acts 1987/I and 1989/XIX, which presumed:

- unlimited access of private persons to arable land
- the revocation of the duty to render land to co-operative and impossibility to reclaim it from the co-operative
- the divisibility of so far non-divisible ownership (up to 50%)
- possibility of purchase of real estate into private ownership also for agricultural physical persons and legal entities who can obtain permission of the Ministry of Finance under s.38 of the Act 1987/1.

This example was not followed by other countries and in Hungary itself it was revoked in the middle of 1994. The foreign capital was still waiting at the time. The lively interest in ownership of real estate and land was visible only after the real turn around after the first free democratic elections to parliament, when creation of market economy as the basis for legal system started. Thanks to that, foreigners could acquire land by various means: by restitution claims, in the form of officially permitted purchase of land – or by means of illegal contracts or buy-out of restitution coupons.

### *The main impacts on (big) enterprises*

*The creation of companies without land:* In the most new member states, the “physical persons”

are the ones legally authorised to own the land in the first place. The consequences of this fact can be quite dramatic; the underestimation of legal entities was the real reason for economical shake-up of most co-operatives. The real problems of co-operatives were not caused by disaffiliating of many members who exercised their right and got money for their share of divided assets but by standard procedure, when co-operatives were forced to rent plots of a few hundreds individual owners. The rented area is almost always between 0.5–5 hectares.

*Fragmentation of private ownership of land:* it is caused by parallel processes:

- the basic situation of returning property to private persons
- competition for the better pieces of land, which are happily rented to “better” new firms and to financially strong foreigners, so “local” companies are left with smaller and less attractive areas
- individual “effort for valorisation” by impoverished and mostly too old villagers who would like to do a good business with their plots of land at least once in a lifetime.

The importance of land law and land policy in the reforming states is in antagonistic relation with changing and persisting forces that brought over these main characteristics:

- dual structure of the land ownership (big enterprises – very small ones),
- the strong limits on mobility of land (exclusion of certain forms of enterprising based on the ownership of land, establishing of official prices, centralist and discriminatory land political control),
- numerous national specifics in ownership structure and land laws.

## **FOREIGNERS (AUSTRIANS) AS ACQUIRERS, HOLDERS AND OWNERS OF AGRICULTURAL LAND**

### **Motivation**

There are few reasons why it pays for farmers from the west to acquire land in the reform countries:

- the land is cheap
- the quality of land is good, production-climatic conditions are perfect, the spectrum of growed cultures is similar to the country of origin of the interested person
- there is cheap work force
- investment costs are relatively low

- accessibility is relatively good
- there are good possibilities of making use of excessive technical capacities (working and write tractors) owned by the enterprise
- in connection with accession to the EU, it can be after all counted on rise of the land prices albeit in future

### **The land market conditions in Central and Eastern Europe**

The price of land in the countries of central and Eastern Europe is roughly 10–20% of the level in near western countries, actually, in some countries it is even lower: 5–10%. For that reason, the temptation of land speculation is much bigger in the neighbouring candidate countries, especially in western Poland, western part of the Czech Republic, western Hungary and newly also in western Romania. Also, the prices of renting and leasing of agricultural land are substantially lower than in the border areas of neighbouring member countries of the EU. This is the reason for sometimes tremendous pressure on the land market caused by foreigners trying to lease or buy land.

On the other hand, the farmers in new member countries have only a minimal chance to buy land in the current economic situation especially because of the lasting widespread lack of capital. Sensible owners structure should be the base of competitive agricultural sector and permanently sustain it. That is why the one of the most important question at present is – because of the potentially “assertive” big enterprises – the question of future cost situation in case when the prices will rise at current the EU levels.

### **What was (and is) going on in eastern border areas of Austria?**

The interest in acquiring or leasing plots of land on the other side of the border which was caused by political changes generally lasts until now, even if the conditions are partly changed and partly cleared up.

In the area of Mülviertel/southern part of the Czech Republic, above standard interest in the possibility of acquiring or buying of land was not so far recorded. Founding a company that is recognised by the Czech government is the precondition for farming in the Czech Republic. Foreigners cannot own land (so far), but they can lease it. Remarkable is the case of moving away of farmer, who relocated before 2000 with

1 400 sheep and with the whole family from Mülviertel to about 1000 ha of land in Černá v Pošumaví in the southern Bohemian border area.

In the area *Waldviertel/southern Bohemia*, quite a lot went on in the realm of land trading already before 2000, but with only a small participation of Waldviertel farmers. Even bigger areas were purchased, namely by the groups of people that founded the companies, among them for example by people from Burgerland, buying the land in the vicinity of České Budějovice; some sources talk about enterprises in the size between 1 000 and 2 000 hectares. The interest of the regional farmers is slowly rising, especially when after the accession to the EU, it can be counted on compensations at about 100 EUR per hectare. In the cases of less extensive lease of land (from 50 to 100 ha), the rent was about 20–35 EUR (300–500 ATS) and 40–60 EUR today. There can be expected further rise of rents.

Between the Weinviertel and southern Moravia areas, the cross border interest in land ownership among smaller farmers is somewhat smaller than among big ones. Especially the latter do farming on leased plots of really remarkable size, which had been in the possession of these enterprises already before collectivisation (Alt Prerau, Hardegg estate, Stutenhof, Piatty-Funfkirchen).

One of the contact areas, which were for a longer time less attractive from the land market point of view, is the region between Weinviertel and western Slovakia. In the recent years, there was a heightened interest from the side of Austria in cross border land lease (for example for the growing of broccoli) and also Slovak private enterprises are signalling that they would like to take seat on the Austrian side and found companies there.

But the main area of cross-border land market activity is the area of Burgenland/western Hungary. Here, the acquiring of land and land leasing is doubtlessly very important. In the northern Burgerland, the interest in used areas in the neighbouring country is the biggest (real farmers with more time and maybe even bigger amount of money) and also the production here is more voluminous. There is a different situation in the areas with mixed enterprises, whose animal husbandry orientation limits strictly such ambitions.

After the consultation with district government in Burgenland, the number of participating farmers is estimated at “more than 1 000” (non-Austrian foreigners are not included). The Austrian farmers prefer rented areas between 100 and 400 ha. Further toward central and southern Burgenland, the share is diminishing. While the main motive behind this

activity remains costs savings (“economies of size”), the second motive – market advantage of the outside border area in the 5 km belt along the border lost significance after the accession of new countries to the EU. The production in the whole area of neighbouring countries is already part of “internal market” – and in connection with that the possibilities of placing production on the market widened. For the across border agricultural production, the much wider border belt (20–40 and even more) became interesting.

And finally, there is the lasting importance of Hungarian labour force for agriculture, especially for the big enterprises that were employing Hungarians only on both Austrian and Hungarian part of their enterprise.

The cross border dealing on the land market between southern Styria and north-eastern Slovenia is different: based on historical development of the land ownership after the Second World War, many Styrian farmers got back into their ownership land that was situated on the Slovenian territory. According to information of District Chamber of Radkersburg (from 2 000), there are around 120 people who own the land in Slovenia. Its area was altogether 220 ha in 1995, out of it 117 ha of forest. The landowners are registered in Slovenian land register. On the other hand, there are also some Slovenian double holders who own land in the Radkersburg area and in western Steyer Weistrase.

During the political upheaval in Yugoslavia and in Slovenia, there was an opportunity for former Carinthian *owners* of Slovenian forest plots to get back their former real estate (at least partially). Roughly 20 owners (mostly of forest land) took advantage of this possibility.

### **CROSS-BORDER LAND MARKET FROM THE POINT OF VIEW OF NEIGHBOURING COUNTRIES**

Agricultural administration (ministries, chambers, district and municipal advisers) in all the neighbouring countries, agricultural universities (Keszthely, Mosonmagyaróvár), research institutes (Prague, České Budějovice, Bratislava, Budapest) and others have been dealing with these problems for a long time. It was found out that there are clear “raised interest regions” and for that reason also regionally stronger land sell offs: western Hungary, western part of the Czech Republic, western Poland, and western Romania. The intensive zone of cross-border land trade goes around 70 km inland of the above-listed states (in case of Austria especially in western Hungary). The

agricultural producers, who were so far mostly active in the already mentioned 5 km belt along state borders with these new assurances, enlarge territorially their interests.

*The attitude of the citizens of neighbouring countries* regarding this development is obviously ambivalent, depending on whether their (personal) participation is possible or not. The fact is that only a few people with the right to dispose of their land can take advantage of this, while on the other hand, the main part of the population can be negatively impacted by the secondary (and rather negative) effects.

Seen objectively, the effects for domestic farmers are rather positive, if we take into account the inflow of technology, specific know-how and agricultural & economic knowledge that is generally connected with such cross-border land exchange. Despite that, the disadvantages are seen rather negatively:

- prices of land, leasing and real estate are by 50% overpriced from the national point of view, locals mostly cannot compete or the products usable as natural values are not good enough;
- many German speaking food processing industry owners have (presumably) better contacts to German speaking producers;
- processing plants “advertise” their capacities but shorten (presumably) supply contract with locals (e.g. Hungary) more than with foreigners;
- the presence of foreigners changes the structure of farming, leads to more extensive ways of farming on the arable land (oil seeds, wheat) that requires smaller labour force;
- the arable land is occasionally dealt with as a pure object of speculation (arable land, vineyards). Many Austrians once bought land for about 300 ATS per ha and then they rented it for 300 to 500 ATS a year.

It is also important to take into account the use of proceeds from selling or renting of land; if and how much of it is invested back into Hungarian agriculture is not known. The farmers and entrepreneurs surely do not sell the land easily; the main objective of the use of income is frequently determined by the basic needs of the standard of living.

### **THE CROSS-BORDER LAND MARKET FROM AUSTRIAN POINT OF VIEW**

The agricultural policy of the country does not see any problems in cross-border trade in agricultural land. The products that are potentially produced across the border do not go beyond the level of “border area

farming” but the new situation on internal market must be taken into account. The domestic production has a new competition in any case. The predominant view is that foreigners in neighbouring country did exactly what they were allowed – took advantage of the chances brought by the transitional period (with the possibility of acquiring land in Hungary until the middle of the year 1994), to create stronger position against forthcoming agricultural competition from the east.

There are still some bureaucratic hurdles to cross-border farming left. The import of the products is not limited by so called “order of entry on border check points” any more, there is not a requirement of the exact growing plan nor confirmation of neighbouring district municipality where the plot is situated, not even the preliminary estimation of expected yields; also the using of machines is freed from custom fees (in case of machinery made in third countries).

So far, looking for the opportunity on the land market by foreign applicants was doubtlessly attractive; today we must add that time brought over situations where also the leasers and sellers of plots of land find themselves on the legally shaky grounds. To these following notes:

- They get hooked on huge areas, which are too big for quite a lot of leaseholders; on the other hand, for the enterprises that want to be successful or get

a good start in neighbouring country, the area of land less than 300 ha is considered as “hardly lucrative” because only quantities from about 25 tons of harvest give reasonable economical results on the market. Also, the purchase of production means under certain value (load for one truck) does not pay off.

- In not a few areas – in the vicinity of German and Austrians borders – the real race is under way to get good land for rent. The most enticing are the prices of rent: it is impossible to get good arable land for 300 to 500 ATS (25 to 35 EUR) as in 2000 or 2001.

## CONCLUSIONS

The reform of ownership relations in the area of land ownership and land law has been under way for ten years. These processes have not been definitively finished yet, but they got very far on the way to create liberal land markets. The private transactions concerning land have been functioning in these countries for a considerable time (namely in the neighbouring countries of Austria and Germany) and the foreigners can become holders – and with some limitations also owners of land in these countries. The structure

Table 2. Expectations and perspectives on the land markets

<i>Poland</i>	<i>Hungary</i>	<i>Czech Republic</i>
<b>... regarding strengthening structures and occupation of land</b>		
consolidation of structure of small enterprises under the preservation of social factor of land	political preferences of family farms; planned consolidation based on “state power” (buy-out of fragmented property)	“practical preferences” given to bigger enterprises; companies with better land lobbying;
regional density of fallow areas limits the land market; land fund can function as land use regulator	land market, certain dynamic after the accession to the EU; interest of banks on land	original situation in industrial country different from agricultural countries; the Land Fund has influence on land market, special conditions are given
<b>... regarding basic costs and conditions of transfer</b>		
modest price increase; great regional differences; rents could increase with agricultural bonuses	land price below the real value of land; obligatory lease for big companies can change the cost regime	assumed price increase (MOEL-maximum); for companies as land owners without “consequences in competition”
derogation time limit is 12 years; order 918/83 EU (custom free cross-border production) valid on the boundary with Ukraine	derogation time limit (7 years) could be prolonged; planned control of its shortening for inland living foreigners; order VO 918/83 EU (custom free cross-border production) valid on the boundary with Romania	in terms of acquiring of land the “effectiveness” of cover persons will equal joint ventures with 100% foreign participation (CZ, H, PL)

of relations on the fields of land holding and land market are still characterized by significant imbalances. The most pressing goals in the area of land policy at present are:

- creation of all background documents for mortgage activities and parallel increase of the importance of mortgage lending for land purchase;
- the creation of facility, which can enable to acquire land for new settlers and new farmers
- prevention of falling apart of the ownership structures and goals based on profit; in most countries, there is a big share of agricultural land not used by their owners. It should be connected to planned changes of agricultural legislature with the goal of supporting coincidence of farming and ownership so the fragmentation of land ownership that occurred after land reform would be diminished
- strengthening of political aim of keeping the land in the “hands of farmers”; as example for the necessary (non discriminatory) control of dealing with land, Austrian commissions for transfer of land could serve (Table 2).

Border areas we are talking about could also produce much more than now and by that way compensate possible production deficits or better supply the “traditional” EU markets. There already exist first supplier relationships to “western” processing plants and storages.

Because of the considerable legislative and political efforts in the direction of “preventing sell off”, it can be said that for example Austrian system of control of the agricultural land market seems to be less ef-

fective than a political control would be. The control of transfer of agricultural land-by-land commissions, keeps land speculations from both outside and inside of the country in limits.

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