

THE EFFECT OF LAND ACQUISITION POLICY ON MARKET TRENDS IN HUNGARY

VPLYV POLITIKY NADOBÚDANIA PÔDY NA TRENDY NA TRHU V MAĎARSKU

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I. Introduction

After accession to the European Union, Hungary was allowed derogation from the provisions of the EU regulations on equal access for all EU citizens to the acquisition of agricultural land up until April 30, 2014. Therefore, this was also the deadline for establishing and reorganising the institutions and provisions of the acquisition, ownership and use of agricultural lands in such a manner that equal access is ensured and legal procedures were applicable to all EU citizens and legal entities. The introduction of completely new regulations on the ownership and trade of agricultural lands meant that it was essential to address a number of related issues, such as usage of lands, lease and rental, the maximum allowed farm size, etc; thus making transactions and ownership as transparent as possible, and attempt to minimise transactions with the sole purpose of speculation.

The complete overhaul of the relevant regulations meant that over the past 3 years, farmers as well as the authorities that are stakeholders in various aspects of land transactions and land usage had to face new challenges.

The current paper addresses two aspects of the emerging questions and issues related to this topic. The first section is an overview of the regulations on the acquisition of agricultural and forestry land, and their effect on market trends and processes. The second section is a summary of a number of selected practical aspects and problems of the regulations on the usage of agricultural lands.

II. Material and Methods

For the current analysis, the starting point was Act CXXII of 2013 on the trade of agricultural and forestry lands, and Act CCXII of 2013 laying down provisions and procedures in connection with its implementation, as well as other relevant direc-

Abstract (EN)

The aim of the present paper is to provide a comprehensive overview of the major regulations related to the acquisition and ownership of agricultural and forestry lands in Hungary and the effect of these regulations on the trends and changes in trade and ownership structure. The four pivotal points regarding policy-making have been the following: (1) maintaining national ownership of agricultural lands, (2) preventing the registration of ownership when the aim of the transaction is speculation, (3) maintaining the limitation and strict regulations on the possibilities for new acquisitions by corporately owned farms, (4) supporting the acquisition and usage of agricultural lands by privately and family owned farms. In order to achieve these aims, the government of Hungary decided upon a framework for agricultural land acquisition and ownership that integrates a number of rules and limitations already applied by land administration authorities in other EU member countries. However, their systematic and cumulative use raises major questions in the application of the relevant laws in real-life situations; in addition, there are serious concerns about their compatibility with EU principles on legislation and jurisdiction⁽¹⁾. This paper summarises typical situations to illustrate the controversies of the regulations related to agricultural land acquisition and use in Hungary.

(1) Korom (2009)

Abstrakt (SK)

Cieľom predkladaného príspevku je poskytnúť ucelený prehľad o hlavných právnych predpisoch týkajúcich sa nadobúdania a vlastníctva poľnohospodárskych a lesných pozemkov v Maďarsku a vplyvu týchto predpisov na trendy a zmeny v obchode a štruktúre vlastníctva. Pri tvorbe politik sa brali do úvahy štyri kľúčové body a to: (1) zachovanie národného vlastníctva poľnohospodárskych pozemkov, (2) zabránenie registrácii vlastníctva, ak cieľom transakcie je špekulácia, (3) zachovanie obmedzenia a prísnych predpisov pre prípad nadobudnutia pôdy farmami vo vlastníctve korporácií, (4) podpora získavania a využívania poľnohospodárskej pôdy súkromnými a rodinnými poľnohospodárskymi podnikmi. Na dosiahnutie týchto cieľov sa maďarská vláda rozhodla pre prijatie rámca upravujúceho získavanie a vlastníctvo poľnohospodárskej pôdy, ktorý zahŕňa niekoľko pravidiel a obmedzení, ktoré už uplatňovali pozemkové úrady v iných členských štátoch EÚ. Ich systematické a kumulatívne využívanie však vyvoláva zásadné otázky pri uplatňovaní príslušných zákonov v reálnych situáciách; okrem toho existujú vážne obavy z ich zlučiteľnosti so zásadami EÚ o legislatíve a súdnej právomoci. Tento dokument sumarizuje typické situácie, ktoré ilustrujú spory o predpisoch týkajúcich sa získavania a používania poľnohospodárskej pôdy v Maďarsku.

Keywords (EN)

pozemková politika, nediskriminačné nadobúdanie pozemkov, vlastníctvo a využívanie poľnohospodárskej pôdy

Kľúčové slová (SK)

pozemková politika, nediskriminačné nadobúdanie pozemkov, vlastníctvo a využívanie poľnohospodárskej pôdy

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tives and decrees.

For the impact study, reports published by banking and mortgage institutions in Hungary were considered, and we also analysed problematic cases as reported by affected farmers and representative associations in the agricultural sector that were directly related to the agricultural land ownership policies of the government.

III. Results and Discussion

When the basic principles of the new regulations affecting agricultural and forestry land use and ownership were announced in the spring of 2012, the market reacted instantly. It was evident that the government was aiming to control and regulate the process of land transactions very closely, and prevent the self-evident possibilities that would have been available for speculators, by cherry-picking practices and regulations that were in effect in other EU member countries in Western Europe.

The government considered so-called “pocket contracts” as the main factor in speculations affecting land acquisition and ownership structures. Up until May 2014, EU citizens were limited by regulations stipulating local residency for a minimum of 3 years, as well as certification in the field of agriculture. Therefore, the procedure invented to circumvent the regulations was the following: at the time of the transaction, a lease contract was drawn up between a Hungarian owner and an EU citizen, and a separate document registered the transaction or an option to purchase. This way, the transaction of ownership or an option was recorded in a contract; however, it was “left in the pocket”, i. e., it was not registered on the title deed. As land registry office procedures have set deadlines, such “pocket contracts” had no date of transaction written on them. The partners were speculating that after the 10-year moratorium on the ownership of land by foreigners, the discriminative regulations would be cancelled, and the more lenient and favourable regulations applicable to Hungarian citizens would also be extended to other EU citizens. However, the government chose an opposite method of ending discrimination: it tightened regulations on ownership and acquisition of agricultural lands for Hungarian citizens as well. Most importantly, a new requirement was a degree or certification in agriculture or farming, and registration as a farmer after relevant vocational training and practical experience. Since “pocket contracts” had been drawn up based on the technical requirements and regulations in effect before 2014, a number of formal requirements were also added, such as printing ownership transaction contracts on special, security watermarked paper, and stating the intent to work the farm by the owner himself, which made the previously drawn up contracts useless. In addition, in order to forcefully prevent the subsequent use of “pocket contracts” for speculative purposes, the Criminal Code also introduced the offence of “unlawful acquisition of agricultural and forestry land”⁽¹⁾.

The news of expected tightening of regulations resulted in a dramatic increase in land transactions. Up until April 2014, Hungarian citizens were allowed to purchase agricultural land

with the maximum value of 6000 golden crowns or 300 hectares even without registering as farmers. From May 2014 onward, however, there was a dramatic decrease in the number of prospective buyers. The number of registered farmers currently stands at around 150,000. The land ownership act allows all EU citizens ownership of a maximum of 1 hectare of land area; however, this size limitation includes and applies to previously purchased land as well as non-agricultural plot segments under the same topographical lot number. In addition, a number of stakeholders, one of them being the state of Hungary, have preemptive right to purchase agricultural lands when other prospective buyers are not registered farmers, which limits the chances of a successful transaction, at least from the point of view of the original buyer included in the “pocket contract”.

The outstanding number of transactions in the year 2016 was generated by the government-organised land acquisition program called “land for farmers”. This agenda meant a stark turning point in government policies: up until 2014, the aim had been to increase the land area owned by the state, which was leased to the farmers. The typical case was that lease contracts were drawn up for decades well under market prices, but then subsequently it was reversed and privatised in larger, consolidated plots.

The success of this policy was debatable: small and medium-sized family farms were unable to finance the expansion of their land area, even despite a heavily subsidised credit program targeted at them. Instead, the privatisation and large-scale sell-off of state-owned lands resulted in huge acquisitions by wealthy stakeholders and their family members. The current regulations of the land acquisition act are often criticised for their approach to acquisitions by family members. Up until 2014, the land area owned by a private citizen and his / her close family members in the vicinity of any given settlement was limited to 1000 hectares or a maximum of 25% of the total agricultural land area nearby. This limitation was completely omitted from the new legislation. Moreover, the new regulations allow the transaction of up to 300 hectares of agricultural land among close relatives; paving the way to amassing thousands of hectares of agricultural plots by having just one registered farmer in the family, and then transferring them to close relatives with a deed of gift.

Agricultural land ownership policies since 1994 have been consistent in limiting ownership by corporations; the reason being that the subsequent changes in owners or shareholders in the company may mean that non-citizens would be granted ownership of agricultural lands. There are currently no other EU members that make it practically impossible for legal entities to purchase and own agricultural lands; moreover, according to the European Commission, this goes against the basic principles of the EU.

It is interesting to read closely the relevant chapters of the land act. Paragraph 6 stipulates that agricultural lands may be purchased by natural persons and legal entities, as regulated by law. However, later on, paragraph 11 goes on to list legal entities as the state of Hungary, local and municipal governments, registered religious groups, and finally, with significant restrictions in place, banks and mortgage or credit institutions. The European Commission has also been critical of the regulations stipulating that in case of transition or changes of

⁽¹⁾ Bányai (2016)

Table 1: Statistics on the trade of agricultural lands in Hungary (2012–2017)

Year	Number of changes in ownership (transactions) [1000]	Area involved in transactions [1000 hectares]	Average price [EUR/ hectares*]	Turnover [%**]
2012	128	136.0	2172.1	1.90
2013	123	126.0	2360.7	1.70
2014	80	100.5	2514.5	1.38
2015	44	46.7	3254.9	0.64
2016	56	165.5	3587.2	2.26
2017	39	50.0	3881.5	0.69

Source: Calculations based on estimates by OTP and FHB banks

* calculations based on the exchange rate on 1st July of each year respectively

** percentage of agricultural land involved in transactions out of total agricultural land area

Table 2: The use of arable lands in Hungary (2003–2017) [1000 hectares]

Year	Individually / family owned	Owned by corporations	Other	Total
2003	1821.1	1804.8	889.6	4515.5
2010	2096.5	1840.0	385.6	4322.1
2013	2125.5	1812.4	387.8	4325.7
2014	2171.4	1779.8	380.0	4331.3
2015	2247.0	1722.9	361.9	4331.7
2016	2357.5	1673.9	301.0	4332.4
2017	2527.0	1645.3	162.0	4334.3

Source: Calculations based on data by the Central Statistical Office (KSH)

ownership by corporations owning agricultural lands legally acquired before 1994 (currently amounting to a total of approximately 140,000 hectares), their dispositional authority will be severely limited.⁽²⁾

Regarding regulations about the right to use agricultural lands, the aim of the current policies is to reduce corporate ownership from 50% in 2003 to around 20%, and favour family / privately owned farms. In order to promote this aim, private citizens have more favourable conditions and subsidised access to lease contracts.

In addition, there is a limit on the maximum allowed agricultural land owned by each farmer. The land act stipulates that family and individually owned farms as well as corporately owned farms may expand up until 1200 hectares, with some notable allowances made for registered seed crop farms and livestock farms with a recorded minimum number of livestock.⁽³⁾

There are two favourable opportunities left open for corporately owned farms. Up to 1800 hectares, corporations are allowed to lease agricultural land from their own members or shareholders. Also, corporations that entered into contracts before the land act came into effect in 2014 are allowed to keep farming those lands up until the end of the lease contracts, even if it means that they exceed the new maximum agricul-

Table 3: The number of agricultural farms owned by individuals / families and corporations, by farm size [2013–2016]

SIZE [hectares]	Individually/family owned		Owned by corporations	
	2013	2016	2013	2016
Under 1 hectare	299790	209712	200	288
1.00–9.99	101534	100899	1339	1889
10.00–99.99	40146	40922	2443	2627
100.00–299.99	4347	5048	1227	1334
300.00–999.99	411	671	1041	1177
1000.00–2499.99	3	4	477	467
Over 2500 hectares	–	–	112	61

Source: Calculations based on data by the Central Statistical Office (KSH)

tural land ownership limitation.

Therefore, it was a logical and wise step on the part of corporations to extend their existing lease contracts for a further 5–10 years (maximum of 20 years) before the new land act came into effect in 2014, but in many cases, these leases will be up soon. However, government-backed lease contracts on state owned lands for 50 years will come in handy for all those corporations that were favoured for such contracts.

However, the new regulations on subsidies that came into effect in 2015 also severely limit the profitability of extended farm sizes for corporations. According to EU regulations⁽⁴⁾, direct payments to large farms of over 150,000 euros are liable to a minimum of 5% absorption. Hungary has a unique regulation: 100% of the EU-supplied area-based direct payments are withheld by the government. So, in practice this means that over 1200 hectares, corporations are only entitled to other supplementary payments, such as greening farm subsidies. The relevant EU directive stipulates that the absorbed subsidy may be reduced by the wages and social security contributions of the employees; however, the Hungarian regulations do not allow for this possibility.

Under the new land act, corporately owned farms came under an umbrella term, “agricultural cooperatives”, irrespective of their specific ownership or management structure. There are two main groups of cooperatives. In the first group, the corpo-

⁽²⁾ Olajos, Andréka (2017)

⁽³⁾ Csák, Kocsis, Raisz (2015)

⁽⁴⁾ Reg. no. 1307/2013

Table 4: Average price and average rental fee of arable lands in Hungary [2012–2017]

Year	Average price of arable lands [EUR/ha*]	Average rental fee of arable lands [EUR/ha*]	Average rental fee/average price	
			[%]	Coefficient
2012	2388,6	133,9	5,6	17,9
2013	2731,7	137,9	5,1	19,6
2014	3031,6	137,8	4,5	22,2
2015	3307,1	145,3	4,4	22,7
2016	4116,3	156,1	3,8	26,3
2017	4622,9	184,2	4,0	25,1

Source: Calculations based on data by the Central Statistical Office (KSH)

* calculations based on the exchange rate on 1st July of each year respectively

ration has been active for more than 3 years, its chief activity and source of income is agriculture or forestry, over half of its annual net revenue is from agricultural activity, and at least one manager or owner is certified in the field of agriculture or has over 3 years of vocational experience. Corporations created after the land act came into effect are in the second group. They exclude corporations formed by change of organisational structure, de-merger, or legal succession. In order to prevent speculations based on de-mergers, newly formed corporations are obliged to consider land areas owned by their predecessors for 5 years for their calculations on allowed land area. This means that corporations that attempted to overcome the limitation on maximum land area by de-mergers or change in organisational structure were trapped. However, if they had already had spin-offs for over 3 years (originally because of taxation purposes), many of those were eligible for registration as agricultural corporations.⁽⁵⁾

The land act stipulates that lease contracts are subject to the same procedure as acquisitions (public announcement, official approval, registration), only with shorter deadlines and a simplified procedure. There are, however, several ways to circumvent certain administrative limitations or restrictions, such as metayage and sharecropping, which prevent those with first right of refusal from access. In addition, the land act has sections dedicated to internal lease contracts between the owners, the employees and the corporation itself, as they are also exempt from public announcement of the lease option and approval by the land authorities. These lease contracts are typically for a minimum of 5 years and well over market prices; therefore, the owners or shareholders of the corporation and their family members as well as their employees who may also be proprietors can easily generate extra revenue, tax free, disguised as "rental fee".

However, there are more disadvantages than advantages of these contracts in the case of large farm sizes. For instance, these internally leased plots are registered as part of the total land area, so area-based direct payments may be lost. Internal lease contracts may in other cases add significant "wiggle

room" in cases when the owner of the land terminates the lease contract by mutual consent, reclaims the land for farming, and then outsources it back to the corporation. In such a case, it is not the corporation that officially farms the land, and the owner is allowed to farm his own plot even without registration or certification. He loses out on rental fees as a source of income; however, on the other hand, he may apply for area-based direct payments that would have been lost if the corporation exceeds the maximum land area.

Determining the rental fee in lease contracts has always been difficult and at times controversial. Due to regulations and business trends, it is easy to foresee an increasing trend; therefore, owners have always been reluctant to sign contracts with fixed prices for extended periods of time. Previously, rental fees were open to modifications only with mutual consent, with an amendment of the lease contract. Lessees have obviously been reluctant to amend the original contracts to their disadvantage, they preferred to postpone that until the end of the contract, and then agree on increased rental fees for the renewed contract. Subsequently, owners were reluctant to sign lease contracts for periods over 5 years. Five-year rental contracts have become the norm, because this is the minimum period of time required for lessors to be exempt from being subject to income tax on rents. In order to promote lessors signing lease contracts for longer periods, the "land for farmers" program that came into effect alongside the land act in 2014, the modifications allow for special procedures for changing rental fees in the case of lease contracts exceeding 10 years. In such cases, both the lessor and the lessee may initiate a procedure to modify rental fees after a period of 5 years, even forcing a judicial procedure to modify (increase or decrease) rental fees to the locally acceptable market rates, based on valuation by a certified land evaluation expert.

It is to be noted though that the procedure to modify rental fees is a two-edged sword. In the past 15 years, it has been self-evident to expect increasing rental fees. However, it is expected that area-based direct payments will be significantly amended and their conditions tightened around the year 2020, which may open the gate to a wave of forcing lessees to decrease rental fees by judicial procedure.

According to the legislative intent, rental fee modification procedures may also be applied with retroactive effect, i. e., it also applied to contracts that were signed before the relevant act came into effect. Therefore, the regulation may also apply when there is a change of ownership on the part of the lessor, and state-owned land is at stake. The state typically signed lease contracts for up to 50 years for a fraction of the market prices, which the new owners may challenge in court.

The land act allows for the possibility of unilaterally terminating a contract at the end of the economic year if negotiations on rental fee modifications were unsuccessful, in cases when the new, market-based rental fee would differ at least by 20% (in either direction) from the original rental fee laid down in the contract. The parties also have a possibility to request a court procedure at any time to modify rental fees, and in cases when the experts appointed by court determine a market-based fee that is at least 20% different from the rental fee laid down in the contract, the contract may also be terminated after a final and binding court ruling.

⁽⁵⁾ Orlovits (2015)

IV. Conclusion

1. The Court of Justice of the European Union has ruled in several cases that generally speaking, restrictions on land transactions are acceptable, under certain circumstances. Such acceptable restrictions being a previous registration and certification procedure, a limit on maximum land size, and preemptive rights to purchase by stakeholders such as local residents, owners of the neighbouring plots, or co-owners. The Court has also ruled that it is not discriminative when a member state significantly tightens its regulations on land acquisition and ownership, as long as the new requirements apply equally both to its own citizens and other EU citizens, even in cases when the latter face significant hardships in conforming to such requirements, as long as they are justifiable and proportionate. EU laws and regulations do not allow for local residency as a requirement for land purchase; however, Court precedents also show that it is often ruled unjustifiable and disproportionate to require owners to farm their own lands, to limit the ownership by corporations, or demand certification and vocational training as a prerequisite to land purchase or ownership.
2. Even though the new land act aims to prevent and minimise abuses and speculative procedures, we consider that this intent has led to overcomplicated regulations. Other, simpler methods and approaches could have been used to achieve the same legislative aims.
3. In our opinion, promoting and strengthening individually and family owned farms may only be successful in the future if maximum allowed land size is regulated appropriately. The currently lax regulations allowing for ownership by close family members and for amassing plots in the vicinity of a settlement result in large areas of land concentrated in the ownership of wealthy oligarch families, which makes other farmers in the area overly vulnerable and disadvantaged.
4. The government has so far failed to establish a kind of legal entity that is allowed to engage in agricultural activities as well as own agricultural land in the form of a family enterprise, in line with the currently prevalent policies on land ownership structure.
5. In order to promote its aims to transform land ownership structure in Hungary, the government has relied excessively on the framework determined by the common agricultural policy of the EU (such as withholding area-based direct payments and refusing to allow for deduction of expenses). In our opinion, it is hazardous to build a new land ownership structure on the possibilities and subsidies provided by the EU, which may be subject to unilateral changes at any time.

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