

The liberalization of land markets

The aim of the European Union is political union through economic means. A critical issue is the applicant's transition to a full market economy and whether this has developed sufficiently for membership.

A market economy requires that prices should normally be set by market forces rather than by government. It implies that there should be private ownership of the means of production, with individuals and companies deciding how these are to be used, and a legal system that enables property rights to be enforced. There must be competitive markets and well-developed private capital markets in which finance can be raised and collateral taken in the event of default. A functioning market economy requires an efficient property market in which real estate can be purchased, sold, rented and used as collateral for loans. This includes agricultural land and natural resources as well as residential, commercial and industrial land and buildings. Otherwise, there can be no free movement of labour or enterprises or free mobility of capital. Restrictions on the ownership or renting of real estate limit the movement of people, businesses and investment.

Chapter 4 of the *acquis* is concerned with the free movement of capital. Restrictions on the movement of capital among Member States (and in many cases with countries outside the EU) are prohibited. The 1988 directive that established free mobility of capital does, however, contain a safeguard clause that enables a Member State, with the consent of the Commission, to restrict real estate transactions in the event of disruption of its monetary and exchange rate policies by short-term capital movements of exceptional magnitude.

Free movement of capital is not just about allowing free transfers of investment among Member States by individuals and companies or the free convertibility of currencies. It also means the removal of restrictions on the ownership of assets and liabilities by individuals and corporate bodies from elsewhere in the EU. It implies that they must be able to acquire or rent all forms of real estate, including agricultural land and secondary residences. Freedom of enterprise means that farm businesses from one part of the EU must be able to relocate or acquire farm businesses elsewhere in the EU. Individuals and companies from elsewhere in the EU cannot be prevented from owning land and thereby be obliged to rent land, in order to establish their business in the country. Nor can discriminatory restrictions be placed on the amount of land that can be owned or rented as these undermine essential elements of the EU's internal market, including the free mobility of labour and investment and freedom of establishment of enterprises. The only restrictions that could be tolerated are ones that apply equally in a non-discriminatory manner to citizens of, and enterprises registered in, the country applying them, and not just to those from other EU countries. In any case, such restrictions are likely to receive approval only in very exceptional circumstances.

Among the countries in Central and Eastern Europe that joined the EU in 2004 (10) and 2007 (2) that had restrictions on foreign ownership of land were Estonia, Hungary, Lithuania and Romania. The countries of the Western Balkans will also have to remove

restrictions if they are to become EU members. The lifting of restrictions on foreign companies acquiring agricultural land also implies that any barriers to domestic companies purchasing land must also end. For example, a Hungarian Act of 1994 limited the ownership of arable land by private individuals to 300 hectares in size.

At issue is whether the applicant country's property markets, including its agricultural land markets, are adequately prepared for accession - in particular, whether the processes of privatization and restitution are complete, whether there is adequate protection of property rights, and whether the legal framework for the buying and renting of real estate and the infrastructure to support the property market (such as land registration systems) are adequately developed. Table 1 illustrates the types of concerns that were raised by the EU about the efficiency of the land markets in Central and Eastern Europe.

The EU does not have an absolute standard for determining whether a country has a functioning market economy, particularly in relation to real estate markets, which largely operate outside the *acquis*. It can also be argued that the EU's monitoring and evaluation of the real estate markets of applicant countries have not been consistent or measured against precise criteria, probably because they are largely outside the *acquis*. This could mean that countries may become members of the EU before their land market problems have been fully resolved, even though they have brought about the formal legal changes required by the *acquis*. They may, therefore, have further work to do on improving the functioning of their land markets after EU accession.

TABLE 1
Examples of the efficiency problems encountered in relation to rural land markets

Country	Date of report	Efficiency problems
All countries	2000–02	Lack of security of tenure in agricultural leases and lack of ability by tenants to offer potential lenders collateral, preventing the restructuring of agriculture into more viable units and depressing agricultural land values. Low take-up rate of SAPARD funds for land improvement and reparation. Need to conclude the process of agricultural land reform.
Bulgaria	2002	Low number of transactions, low prices of agricultural land, fragmented plots, shared ownership, insufficient documentation of ownership in land registries and slow resolution of legal disputes, resulting in unused farmland and impediments to increasing productivity.
Estonia	2001	Delays in privatizing unclaimed arable and forest lands.
Lithuania	2002	Slow pace at which outstanding land restitution issues are being resolved.
Poland	2002	Need to improve land registration so as to facilitate the use of property as collateral for loans. Uncertainties about restitution.

Romania	2002–03	Slow pace of restitution. Need to complete cadastre reform, registration of property titles in the land book offices and issuing of land titles. Development of a policy for agricultural land consolidation.
---------	---------	---

Sources: Commission of the European Communities, 2001; 2002a, p. 42; 2002b, pp. 17, 19; 2002c, p. 30; 2002d, p. 37; 2002e, pp. 39–40; 2002f, p. 69; 2003, p. 10; Estonian Government, 2001, Ch. 1; Pouliquen, 2001.

As the sudden liberalization of the rural land markets of countries joining the EU could be extremely destabilizing, an area in which transitional arrangements have been permitted after entry has been rural land markets. It should be noted that these issues do not just apply to the countries of Central and Eastern Europe. Cyprus was permitted to retain restrictions on the ownership of secondary residences by non-residents for a five-year period after accession. Malta has been permitted to retain indefinitely its controls over the acquisition of secondary residences by those who have not been resident for five years, in recognition of the limited land on the island available for residential development. Nor do such derogations just apply to the new EU Member States. Denmark has the right to maintain its controls over the acquisition of second homes, provided that EU nationals residing in Denmark have the same rights as Danish nationals. In the Åland islands of Finland, there are restrictions on who can acquire and hold real estate, but these apply to natural and legal persons from all Member States and do not give special rights to those from Finland. The key to all of these restrictions is that they cannot confer any special rights and privileges on the citizens or legal persons of one Member State over those from elsewhere in the EU. Controls over land markets may be necessary in certain circumstances, but they cannot be discriminatory.

The Accession Treaties governing the entry of the ten Central and Eastern European countries to the EU in 2004 and two countries in 2007 provide for three types of transitional arrangements with respect to real estate markets.

- Secondary residences. The Czech Republic, Hungary and Poland have been permitted to retain restrictions on the ownership of secondary residences by EU nationals who are non-residents, and by EU companies neither established in the country nor having a branch or representative agency, for five years from accession. This arrangement will also apply to Bulgaria and Romania when they join the EU in 2007.

- Agricultural land and forests. All the Central and Eastern European countries that joined the EU in 2004, except Slovenia, have been granted transition periods during which they can restrict the ability of non-residents to acquire agricultural land and forests. The Czech Republic, Estonia, Hungary, Latvia, Lithuania and Slovakia were granted seven-year transition periods during which they are able to maintain restrictions on non-resident EU nationals and companies from other EU Member States acquiring agricultural land and forests. This transitional arrangement will also apply to Bulgaria and Romania when they join the EU in 2007. Hungary is also allowed to maintain

restrictions on the acquisition of agricultural land and forests by legal persons during this transition period. Poland has been granted a 12-year transitional period. EU nationals who have established themselves as self-employed farmers in these countries are excluded from the restrictions. There is to be a review of all the transitional arrangements within three years of accession and they can be terminated or shortened by the EU. If there are serious disturbances in the agricultural land markets of the countries, or a threat of serious disturbance, the transition periods can be extended for up to a further three years.

- Use of the general economic safeguard clause. Slovenia has not been granted any specific real estate transitional arrangements, but is permitted to use the general economic safeguard clause in the Accession Treaty to protect its real estate market for up to seven years after accession. Under Article 37, the safeguard clause permits a new Member State to apply for authorization to take protective measures in the event of serious difficulties that are liable to persist and “could bring about serious deterioration in the economic situation of a given area”. The general safeguard clause normally applies for three years after accession, but its duration has been extended for Slovenia's real estate market.

Appendix 1 sets out the transitional arrangements in more detail on a country-by-country basis (see below).

Although most of the Central and Eastern European countries have been granted transitional exemptions from opening up their rural markets to purchasers from other Member States, eventually rural land and secondary residential markets will become accessible. The transitional periods are relatively short and, as they come to an end, the countries are likely to experience an influx of Western European farming businesses buying or renting farmland, attracted by lower production costs and land prices. They may also be attracted by historically lower levels of herbicide, pesticide and artificial fertilizer use, which reduce the costs of conversion to organic farming. It can be expected that farmhouses and housing for rural workers, as well as housing in coastal and scenic areas, border regions and areas with winter or water sports, fishing or hunting, will be purchased as secondary residences by citizens from elsewhere in the EU or by companies and investors for tourist use. Many Western European countries experience similar pressures on residential property in rural areas, which can result in local workers being priced out of housing markets. The eventual granting of rights to foreign companies to acquire agricultural land implies that any remaining obstacles to their domestic companies purchasing agricultural land must be lifted. The phenomenon of larger farming businesses being obliged to rent land on a short-term basis because they cannot own it will disappear. The use of devices such as options to purchase at a future date and the registering of purchases in the names of nominees may mean that these changes will be anticipated towards the end of the transition periods, even though the interests acquired may not be officially registered or appear in official statistics. There is some limited evidence of such practices already occurring.