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The Contract on the Transfer of Agricultural Holdings[1]

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Abstract. At the end of 2021, the Hungarian Parliament adopted Act CXLIII of 2021 on the Transfer of Agricultural Holdings, which entered into force on 1 January 2023. The Act codified the agricultural holding transfer contract, defining its concept, essential elements, and types. This article presents and describes the rules of this new type of contract. The article also discusses the theories developed in Hungarian case law and jurisprudence on the classification of the contract. The author attempts to classify the new type of contract within the existing categories of contracts. The author points out that the practical application of the new type of contract as an atypical contract outside the Civil Code may raise problems, especially in view of the combined application of the provisions of several different legal norms and the mixed nature of the contract. Problems may arise from the fact that, in addition to the statutory provisions on business transfer contracts, the provisions of the Civil Code, the Act on the Turnover of Agricultural Land, and the Family Farm Act also apply.

Keywords: transfer of agricultural holdings, contract, Hungarian Civil Code, atypical contracts, categories of contracts, classification of contracts, farm, family farm, farmer

1. Introduction

On 14 December 2021, the National Assembly adopted Act CXLIII of 2021 on the Transfer of Agricultural Holdings, which entered into force on 1 January 2023. The Act codified the contract on the transfer of agricultural holdings, defining its concept and its essential elements and types. It is likely that this new contract will be interpreted and explained in many different ways by many people. On our part, the following is an attempt to situate the contract on the transfer of agricultural

1 The study was carried out in the framework of the Hungarian Ministry of Justice's programmes to improve the quality of legal education.

holdings in the system of contracts, seeking an answer to the question of whether we are dealing with a new typical or atypical contract, or perhaps a contract with mixed content. The starting point for this is, of course, freedom of type as a non-codified sub-principle of Hungarian contract law. Contractual freedom is one of the most important of the contract principles, according to which the will of the subjects is not legally bound. One of the sub-principles of this principle is the freedom of type, according to which the parties are free to decide whether to conclude a contract named in the Civil Code or other legislation or a contract that may be unnamed or mixed.[2] This freedom of the parties may be limited only exceptionally, primarily in the public interest, in particular in the case of contracts creating legal persons.[3] We share György Bíró's view that the relevance of typification is that it assists the legal practitioner in correctly classifying the content of the contract, thus helping legislation and law enforcement.[4] Typing also plays an important role in determining the correct legal consequences.[5]

In the following, we will first look at the aspects, principles, and typification methods according to which types of contracts, categories and groups of categories have been developed by jurisprudence from the first third of the 20th century until today and to what extent legislation and judicial practice are or have been in line with them. Following a sketch of the attempts at typification, an overview is provided of the driving forces behind the emergence of the contract on the transfer of agricultural holdings as a newly codified type of contract and of the normative regulation of this new type of contract. In summary, we draw our conclusions as to where the new type of contract can be placed in the system of civil law and contract law in force and what are its main characteristics. In this connection, we wish to present a kind of characteristic of the new type of contract, thus contributing to the interpretation and smooth practical application of the new body of law as far as possible.

2. Trends in the Typology of Contracts

In our daily lives, we come across a wide variety of types and contents of contracts. In order to find our way through the maze of these contracts, not only legislation but also jurisprudence has very quickly recognized the need to set up 'signposts' to help us navigate between the different types of contract. Already in Roman law, the typification of contracts played an important role, where contracts concluded according to certain formalities were at first considered to

2 Bíró 1997. 190.
3 Bíró 1997. 194.
4 Bíró 2000. 39.
5 Bíró 1997. 194.

be legally binding only, and typification was known as the particular formality.[6] Later, in the period of the development of capitalist law, a significant change was observed: on the one hand, several types of contracts still known in Roman law were no longer regulated, and, on the other hand, the content of the remaining types of contracts changed, and new types were created.[7]

Hungarian private law literature of the first third of the 20th century also dealt with the typification of contracts, distinguishing between innominate (atypical) contracts, which are characterized by the fact that none of the traditional services are included but are directed to a specific service according to the contractual provisions of the parties, and mixed contracts, 'the content of which is the combination of several of the typical services included in the institutional types of contract in a different way from the traditional forms'.[8] Villányi also distinguishes contracts where 'the party undertakes as an ancillary service an obligation the content of which is a typical service of another type of contract'.[9] Villányi characterizes as a separate category contracts where the service 'serves the purpose of another contract'[10] and contracts concluded by agreement of the parties where the nature of the obligation is uncertain at the time of the conclusion of the contract and will only become clear in the future,[11] and by 'aggregation of contracts' Villányi means the inclusion of several separate contracts on the basis of a common element.[12] Villányi also points out that an obligation may arise in the case of a combination of contractual and non-contractual obligations.[13]

Villányi based his system of contract typification on the work of the German author H. Hoeniger (*Die gemischten Verträge in ihren Grundformen*, 1910), distinguishing between typical elements of the contract and elements which are incidental to the nature of the transaction.[14] By mixed contracts of a pure type, Villányi means contracts 'in which the typical elements of one category of statutory contracts are linked to atypical elements of another contract or contracts'.[15] By mixed contracts of a pure type, Villányi means contracts 'in which the typical elements of one category of statutory contracts are linked to atypical elements of another contract or contracts'. Villányi further distinguishes within mixed contracts of a pure type the situation where the non-typical element was already included in the contract at the outset from the situation where it was only subsequently introduced into the legal relationship, by mixed contract being

6 Harmathy 1980. 1589.
7 Harmathy 1980. 1591.
8 Villányi 1942. 2.
9 Villányi 1942. 2.
10 Villányi 1942. 2.
11 Villányi 1942. 3.
12 Villányi 1942. 3.
13 Villányi 1942. 3.
14 Villányi 1942. 4.
15 Villányi 1942. 4.

understood the former.[16] Villányi classifies as mixed-type mixed contracts those contracts whose 'content is a combination of typical factual elements of different contracts'.[17] Villányi points out that subgroups can also be distinguished within this category according to the way in which the contractual services are linked and the content of their services, where the linkage of services can be: (i) synallagmatic form, where the service is opposed by an equivalent service; (ii) corporate form, where the services are linked only indirectly; (iii) free form, where the services are not linked at all.[18] Villányi (based on Hoeniger) distinguishes between formal and material type-mixing, the former meaning the combination of different forms of connection, the latter the mixing of service contents.[19] Among the mixed type of mixed contracts, Villányi distinguishes mixed company contracts, by which he means contracts where each party undertakes to provide different types of services, contracts where the same contracting party is asked to provide different services, and so-called dual-type contracts, where 'two different typical services are in a relationship of value and consideration'.[20] Furthermore, Villányi treats as a separate category contracts with a formal mixture of services, where there is a mixture of interrelated forms of services, typically including a contract for consideration mixed with a contract of gift.[21]

Villányi also summarizes the different theories developed in the legal literature regarding the separation of mixed contracts from mixed 'pure' contract types, pointing out that (i) according to the absorption theory, the essential service of the contract is identical to the essential service of a historically established contract type and can be classified as one of the traditional contract types,[22] and (ii) according to the combination theory, 'mixed facts must be matched by mixed legal consequences'.[23] (iii) The creation theory focuses on an independent judicial assessment of the purpose of the contract and the interests of the parties.[24] (iv) The author distinguishes mixed contracts where absorption, combinatorial, and creative principles are alternately applied.[25]

The theories summarized by Villányi are also presented by Lajos Vékás in his seminal work on the contract system, pointing out that in the legal literature there are serious debates about mixed and atypical contracts, focusing on the general issues of contract typification and the 'legal consequences of the mixing

16 Villányi 1942. 4.
17 Villányi 1942. 4.
18 Villányi 1942. 5.
19 Villányi 1942. 5.
20 Villányi 1942. 6.
21 Villányi 1942. 6–7.
22 Villányi 1942. p. 7.
23 Villányi 1942. 8.
24 Villányi 1942. 9.
25 Villányi 1942. 10.

of type elements in life'.[26] These theories are often referred to in recent Hungarian private law literature.[27] In examining contract types, Vékás concludes that the essence of contract types can be grasped by 'starting from the legal theoretic insight that considers particularity as a specific conceptual element determining the concrete structure of the world of legal reflection'.[28] Vékás stresses that the main types of contract known in civil law reflect traditional forms, which is also a 'scientific type'.[29] Vékás emphasizes the high degree of generalization in typification from the scientific point of view, which can be advantageous for 'contract systematization, above all, for the systematization of codes, and very useful for the development of the didactics of contract law, but not a problem in the practice of law enforcement'.[30] In relation to the basic types of contract, Vékás stresses that 'the scientifically elaborated types have been given normative content and legal character in too direct a form, in their scientific generality'.[31] Vékás also stresses that the specific rules of contract types focus on transactions based on the person of the entrepreneur of free-enterprise capitalism or on private property, and concludes that transactions which are not only not regulated by a specific law but which correspond in their main characteristics to the characteristics of a type regulated by a specific law, but which 'in their concrete essence cannot be subject to the essential features and therefore to the rules of that type, are also considered atypical contracts.'[32] Vékás points out that contract typification is made more difficult by several factors such as the emergence of standard contracts and 'the proliferation of subforms of certain types of contracts'.[33] Vékás sees the biggest problem in the area of typification in the difficulty of finding the right proportions, i.e. defining the type both too broadly and too narrowly can be difficult, and in his view, a new type of contract should only be recognized if the creation of a sub-type cannot adequately assist judicial practice.[34] In conclusion, however, Vékás argues that the typification of contracts is necessary in all continental legal systems.[35]

Attila Harmathy draws attention to the dissolution of traditional types of contracts, primarily with the emergence of mass production, the continuous change in the nature of contractual services, and the economic content.[36]

26 Vékás 1977. 90–92.
27 Papp 2009a. 3; Papp 2011. 101; Papp 2009b. 14; Papp 2019. 83; Auer–Balog–Jenovai–Juhász–Papp–Strihó–Szeghő 2015. 48–49.
28 Vékás 1977. 151.
29 Vékás 1977. 152.
30 Vékás 1977. 152–153.
31 Vékás 1977. 153.
32 Vékás 1977. 155.
33 Vékás 1977. 155.
34 Vékás 1977. 156.
35 Vékás 1977. 156.
36 Harmathy 1980. 1592.

Harmathy focuses on the development of commerce in the evolution of contract law based on the Roman legal tradition and points out that, as the link between types of contract is loosened, 'the rules on the types of contract are increasingly designed to assist the parties'.[37] In relation to the trends of the second half of the 20th century, Harmathy points out that detailed statutory regulation is becoming more and more common, beyond the traditional civil law codes, and that general contract terms and mixed contracts are coming to the fore, where the development of metropolitan life and technology, as well as the increasing influence of the state in the conclusion of contracts, are influencing typification.[38] Harmathy sees the justification for increasingly detailed regulation of certain types of contracts in the fact that, on the one hand, this could remedy the crisis situation, and, on the other hand, there is increasing state intervention in economic policy, increasing the amount of binding rules in contract law.[39] Harmathy also points out that the boundaries between contract types are blurring, with the number and importance of sub-types increasing and the nature of the service, the economic element, becoming the most important grouping factor.[40] Harmathy concludes that there is no generally accepted grouping of the types of contracts, and, for his part, he considered the grouping according to contracts for consideration and free contracts to be of fundamental importance.[41]

The recent Hungarian private law literature also typifies according to different criteria;[42] thus György Bíró distinguishes, on the basis of formal criteria, between so-called atypical contracts, which are named in the Civil Code or other legislation, and those which are regulated in legislation but not named and those which are not regulated by legislation but only occur in practice,[43] also distinguishing between consensual and real contracts according to the legal effects of the contract, *dare*, *facere*, *nonfacere*, and *praestrae* contracts according to the content of the contract, free contracts and contracts for consideration according to the value relations, polarized and unipolar contracts according to the positions of interest, title-based and abstract contracts, and transactions which create and complicate a duty, mass and individual transactions. According to Bíró's classification, we can speak of preliminary and definitive contracts, as well as bilateral or multilateral contracts, or contracts concluded orally, by implication or in writing, and contracts involving a single service or a continuous service, the latter emphasizing the continuous, recurrent, or intermittent nature of the obligation, although he also considers that

37 Harmathy 1980. 1593.
38 Harmathy 1980. 1594.
39 Harmathy 1980. 1594.
40 Harmathy 1980. 1595.
41 Harmathy 1980. 1599.
42 Szudoczky 2000. 57–62; Miskolczi Bodnár 1997. 3–11; Osváth 2006. 457–467.
43 Bíró 1997. 195.

the typology is only relative.[44] He also stresses that the primary consideration is the qualification of the content of the contracts.[45]

In Bíró's view, the essence of typification is to form groups on the basis of identical criteria and to separate them by emphasizing the differences, stating that the task of typification is 'to orient the parties to the contract, as a constitutional rule of freedom of contract, which tolerates exceptions, in the elaboration of a sufficiently deep, clear, easily analysable and classifiable contract'.[46] Regarding the role of normative rules on types of contracts, Bíró stresses that they 'provide a framework for derogations from the common rules and a model set of contracts that are most frequently applied'.[47] Bíró also stresses that for all types of contracts, a distinction can be made between elements that cannot be disregarded (*essentialia negotii*), elements that can be disregarded (*naturalia negotii*) and elements that are not essential but can be made essential (*accidentalia negotii*).[48] According to Bíró, there is no principle of classification along which all contracts can be grouped, but the conduct of the principal service provider is the focus of the analysis.[49] Bíró considers it important to reflect the different levels of abstraction in the legal regulation of individual contracts such as the general provisions of the Private Code, the common rules of obligations, the general rules applicable to contracts, and, finally, the fixing of the characteristics of the basic types of contracts as families of types, which may be accompanied by specific rules for certain contract subtypes.[50] As an important development trend, Bíró points out the increasing assertion of the free will of the parties and the reduction of binding regulations in the regulation of certain types of contracts.[51]

Tekla Papp, in her assessment of the emergence of so-called atypical contracts outside the Civil Code at the end of the 20th century, highlights the following factors in the background: the mass increase in commercial activity and business-like management, the emergence of new types of contracts, the emergence of new contract techniques, and the tendency towards standardization.[52] Tekla Papp describes atypical contracts according to different aspects, distinguishing the following attributes: the absence of a Hungarian name, the lack of a Hungarian version in the Civil Code, the role of foreign practice and legislative patterns and domestic customs in the drafting of the rules, codification typically at the level of a statute or government regulation, the influence of European legal unification, the

44 Bíró 1997. 197.
45 Bíró 1997. 198.
46 Bíró 2000. 40.
47 Bíró 2000. 40.
48 Bíró 2000. 40.
49 Bíró 2000. 41.
50 Bíró 2000. 42.
51 Bíró 2000. 44.
52 Papp 2009a. 3.

possibility of concluding contracts with any content, the preference for written form, the appearance of general terms and conditions and blanket contracts, the existence of a business organization at one or both poles, the existence of a long-term market relationship, and the existence of a durable legal relationship.[53]

Tekla Papp also refers to mixed contracts (*contractus mixtus*), by which she means contracts involving several named contractual services and within which she distinguishes three subgroups such as the mixed type contract, where elements of other contracts are mixed in such a way that they cannot be established, from which contract the provision in question derives, the type-combination contract, where elements of other contracts are separable in the new contract, and the contract for a wholly specific service, which, apart from the specific service, does not otherwise differ from the contract provided for in the Civil Code – contract.[54]

Tekla Papp concludes that atypical contracts cannot be classified in any of the sub-categories of mixed contracts because, in her view, atypical contracts are a sui generis group,[55] i.e. in her view, the range of atypical contracts is both more and different in nature from the group of mixed contracts.[56] Tekla Papp does not classify innominate contracts as atypical contracts, characterizing them as 'agreements' in that they do not have a separate name, are less widespread, and lack specific exceptional normative regulation.[57]

Tekla Papp, examining the judicial practice, came to the conclusion that the judicature approaches atypical contracts primarily in a result-oriented manner, where it primarily examines the will of the parties, the business and economic objective to be achieved, and the specific characteristics of the service contracted.[58] As regards atypical contracts, Papp stresses that the number of atypical contracts is constantly growing, while pseudo-atypical contracts can also be distinguished alongside mixed and atypical contracts,[59] which may appear to be atypical contracts by their name and content but in reality are either mixed contracts or named contracts (such as distributorship contracts).[60] This is due to changes in social and economic circumstances, in that new types of agreements need a certain 'crystallization' period, after which they can be classified as atypical contracts.[61] Tekla Papp also draws attention to the fact that in the context of mixed contracts, there is also a 'mixing' of branches of law, which means that

53 Papp 2009a. 3; Papp 2011. 97–98; Dudás–Papp 2003. 44–45; Auer–Balog–Jenovai–Juhász–Papp–Strihó–Szeghő 2015. 37–39.
54 Papp 2009a; Papp 2011. 10; Dudás–Papp 2003. 5.
55 Papp 2009b. 12.
56 Papp 2009a. 3; Papp 2011. 11.
57 Papp 2009a. 2; Papp 2011. 11.
58 Papp 2009a. 5; Papp 2011. 11-15; Auer–Balog–Jenovai–Juhász–Papp–Strihó–Szeghő 2015. 46.
59 Papp 2009b. 23; Papp 2019. 48; Auer–Balog–Jenovai–Juhász–Papp–Strihó–Szeghő 2015. 59; Papp 2011. 12.
60 Papp 2009a. 8–9; Dudás–Papp 2003. 11.
61 Papp 2009a. 6.

the provisions of several branches of law apply to the same contract.[62] The author concludes that it is not the nomenclature or vocabulary used by the parties that is of importance for the type of contract but the actual conceptual elements and the content that must be given decisive importance.[63] She also points out that from the early 1990s until a few years after the turn of the millennium, judicial practice considered as atypical all contracts that were not regulated in the Civil Code, and after the turn of the millennium, judicial practice adopted the typification of contracts in the legal literature.[64] Finally, it should also be mentioned that Tekla Papp distinguishes between autonomous and non-autonomous contract types within atypical contracts,[65] the former being contracts that are independent of other legal relationships or activities, and the latter being contracts that are based on another legal relationship or activity.[66] Tekla Papp also distinguishes between atypical contracts according to whether they differ from the contracts regulated by the Civil Code in terms of their ancillary or essential features and also according to whether the atypical contract in question is regulated by a legal norm or not.[67]

Ágnes Juhász primarily distinguishes between named contracts (including typical and atypical contracts) and non-named contracts, stating that within named contracts the distinction between typical and atypical contracts is based on whether the contract in question is named in the Civil Code.[68] Juhász also points out, however, that the contracts named in the Civil Code are rarely found in practice in a 'completely clear-cut form' but rather in a mixture of contracts and mixed contracts, which blurs the boundaries of the basic types of contracts.[69] Based on an examination of the content of the contracts, Ágnes Juhász distinguishes between 'typical-atypical' contracts, which are not regulated by the Civil Code but by other legislation, and the group of contracts which are not regulated by legislation at all.[70] With regard to the codification of certain atypical contracts in the Civil Code, Juhász points out the underlying driving forces (focusing on franchise contracts), the change of economic relations, and the process of unification.[71]

Tekla Papp's monograph on atypical contracts, which deals in detail with the issues of contract typology, the classification of atypical contracts, and the appearance of atypical contracts in various legal acts and in judicial practice, should not be left out of the presentation.[72] Tekla Papp, in her monograph, also considers

62 Papp 2009a. 6.
63 Papp 2011. 15.
64 Papp 2011. 11.
65 Papp 2009b. 16.
66 Papp 2009a. 6.
67 Papp 2009a. 6.
68 Juhász 2012. 68.
69 Juhász 2012. 68.
70 Juhász 2012. 70–71.
71 Juhász 2012. 73.
72 Papp 2019.

the contracts named in the Civil Code, Part Three of Book Six, as typical contracts, while the group of contracts outside these are considered atypical contracts.[73] In this context, the author stresses that even a contract named in a procedural law (e.g. the joint litigation contract named in Act CXXX of 2016) can be included in the scope of atypical contracts.[74] The author's summary work refers to contracts covering a special legal transaction governing a non-permanent legal relationship, which appear in his previous articles under the title 'agreement', as 'de facto innominat contractus'.[75] The author also refers to an approach in the international legal literature that focuses on bilateral and multilateral contractual relationships, distinguishing groups such as chain contracts, network contracts, umbrella or framework agreements, and affiliated contracts.[76] The author also mentions a new category, which he calls a group of contracts, in which there are independent contracts of equal rank.[77] In this context, the author mentions that complex contracts have also appeared in Hungary and that affiliated contracts can also be found, mainly as a result of the implementation of EU legislation with a consumer protection approach,[78] while pointing out the lack of legal literature on multilateral contractual relations.[79] The monograph also reflects the distinction between independent and dependent contract types within atypical contracts;[80] however, the author distinguishes each atypical contract from the others on the basis of certain characteristics such as the nature of the regulation of the contract, its function, content, connection with a particular branch of law, or its unclaimed or indirect object.[81] Finally, Papp's monograph reflects the attitude of judicial practice towards atypical contracts,[82] as well as the attitude of the legislature towards such atypical contracts.[83]

3. Legal Regime of the Contract on the Transfer of Agricultural Holdings

As mentioned in the introduction, Act CXLIII of 2021 contains basic provisions on a new type of contract, the contract on the transfer of agricultural holdings. The scope of the Act covers the transfer of the agricultural holding of a farmer and a

73 Papp 2019. 43–44.
74 Papp 2019. 45.
75 Papp 2019. 47.
76 Papp 2019. 52.
77 Papp 2019. 53.
78 Papp 2019. 54.
79 Papp 2019. 56.
80 Papp 2019. 78.
81 Papp 2019. 80.
82 Papp 2019. 81–82.
83 Papp 2019. 83–86.

self-employed person engaged in agricultural, forestry, and ancillary activities.[84] The preamble of the Act stresses that the farm and forestry activities carried out by family members, through the joint use of their resources and the results of their work, is a unique set of assets, the transfer of which to the next generation is a priority for the legislator, taking into account economic efficiency and viability, as well as the balanced income of farmers.[85] The ministerial explanatory memorandum of the Act stresses that it is essential to facilitate the generational transition of the agricultural sector and to promote generational renewal of the agricultural sector, to which the contract on the transfers of agricultural holdings contributes, whereby, in order to continue agricultural and forestry activities, or as a result of such activities, an individual asset is created which is of greater value than the sum of the individual assets and which is otherwise separate from the private assets of the farmers.[86] The ministerial explanatory memorandum sees the need for a separate type of contract in the specific rules for the transfer of agricultural and forestry land or in specific rules due to the complexity of the elements that make up the economy.[87]

The following is a brief overview of the concept and the most important elements of the contract, with the understanding that the provisions of the Civil Code also apply to the contract on the transfer of agricultural holdings, in addition to the *lex specialis* rules contained in the separate law,[88] i.e. the Parts One and Two of Book Six of the Civil Code, as well as the provisions on sale, gift, maintenance, and life annuity contracts as background rules, are also applicable to the contract on transfer of agricultural holdings.

The concept of a contract on the transfer of agricultural holdings is defined in a complex manner, but basically in a method typical of the types of contracts regulated by the Civil Code, i.e. by specifying the parties to the contract and their main obligations. The law states that under the contract on the transfer of agricultural holdings (i) the transferor is obliged to transfer ownership of the agricultural holding, the transferee is obliged to pay the purchase price and take possession of the agricultural holding (agricultural holding transfer contract of sale), (ii) the transferor is obliged to transfer ownership of the agricultural holding free of charge, and the transferee is obliged to take possession of the agricultural holding (the agricultural holding transfer contract of gift), and (iii) the transferee is obliged to transfer the agricultural holding, or the person designated by the transferor to provide for the care and maintenance of the holding according to the circumstances and needs of the transferee until the death of the transferee or the person designated by the transferor (the agricultural holding transfer

84 Act CXLIII of 2021, Article 1.
85 Act CXLIII of 2021, Preamble.
86 Act CXLIII of 2021, Ministerial Explanatory Memorandum, General Reasons.
87 Act CXLIII of 2021, Ministerial Explanatory Memorandum, General Reasons.
88 Act CXLIII of 2021, Article 3 Paragraph (2).

maintenance contract), the transferor is obliged to transfer ownership of the agricultural holding, or (iv) the transferee is obliged to provide a specified sum of money or other fungible item on a recurring basis until the death of the transferor, the transferor is obliged to transfer ownership of the agricultural holding (the agricultural holding transfer life annuity contract).[89] This means that an agricultural holding transfer contract can be concluded on the basis of the provisions of the four types of contracts regulated by the Civil Code.[90] However, it is also possible for the parties to agree that the use of the land is transferred by the transferor to the transferee on the basis of Act CXXII of 2013 on leasehold or freehold land use, in the case of forests on the basis of the titles specified in Act CCXII of 2013, in which case there is an obligation on the part of the transferor to transfer the use of the land and an obligation on the part of the transferee to pay a fee or a rent (except for the use of the land as a favour).[91]

The law also allows the parties to agree that, on the one hand, the rules of a contract containing elements of transfer of property (sale, gift, maintenance, or life annuity) will be mixed with the rules of a contract of use, with the proviso that it must be clearly distinguished which contractual provisions will govern each element of the holding.[92]

Examining the elements of the contract, we can primarily conclude that the contract can only be concluded between specific parties defined by law and for a specific indirect object (the agricultural holding), with the result that we are basically dealing with a dare, property-transfer type of contract, where the main obligation of the party providing the material service is to transfer ownership of the farm as a set of things. This may be supplemented by elements of a use-type contract.

According to the law, the contract is concluded between the transferor and the transferee. A transferor may only be a farmer who has reached the retirement age or will reach it within 5 years of the conclusion of the contract or a self-employed person engaged in farming or forestry who (i) has been engaged in farming, forestry, or ancillary activities in his own name and at his own risk for at least 10 years and has a proven turnover from these activities, (ii) has been registered in the land use register for at least 5 years as a land user of more than three quarters of the area of land used for agriculture or forestry as defined in the farm transfer contract or has been registered in the forestry register for at least 5 years as a forest manager or is the owner of a business company registered as such.[93]

The transferee may be a farmer who is at least 10 years younger than the transferor, who is under 50 years of age, who is a self-employed farmer or a

89 Act CXLIII of 2021, Article 3 Paragraph (2).
90 Act CXLIII of 2021, Ministerial Explanatory Memorandum, Explanatory Memorandum to Article 3.
91 Act CXLIII of 2021, Article 3 Paragraph (3).
92 Act CXLIII of 2021, Article 3 Paragraph (4).
93 Act CXLIII of 2021, Article 2 point b).

self-employed person engaged in farming or forestry, who meets the statutory requirements for operating the agricultural holding to be transferred and who (i) is related to the transferor by family ties as defined in the Act on Family Farms or[94] (ii) has been employed or has had other employment relationships[95] with the transferor for at least 7 years.[96]

The legal definition therefore establishes several criteria for the parties, the primary one being that a farmer or self-employed person who has reached or is close to retirement age should enter into a contract with a person who can take over the economic activity already carried out by the transferor and who is younger in age than the transferor and has been previously in contact with him or her, either in a relationship of dependency or in a relationship of employment.

With regard to the parties, it follows from the wording of the law that the qualities that the parties must have are laid down in the law by means of a congruent regulation so that persons who do not meet the definition laid down in the law cannot conclude this type of contract, i.e. the new type of contract, the contract on the transfer of agricultural holdings. At the same time, the legislator excludes the possibility for the transferee to have more than one party to the contract at the same time, stipulating that the transferee can only be one person.[97] Also on the side of the transferee, a further special condition is that the transferee must be related to the transferor (chain of relatives). According to the law on family farms, a chain of relatives is defined as a group of natural persons who are closely related to each other (Civil Code Book 8 Article 1, Paragraph (1) point 1 such as spouse, lineal relative, adopted, step and foster child, adoptive, step and foster parent, and sibling), as well as relatives and direct relatives of these persons. Although this is not explicitly referred to in the Family Farms Act, it is presumed that the term 'relative' is used in the Civil Code 8 Article 1, Paragraph (1) point 2, in addition to the close relative, the life partner, the spouse of a relative in the same line, the spouse's relative in the same line and the spouse's brother or sister, or the brother's spouse, should be understood to mean the life partner, the spouse of a relative in the same line, the spouse's relative in the same line and the spouse's brother or sister, or the brother's spouse.[98] The transferor can be a farmer or a self-employed person, which follows from the rule defining the scope of the law.[99]

As an indirect object of the contract, the agricultural holding is defined in the law in such a way that the definition actually lists certain property elements for

94 Act CXXIII of 2020.
95 Employment as a salaried employee, activity based on works contract or a contract of assignment, activity as a member of a commercial or civil law partnership or sole proprietorship, and activity as a self-employed person (Act CXLIII of 2021, Article 2 point d).
96 Act CXLIII of 2021, Article 2 point c).
97 Act CXLIII of 2021, Article 3 Paragraph (6).
98 Act CXXIII of 2020, Article 2 point b).
99 Act CXLIII of 2021, Article 1.

the operation of the farm such as agricultural, forestry and other land, including farms, owned or used by the transferor, real or personal property and rights in rem necessary for the pursuit of such an activity, as well as shares in the assets of a business company, cooperative shares or interests in forestry associations related to such an activity, and other rights and obligations relating to all these assets.[100] From the definition of the agricultural holding, it can therefore be concluded that an aggregate of things may constitute the indirect object of the contract, i.e. a mass of property which appears in the contract as a unit of turnover. A contract on the transfer of the agricultural holding can therefore also be described as a single contract for the transfer of all the various items of property necessary for the operation of the farm and owned by the transferor.

The legislator emphasizes the definitive nature of the contract by means of a specific normative provision, which is reflected in the rule that the transferor may not, after the conclusion of the contract, engage in any new activity on the transferred holding, nor exercise any rights or obligations of forestry (except the right to benefit); this activity, registered in the food chain information system, must be deleted, and the transferor may only request to be re-registered in the information system or in the register of forest holders if the contract is terminated for specific reasons defined by law (termination by a court or by one of the parties by notice of termination) or if, following the death of the transferee, the transferor acquires ownership of the agricultural and forestry land forming part of the holding as the transferee's heir or acquires the right to use the land in question.[101] According to the minister's explanatory memorandum, the basic aim of the contract on the transfer of agricultural holding must be to ensure that the transferor ceases his activity and does not restart farming and forestry.[102] If the holding includes shares in a company, neither the statutory right of pre-emption nor the right of pre-emption provided for in the articles of association may be applied to the transfer of such shares.[103]

The law lays down an essential formality when it provides that a contract on the transfer of an agricultural holding is valid only if it is in the form of a public deed or a private deed countersigned by a lawyer.[104]

The contract on the transfer of agricultural holding contains a number of provisions, in line with the land turnover regulations, which are also reflected in the provisions relating to the ownership, possession and use of agricultural and forestry land, and the collection of benefits, as follows:

100 Act CXLIII of 2021, Article 2 point a).
101 Act CXLIII of 2021, Article 4 Paragraph (1) and (2).
102 Ministerial Explanatory Memorandum to Act CXLIII of 2021, Explanatory Memorandum to Article 4.
103 Act CXLIII of 2021, Article 4 Paragraph (3).
104 Act CXLIII of 2021, Article 3 Paragraph (5).

– In the event of termination of the contract by the court, the parties must settle and restore the original situation or, if this is not possible, settle for the services already provided.[105]

– In the event of termination of the contract, the transferee may take away the fixtures and fittings which he or she has installed.[106]

– The transferor is obliged to pay to the transferee, in the case of the development of the holding through investment, the part of the holding's profits not yet recovered, and the transferee is entitled to the holding's profits.[107]

– In the case of a transfer of ownership of the land, the transferor must make declarations under the Act on the turnover of agricultural land (e.g. that the use of the land will not be transferred to another person, the land will be used by the landowner, the landowner will fulfil his/her obligation to use the land, and he/she will not use the land for any other purpose for a period of five years),[108] and, in the case of a transfer of the right to use the land, the transferor must make declarations under the Act on the turnover of agricultural land (e.g. declarations concerning the non-assignment of the use of the land to another person, the use of the land by the landowner, the obligation to use the land)[109] and other commitments,[110] and, in the case of a transfer of land ownership or a contract of use involving the use of land for a specific purpose or other obligations, s/he must also undertake to fulfil the specific obligations.[111]

– The transferor must be deleted from both the register of farmers and the register of agricultural producer organizations and agricultural holding centres (where he can only be re-registered if the transferee dies before the transferor and the transferor acquires ownership or the right to use the land for agricultural and forestry purposes as the transferee's heir).[112]

– In the case of a transfer of use, the provisions of the Act on the turnover of agricultural land and Act CCXII of 2013 on the longest duration of the contract (possibly for an indefinite period) also apply in this context,[113] and after the expiry of the duration of the contract for the use of land, the transferor is obliged to conclude a new contract with the transferee (or a third party) for the transfer of the use of the land.[114]

– The rules of the Act on the turnover of agricultural land concerning the maximum acquisition of land and the maximum possession of land shall be

105 Act CXLIII of 2021, Article 5 Paragraph (1) and (2).
106 Act CXLIII of 2021, Article 5 Paragraph (3).
107 Act CXLIII of 2021, Article 5 Paragraph (4).
108 Act CXXII of 2013, Article 13 Paragraph (1).
109 Act CXXII of 2013, Article 42 Paragraph (1).
110 Act CXLIII of 2021, Article 6 Paragraph (1).
111 Act CXLIII of 2021, Article 6 Paragraph (2).
112 Act CXLIII of 2021, Article 6 Paragraph (3).
113 Act CXLIII of 2021, Article 6 Paragraph (4).
114 Act CXLIII of 2021, Article 6 Paragraph (5).

applied mutatis mutandis to the date of acquisition.[115] If this land acquisition or possession maximum is exceeded, the contract becomes impossible according to the law, which results in the termination of the contract under the Civil Code.[116]

As regards the rights and obligations of the contracting parties, i.e. the content of the contract, the law provides a detailed definition, listing the mandatory elements that must form part of the contract. These are the following:

– the rights and obligations of the parties according to the nature of the contract;

– the precise definition of the elements of the holding;

– a list of the civil law contracts relating to the elements of the holding (showing that the transferee is aware of the rights and obligations arising from them);

– the authorizations to carry on the activity (certifying that the transferee is aware of the rights and obligations arising therefrom);

– pending procedures for aid under Act XVII of 2007;

– applications for aid from European Union funds submitted and not yet decided and the deeds of establishment of the aid relationships established (certifying that the transferee has acknowledged and accepted the rights and obligations arising therefrom);

– the provisions necessary to ensure the agricultural holding transfer process in the case of joint management of the parties, the duration of cooperation, and the date of transfer of each element;

– other elements required by law.[117]

In our view, the list is not exhaustive, the parties may agree on other matters, but the elements listed in the law must be included in the transfer contract in any case, as a consequence of the legislative purpose.

If the contract on the transfer of an agricultural holding is concluded with a specific character, additional detailed rules shall apply to the contract. The agricultural holding transfer contract of sale must specify the value of the various elements of the holding and may not include rights of pre-emption, repurchase, purchase option, and right to sell, nor may it include an agreement to purchase upon delivery subject to inspection and purchase upon delivery subject to testing.[118] Where the parties enter into a contract of gift, maintenance, or annuity as a contract on the transfer of an agricultural holding, (i) the value of each element of the holding must be determined, (ii) such a contract may only be entered into by close relatives if they agree to transfer ownership of agricultural and forestry land, (iii) in the case of a contract of a gift nature, if the transferor's survival is threatened by a change in the circumstances of the transferor after the conclusion of the contract, the transferor may claim an annuity from the

115 Act CXLIII of 2021, Article 6 Paragraph (6).

116 Act V of 2013 Book 6, Article 179.

117 Act CXLIII of 2021, Article 7.

118 Act CXLIII of 2021, Article 8 Paragraph (1) and (2).

transferee, the amount of which shall be decided by the court in the absence of agreement. This rule is similar to the rule in the Civil Code concerning gift contracts, according to which, if the gift is necessary for the donor's subsistence because of a change that occurs after the conclusion of the contract, the donee may reclaim the existing gift if the return of the gift does not endanger the donee's subsistence, but the donee is not obliged to return the gift if the donor adequately provides for his subsistence by means of an annuity or maintenance in kind.[119] This rule differs from the rule in the Civil Code in that in the case (iv) if the relationship between the parties deteriorates or if, as a result of the conduct or circumstances of one of the parties, it becomes impossible to keep the property in kind, the transferor may apply to the court to have the contract amended into a life annuity contract, which is the same as the contract of maintenance provided for in the Civil Code,[120] with the difference that the statutory provision on the agricultural holding transfer maintenance contract does not include the Civil Code rule on contracts of maintenance, which provides that the contract may be amended 'definitively or until the circumstances cease to exist'. (v) In the event of the death of the transferee, the liability for the debts of the testator is transferred to the heir of the transferee under the rules of the maintenance or life annuity contract to the extent that the maintenance or life annuity granted until the death of the transferee does not cover the value of the agricultural holding determined at the time of the conclusion of the contract on the transfer of the agricultural holding, which is a rule of the Civil Code similar to the rule on maintenance contracts,[121] formulated as a *lex specialis* for the agricultural holding transfer maintenance contract.[122]

According to a special rule in the law, the parties may cooperate in the joint management of the holding, which may be for a maximum period of 5 years, during which the transferee may personally participate in the management of the holding and the costs of which may be borne jointly by the parties. In this case, the transferor shall be entitled to a share in the results of the operation of the holding in proportion to the costs of running the holding, the difference being accounted for as an instalment of the purchase price in the case of a contract of sale of the holding or as an annuity in the case of a life annuity contract, unless otherwise agreed, in the case of a transferor's share of the results exceeding this proportion.[123] In this case of cooperation, the parties are jointly authorized to conduct the business and take their administrative decisions together.[124] Management is understood to mean decision making for the operation of the agricultural holding, where

119 Act V of 2013 Book 6, Article 237 Paragraph (1).
120 Act V of 2013 Book 6, Article 495 Paragraph (2).
121 Act V of 2013 Book 6, Article 495 Paragraph (3).
122 Act CXLIII of 2021, Article 9 Paragraph (1)–(5).
123 Act CXLIII of 2021, Article 10 Paragraph (1)–(3).
124 Act CXLIII of 2021, Article 10 Paragraph (4).

cooperation requires ongoing decisions to be taken unanimously by the parties, the details of which cannot be specified in detail at the time of contracting.[125] This provision is similar to the Civil Code's rules on the conduct of civil law partnership agreement.[126] Unless otherwise agreed by the parties, the transfer of ownership of the elements of the holding or the transfer of use may take place on the last day of the cooperation period.[127] The purpose of cooperation between the transferor and transferee is to transfer the farmer's knowledge and contacts, thus contributing to the success of the generational change.[128]

A special provision applies to the purchase in instalments: where the transferee pays the purchase price in instalments (in the case of a sale and purchase contract), the transferee has a lien on the assets of the holding up to the amount of the instalments paid, although the parties may provide otherwise. However, if the transferee has acquired ownership of the assets of the holding, the transferor shall thereafter have a lien on the assets of the holding up to the amount of the unpaid purchase price instalments, unless the parties agree otherwise.[129] A pledge is a security in rem, i.e. one of the strongest securities available to the parties, which the legislator regulates as a statutory pledge. It can be understood as a completely new type of statutory pledge because the Civil Code does not provide for a statutory pledge in the case of a contract of sale in the rules of purchase in instalments.

However, in the case of cooperation between the parties, it is possible to record the fact of the transfer of the holding in the land register.[130] However, during the period of cooperation, the contract on the transfer of agricultural holding may be terminated with immediate effect if (i) one of the parties is in culpable breach of an essential obligation under the contract or (ii) the health of the transferee has deteriorated or there has been a lasting change in his/her living conditions which prevents him/her from fulfilling his/her obligations under the law.[131] If the transferor dies, his heir shall not be required to make any personal contribution which the transferor undertook to make under the contract.[132]

The similarity with the strict rules of the Act on the turnover of agricultural land and the consistency with leases is shown by the legal provision requiring the approval of the contract on the transfer of agricultural holding by the agricultural administration. In the course of the procedure, the agricultural administration must verify compliance with the provisions of the Act on the turnover of

125 Ministerial Explanatory Memorandum to Act CXLIII of 2021, Explanatory Memorandum to Article 10.
126 Act V of 2013 Book 6, Article 503 Paragraph (1).
127 Act CXLIII of 2021, Article 10 Paragraph (5).
128 Ministerial Explanatory Memorandum to Act CXLIII of 2021, Explanatory Memorandum to Article 10.
129 Act CXLIII of 2021, Article 10 Paragraph (6).
130 Act CXLIII of 2021, Article 10 Paragraph (7).
131 Act CXLIII of 2021, Article 11 Paragraph (1).
132 Act CXLIII of 2021, Article 11 Paragraph (2).

agricultural land on the acquisition of ownership or the right of use, with the provisions of the Act on the transfer of agricultural holdings and with the other provisions of the Act on the turnover of agricultural land and Act CCXII of 2013.[133] A contract on the transfer of agricultural holding is therefore a contract subject to the approval of the authority under the Civil Code, which is governed by the rule of the Civil Code that the contract becomes effective retroactively to the date of its conclusion upon the approval of the authority, with the proviso that until the declaration of approval or the expiry of the time limit for the declaration, the rights and obligations of the parties are to be assessed according to the rules of the pending condition and the contract does not become effective if the authority does not grant the approval.[134] The agricultural administration shall have 60 days for approval. Note that the ministerial explanatory memorandum to the Act mentions a further 30 days.[135] However, the approval does not replace the other conditions and requirements for the validity of the contract.[136]

The agricultural administrative body may also refuse approval if the parties do not comply with the conditions laid down in the Act, if there is a barrier to the acquisition of the right of ownership or use, if the provisions on the use of the land do not comply with the provisions of the Act on the turnover of agricultural land and Act CCXII of 2013, and if the agreement of the parties does not comply with the conditions laid down in the Act.[137] It can be concluded from the above that the legislator did not intend to apply the legal consequence of invalidity in the case of certain provisions that do not comply with the conditions laid down in the Act on the transfer of agricultural holding but rather to provide that in such a case the contract will not become effective since in the absence of official approval the contract cannot have legal effects.

Lastly, the law lays down certain succession issues relating to the transfer of holdings, which cover three areas: civil law contracts, public authorizations, and subsidy relationships. With regard to civil law contracts, it is a matter of contractual subrogation based on the provision of the law,[138] with the exception that the transferee replaces the transferor without the consent of the third party remaining in the contracts,[139] in which case an additional speciality is that the transferee must undertake to fulfil obligations under civil law contracts.[140]

133 Act CXLIII of 2021, Article 12 Paragraph (1).
134 Act V of 2013 Book 6, Article 118.
135 Ministerial Explanatory Memorandum to Act CXLIII of 2021, Explanatory Memorandum to Article 12.
136 Act CXLIII of 2021, Article 12 Paragraph (3).
137 Act CXLIII of 2021, Article 12 Paragraph (4).
138 Act V of 2013 Book 6, Article 211.
139 Act CXLIII of 2021, Article 13 Paragraph (1).
140 Act CXLIII of 2021, Article 13 Paragraph (2).

As regards public authorizations, the law provides for succession in respect of all public authorizations required to carry out the economic activity linked to the holding, as specified in the transfer contract, on condition that the transferee must comply with the legal requirements, including qualification requirements, which determine the conditions for carrying out the activity.[141]

The transferee will also be the general successor to the transferor as regards the subsidy relationships but must meet the eligibility and content conditions, failing which the subsidy relationships will be terminated, but the transferor will be exempt from the obligation to repay the aid.[142] In this context, the provisions of Act XVII of 2007 and Government Decree 272/2014 (XI.5.) on subsidies must be taken into account.

4. Conclusions – Typical Features of the Contract on the Transfer of Agricultural Holdings

With regard to the contract on the transfer of agricultural holding, the legislator considered that in order to ensure the transfer of the agricultural holding and to facilitate the generational transfer, it is necessary to regulate a separate, sui generis type of contract in a normative form. For our part, we are not convinced that it was absolutely necessary to create this separate type of contract and to draw up detailed rules for it. The legal provisions in force, such as the rules on the transfer of ownership and usufructuary rights in certain types of contracts (sale, gift, maintenance, and life annuity contracts), the rules on the Act on the turnover of agricultural land, and other provisions of the Civil Code (Book Six, Part Two, General Rules of Contract), have always provided an appropriate framework for the parties to transfer all the assets necessary for the pursuit of agricultural and forestry activities or to settle any use relations and the framework for their cooperation in other complex ways, in the context of an unnamed contract. Given that the legislator decided that it was necessary to create a separate type of contract, the following conclusions can be drawn from an assessment of its main characteristics:

– The contract on the transfer of agricultural holding regulated by Act CXLIII of 2021 is a named type of contract, which, according to the classical private law jurisprudence, does not belong to the group of atypical contracts regulated by the Civil Code and which (i) can be understood as a special subtype of sale contract, gift contract, maintenance contract, and life annuity contract, and as such would not have required a separate legal regulation, and (ii) can be considered as a mixed contract, in that it may contain, in addition to the elements of transfer of ownership, elements of use (lease) and even elements of

141 Act CXLIII of 2021, Article 14 Paragraph (1)–(2).
142 Act CXLIII of 2021, Article 15 Paragraph (1)–(2).

cooperation. The provisions on cooperation between the parties are reminiscent of similar provisions in civil law partnership regulated in the Civil Code. The latter would not have justified a separate statutory provision either. In our view, there was no need to name a mixed contract which contains elements of a property transfer contract (sale, gift, maintenance, and life annuity), a lease and a civil law partnership contract, all of which have the characteristics of a civil law partnership. Just as there is no independent regulation in the Hungarian civil law in force, i.e. the sale mixed with a gift does not qualify as a named atypical contract, there was no indispensable need for independent legislation in relation to the contract on the transfer of agricultural holdings.

– As indicated above, the legislator could have achieved the same objective by applying the current civil law legislation (Civil Code, Book Six, Part Two) and the land turnover rules (Act on the turnover of agricultural land and Act CCXII of 2013) in combination, as it was regulated by the special new legal provisions on the contract on the transfer of agricultural holdings. An appropriate solution would have been for the legislator not to regulate these contracts in the Civil Code as a separate subtype of sale, gift, maintenance, and life annuity contracts, but the Civil Code could (in the rules of Civil Code on contracts of sale, gift, maintenance, and life annuity and in the provisions of the Civil Code on leases and civil law partnership contracts) at least refer to the fact that a separate statutory provision contains additional special provisions for the contract on the transfer of agricultural holdings.

– By referring to the Civil Code as a background rule in the Act on the contract transfer of agricultural holdings, it can be clearly stated that, compared to the Civil Code, we are dealing with a *lex specialis* regulation, to which the provisions of the Civil Code must also be applied.

– The contract on the transfer of agricultural holdings is primarily regulated as a contract for the transfer of property, with the proviso that if it contains elements of use or cooperation, it can also be used in practice as a mixed contract. Because of the property transfer nature, the most important obligation of the transferor as the obligor, as the party providing the material service, is the transfer of property, and as such it is specific in that the indirect object of the contract can only be the agricultural holding, which, according to the legal definition, is a set of things of different types and rights. The discrepancy between the name of the Act (on the transfer of agricultural holdings) and the type of contract it regulates (farm transfer contract) can be seen as a minor legislative shortcoming since the definition of 'holding' in the Act makes it clear that, in the case of a farm transfer contract, it is only a contract type that provides the framework for the transfer of agricultural holdings, not other types of holdings.

– By including in the definition of an agricultural holding, on the one hand, agricultural and forestry real estate for agricultural and forestry use and other real

estate and the movable property, rights of property, shares in companies, and other rights and obligations necessary for the exercise of such activity, the agricultural holding transfer contract is a contract for the transfer of several individual things (and rights) in one contract, i.e. it is in fact a sale as a single unit of turnover. The transfer of goods and rights necessary to carry out agricultural activities in the context of one contract can be carried out in the absence of specific legislation (designation as a separate type of contract) in the current civil law environment. The sale (transfer of property) of all the individual things (and rights) necessary for the pursuit of a given activity in the context of a contract does not justify the codification of the contract as an atypical contract with a separate name. There is no doubt that the combination of things (*universitas rerum*) is relevant from a practical point of view, i.e. that it is easier to transfer things and rights as a whole than to transfer the elements that make up the combination separately.[143] However, as Barna Lenkovics clearly points out, this 'unit of circulation' does not preclude the individual things in the totality of things (*universitas rerum*) from being the subject of separate property rights.[144] The holding which is the subject of a contract for the transfer of an agricultural holding may in fact be understood as a property, that is to say, as 'a totality of rights in rem and obligations concentrated around a specific person as the centre' or as 'a totality of his property, that is to say, his rights and obligations in respect of things and in relation to other persons, which can be determined in the interests of a legal entity',[145] where – from a legal-dogmatic point of view – the agricultural holding is seen as a sub-asset within the assets of the farmer or self-employed person. The nature of 'property' does not, however, justify defining a contract permitting the joint transfer of the goods and rights which it covers as a separate type of contract.

– The provisions of the Act on the Transfer of Agricultural Holdings on the contract on the transfer of agricultural holdings require a complex legal application since, in addition to this Act, the provisions of the Civil Code, the Act on the turnover of agricultural land, the provisions of Act CCXII of 2013, and the provisions of the Family Farms Act must also be taken into account. The parties can only conclude a full and comprehensive contract if they comply with all the laws listed, bearing in mind that many of them are not subject to derogation.

– As a differentiating feature of the farm transfer contract, it is indispensable to mention the increased formal requirements, the need for a private deed signed by a lawyer or a public deed, and the need for approval by the agricultural administration. Another special rule (different from the Civil Code) is that in the case of a contract on the transfer of agricultural holdings, the application of certain special types of sale and purchase agreement (right of repurchase, pre-

143 Lenkovics 2001. 49.
144 Lenkovics 2001. 49.
145 Lenkovics 2001. 49.

emption right, purchase option and right to sell, nor may it include an agreement to purchase upon delivery subject to inspection and purchase upon delivery subject to testing) is not possible in the absence of a statutory prohibition, while the purchase by sample cannot be interpreted as another special type of sale contract, and the legislator has made it possible to use instalment sales in contracts on the transfer of agricultural holdings, supplemented by special rules.

In our view, problems may arise in the practical application of the new type of contract as an atypical contract outside the Civil Code, in particular with regard to the combined application of the provisions of several different legal acts and, where appropriate, the mixed nature of the contract. It is conceivable that the actual practical application of this new type of contract will remain limited, taking into account that the objective of a contract on the transfer of agricultural holdings can be achieved by other legal constructions, and in many cases in a simpler way, without legal obligations and mandatory rules. The new type of contract severely limits the contractual freedom of the parties, restricting their room for manoeuvre in reaching an agreement that is fully adapted to the needs of practice. Practice, however, will decide whether there is a need for a contract on the transfer of agricultural holdings as a sui generis atypical contract in the current Hungarian law or whether the new type of contract remains a type of contract that is not actually applied as part of the living law. It cannot be ruled out that a few years after entry into force, based on practical experience, the legal regulation of this type of contract will be amended to better adapt it to the needs of practice. Once the experience gained from the application of the provisions of the law has been formulated, it will be necessary to examine the justification for the legislation and its possible amendment a few years after its entry into force.

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