

Pre-emption rights compared – Netherlands, Slovenia and Sweden

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Preemption right

- Right of claiming or purchasing before or in preference to others
 - Right to become the owner of a property over anybody else, when the previous owner decides to sell
- Beneficiary:
 - national or local administration due to some public interest
 - other citizens (leaseholder, neighbor, ..)

Preemption right

- Based on applicable law the right can be given to the beneficiary by:
 1. contractual agreement ('owner gives the right')
 2. declaration by the beneficiary ('claims the right')
 3. legal stipulations (follows from the law)

Preemption right

- Preemption right can take effect by
 - A. mandatory offering it
 - owner -when intending to sell- has to offer it to the beneficiary first ('right of first refusal')
 - B. taking over the agreed contract
 - beneficiary is officially informed about the deal between the owner and the buyer and takes over the buyers position, usually just before final registration is made

Contractual preemption rights

- NL: you can put in the contract and deed what you want, deed is registered and thus anyone can see it
- SLO: you can arrange in contract, but without term ends in 5 years, does not go with land when sold
- SE: statute forbids any 'options' in contracts

Legal preemption rights

	Netherlands	Slovenia	Sweden
Municipality	2-A	2-A	3-B
Agricultural Land	3-A	3-A	2-A
Forest Land		3-A	
Water		3-A	
Apartment unit	(1-A)	3-A	
Apartment complex			2-A
Cultural heritage		3-A	
Protected areas	(2-A)	3-A	

Preemption for Agricultural land in Slovenia

- The right of pre-emption may be claimed in the purchase of agricultural or forest land by pre-emptors in the following order
 - the co-owner,
 - the farmer whose land in his/her ownership is adjacent to the land to be sold
 - the hirer of the land to be sold,
 - another farmer,
 - agricultural organisation or a self-employed person that requires land or farm holding to perform their agricultural and/or forestry activities, and
 - the National Farm Land and Forest Fund of the Republic of Slovenia

Burdens

- preemption right burdens transactions, by introducing uncertainty and taking time, this increases transactions costs
 - in 'offer system' seller has to wait before he can put it on the free market
 - in 'take over system' buyer runs risk of all his efforts to become void (money is compensated, time is not)
- burdens beneficiaries in having to check every case

Benefits

- it is a relatively easy way of beneficiaries to get land which is of special interest to them
- initiative to sell comes from the owner
 - no additional compensation needs to be paid
 - infringement on seller's ownership right is limited (vis-à-vis compulsory purchase/expropriation)

In balance ?

- when do benefits outweigh burdens ?
 - when serious percentage of cases under preemption is actually preempted by the beneficiary
- thus
 - limit area under preemption to where the beneficiary has a real (acute) interest
 - don't let the buyer be uncertain while contracting

Worth it ?

- if really used and applied with restraint, and organized in the right way it seems worth it
 - declaration system combined with 'offer system' seems least disruptive
- further analysis, also with input from practice and more proper costing is called for

