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The regulation of financial support in particular for agricultural support\*\*

## 1. Introductory thoughts

The diversified system of financial support has a great impact on the economy, especially in those countries where its rate is significant and the state's involvement is not neglectable. More theoretical experts of economic science are in discussion with each other whether the contribution is beneficial or not in the modern economic. Anyway, the contributions interfere with market economy conditions and are important instruments of state functions.

The complex system of state functions demonstrates the diverse tasks of the modern state. From theoretical side functions can be categorized functionally (public, welfare, economic function), from the nature of the state's activity (regulatory, financing function) and from economics perspective (allocation, redistributive, stabilization function).<sup>1</sup>

The starting assumption may originate from the economic tasks of the state. The state's economic functions can be divided into four main areas from the target system point of view: increasing of economic efficiency, reduction of economic disparities, maintenance of economic stability and development of international economic policy.<sup>2</sup> All four areas closely related to the aid policy as set of instruments

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<sup>1</sup> Zsugyel János (edit.): *Közpénzügyek nagy kézikönyve*, Budapest, Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., 2009, 37-44. According to the authors classification defence, social and state organizational activities and jurisdiction belong to the functions of public authority. Welfare functions serve the raise and maintenance of human capital. Authors classify the economic functions on the basis of their economic nature which in a different approach but fit Samuelson's and Nordhaus' concept. Allocation function means the abstraction of resource from private sector to create collective asset. Redistributive function is the redistribution of income with the society and between economic sectors. The state's stabilization function is means that the state makes effort to mitigate economic crisis and create financial balance.

<sup>2</sup> Paul A. Samuelson – William D. Nordhaus: *Közgazdaságtan*, Budapest, Akadémiai Kiadó, 2012, 273-278. Samuelson and Nordhaus under the increasing of economic efficiency mean the socially desirable distribution of resources when the state intervenes into economic processes at micro level and change the allocation choice market supply and demand. In order to reduce

which help achieving the above mentioned aims. However, there are such economic theoretical perceptions that dispute the efficiency of economic functions in some areas.<sup>3</sup>

Globalization has created new world economic circumstances in many respects which reevaluate and change the economic function of each state. A particularly important area in this respect is the economic regulation of integrations which lead to the reduction of financial sovereignty of member states. Such a situation prevails in within the EU, although the member states still have important possibilities in fiscal policy.<sup>4</sup>

The most controversial area of economic financial support is the promotion of production, as the state strongly intervenes into market conditions. It arises the following problem, the economic effect of these contributions are not foreseeable. According to the literature, based on these effects contributions can be offensive which strengthen the favourable features of market mechanism or can be defensive which endeavour to maintain uneconomic production. In the latter case it may occur that the contributions cause double damage. On one hand contributions are used for not efficient areas, on the other hand financial resources are drained from income owners who would have used them more efficiently.<sup>5</sup> In former socialist countries, including Hungary too, the support or non-support of economic operators from budgetary sources creates economic debate.<sup>6</sup>

In agricultural economy, financial support has a special position. The sector's biological features, longer production cycles, weather dependence decrease the rate of capital invested in agriculture which can mitigated by subsidies provided for farmers or even it is necessary.<sup>7</sup>

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economic inequalities the state corrects unequal distribution of the market. Correction is realized by taxation and transfers. The maintenance of economic efficiency is provided by macro-economic instruments which are implemented through the legislation financial and budget policy. In the frame of development of international economic policy four steps are taken, such as the mitigation of trade restriction, international aid, coordination of macro-economic policy and global environmental protection.

<sup>3</sup> Thomas Piketty: *A tőke a 21. században*, Budapest, Kossuth Kiadó, 2015, 31-39. Piketty for example disputes that income and distribution would be changeable in the longer term especially from the point of view that because of internationalization of capital states have few effective instruments of redistribution.

<sup>4</sup> Sivák József – Vígvári András: *Rendbgyó bevezetés közpénzügyek tanulmányozásába*, Budapest, Complex Kiadó Jogi és Üzleti Tartalomszolgáltató Kft., 2012, 75-78.

<sup>5</sup> Joseph E. Stiglitz: *A kormányzati szektor gazdaságtana*, Budapest, KJK-KERSZÖV Jogi és Üzleti Kiadó Kft., 2000, 52-57. The author interprets broadly the term of subsidy in his work. Under subsidies he means duty, state guarantees, cheaper credits and tax preferencies.

<sup>6</sup> Read more in: Lentner Csaba: Az új magyar állampénzügyi rendszer – történeti, intézményi és tudományos összefüggésekben, *Pénzügyi Szemle/Public Finance Quarterly*, 2015/60, 458-472. The author states that the insurance of state aid is admissible in the post-crises market economy conditions as the reason of subsidy in many cases is the state's economic policy which makes difficult the farmer's situation or other external shocks.

<sup>7</sup> Lentner Csaba: Dilemmas of Hungary's Agricultural Future Contrasted with its Historical Background and Developed Market Economy Models, in: Erzsebet Gidai (edit.): *On the eve of the*

There is such a literature point of view that forecast the relative decline of agriculture in the longer time, as agricultural incomes stagnated in the last half century which reason is that the relative price of agricultural products constantly fell. Its reason is mainly that while demand increased slowly, supplying expanded rapidly as the productivity of agriculture grew faster in the world's developed countries than the industries.<sup>8</sup> The relative income reduction threatens that the farmers will abandon agricultural activities and thus endangers food production. Agricultural production is a strategic issue both at the level of the country and the EU. So with contributions a better profitability may be reached, thereby making the sector more profitable. It is necessary even if it results in loss of efficiency as with contributions a not effective and marketable production may be sustainable. However, the aim would be that the contributions would encourage the farmers to increase efficiencies in addition to income supplement. Therefore, it is really important that the aid policy will be properly developed and a correct regulation will be available to achieve his goal. In recent years several thousand billion Forint of EU financial support has flown into the economic, so in addition to its expedient and effective use, the verification and the sanction of unlawful use is also really important issue.<sup>9</sup> The most appropriate solution would be to develop a general legislation applying to financial support which would serve as a general rule and in addition sectoral legislation would regulate the conditions specific to that sector. Presently, legislation concerning public finances includes the general rules which however, regulate this legal area in more level and legislation. Legislation and the judicial practice have raised more issues according to financial support in recent years which results would be practical to build into legislation. Would be also appropriate to strengthen the public conditions in grant contracts which would reinforce the enforceability of sanctions.

## 2. Place and role of financial support in the legal system

The concept of contributions is broad and can be examined from more aspects.<sup>10</sup> From financial aspect contribution means the granting of financial support to natural persons or organisations without actual and direct compensation. The support

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*21st Century: Challenges and responses*, Budapest, Akadémiai Kiadó, 1998, 175-185. The author describes the support of agriculture as world phenomenon which manifests itself in different forms and considers stronger support trends necessary in the case of emerging countries.

<sup>8</sup> Samuelson – Nordhaus 2012, 66-68. The authors point out that the elements of productivity growth are mechanisation, watering, speciation of high-yield animal species and sublimation of new plants.

<sup>9</sup> Lentner Csaba: A magyar agrárfinanszírozás jellemzői az EU csatlakozás küszöbén, *GAZDÁLKODÁS*, 2004/48, 69-78. Lentner wrote about the strong subsidy dependence of agriculture in the year of accession to the EU and proved that the majority of subsidies –instead of favoured individual farms for one and half decade- is given to enterprises where –according to his view- subsidy is more useful and generates more efficiency.

<sup>10</sup> Special approach of institutional system is used by e.g. Csák Csilla. Read more in: Csák Csilla: A támogatások intézményrendszere, in: Csák Csilla et al: *A gazdasági és társadalmi kohézió politikája az Európai Unióban és Magyarországon*, Miskolc, Novotni Alapítvány, 2009, 50-68.

may result from public- and private sector as well. Public financial support is more typical and more significant requiring its economic significance and Financial Law is also concerned with this legal area. Contributions from public-sector may also effect the private-sector as these contributions provide funds not only for organisations belonging to public finance but also natural persons and organisations that are outside the public finance.

Subsidies from regulatory aspect primarily belong to Financial Law despite the fact that some area of them concern to European Union Law, Civil Law and to other branches of law.<sup>11</sup> The frame of legislation is ensured by the Act on public finance and the Government Decree on the implementation of it. Budget support is approached from various aspects by theory. Broadly interpreted, every transfer of income within the system and subsystem of public finance belongs to the concept of support, whereas in a narrow sense support from a subsystem of the public finance for persons and organisations outside the public finance falls into the concept.<sup>12</sup> The definition makes it clear that both support within and outside the subsystem belongs to the concept of budget support.

The Act on public finance determines the concept of budget support in a narrow sense as it states that budget support is provided from the central subsystem of public finance without compensation, paid in cash (taking into account the statutory exceptions in this case as well). Subsidies and contributions provided for municipal subsystem and specific subsidies provided for persons, organisations outside the public finance do not belong to the concept.<sup>13</sup> It is clear that by the term the legislator means subsidies provided within the subsystem of central state budget, so the statutory concept is confined to concept of financial support within the central subsystem. The Act uses the term of subsidies as for wider concept which means both support of central and municipal subsystem.<sup>14</sup> The ordinary term and the concept of budget support regulated by other legislation is fundamentally different from the statutory concept. The term is defined differently by the Government Decree on the implementation of the Act on public finance which uses the concept of budget support not only in this sense. The Decree uses the concept of budget support in the concept of supported action as well for subsidies from European Union sources and from other sources.<sup>15</sup>

Therefore, it is necessary to define what is the concept of budget and public finance support. The term of budget covers both subsystems of public finance, central and municipal subsystem but the statutory concept narrows the term to the central budget support. However, public finance support should be understood more broadly.

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<sup>11</sup> Nagy Zoltán: A közpénzügyi támogatási jogviszony a közjogi és magánjogi szabályozás metszetében, *Publicationes Universitatis Miskolciensis Serie Juridica et Politica*, 2012/XXX, 339-350.

<sup>12</sup> Földes Gábor – Nagy Tibor: Az adótan és az adójog általános része, in: Simon István (edit.): *Pénzügyi jog I.*, Budapest, Osiris Kiadó, 2007, 367.

<sup>13</sup> Act CXCV of 2011 on public budget (Public Budget Act) 1. § 14.

<sup>14</sup> Public Budget Act. 1.§ 19.

<sup>15</sup> Government Decree 368/2011. (XII.31.) on the implementation of the Act on public finance 1. § 8.

As I have already mentioned, the term of subsidies covers both budget support and municipal support.

It is necessary to analyze the term of public finance for interpreting the term. According to theory, regulation of funds by public bodies, supplying public services and satisfaction of public needs, allocation and redistribution are belong to the features of public finances.<sup>16</sup> Thus, public finance nature means a broader interpretation and includes public finance and it's both subsystems. It is supported by the Act on transparency of subsidies as it uses the term of public funds subsidies and the provisions on its scope regulates three sources of funds: subsidies from public finance, European Union sources and from sources laid down in international agreement.<sup>17</sup>

On this basis it is established that legislation uses the term of public finances support as a general term which includes subsidies provided from subsystems and the international and European Union subsidies as well. Budget subsidies belong to public finance support which means a narrower scope of subsidies provided from the central budget.

In respect of financial regulation public finances support are related to taxation rules both theoretically and practically. Theoretically, public finances support can be classified as negative taxes. In significant part subsidies and their procedural order are laid down in laws and compare to taxes the direction of financial service differ from taxation. However, the distinctions between tax preferences and public finances support are increasingly blurred.<sup>18</sup>

Public finances regulation cannot be considered as the general rule of the whole public finances support system as the Act on public finances focuses primarily on budget support. It is a big deficiency compare to the previous regulation as there is no general rule to the regulation of public finances support. The Act separates the agricultural subsidies and European Union sources. Separation is justified since agricultural subsidies are not necessarily financed entirely by the European Union sources.<sup>19</sup>

On the basis of legislation we cannot talk about a unified public finances support system. It can be inferred from legislation that the legislature regulates the budget support procedure as general rule and in some areas gives special rules e.g. municipal support cases and in European Union sources. Regarding these facts the procedures, general and special legislation can be considered as the procedural set of rules of public finances support.

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<sup>16</sup> Simon István (edit.): *Pénzügyi jog I.*, Budapest, Osiris Kiadó, 2007, 29; Horváth M. Tamás: *Helyi közszolgáltatások szervezése*, Budapest-Pécs, Dialóg-Campus Kiadó, 2002, 47-48; Horváth M. Tamás: *Közmenedzsment*, Budapest-Pécs, Dialóg-Campus Kiadó, 2005, 39-63.

<sup>17</sup> Act CLXXXI of 2007 on transparency of subsidies provided from public funds 1. § (1).

<sup>18</sup> Földes – Nagy, 2007, 365-367.

<sup>19</sup> Public Budget Act 1. § 1.: agriculture subsidy: payments, related to direct, market and intervention measures, financed wholly or partly by the European Agricultural Guarantee Fund; furthermore subsidies granted by the European Agricultural Fund for Rural Development, European Fund for Fishes and European Maritime and Fisheries Fund; and agricultural fishing, forestry, wildlife management and rural development subsidies provided from central budget of the Member State's competence.

Public finances support procedure thus encompasses the set of rules: of the acceptance of subsidy needs of each support area, of subsidies granting, of reporting and of the verification of subsidies. However, different rules apply to central budget support, to central budget support of local governments and some special central budget support (employment, training, social and child protection support). Although, budget procedures extend to European Union rules but with the restriction that European Union legislation is more relevant in this area.

### 3. European Union subsidies

European Union subsidies should be interpreted separately where regulation specifically defines the term of subsidy.<sup>20</sup> Direct financial contributions provided from the budget without requesting which finances the activities serving the achievement of purposes of a European Union policy, or which serve a general European interest, or which serve the functioning of an organisation operating for the purpose of a European Union policy.<sup>21</sup> The term of subsidy is interpreted broadly by jurisprudence as all economically assessable advantage is classified into this concept. Beside direct payments, inter alia the use of infrastructure with favourable conditions, loan granted on preferential conditions and lower taxes, tax benefits belong to the concept of subsidy.<sup>22</sup>

There are four forms of subsidy:<sup>23</sup> (a) reimbursement of the actually incurred, eligible costs; (b) lump sum which covers the execution of measures or the costs of functioning; (c) flat-rate financing which covers the pre-defined, unique type of expenditures; (d) combined funding (interconnection of previous forms).

European Union subsidies can be direct or indirect payments depending on that the subsidy is provided by the own organs or institutions of the organisation or by the component bodies of the Member State. Direct payments can be distinguished by the body granting the support or by the item or the source of the subsidy. In the case of indirect payments it's the Member States that provide subsidies instead of the EU so similar classification aspects prevail as in the case of direct payments. (Considering the rate of subsidies, indirect subsidies are typical.)<sup>24</sup>

State aids, which are based on three basic pillars, have special significance in European Union legislation.<sup>25</sup> Treaty on the Functioning of the European Union is a primary source of law which defines the term of state aid and its prohibition from EU legislation point of view.

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<sup>20</sup> Regulation 1605/2002/EC of the EP and of the Council Article 108, Erdős Éva: Állami támogatások, adóverseny kontra szubszidiaritás az európai adójogban, *Miskolci Jogi Szemle*, 2017/2 különszám, 114-127.

<sup>21</sup> Halász Zsolt: *Az Európai Unió költségvetésének szabályozása*, PhD értekezés, Miskolc, 2010, 161.

<sup>22</sup> Kengyel Ákos: *Az Európai Unió közös politikái*, Budapest, Akadémiai Kiadó, 2010, 61-62.

<sup>23</sup> Halász 2010, 161.

<sup>24</sup> Radnóczy Zsolt: *Támogatások az Európai Unióban*, Budapest, Akadémiai Kiadó, 2004, 123-125.

<sup>25</sup> Erdős Éva: *A beruházásösztönzés adójoga*, Miskolc, Miskolci Egyetem, 2012, 147-149.

The Treaty states that otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form, be incompatible with the internal market. The aid must be distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods or it affects trade between Member States.<sup>26</sup> However, the prohibition is not comprehensive as there are exceptions of the prohibition if it is in line with EU politics and the conditions of subsidy are retained. So we can talk about state aid if the support meets the following conceptual criteria:<sup>27</sup> (a) beneficiary company; (b) state resources; (c) advantage; (d) selectivity; (e) distortion of competition; (f) impact of the trade between Member States.

These conceptual criteria must meet so that the state aid is not permitted. The term of beneficiary company includes all companies carrying out economics activities irrespectively of its legal status. According to literature economic activity is every activity which means the market of products and services and assumes the risk of compensation.

The term of state resource is also a broad concept. The term includes sources from any subsystem (central budget, local government) of public finances. Furthermore, the term includes EU sources to which the government has influence and which are state-owned sources or are from state-influenced companies.

State aid should provide such benefit for the company which anyway cannot reached by the company. The advantage is not only direct payment but also exemption from normal costs.<sup>28</sup>

Selectivity is an important element of the term of state aid, so the aid has to extent only to the company, economic region or the territorial unit. If the aid is applicable to any company without restriction in the territory of a Member State, then the aid does not fall into the concept of state aid.

Furthermore, the distortion of competition and the effect on trade between Member States are important factors as well. The distortion of competition means that the beneficiary company needs to operate in such a market where there is competition between businesses. EU legislation usually presupposes competition therefore Member States have to prove the opposite of it. Trade between Member States is also interpreted broadly by literature.

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<sup>26</sup> Treaty on the Functioning of the European Union, Article 107 (1).

<sup>27</sup> Gyükér Anita: Az uniós állami támogatási szabályok alkalmazása az adóintézkedések területén – az Európai Bíróság esetjogának tükrében, *Állami Támogatások Joga*, 2013/1, in: [atj.versenyjog.com/images/stories/issues/2013/ATJ-2013-2.pdf](http://atj.versenyjog.com/images/stories/issues/2013/ATJ-2013-2.pdf) (2014.09.20.)

<sup>28</sup> Erdős 2012, 143-144. The author point out by summering literature positions that state aid can appear in many forms. The aid can be cash, tax waiver, tax exemption, reduced tax rate, exemption of deadline of General Sales Tax recovery, export benefit, export credit with preferential interest rate, export subsidy, state guarantee, ensure of goods and service on preferential terms, investments aid, abandonment of state revenue, state debt forgiveness, tax base reduction, subsidy, tax credit, tax advantage, soft loan or interest rate, preferential credit guarantee, undersold real estate, conversion of debt into capital share, preferential and accelerated procedure, State guarantee, state procurement on a favourable conditions than market conditions.

The influence of trade between Member States can be realized both in domestic and export markets. In both cases the company has competitive advantages against other EU companies as subsidised products crowd out unsubsidised products from the market.

If a state aid does not meet all the above mentioned criteria then that is a permissive but not constituting state aid measure.<sup>29</sup> Literature defines those cases that are most likely considered as such measures:<sup>30</sup> (a) general measures; (b) the principle of private market investor; (c) social aid; (d) public service; (e) team sport and youth replacement education; (f) sales of real estate; (g) public infrastructure development.

General measure typically applies to the assigned territory of a country or an organization and makes no distinction between companies which are correspondent to the subsidy conditions and that country or organisation automatically becomes a part of it. Thus, conditions criteria cannot contain restrictive rules (size of the enterprise, scale of the investment).

In the case of the principle of private market investor the conditions criteria of state aid is not implemented. The principle means that the public body's investment or lending is not state aid if any other private investor would act the same in a similar situation.

Social aid is also not regarded as state aid as it's subsidy provided to individuals.<sup>31</sup> Social aid cannot consider being state aid even though it is provided to an enterprise to get social aid since the beneficiaries of the aid are natural persons. However, the aid may not go hand-in-hand with reducing the costs.

Public service is also not regarded as state aid if the aid is in accordance with four criteria. The criterias are the following: (a) contractual or legislative authorization for public service; (b) support conditions should be granted in advance, in a transparent and objective manner; (c) the rate of aid cannot exceed the extend necessary to covering the costs, taking into account the incomes and reasonable profit; (d) in the absence of public procurement, the rate of aid should be determined by taking into account the typical, cost-effective enterprise.

In case of sport subsidy it is necessary to distinguish between the support of mass sport and competitive sport. The support of market-based competitive sport belongs to non-permitted state aid. The support of team sport and youth replacement education is not considered being state aid.

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<sup>29</sup> Treaty on the Functioning of the European Union, Article 107 (10).

<sup>30</sup> Publication of State Aid Monitoring Office. Each subsidy type is described on the basis of this publication, in: <http://tvi.kormany.hu/> (2016. 05. 01.)

<sup>31</sup> The state provides social aid to individuals if they cannot provide the necessary asset for subsistence in any life section. These social aids are provided through the institutions of social security system by the state. Subsidies can be classified from several aspects. Read in detail: Tóth Hilda: Alapkérdések, in: Tóth Hilda (edit.): *Szociális jog - Társadalombiztosítási jog*, Miskolc, Miskolci Egyetemi Kiadó, 2013, 11-28.



In the case of real estate sales exemption from state aid rules is also conditional. If state and local government real estate sale is open and unconditional, it is done by tendering similar to auction and the best tender is accepted, then real estate sale is not considered being state aid. There is opportunity for sales without tendering but in this case sales should be done at market price determined by an independent asset valuer.

Public infrastructure development does not constitute state aid when a number of conditions are met. If the results of development is unrestricted and free to use by anybody and the subsidy does not exceed the reasonable costs of development, then public infrastructure development is not considered being state aid. Development is also not considered being state aid, if the beneficiary of aid is not an enterprise with regard to the subsidy purpose, so the development is appropriated to develop a public activity.

#### 4. Direct agricultural payments

The importance of agricultural subsidies is the largest of the various subsidy areas and the area of agricultural subsidies is recognized by economics as a necessarily supported area. Availability of cheap, high-quality and sufficient quantities of food is an important economic social interest for all country which most direct way is to be locally produced by local farmers.<sup>32</sup> Food production's strategic importance is increasing in parallel to the growth of population and climate change. Scarce resource is true for food as well despite the fact that in developed countries significant surpluses is generated. However, there are developing countries where there is a lack of food but unfortunately, in these countries there is no solvent demand for it. So a significant disproportion prevails in food production in the world which is further raised by the shrinkage of suitable cultivated crop areas. Hungary is in a good position from this point of view but negative trends must already be taken into account, which threaten future food production and aid policy must be developed with regard them.

Rural development is closely related to food management which is showed well by EU's aid policy. General world trend is the growth of urban population and rural depopulation which have several social and economic reasons. Hungarian rural depopulation causes more and more problems in agricultural production. Nowadays, labour shortage is also increasing in this sector. However, parallel to this fact there is a significant unemployment. Internal migration strengthens labour shortage and reduces unemployment. Young people do not wish to have a job in agriculture because of low payment, difficult circumstances and temporary work. They cannot prevail as young farmers if there is no land available to them and if there is a lack of capital.<sup>33</sup>

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<sup>32</sup> Muraközy László: *A japán rejtély- Úttermelő csodák és végzetes zsákutcák*, Budapest, Akadémiai Kiadó, 2016, 99-100.

<sup>33</sup> Social enterprises may find solution for solving the issue. For the solution see: Csák Csilla – Mélypataki Gábor – Olajos István: Társadalmi vállalkozások működésének jogi szabályai, in: Szűcsné Markovics Klára (ed.): *Vállalkozási ismeretek társadalmi vállalkozások számára – Az elméleti képzés moduljainak tananyagai: Szociális szövetkezeti menedzser képzés*, Miskolc, Miskolci Egyetem Gazdaságtudományi Kar, 2017, 54-112.

The price of lands has become really expensive in recent years and the acquisition of arable land is limited because of high prices, absence of consumer and legal barriers.<sup>34</sup> Processing industry is lacking from agricultural production which would provide opportunity to high-skill employment. Only limited aid sources are available for the replacement of it. Further problem is that a large part of unemployed rural population is old or is in a bad health condition that makes them unable to hard physical jobs. The migration of rural population is from the countryside to the city, mainly to Budapest and abroad threatens the labour foundation of agricultural production in the future and the maintenance of farmers' present activity. It does not cause a significant problem for the established, mainly monoculture production but it does for livestock, fruit and vegetable production.

Thus, the question arises whether agricultural subsidies serves well those social and economic objectives for which they were introduced. The EU's general object is to develop a smart, sustainable economy and society, which ensure economic growth, productivity, high level of employment and strengthen of social cohesion.<sup>35</sup> I do not examine indirect payments, only direct payments.<sup>36</sup> Financial law legislation is a significant legislation of subsidy policy of which I consider only rules being key importance for this topic.<sup>37</sup>

Legal regulation and importance of agricultural subsidies is based primarily on EU's aid policy after accession to the EU.<sup>38</sup>

The importance of national subsidies has decreased. It does not mean that in the case of subsidies there is no link between national and EU budget. A literature

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<sup>34</sup> For the practical problems of the acquisition of arable land see: Olajos István: Földjogi kiskaté – kérdés felelet a magyar földjog aktuális kérdéseiről, *Miskolci Jogi Szemle*, 2017/2. klsz., 409-417; Olajos István: The acquisition and the right of use of agricultural lands, in particular the developing Hungarian court practice, *JAEL*, 2017/23, 91-116, doi: 10.21029/JAEL.2017.23.91

<sup>35</sup> Hutkai Zsuzsanna: Az uniós források felhasználásának gyakorlata, szabályozási háttere, *Pro Publico Bono-Magyar Közgazdaság*, 2016/1, 58-59.

<sup>36</sup> Nagy Zoltán: Az agrárszektor különleges adójogi szabályozásának alapkérdései, in: Csák Csilla (edit.): *Agrárjog: A Közös Agrárpolitika megvalósulása Magyarországon*, Miskolc, Novotni Kiadó, 2008, 306-322; Nagy Zoltán: A társasági adó agrárjogot érintő speciális szabályai, in: Csák Csilla (edit.): *Agrárjog, A Közös Agrárpolitika megvalósulása Magyarországon*, Miskolc, Novotni Kiadó, 2008, 311-316; Nagy Zoltán: Az agrárium adójogi szabályozása, in: Csák Csilla (edit.): *Agrárjog: A magyar agrárjog fejlődése az EU keretei között*, Miskolc, Novotni Kiadó, 2010, 315-334.

<sup>37</sup> Csűrös Gabriella: *Uniós pénzügyek*, Budapest, HVG-ORAC Kft., 2015, 137-138.

<sup>38</sup> Subsidies and their legislation went through a significant development since the accession to the EU. These steps are well described in the following studies of Szilágyi János Ede: Szilágyi János Ede: A magyar SAPARD Hivatal szervezésének tanulságai, in: Stipta István (edit.): *Miskolci Egyetem Állam- és Jogtudományi Kar díjnyertes TDK dolgozatai*, Miskolc, Bíbor Kiadó, 2003, 377-446; Szilágyi János Ede: Az agrártámogatások rendszere, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2005, 222-234; Szilágyi János Ede: *Eredetvédelmi kérdések a borjogban*, Miskolc, Novotni Kiadó, 2009, 86-112; Szilágyi János Ede: A támogatások rendszere az agráriumban és a vidékfejlesztésben, in: Csák Csilla (edit.): *Agrárjog*, Miskolc, Novotni Kiadó, 2010, 355-371; Raisz Anikó – Szilágyi János Ede: Development of agricultural law and related fields (environmental law, water law, social law, tax law) in the EU, in countries and in the WTO, *Journal of Agricultural and Environmental Law*, 2012/12, 114-117, etc.

points out, that the Hungarian budget is a co-financier, furthermore, provides transitional national aid, complementary national payments and may provide exclusive national aid.<sup>39</sup> However, these national subsidies have to comply with European Union's legal system, so they can be granted only on a limited basis and on the basis of set of rules.

Therefore, in the case of subsidies European Union aids have a great importance. The purpose of European Union's Common Agriculture Policy is ensuring an affordable supply of food, the support of European farmers and the enhancement of agricultural productivity and competitiveness. Common Agriculture Policy has three areas (market organisation,<sup>40</sup> direct payments, rural development) and two pillars arise from them, namely market organisation and direct payments, and rural development. Available budget sources show well the significance of the pillars within which direct payments provide the largest sources.<sup>41</sup>

The system of direct payments consists of compulsory (basic payment scheme-SAPS,<sup>42</sup> greening payment,<sup>43</sup> young farmers scheme) and voluntary schemes (coupled

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<sup>39</sup> Szilágyi János Ede: A mezőgazdasági és vidékfejlesztési pénzügyek, valamint a mezőgazdasági kockázatkezelés szabályai, in: Csák Csilla – Hornyák Zsófia – Kocsis Bianka Enikő – Olajos István – Kókai-Kunné Szabó Ágnes – Szilágyi János Ede: *Agrárjog – A magyar agrárjog- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 237-239. The author explains that national subsidies represent a significantly smaller part comparing to agricultural and rural development subsidies financed by the EU. However, national budget is linked to the European Union budget support system at several points. Read more about the system of agricultural support: Szilágyi János Ede: *Az agrár- és vidékfejlesztési támogatások új rendszere: 2007, Sectio Juridica et Politica*, Miskolc, Tomus XXV/2, 719-733.

<sup>40</sup> Read more about the international and national problems of market regulation: AndrÉka Tamás – Bányai Orsolya – Olajos István: The most changes of the Hungarian Agricultural Market Policy after the 13th CAP reform, *Agrár- és Környezetjog*, 2015/19, 3-32.

<sup>41</sup> Direct subsidies-Gazdálkodói kézikönyv, in: [www.mak.hu/kiadvanyok/kiadvanyok/576-kozvetlen-tamogatasok-kezikonyv?path=kiadvanyok](http://www.mak.hu/kiadvanyok/kiadvanyok/576-kozvetlen-tamogatasok-kezikonyv?path=kiadvanyok), (15.01.2017) The budget of Common Agriculture Policy for the 2014-2020 budgetary cycle is EUR 373 billion which represent 38% of total European Union budget and which is within the Chapter „Sustainable growth: natural resources. In the case of Hungary, in this European Union budgetary cycle Hungary gets 12,3 billion Euro, from which 8,85 billion Euro goes for direct payment and 3,45 billion Euro for rural development.

<sup>42</sup> Instead of basic payment earlier the so called SAPS system was available for joined countries before Hungary's accession or for founding states. In connection with this it was raised that Hungary should have introduced the basic payment, however, the law adopted for this purpose did not go through the Constitutional Court's control and the new government set aside the introduction of SAPS system. About it writes in detail and makes analysis: Csák Csilla – Olajos István: The application of the single payment by national administrations and national courts, *Journal of Agricultural and Environmental Law*, 2008/5, 31-43; Téglási András: How is property ownership guaranteed constitutionally in the field of agriculture, *Journal of Agricultural and Environmental Law*, 2009/7, 18-29.

<sup>43</sup> Read about greening payment, in: Farkas Csamangó Erika: A zöldítési támogatás szabályozási rendszere, *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2015/77, 482-491.

support) or voluntary schemes for Member States and alternatively schemes for farmers (simplified scheme for small farmers).<sup>44</sup>

The impact of subsidies on agriculture is controversial in many respects and have not solved completely those problems yet that were carried by the Hungarian agriculture before the change of regime. The achievement of the Hungarian agriculture did not reach the performance done between 1981-1989 despite the significant amount of subsidies provided in crop production and in livestock breeding. It had both commercial policy and competitiveness reasons. Hungary was not able to replace the lost markets after the change of regime in technologically more developed European Union markets and the technical development and competitiveness of Hungarian agriculture lagged behind the developed agriculture states. Subsidies, in this quite short period could not change this situation significantly.<sup>45</sup> Hungary has not reached the level of production before the change of regime in recent years. However, the question arises where the Hungarian agriculture would be without subsidies at present. The answer is that the level of production would not reach the current level without subsidy.

The support of agricultural practices is beneficial for the climate and the environment – enforcement of environmental protection – which is a new area in the subsidy system.<sup>46</sup>

It does not mean a lot of good things in current farming system for agriculture. According to literature forecast, the transition to the production of three different crops from the current two ones and the establishment of ecological target area on the

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<sup>44</sup> Szilágyi 2017, 251-259. The author describes this direct payments in detail. Hungary can still use within basic payment the Single Area Payment Scheme (SAPS) instead of the new Basic Payment System (BSP). This subsidy is granted for legitimate land-user. Transitional national payment is only granted from national budget. Hungary may still choose and maintain coupled support. Greening payment is a new type of subsidy which supports agricultural practices beneficial for the climate and the environment (crop diversification, maintaining existing permanent grassland and having ecological focus areas on the arable land). Young farmers support is a compulsory scheme of the payment system however, the support of young farmers is also provided in rural development programs. The support of small farmers belongs to the voluntary scheme which is chosen by Hungary.

<sup>45</sup> Somai Miklós: Agrártámogatások az Európai Unióban, in: [real.mtak.hu/17418/1/Somai\\_Agrártámogatások...pdf](http://real.mtak.hu/17418/1/Somai_Agrártámogatások...pdf) (12.01.2018)

The author points out that there were false expectations in connection with the accession to the EU in agriculture sector. On one hand it has turned out that West-European economic became self-sufficient due to European Union subsidies and agricultural production and agricultural processing are in a high technological level. On the other hand Hungary received significant European Union subsidy but its amount reached the support level of previously accessed Member States only by 2013.

<sup>46</sup> Szilágyi 2017, 253. Valuable studies about agricultural subsidies and environment protection: Farkas Csamangó Erika: A kölcsönös megfeleltetés környezetvédelmi követelményrendszere az EU-ban, *Forum: Acta Juridica et Politica*, 2015/2, 83-93; Fodor László: *Környezetjog*, Debrecen, Debreceni Egyetemi Kiadó, 2014, 181-193; Csák Csilla: Cross compliance, avagy környezetvédelem a támogatás feltételeként, *Publicationes Universitatis Miskolciensis Sectio Juridica et Politica*, 2012/2, 423-433; Olajos István: *Támogatási jogunk és a megújuló energiák* vidékfejlesztési fejezete, Miskolc, Miskolci Egyetem, 2012, 97-133.

eligible land is difficult for farmers. In the latter case, the cheapest and probably the best solution by farmers is the fallow results that a significant amount of land becomes non-agricultural land.<sup>47</sup>

Organic farming has an increasing importance in connection with environmental protection. Firstly, it is a break out opportunity for small farmers; secondly, the need for healthy diets has a binding effect on food production. Literature points out that organic farming would be an advantage in terms of employment as labour demand is higher and its costs are lower than traditional farming's cost. However, additional costs arise until the development of the system and boosting sales which may be compensated by the subsidy system.

A further challenge for agricultural economy and subsidy policy is the problem of climate change. Extreme weather anomalies make it difficult for farmers to correspond to new challenges. Both drought and significant inland water cause and will cause problem in Hungary.<sup>48</sup> Adaption to them makes more expensive food production (mainly in the case of new technologies, insurance, processing and storage).<sup>49</sup> Subsidy policy should adapt to the situation and help farmers to prepare for these challenges.

## 5. Closing thoughts

Subsidy policy is complex, cross-cutting set of rules which affects some scientific research area beside legal research. However, it has an increasing importance in economic and social processes. Taking into account all of these facts, legislative changes are needed.<sup>50</sup> A unified subsidy act should be adopted in which the procedure of subsidies should be regulated in details and be increased with sectoral laws.

Furthermore, public legislation should be strengthened in the case of subsidies as the conversion of public funds into private assets largely justifies it. Subsidies carry economic political and social purposes. In order to ensure these purposes public laws means the most effective and best solutions.

Within public legislation it would be important to regulate contractual relations in new public contractual framework and to strengthen supervision with more stringent sanctions to reduce abuses and to make subsidies reach their purpose.

All these general statement are increasingly valid for agriculture subsidies. The study presents several issues concerning to rural development and agricultural economy. Problems, of course, cannot be solved only by subsidy policy but it means an

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<sup>47</sup> Somai 2018, 20.

<sup>48</sup> The concept of landscape-oriented water management supported by Szilágyi János Ede offers solution to the problems: Szilágyi János Ede: *Vízgazdálkodás – Vízpolitika – Vízjog*, Miskolc, Miskolci Egyetemi Kiadó, 2018, under press.

<sup>49</sup> Veisz Ottó – Bencze Szilvia – Balla Krisztina – Karsai Ildikó – Varga Balázs: Tények és előrejelzések, *Magyar Mezőgazdaság*, 2015/70, 22-25, in: <http://real.mtak.hu/id/eprint/40887>, (20.01.2018).

<sup>50</sup> Contradictions of different subsidy procedures are analysed in: Olajos István: A támogatási eljárás és a közigazgatási eljárás kapcsolata, legfontosabb problémái, *Publicationes Universitatis Miskolciensis series Juridica et Politica*, 2005/1, 439-456.

important solution option in this area. Therefore, analysis should focus on subsidy policy. Country life and agricultural production are closely linked to each other therefore a complex treatment is needed from the aspect of support. Strategy is a priority area not only in Hungary but in the European Union.