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Influencing factors of the competitiveness of national agricultural law

This publication was created for the international conference of the European Council for Rural Law (CEDR) to be held every two years. It was organised in this year between 21 and 23 September in Lille, France. The scientific work was done in three commissions, and we represented Hungary in Commission II, where two questions were in the focus, namely that which national provisions promote the competitiveness of national agriculture, and which national provisions reduce it. In the suggested topics we examined the followings by answering the questions: legal provisions on land and property, legal regulation of product marketing, tax law provisions, legal provisions concerning the farm operator, rules concerning agricultural workers, prescriptions concerning the agricultural holding, and water management regulation from the environmental provisions.

1. Legal requirements of land and property¹

a. Access to land (rental forms, property rights...)

b. Access to production (e.g. quotas) and exploitation rights (e.g. administrative controls)

7. Legal regulation of product sales

a. Marks of quality

In the first part of our national report, besides the access to land and production,² we are going to report how the different marks promote the

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² Hungarian Agricultural law, Constitutional law and European law literature prepared for analysing land sales: Alvincz József: A földügyi szabályozás téves értelmezése, avagy hiteltelen írás a Hitelben, *Hitel*, 2013/6, 111-121.; Andréka Tamás – Horváth Ákos – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése, *Magyar Jog*, 2017/7-8; Anka Márton Tibor: Egymás ellen ható kodifikációk (Polgári Törvénykönyv és földforgalom), *Gazdaság és jog*, 2015/10, 13-19.; Bányai Krisztina: A zsebszerződések ügyészi szemmel, *Új Magyar Közigazgatás*, 2014/1, 62-71.; Bányai Krisztina: A zsebszerződésekről a jogi környezet változásainak tükrében, in: Stipta István (edit.): *Studia Iurisprudentiae Doctorandorum Miskolciensium = Miskolci Doktoranduszok Jogtudományi Tanulmányai*,

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competitiveness of locally produced and quality goods and which organizations of the Hungarian law promote and which pull back the sales of goods.³

The Hungarian Fundamental Law treats the land that is a special national value as a natural resource. Land is one of the natural resource in national public law and it is a national treasure which preservation of productivity and GMO free utilization is granted in Fundamental Law. Since 2014 only those people can get the ownership of land over 1 hectare who fulfil at least one of the three criteria of the farmer's concept, or who has agricultural secondary education or has had income from agricultural activity for at least 3 years or has 25% ownership of a company where the 50% of income derives from agricultural activity. The elements of Hungarian regulation are similar to the standard farmer's concept of German and French law, however more favourable, since here the terms are alternative and the fulfilment of at least one condition makes the applicant suitable for fulfilling the criterias. The farmer status is generated with the registration procedure starting in the Land Registry of District Office. The existence of this status has the following condition to obtain the ownership of a land by being sold. Prior authorization of the Land Registry of District Office is required to acquire the ownership of a land by being sold. The customer must have a valid sales contract with the land owner for the acquisition. However, the sales supervene between the parties only if there is nobody with pre-emptive rights by Hungarian laws who wishes to exercise this right in the authorization procedure. People eligible for pre-emption can make an acceptance statement of the contract during this period in which they replace the buyer. In the procedure for granting ownership, every potential customer must make a statement where he or she will use the land suitably for

Nemzeti alkotmányok, európai integráció és alkotmányos identitás, *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2015/77, 319-328.; Vidékfejlesztési Minisztérium: *Az új földtörvény vitaanyaga – A magyar föld védelmében*, 2012. május 30., in: [http://2010-2014.kormany.hu/download/1/f1/90000/%C3%BA;%20%C3%B6ldt%20\(20.12.2016\)](http://2010-2014.kormany.hu/download/1/f1/90000/%C3%BA;%20%C3%B6ldt%20(20.12.2016))

³ The most important Hungarian literature of the protection of productions and know-how: Bukodi Blanka: Az agrárjogi kerekasztal alakuló ülése, *Agrár- és Környezetjog*, 2016/20, 39-49.; Prugberger Tamás – Szabó Ágnes: Szükséges-e a szaporítóanyagokat minősíteni? *Studia iurisprudentiae doctorandorum Miskolciensium*, 2013/12, 335-350.; Szabó Ágnes: A növényfajta-oltalmára létesült nemzetközi egyezmény és a növényfajta-oltalmat érintő nemzetközi szabályok, *Publicationes Universitates Miskolciensis Sectio Juridica et Politica*, 2011/2, 569-594.; Szabó Ágnes: Szabadalom – növényfajta-oltalom – tájfajta, *Profectus in litteris*, 2011/3, 273-284.; Szabó Ágnes: Nemzeti értékek és hungarikumok, *Védjegyvilág*, 2012/1, 1-6.; Szabó Ágnes: Lisszabontól Genfig az agrár termékek földrajzi árujelző oltalmának szabályozására figyelemmel, *Védjegyvilág*, 2016/1-2; Szilágyi János Ede: Földrajzi árujelzők szabályozása multilaterális nemzetközi megállapodásokban, *Miskolci Jogi Szemle*, 2008/2, 95-120.; Szilágyi János Ede: *Eredetvédelmi kérdések a borjogban*, Miskolc, Novotni Alapítvány, 2009; Szilágyi János Ede: Az eredetvédelem egyes aktuális kérdései: a magyar termék és a hungarikum, in: Pogácsás Anett (edit.): *Quaerendo et Creando: Ünnepi kötet Tattay Levente 70. születésnapja alkalmából*, Budapest, Szent István Társulat, 2014, 607-621.; Szilágyi János Ede: A borjog helye a magyar és az európai uniós joganyagokban, in: Sipta István, Jámborné Róth Erika (edit.): *Doktoranduszok Fóruma*, Miskolc, 2005. november 9., Állam- és Jogtudományi Kar szekciókiadványa, Miskolc: Miskolci Egyetem Innovációs és Technológia Transzfer Centrum, 235-240.; Szilágyi János Ede: Protection of Origin and Wine Law: Eredetvédelem és borjog, *Agrár- és Környezetjog*, 2008/6, 62-89.

its farming branch, will be treated as his or her own land, won't be excluded from cultivation for at least 5 years, doesn't have debt based on an earlier made land use contract and it hasn't been established against him or her that a contract was made to encompass land use laws. Who wishes to exercise his or her pre-emptive right, it shall be marked whether his or her pre-emption right is based on an agreement or law and whether the buyer would have such a right against somebody. This is important because if the seller makes a contract with a buyer whose pre-emption right is stronger, then a third party can't make a successful pre-emptive statement to the land.

The Fundamental Law adopted on 18 April 2011, highlights the conservation of biodiversity. Article P of the Fundamental Law declares that "*Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.*"

The EEC launched the Euroterroirs, the European Country Program in 1993 in order to collect and describe the traditional agricultural products and food in the Member States. The Ministry of Agriculture, in connection with this program, made the Traditions-Flavours-Regions Collection between 1998-2002. This TFR Collection contains the scientific description of Hungarian sceneries, autochthons and the locally traditional foods which are the genetic and gastronomic heritage of Hungary. The TFR trademark belongs to the Program (proprietor of the trademark: Ministry of Agriculture) for which right of use tender can be submitted constantly to the Ministry of Agriculture.

Hungarikum is a collective term indicating a value worthy of distinction and highlighting within a unified system of qualification, classification and registry and which represents the high performance of Hungarian people thanks to its typically Hungarian attribute, uniqueness, specialty and quality and (a) which are considered the work and outstanding value of the Hungarian people both within Hungary and abroad, (b) which are natural values under protection, (c) which are classified as hungarikums by the Hungarikum Committee as a result of the individual assessment or (d) which are considered as Hungarikums by virtue of this law.

Decree No. 74 of 2012 (VII. 25.) VM of the Ministry of Rural Development on the use of certain voluntary distinctive signs on food regulates the conditions of use of Hungarian product, domestic product and domestic processed product or the equivalent sign.

The use of Hungarian product, domestic product and domestic processed product or the equivalent sign provides information for consumers about the origin of the food. The distinctive mark has a content referring to the quality despite the fact that it's not certificate the quality of food.

The holder of the colourful figurative trademarks of Hungarian product, domestic product and domestic processed product made the rules of all three trademarks in accordance with the provisions of Decree No. 74 of 2012 (VII.25.) of the Ministry of Rural Development.

The use of the colourful figurative trademarks of Hungarian product, domestic product and domestic processed product is not compulsory in connection with the use of distinctive signs regulated by Decree No. 74 of 2012 (VII. 25.) VM of the Ministry of Rural Development. Food producers may also notify another sign for trademark protection in accordance with the provisions of the decree but they must ensure that the signs are used properly.

The patentability of plants may have special conditions: Novelty- the plant is new if its adulterant has not been emitted (a) one year before the priority day anshore, (b) four years before or in the case of grapes and tree six years before abroad; Distinctness, uniformity, stability.

The requirement of DUS shall be examined in variety experiment in connection with variety names. The approval of plant-breeder is required (a) for producing adulterant, preparing the reproduction, recommending for emitting, export, import and keeping in a in the favour of these purposes (b) the protection spreads to the crop (c) to the product produced from the crop (d) furthermore to the derived crop. A bound of the protection is the allowance of the plant-breeder – produced crop, agricultural allowance is usable for development – and that the producer may retain the crop produced by him or her as adulterant. The period of protection in the case of grapes and trees lasts till the end of the 30th year, in the case of other plants till the end of the 25th year.

2. Tax law provisions regarding the competitiveness of the national agricultural law- Personal income tax, Value-added tax

a-b: Personal Income Tax

From an agricultural law perspective the personal income tax addresses the sector's issues the most. Most private individuals perform agricultural cultivation not as a private entrepreneur but as an additional source of income which is especially important for the people, who are living in the rural areas. The sector's other particularity is their high cost and their questionable verification. Even though the agriculture as a sector demands great costs, these costs manifest in self-performed tasks or self-produced crop, actions which the taxpayer does not have bills for.

In the light of the above mentioned, the Act CXVII of 1995 on Personal Income Tax addresses the income of those private individuals who perform agricultural cultivation specially. The aforementioned law establishes the category of small-scale agricultural producers as well as agricultural smallholders, defines tax exemptions as well as provides discounts on income, establishes special small-scale agricultural flat-rate costs, provides tax relief for small-scale agricultural producers, and as a special tax rule it creates the option of flat-rate taxation.

There are several tax exemptions related to the agricultural area, such as the income from the transfer of a cooperative business share obtained in the course of the realization of the cooperative business, the annuity obtained for land, the income from the transfer and lease of land, and the payment of land. It is also clear from the list that tax law exempts land income in particular from personal income tax.

While ensuring the tax exemption, the personal income tax law provides favourable taxing conditions for taxpayers engaged in agricultural activities.⁴

Specific rules apply to small-scale agricultural producers and agricultural smallholders, the rules which apply to agricultural producers also apply to family estate farmers and their contributing family members and extend to the private individuals who engage in agricultural production and are registered in the customer registration system maintained by the agricultural and regional development aid.

Small-scale agricultural producer⁵ means a private individual above the age of 16 who is not a private entrepreneur but possesses a small-scale producer license and is engaged in activities aimed at producing the listed products on his own farm.

Own farm shall mean the entitlement of the private individual who is actually conducting the production activities to dispose over the equipment (including leased equipment), the organization of production and - with the exception of cultivating sowing seeds under contract and breeding, fattening, and tending livestock under contract - the use of the results of production.⁶

Tax law also provides the definition of small-scale producer license: small-scale producer license means an official document issued and validated pursuant to the provisions of a government decree designed to register the income generated by small-scale agricultural activities; the license shall contain: a) the particulars of the small-scale agricultural producer, b) all of the other information prescribed in the government decree that is necessary for discharging tax liability.⁷

According to the personal tax law special taxation conditions are granted only to private individuals engaged in agricultural production, an important element of the concept of small-scale agricultural producer is the activity or the product to which this activity is directed.

Small-scale agricultural production activities include the growing of plants, orchards, breeding of animals, and processing of products at an individual's farm, if this occurs using base materials which are themselves produced at the farm, the collection of certain agricultural products at an individual's own farm which does not violate the law, and forestry activities conducted in an individual's own forest area, if, in respect of all of the aforementioned activities, the product produced or the activity falls under either of the categories listed in Act CXVII of 1995 on Personal income tax law.⁸

The concept of agricultural smallholder covers a narrower concept within the concept of a small-scale agricultural producer. Agricultural smallholder means any small-scale agricultural producer whose revenue from such activities does not exceed 8 million forints – 26230 euro - in a tax year. The special category is important because it provides better tax conditions for the individual.

⁴ Szakács Imre: *Az adózás nagy kézikönyve*, Budapest, KJK-Kerszöv, 2008, 762.

⁵ Hadi László (edit.): *Az új adójog magyarázata 2010*, Budapest, HVG-ORAC Kft., 2010, 871.; § 3 point 18 of Act CXVII of 1995 on Personal Income Tax

⁶ § 3 point 18 a) of Act CXVII of 1995 on Personal Income Tax

⁷ § 3 point 18 b) of Act CXVII of 1995 on Personal Income Tax

⁸ Schedule No 6. to Act CXVII of 1995

The income from small-scale agricultural producer activities is one type of income derived from self-employment activities⁹ within the aggregate taxed earnings, so income is determined by itemized expense accounting or 10 per cent expense ratio.¹⁰

Small-scale agricultural producers (including agricultural smallholders using flat-rate taxation) with revenues less than 600,000 forints annually from such activities shall not be required to consider income from such revenues, while if revenues exceed the above amount, income shall be determined based on all revenues included.¹¹

Small-scale agricultural producers using itemized expense accounting may deduct the following from their income from such activities¹²: a) if employing workers with at least 50 per cent disability, the monthly wages paid to each such employee, not to exceed the prevailing monthly minimum wage in effect on the first day of the month; with respect to apprentice training of vocational school students on the basis of apprenticeship agreement, as described by law, 24 per cent of the prevailing minimum wage for each student and for the month and any fraction thereof, or 12 per cent of the prevailing minimum wage for the month and any fraction thereof if the apprentice training is provided under a cooperation agreement concluded with the vocational school. A small-scale agricultural producer (for the purposes of this Section hereinafter referred to as 'employer') providing further and continuous employment to a vocational school graduate who has successfully completed the professional examination or to a previously unemployed person, or a person released from imprisonment within 6 months from the date of release, or a person released on parole, if not using flat-rate taxation, may deduct the amount of social security contribution paid during such employment, not to exceed a period of 12 months, from the revenues produced by such activities, regardless of whether such amounts can otherwise be claimed as expenses in the case of itemized expense accounting.

Agricultural smallholders using itemized expense accounting may claim 40 per cent of the revenues from such activities, deducted as smallholders' expense allowance, over and above verified expenses. In this case losses may not be deferred until, if so intended, such smallholders' expense allowance is claimed.¹³

In addition to the special cost accounting and income reduction rules, the legislator also provides the taxpayer with a tax break for the small-scale agricultural producer in the amount corresponding to the tax on his income from this activity,¹⁴ but this amount can not exceed 100,000 forints (327 euros). The two tax breaks are collectively referred to as small-scale agricultural producers' tax breaks.

⁹ § 8 of Act CXVII of 1995 on Personal Income Tax. The rate of tax in the year of 2017 is 15%, in principle, for all income subject to personal income tax.

¹⁰ Itemized cost accounting means that the taxpayer is entitled to deduct from his income the maximum amount of his income. 'Expense' according to § 4 (3) of Act CXVII of 1995 on Personal income tax; Only expenses directly connected to gainful activities, actually paid during the tax year exclusively for the purpose of gainful activities and for pursuing the activities, which are duly substantiated shall be recognized as expenses.

¹¹ § 23 of Act CXVII of 1995 on Personal Income Tax

¹² § 21 of Act CXVII of 1995 on Personal Income Tax

¹³ § 22 (6) of Act CXVII of 1995 on Personal Income Tax

¹⁴ § 39 (1) of Act CXVII of 1995 on Personal Income Tax; Szakács 2008, 852-853.

Furthermore, the law also favours agricultural smallholders by giving them the option of flat-rate taxation which in essence means that no substantive cost declaration has to be made instead it is based on the smallholders income.¹⁵ The basis is the flat-rate income which is calculated by subtracting the expense ratio determined by the Personal Income Tax and expressed in a percentage of income Act from the smallholders overall income.¹⁶

This results in an extremely low tax base for agricultural smallholders, generally 15% (expense ratio of 85%) and 6% for breeding and production of animal products (expense ratio of 94%).

Agricultural activities may be conducted by the taxpayer as a private entrepreneur as well but in this case he shall be subjected to the general rules with the exception of flat-rate taxation since that is also an option for private entrepreneurs conducting non-agricultural activities.

c-d: Value Added Tax

VAT is sector neutral, the agricultural sector is also subject to the general rules and the law only mentions agricultural products and agricultural activities in special exceptions. The VAT Act regulates the agricultural sector with its participants and the consumers of agricultural products through special provisions.

This specialty manifests in the tax rates and the special legal status of agricultural producers.

The rate of VAT affects the consumer price of products putting the burden on the end consumers. Providing tax benefits for basic food products is in some cases necessary for the central budget to prevent them from becoming impossible to pay for by low income consumers. The law defines three types of tax rates.¹⁷ The general tax rate of 27% and the reduced rates of 5% and 18%. These rates apply to different types of products and services. The general rate isn't specified by the Act, it is a collective rate which has to be applied to each transaction for which the legislator doesn't provide reduced tax rates.¹⁸

The 5% tax rate apply to herbal drugs and among others to domestic swine, cattle, sheep, goat and their meat, poultry meat eggs and milk. The 18% tax rate applies to milk products, grain and products made using these. Reduced tax rates therefore apply only to a limited circle of agricultural products.

Taxpayers in the agricultural sector are subject to the general rule but different types of special activities are provided with an option for special taxation method. This section focuses on the rules of taxation applied to producers conducting agricultural activities (agricultural producers). The special regulations benefit the taxpayers in two areas: the taxpayer is exempted from tax obligations and the related administrative burdens, through the compensational charges gain `special budget

¹⁵ § 50-57 of Act CXVII of 1995 on Personal Income Tax

¹⁶ § 53 of Act CXVII of 1995 on Personal Income Tax

¹⁷ § 82 (1)-(2) of VAT Act

¹⁸ Szakács 2008, 97.

assistance' which helps covering VAT costs related to their acquisitions.¹⁹ Agricultural activities are not subject to taxes but they don't allow for tax deduction and taxpayers have no return or accounting obligation regarding these activities. The law grants agricultural producers special legal status and also provides a legal definition from a VAT perspective.

A taxable person conducting agricultural activities shall mean one who fully or partially conducts agricultural activities, is qualified as micro entrepreneurship or self-employment by the special law, is established inland or otherwise has their place of residence or habitual residence inland. Agricultural activity shall mean the production or processing of products listed by the VAT Act and services provided with the use of instruments of self-owned businesses.²⁰

Compensational charges offset non-deductible taxes in cases of purchases from the conductor of the agricultural activity. Compensational charges are part of the consideration but not the buying price and have to be paid after the transaction by the buyer. ²¹ The rate of the compensational charge is determined by the VAT Act at 12% for plants and herbal products, at 7% for livestock and animal products and also for providing services. Therefore compensational charges provide additional income for taxable persons conducting agricultural activities and the option to pass on VAT of acquisitions.

Compensational charges weigh only on the end consumer since the recipient has the option to deduct the VAT.

3. Legal provisions concerning the farm operator

a. Social security

In the Hungarian social security law there are not any specific provisions regarding the farm operator. Farm operation can be performed in many forms which entitles the person for social security benefits. Section 5 of Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services provide a list of insured persons in the Hungarian social security system.

Farm operator can act as private entrepreneurs, if not engaged in auxiliary activities, business partners, if not engaged in auxiliary activities, persons performing work for remuneration in any work-related relationship (under agency contract or in self-employment, other than private entrepreneurs) - not including the persons engaged in voluntary activities of public concern performed under specific other legislation, small-scale agricultural producers, if the length of time remaining until the appropriate retirement age and the length of service time already acquired is at least

¹⁹ § 197-253 of VAT Act

²⁰ § 198 point a-c) of VAT Act. Sections I and II of Appendix 7 of the Act list all the products and services in the field of agricultural activities (e.g. living plants, livestock, animal products, food products from the processing of agricultural products, field work, packing and storage of agricultural products).

²¹ § 201-202 of VAT Act

twenty years on the aggregate, excluding: (a) minors engaged in small-scale agricultural activities under a joint small-scale producer license and members of a farming homestead who are minors, (b) persons covered by insurance on other grounds²²

Benefits provided by the social welfare system are available through the health insurance and pension insurance systems. It means insured farm operators are entitled for the following social benefits: (1) Health insurance benefits: (a) health services; (b) cash benefits: (ba) infant care benefits, (bb) child-care benefits, (bc) sick-pay; (c) accident benefits: (ca) emergency medical services, (cb) benefits for accident-related injuries, (cc) accident compensation. (d) benefits provided to workers with disabilities: (da) invalidity allowance, (db) rehabilitation allowance; (2) Pension insurance benefits are: (a) social security pension benefits on one's own right: (aa) old-age benefits, (b) dependents' benefits: (ba) widow's pension, (bb) orphans' pension, (bc) parent's benefits, (bd) accident-related dependent's benefits. (3) Rehabilitation benefits.²³

The Hungarian social security system provides for a wide range of services in the case of incapability of work. There is not a separate accident benefits pillar, it can be found in the health and pension pillar of the social security system.²⁴

According to Section 8 insurance of farm operator as insured person shall be suspended: (a) for any period of leave of absence without pay, except if: (aa) receiving infant care benefits, child-care benefits, child-care assistance benefits, child-care allowance or child-rearing allowance during the leave of absence, or (ab) the leave of absence without pay is taken for caring for a sick child below the age of twelve; (ac) the leave of absence without pay is taken for serving as a voluntary reservist; (b) for any period of unauthorized leave; (c) for any period of exemption from work (service), except if the employee is to be paid his average earnings for any duration of exemption from work in accordance with labor regulations, or if wages (remuneration), average earnings (absentee pay), or sick-pay had been paid; (d) for any period of pre-trial detention and imprisonment, unless the defendant was cleared of all charges by final verdict, or if the criminal proceedings were dismissed, or if the defendant was acquitted by final court verdict after sentencing; (e) for the duration of suspension of legal practice, and as regards notaries public and patent agents, for the duration of suspension of their membership in the relevant association; (f) during the period of suspension of private entrepreneurial activities. (g) for the duration of suspension of animal-health service activities of veterinary practitioners; (h) for the duration of suspension of apprenticeship agreements; (i) in cases not mentioned in Paragraphs a)-h), when the employment underlying insurance relationship is suspended in accordance with specific other legislation.²⁵

²² Prugberger Tamás: A társadalombiztosítás alanyai, in: Tóth Hilda (edit.): *Szociális jog - Társadalombiztosítási jog*, Miskolc, Miskolci Egyetemi Kiadó, 16-19.

²³ Section 14 of Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services

²⁴ Prugberger Tamás: Alapkérdések, in: Tóth Hilda (edit.): *Szociális jog - Társadalombiztosítási jog*, Miskolc, Miskolci Egyetemi Kiadó, 13., 169-176.

²⁵ See more in: Tóth Hilda (edit.): *Szociális jog - Társadalombiztosítási jog*, Miskolc, Miskolci Egyetemi Kiadó, 17-19.

4. Legal provisions concerning agricultural workers

a. Working conditions provided by contract (duration, wage ...)

Act I of 2012 on Labour Code does not contain any special provision on agricultural workers, therefore as a main rule, the general provisions shall apply. Section 201 of the Labour Code refers to simplified employment and occasional work relationship, according to which agricultural work can be performed. Any employment contract for simplified employment or occasional work shall be considered null and void if the parties are engaged under an employment relationship at the time it was concluded. An existing employment contract may not be modified by the parties to conclude a simplified employment or occasional work relationship. There are several provisions which shall not apply to this kind of employment relationship.²⁶ The daily working time may be arranged based on an irregular work schedule regardless of any working time banking arrangement or payroll period arrangement.

However, agricultural work might be performed within the framework of public employment.²⁷

b. Recruitment of migrant European and non-European workers

The Labour Code and any other code referring to employment relationship within which agricultural can be performed shall apply having regard to the rules of international private law. Unless otherwise provided for, Labour Code shall apply to persons who normally work in Hungary.²⁸

Act CXXV of 2003 on equal treatment prescribes the general equal treatment principle to people regardless their race, nationality and forms of employment, ie. working conditions.

c. Employee organisations and trade unions

Provisions of employee organisations (work councils) and trade unions shall apply to agricultural workers as well under the scope of Labour Code. However, there are not any specific provisions relating to them.

²⁶ Section 203 of Act I of 2012, Details can be found in Act LXXV of 2010 on simplified and occasional work.

²⁷ Jakab Nóra: Közfoglalkoztatás Magyarországon, in: Jakab Nóra – Borkuti Eszter – Rác Orsolya (edit.): *Szociális Jog I. Európai és magyar foglalkoztatás támogatási- és munkaügyi, valamint munkavédelmi igazgatási jog*, Miskolc, Bíbor Kiadó, 63-66.

²⁸ Section 3 of Act I of 2012

d. Collective employment agreements

Agricultural workers are not excluded from the right to cooperate and to conclude collective agreements. However in order to conclude to collective agreement they shall be strong enough to cooperate. As small-scale agricultural producers and agricultural smallholders they are not able to determine work conditions by means of practising their collective rights.

e. Social security contributions and taxes

Agricultural workers, besides the cases of being insured as farm operator, are insured in the following cases too according to Section 5 of Act LXXX of 1997 on the Eligibility for Social Security Benefits and Private Pensions and the Funding for These Services: (a) persons engaged in employment under employment contract in the private or public sector; (b) cooperative members, if participating in the cooperative's activities in person under contract of employment, contract of agency or personal service contract, not including the persons pursuing a full-time course of study in a school cooperative group - also during the period of suspension of his student relationship before reaching the age of twenty-five years -, and members of cooperatives performing work in a social cooperative within the framework of member's work relationship; (c) persons performing work for remuneration in any work-related relationship (under agency contract or in self-employment, other than private entrepreneurs) - not including the persons engaged in voluntary activities of public concern performed under specific other legislation²⁹ - if the income from these activities comprising part of the contribution base for the month reaches thirty per cent of the prevailing minimum wage, or one-thirtieth of the said minimum wage for each calendar day;

According to Section 16 of Act LXXX of 1997 in addition to the persons insured listed above health services are also available to persons receiving agricultural benefits (old-age allowance, occupational disability benefits, widow's allowance, increased old-age allowance, occupational disability benefits, widow's allowance).

Section 18 of Act LXXX of 1997 insured persons are required to pay health insurance contributions in kind, monetary health insurance contributions and labour market contributions (hereinafter referred to collectively as 'health insurance and labour market contributions'), as well as pension contributions, furthermore, private entrepreneurs and business partners engaged in auxiliary activities are required to pay pension contributions. Private entrepreneurs engaged in auxiliary activities and business partnerships on any business partner who is engaged in auxiliary activities shall also pay the above mentioned contributions.³⁰

²⁹ See Act LXXXVIII of 2005

³⁰ The rate of pension contributions payable by insured persons, by private entrepreneurs and by business partners engaged in auxiliary activities, and by members of social cooperatives performing work within a member's work relationship, is 10 per cent. The rate of health insurance and labor market contributions payable by insured persons is 8.5 per cent. Health insurance and labor market contributions shall comprise 4 per cent of health insurance

Employers shall contribute to sick-pay expenses. Contributions are paid on the income comprising part of the contribution base by the rates in effect at the time of payment. Contributions shall also be paid on income paid out (disbursed) after the termination of the relationship that is subject to compulsory insurance if considered to comprise part of the contribution base.

According to Act CXVII of 1995 on personal income tax there is a distinction between 'Small-scale agricultural producer' and 'Agricultural smallholder'.

'Small-scale agricultural producer' shall mean a private individual above the age of 16 who is engaged in activities aimed at producing the products listed in Annex 6 on his own farm in Hungary (hereinafter referred to as 'small-scale farming activities'), who is not recognized as a private entrepreneur in respect of these activities but possesses a small-scale producer license, including the private individual registered as a family estate farmer in the register maintained for this purpose, and any members of the family of such private person who participate in the family homestead in a form other than employment, with respect to all of them in connection with the revenue (income) from the activity or activities aimed to produce the products listed in Annex 6. For the purposes of this provision: (a) 'own farm' shall mean the entitlement of the private individual who is actually conducting the production activities to dispose over the production equipment (including leased land and equipment), the organization of production and - with the exception of cultivating sowing seeds under contract and breeding, fattening, and tending livestock under contract - the use of the results of production; (b) 'small-scale producer license' shall mean an official document containing the data provided for by government decree, with facilities to register the income generated by small-scale farming activities, issued and validated pursuant to the provisions therein specified; (c) in respect of cultivating sowing seeds under contract and breeding, fattening, and tending livestock under contract, the full delivered (gross) price of the product or animal shall be regarded as the income from small-scale farming activities, whereupon the delivery price of the product or animal may be claimed as an expense when determining income. 19)³¹ 'Agricultural smallholder' shall mean any small-scale agricultural producer whose revenue from such activities does not exceed 8 million forints in a tax year.

Regarding the taxation of agricultural small holders is detailed in Sections 16. (income from self-employment activities) 21-22. (agricultural producers using itemized expenses) 24. (income form activities other than self-employment) 39. (allowances on certain specific activities) 46. (tax advance payment liability) 50. (flat rate taxation of private entrepreneurs and agricultural smallholders).

contributions provided in kind, 3 per cent of health insurance contributions provided in money, and 1.5 per cent in labor market contributions. The amount of health services contributions payable by private entrepreneurs engaged in auxiliary activities, by business partnerships on behalf of any business partner who is engaged in auxiliary activities, by social cooperatives on behalf of their members performing work within a member's work relationship shall be 7,110 forints monthly (237 forints per day, less than 1 euro).

³¹ Established by Subsection (3) of Section 2 of Act CI of 2004, effective as of 1 January 2005. Applies to income obtained and tax liabilities arising subsequent to 1 January 2005. Amended: by subparagraph 2 paragraph (1) Section 212 of Act LXXXI of 2008. In force: as of 01.01.2009.

Act CXVII of 1995 does refer to Agricultural block exempted (ABER) aid³² and 'De minimis aid.'³³

5. Legal provisions concerning the agricultural holding³⁴

First, we remark in relation to this topic, that in the Hungarian regulation there are big deficiencies at present, and the lack of special rules on the agricultural holdings and also on the land inheritance reduce seriously the competitiveness of the Hungarian agricultural law.

a. *The inheritance of agricultural land and holding*

In 2013 the Act on Transactions in Agricultural and Forestry Land (hereafter referred to as Land Transaction Act)³⁵ was created which introduced serious restrictions in reference to transaction of agricultural lands (e.g. terms to turn into a farmer,³⁶ legal institution of approval by the authority³⁷, to make statements which are necessary

³² Agricultural block exempted (ABER) aid' shall mean aid provided pursuant to Articles 1-14 and 17 of Commission Regulation (EU) No. 702/2014 of 25 June 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ L 193, 01.07.2014, p. 1-75).

³³ De minimis aid granted in the agricultural sector' shall mean aid provided under Commission Regulation (EU) No. 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9-17).

³⁴ „This part of the work was created in commission of the National University of Public Service under the priority project KÖFOP-2.1.2-VEKOP-15-2016-00001 titled „Public Service Development Establishing Good Governance” in *Győző Concha Doctoral Program.*”

³⁵ Act CXXII of 2013; See about the circumstances of adoption of the Act: Szilágyi János Ede: A földforgalmi törvény elfogadásának indokai, körülményei és főbb intézményei, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közzolgálati Egyetem, 2013, 109-119.

³⁶ See more about the definition of the farmer: Olajos István: A termőföldek használata az erdő- és mezőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény alapján, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közzolgálati Egyetem, 2013, 121-135.; Raisz Anikó: Women in Hungarian Agriculture, in: Esther Muñiz Espada – Leticia Bourges (szerk.): *Agricultura Familiar*, Madrid, Ministerio de Agricultura, Alimentación y Medio Ambiente, 2014, 125-142.; Szilágyi János Ede: Das landwirtschaftliche Grundstückverkehrsgesetz als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agar- und Umweltrecht*, 2015/2, 44-50.

³⁷ See further about the approval by the authority: Bobvos Pál: A földforgalom hatósági engedélyezés alá eső tulajdonszerzési jogcímei, in: Bobvos Pál – Hegyes Péter: *A földforgalom és földhasználat alapintézményei*, Szeged, SZTE ÁJK – JATE Press, 2015, 61-67.; Jani Péter: A termőföld-szerzés hatósági engedélyezésének szabályozása de lege lata és de lege ferenda, in: Ágoston Eszter Ildikó (edit.): *Komplementer kutatási irányok és eredmények az agrár-, a környezeti- és a szövetkezeti jogban*, Szeged, SZTE-ÁJK, 2013, 15-28.

to acquisition of ownership³⁸). Two more legislation will regulate the area beside the Land Transaction Act, which are namely the Holding Regulation Act and the Production Organization Act,³⁹ but these have not already been created.

The new Land Transaction Act was expected to enshrine in law the order of intestate succession relating to agricultural lands, because the previous Act⁴⁰ was not included provision relating to agricultural inheritance too, but in more European countries there are special regulations in force, which are relating to this issue, but it has not been done. The legislature was explicitly excluded from the scope of the Act the case of the acquisition of landownership with intestate succession.⁴¹ We mention here, that however the scope of the Act is extended to the acquisition of landownership on the basis of disposition of property, the restrictions of acquisition of ownership are applicable in this case with some deflections, which are named in the Land Transaction Act. Compared to the acquisition of ownership on other title, a fundamental difference is, that the notary public's task is to send the disposition of property to the agricultural administration body for approval. The provisions on preemption right shall be ignored in this procedure, and the opinion of the local land commission shall not be requested.⁴² The agricultural administration body shall consider the eligibility of the heir and as to whether testamentary disposition is predisposed to breach or circumvent restrictions on land acquisitions. If it refuses to approve the acquisition, such disposition of the will shall be considered invalid.⁴³

In December 2013 the Parliament adopted the Act CCXII of 2013 (hereafter referred to as Act on Land), which disposes on several provisions and transitional rules related to Act CXXII of 2013 on Transactions in Agricultural and Forestry Land, but this Act includes provisions on intestate succession of agricultural lands either.

Because of the lack of special rules, the agricultural land and the agricultural holding shall be inherited according to the general civil-law rules, which rules do not take into consideration the nature of the agricultural land, and it can have serious effects. It can easily happen, that persons who are other than farmers will acquire the ownership of land, in this case it has bigger chance, that the agricultural area will not be farmed appropriately. It is a typical case, that more successors will be entitled to acquire the land, for example if the legator has more children, and they will acquire the ownership of this in proportion of their shares, and the land will be fragmented in this way. This is in contrast with the purpose of the Land Transaction Act's preamble, for example the creation of estates sufficient in size for viable and economically feasible agricultural production, or eliminating the detrimental consequences of a fragmented estate structure in terms of ownership.

³⁸ See further: Csák Csilla – Hornyák Zsófia: Az átalakuló mezőgazdasági földszabályozás, *Advocat*, 2013/1-4, 12-17.; Csák Csilla – Hornyák Zsófia: Az új földforgalmi törvényről, *Östermelő*, 2013/4, 7-10.

³⁹ § 1 (2)-(3) of Land Transaction Act

⁴⁰ Act LV of 1994 on Arable Land

⁴¹ § 6 (2) of Land Transaction Act

⁴² See more in: Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *Agrár- és Környezetjog*, 2013/15, 93-110.

⁴³ § 34 of Land Transaction Act

However we can find one rules on the agricultural land- inheritance in our Civil Code, which is namely the apropos of disclaimer of inheritance.⁴⁴ On the basis of this the heir shall be entitled to separately disclaim inheritance of a farmland, its equipment, accessories, livestock, and tools and implements, if he is not engaged in agricultural production by profession. With this the Act gives the opportunity, that a successor who is engaged in agricultural production by profession receives possibly the agricultural land and the adherent instruments. This rule was considered favourable anyway, because according to the main rule, the successor can refuse the estate only as a whole, and only by the above mentioned inheritance assets can be disclaimed separately by the successor.

We can tell in conclusion, that special rules⁴⁵ shall be needed to configure anyway. Because we don't find such provisions in the Land Transaction Act, so these rules should regularize in a separate Act on land inheritance.

b. Legal status of the holding

In Hungary the agricultural land means the subject of the regulation, and not the agricultural holding.⁴⁶ But we have to wait for the creation of the special rules-contained Act regarding to the agricultural holding⁴⁷ yet, as we referred to this earlier.

We can find only one definition in reference to the category of the agricultural holding in the Land Transaction Act, according to this agricultural holding shall mean the basic organization unit of production equipment and other means of agricultural production (land, agricultural equipment, other assets) operated with the same objective, functioning also as a basic economic unit by way of economic cohesion.⁴⁸ The Act declares a special type of the agricultural holding as well, namely the family farm.⁴⁹ In the Act on Land we can find some transitional provisions too in reference to the agricultural holding, when it says that until the entry into force of cardinal law

⁴⁴ § 7:89 (2) of Civil Code; See more in: Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitants and their children in the agricultural enterprise in Hungary, *Agrár- és Környezetjog*, 2013/15, 52-57.

⁴⁵ See about the regulatory models of other countries: Prugberger Tamás: A mező- és gazdasági földingatlan tulajdonának, használatának-hasznosításának és jogát ruházásuk szabályozásának lehetőségei az uniós jog tükrében, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Kiadó, 2010, 211-239.

⁴⁶ Szilágyi János Ede: Az agrár- és vidékfejlesztési jog elmélete, in: Csák Csilla – Hornyák Zsófia – Kocsis Bianka Enikő – Olajos István – Kókai-Kunné Szabó Ágnes – Szilágyi János Ede: *Agrárjog. A magyar agrár- és vidékfejlesztési jogi szabályozás lehetőségei a globalizálódó Európai Unióban*, Miskolc, Miskolci Egyetemi Kiadó, 2017, 25.

⁴⁷ See more about the regulation of agricultural holding: Kurucz Mihály: Az ún. agrárüzem-szabályozás tárgyának többféle modellje és annak alapjai, in: Korom Ágoston (edit.): *Az új magyar földforgalmi szabályozás az uniós jogban*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 55-77.

⁴⁸ § 5 point 20 of Land Transaction Act

⁴⁹ § 5 point 4 of Land Transaction Act: *family farm*: an agricultural holding registered by the agricultural administration body as a family farm.

relating to agricultural holdings, family farm should be thought of such collective of the lands which are in the ownership and use of the members of farming family, furthermore the immovable and movable assets, which are belonging to the land and marking in the inventory – in particular building, edifice, agricultural equipment, accessories, machine, livestock, resource –, and the utilization of this under the contract between the members of the farming family rest on the total employment of one family member and on the contribution of the other family members, and which registered by the agricultural administration body as family farm.⁵⁰

6. Environmental regulations – water management

Out of the topics in the area of environmental law we touch upon the water management in our report, and within this we bring into focus the issues connected to the protection of drinking water.

In Hungary numerous regulations⁵¹ are concerning to the protection and use of water. From these, we have to highlight the Fundamental Law⁵² of the country first of all. The Fundamental Law took over the provisions of the previous Constitution⁵³ relating to the right to a healthy environment and the right to physical and mental health, and it also supplemented these provisions relating to the water with the rule, that Hungary „shall facilitate the enforcement of the right to physical and mental health... by providing access to potable water.”⁵⁴ One new provision of the Fundamental Law compared to the previous Constitution is in the Article P (1), namely that „natural resources, particularly... water resources... shall comprise the nation’s common heritage; responsibility to protect and preserve them for future generations lies with the State and every individual.”⁵⁵

⁵⁰ § 4 of Act on Land

⁵¹ For example Fundamental Law of Hungary (25 April 2011), Act LIII of 1995 on the General Rules of Environmental Protection, Act LVII of 1995 on the Water Management, Act CXLIV of 2009 on Water Associations, Act CCIX of 2011 on Water Utility Service, Act LIII of 1996 on Nature Conservation.

⁵² Fundamental Law of Hungary (25 April 2011)

⁵³ The Constitution of the Republic of Hungary, Act XX of 1949

⁵⁴ Article XX (2) of Fundamental Law

⁵⁵ See further about it: Fodor László-Bujdos Ágnes: Right to Environment and Right to Water in the Hungarian Fundamental Law, in: Szabó Marcel-Greksza Veronika (edit.): *Right to Water and the Protection of Fundamental Rights in Hungary*, University of Pécs, Faculty of Law, Centre of European Research and Education, 2013, 34-48.; Szilágyi János Ede : Affordability of Drinking-water and the New Hungarian Regulation Concerning Water Utility Supplies, in: Szabó Marcel-Greksza Veronika (edit.): *Right to Water and the Protection of Fundamental Rights in Hungary*, University of Pécs, Faculty of Law, Centre of European Research and Education, 2013, 68-83.; Raisz Anikó: Water as the Nation’s Common Heritage in the Frame of the Common Heritage of Mankind, in: Szabó Marcel-Greksza Veronika (edit.): *Right to Water and the Protection of Fundamental Rights in Hungary*, University of Pécs, Faculty of Law, Centre of European Research and Education, 2013, 84-96.

As we already mentioned it, we can find provisions about protection of water in more acts, we would like to highlight and present one from these focusing on the protection of drinking water and the competitiveness promoting provisions of national agricultural law of this. This is the Act LVII of 1995 on the water management, which formulates general prescriptions relating to water management too. These requirements include, that drinking water supply, waters which serve the mineral and medicinal water utilization or designated for that purpose must be kept with designation and maintenance – rate of which is determined in specific measure – of protective area, protective zone of water abstraction in enhanced protection and safety (water resources protection); the water authority can order restriction of ownership and use according to specific measure on the basis of act on water management in order to protect of long-range drinking water base or with theoretical water rights licence already committed water resources.⁵⁶

One of the most important provision of the act is, that it determines the order of water demand's meeting, which shall be as follows: (1) subsistence drinking and public health, disaster preparedness, (2) medical, and associated with the population's alimentation directly serving productive and service activity, (3) water supplies for animals, fish-farming, (4) nature conservation, (5) irrigation, (6) economic, (7) other (such as sport, recreation, holiday, bathing, tourism) water use.⁵⁷

If the restriction of water use becomes necessary, the order of the restriction is the reverse of the meeting's order detailed above. If the available quantity of water reduces from natural or other unavertable reason, – with the exception of subsistence water use – the water use can be limited, ceased or abolished beside the retention of safety requirements in the order of the restriction of water use without compensation.⁵⁸

We have tried to highlight some rules, which are positive in the protection of hungarian drinking water anyway, and help the competitiveness of our agricultural law. As the obstacle of competitiveness we assign on this topic, that too many measures contain provision concerning to the protection of water, so the regulation of this area is too difficult to see and follow.

Closing remarks

12 national reports expressed on the congress. We have heard the lectures of Germany, Belgium, Bulgaria, Spain, France, the Netherlands, Poland, Romania, the United Kingdom and Slovakia, and an individual report from a Spanish presenter.

On the basis of the lectures the first statement of the Commission II was that it is very hard to compare and rate the effect of the acts concerning to the competitiveness. Nevertheless, the Commission formulated some recommendations in connection with the issued topics.

⁵⁶ § 14 (2)-(3) of Act on the Water Management

⁵⁷ See further: Szilágyi János Ede: *Vízjog – Aktuális kibívások a vizek jogi szabályozásában*, Miskolc, Miskolci Egyetem, 2013, 147.

⁵⁸ § 15 (4)-(6) of Act on the Water Management

First, the Commission recommends the European harmonisation at least on the fiscal and social territory; however, it accepts that the harmonisation doesn't concern to all branches of the legal protection, and it can result the risk, that it can ensure only a minimum level of protection. Furthermore, it seems that some areas have to belong to national competence henceforward: civil agricultural law (e.g. lease, inheritance).

In addition, the Commission suggested too that the countries should adjust the laws to the market requirements faster, and it formulated in relation to the future reform of the Common Agricultural Policy, that the supports of the second pillar should aim better the husbandry.