

**Orsolya PAPIK\***  
**“Trends and current issues regarding member state’s room to maneuver of land  
trade” panel discussion**

## 1. Introduction

On the basis of a joint initiative of the Subcommittee of Public Law of the Hungarian Academy of Sciences (MTA) and CEDR – Hungarian agricultural law association (MAE) a thematic overview panel discussion was organized on 1 June 2017 14:00, with the title “*Trends and current issues regarding member state’s room for maneuver of land trade*”. The venue for the discussion was the MTA Office Building (Budapest, Nador u. 7) Ground floor. No. 29 room. The basis for the discussion is a part of the September 9 to 13 2015 Congress’ second working committee’s report (only accepted in some parts) of the Paris-based European Council for Agricultural Law (Comité Européen de Droit Rural, CEDR). On the other hand the discussion is about the questions of certain representatives of the European Parliament that require written answers of the European Commission and about the answers, in the subject of agricultural land, between 2015 and 2017. Having regard to the content of the documents above, the organizers of the panel discussion built the topic around three major issues, which were:

1. There may be uncertainty whether the determination of the Member States’ room for maneuver of land trade may satisfy the requirements of the EU Law. Beyond the European Court of Justice’s fairly small number of judgement in connection to the topic, what could help understanding the farm policy framework provided by the EU law. Do the current EU legal framework enable the Member States to control the lands trade along their agricultural interests in the long term. Has it been worked out scientifically?

2. May the deviation from the principle of equal treatment be justified, relating to the fact that the Commission initiated procedure against the ‘new member states’, on the basis

of the questions addressed by the commission requiring written answers from MEPs, and their answers. a) Can the deviation be justified by the expiry of the derogation periods? b) Can the deviation be justified by complaints to the Committee about the state regulation of that land.

3. What is your opinion on the conclusion of Potsdam in 2015 in the I.2. point whereas four solving experiment were recorded in the fragment that has been sent to the participants. Are there any of them you could agree with? In addition to the four solutions, what other options would be considered feasible? What arguments could you

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Our country as a member of the European Union is obliged to provide – under the same conditions of – the land acquisition for its own citizens and legal persons or other Member States’ citizens and legal entities in accordance with principle of national treatment in relation to the utilized agricultural land. However, the economic development of our country and the other new member states causes problems, so that the land prices are significantly under the price level of the Western European member states.<sup>1</sup> Thus Hungary – and other newly accepted Member States – introduced protective measures<sup>2</sup> in relation to cross-border land acquisitions for non- agricultural purposes, but these measures are not domestic inventions, almost all of the provisions can be found in the same or similar forms of the Western European Member States’ land law concept.<sup>3</sup>

<sup>1</sup> See also the structure of Hungarian land ownership: Tanka Endre: A földtulajdon és a földhasználat szerkezeti átalakulása a magyar mezőgazdaság dekollektivizálása során, *Gazdaság és Társadalom*, 1996/1-2, 47-77.

<sup>2</sup> For cross-border acquisitions: Kocsis Bianka Enikő: A mező- és erdőgazdasági földek tulajdonjogának megszerzését vagy használatát korlátozó jogszabályi rendelkezések kijátszására irányuló jogügyletek és a naturalis obligatio kapcsolata, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2015/16, 241-258.; Kozma Ágota: Zsebszerződések veszélyei, *Magyar Jog*, 2012/6, 350-360.; Olajos István: A zsebszerződésekről, *Héthatár*, 2001/2, 36-38.; Olajos István – Szalontai Éva: Zsebszerződések a termőföld-tulajdonszerzések területén, *Napi Jogász*, 2001/7, 3-10.

<sup>3</sup> For details on the legal regulation of arable land see also: Bobvos Pál: A termőföldre vonatkozó elővásárlási jog szabályozása, *Acta Universitatis Szegediensis Acta Juridica et Politica*, 2004/3, 1-25.; Bobvos Pál – Hegyes Péter: *Földjogi szabályozások*, Szeged, JATEPress, 2014, Bobvos Pál – Hegyes Péter: *A földforgalom és földhasználat alapintézményei*, Szeged, SZTE ÁJK – JATE Press, 2015; Bobvos Pál – Farkas Csamangó Erika – Hegyes Péter – Jani Péter: A mező- és erdőgazdasági földek alapjogi védelme, in: Balogh Elemér (edit.): *Számadás az Alaptörvényről*, Budapest, Magyar Közlöny Lap- és Könyvkiadó, 2016, 31-40.; Fodor László: *Agrárjog* Debrecen, Kossuth Egyetemi Kiadó, 2005, 137-144.; Fodor László: Kis hazai földjogi szemle 2010-ből, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 2010, 115-130.; Gyovai Márk – Kiss-Kondás Eszter: A mező- és erdőgazdasági földek árverés útján történő szerzésének szabályai, különös tekintettel a végrehajtási eljárásra, *JAEL*, 2016/20, 64-77., doi: 10.21029/JAEL.2016.20.50; valamint Olajos István: A termőföldről szóló törvény változásai a kormányváltások következtében – gazdasági eredményesség és politikai öncélúság, *Napi jogász*, 2002/10, 13-17.; 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 Közszolgálati Egyetem, 2013, 121-135.; Olajos István: A mezőgazdasági földek tulajdonszerzéséhez kapcsolódó eljárások (jegyző, helyi földbizottság), *Új Magyar Közigazgatás*, 2014/3, 53.-55.; Olajos István – Szilágyi Szabolcs: The most important changes in the field of agricultural law in Hungary between 2011 and 2013, *JAEL*, 2013/15, 95-97.; Prugberger Tamás: Szempontok az új földtörvény vitaanyagának értékeléséhez és a földtörvény újra kodifikációjához, *Kapu*, 2012/6-7, 62-65.; Kocsis Enikő Bianka: The new Hungarian land transfer regulation from the aspect of examination of the European Union, *JAEL*, 2014/16, 95-110.; Tanka Endre – Molnár Géza: *Nem én kiálltok, a föld dübörög...*, Budapest, Kairosz, 2011, 1-418.

The European Commission in 2015 launched a series of infringement proceedings against the new Member States, saying that their rules on land trade is not compatible with EU law, and in particular they criticized the arrangements that exist in the old Member States. Among other things, this contradiction has led the organizers to use domestic high theoretical and practical experts who are trying to map out the foundations and limits of the Member States’ room to maneuver for land grabbing, and the reason for the procedures against possible discriminatory nature of the new Member States and possible solution options.

The event was opened by Prof. Dr. Tamás M. Horváth, DSc., Chairman of the Institute of Public Law Subcommittee AJB, and he immediately gave the word for chief director Tamás Darabos who welcomed the participants on behalf of the National Association of Agricultural Economics. In his introduction he analysed the importance of the agricultural land mainly from an economic point of view, pointed out, as it is such a strange thing,<sup>4</sup> that to a large extent it influences a particular national economy’s performance. The structure of land ownership also gives a section of rural society, and current farm policy issues, decisions and resolutions will determine the economic and social situation of young people, the future generation. After laying the economic foundations, the podium discussion was moderated by dr. habil. Csák Csilla (PhD, President of MAE) professor,<sup>5</sup> who led the conversation around these issues. In the introduction of the panel discussion the Associate Professor thanked the helpfulness of the Public Law Subcommittee, that contributed to the agricultural community in the work of legal professional qualification in relation to major magazines and organizing a panel discussion.

## 2. May there be uncertainty whether the determination of the Member States’ room for maneuver of land trade may satisfy the requirements of the EU Law?

Csilla Csák Associate Professor gave the word to dr. Tamás Andréka,<sup>6</sup> head of department of the Ministry of Agriculture.

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<sup>4</sup> For details on the legal aspects of land: Horváth Gergely: A természetvédelmi és agrártermelési célok szintézise, in: Bihari Mihály, Patyi András (edit): *Ünnepi kötet Szalay Gyula tiszteletére, 65. születésnapjára*, Győr: Universitas-Győr, 2010, 236-250.

<sup>5</sup> Csilla Csák is the author of many articles on agricultural land and land policy, including: Csák Csilla – Kocsis Bianka Enikő – Raisz Anikó, Vectors and indicators of agricultural policy and law from the point of view of the agricultural land structure, *JAEL*, 2015/19, 32-43.; Csák Csilla – Hornyák Zsófia: Igényérvényesítés lehetőségei és határai a mezőgazdasági földforgalom körében - bírósági keretek, *Studia Iurisprudentiae Doctorandorum Miskolciensium*, 2014/14, 139-158.; Csák Csilla – Nagy Zoltán: Regulation of Obligation of Use Regarding the Agricultural Land in Hungary, *Zbornik radova Pravnog fakulteta u Novom Sadu*, 2011/2, 541-549.

<sup>6</sup> Dr. Tamás Andréka, Head of the Legislative Department of the Ministry of Agriculture. See also the topic Andréka Tamás – Bányai Krisztina – Olajos István: A magyar agrár-piacpolitika legfontosabb változásai a Közös Agrárpolitika 2013-as reformját követően *Agrár- és Környezetjog*, 2015, 19-32.; Andréka Tamás – Olajos István: A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése *Magyar Jog* 2017/7-8, 410-424.

The head of department referred to the lack of sources of funds first<sup>7</sup> in his speech, which would create a very unpredictable regulatory environment for Member States. Treaty on the Functioning of the European Union (hereinafter 'TFEU). refers only to the free movement of capital by trademark law, but there is neither regulation nor a directive level control, so the states that want to regulate their land trade get in a very difficult position. The legislation is a national responsibility,<sup>8</sup> but the European Commission and the European Court of Justice ad hoc decisions have been overshadowed this freedom.

However, the European Court of Justice never investigates and decides generally, but only examines land trade control of a Member State in parts. The court's decisions are often based on the general terms mentioned above, and lead down decisions based on those precedents that have been substantial influence on the Member States farm policy's room for maneuver. On the other hand, Chief of Department explained that the European Court clearly considered the land as capital, applied the provisions on the free movement of capital in practice, and explored the possibility of limiting along this line. All restrictions on the movement of capital between Member States and between Member States and third countries are prohibited under Article 63 of TFEU.<sup>9</sup> However, the TFEU provides a derogation, as referred to in Article 63, provisions shall not affect Member States' right to adopt the necessary measures to prevent infringements of national laws and regulations, especially in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of administrative or statistical purposes of capital movements and make appropriate decisions justified by public policy or public security.<sup>10</sup> However, we must point out that the scope of restrictions is not a closed estimation, so the room to maneuver for Member States is given, the case law of the coming years will show which restrictions are accepted by the community and which not.

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<sup>7</sup> Olajos István: Az Alkotmánybíróság döntése a helyi földbizottságok szerepéről, döntéseiről, és az állásfoglalásuk indokainak megalapozottságáról, *Jogesetek Magyarázata*, 2015/3, 17-32.

<sup>8</sup> Téglási András: A tulajdonhoz való jog védelme Európában, *Kül-Világ*, 2010/4, 22-47.; Téglási András: Az alapjogok hatása a magánjogi viszonyokban az Alkotmánybíróság gyakorlatában az Alaptörvény hatálybalépését követő első három évben, *Jogtudományi Közlemény*, 2015/3, 148-157.; Téglási András: Hogyan védi az Alkotmányunk a mezőgazdasági termelők tulajdonhoz való jogát, *JAEL*, 2009/7, 18-29.; Prugberger Tamás: Reflexiók „A termőföldről szóló 1994. LV. tv. 6. §-a a nemzetközi jog és az EU-jog fényében” c. fórumcikkhez, *Magyar Jog*, 1998/5, 276-287.; dr. Horváth Gergely: Protection of Land as a Special Subject of Property: New Directions of Land Law In: Smuk Péter (edit) *The Transformation of the Hungarian Legal System 2010-2013.*, Budapest: CompLex Wolters Kluwer, 2013, 359-366.

<sup>9</sup> Article 63 of TFEU

<sup>10</sup> Article 65 of TFEU

Dr. Habil. Mihály Kurucz PhD (ELTE Faculty of Law, Associate Professor, Head of Department),<sup>11</sup> Associate Professor expressed his consent to the Head of Department. He noted that at a number of judgements (8-9) delivered on the subject in recent years, detected the absence of the public interest or the necessity or proportionality, and when these regulations would meet the criteria, the decision-makers referred to the detriment of freedom of establishment, leaving the land as a capital analysing approach. Indeed, restrictions on the freedom of establishment of nationals of a Member State within the territory of another Member State are prohibited.<sup>12</sup> As for the interpretation of Mihály Kurucz the community formed in connection with the practice of goods (eg. the Cassis de Dijon case)<sup>13</sup> with minor modifications transposed to the farm policy’s community context, which means that the smallest Member State applies restrictions is the starting point. He indicated immediately, that the land grabbing is a real problem, it actually exists on the European land market. He mentioned that he referred in the recommendations of the European Parliament to the regulatory approval system to avoid this, the system of pre-emption rights as a means of eliminating land grabbing. Finally, the professor pointed out that he misses the application of Article 39 TFEU section (2) in relation to the relevant case law. Whereas we have to consider that, in working out the CAP, account should be taken of the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions, of the need to effect the appropriate adjustments by degrees, and of the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.<sup>14</sup>

<sup>11</sup> Kurucz Mihály: Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről In: Szalma József (edit.): *A Magyar Tudomány Napja a Délvidéken 2014*, Újvidék, Vajdasági Magyar Tudományos Társaság, 2015, 120-173.; 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, 2013. július 11-én azonos címmel rendezett konferencia szerkesztett előadásai*, Budapest, Nemzeti Közszolgálati Egyetem, 2013, 56-76.; Kurucz Mihály: Gondolatok egy üzemszabályozási törvény indoklásáról *Gazdálkodás* 2012/2, 118-130.; Kurucz Mihály: A mezőgazdasági üzem, mint jogi egység In: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai = Current challenges of the European legislation on agricultural land = Aktuelle Herausforderungen der europäischen Regulierung über den landwirtschaftlichen Boden*, Miskolc, Novotni Alapítvány, 2010, 151-176.

<sup>12</sup> Article 49 of TFEU

<sup>13</sup> On 20 February 1979, the European Court of Justice delivered its judgment in Case C-120/78. *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, concerning the assessment of measures having equivalent effect to quantitative restrictions: The concept of measures having an effect equivalent to quantitative restrictions on imports, contained in article 30 of the eec treaty, is to be understood to mean that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption by the legislation of a member state also falls within the prohibition laid down in that provision where the importation of alcoholic beverages lawfully produced and marketed in another member state is concerned.

<sup>14</sup> See also: Bányai Krisztina: Theoretical and practical issues of restraints of land acquisition in Hungary, *JAEL*, 2016/20, 5-15., doi: 10.21029/JAEL.2016.20.5; Hegyes Péter: Értelmezési és jogintézményi kérdések a termőföldre vonatkozó elővásárlási jog szabályozásával

Dr. Ágoston Korom PhD<sup>15</sup> (National Agricultural Economics Association, expert) considers that the level of uncertainty arises of both the European Commission and the Court, that the land policy is located at the crossroads of the positive and negative integration, and this intersection is shifted towards negative integration. Whereas in connection with the institution’s action against land grabbing the positive integration tools could bring significant results. She emphasized that while maintaining the integrity of the internal market, not necessarily the national public interest, but primarily to achieve the objectives for the common agricultural policy instruments should be developed. According to Dr. Tamás Andréka, the Head of Department, she noted that indeed this widely Individual judgments were made, and also in relation to the relevant Advocates General it is clear that these can not be automatically translated into the regulatory regime of another Member State, but also to consider the question as a whole. On the other hand, he stressed that the institution of the preliminary ruling procedure is to ensure a kind of uniform legal interpretation followed by Member States. In relation to the free movement of capital, it was noted that she fully agree with her former professional mentor Jacques Pertek’s thoughts that *"the role of the free movement of capital in the EU legal order following the change in the mainstream of economic trends, quasi its codification."*

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összefüggésben, in: Bobvos Pál (edit.): *Reformator iuris cooperandi*, Szeged, Pólay Elemér Alapítvány, 2009, 199-207.; Holló Klaudia – Hornyák Zsófia – Nagy Zoltán: Az agrárjog fejlődése Magyarországon 2013 és 2015 között, *JAEL*, 2015/19, 73-87.; Hornyák Zsófia: Grunderwerb in Ungarn und im österreichischen Land Vorarlberg, *JAEL*, 2014/17, 62-76.; Hornyák Zsófia: Die Voraussetzungen und die Beschränkungen des landwirtschaftlichen Grunderwerbes in rechtsvergleichender Analyse, *CEDR Journal of Rural Law*, 2015/1, 88-97.; Keller Ágnes: A termőföld (mező- és erdőgazdasági földek) forgalmára vonatkozó új szabályozás ügyészi szemmel, *Ügyészek Lapja*, 2013/6, 191-198.; Olajos István: Die Entscheidung des Verfassungsgerichts über die Rolle, die Entscheidungen und die Begründetheit der Gründen der Stellungnahmen der örtlichen Grundverkehrskommissionen, *Agrar- und Umweltrecht*, 2017.

<sup>15</sup> Dr. Ágoston Korom PhD. Assistant Lecturer of NKE Faculty of Public Administration, his primary field of research is the land policy of the Member States. He has many publications on the subject, including: Korom Ágoston: Gondolatok az új tagállamok birtokpolitikájával kapcsolatban- Transzparencia és egyenlő elbánás In: Gellén Klára (edit.): *Honori et virtuti: Ünnepi tanulmányok Bobvos Pál 65. születésnapjára.*, Szeged, Iurisperitus, 2017, 259-268.; Korom Ágoston: Nemzeti érdekek érvényesítése a birtokpolitikában *Notarius Hungaricus*, 2012/2, Korom Ágoston: A „Dán“ Jogesetet (C-370/05) követően a tagállamok a külföldiek termőföld és ingatlan vásárlásával kapcsolatos, valamint a birtokpolitikára vonatkozó mozgásterének módosulása, *Glossa Iuridica Jogi Szakmai Folyóirat*, 2011-/2, 1-25.; Korom Ágoston: A földpiacra vonatkozó kettős jogalap tételeinek bírálata *Magyar Jog* 2011/3, 152-159.; Korom Ágoston: A birtokpolitika közösségi jogi problémái *Gazdálkodás*, 2010/3, 344-350.; Korom Ágoston: A termőföldek külföldiek általi vásárlására vonatkozó "moratórium" lejártát követően milyen mozgásteret tesz lehetővé a közösségi jog? *Európai Jog: Az Európai Jogakadémia Folyóirata* 2009/6, 7-16.

On the first issue dr. habilis. Ede János Szilágyi<sup>16</sup> (PhD, associate professor, University of Miskolc, Faculty of Law), considered it important to highlight: (a) In his opinion, the Opinion of the Advocate General published on 31 May 2017, the European Court of Justice C-52 / 16th and C-113 / 16th, is relevant in several ways. The cases relate to the specific provisions of the Hungarian land trade regulations, which require a usufruct rights and the right to use property in a legal sense ordered the contract termination ex lege. (a1) It points out that although the comprehensive examination of the Hungarian land registration law is not the subject of the Advocate General’s Opinion, however, the Opinion contains important notes in connection with the Hungarian land trade regime and other important legal institutions in addition to the specific subject-matter. For example it concerns the issue of property acquisition of legal entities, and what may be concluded from the Opinion augurs ill, as well as the outcome of infringement proceedings against an overall gain inability of entities including the Commission. Mr. Szilágyi professor also notes that the Advocate General's Opinion is essentially examines only the negative integration model (only the provisions on free movement of capital within it) in terms of the EU provisions for the Hungarian regulations, the positive integration model appearing in the Common Agricultural Policy is not even mentioned. In other words, it follows that it is not just one – the dr. Augustine stressed by soot – shift can be observed in the positive direction of the integration model towards negative integration model, but almost complete disappearance of the positive model can be seen.

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<sup>16</sup> János Szilágyi Edes published several independent and co-authored writings on the regulation of land regulation, in which he analyzes the current issues of the land management regulation: Csák Csilla – Szilágyi János Ede: Legislative tendencies of land ownership acquisition in Hungary, *Agrarrecht Jahrbuch 2013*, Wien-Graz, NWV, 2013, 215-233.; Jakab Nóra – Szilágyi János Ede: New tendencies in connection with the legal status of cohabitants and their children in the agricultural enterprise in Hungary, *JAEL*, 2013/15, 39-57.; free access; Prugberger Tamás – Szilágyi János Ede: Földbirtokszerkezet és szabályozás Nyugat-Európában. *Az Európai Unió Agrárgazdasága*, 2004/8-9, 38-41.; 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, *JAEL*, 2012/12, 119-123.; free access; Szilágyi János Ede: Az Egyesült Államok és szövetségi államainak mezőgazdasági földtulajdon szabályozása a határon átnyúló földszerzések viszonylatában, *Miskolci Jogi Szemle*, 2017/2, 569-577.; Szilágyi János Ede: A magyar földforgalmi rezsim tulajdonszerzési előírásai, in: Szilágyi János Ede (edit.): *Agrárjog*, Miskolc, Miskolci Egyetemi Kiadó, 2017b, 74-95.; Szilágyi János Ede: A magyar földforgalmi rezsim általános bemutatása, in: Szilágyi János Ede (edit.): *Agrárjog*, Miskolc, Miskolci Egyetemi Kiadó, 2017c, 64-74.; Szilágyi János Ede: The Accession Treaties of the New Member States and the national legislations, particularly the Hungarian law, concerning the ownership of agricultural land, *JAEL*, 2010/9, 48-60.; free access; Szilágyi János Ede: A termőföldek törvényes elővásárlási jogának alakulásáról, különös tekintettel a rendszerváltás utáni jogfejlődésre, *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, 2006/24, 511-525.; Szilágyi János Ede: Az Európai Unió termőföld-szabályozása az Európai Bíróság joggyakorlatának tükrében, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kibívásai*, Miskolc, Novotni Alapítvány, 2010, 269-281.; 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 Közszolgálati Egyetem, 2013, 109-119.; etc.

He added the conclusion of the Opinion that says the Hungarian rules of usufruct right are ex lege termination provisions of the so-called 'indirect discrimination', and restrict the free movement of capital. He notes that restrictions in the EU jargon is a kind of aggravated unlawful restriction on discrimination. In her observation the Advocate General's finding suggests the misinterpretation (or incompetence) of the usufruct (usufructus), it qualifies the Hungarian regulations that narrowing the usufruct right of land in close relatives are discriminatory for EU citizens and legal persons. At this point, she cites Anikó Raisz's finding that it's like the Advocate General had confused the legal institution of usufruct and the lease institution.<sup>17</sup>

Ede János Szilágyi consider it as an important document in this regard, the report of the European Parliament adopted on 27 April 2017,<sup>18</sup> such as the provision of which calls on the European Commission to submit a clear and comprehensive criteria in relation to land trade. In this regard, Szilágyi notes the performance of Professor Roland Norer in Miskolc, in which the Austrian-Swiss professor analyzed the Informal European Commission documents, then the European Court of Justice case law confers on them binding legal effect - by significantly bringing the judgments of the European Court of Justice accordingly. Ede János Szilágyi, following that pattern, has raised the possibility in the case of EP report, as it formulates proposals for aspects of land trade which is filling a gap.<sup>19</sup> Finally, it points out that the new free trade agreements can make a contribution to the EU-level uncertainties in land trade. According to her it is enough to think of the CETA investment rules for agricultural lands, or the Court of Justice of the European Union recently published 2/15.<sup>20</sup> No opinion, having a specific theme: "*Concluding a free trade agreement between the European Union and the Republic of Singapore - The distribution of powers between the European Union and the Member States*".

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<sup>17</sup> It gives the following interpretation of the Advocate General's Opinion: Szilágyi János Ede: Cross-border acquisition of the ownership of agricultural lands and some topical issues of the Hungarian law, *Zbornik Radova Pravnog Fakulteta u Novom Sadu*, 2017d under publishing

<sup>18</sup> European Parliament (EP): *Report on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers*, Committee on Agriculture and Rural Development A8-0119/2017, 2017.03.30, free access. Ennek részletes elemzését közli: Szilágyi János Ede – Raisz Anikó – Kocsis Bianka: Topical developments of the Hungarian agricultural law from the aspects of food sovereignty and food security – A magyar agrárjog legújabb fejlődési irányai az élelmiszer-szuverenitás és élelmiszer biztonság szempontjából, *JAEL*, 2017, under publishing

<sup>19</sup> See also: Szilágyi János Ede: Cross-border acquisition of the ownership of agricultural lands and some topical issues of the Hungarian law, *Zbornik Radova Pravnog Fakulteta u Novom Sadu*, 2017d, under publishing

<sup>20</sup> He expresses this view: Szilágyi János Ede: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzések, *Miskolci Jogi Szemle*, 2017e/klszm 1, 121-124.; Szilágyi János Ede: A magyar földforgalmi jogot befolyásoló jogi környezet, in: Szilágyi János Ede (edit.): *Agrárjog*, Miskolc, Miskolci Egyetemi Kiadó, 2017f, 52-54.; Raisz Anikó: Topical issues of the Hungarian land-transfer law, *CEDR Journal of Rural Law*, 2017a/1, megjelenés alatt; Raisz Anikó: A magyar földforgalom szabályozásának aktuális kérdéseiről, *Publicationes Universitatis Miskolcensis, Sectio Juridica et Politica*, 2017b/35, under publishing.

### 3. Can the deviation from the principle of equal treatment be regarded as justified, as the Commission initiated procedure only against the 'New Member States'?

Professor Csilla Csák indicated in her introduction that the Commission's discretionary power is the opening of the various methods of obligation, but it can not be discriminatory in principle. However, Dr. Tamás Andréka immediately noted that the Member States represent force based on economic or other characteristics, features, and these inequalities are manifested among other things in relation to these issues. He highlighted with respect to land trade that the Hungarian land trade restriction system is much more liberal than for example the French model. He pointed out, however, that in some cases national specificities are taken into account. It can be detected at the Estonian legislation as a manifestation, since the Estonians connect the possibility of land acquisition to linguistic skills, which is also clearly discriminatory for someone who is less familiar in the topic, but he immediately noted that national characteristic of Estonia that they are afraid of non-EU countries acquiring. Secondly Tamás Andréka noted that the Commission does not devote sufficient attention to the professional co-operation with the Member States, so far there has been two series of technical negotiations over the past nearly 14 years. But these meetings helped to crystallized that we are not the alone with the problematic issues in the Hungarian land trade, several other Member States faced similar problems, for example, in Germany land grabbing appeared as a significant problem. We followed the development of the domestic land trade in a parallel manner, and in many cases taken over certain elements from some Member States, such as the Austrian construction. This argument, of course, was not accepted by the European Commission, and Tamás Andréka also hinted that it is legitimate that they did not accept it, since another Member State's model does not make the model compatible with Community Law.

Dr. Mihály Kurucz continued the train of thought started by Tamás Andréka, he immediately referred to a 'two Europe' construct, that means within the EU there are core countries, peripheral and semiperipheral areas. Hungary belongs to the latter. Based on economic considerations, the core countries want to use the periphery and semi-periphery countries to gain access to resources. Thus, the procedures are not accidental but intentional. But he pointed out that the acquisition of production factors associated with the decrease of sovereignty and the loss of the land as a natural resource.<sup>21</sup> He sees the way out of that, if we put the emphasis on the direction of the Common Agricultural Policy, to the positive integration model.

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<sup>21</sup> Horváth Gergely: Az élet természeti alapjainak védelmi rendszerei és az agrárgazdaság in: Gellén Klára (edit.): *Honori et virtuti: Ünnepi tanulmányok Bobvos Pál 65. születésnapjára*, Szeged, Jurisperitus, 2017, 158-174.; dr Horváth Gergely: Kollízió? Az élet természeti alapjainak védelmi rendszerei és a gazdaság, *Külgazdaság Jogi Melléklete*, 2016/7-8, 69-90.; dr Horváth Gergely: Az élet természeti alapjainak védelmi rendszerei *Társadalomkutatás*, 2013/4, 386-402.

He noted that the questions to the Commission were always concise, but precise questions, inquired only about the Commission's answer that was not fully understandable. On the contrary, the Commission's answers were always the same, not even deign the asking person to provide a substantive response. Ágoston Korom admitted that the Commission's discretionary power is to initiate a procedure and previous investigations, but she insist on the principle of equal treatment. Although she could detect that from the mid-2000s the practise of law is eroded and the crisis deepened it. She referred that the Union keeps current interest in mind in recent years and it often differs from the elaborate judicial practice and it hides as much danger as if the Member State did not respect the Community Law. He also mentioned the fact that a few decades ago, for example, a requirement demanded by the Estonians and the restriction told by Tamás Andréka would not have jumped at the bar. However, he agrees that to protect our own control system, apparently used by another state - that is against the EU law- we cannot cite that regulations. Ágoston Korom pointed out that although the Commission asserts the principle of equal treatment, but they carry out an investigation against the newly joined Member States, which was justified by the derogation period, but in the contract there is not any indication that this procedure is obligatory. The expert noted that on several occasions the committee was asked if there is any complaint received regarding the founders or old Member States' regulations, and they received an evasive answer, then they succeeded and got to know that 50 complaints were received, but these happening did not became procedures, therefore a derogation from the principle of equal treatment is justified.

Ede János Szilágyi raised the following problems at the second issue. According to Szilágyi's view the expiry of the derogation period for land trade to countries which joined in 2004 does not justify that the European Commission launched an infringement procedure only with the countries who joined in 2004 or after. Of course, the Commission's discretionary power is to initiate infringement proceedings against anyone, but the European Court of Justice exercising its right can not act in discriminatory way. For this reason, it can be examined in relation to infringement proceedings, if the Commission acted in a discriminatory way and in that case the European Ombudsman can be contacted. Tamás Andréka raised that any country introducing restrictions is going to lose in a decade against the European Commission in this battle, Ede János Szilágyi answered that not only the new Member States, but the old ones, because - for example the new members can open an investigation of the old Member States in front of the European Court of Justice- the restrictive requirements of the old Member States can be eliminated. Szilágyi agreed with the step that the new Member States could launch investigation into the restriction of land trade of the old Member States. It would seriously affect the sovereignty of the old Member States<sup>22</sup> and such a move is tantamount to an open declaration of war, as he considered that it would cause severe cracks in European integration.

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<sup>22</sup> He expresses his opinion on sovereignty: Szilágyi János Ede: Acquisition of the ownership of agricultural lands in Hungary, taking the EU's and other countries' law into consideration, *Zbornik Radova Pravnog Fakulteta u Novom Sadu*, 2016/4, 1439, doi: 10.5937/zrpfns50-12226, free access.

According to Szilágyi, in a way it was the same move as when Austria proposed to launch infringement proceedings at the European Commission in case of usufruct rules. (Austria later withdrew this initiative, but the action was brought...) For this reason Szilágyi has also added that for new Member States it is a priority issue and the matter of sovereignty to limit land sales to avoid the so-called land grabbing phenomenon, that is why the right cannot be denied from the new Member States to protect the agricultural lands.<sup>23</sup> Therefore, Ede János Szilágyi states that it would be worth considering the possibility in case of both the new and old Member States for the EU level land traffic and to deepen the integration. Szilágyi recalled that that is why the Potsdam Conference of 2015 CEDR II. Work Committee dealt with this issue in depth.<sup>24</sup> He added, however, that the experts participating in the working committee are not able to reach an agreement in the working committee conclusions, that sought to determine the scope of these legislative issues at EU level. Nevertheless, this part of work was published, on the ground that it can be the basis of a possible future agreement.<sup>25</sup> Therefore Szilágyi is of the opinion that the European Parliament's initiative can be considered, in which the European Parliament calls on the Commission to consider a moratorium, until the Commission publish the above mentioned EU land trade criteria.<sup>26</sup> According to Szilágyi, infringement procedures launched by the European Commission in front of the new Member States' citizens could have avoided the issue of discrimination, for that the European Commission tactically should not have initiated these infringement procedures. It would have been enough, if they had waited the initiated or the expected outcome of the preliminary ruling proceedings.

As it was indicated in the introduction to this article, a starting point of the panel discussion were questions and answers by the MEPs to the Commission, which if not in full, but in summary worth reviewing. The starting point was that the Commission can launch infringement procedures against the new Member States, so the representatives wished to know the reason for the received complaints, if there is any, regarding the regulation of the old Member States, and why infringement proceedings have not launched yet. On behalf of the Commission, Jonathan Hill and in one case the Vice-President Valdis Dombrovskis answered.

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<sup>23</sup> He expresses his opinion: Szilágyi János Ede: Das landwirtschaftliche Grundstückverkehrsgesetz als erster Teil der neuen ungarischen Ordnung betreffend landwirtschaftlichen Grundstücken, *Agrar- und Umweltrecht*, 2015/2, 44-46.

<sup>24</sup> Szilágyi János Ede: *General Report of Commission II*, in: Roland Norer (edit.): CAP Reform: Market Organisation and Rural Areas: Legal Framework and Implementation, Baden-Baden, Nomos, 2017g, under publishing

<sup>25</sup> Szilágyi János Ede: Conclusions, *JAEL*, 2015/19, 94-95, free access.

<sup>26</sup> European Parliament (EP): *Report on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers*, Committee on Agriculture and Rural Development A8-0119/2017, 2017.03.30, point 40, free access

They expressed in their replies that the Commission continually monitors the EU law in all Member States, and equally shall take the necessary measures, and they assured the MPs that the principle of equal treatment and impartiality is used for monitoring and taking measures among the Member States, the "*systematic review of the agricultural laws of six Member States currently conducted by the Committee is due to the accession protocols.*" Csilla Csák also noted at the conclusion of the negotiation of the question that the Hungarian delegation appears at the conferences held under the CEDR and in many cases the performances, ideas are not successful every time, in this sense the international scientific medium is divided. She noted that earlier in the Hungarian GMO-free agriculture it was also generated significant scientific debate and also in relation to the land issue, it 'glowed in the air' at the last conference in Potsdam.

#### **4. What is your opinion on the conclusion of Potsdam in 2015 in the I.2. point whereas four solving experiment were recorded in the fragment that has been sent to the participants?**

With regard to the third issue Ede János Szilágyi described the conclusion of the report of CEDR Potsdam, and in this respect, the accepted part by the Working Committee, which working paper was prepared by him as a general reporter.<sup>27</sup> The possible solutions are the following:

(a) The EU Member States give up using the four basic freedoms with regard to land policies. This would indicate a move toward loosening of integration.

(b) Those Member States which have introduced restrictions on land markets, liberalize the land market regulation or introduce more liberal rules. This is obviously harm the interests of the citizens of these Member States in many ways and can lead to land-grabbing phenomenon at land markets in the new Member States.

(c) The debate can be solved in a simply political way: that could be to turn blind eye over the case, for example based on a political background decision. In this case, there is no gurantee that this issue will not come up again, or that someone (basically anyone) will not refer the matter to the CJEU in preliminary ruling procedure, this way outrick the politicians (ie the Commission and the Member State) background decisions.

(d) We can move to the further management of legislative process, if necessary, with the modification of the EU legislation. This may eliminate the uncertainties and deepen the integration; on the other hand it can be interpreted as the giving up of a certain part of sovereignty.

Professor Szilágyi then explained that the EU is searching for its place and purpose in the world's political stage, therefore, it is not impossible that he vote for deepening integration.

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<sup>27</sup> Land use issues in relation to human rights see also: Raisz Anikó: Földtulajdoni és földhasználati kérdések az emberi jogi bíróságok gyakorlatában, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kihívásai*, Miskolc, Novotni Alapítvány, 241-253.

Mihály Kurucz rejected the first solution, that would be the complete termination of the foundation of the community, and it would prove ‘the nonsensical community.’ The second model, which is based on the liberalization is not rejected completely, but he consider it possible if very serious legal restrictions will be introduced for the land and biotop protection. But the inevitable question arises that is about the acquisition of property rights of person, because its peculiarity is the transition, the self-multiplication, it changes hands as there is no land drifting behind in the classical sense. Szilágyi agreed on the problem identified on the third model that this model will live and work until the people in the agreement. Mihály Kurucz thinks that the last resort, ie the positive integration is a way out of this situation, it would clearly mean the Common Agricultural Policy, but they would like to ‘renationalize,’ but even so, this mixed model is a viable option. The Member States could clearly see the targets with a directive type of control, which can be tailored to the individual methods of compliance. The basis of this contract could be the internal market, the Article 39 TFEU or the Cohesion Fund. Tamás Andréka also rejected the first model, but he would transfer the stress, namely from the capital-oriented approach toward the establishment attitude. According to the Head of Department the other viable option could be the integration into the Common Agricultural Policy. As the competition law was integrated, the land as a factor of production could also appear at the level of common agricultural policy. But the difference in the policies of the Member States also arises here, Tamás Andréka found it dubious, whether it is possible to create a harmony between the Member States. He stated that based on the international experience every state afraid of another Member State or States in an economic sense, so we can find restrictions in connection with the land trade in each of the Member States’ law. Both models would bring about a solution, of course, and the Member States give up from their sovereignty to some extent. He emphasized that the Commission and the Court will clearly take a stand to preserve and deepen the acquis. Ágoston Korom agree on the issue that the EU institutions will not give away the EU acquisitions, so the decrease of the economic freedom’s intensity is unimaginable. However, the common land policy is difficult to integrate into the common agricultural policy, he sees a number of difficulty behind it.

At the closing of the panel discussion Csilla Csák asked Nándor Pávai who closed the event on behalf of Font Sándor, President of the National Assembly Agriculture Committee. He mentioned that based on the data there is a stable increase in the agricultural sector, an overall satisfaction felt in the host society, which is, in addition to many other reasons, attributable to the legislation.<sup>28</sup> Finally, he offered on behalf of the president that the Committee on Agriculture also continues to provide as much help as possible for scientific research and problem solving.

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<sup>28</sup> See more about: Nagy Zoltán: A termőfölddel kapcsolatos szabályozás pénzügyi jogi aspektusai, in: Csák Csilla (edit.): *Az európai földszabályozás aktuális kibívásai*, Miskolc, Novotni Kiadó, 2010, 187-198.; Olajos István: A haszonbérleti szabályozás árnyoldalai, *Magyar Jog*, 2001/2, 21-24.; Prugberger Tamás: A haszonbérleti szerződésről de lege lata és de lege ferenda, in: *Publicationes Universitatis Miskolciensis Sectio Iuridica et Politica*, 2004/22, 455-483.

## 5. Final Thoughts

The conference was the first step of the common thinking and sharing of experiences, because as we have seen above, the land issue is actually glow in the air. High degree of uncertainty felt in the community land policy and these uncertainties are compounded by the practice in land matters by Commission and Court of Justice, which does not contribute to the development of a single farm policy concept. Report from the European Agricultural Law Council and podium discussion’s participants’ comments demonstrate, however, that the agricultural lawyers and experts of theory and practice see different ways of solving. In connection, there is noticeable shift towards positive integration model and it is the most appropriate, but a number of conceptual issues’ consideration are needed yet. Personally, I, as a young expert in the field of agricultural law in theory and practice, like listening to speakers, the President and the invited experts valuable thoughts, comments. I hope this conference was just the beginning.