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### **Commission I**

Statut juridique des conjoints et de leurs enfants dans l'entreprise agricole – **Legal status of cohabitantes and their children in the agricultural enterprise** – Rechtliche Stellung der Partner und deren Kinder im landwirtschaftlichen Unternehmen

#### **National report for Hungary**

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In this report in *Section A. (Stocktaking) point 2.* and *Section B. (Legal developments)* are worked up jointly in the different area fields by distinguishing present and past regulation and comparing male and female, and agricultural and non-agricultural sectors. 6.1. and 6.2. are worked up within the provisions of subsidy law; land law and tenancy.

## **A. Stocktaking**

Which are the characteristics distinguishing the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise *in general*? Is the status of countrywomen regulated by law? (1.)

Generally speaking the recent Hungarian civil, family, social security law do not characterize specifically the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise (furthermore referred to as “target group”) *in general*. In the Hungarian legislation the focus is on the protection of the family, not only the individuals, but their relations also, and of the marriage. Family is a significant entity and resource of the nation, therefore the state has to respect and protect it (see the details below).<sup>1</sup>

Families performing agriculture activities are entitled for state subventions, and are protected by special legal institutions. Specifically agricultural law focuses on the target group.

Women have a special status regarding the pensionable age, as they can be retired regardless their age, if they have 40 years of service. This regulation aims to acknowledge the time spent with motherhood.

The Hungarian legislator tries to solve some problems such as aging and migration in the agriculture by focusing on families.

**Stocktaking, legal developments, equal treatment in different branches of law and area fields (points 2., 3., 6.1. and 6.2.)**

**(2.) Present: Which are the characteristics distinguishing the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise *in particular*, namely in the following fields?**

**(3.) Past: Has the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in the jurisdiction of your country changed with regard to the following branches of law and area fields? If yes, how and to which extent?**

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<sup>1</sup> See National Avowal of the Fundamental Law of Hungary (25 April 2011).

**(2.3.1.) Comparison: make a comparison between the legal status of partners and their children in the non-agricultural enterprise?**

**(2.3.2.) Comparison: make a comparison between female and male partners in the agricultural enterprise?**

**In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, *particularly* with regard to the following problematic issues**

**Demographic ageing and rural depopulation, with due regard to the exodus of women? (6.1.)**

**Multifunctionality of agriculture and diversification of production, with due regard to the situation of women in part-time farming operations? (6.2.)**

### **Subsidy law (6.1. and 6.2.)**

As regards the topic of the present national report, besides numerous other non-mentioned supports, it is worth stressing the following two groups of agricultural and rural development supports. The first group typically focuses on the young agricultural producers (and so indirectly on young couples) and the second group concentrates on the employment of women.

I. *Support of the transfer of agricultural holdings to agricultural producers<sup>2</sup> and support for the start of young agricultural producers:<sup>3</sup>* These supports – financed from the European Agricultural Fund for Rural Development (hereinafter referred to as EAFRD) – can play an important role in the life of a young couple working in the agricultural sector. Although direct beneficiaries of these supports are not couples (or families), but young agricultural producers (under the age of 40), it is unquestionable that these kinds of supports help the early life of whole families.

II. *The promotion of the employment of women* from the rural development supports are financed from the EAFRD.<sup>4</sup> As to these supports, the promotion of the employment of women brings extra points during the evaluation of the given support application. These supports are *inter alia*: the purchase of machinery and technological equipment,<sup>5</sup> the modernization of animal farms,<sup>6</sup>

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<sup>2</sup> Decree of the Minister for Rural Development (hereinafter referred to as VM decree) No. 121/2012 (28/11).

<sup>3</sup> VM decree No. 57/2012 (21/6).

<sup>4</sup> In connection with this group of supports, we applied the outstanding research of *Anikó Raisz.* See RAISZ, Anikó: Women in Agriculture – Country Report Hungary, to appear.

<sup>5</sup> Decree of the Minister for Agriculture and Rural Development (hereinafter referred to as FVM decree) No. 26/2007 (17/4).

the establishment of the plantation of perennial, non-arboreal energy crops,<sup>7</sup> the establishment of arboreal plantations of short rotation coppice for energy production,<sup>8</sup> the establishment and modernization of plantations,<sup>9</sup> the production of renewable energy for agricultural use,<sup>10</sup> the modernization of horticulture,<sup>11</sup> the purchase of machinery and technological equipment in horticulture,<sup>12</sup> investments in amelioration, the development of irrigation and water-management facilities,<sup>13</sup> the modernization of crop production facilities,<sup>14</sup> the value increase of agricultural products,<sup>15</sup> the development and modernization of the machinery in forestry,<sup>16</sup> the establishment of holdings producing vegetable-based crude oil and crude alcohol for non-agricultural purpose,<sup>17</sup> the forming and operation of integrated public and service opportunities in connection with basic services for the rural economy and population,<sup>18</sup> the development of agricultural roads,<sup>19</sup> the establishment of modern plantations and the modernization of plantations in horticulture,<sup>20</sup> the modernization and establishment of horticultural plantations,<sup>21</sup> the modernization of poultry farms,<sup>22</sup> silvicultural measures in the young forests,<sup>23</sup> etc. In connection with this group of supports, it is worth referring to the survey of the Hungarian Central Statistical Office. According to this survey, 52,1 percent of women aged between 15-64 worked in 2012; the Hungarian Central Statistical Office measured similarly high employment rate only in 1992.<sup>24</sup>

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<sup>6</sup> FVM decree No. 27/2007 (17/4) and VM decree No. 61/2012 (29/6).

<sup>7</sup> FVM decree No. 71/2007 (27/7).

<sup>8</sup> FVM decree No. 72/2007 (27/7).

<sup>9</sup> FVM decree No. 75/2007 (27/7).

<sup>10</sup> FVM decree No. 78/2007 (30/7).

<sup>11</sup> FVM decree No. 25/2008 (7/3) and VM decree No. 103/2011 (8/9).

<sup>12</sup> FVM decree No. 26/2008 (7/3).

<sup>13</sup> FVM decree No. 34/2008 (27/3).

<sup>14</sup> FVM decree No. 35/2008 (27/3).

<sup>15</sup> FVM decree No. 47/2008 (17/4).

<sup>16</sup> FVM decree No. 144/2008 (7/11).

<sup>17</sup> FVM decree No. 44/2009 (11/4).

<sup>18</sup> FVM decree No. 112/2009 (29/8).

<sup>19</sup> FVM decree No. 125/2009 (29/9).

<sup>20</sup> FVM decree No. 35/2010 (9/4).

<sup>21</sup> VM decree No. 55/2011 (10/6).

<sup>22</sup> VM decree No. 78/2011 (3/8).

<sup>23</sup> VM decree No. 25/2012 (20/3).

<sup>24</sup> Source (07/03/2013): <http://www.kormany.hu/hu/nemzetgazdasagi-miniszterium/hirek/husz-eves-csucson-a-noi-foglalkoztatasi-rata>

## Land law and tenancy (6.1. and 6.2.)

As far as the Hungarian land law and tenancy are concerned, nowadays these areas undergo a great transformation.<sup>25</sup> First, the new Hungarian land transfer act is analysed; second, this report focuses on the demographic land program of Hungary.

I. At the end of June 2013, the Hungarian parliament (called *Országgyűlés*) adopted a new law concerning *transfer of agricultural lands and lands of forestry*<sup>26</sup> (hereinafter referred to as 'land transfer act' or 'LTA'). The land transfer act entering into force progressively (between December 15, 2013 and May 1, 2014) comprises essential provisions regarding family homestead, family estate farmer, close relatives, young farmer and beginner farmer. But before a detailed assessment of these provisions, it is worth noting that the land transfer act is merely one act of the new Hungarian land law regime.<sup>27</sup> Besides

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<sup>25</sup> On the antecedents of the Hungarian land law, see CSÁK, Csilla: The changes in the circumstances of arable land's ownership and land tenure from the time of the democratic transformation to our days. *Journal of Agricultural and Environmental Law*, 2007/2, pp. 3-18; KURUCZ, Mihály: Critical analyses of arable land regulation in Hungary. *Journal of Agricultural and Environmental Law*, 2007/3, pp. 17-47; TANKA, Endre: Draft amendment of the Act LV of 1994 on arable land by the proposal of the Ministry of Agriculture and Rural Development and the Ministry of Justice and Law Enforcement (no. 41123/4/2007). *Journal of Agricultural and Environmental Law*, 2007/4, pp. 42-49; TANKA: Why has the general land consolidation no chance in Hungary? *Journal of Agricultural and Environmental Law*, 2006/1, pp. 23-28; BOBVOS, Pál: A földtulajdon és a földhasználat szerkezetének átalakítása hazánkban. *Acta Universitatis Szegediensis Acta Juridica et Politica*, 1994/2, pp. 1-20; BOBVOS: A magánszemélyeket érintő termőföld-tulajdonszerzési korlátozások. *Magyar Jog*, 1988/7-8, pp. 636-646; FODOR, László: *Agrárjog*. Debrecen, Debreceni Egyetem Kossuth Egyetemi Kiadó, 2005, pp. 58-70; TANKA: A termőföld-védelem történeti és jelenbeli alapkérdései. *Állam és Igazgatás*, 1981/2, pp. 140-152; TANKA: Törekvések a szövetkezeti földviszonyok jogi korszerűsítésére. *Magyar Jog*, 1990/3, pp. 239-245; VASS, János: Termőföld magántulajdon és földhasználat. *Magyar Jog*, 1993/11; see CSÁK (ed.): *Aktuelle Herausforderungen der europäischen Regulierung über den landwirtschaftlichen Boden*. Miskolc, Novotni Kiadó, 2010 and from the papers in this volume see especially the papers of the following authors: ANDRÉKA (pp. 7-20), BEZDÁN (pp. 21-36), BOBVOS (pp. 37-50), CSÁK (pp. 69-80), ERDŐS (pp. 81-90), FARKAS CSAMANGÓ (pp. 91-106), FARKANÉ MOLNÁR (pp. 107-114), FODOR (pp. 115-130), HEGYES (pp. 131-138), KURUCZ (pp. 151-176), MIKLÓS (pp. 177-186), NAGY (pp. 187-198), OLAJOS (pp. 199-210), PRUGBERGER (pp. 211-240), RAISZ (pp. 241-254), SZILÁGYI (pp. 269-282), TANKA (pp. 283-303). See furthermore OLAJOS, István: A termőföldről szóló törvény módosítása – avagy mi fér bele a száz napba? *Napi Jogász*, 2002/8, pp. 8-12; OLAJOS: A termőföldről szóló törvény változásai a kormányváltások következtében: gazdasági eredményesség és politikai öncélúság. *Napi Jogász*, 2002/10, pp. 13-17; OLAJOS: Termőföldbirtoklás, hasznosítás és forgalmazás a családi gazdaság elősegítésének új jogi szabályozása tükrében. *Magyar Jog*, 2002/5, pp. 286-295.

<sup>26</sup> Act CXXII of 2013 on transfer of agricultural lands and lands of forestry (LTA). It is worth mentioning that the Hungarian law-maker analysed even the Swiss land law during the preparation process of the LTA bill, and noting that the Swiss vice-president of the CEDR, Mr. *Philippe Haymoz*, played an important role making the Swiss land law well-known in Hungary; see e.g. HAYMOZ, Philippe: *Bäuerliches Bodenrecht – Unterlagen für eine Übersicht und Einführung zum BGBB*. 2011.

<sup>27</sup> On the antecedents of the new Hungarian land law regime, see furthermore CSÁK – SZILÁGYI: Legislative tendencies of land ownership acquisition in Hungary. In: NORER, Roland – HOLZER,

the land transfer act two related other acts, the act on agricultural holding (hereinafter referred to as 'agricultural holding act') and the act on integrated agricultural production organization (hereinafter referred to as 'production organization act') would be adopted in Hungary expectedly in the autumn session of Országgyűlés. These two other laws will likely change the rules on the transfer of agricultural lands not just basically but also in the principles.<sup>28</sup>

As regards the land transfer act, the main reason of the LTA's adoption was that the current law (i.e. Act LV of 1994 on arable lands; hereinafter referred to as AAL) is not compatible with the EU law.<sup>29</sup> Namely, some of the AAL provisions discriminate against EU citizens on the ground of their nationality and these provisions are against the principles of the EU law (especially the free movement of capital and the free movement of persons). After the accession to the EU, Hungary could/can maintain this discriminative legislation because of its Accession Treaty. According to the Accession Treaty of Hungary: "*Hungary may maintain in force for seven years from the date of accession the prohibitions laid down in its legislation existing at the time of signature of this Act on the acquisition of agricultural land by natural persons who are non-residents or non-nationals of Hungary and by legal persons.*"<sup>30</sup> By virtue of the Accession Treaty, Hungary could extend this seven-year-long transitional period in 2010 for three further years (i.e. until April 30, 2014).<sup>31</sup>

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Gottfried (Hrsg.): *Agrarrecht Jahrbuch 2013*. Wien – Graz, Neuer Wissenschaftlicher Verlag, 2013, pp. 215-226; HOLLO, Klaudia: A termőföldről szóló 1994. évi LV. törvény, valamint a mező- és erdőgazdasági földek forgalmáról szóló T/7979. számú törvényjavaslat egyes rendelkezéseinek összehasonlító elemzése. *Themis*, 2013/June, pp. 111-140; Zsohár, András: A termőföldről szóló törvény módosításának problémái. *Gazdaság és Jog*, 2013/4, pp. 23-24.

<sup>28</sup> See some details (on the probable rules of the agricultural holding act and production organisation act) in the published concept of land law ('*Working paper of the land law – Protecting the Hungarian lands*'; hereinafter referred to as CLL).<sup>28</sup> The CLL appeared on the homepage of the Government on May 30, 2012. The CLL may be downloaded from (21/03/2013): <http://ujfoldtorveny.kormany.hu/a-magyar-fold-vedelmeben>.

<sup>29</sup> On the relationship between the Hungarian land law and the EU law, see SZILÁGYI: The Accession Treaties of the New Member States and the national legislations, particularly the Hungarian law, concerning the ownership of agricultural land. *Journal of Agricultural and Environmental Law*, 2010/9, pp. 49-50; See furthermore KECSKÉS, László – SZÉCSÉNYI, László: A termőföldről szóló 1994. évi LV. törvény 6. §-a a nemzetközi jog és az EK-jog fényében. *Magyar Jog*, 1997/12, pp. 721-729; KOROM, Ágoston: *Az uniós jog végrehajtásával kapcsolatos elméleti, és gyakorlati problémák – „A bírósági aktusokból eredő tagállami felelősség”*. PhD thesis, Károli Gáspár University of the Reformed Church of Hungary, Budapest, 2012; KOROM: A termőföldek külföldiek általi vásárlására vonatkozó 'moratórium' lejártát követően milyen birtokpolitikát tesz lehetővé a közösségi jog. *Európai Jog*, 2009/6, pp. 7-16; KOROM: A földpiacra vonatkozó kettős jogalap tételeinek bírálata. *Magyar Jog*, 2011/3, pp. 152-159; PRUGBERGER, Reflexiók „A termőföldről szóló 1994:LV. tv. 6. §-a a nemzetközi jog és az EU-jog fényében” c. fórumcikkhez. *Magyar Jog*, 1998/5, pp. 276-287.

<sup>30</sup> See the Accession Treaty of the New Member States of 2004 and also point 3 (on the free movement of capital) of the Annex X (on Hungary) of this Accession Treaty.

<sup>31</sup> See Resolution 2/2010 (18/2) of Országgyűlés on the necessity of the extension of the transitional period concerning the restriction of the acquisition of agricultural land by non-

Besides the provisions providing the same opportunity for EU-citizens as for Hungarian citizens to acquire ownership of Hungarian agricultural lands, the new LTA has other new provisions in comparison with the AAL. The Hungarian parliament changed the restrictions concerning the *permissible size(s) of agricultural lands* (these limits are expressed in hectares) up to which Hungarian citizens and other EU member states' citizens may acquire the ownership of agricultural land (ownership-limit) or may have the usage of agricultural land (usage-limit). In general terms, the ownership-limit for farmers is 300 hectares and the usage-limit for farmers and agricultural organisations is 1200 hectares (1800 hectares if the purpose of the usage is raising animals or growing seeds [sowings]). According to the LTA, the person who would like to acquire the ownership of agricultural land shall announce on their various relations (e.g. they are about to use the agricultural land themselves; they are going to fulfil the requirement concerning compulsory utilization of agricultural land; they do not have any debt in connection with the rent of an agricultural land). By virtue of the LTA, the Hungarian agricultural authority shall approve the contracts (concerning e.g. sales, leaseholds) and other forms of ownership acquisition. In connection with contracts aiming at the acquisition of agricultural land, the local land committees (which include the representatives of local farmers and agricultural organisations) are also entitled to approve these contracts (and other forms of ownership acquisition as well). The pre-emptive right (in German: *Vorkaufsrecht*)<sup>32</sup> (in connection with the sale of an agricultural land) and the right of first refusal (in German: *Vorpachtrecht*) (in connection with the leasehold of an agricultural land) are essential parts of the new land transfer act.<sup>33</sup>

As far as the topic of the present national report is concerned, the family homesteads have an emphasized status in the LTA. In the definition part of the LTA,<sup>34</sup> the definition of the *family homestead* is the following: it is a

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Hungarian natural and legal persons; and the European Commission's Decision 2010/792/EU of December 20, 2010 (in which the EU Commission extended the ad interim period for the acquisition of agricultural lands in Hungary).

<sup>32</sup> On the definition of the pre-emptive right, see Section 373 of Act IV of 1959 on the Hungarian Civil Code: "If an owner grants a right of preemption to a specific thing in a written agreement and wishes to sell the thing, he shall notify the person who has the right of preemption of the offer he has received before he concludes the contract. If the person with the right of preemption issues a statement of acceptance to the owner regarding the conditions of the offer, the contract shall be deemed concluded between them. If the beneficiary fails to issue a statement within the period generally established for acceptance of a proposal, the owner shall be entitled to sell the thing according to the offer or under better terms. The provisions on the right of preemption shall also be applied to rights of preemption based on legal regulation."

<sup>33</sup> On the pre-emptive right and the right of first refusal in the current Hungarian land law, see LESZKOVEN, László: A termőföldet érintő elővásárlási jog egyes kérdései. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Tomus XXII (2004), pp. 393-403; OLAJOS: A 2002. február 22-én hatályba lépő termőföld adásvételéhez kapcsolódó elővásárlási és elő-haszonbérleti jog gyakorlásáról. *Napi Jogász*, 2002/4, pp. 7-12.

<sup>34</sup> LTA, § 5.

specific agricultural holding which is registered by the Hungarian agricultural authority as family homestead. In connection with the definition of family homestead, it is worth mentioning two other definitions of the LTA. The first is the definition of the agricultural holding (in German: *Betrieb*).<sup>35</sup> By virtue of the LTA, the *agricultural holding* as the complex of different property elements (e.g. agricultural land, agricultural facilities, other property elements) is a farming and organisational unit of the agricultural activities for the same purpose. The second connecting definition is about the *family estate farmer*. He/she (i.e. private person) is the manager of the family homestead. By the way, the definition of the *members of a farming family* includes a relatively wide personal group; i.e.: family estate farmer, and their spouse, common-law spouses (or civil partners),<sup>36</sup> underage children and grandchildren, furthermore the registered full age children, parents, grandparents, siblings; under LTA, the category of 'child' may even mean an adopted or foster child. According to the LTA, the family estate farmers and the members of farming families have a privileged position in the order of persons entitled to have pre-emptive rights or rights of first refusal.<sup>37</sup> Similarly to the detailed provisions of the agricultural holdings, even the detailed rules of family homestead would be in the agricultural holding act.

Close relatives also have special status by virtue of the LTA. But first of all, it has to be emphasized that under the LTA the category of close relatives<sup>38</sup> (which includes spouse, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents and siblings) does not comprise the common-law spouses (similarly to the *new* Civil Code of Hungary<sup>39</sup> which enters into force in March 15, 2014). By virtue of the LTA, only *farmers* (i.e. agricultural producers who are Hungarian and EU member states' citizens) can acquire the ownership of an agricultural land up to 300 hectares. Other Hungarian and EU member states' citizens can acquire the ownership of agricultural land up to 1 hectare; except for the (non-farmer) Hungarian and EU member states' citizens, who may acquire the ownership of agricultural land from their close relatives (up to 300 hectares).<sup>40</sup> Under the LTA, close relatives can acquire the ownership of an agricultural land by virtue

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<sup>35</sup> On the possible dimensions of the Hungarian agricultural holding legislation, see KURUCZ: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről. *Geodézia és Kartográfia*, 2008/9, pp. 13-22; KURUCZ: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part II. *Geodézia és Kartográfia*, 2008/10, pp. 3-9; KURUCZ: Gondolatok a termőföldjog szabályozás kereteiről és feltételeiről – part III. *Geodézia és Kartográfia*, 2008/11, pp. 10-17; KURUCZ: Gondolatok egy üzemszabályozási törvény indoklásáról. *Gazdálkodás*, 2012/2, pp. 118-136.

<sup>36</sup> Common-law spouses (or civil partners) shall be construed as two unmarried persons living together in an emotional and financial community in the same household.

<sup>37</sup> LTA, § 18 (4) and § 46 (4).

<sup>38</sup> LTA, § 5.

<sup>39</sup> Act V of 2013 on Civil Code.

<sup>40</sup> LTA, § 10 (3).

of the legal title of donation; besides close relatives, only the Hungarian state, local governments and established churches may acquire the ownership of agricultural lands by virtue of the legal title of donation.<sup>41</sup> According to the LTA, the provisions concerning the pre-emptive right and the right to first refusal are not applied in the case of contracts among close relatives.<sup>42</sup> The approval of the agricultural authority is not necessary if the transfer of ownership of agricultural lands happens among close relatives.<sup>43</sup> Similarly, the approval is unnecessary in case the farmer leases the agricultural land to their close relatives.<sup>44</sup> According to the LTA, usufruct can be established by a contract merely for close relatives; the establishment of usufruct by contract for others shall be deemed null and void.<sup>45</sup>

Last but not least, the LTA comprises special provisions concerning young farmers<sup>46</sup> and beginner farmers.<sup>47</sup> According to the LTA, young farmers and beginner farmers have a privileged position in the order of persons entitled to have pre-emptive rights or rights of first refusal.<sup>48</sup>

II. The demographic land program is an emphasized strategy issue of the new 'National Rural Development Strategy 2012-2020' (its subtitle: 'The constitution of the Hungarian countryside'; hereinafter referred to as NRDS).<sup>49</sup> The other name of this demographic land program is the '*comprehensive career model for young farmers*'. Important factor of the career model is that it makes it possible for young agricultural producers to receive land from the National Land Fund. On the basis of the NRDS, the Hungarian government decided to start a demographical land programme, in the frame of which they aim at ameliorating the demographic situation and a change of generations in agriculture with the long-term (25-50 years) lease of arable lands and other measures. In the frame of inheritable leasing rights, young couples wanting to work in agriculture can receive lands, if this young family (a) settles there, (b) pursues sustainable agricultural activity, and (c) obliges themselves to give birth to and raise at least two children.<sup>50</sup> The demographic land programme's date of entering into force is uncertain at the time of writing this report, but it is

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<sup>41</sup> LTA, § 12 (2).

<sup>42</sup> LTA, § 20 and § 48 (1).

<sup>43</sup> LTA, § 36 (1).

<sup>44</sup> LTA, § 59 (1).

<sup>45</sup> LTA, § 37 (1). See furthermore LTA, § 13 (2) and § 42 (2).

<sup>46</sup> LTA, § 5.

<sup>47</sup> LTA, § 5. See furthermore LTA, § 3 (2), § 15, § 42 (4).

<sup>48</sup> LTA, § 18 (4) and § 46 (4).

<sup>49</sup> *Nemzeti Vidékstratégia 2012-2020*. Budapest, March 2012, composed the Ministry of Rural Development, accepted by the Hungarian Government; see Governmental Resolution No. 1074/2012. (28/3); source (19/07/2013):

<http://videkstrategia.kormany.hu/download/4/37/30000/Nemzeti%20Vid%C3%A9kstrat%C3%A9gia.pdf>

<sup>50</sup> NRDS, p. 75.

expected to contribute fundamentally to the amelioration of the situation of families connected to the agricultural sector and rural areas.<sup>51</sup>

### Law of succession

In connection with agriculture, a rule can be found in the Hungarian Civil Code in force. According to this provision concerning disclaiming inheritance,<sup>52</sup> an heir can disclaim not the whole, but a determined part of their inheritance (i.e. the inheritance of the unit of an agricultural land and connected facilities, animals, etc.). The new Hungarian Civil Code has essentially transferred the above mentioned provision of the current Civil Code word-for-word.<sup>53</sup> By the way, it is worth mentioning that the adoption of the above mentioned agricultural holding act is scheduled; and in connection with this act, the authors of this report would endorse the adoption of special provisions concerning the inheritance of agricultural holdings.<sup>54</sup>

### Family law

The Hungarian family law<sup>55</sup> does not distinguish between the legal status of the target group. The general regulation shall apply to them. The Hungarian family law focuses on family and marriage. The general protection of families and marriage is laid down in the Fundamental Law,<sup>56</sup> Article L (in force since January 1, 2012), and in Act CCXI of 2011 on the protection of families.

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<sup>51</sup> RAISZ, Anikó – SZILAGYI, János Ede: Development of agricultural law and related fields (environmental law, water law, social law, tax law) in the EU, in countries and in the WTO. *Journal of Agricultural and Environmental Law*, 2012/12, pp. 125-126.

<sup>52</sup> According to § 674 of Act IV of 1959 on the Civil Code of the Republic of Hungary: (1) An heir shall be entitled to disclaim an inheritance after descent and distribution. The state, as a legal heir, shall not be entitled to disclaim an inheritance. (2) An heir shall be entitled to disclaim particularly *inheritance of a farmland and/or its equipment, accessories, livestock, and tools and implements*, if he is not engaged in agricultural production by profession.

<sup>53</sup> § 7:89 (2) of Act V of 2013 on Civil Code.

<sup>54</sup> As similar rules can be found in other European countries; see PRUGBERGER: A fejlett polgári államok földtulajdoni és mezőgazdasági üzemstruktúrája a XX. század agrárreformjai tükrében – az agrárjog megjelenése. In: PRUGBERGER (ed.): *Agrárjog I*. Miskolc, Bíbor Kiadó, 1999, pp. 81-116.

<sup>55</sup> On the development of the Hungarian family law, see the outstanding article: BARZO, Tímea: A magyar családi jog szabályozásának fejlődéstörténete. In: MISKOLCZI BODNAR, Péter (ed.): *A civilisztika fejlődéstörténete*. Miskolc, Bíbor Kiadó, 2006, pp. 11-46; and BARZO: A családjog és a polgári jogi kodifikáció. *Magyar Jog*, 2000/5, pp. 288-292; WOPERA, Zsuzsa: A házassági perek. In: WOPERA (ed.): *Polgári eljárásjog II*. Budapest, HVG-ORAC, 2013, pp. 91-105; WOPERA: *Az európai családjog kézikönyve*. Budapest, HVG-ORAC, 2012.

<sup>56</sup> RAISZ, Anikó: Women in Agriculture – Country Report Hungary, to appear.

Since 2012 there is an emphasis on family and marriage, as family is the most important national resource, and secures sustainable development. However there has not been any change in the legal status of the target group.

Act IV of 1959 (old Civil Code) lays down the same rules on partners in marriage and registered civil partnership in the case of succession and usufruct. Act V of 2013 (new Civil Code, coming into force on March 15, 2014) gives broader protection to the marriage partner. Civil partners get maintenance if the relationship ends, but are not entitled for use of home.

There is no difference between male and female in the agricultural enterprise, and between the legal status of the target group in the agricultural and non-agricultural enterprise.

### **Social security law**

The general provisions of the Hungarian social security law<sup>57</sup> characterize the legal status of the target group.<sup>58</sup> The target group is insured according to § 5 of Act LXXX of 1997 on the contributions of the social security. Agricultural producers have to fulfill contribution payment differently compared to entrepreneurs and employees. The amount of the contribution depends on their yearly income.

Agricultural producers contrary to the insured persons do not have to pay contribution to the Employment Fund, which provides services in the case of unemployment.

The provisions of entitlement for pensions have been changed since 2012. The aim is to secure the financial sustainability of the Hungarian Pension System and maintaining the adequacy of pension benefits. Therefore the following steps have been taken: increase of retirement age from 61 to 65; restrict access to early retirement; support longer working lives by developing employment opportunities for older workers, increase of contributions.<sup>59</sup>

Women can be retired regardless their age, if they have 40 years of service, of which 32 years must be spent in work; the rest is acknowledged for bringing up the children.

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<sup>57</sup> On the Hungarian social law, see TOTH, Hilda: A kötelező egészségbiztosítás rendszere és ellátásai Magyarországon. In: TOTH (ed.): *Szociális jog*. Miskolc, Miskolci Egyetemi Kiadó, 2013, pp. 86-109.

<sup>58</sup> Besides security law, even the Hungarian labour law includes special provisions concerning agricultural sector; see e.g. (on `household work`): MÉLYPATAKI, Gábor: Neue Formen der Beschäftigung im Agrarrecht – Die vereinfachte Beschäftigung. *Journal of Agricultural and Environmental Law*, 2010/9, pp. 33, 35, 37-39.

<sup>59</sup> The reform took place according to the White Paper of the European Commission (COM (2012) 55 final; source (22/05/2013): <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0055:FIN:EN:PDF>

### Tax law

Since 2010, a family (i.e. one or two parents of the family) can vindicate their right to, so called, *family tax allowance* after their child(ren) under Act CXVII of 1995 on Personal Income Tax (Act PIT).<sup>60</sup> The sum of their family tax allowance can be deducted from their gross income. After this deduction, the family has to pay the tax after the rest sum of the gross income. The sum of the family allowance is 62.500 Hungarian Forint (HUF) per child up to two children, and 206.250 HUF per child over 3 children. At the time of writing of this report, the exchange rates (19.07.2013) are the following: 1€ is 295 HUF; and 1 CHF is 239 HUF.<sup>61</sup> Between January and May 2013, the average gross earnings were 227.800 HUF in Hungary, according to the data of the Hungarian Central Statistical Office.<sup>62</sup> According to the Act PIT provisions concerning family tax allowance, if a family has three children (i.e. the sum of their family tax allowance is 3 x 206.250 HUF = 618.750 HUF) and the common gross income of the mother and father is e.g. 818.750 HUF per month, the base of the family's tax is going to be 200.000 HUF per month (the percentage of the PIT is 16 percent for everybody). That is 32.000 HUF per month (without the family tax allowance they should pay further 99.000 HUF per month, that is 131.000 HUF per month!).

### Corporate law

General provisions shall apply to the target group.

Family relations have importance in the case of transfer of business shares under any legal title other than sale; in the case of devision of joint marital property and in the case of conflicts of interest on behalf of the senior officer (§ 25 and § 129 Sec. (1)-(3) of Act IV of 2006 on business associations).

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<sup>60</sup> On the rural tax law, see furthermore NAGY Zoltán: Az agrárszektor adójogi szabályozása. In: CSÁK (ed.): *Agrárjog*. II. volume. Miskolc, 2005, Novotni Publisher, pp. 188-205; NAGY: Az agrárszektor adójogi szabályozása. In: CSÁK (ed.): *Agrárjog*. Miskolc, 2006, Novotni Publisher, pp. 309-326; NAGY: Az agrárszektor különleges adójogi szabályozásának alapkérdései. In: CSÁK (ed.): *Agrárjog*. Miskolc, 2008, Novotni Publisher, pp. 306-322; NAGY: Az agrárium adójogi szabályozása. In: CSÁK (ed.): *Agrárjog*. Miskolc, 2010, Novotni Publisher, pp. 315-335; NAGY: A mezőgazdasági tevékenységet végzők adójogi szabályozása egyes jövedelemadóknál. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Miskolc University Press, Miskolc, Tomus XXIII/2 (ann. 2005), pp. 333-349; RAISZ – SZILAGYI: Op. cit. 2012, pp. 123-124; OLAJOS István – RAISZ Anikó: The Hungarian National Report on Scientific and Practical Development of Rural Law in the EU, in States and Regions and in the WTO. *Journal of Agricultural and Environmental Law*, 2010/8, pp. 45-46 ; etc.

<sup>61</sup> According to the website of the central bank of Hungary; source (20/07/2013): <http://www.mnb.hu/arfolyamok>

<sup>62</sup> Source (20/07/2013) <http://www.ksh.hu/docs/hun/xftp/gyor/let/let21305.pdf>

### **Transfer of business**

Act IV of 2006 on business associations (§§ 69-87) lays down the rules on transfer of business prescribing the liability for debts and requirements for the balance sheet. The local council must be informed in this case. The general rules shall apply to the target group. There have not been changes in the provisions. There is no difference between male and female in the agricultural enterprise, and between the legal status of the target group in the agricultural and non-agricultural enterprise in the case of the transfer of business.

## **B. Legal Developments**

**(4.) Are the legal developments concerning the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, as established in your country, traceable to trends**

### **4.1. in national law, and to which in particular?**

In the Fundamental Law of Hungary, there are numerous provisions in connection with families. The new Hungarian constitution entered into force on 1<sup>st</sup> January 2012 can be assessed as an utterly family-centered constitution. In its avowal, the law-maker fixed that *“We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are fidelity, faith and love.”* Article L is an essential provision of the Fundamental Law: *“Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the nation’s survival. The basis of the family relationship is the marriage and the relationship between parents and children. Hungary shall encourage the commitment to have children. The protection of families shall be regulated by a cardinal Act.”* By virtue of Article P of the Fundamental Law, the agricultural holding act, which includes even the provisions of family homesteads, also will be regulated by a *cardinal Act*.<sup>63</sup> Besides other essential rules, Article XV of the Fundamental Law includes the following: *“Women and men shall have equal rights... Hungary shall adopt special measures to protect families, children, women, the elderly and persons living with disabilities.”*<sup>64</sup>

According to Article L of the Fundamental Law, Országgyűlés adopted the above mentioned Act CCXI of 2011 on the protection of families as a cardinal

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<sup>63</sup> By virtue of Article T of the Fundamental Law, cardinal Acts shall be Acts of Parliament, the adoption and amendment of which requires a two-thirds majority of the votes of Members of Parliament present.

<sup>64</sup> On the adoption and main provisions of the new Hungarian constitution, see RAISZ: A Constitution’s Environment, Environment in the Constitution: Process and Background of the New Hungarian Constitution. *Est Europa – La Revue*, 2012/ Special Edition 1, pp. 37-70.

Act. By the way, “Act CCXI of 2011 has already been reviewed by the Constitutional Court and some dispositions have been found unconstitutional, among others the notion of family had to be described broader than in the original version, i.e. the notion is not only valid for the partnership of a man and a woman.”<sup>65</sup>

In national law the employment of women in general is at focus. The New Hungary Rural Development Programme (2007-2013) (it is the basis of the current rural development supports from the EU; hereinafter referred to as NHRDP)<sup>66</sup> admits that *great attention must be paid to women, with special regard to female farmers*. It is essential not only from a social, but also from an economic point of view, as many of the elderly – as we could see, in majority female – farmers are unable to conduct competitive production meeting the requirements of the European Union, mainly due to the loss-producing, fragmented holding structure.<sup>67</sup>

If the partners, specifically contrywomen perform agricultural activity, they are insured and are entitled for services in the social security system. It is an issue of the compatibility of family and work. The preferable treatment of women regarding retirement is also laid down in Article XIX of the Fundamental Law on the right to social security. This regulation was introduced within the sustainable pension reform.

#### **4.2. in European law, and to which in particular? Which role are playing the advancement of the CAP, the subsidy law of the EU and the EU programmes EAFRD<sup>68</sup> and LEADER+?<sup>69</sup>**

*Equal treatment of women and protection of mothers in employment.* Equal treatment of women generally and specifically at work and the workplace is

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<sup>65</sup> RAISZ: Women in Agriculture – Country Report Hungary, 2013, to appear. See Constitutional Court Decision No. 43/2012 of December 20, 2012.

<sup>66</sup> *New Hungary Rural Development Programme* (2007-2013). Budapest, December 2009, version 5, amendments according to EERP and CAP HC; (hereinafter referred to as NHRDP). Source (04/01/2013):

[http://www.fvm.gov.hu/doc/upload/201003/nhrdp\\_v5\\_2009.pdf](http://www.fvm.gov.hu/doc/upload/201003/nhrdp_v5_2009.pdf) For further reading see FREY, Mária: Nők és férfiak a munkaerőpiacon – a Lisszaboni Növekedési és Foglalkoztatási Stratégia céljainak a tükrében. In: NAGY, Ildikó – PONGRÁCZ, Tiborné (ed.): *Szerepváltozások. Jelentés a nők és férfiak helyzetéről 2009*. TÁRKI – Szociális és Munkaügyi Minisztérium, Budapest, 2009, pp. 27-51.

<sup>67</sup> NHRDP, p. 33. See the excellent writing of RAISZ: Women in Agriculture – Country Report Hungary, 2013, to appear.

<sup>68</sup> European Agricultural Fund for Rural Development.

<sup>69</sup> The term ‘Leader’ is a French acronym meaning ‘*Liaison entre actions de développement de l’économie rurale*’ (in English: ‘Links between actions for the development of the rural economy’).

based on equal treatment directives<sup>70</sup> and on policies of the EU.<sup>71</sup> Therefore fixed term, part-time work are encouraged. Mothers' employment after the parental leave is supported by state subsidies; the employer receives decrease of contribution to be paid, if a mother is employed at the workplace in full or part-time.<sup>72</sup>

The Labour Code (Act I of 2012) also contains (quite numerous) provisions on the protection of pregnant, nursing women or those having young children; for instance the possibility of part-time work for request of a parent having a child younger than 3 years' old.<sup>73</sup>

**4.3. in *international* law, and to which in particular? Are the country reports of the UN-Committee on the Elimination of Discrimination against Women (CEDAW) of relevance in this respect?**

The latest concluding observations<sup>74</sup> of the Committee on the Elimination of Discrimination against Women (CEDAW) on Hungary from 2007 even mentions the problems of rural women and asks for measures for their benefit. In its point 27, the document expressly addresses labour issues: asks for the further close observation of the situation of women in the fields of employment and work in rural areas as well as for the effective implementation of legislative provisions on equal pay for work of equal value and on equal opportunities in employment – corresponding to the above described problems. The Committee expresses its concerns about the limited information on the situation of rural women in many regards and asks for a comprehensive picture of the *de facto* situation of rural women in all areas covered by the Convention in the next report (points 32 and 33). Furthermore, and it mirrors for instance in the above often mentioned NHRDP, it urges the state to ensure that a gender perspective

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<sup>70</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

<sup>71</sup> See Strategy for equality between women and men 2010-2015, Roadmap for equality between women and men (2006-2010), Fifth Community Action Programme on Equal Opportunities (2001-2006)

<sup>72</sup> See Act CXLVI of 2012 on the amendment of acts in order to implement the provisions of the Workplace Protection Action Plan; Act CXXXIII of 2004 on the promotion of work for mother job seekers after parental leave

<sup>73</sup> § 61. For other examples see §§ 12, 55, 60, 65, 113, 219, 294, 295 and 53, 118, 126, 127, 128, 130; latter articles in force since January 1, 2013. RAISZ: Women in Agriculture – Country Report Hungary, 2013, to appear.

<sup>74</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Hungary, 10 August 2007, CEDAW/C/HUN/CO/6

is integrated in all rural development policies and plans.<sup>75</sup> At it was mentioned above NHRDP admits that great attention must be paid to women, with special regard to female farmers.

There are several policies for the promotion of employment of women, like providing subsidy for the employer if a mother after parental leave is employed.

The Labour Code provides protection to pregnant and nursing mothers, as mentioned above.

The principle and rules of equal treatment are laid down in Act CXXV of 2003 on the equal treatment, which influences the employment issue of women. The principle must be followed during the selection process, and during the conclusion and termination of the employment contract. § 12 of the new Labour Code prescribes equal pay for equal work.

## C. Prospects

**(5.) In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, *in general*?**

The New Hungary Rural Development Programme (2007-2013) incorporates the equal treatment issue of men and women.

As mentioned above, the family as legal institution is strongly protected by the Fundamental Law and Act CCXI of 2011 on the protection of families. It is part of the National Family Policy Action Plan 2011-2020.

Trainings are organised as active employment policy measures to promote the employment of women.

**(6.) In your country, are there measures identifiable aiming at improving the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise, *particularly* with regard to the following problematic issues**

**(6.3.) Training and development and access to information and to information technology, with due regard to the requirements of women with multiple responsibilities?**

The priorities in the National Lisbon Action Plan regarding equality between men and women are restricted. This approach does not emerge in the education and training.<sup>76</sup>

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<sup>75</sup> RAISZ: Women in Agriculture – Country Report Hungary, 2013, to appear.

The Hungarian employment policy is based on Act IV of 1991 on the promotion of employment and services of unemployed. Training, counselling, maintenance of work and workplace are active measures of the employment policy including the promotion of self-employment of unemployed women. Self employment has recently grown among women.<sup>77</sup>

Trainings focus on disadvantaged women.<sup>78</sup>

**(6.4.) Participation in organisations and in politics, with focus on the participation of women?**

Gender Mainstreaming does not emerge in equal treatment regulation regarding the participation in organisations and politics.<sup>79</sup>

Women's civil organisations are pioneers, and suffer from financial, cooperational and organisational deficiencies.<sup>80</sup>

In 2004 women's representation was 9,8% in the Parliament, and 12% in the government. Therefore it can be stated that Hungary is behind with promoting women's participation in public life.<sup>81</sup>

**(7.) On the basis of experiences made in your country, are there measures identifiable which improved the legal status of partners, specifically countrywomen, and their children in the agricultural enterprise in a sustained manner and which may be borrowed by other countries?**

At the end of this report, a general and an agriculture-specific instrument may be stressed from the legal solutions of Hungary.

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<sup>76</sup> FREY Mária: *Nemzeti Akcióprogram a növekedésért és foglalkoztatásért. Magyarország Lisszaboni Akcióprogramja foglalkoztatási fejezetének és előrehaladási jelentéseinek értékelése a nők és férfiak egyenlősége érvényre juttatásának szemszögéből.* Budapest, 2008, p. 43.

<sup>77</sup> See HEFOP 1.3. project on the support of women's employment and their placement at work which aimed to promote employment and self-employment by trainings. In: FREY: Op. cit. 2008 pp. 17., 29.

<sup>78</sup> See EQUAL programs and their results in BORBÉLY, Szilvia: *A nők és a férfiak esélyegyenlőségének elősegítése a felnőttek képzésben,* Békéscsaba, 2008. See also HEFOP 1.3. program in FREY: Op. cit. 2008, pp. 41-45.

<sup>79</sup> ILONZKI, Gabriella: *Nők a politikában: Az Európai Unió és Magyarország.* In: NAGY, Ildikó – PONGRÁCZ TIBORNÉ – TÓTH, István György (ed.): *Szerepváltozások. Jelentés a nők és férfiak helyzetéről.* TÁRKI, Ifjúsági, Családügyi, Szociális és Esélyegyenlőségi Minisztérium, Budapest, 2005, pp. 57-69; source (22/05/2013): <http://www.tarki.hu/adatbank-h/kutjel/pdf/a965.pdf>

<sup>80</sup> LÉVAI, Katalin – KISS, Róbert: *Nők a közéletben.* Source (22/05/2013): <http://www.tarki.hu/adatbank-h/nok/szerepvalt/levai-kiss97.html>

<sup>81</sup> ILONZKI: Op. cit. pp. 64, 66.

Nowadays, the family-based income tax is a reality in Hungary. When having at least three children, the sum of the tax allowance is significant and it can essentially contribute to the maintenance of a family.

The demographical land program mentioned in this report could be – if realized – an utterly efficient instrument of family support.