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Commission I

**National Report – Rapport national – Landesbericht
Hungary**

**Legal incentives and legal obstacles to diversification for farmers
– Incitations et obstacles juridiques de la diversification de
l'agriculture – Rechtliche Fördermittel und Hindernisse für die
bäuerliche Diversifikation**

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Commission I

Hungarian National Report

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Question 1

a) What is your national statutory definition of diversification

b) If there is no statutory definition, what is understood by the word ‘diversification’ in your country?

According to the Hungarian agricultural law, there are two typical approaches of the ‘diversification’. The first approach is connected to the legislation of nature conservation as biodiversity (i.e. the number and variety of organisms found within a specified geographic region). According to the second, representatively economic approach,¹ diversification means the expansion of the profile of a holding in order to achieve a better market position. This latter approach may be found in the Community system of rural development and, because of the compulsory feature of the concerned Community law, this also appeared in the Hungarian national law.² I have to note that the requirements of the biodiversity are also important objectives and parts of the rural development norms.³ In regard to the subject of this paper (i.e. rural diversification rules),⁴ hereinafter I deal with the second, economic approach of the diversification.

¹ See BAKOS Ferenc: *Idegen szavak és kifejezések szótára*. Budapest, 1997, Akadémiai Publisher, p. 189.

² See furthermore OLAJOS István: *A vidékfejlesztési jog. Kialakulása és története*. Miskolc, 2008, Novotni Publisher, pp. 93-156.

³ See furthermore OLAJOS: *A fenntartható fejlődés*. In: OLAJOS (ed.): *Vidékfejlesztési politika és támogatásának joga*. Miskolc, 2008, Novotni Publisher, pp. 24-30.

⁴ On the determination of the subject see *Questionnaire [on] Legal Incentives and Legal Obstacles to Diversification for Farmers*. Final version 2. For: XXV European Congress and Colloquium of Agricultural Law Cambridge (Commission I) – 23 to 26 of September 2009. Organized by the European Council for Agricultural Law (CEDR) in collaboration with the Agricultural Law Association, London (ALA). The economic approach of the rural diversification rules is offered by *Frequently Asked Questions (FAQs) [on] Legal Incentives and Legal Obstacles to Diversification for Farmers*. For: XXV European Congress and Colloquium of Agricultural Law Cambridge (Commission I) – 23 to 26 of September 2009. Organized by the CEDR in collaboration with the ALA. The FAQs refers to the Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

According to the Hungarian national law, the activity of the rural development has become part of the agricultural activity. In regard to this, the different connotations of the agricultural activity have to be emphasized.

Agricultural activity. This definition can be of importance in numerous practical situations, e.g. as to the preference in tax law or environmental protection law. With regard to the tendencies of Western Europe, this definition can be described as a multilayer idea.⁵ The definition consists of four levels. The first level as the core of the concept includes the growing of crops and the keeping of animals. The second level is really close to the first level and means the processing and sale of agricultural products in the primary form. The classification of the next two levels as agricultural activity is not so clear and there are some differences in the legal orders of the Member States. The third level is the secondary activities in the frame of the agricultural holding;⁶ e.g. agrotourism in the rooms of a farm building. The fourth level means the secondary activities outside of the agricultural holding. In a concrete case, this activity can also be the part of the system of agricultural supports⁷ (e.g. rural development supports of the EC).⁸

Due to the direct application of the EC law in Hungary, all the phases of the definition of agricultural activity are part of the Hungarian legal order (e.g. acts on arable lands, taxes, agricultural supports).⁹

⁵ The determination of agricultural activity is also difficult in other Member States. The German Handbook includes 40 different definitions of agriculture; see KÄB, Peter: Multifunktionale Landwirtschaft als agrarrechtliches Problem? *Agrar- und Umweltrecht*, 2003/3 (2003/annex I) p. 3, and GRIMM, Christian: Von der Landwirtschaft zur Wirtschaft auf dem Lande? Gedanken zum Begriff der Landwirtschaft (1). *Agrarrecht*, 2001/1, pp. 1-3.

⁶ In accordance with the subject of agricultural holdings, the definition includes arable lands, buildings and edifices for residential and farming purposes, machines, equipments, livestock and property rights (e.g. quotas, direct payments) with regard to jurisprudence.

⁷ See FODOR László: *Agrárjog. Fejezetek a mezőgazdasági életviszonyok sajátos szabályozása köréből*. Debrecen, 2005, Kossuth Academic Publisher of the University of Debrecen, pp. 23-30; See furthermore KURUCZ Mihály: Agricultural law's subject, concept, axioms and system. *Journal of Agricultural and Environmental Law*, 2007/2, pp. 41-84.

⁸ The expansion of the definition of agricultural activity is well modelled in the 'Zwiebeltheorie' (onion theory) adopted by the German and Austrian member associations of the CEDR (*Comité Européen de Droit Rural*); see GRIMM: *Agrarrecht*. München, 2004, C.H. Beck Publisher, p. 10.

⁹ According to Article 3 of Act LV of 1994 on arable land (hereinafter referred to as 'Tft.'), 'agricultural activity' means growing of crops, market gardening, animal husbandry, fishing, operation of fish hatcheries and fish farms, production of seeds and propagation materials, hunting, trapping and game propagation, forestry and mixed farming; the 'secondary activity' means rural and agrotourism, handicrafts, timber production, food processing in the primary form, processing of agricultural byproducts and waste of vegetable and animal origin for purposes other than food, and direct sale of products gained from the aforementioned products, and services incidental to agricultural activities. On the determination of the definition in Hungarian legislation, see furthermore Article 2 d) of Act of XLVI of 1999; Article 2 d) of Act

According to the third and fourth levels of this definition of agricultural activity, I may not state that in the Hungarian agricultural law, there is no essential difference between 'rural diversification' and 'rural development'. (In spite of the lack of this relevant difference in the Hungarian law, fundamental distinction may be drawn between the two institutions in other EU countries.¹⁰) But this does not mean that only agricultural provisions provide diversification of the rural areas and holdings in Hungary. In practice, other provisions (e.g. civil law, tax law, etc.) may be applied in these relations.

As a conclusion, I need to emphasize that, according to the Hungarian legislation concerning agriculture and rural development, economic diversification (i.e. rural diversification rules) includes two distinguishing levels. First, rural diversification means the changes among the different branches of agriculture (e.g. restructuring of plant production for producing non-food and non-feed products; or changing of the structure from the production of cereals to the horticulture). Second, diversification includes the situation when the agricultural activity concerning the first and second levels of the definition of agricultural activity is completed or replaced by non-agricultural activities (e.g. tourism).

Question 2

What are the legal rules governing diversification?

- a) Are they based on national statutes or common law or case law or contract?
- b) How do these rules differ when they are applied to landownership or tenancy?
- c) Is there any conflict between EU law and state law?

I. The Hungarian rural development strategy (i.e. New Hungary Rural Development Programme;¹¹ hereinafter referred to as NHRDP) is the base of the rural diversification rules. The NHRDP is the frame and contains the explanation of all the important rural development norms. Before the presentation of the relationship between the diversification and the NHRDP, I have to emphasize the Community antecedents of the Hungarian strategy. Namely, the NHRDP is part of the Common Agricultural Policy (hereinafter referred to as CAP). The legal bases of the second pillar (i.e. rural development) of the CAP are especially the Commission Regulation No 1974/2006 and Council Regulation No 1698/2005. The Hungarian decision-maker adopted the measures of the NHRDP for the Hungarian rural areas in accordance with EC law.

II. In the NHRDP, the decision-maker noted: Density of enterprises in rural settlements is significantly lower (55 pcs/1000 inhabitants, 2004) than the national average (86 pcs/1000 inhabitants, 2004); at the same time, agriculture is much more decisive in the rural areas than the national average, causing hardship due to the sector's lower profits, declining share in the GDP, and growing unemployment. Beyond improving the profitability of agriculture, therefore, it is critical to support economic diversification and promote new enterprises in order to provide the rural population with alternative and/or supplementary sources of income.¹² The rural

CXXI of 1999; Article 198 and Annex 7 I-II of Act CXXVII of 2007; Annex 6 I of Act CXVII of 1995.

¹⁰ As to the distinction, the FAQs emphasizes that „Diversification is aimed more at the formation of alternative rural businesses as opposed to alternative production methods.” *Frequently Asked Questions (FAQs) [on] Legal Incentives and Legal Obstacles to Diversification for Farmers*. Op. cit.

¹¹ Its English version is to be found at (27.06.2009) http://www.fvm.hu/doc/upload/200904/new_hungary_rural_development_programme_official_20090422.pdf

¹² NHRDP p. 55.

settlements feature a higher proportion of micro-enterprises resulting from the great number of self-employed 'forced enterprises' and the 'smaller market', and these have a much more difficult competitive situation in the market than large enterprises. Economic diversification and economic development must pay special attention to this stratum of entrepreneurs.¹³

The situation analysis proved that in Hungary the proportion of agricultural area, and especially that of arable land, is very high. Within the arable crop production, due to domestic production traditions and ecological conditions, the production of cereals is prevalent. With the present structure of cereal production, Hungary is experiencing short-term tensions in the cereal market. One method of decreasing excess in cereals is to re-structure land use. The real objective is not the definite holding back of cereal production, but rather, market stabilisation. The situation analysis also showed that the restructuring of plant production (for producing non-food and non-feed products) and the diversification of production (renewable energy) has started (although it is not very visible). The SWOT analysis mentions the growing demand for renewable energy resources as an opportunity. The possibility of change in the utilisation of agricultural land also has to be examined (different crops, recreational activity, leaving the land fallow and afforestation).¹⁴

The NHRDP measures for rural diversification may be summarized as followed.¹⁵ In order to handle the structural problems of the Hungarian agriculture, a diversified approach is needed. To mitigate the market tensions caused by the overproduction of cereals, there can be *several ways of facilitating restructuring*:

(1) *The production of bio-energy* could provide a solution for the overproduction on two sides. On the production side, the plantation of fast growing species decrease the land used for cereal production, while on the market side, the use of cereals for bio-ethanol production decreases the surplus that was produced.

(2) Investments in *animal husbandry* also diminish the production surplus of cereals using it as input for animal breeding. This significantly increases the creation of added value along the production chain.

(3) *Forestry* – more precisely afforestation – decreases the area used for crop production, therefore results in a potential decrease of the total amount of cereals. This way it contributes to the change of the production structure.

(4) *Horticulture* – based on the favourable conditions for agricultural production – can be an alternative solution for the diversification of agricultural activities and for the income generating of producers.

(5) *Development of infrastructure*, especially investment in logistics, could largely help to improve market access of agricultural products and commodities.

(6) Diversification into non-agricultural activities. According to the NHRDP, the domains of diversification covered are: agro-tourism; crafts and technical services; social services; activities linked to recreation; processing of non-Annex products; establishment of nursery garden for forestry; activities linked to the use of renewable energy.

(7) Within the frameworks of enterprise development (e.g. micro-businesses and tourism), the support for micro-enterprises will have a key role as the most significant tool for the diversification of rural economy.

(8) Improving access to basic services and preserving the natural and cultural heritage (village renewal).

¹³ NHRDP p. 64.

¹⁴ NHRDP p. 73.

¹⁵ See furthermore the earlier version (19.02.2007) of the NHRDP p. 63.

The concrete measures of the NHRDP were adopted as decrees of the Hungarian minister of agriculture and rural development (MARD).¹⁶

Besides the decrees of the minister of agriculture and rural development, Act XVII of 2007 on the provisions of the legal procedure of agricultural and rural development supports and its implementing norms¹⁷ have a great importance in rural diversification.

Parts of the Hungarian rural development system are also the provisions in which the lawmaker established the special supports institutions and the necessary support registers.

III. There is a close relationship between the NHRDP and the National Diversification Programme¹⁸ (NDP). The NDP concerns affected regions between 2007 and 2010. The NDP intends to establish the base of the economic changing in some regions of Hungary after the abolishment of the sugarworks.

The aim of the improvement is the diversification of the economic structure for the sustainable development of the concerned regions. The legal background of the NDP is Regulation (EC) No 320/2006, where the Council promoted the diversification of the local economy because of the Community crisis of the sugar sector. This regulation disposes the establishment of a temporary fund as part of the EAGF to finance the supports of the diversification measures inside the EC.

¹⁶ According to the rural diversification, the most important measures are Decree No 52/2009 (IV.16.) of the minister of agriculture and rural development on the supports of the plant production for energetic purposes in year 2009, Decree No 46/2009 (IV.16.) of the minister of agriculture and rural development on the EAFRD supports for the first establishment of agro forestry systems, Decree No 138/2008 (X.18.) of the minister of agriculture and rural development on the EAFRD supports for the conservation and upgrading of the rural heritage, Decree No 137/2008 (X.18.) of the minister of agriculture and rural development on the EAFRD supports for the encouragement of tourism activities, Decree No 136/2008 (X.18.) of the minister of agriculture and rural development on the EAFRD supports for the business creation and development, Decree No 25/2008 (III.7.) of the minister of agriculture and rural development on the EAFRD supports for the modernisation of the horticulture, Decree No 9/2008 (I.24.) of the minister of agriculture and rural development on the EAFRD supports to the basic services for the economy and rural population, Decree No 88/2007 (VIII.17.) of the minister of agriculture and rural development on the EAFRD supports for the afforestation of agricultural lands, Decree No 71/2007 (VII.27.) of the minister of agriculture and rural development on the EAFRD supports for the plantation of energy crops, Decree No 27/2007 (IV.17.) of the minister of agriculture and rural development on the EAFRD supports for the modernisation of the livestock farms, etc.

¹⁷ See Decree No 36/2009 (IV.3.) of the minister of agriculture and rural development on the single procedure of the supports of the EAFRD and the European Agricultural Guarantee Fund (hereinafter EAGF), Decree No 23/2007 (IV.17.) of the minister of agriculture and rural development on the general conditions of the EAFRD supports, etc.

¹⁸ The NDP was adopted by the Ministry of Agriculture and Rural Development.

Its Hungarian version is to be found at (29.06.2009): http://www.fvm.hu/doc/upload/200809/nemzeti_diverzifikcis_program_2008_09.pdf

The condition of the payment entitlements is to ensure the compliance with the one or more measure(s) of the first and the third axes of Regulation No 1698/2005.¹⁹

The NDP measures of the year 2009 are similar to the NHRDP in name and conditions. In order to gain the NDP measure, beneficiaries from the concerned regions have to be registered in a special NDP register. The registered NDP beneficiaries are excluded from the NHRDP supports having the same conditions during the time of the NDP registration.

Question 3

In respect of diversification

a) Who allows farmers to diversify?

b) How far does freedom of contract feature in the negotiations between farmer and landowner?

c) How far can a farmer diversify without permission of the landowner or other authority?

d) Is there any need for a local authority involvement in respect of planning law?

I. The decisions on rural diversification supports are typically made by the Agricultural and Rural Development Agency.²⁰

II. If the diversification is connected with the alteration of the cultivation profile of arable land or the alternate utilization of arable land, the concerning provisions of Act CXXIX of 2007 on the protection of arable lands shall be applicable.²¹

¹⁹ The conditions of the NDP and the implementation provisions of the Regulation (EC) No 320/2006 are disposed in the Commission Regulation (EC) No 968/2006.

²⁰ See e.g. Sections 32, 55 and 68 of Act XVII of 2007, Section 9 of Decree 23/2007 of the MARD, Section 7 of Decree 136/2008 of the MARD and Section 7 of Decree 137/2008 of the MARD. On the system of the institution of rural development see CsÁK Csilla: A támogatások pénzügyi rendszere. In: OLAJOS István (ed.): *A gazdasági és társadalmi kohézió politikája az Európai Unióban és Magyarországon*. Miskolc, 2009, Novotni Publisher, pp. 43-49; CsÁK Csilla: A támogatások intézményrendszere. In: OLAJOS István (ed.): *A gazdasági és társadalmi kohézió politikája az Európai Unióban és Magyarországon*. Miskolc, 2009, Novotni Publisher, pp. 50-67; CsÁK Csilla: A vidékfejlesztés foglalkoztatási és szociális kérdései. In: OLAJOS István (ed.): *Vidékfejlesztési politika és támogatásának joga*. Miskolc, 2008, Novotni Publisher, pp. 120-166; OLAJOS István: The Provisions of the Rural Development in Connection with the Agriculture in Hungary. *Journal of Agricultural and Environmental Law*, 2006/1, pp. 3-22; OLAJOS István: A vidékfejlesztéshez kapcsolódó támogatási eljárás. In: OLAJOS István (ed.): *Vidékfejlesztési politika és támogatásának joga*. Miskolc, 2008, Novotni Publisher, pp. 94-119; OLAJOS István: A vidékfejlesztés, mint a KAP második pillére. In: CsÁK Csilla (ed.): *Agrárjog*. Miskolc, 2008, Novotni Publisher, pp. 399-417; OLAJOS István: Egyes támogatási intézkedések. In: OLAJOS István (ed.): *A gazdasági és társadalmi kohézió politikája az Európai Unióban és Magyarországon*. Miskolc, 2009, Novotni Publisher, pp. 94-102; WOPERA Zsuzsa: Certain Procedural Questions of Remedy Against Agricultural Supports Decisions. *Journal of Agricultural and Environmental Law*, 2008/6, pp. 90-97.

²¹ See BÁNDI Gyula: *Környezetjog*. Budapest, 2006, Osiris Publisher; CsÁK: *Környezetjog*. Tomus I, Miskolc, 2008, Novotni Publisher, pp. 85-99; FARKAS CSAMANGÓ Erika: A föld- és vízvédelem hatályos jogi szabályozása. *Acta Universitatis Szegediensis Acta Juridica Et Politica, Publicationes Doctorandorum Juridicorum*, Tomus II, Szeged,

Unless otherwise prescribed in the Act, users of arable land are required to produce a selected crop included in the agricultural profile in which that land is classified, or to execute the statutory soil conservation measures without production of crop (obligation of utilization). Vineyards and orchards shall only be utilized in accordance with their respective cultivation profile.²²

Any alteration of the cultivation profile shall be reported to the land title office in accordance with the provisions of the specific other legislation.²³

If the alternate utilization of the arable land has been authorized, the land user shall perform his obligation of utilization during the period of using such as authorized (temporary utilization). Users shall provide regular care for the vegetation of land which is not classified as arable land, if it does not prevent or restrict the use of such a land for other purposes (secondary utilization).²⁴

The alternate utilization of the arable land shall be authorized by the land title office responsible for the area where the land is located.²⁵ The alternate utilization of the arable land may be temporary or permanent.²⁶

Arable land may be used for purposes other than agricultural only under special circumstances, preferably using arable land of lesser quality when and where possible. Arable lands of better than average quality may only be used temporarily for the purposes of development projects confined to a particular area. Only areas unsuitable for agricultural purposes or those of poor quality shall be used for waste disposal sites, in due observation of environmental protection and nature conservation requirements. The use of arable land as defined above shall be limited to occupy the least amount of land possible.²⁷

Upon termination of alternate utilization, users shall restore the condition of the land for agricultural production or for forestation and provide for its utilization (re-utilization).²⁸

Arable land used for alternate purposes without authorization shall be restored to its original state.²⁹

III. The frame of the legal relationship between landowners and farmers are typically disposed by Act IV of 1959 on the Civil Code of the Republic of Hungary (hereinafter referred to as Civil Code) and Act LV of 1994 on Arable Land (hereinafter referred to as Act AL).³⁰ In regard to the

2003; FODOR: *Környezetjog*. Debrecen, 2006, DE-ÁJK & Lícium Art Publisher, pp. 141-159; FODOR: Gondolatok a földvédelem agrárjogi és környezetjogi kapcsolódási pontjairól. In: CSÁK (ed.): *Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára*. Miskolc, 2007, Novotni Publisher, pp. 108-117; etc.

²² Section 5(1)-(2) of Act CXXIX of 2007.

²³ Section 3 of Act CXXIX of 2007.

²⁴ Section 5(3)-(4) of Act CXXIX of 2007.

²⁵ Section 9(1) of Act CXXIX of 2007.

²⁶ Section 10(3) of Act CXXIX of 2007.

²⁷ Section 11(1)-(4) of Act CXXIX of 2007.

²⁸ Section 6(1) of Act CXXIX of 2007.

²⁹ Section 16(1) of Act CXXIX of 2007.

³⁰ See BOBVOS PÁL: A földtulajdon és földhasználat szerkezetének átalakítása hazánkban. *Acta Universitas Szegediensis de Attila József Nominatae. Acta Juridica et Politica*, Tomus XLV, Fasciculus 2, Szeged, JATE Press, 1994, pp. 3-20; CSÁK: A Nemzeti Földalap szerepe a földtulajdoni és -használati viszonyok között. *Cég és Jog*, 2002/10, pp. 5-8; CSÁK: 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,

diversification, the dispositions concerning leasehold of these acts may be emphasized. Unless Act AL provides otherwise, the provisions of the Civil Code on leasehold contracts shall apply to the leasing of arable land.³¹

Under a leasehold contract the lessee shall be entitled to use and collect the proceeds of a designated parcel of agricultural land or some other profitable thing for a specific time, and he shall be obliged to pay appropriate rent therefor.³²

According to the Civil Code, a written contract is required to lease agricultural land; administrative approval may be prescribed by statutory provision for the validity of such contracts.³³ According to Act AL, budgetary subsidies provided in connection with the use of land - with the exception of the support provided directly to producers and financed by the European Union plus the national contribution - shall be granted only if such use is registered by the real estate supervisory authority (i.e. the land title office).³⁴

According to the Civil Code, unless otherwise prescribed by law, any sublease of agricultural land shall be null and void.³⁵ According to Act AL, in order to integrate the production, a lessee may agree with another user of arable land upon the consent of the lessor to convey the use of his leased land for a specific period. The agreement and the consent of the lessor must be made in writing. Conveyance of land use shall have no effect regarding the lessee's obligations existing toward the lessor, unless otherwise stipulated by the parties concerned.³⁶

The term of leasehold contracts concluded by domestic private persons and legal entities or unincorporated organizations shall be for fixed periods. According to the main rule, the term of a leasehold contract shall not exceed twenty years. Leasehold contracts for forest lands or for forestation shall terminate at the end of the fifth year following the end of the growing period (maturity for felling). Leasehold contracts for vineyards and orchards, and arable land for other types of plantations or for the plantation of vineyard, fruit trees or other types of plants shall

pp. 3-18; KURUCZ: Critical analyses of arable land regulation in Hungary. *Journal of Agricultural and Environmental Law*, 2007/3, pp. 17-47; OLAJOS: A haszonbérleti szabályozás árnyoldalai. *Magyar Jog*, 2001/2, pp. 21-24; OLAJOS: Mezőgazdasági haszonbérlet. In: CSÁK (ed.): *Agrárjog*. Miskolc, 2008, Novotni Publisher, pp. 124-139; OLAJOS István – PRUGBERGER Tamás: Termőföldbirtoklás, hasznosítás és forgalmazás a családi gazdaság elősegítésének új jogi szabályozása tükrében. *Magyar Jog*, 2002/5, pp. 286-295; PRUGBERGER: A mezőgazdaság által igényelt speciális polgári jogi normák bevitele az új PTK-ba. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Miskolc University Press, Miskolc, Tomus: XXIII/2. (ann. 2005), pp. 489-524; TANKA Endre: Why has the general land consolidation no chance in Hungary? *Journal of Agricultural and Environmental Law*, 2006/1, pp. 23-28; 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; VASS János: A földtörvény módosításának margójára. VASS (ed.): *Tanulmányok Dr. Domé Mária egyetemi tanár 70. születésnapjára*. Budapest, ELTE Állam- és Jogtudományi Kar, 2003, pp. 159-170; VASS: A szövetkezetek közös használatában álló földvagyron sorsa az átalakulás tükrében. *Magyar Jog*, 1993/5, pp. 291-294; VASS: Termőföld magántulajdon és földhasználat. *Magyar Jog*, 1993/11, pp. 674-677, etc.

³¹ Section 12 of the Act AL.

³² Section 452(1) of the Civil Code.

³³ Section 452(3) of the Civil Code.

³⁴ Section 11/A of Act AL.

³⁵ Section 452(3) of the Civil Code.

³⁶ Section 12/A of Act AL.

terminate at the end of the last year in which the vineyard, orchard and other plant has any value (period of depreciation write-off).³⁷

The lessee shall be entitled to use and collect the proceeds of a thing only in accordance with the rules of proper management. The lessee of agricultural land shall cultivate the land according to its designated purpose and shall preserve the fertility of the land in the course of doing so.³⁸

The lessor shall be entitled to cancel a leasehold contract with immediate effect if the lessee (a) despite a warning, willfully damages or seriously endangers the condition of the thing; or (b) despite a warning, fails to cultivate the leased land or is generally engaged in a conduct that seriously jeopardizes the overall success of production, the fertility of the land, the livestock, or equipment.³⁹ Additionally, according to Act AL, a lessor may terminate the leasehold contract by notice with immediate effect if the lessee (a) has relinquished use of the arable land to another party without or in deviation of the lessor's approval, has changed the properties of the arable land excessively and unreasonably, or has changed the designated cultivation profile of the arable land; or (b) is engaged in activities in contravention of the provisions of legal regulations on nature preservation or of the nature preservation authorities, or is engaged in activities inflicting damage to the substance or condition of the nature preservation area, furthermore, if the lessee endangers in any way the continued existence of natural resources.⁴⁰

Upon the expiration of an agricultural leasehold, the land and other leased things shall be returned in a condition that allows immediate and proper continuance of production.⁴¹

Upon termination of the leasehold contract, the lessee (a) may remove the equipment and accessories he has installed or built; and (b) may demand the actual value, as established at the time of termination, of the equipment that cannot be removed, of the vegetation he has planted and of the measures and installations he has implemented for the conservation of the soil resulting in the improvement of soil quality; as well as (c) shall, unless agreed with the lessor to the contrary, demolish and remove at his own expense and without any claim for compensation, any temporary building structure he has erected. In the event of failure to comply with this obligation, the lessor may effect demolition or removal at the expense of the obligor.⁴²

In respect of the leasehold of arable land, right of first refusal shall be granted to the former lessee or – if the former lessee has installed a plantation or a fish pond with the owner's consent – a person the lessee has designated, unless the lessor has terminated the leasehold contract by notice with immediate effect.⁴³

Question 4

What are:

a) the incentives for a farmer diversifying?

b) the disincentives for a farmer diversifying e.g. tax laws?

³⁷ Section 13(1)-(4) of Act AL.

³⁸ Section 453(1)-(2) of the Civil Code.

³⁹ Section 457(2) of the Civil Code.

⁴⁰ Section 18 of Act AL.

⁴¹ Section 460 of the Civil Code.

⁴² Section 20 of Act AL.

⁴³ Section 21(1) of Act AL.

c) the obstacles for a farmer diversifying e.g. refusal of landowner to agree to diversification?

According to the Hungarian agricultural legislation, the typical incentives for a farmer diversifying are on the one hand tax subsidies, on the other hand agricultural financing. The agricultural financing consists of agricultural credits⁴⁴ and agricultural supports. I have written on the emphasizing support system of the agricultural financing hereinbefore (i.e. on the NHRDP), therefore now I focus on the features of the tax system concerning agriculture.⁴⁵

In actual practice, Act CXXVII of 2007 on Value Added Tax (hereinafter Act VAT), Act CXVII of 1995 on Personal Income Tax (Act PIT) and Act LXXXI of 1996 on Corporate Tax (Act CT) have to be emphasized.

The Act VAT provides a sector-neutral legislation, which means that the general rules basically concern the agricultural sector as well and Act VAT provides only some exceptions for the agriculture.

In regard to the diversification, three features of the VAT need to be emphasized. Ad1 The amount of tax of certain products concerning diversification (e.g. medicinal herbs) is only 5 percent of the tax base (the average of the amount of VAT is 25 percent since 1st July 2009).⁴⁶ Ad2 Certain rules also provide special facilities for the 'taxable person who is engaged in agricultural activities'.⁴⁷ Taxable persons engaged in agricultural activities shall not be subject to tax payment, nor shall they be entitled to deducting tax. Receiving taxable persons shall pay a 'compensation premium', in addition to the purchase price but as part of the consideration, to the taxable person engaged in agricultural activities for the goods supplied within the scope of such activities (the percentage rate of the compensation premium is 7% or 12%). Ad3 According to Act VAT, the definition of 'agricultural activity' includes numerous types of activities, therefore these rules can also support the rural diversification.

Act CT also provides a sector-neutral legislation, i.e. the general rules concern the agricultural sector.

In regard to the diversification, two features of the CT need to be emphasized. Ad1 At the 'tax base decrement factors', the rules of 'depreciation' may be emphasized, according to the

⁴⁴ See CSÁK: *Az integrált szövetkezeti hitelintézetek szervezeti és funkcionális megközelítése*. PhD Thesis; Miskolc, 2000, University of Miskolc School of Law; CSÁK: Agrárhitelezés. In: CSÁK (ed.): *Agrárjog*. Miskolc, 2008, Novotni Publisher, pp. 323-338; CSÁK: Állami szerepvállalás a takarékszövetkezetek integrációjában. In: BRAGYOVA András (ed.): *Ünnepi Tanulmányok Holló András 60. Születésnapjára*. Miskolc, 2003, Bíbor Publisher, pp. 89-108; CSÁK: A hitelszövetkezeti rendszerek történeti és elméleti alapvetései. *Publicationes Universitatis Miskolcensis Sectio Juridica et Politica*, Miskolc University Press, Miskolc, Tomus XXII. (ann. 2004), pp. 357-373; CSÁK: Az agrárhitelezés intézményrendszerének nemzetközi modelljei. In: CSÁK (ed.): *Ünnepi tanulmányok Prugberger Tamás professzor 70. születésnapjára*. Miskolc, 2007, Novotni Publisher, pp. 83-90, etc.

⁴⁵ See NAGY Zoltán: Az agrárszektor adójogi szabályozása. In: CSÁK (ed.): *Agrárjog*. Volume II. 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: 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.

⁴⁶ Section 82 of Act VAT.

⁴⁷ Sections 197-204 of Act VAT.

diversification. The depreciation may be deducted from the prime cost of 'tangible assets' and 'intangible assets' of an investment project.⁴⁸ The category of intangible assets may include e.g. the intellectual products. Forests, plantations, buildings and technical equipments may comprise the class of tangible assets.⁴⁹ Ad2 According to Act CT, there are some 'tax incentives' granted for investment projects (e.g. projects for the processing and marketing of agricultural products)

Two main features of the PIT may be emphasized. Ad1 Income from the 'rural tourism services'⁵⁰ shall be exempt from the tax.⁵¹ Ad2 Act PIT provides favourable tax conditions for the taxable person who is engaged in agricultural activities (e.g. 'small-scale agricultural producer'⁵²). According to Act PIT, the definition of 'agricultural activity' includes numerous types of activities, therefore these rules can also support the rural diversification according to the NHRDP.⁵³

Question 5

How is the role of diversification perceived in your country in the light of new considerations such as food shortages, renewable energy sources (bio-fuels, wind power, etc.) and so on?

How do you think the European Union should deal with these new circumstances?

The potential of the Hungarian agriculture is able to produce more food than the population of the country may consume. Despite the relatively good opportunities of the food-production, the Hungarian Republic is energy-addict to other countries (e.g. Russia). The latest food-price-boom has called attention to the fact that the change of utilization of our agricultural lands from the production of food or feed to the production of energy may be problematic. In spite of this change, I support the conversion of agricultural wastes into energy sources. This procedure was developed by the professor of University of Miskolc, i.e. Dr. *Iván Raisz*.⁵⁴ The basis of the technology is the conversion from municipal wastes into methyl alcohol.

⁴⁸ See the Annex 1 of Act CT.

⁴⁹ See the Annex 2 of Act CT.

⁵⁰ According to Section 3 of Act PIT, 'rural tourism services' shall mean services provided by a private individual, not as a private entrepreneur: (a) by providing accommodations, to include not more than ten beds, in his own rural house together with meals and optional programs (including demonstration of the household and the farm's operation) for individual private persons or families for the purpose of earning a profit; or (b) temporary rural and agro-tourism services.

⁵¹ Section 74 of Act PIT.

⁵² According to Section 3 of Act PIT, 'small-scale agricultural producer' shall mean a private individual above the age of 16 who is not a private entrepreneur but possesses a small-scale producer license and is engaged in activities aimed at producing the products listed in Schedule No 6 on his own farm, including private individuals registered as agricultural producers in the register of the body in charge of agricultural and regional development aid and the private individual who qualifies as a family estate farmer under the Arable Land Act, and any members of the family of such private person who participate in the family homestead in a form other than employment, with respect to all of them in connection with the revenue (income) from the activity or activities aimed to produce the products listed in Schedule No 6.

⁵³ See Schedule No 6 of Act CT (e.g. production, processing and sale of foodstuffs by smallholders, as well as forestry, planting, etc.).

⁵⁴ See presentation of RAISZ Iván: *Methanol Synthesis from Communal Waste*, 'Quelles Energies Pour le Futur?', French Institute, Budapest, 14-15th April 2008; presentation of

On the one hand, the EU ought to establish a real single and common energy policy for the solution of the energy crisis (i.e. in Central Europe). Only with this policy would it be able to solve the energy dependence. On the other hand, the CAP should produce the adequate measure of the base agricultural products instead of relying on the export thereof, besides the production of luxuries. After the economical crisis in 2008, the European economy shall establish a more emphatic environmental protection sector as a new basis which could be able to solve the problems of climate changing, food and energy shortages with increasing employment.

RAISZ I.: *Bio- és hulladék anyagok alkalmazása energetikai függőség csökkentésére*, `Észak-magyarországi Régió Műszaki Értelmiségének Napja` MTA-MAB residence, Miskolc, 19th May 2009; RAISZ I. - BARTA István: Kommunális hulladékból szintézisgáz és ECO-METANOL előállítása. In: Környezet és Energia Konferencia Debrecen, 8-9th May 2009, DAB Megújuló Energetikai Munkabizottság. Környezettudatos energia termelés és felhasználás. pp. 76-82. Debrecen, 2009.

Summary

According to the Hungarian agricultural law, there are two typical approaches of the 'diversification'. The first approach is connected to the legislation of nature conservation as biodiversity (i.e. the number and variety of organisms found within a specified geographic region). According to the second, representatively economic approach, diversification means the expansion of the profile of a holding in order to achieve a better market position. This latter approach may be found in the Community system of rural development and, because of the compulsory feature of the concerned Community law, this also appeared in the Hungarian national law. I have to note that the requirements of the biodiversity are also important objectives and parts of the rural development norms.

According to the Hungarian national law, the activity of the rural development has become part of the agricultural activity. In regard to this, the different connotations of the agricultural activity have to be emphasized.

Agricultural activity. This definition can be of importance in numerous practical situations, e.g. as to the preference in tax law or environmental protection law. With regard to the tendencies of Western Europe, this definition can be described as a multilayer idea. The definition consists of four levels. The first level as the core of the concept includes the growing of crops and the keeping of animals. The second level is really close to the first level and means the processing and sale of agricultural products in the primary form. The classification of the next two levels as agricultural activity is not so clear and there are some differences in the legal orders of the Member States. The third level is the secondary activities in the frame of the agricultural holding; e.g. agrotourism in the rooms of a farm building. The fourth level means the secondary activities outside of the agricultural holding. In a concrete case, this activity can also be the part of the system of agricultural supports (e.g. rural development supports of the EC).

Due to the direct application of the EC law in Hungary, all the phases of the definition of agricultural activity are part of the Hungarian legal order (e.g. acts on arable lands, taxes, agricultural supports).

According to the third and fourth levels of this definition of agricultural activity, I may not state that in the Hungarian agricultural law, there is no essential difference between 'rural diversification' and 'rural development'. (In spite of the lack of this relevant difference in the Hungarian law, fundamental distinction may be drawn between the two institutions in other EU countries.) But this does not mean that only agricultural provisions provide diversification of the rural areas and holdings in Hungary. In practice, other provisions (e.g. civil law, tax law, etc.) may be applied in these relations.

According to the Hungarian legislation concerning agriculture and rural development, economic diversification (i.e. rural diversification rules) includes two distinguishing levels. First, rural diversification means the changes among the different branches of agriculture (e.g. restructuring of plant production for producing non-food and non-feed products; or changing of the structure from the production of cereals to the horticulture). Second, diversification includes the situation when the agricultural activity concerning the first and second levels of the definition of agricultural activity is completed or replaced by non-agricultural activities (e.g. tourism).