

**Conclusions of the work of the Committee II
of XXX European Congress of Agricultural Law:**

*Protection of cultivated land: rural planning law and agricultural property
and real estate law*

1. In the works of the commission II much attention was paid to the issue of agricultural property and real estate law in context of land disponibility for agricultural purposes.

The national reporters in great detail analyzed questions relating to *inter vivos* transactions concerning agricultural land, taking into account instruments of administrative control of land transfers, instruments deriving from private law, such as pre-emption rights, as well as provisions concerning inheritance of agricultural land (*mortis causa* transfers) and special regulation of the agricultural land lease agreement. Last but not least national legislation on land grabbing and restrictions on the purchase of agricultural land by foreigners were thoroughly discussed.

Regarding *inter vivos* transactions concerning agricultural land three basic models of legal regulation were individualized:

a/ model excluding any legal control,

b/ model giving priority to private-law control instruments (primarily pre-emption right)

c/ model based on administrative control of land transfer (permits from competent authorities) making the purchase of agricultural land subject to a number of subjective criteria. This type of regulation is usually associated with the need for the acquirer to possess agricultural qualifications and introduce the requirement for self-farming obligation after acquisition.

Regulations that make inheritance of agricultural property dependent on obtaining an administrative permit were also widely discussed.

When trying to assess these national regulations some members of the commission indicated that regulations specific to the administrative control model may result in violation of the basic principles of the EU, namely the principle of the free movement of capital. These regulations in particular could discriminate against citizens of other EU countries - not in a formal way, but through the practical effects of their application - or may impose other disproportionate restrictions that would have a negative impact on investment. Citing the latest case law of the European Union Court of Justice they challanged the proportionality of such provisions.

On the other hand, however, other members of the commission argued that administratives restrictions fill the requirements of the EU law serving legal public interest objectives such as preventing speculative land acquisition, ensuring that agricultural property is occupied and farmed predominantly by the owners and combating the phenomenon of land grabbing.

On the subject of reference model of agricultural land ownership transfer, both *inter vivos* and *mortis causa*, it is therefore difficult to conclude that committee members have reached a consensus.

No uniform position could be also found regarding land grabbing. This concept is understood differently in individual countries, and in some of them is not known at all.

2. Consensus, on the other hand, was more easily achieved on two further issues related to agricultural land law:

a/ The first issue concerns agricultural lease contract, which members of the commission see as one of the main factors stimulating efficiency in the agricultural sector. In this context it was suggested to develop a statute for agricultural leases within a European Union legal framework, whose pattern could be the current regulations adopted in Belgium, France and Luxembourg. This statute should, in particular, take into account the protection of the tenant's economic interests by ensuring the stability of the lease and determining the manner in which the tenant's investment should be cleared.

b/ Committee members also appreciated these national regulations that support the acquisition of agricultural property by young farmers. In the opinion of committee members this kind of support for young farmers fully implements the aims of the common agricultural policy, which tends to facilitate younger people access to agriculture. Commission suggests that comprehensive approach to facilitate the takeover or setting up of farms by young farmers should be introduced in individual countries because this is the only way to stop the aging process in agriculture and to ensure the continuity of farm operations.

It was also proposed that under the EU legislation the status of an active farmer should be associated with preferential access to agricultural land.

3. Regarding qualitative protection of agricultural land many reporters indicated limited effectiveness of existing national measures. They stressed however the growing importance of direct payment system linked with cross-compliance requirements as the most important instrument of qualitative protection.

At the national level they also highlighted the need for a wider use of voluntary programs enriched with financial incentives for farmers deciding to use environmentally beneficial treatments.

At the European level the commission stressed the necessity to have an integrated understanding regarding the risks associated to land degradation and desertification and their social and economic impacts in order to develop efficiently a more coherent policy in the EU. European institutions should actively engage in order to preserve and to increase the quality of soils and to stop the soil degradation proces by financing the implementation of direct actions against soil degradation and desertification.

4. Regarding quantitative protection, the commission drew attention to the need to disseminate spatial planning instruments in European countries. In many jurisdictions, the level of dissemination of this type of instruments is insufficient, leading to too easy conversion of agricultural property for other purposes.