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Conclusions**
(Commission II)

I. Assessment and explanation

1. General part: the development of rural areas

One of the essential purposes of the EU's rural development policy is to maintain the rural communities. By virtue of Article 4 c) of Regulation (EU) 1305/2013: *"Within the overall framework of the CAP, support for rural development… shall contribute to achieving the following objectives:… [c] achieving a balanced territorial development of rural economies and communities including the creation and maintenance of employment".* This purpose of the regulation is acceptable because rural population is continuously decreasing in almost every country. However, the decrease of the agricultural lands' quantity in comparison with real estate used for other purposes is a typical feature in numerous countries as well.

According to Regulation 1305/2013/EU, the approval of national and regional development programs was underway during the assessed period. Because of this delay, the adoption of detailed national legislations begins in numerous Member States nowadays. Therefore, the conclusions of this commission in connection with the national implementation of the EU rural development policy may often be partial. Taking these into consideration, the following findings concerning the new rural development period of the EU in 2014-2020 are highlighted:

1.1. There is the necessity to build a stronger integration between urban and rural areas. This could be the proper basis of a sustainable land management policy.

1.2. National and regional rural development programs create a good opportunity for states and regions to determine their special demands.

1.3. In connection with the implementation of national and regional rural development programs, the essential element is how the Member States and beneficiaries can provide their contributions to the co-financing of the EU's rural development program.

1.4. There is a growing emphasis in the national and regional rural development programs to introduce measures promoting nature conservation, environmental protection and sparing of natural resources (e.g. soil, water) as well as the support of women or young farmers.

1.5. The maintenance and development of rural community has a significant role in the rural development programs.

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As for the countries outside of the EU, there are plenty of measures which are similar to the initiatives in the EU's rural development policy.

2. Cross-border acquisitions and acquisitions of agricultural land by non-agricultural capital

On 17.01.2014, the CEDR Management Board created three working groups to develop the three perspectives proposed by the representative of the EU Commission in Berlin. One of these groups was established in order *"to work on the subject of land property and territory protection"*. The late Honorary President of the CEDR, Prof. Hudault was member of this working group.

As an introduction to the topic, it is worth stressing that the situation when the local (e.g. rural) communities cannot have a proper access to their natural resources (e.g. land, water) may result in a serious social crisis.

As regards rural (agricultural) communities, Article 39 of the Treaty on the Functioning of the European Union (TFEU) refers to the so-called `agricultural community´, the CJEU jurisdiction concerning ownership of agricultural lands mentions `permanent agricultural community´, Article 4 of regulation 1305/2013/EU uses the term of `rural communities´. It is important to analyse the relationship between the definition of rural communities and agricultural communities in the rural development documents and in the land law documents (e.g. in the jurisprudence of the CJEU). Are these categories the same or only similar? What does it mean `rural community´? It means a fix and constant community (e.g. a kind of indigenous people) or rather a dynamic and fast varying population? Which type is supported by the EU rural development law, and which one can be protected by the national land law of the Member States?

Cross-border acquisitions of agricultural lands and forests, and – if the national law knows this category – also of agricultural holdings (hereinafter referred to all of them as `agricultural land´ or `land´), furthermore, the acquisition of agricultural lands by non-agricultural capital affect the maintenance of rural (agricultural) communities, and they are regulated quite differently in every country.

As regards the maintenance of rural (agricultural) communities, certain international documents (e.g. UN General Assembly, A/HRC/13/33/Add.2) contain the demand that lands should be cultivated by local people (connecting this among others with the concept of sustainable development). In the EU law, Article 39 (1) point b) of the TFEU rules to ensure a fair standard of living for the agricultural community. The Court of Justice of the European Union (CJEU) regards the objectives of national agricultural land policy such as (a) to preserve a permanent agricultural community, (b) that the land should belong to persons wishing (and being capable) to farm it, (c) the possibility to counteract speculative land acquisition, etc. to be conform to the TFEU and to pursue an objective in the public interest. With certain restrictions, the CJEU regards the assurance that agricultural property be occupied and farmed predominantly by the owners to be an objective in the public interest.

Beside the inland land transfer, also the cross-border acquisition plays a more and more important role in the ownership and/or the use of agricultural lands and holdings (hereinafter together referred to as cross-border acquisition). However, it is

worth emphasizing that the distinction between internal and cross-border acquisitions cannot be exact. According to the national reports, cross-border acquisition primarily means the situation in which citizens and legal entities of a country (hereinafter referred to as `foreigners´ or `investors´) gain the ownership or long-term use of an agricultural land situated in another country (hereinafter referred to as `target´ country or area). The goals of this acquisition can be various: (a) to produce agricultural products, (b) to speculate on the land market, (c) others, (d) the combination of points (a)-(c). In a wider sense, the situation in which foreigners establish legal entities in the target country and gain the lands of the target country may be regarded as cross-border acquisition as well. In the EU law, this interpretation of a cross-border acquisition could become quite difficult due to the forms of the European Cooperative Society (SCE) and the European Company (SE). Otherwise, it is worth noticing that in the EU law, the `cross-border´ element with regard to land acquisitions has been typically assessed in the frame of preliminary ruling procedures.

In numerous countries, there is an acceptable interest to get to know transparently the ownership background of the legal entities which own and use agricultural lands in these countries. Therefore and additionally, the states are supposed to have access to the information and to operate proper registers in order that they may assess the status of cross-border acquisitions in their territories properly. However, comprehensive land registers are also the basis for the proper development of rural areas and for the improvement of environmental conditions.

The cross-border acquisition may have a strong relationship with the phenomenon of `acquisition of agricultural lands for non-agricultural purposes´, nevertheless, it is worth emphasizing that they are definitely not the same. However, nowadays, the border between agricultural and non-agricultural activities is not so strict.

Numerous parts of the world are affected by the so-called land-grabbing process, which essentially means large-scale cross-border leases or acquisitions of agricultural lands by private and state investors. In this process, certain countries and regions typically appear as investors, while others as target areas. The national reporters of the present CEDR congress did not regard the cross-border acquisition in their countries as part of the land-grabbing.

In the EU, in the majority of countries having acceded to the EU in 2004 or afterwards (hereinafter new EU Member States), the moratorium upon which the agricultural land acquisition of other Member State (MS) citizens and legal entities could legally be restricted, has expired. Afterwards – allowing the principles of the freedom of establishment and the free movement of capital out of the four freedoms of the EU to evolve (and in certain situations even the application of Article 17 of the Charter of Fundamental Rights of the European Union may be raised) – the new EU MSs are obliged to let every EU MS citizen and legal entity to acquire land under the same terms as their own citizens, legal entities. In this situation however, serious conflicts may arise out of the fact that there is a significant difference between the land prices of the old and the new EU MSs. Taking these price-differences into consideration, numerous new MSs have introduced restricting measures concerning cross-border acquisition and acquisitions for non-agricultural purposes applying the legislation and practice of some old MSs as a role model. Nevertheless, in 2015, the EU Commission submitted infringement procedures only against new MSs (e.g. Bulgaria, Hungary, Latvia,

Slovakia). In cases when the EU Commission initiated infringement proceedings against the new MSs because of such MS restrictions that already exist in old MSs, the action of the EU Commission can raise concerns, and may be regarded discriminative.

Besides, infringement procedures may be initiated later against an old MSs as well; e.g. any other MS may directly initiate the infringement procedure against a MS that uses a restriction in the land market that is not – according to the CJEU – in compliance with the EU law. The situation definitely refers to some uncertainty in the land law policy in the EU. The question may be solved in different ways; here, we draw the attention to four possible solutions: [a] The EU ceases to apply the four fundamental freedoms with regard to the land policy of the MSs. This step would mean in a way the easing of the integration. [b] Those MSs which introduced restrictions in their land market, liberalize the rules of their land market or introduce more liberal rules. Obviously, this may severely hurt the interests of the citizens of these MSs, and may lead to land-grabbing with regard to the land markets of the new MSs. [c] The debate may be solved in a simple political way: i.e. the case may be forgotten, e.g. based on a political background-deal. In this case, there is no guarantee that the question would not arise later again, or that someone (basically anyone) does not bring the question in front of the CJEU in the frame of a preliminary procedure, basically circumventing the background-deal of the politicians (i.e. of the EU Commission and the given MSs). [d] We move in the direction of further regulation, even modifying the primary legislation of the EU if necessary. This may cease the uncertainty and deepen the integration; on the other hand, it may be interpreted as giving up a certain part of the sovereignty.

However, the cross-border acquisition of agricultural lands and the acquisition of agricultural lands for non-agricultural purposes raise topical legislative issues also in the old MSs of the EU; e.g. in Germany, in Austria, or in the UK (especially in Scotland). This question is mostly ignored in countries where – compared to other MSs – the land prices are high (the Netherlands, Belgium).

As regards the countries outside of the EU, different forms of legislations concerning cross-border acquisition (e.g. Argentina, Brazil) or acquisition of agricultural lands for non-agricultural purposes (e.g. Norway) exist. It is worth noticing that the jurisdiction of the US federal appellate court in connection with states legislation concerning corporate ownership has significant similarity to the practice of the CJEU regarding the land law of the MSs.

II. Recommendations

1. Recommendations for the decision makers (EU institutions and countries' parliaments and governments)

1.1. General recommendations concerning rural areas and, especially, Regulation 1305/2013/EU

1.1.1. A sustainable and integrative land law policy is to be established in order to create harmony between urban and rural areas (agricultural territories).

1.1.2. Properly integrated, real-time and comprehensive database at national and/or regional, local level may help to maintain both rural areas (agricultural territories) and the environment as well.

1.1.3. Further measures are to be imposed to stop the depletion of the rural population and the decrease of agricultural lands.

1.2. The cross-border acquisition of agricultural lands and the acquisition of agricultural lands for non-agricultural purposes

As to cross-border and non-agricultural acquisition of agricultural lands, beware that Commission II has discussed the following conclusions, without having arrived to a final version of recommendations. Therefore, our recommendations and conclusions are rather of a problem-detecting nature, and we ask you to consider them as being a draft, not reflecting the univocal standpoint of all present.

(a) with regard to the agricultural land price differences in the EU, and in order to avoid the possibility of land-grabbing;
(b) with the regard to the uncertainties arising in the land policy in the EU;
(c) respecting the sovereignty of the Member States;
(d) enabling to take into consideration the differing features of the individual Member States to a proper extent;
(e) ensuring to handle the EU's natural and legal persons in a non-discriminative way;
(f) promoting to deepen the European integration further and to decrease euro-scepticism.

We recommend the decision-makers to assess the followings:

1.2.1. There is a rising demand vis-à-vis the EU legislation to deal with the creation of special rules on agricultural lands, proceeding from the relevant jurisprudence of the CJEU, developing and – if necessary – amending it.

1.2.2. Agricultural land, just like water, may not become the object of commercial transactions in a classical sense, therefore, the principles of the freedom of the capital and of the free movement of persons shall not apply without restrictions in the case of agricultural land.

1.2.3. According to the existing contractual texts and the corresponding CJEU jurisprudence, certain public interest objectives may be applied by the MSs on their own decision.

1.2.4. Legal norms have to determine those public interest objectives which can be called up when restricting the free movement of capital and persons with regard to agricultural lands; particularly the followings:

1.2.4. a. to maintain the rural and the agricultural population

1.2.4. b. to counteract speculations

1.2.4. c. agro-productional use of agricultural lands in a broader sense

1.2.4. d. national security (i.e. to have an overview about who owns and uses the land of the given Member State)

1.2.4.e. etc.

1.2.5. In the frame of the new regulation, several notions have to be determined properly, such as the agro-productional use of agricultural lands in a broader sense.

1.2.6. As to the acquisition of agricultural lands, we deem it important to regulate, inter alia, the following measures as proportional restrictions:

1.2.6.a. The introduction of a regulation similar to the Disclosure Act already functioning in the USA, according to which states could require any foreign natural and foreign legal person who acquires or transfers any interest in agricultural land to report that transaction to a given national authority within a certain time. The situation in which foreigners establish legal entities in the target country and gain the lands of the target country may be regarded as cross-border transaction as well; (see in detail US Report, pp 15-16).

1.2.6. b. The possibility to restrain the ownership acquisition or the use of land by legal persons to certain forms of legal persons, in which the ownership structure is transparent.

1.2.6. c. To enable the prescription that in the case of legal persons who aim at acquiring the ownership or use of agricultural lands, the significant interest of these persons shall be owned by agricultural producers fulfilling the requirements below.

1.2.6.d. To enable the prescription that in the case of agricultural producers who aim at acquiring the ownership or use of agricultural lands, these producers have to dispose of an appropriate degree in agriculture and/or of a certain practice in agricultural activity.

1.2.6. e. To enable the prescription of agro-productional use of lands in the case of ownership and use of agricultural lands.

1.2.6. f. To enable the prescription of self-production in the case of agricultural producers who aim at acquiring the ownership or use of agricultural lands.

1.2.6. g. To enable to introduce the procedure of prior authorisation for the acquisition of agricultural lands.

1.2.6. h. To enable to counteract simulated or sham contracts, e.g. introducing the local land committees in the procedure of prior authorisation for the acquisition of agricultural land.

1.2.7. To suspend the infringement procedures against the New Member States until realisation of the measures in Point 1.2.

2. The recommendations of the general reporter for CEDR

1. The CEDR shall take further part in the realisation of the above proposals.

2. Because several national reports adverted to the important role of the water, in a future research, the status of other natural resources, especially of water, are to be analysed by the CEDR focusing on how rural communities access to their resources. The national rural development programs deal with numerous aspects of water; e.g. in connection with climate change, agricultural irrigation or risk-management. Agricultural insurance policies also have a strong relationship with water management in rural areas.