

Hungarian landmarket in the light of the new law

I. Introduction

In Hungary the natural resources – which include lands, forests and mining assets – make up 35% of national wealth. Lands total up to 75% of natural resources. Lands give 26% of national wealth.

Land is a scarce resource what is an important economic fact. Not only nationally, but also locally. The majority of the national wealth (for example building assets and working capital) can be expanded, but it is not true for the lands (in a peaceful way).

The total area of Hungary is cca. 9.3 million hectares, with a land area of cca. 7.5 million hectares. The size of the agricultural areas is cca. 5.5 million hectares. From this arable lands total up to cca. 4.5 million hectares.

If we have a look at the ownership structure, we can conclude that two thirds of all the lands are owned by natural persons. The reason of this structure can be found in the legal environment, since from 1994 there is no way to acquire the property of land by legal entities. Before this date there was no land circulation in Hungary because of the collectivized agriculture. But because of a legal mistake (legal vacuum), there was a short period in 1994 when legal entities could acquire the property of land. The ownership of the State is significant, but most of its lands are forests. The size of arable lands owned by the State is only cca. 0.7 million hectares.

If we have a look at the land use data, we can conclude that the number of registered holders who are natural persons is much higher than the number of agricultural companies. But the size of the lands used by these two groups is balanced. From the data relating to the cultivated plots we can see that the average size of the plots used by natural persons as farmers is smaller. So we can say that agricultural companies cultivate larger lands than natural persons engaged in farming activity. The average size of the lands used by natural persons is 30 hectares, and the average size of the lands used by agricultural companies is 350 hectares.

If we have a look at the titles of use, we can conclude that agricultural companies (holdings and cooperatives) lease the lands and natural persons engaged in farming activity are using their own lands.

II. The problems of the Hungarian land owning structure

- 1.) As a result of the privatization and compensation process nowadays there are 8.6 million hectares lands in 3.9 million pieces in Hungary. The average size is 2.2 hectares.
- 2.) Currently there are 2.8 million landowners in Hungary who have 6 million hectares.
- 3.) 1.8 million owners rent their land.
- 4.) The Hungarian land structure has a dual nature: there are few holdings and cooperatives with large land areas, and a lot of small farms being at the limit of viability at the same time.

III. The goals of the new land circulation act are the following:

- 1.) to eliminate the discrimination between the citizens of the EU Member States and the Hungarian citizens based on their nationality in the field of acquisition of land ownership and the right of use of lands,
- 2.) because of the limited availability of not renewable land resources, land can be owned only by the person who will actually cultivate it, and it is not available for the investors who do not perform agricultural production activity,
- 3.) to prevent the entry into force of illegal contracts intending the acquisition of the property of the land against the prohibition laid down in the national legislation ("pocket contracts"),
- 4.) to promote the small and medium farms, and the formulation of a new agricultural structure based on family farming, with reducing the large agricultural holdings, but not eliminating them (they are needed to produce marketable high volume products and products with stable quality),
- 5.) to renew the rural areas in order to keep the local population and to raise agricultural incomes in order to boost the local employment,
- 6.) to promote animal husbandry.

The land circulation act implements the regulations of the Constitution regarding the protection of natural resources, especially soil. With the third modification of the Constitution, the act on agricultural and forestry land circulation became a cardinal act in order to establish rules which are predictable in the long run.

IV. The tools of the land circulation act

- 1.) Official approval of the acquisition of the right of ownership and the right of use. In the authorisation procedure of land acquisition the local land committee has a veto right. The members of the local land committee are elected from the local farmers who possess land at the settlement;
- 2.) The circle of those who are entitled to acquire land is narrow: agricultural or forestry land can only be owned by farmers and can only be used by farmers or agricultural companies. These rules ensure that only those can own land who have agricultural education or practise and are capable of professional agricultural production;
- 3.) The act requires personal activity from the land owner. This rule does not support the land acquisition of those who have speculative investment purposes;
- 4.) The pre-emptive right and the pre-emptive use right can ensure that land can be primarily acquired by the local farmers, and others can only acquire it if no one in the settlement would like to do so. This helps the gradual land consolidation and concentration;
- 5.) The maximum allowed size of land holding and all land held in possession prevent the high volume of land concentration, and the establishment of large agricultural holdings, and it gives the possibility of acquisition of those lands which lease contract has been terminated. In addition to this it can support the farmers to have a better income.

ad 1.) the procedure

The act lays down the rules of the authorisation procedure. The purchase offer of the land accepted by the owner shall be incorporated in a contract. The contract shall be notified by the

owner to the persons eligible to pre-emptive rights. The notary of the local government where the land is located publishes the contract for 60 days. Holders of the pre-emptive rights are entitled to make a legal declaration on accepting the contract or waiving their pre-emptive rights within a 60 day limitation period. The notary sends the documents to the agricultural administrative authority for approval of the sale. The local land committee shall give an opinion to the authority whether it supports it or not. An appeal can be submitted to the local government. If the local land committee rejects the contract or the person who has pre-emptive rights, the authority has to deny the approval of the contract. If the local land committee agrees with the contract or the person who has pre-emptive rights, the authority examines whether the conditions of the acquisition are met (e.g. farmer's status, the maximum allowed size of land holding and all land held in possession, proportionality of the price, enforceable land protection fine, unpaid land use fee). The authority establishes the rank of the persons who have pre-emptive rights, and approves the contract with the first in the rank. Then the acquisition can be recorded in the land registry.

ad 2.) personal conditions

The ownership right of the land may be acquired by resident natural persons and citizens of Member States who are farmers. Legal entities are not capable of acquiring land. Because of the nature of the legal entity it is not possible to control who stands behind it, and it can circumvent the requirements of the act especially the maximum allowed size of land holding and all land held in possession. It is easy to change the ownership structure of the legal entity which makes it impossible to control the implementation of the requirements. Moreover it makes possible the acquisition of land by third country (non EU) nationals.

The conditions of the farmer status are the following: he/she must be a resident natural person or a citizen of a Member State, who is registered in Hungary, and who has a professional qualification in agriculture or forestry or in the absence of it, he/she is certified to have at least three year agricultural experience (the requirement of agricultural experience in Hungary is the same as the regulation in the Accession Treaty: "who have been legally resident and active in farming in Hungary at least for three years continuously").

The conditions relating to the agricultural company are as follows: it must be a legal person or an unincorporated organisation with a seat in a Member State, which has been registered by the agricultural administrative authority and it pursues as primary activity an agricultural or forestry activity continuously for at least three years; more than half of its annual net sales must come from agricultural or forestry activity; and it must have a manager who has a professional qualification in agriculture or forestry or has at least three year agricultural experience. The goal of these requirements is to ensure the performance of professional agricultural activity in order to increase the quantity and quality of agricultural production. The knowledge of Hungarian language is not required, and the professional education gained in the EU is accepted.

ad 3.) against the speculation

Land can be owned only by the person who actually cultivates it, and it is not available for the investors without agricultural production activity. When acquiring the ownership of a land, the person acquiring the land shall make a declaration to cultivate the land himself/herself, and not to transfer the right of use to other persons. The reason of these rules is to prevent the speculative land purchases. The land is a not renewable resource which has limited

availability. Investment without agricultural production can raise the prices of land without proper reason and can prevent the farmers to acquire more lands. The rise in the price has the effect of increasing the leasing fee and it raises the costs of production and the price of foods.

ad 4.) pre-emptive rights, pre-emptive use rights

With exercising his/her pre-emptive right the person can enter into the contract. There is no obligation to exercise this right, only a possibility exists. The person who has this right shall accept all conditions of the contract without any modification. The reason of the pre-emptive rights is to ensure land consolidation and concentration. Only local farmers have this right in order to concentrate lands close to the residence of the farmer. The definition of the local farmer requires three year local residence according to the Accession Treaty.

ad 5.) maximum allowed size of land holding and all land held in possession

The maximum allowed size of land holding is 300 hectares, according to the previous act and historical traditions in Hungary. The maximum allowed land held in possession is 1200 hectares in which the ownership and the lands used by any title must be counted together. As an exception it is possible to acquire 1800 hectares in 3 cases:

- in order to produce feed for animal husbandry,
- to establish isolation zone in order to ensure seed production,
- for a cooperative if it leases the land from his members.

The new land circulating act enters into force in two steps: the regulations relating to the use and utilization of land entered into force on 1st of January 2014, and the rules relating to the ownership entered into force on 1st of May 2014. The act has no retrospective effect which means that it does not affect the ownership acquired before the entry into force of the act and the contracts being in the process of conclusion at the time of entry into force of the act.