

REPARCELLING OF AGRICULTURAL LANDS AND REPARCELLING MEASURES IN THE PRACTICE OF THE CJEU – LESSONS LEARNED FROM ZAMESTIK JUDGMENT

PREPARCELÁCIA POĽNOHOSPODÁRSKEJ PÔDY A OPATRENIA PREPARCELÁCIE V PRAXI SÚDNEHO DVORA EÚ – POUČENIA Z ROZSUDKU ZAMESTIK

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I Introduction

The Member States' room for manoeuvre in the field of land policy, or the scope for regulating land policy is or has been considered to be relevant primarily in the context of the internal market: control in this area was applied in connection with the free movement of capital, or, in KOB Sia case⁽¹⁾,

the so-called service directive⁽²⁾. The so-called negative integration form plays the most important role in both areas.⁽³⁾

² Directive No 2006/123.

³ Negative integration form refers to EU rules aimed at reducing, removing or limiting national measures that “stand in the way” of the internal market or hinder it.

¹ Court of Justice of the European Union.

Abstract (EN)

The subject of Zamestik judgment (Court of Justice of the European Union, C-343/21) examined hereby is a Bulgarian farmer who was ordered by the Bulgarian authorities to repay the part of an agri-environmental grant from the European Agricultural Fund for Rural Development (EAFRD) because, during the period of his commitment to the EAFRD, his agricultural holding was reparable and he was unable to fulfil his commitment to ensure the use of entire territory of the land for five years. The Opinion of the Advocate General and the judgment took different positions. From this decision we will learn about the concepts of reparcelling, reparcelling measures and approved land-consolidation, whether this concept should have a uniform EU interpretation and what kind of measures of Member States can be considered as reparcelling measures. The link between reparcelling, approved land-consolidation and agri-environmental objectives of the EAFRD and the “traditional land policy” room for manoeuvre of the Member States will be examined.

Abstrakt (SK)

Predmetom skúmaného rozsudku vo veci Zamestik je bulharský farmár, ktorému bulharské orgány nariadili vrátiť časť agroenvironmentálneho grantu z Európskeho poľnohospodárskeho fondu pre rozvoj vidieka (EPFRV), pretože počas obdobia jeho záväzku voči EPFRV bol jeho poľnohospodársky podnik preprarelovaný a on nebol schopný splniť svoj záväzok zabezpečiť využívanie celého územia pôdy počas piatich rokov. Stanovisko generálneho advokáta a rozsudok zaujali odlišné stanoviská. Z tohto rozhodnutia sa dozvieme o pojmoch preprarelovanie, opatrenia na preprarelovanie a schválené sceľovanie pôdy, a to, či by mal mať tento pojem jednotný výklad na úrovni EÚ a aké opatrenia členských štátov možno považovať za opatrenia na preprarelovanie. V príspevku bude preskúmaná súvislosť medzi preprarelovaním, schválenými sceľovaním pôdy a agroenvironmentálnymi cieľmi EPFRV a manévrovacím priestorom členských štátov v rámci “tradičnej pozemkovej politiky”.

Keywords (EN)

reparcelling of agricultural lands, reparcelling measures in the EU, land policy, land-consolidation, agri-environmental objectives

Kľúčové slová (SK)

preprarelovanie poľnohospodárskej pôdy, opatrenia na preprarelovanie v EÚ, pozemková politika, sceľovanie pôdy, agroenvironmentálne ciele

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By Member States' room for manoeuvre in the field of land policy⁽⁴⁾, or the scope for regulating land policy, we generally mean the rules on the use and the ownership of agricultural lands and, in most cases, measures relating to state or municipally owned lands are not included.

There is no doubt that the Member States have the competence to establish rules on the ownership and use of agricultural lands, and EU competence in this area would certainly not be compatible with Article 345 TFEU, which precludes EU interference in the property regime of Member States. However, Member States may not invoke the same Article to justify measures introduced in this area which are incompatible with internal market law⁽⁵⁾. In its practice over decades, the Court of Justice of the European Union reduced, also in the field of property transactions, the role of Article 345 TFEU to a minimum⁽⁶⁾.

Regarding Member States' room for manoeuvre in the field of land policy, Festsrsen⁽⁷⁾ and Ospelt judgements⁽⁸⁾, have to be mentioned. Based on this legal practice, the free movement of capital can be restricted in order to create small and medium-sized farms, to maintain rural populations and to reduce speculative pressure on land prices, under very strict, perhaps excessive, EU controls. In Segro⁽⁹⁾ and Commission v Hungary⁽¹⁰⁾ judgements, JCEU have controlled national rules on the ownership and use of agricultural lands, but it is not certain that they have affected the Member States' room for manoeuvre in the field of land policy⁽¹¹⁾, or the scope for regulating it.

In KOB Sia⁽¹²⁾ judgement⁽¹³⁾, the Court of Justice of the European Union, departing from decades of consistent legal practice, has taken and applied the so-called service directive and freedom of establishment as the basis of its decision instead of the free movement of capital guaranteed by Article 63 TFEU, i.e. by primary law. As the Member State's legislation under examination contained direct discrimination on grounds of nationality, it was not possible to learn anything about the structure of EU control in this area in terms of the Member States' room for manoeuvre in the field of land policy⁽¹⁴⁾.

The present judgment plays a role with regard to the so-called positive integration form with a completely different structure. Under the EAFRD, farmers may voluntarily undertake to achieve agri-environmental objectives for which they receive financial compensation. The achievement of these objectives is subject to a requirement to maintain them for at least 5 years on the same land. Otherwise, farmers will face sanctions, i.e. retroactive reimbursement of all or part of the aid received. However, the relevant EU regulation provides exceptions to this rule: among others, farmers who have not been able to comply with their agri-environmental obligations due to the reparcelling of the land

⁴ See: János Ede Szilágyi-Hajnalka Szinek: Egyes közép-európai országok nemzeti földjoga, és az Európai Unió sajátosságai [National land law in some Central European countries and the specificities of the European Union], in Publicationes Universitatis Miskolciensis, Sectio Juridica et Politica, Miskolc University Press, Csilla Csák: The Regulation on Agricultural Land Ownership in Hungary after the Moratorium, Zbornik Radova 2017, Zsófia Hornyák: A mezőgazdasági föld, mint természeti erőforrás. [Agricultural land as a natural resource.] Pro Publico Bono-Magyar Közigazgatás, 2017/4, Mihály Kurucz: Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről [Reflections on the EU tensions of the Hungarian land distribution act], in A Magyar Tudomány Napja a Délvidéken [The Day of Hungarian Science in Délvidék], 2014, Vajdasági Magyar Társaság, Újvidék, 2015, Szilágyi János Ede Szilágyi: Az európai jog és a magyar mezőgazdasági földek szabályozása [European law and the regulation of Hungarian agricultural land], Agrár és környezetjog 2017, Zsófia Hornyák_Legal frame of agricultural land succession and acquisition by legal persons in Hungary. Journal of Agricultural Law, 2021, János Ede Szilágyi: A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló földszerezések [The new regime of the Hungarian land distribution and cross-border land acquisitions]. Miskolci Jogi Szemle, 2017, János Ede Szilágyi: Conclusions: Journal of Agricultural and Environmental Law, 2015, István Olajos: Földjogi kiskaté-kérdés felelet a magyar földjog aktuális kérdéseiből [Land law questionnaire-questions and answers on current issues of Hungarian land law], Miskolci Jogi szemle, 2017

⁵ A distinction must be drawn between relations in rem and other Member State measures, such as Member State operations relating to real estates, for the purposes of EU review. While EU law only 'interferes' with national relations in rem in exceptional circumstances, in other areas, the case-law places very strict control on real estate operations.

⁶ See: Ágoston Korom: Az uniós jog hatással van-e a tagállami dologi jogi viszonyokra? [Does EU law have an impact on the substantive law of a Member State?] In Sándor István Czifusz György (ed) Edited version of presentations from the conference in honour of professor Károly Szladits held on 21 September 2023 in Dunaszerdahely, Budapest, Hungary, Közjegyzői Akadémia Kiadó, (2024),

⁷ Court of Justice of the European Union, C-370/05

⁸ Court of Justice of the European Union, C-452/01

⁹ Court of Justice of the European Union, C-52/06

¹⁰ Court of Justice of the European Union, C-235/17

¹¹ By Member States' room for manoeuvre in the field of land policy, or the scope for regulating land policy, we generally mean the rules on the use and the ownership of agriculture lands except state or municipally owned lands.

¹² Court of Justice of the European Union, C-206/19.

¹³ See: How the KOB Sia case altered the Member States' margin of appreciation: with particular attention to the judgement's possibility consistent characteristics and the relevant provisions of Directive No 123/2006, JAEL, 2023.

¹⁴ In case of a Member State's legislation, failure to meet the criterion of non-discrimination on grounds of nationality in the scope of the fundamental economic freedoms automatically implies it.

in question or to the reparcelling measures regarding thereto shall not be sanctioned. Below, we examine a judgment in this area, comparing it with the case-law on the Member States' room for manoeuvre in the field of land policy.

II Results and Discussion

2.1 Main Proceedings of Zamestik Case

In 2013, the Bulgarian farmer submitted an application for EAFRD support under which he undertook to carry out activities in line with the agri-environmental commitments required by Regulation No 11/2009 for five consecutive years on the same agricultural area. The agricultural lands in question, which were leased and cultivated under the relevant Bulgarian legislation, made the farmer eligible to participate in the programme in question, for which agreements were concluded for a period of one year. These agreements were concluded every year, but for the 2016/2017 farming year, the farmer was unable to conclude agreements under Bulgarian law, as the participants in the previous agreements already wished to cultivate the lands themselves. As a consequence, the party concerned in the main proceedings was unable to fulfil the environmental commitments in respect of the land in question.

According to the relevant EU provisions, the agricultural area covered by the measure in question must correspond to at least 90% of the area subject to the environmental commitment each year. For the party concerned in the main proceedings, this area was only approximately 75%, and the authorities therefore terminated the commitment. As the act in question was not challenged, it became final. The farmer was subsequently informed to repay approximately 20% of the amount paid.

The case has been referred to the CJEU, and several questions have been asked in the proceedings, which will be examined in the light of the main findings of Advocate General Laila Medina's Opinion in the case.

The first question referred to the Court of Justice of the European Union was whether Article 45(4) of Regulation No 1974/2006 has to be interpreted as meaning that it is applicable in cases where a farmer is unable to comply with its agri-environmental commitments for the last year of performance of those commitments and where that inability results from the absence of agreements between the farmer and the owner or former user of the agricultural land.

The opinion emphasises that the commitments in question are aimed at promoting sustainable farming, within the framework of which the voluntary commitments undertaken by farmers go beyond

the mandatory provisions laid down in the relevant EU legislation.

In the procedure, the European Commission emphasised that agri-environmental payment commitments should be made for at least five years, as shorter-term commitments reduce the positive effects on sustainability⁽¹⁵⁾.

Article 45(4) of Regulation No 1947/2006 introduces an exception, namely that if the beneficiaries of agri-environmental payments do not fulfil their commitments under the EAFRD, in addition to the reduction of payments, the farmers in question will in most cases face exclusion from receiving aid or repayment of aid already paid⁽¹⁶⁾. If the present case were to be considered as a case of reparcelling, the farmer in question would be exempted from the obligation to repay the aid paid in previous years.

However, the relevant EU secondary legislation does not define the concept of reparcelling and reparcelling measures, as these may differ from one Member State to another. However, the opinion concludes that it, i.e., Article 45(4) of Regulation No 1947/2006, should provide a uniform interpretation of the concepts of "reparcelling" and "reparcelling measure" throughout the EU⁽¹⁷⁾.

By reparcelling measure, the opinion meant a land exchange requiring a rearrangement of ownership, use, and related rights, with the aim of promoting the creation of more efficient agricultural holdings, as reflected in their shape or size.

By contrast, the reparcelling measure is interpreted in a broader sense, i.e. it is a redistribution of land in rural areas, the aim of which is to create facilities of public utility in the area through agricultural planning that contributes to the creation of roads, irrigation systems and soil protection. It should be noted that, according to the opinion, both institutes are characterised by public intervention, including active involvement and approval.

The Bulgarian Government's position is⁽¹⁸⁾ that the agricultural land of the farmer in the main proceedings, in the last year of commitment, was not concerned by a reparcelling operation, but precisely by the non-reparcelling thereof, since the parcels of land of the rest of the owners remained in their

¹⁵ This explains why, in laying down detailed rules for the application of Regulation No 1698/2005, it has included cases where the relevant rules determine the obligations of Member States and farmers subject to the obligations during the period thereof in the event of a reduction or increase in the size of the agricultural holding or a transfer of ownership thereof.

¹⁶ Opinion of the General Advocate, C-343/21, pp 31–32.

¹⁷ Opinion of the General Advocate, C-343/21, pp 33–34.

¹⁸ Opinion of the General Advocate, C-343/21, p 47.

actual boundaries. The Government further argued that the farmer in question could not have expected the other owners to renew the agreements concluded under the relevant legislation⁽¹⁹⁾ after the expiry thereof. Consequently, this risk undertaken by the farmer should not be borne by the Member States.

However, according to Advocate General Laila Medina, there is clearly a reparcelling of the land in question, as the structure of the land has been rearranged through a procedure requiring state intervention. In this respect, the opinion therefore places the emphasis on state approval. It also put forward other arguments in support of its thesis, which are within the framework of a teleological interpretation: in her view, a farmer who pursues the objectives which EU legislation seeks to promote and who, because of the lack of an agreement with the landowners, is unable to collect all the land initially declared and is therefore unable to fulfil the obligations he has undertaken under the EAFRD, cannot be penalised.

The opinion further argued that Article 45(4) of Regulation No 1974/2006 does not provide specific grounds for the reasons which may lead to the recovery of aid received under the EAFRD for the reparcelling of agricultural land initially declared. From the above, the Advocate General concludes that the obligation to use all the land must be assessed objectively, irrespective of the legal basis of the Member State which the farmer has chosen to use under the EAFRD⁽²⁰⁾.

As a final argument, the opinion stresses that the voluntary reparcelling of agricultural land, which constitutes a legal basis for the application for EAFRD grant, is also explicitly provided for in national law.

The CJEU did not share the conclusions of the Opinion, although it did not reach different conclusions on several points. The most important difference is that the Court of Justice interpreted Article 45(4) of Regulation No 1974/2006 as applying where a farmer is unable to fulfil its obligations under the EAFRD because of an operation which can be considered as a reparcelling or land-consolidation measure initiated or approved by the authority of the Member State concerned. By contrast, the provision in question does not apply in cases where the failure to make an EAFRD commitment results from the loss of the right to use the part of the agricultural holding's land.

The CJEU has also confirmed that, in case of reparcelling or land-consolidation measures,

the authorities' approval or the involvement thereof is necessary.

The Court of Justice also recognised that agri-environmental support plays an important role in the sustainable development of rural areas and that, as stated in the opinion, producers should not be deterred from such commitments by the fact that, during the period of their commitment, they may be subject to reparcelling or land-consolidation measures which prevent them from fulfilling their commitments.

The second question asked in the procedure was whether the farmer could refuse to repay the aid in question if a Member State had failed to take the measures necessary to enable the holding to adapt to the new situation.

According to Article 45(4) of Regulation No 1974/2006, if a farmer undertaking agri-environmental commitments cannot fulfil his obligations due to reparcelling, the Member States have to take all necessary measures to adapt the commitments in question to the new situation. If this adaption is not possible, no refund can be claimed. According to Advocate General Laila Medina, no such measures were taken because, according to the documents in the main proceedings, the farmer had to repay part of the aid in question. The CJEU added that the purpose of the concerned mechanism is to ensure a balanced application of EU aid in order to promote sustainable rural development⁽²¹⁾.

The Court of Justice has already expressed doubts as to whether the impossibility of complying with the agri-environmental obligation is indeed the result of reparcelling or reparcelling measures, the national court must examine whether the authorities have taken all the necessary measures to adapt the commitments to the new situation. If the court of the Member State concludes that this has not been done, that court must consider that the commitment has been terminated and that no reimbursement may be claimed from the farmer⁽²²⁾.

The third question was not examined in the opinion, so only the judgment of the CJEU is available in this respect. In this question, the national court sought the answer whether a situation in which a beneficiary of agri-environmental aid is unable to comply with its commitments because an agreement on the use of the land has not been concluded with the users or owners of the agricultural land in question for the last year of its commitments constitutes force majeure within the meaning of Article 31 of Regulation No 73/2009 and must, therefore, be notified to the authority within

¹⁹ Article 37 of law on ownership and use of agricultural lands.

²⁰ In case of obligations undertaken within the frames of EAFRD, it is not clear how these could be considered as "purely national" conditions.

²¹ Recital 23 of Regulation No 1975/2006.

²² Court of Justice of the European Union, C-343/21 pp 52–53.

10 days⁽²³⁾ in accordance with Article 75(2) of Regulation No 1122/2009⁽²⁴⁾.

The Court of Justice recalled the case-law in this field, as it stated in *Internationale Handelsgesellschaft* judgment⁽²⁵⁾, a case falling within the scope of the Common Agricultural Policy, and in *Szemere* judgement⁽²⁶⁾, affected also by rural development, that any event outside the control of the operator, resulting from exceptional and unforeseeable circumstances, and the consequences of which, in spite of the exercise of all due care, could not have been avoided constitutes force majeure⁽²⁷⁾.

It follows from this principle that a farmer who is unable to fulfil his agri-environmental commitments because of an agreement with other owners or users of agricultural land for the use of that land may be considered as force majeure, provided that this was due to exceptional and unforeseeable circumstances outside the control of that beneficiary, the consequences of which, in spite of the exercise of all due care, could not have been avoided⁽²⁸⁾. It is for the acting national court to ascertain.

2.2 Comparison of Zamestik and Askos Judgements

Interesting lessons can be drawn from the comparison of Zamestik and Askos' judgements. In the main proceedings of Askos Properties Food case⁽²⁹⁾, related also to Bulgaria, it was not examined whether there has been reparaelling under EU law. However, in both judgments, the farmer concerned was unable to fulfil his agri-environmental commitments, i.e., the obligations he had undertaken in the context of the EAFRD.

In the main proceedings of Askos case, the impossibility of complying with the undertaken commitment was caused by a change in national legislation which, following an amendment to the legislation, meant that a farmer could only rent land from the State or a municipality if he kept a certain number and type of herbivorous animals⁽³⁰⁾.

The farmer and the EU court considered the question of whether, in the given circumstances, the farmer should recover part of the aid in question in the light of force majeure or exceptional circumstances within the meaning of the relevant EU legislation, or in the context of the expropriation of the agricultural holding.

In Zamestik judgment, the farmer's obligations under the EAFRD were not the result of a change in the national legislation, but of the fact that the farmer in question was unable to renew his agreements with the owners or users of the land in question for the last year of part of the land covered by agri-environmental commitments⁽³¹⁾. One of the key questions in the latter dispute was whether the mail proceedings of the case could in fact be classified as a reparaelling or a land-consolidation measure. In the absence of such a ruling, the CJEU or the court of the Member State was required to "decide" in the light of the circumstances of the case, whether a similar situation could be considered as force majeure.

2.3 Case-law on the European Union's Right to Repayment in the Event of Irregular or Undue Payments within the Scope of the EAFRD

The importance of Askos and Zamestik judgments examined in the present study⁽³²⁾ is brought to the fore when examining the relatively strict rules on the repayment of undue or unlawfully paid aid in the context of the application of the EAFRD.

In practice, similar cases occur relatively frequently, as evidenced by the large number of judgments resulting from preliminary rulings brought before the CJEU in recent years. In these judgments, the Court of Justice of the European Union applies the consistent practice whereby Member States do not have discretion to recover undue or unlawfully paid aid, but must take into account the European Union's right to recovery. According to settled case-law, the European Commission must approve the Member States' rural development programmes, but this examination, which necessarily includes an examination of the substance, does not confer on this act the status of an act of the European Union.

²³ It is obvious that this option is relevant if the main proceedings of the case or similar cases do not qualify as a reparaelling or a reparaelling measure.

²⁴ Regulation No 73/2009 does not contain an exhaustive list of events of force majeure, but the events listed do not include the impossibility of fulfilling agri-environmental obligations due to the failure to conclude an agreement with the owners or users of the land in question.

²⁵ Court of Justice of the European Union, C-11/70.

²⁶ Court of Justice of the European Union, C-330/14.

²⁷ Court of Justice of the European Union, C-343/21 p 58.

²⁸ Court of Justice of the European Union, C-343/21 p 59.

²⁹ Court of Justice of the European Union, C-656/22.

³⁰ As the farmer was unable to meet this condition, the Member State authorities decided that it had to repay the part of the aid retroactively.

³¹ As mentioned above, for agri-environmental commitments under the EAFRD, the desired effects will only be achieved if the commitment is for a minimum of five years, and it is also important that the land of question must be at least 90% the same.

³² See: Ágoston Korom: Jogellenesen, vagy jogalap nélkül kifizetett támogatások visszafizetésére vonatkozó EUB gyakorlat az EMVA alkalmazási körében [EUB practice on recovery of undue or unjustified payments in the context of EAFRD], JURA, 2025/2.

However, the above does not prevent the acting national court from taking into account the general principles of legal certainty and legitimate expectations in exceptional circumstances. However, it is an important limitation that the principle of legitimate expectations, the conduct of the national authorities or the possible approval or position of the European Commission cannot be invoked against a clear provision of an EU legal act. The position of the European Commission addressed to a Member State is, *inter alia*, only legally relevant concerning the given Member State.

In Huber judgment⁽³³⁾, the farmer in question was ordered to repay the aid in question because he had used products prohibited by the relevant directive. However, the authorities were aware of the use of the product in question, and the directive in question was not made available to the farmer. The authorities' information on the directive was only available on the Ministry's bulletin board. The national court could only apply the principles of legal certainty and legitimate expectations on the basis of very strict criteria.

In the Eurzeugerorganisation Tiefkühlgemüse judgment⁽³⁴⁾, a producer organisation received aid for the purchase of food processing equipment. However, the authorities were aware that the equipment in question was operating on another site; they later ordered the repayment of the aid in question because it was not eligible. According to the case-law, a strict interpretation must be given to the costs relating to the bearing of costs by the Union under the Common Agricultural Policy, and the principle of legal certainty can only be applied if the economic operator is acting in good faith.

III Conclusions

By the room for manoeuvre in the field of land policy in the traditional sense, we mean the regulation of the ownership and use of agricultural land, which is undoubtedly the responsibility of the Member States. In that respect, it is not really relevant whether the control of the European Union's legal order is exercised on the internal market side is through a primary law, i.e. the free movement of capital, or through a secondary EU legal act, the service directive. Article 345 of TFEU plays almost no role in terms of this control in so far as it can be invoked by Member States. It is also important to mention that the objectives of land policy, although it promotes one of the objectives of the CAP, namely to improve the quality of life of farmers, are outside the scope of the CAP.

Reparcelling, on the other hand, can be used as an exception to the scope of the EAFRD, exempting it from its strict sanctions. It is clearly the positive form of integration, i.e. "control is exercised" in the scope of the Common Agricultural Policy.

Regulation No 1947/2006 did not define the concept of reparcelling, but both the judgment and the Advocate General's Opinion lead to the conclusion that it should be given an EU, therefore, a uniform interpretation.

The opinion distinguishes the reparcelling and the reparcelling measures. By reparcelling, it means an exchange of land, which affects the ownership and the right of use and the related entitlements. It sees the purpose of reparcelling as the creation of more efficient agricultural holdings in terms of their shape or size.

It takes a broader view of the reparcelling measures, which aim at agricultural planning, the creation of public utility institutions, including soil protection, and the establishment of irrigation systems. In both cases, the opinion stresses the need for active state intervention and the role of the state in approving the process.

Besides reparcelling, the CJEU refers not to reparcelling measures but to land-consolidation measures decided or approved by the competent authorities. The CJEU also referred to the case-law according to which, where a secondary EU act does not refer to national law, it must be applied independently to ensure uniform interpretation throughout the Union. Moreover, the CJEU also recalled case-law according to which terms that are not defined in EU law must be interpreted according to the rules of ordinary usage, according to the teleological interpretation.

However, the EU court also stressed that the different language versions imply that the authorities are actively involved or give their consent, which implies that the concept of reparcelling or approved land-consolidation can include any operation carried out to ensure that agricultural parcels are cultivated more rationally.

In this respect, the question arises as to how the above conditions can be reconciled: on the one hand, the concepts of reparcelling and approved land-consolidation must be interpreted independently and uniformly in the Union, taking into account the generally accepted concepts of grammar and the rules of teleological interpretation, and on the other hand, they may include any operation carried out in a Member State on agricultural parcels with a view to a more rational cultivation of the land. It seems to us that these two conceptual requirements are in conflict. Certainly, the concepts of reparcelling and approved land-consolidation will be defined by Member State law, with the proviso that EU law will require that it is done for the purpose of the rational cultivation of agricultural

³³ Court of Justice of the European Union, C-336/00.

³⁴ Court of Justice of the European Union, C-516/16.

parcels and, on the other hand, that it must be done with the involvement or approval of an authority.

The concept of reparcelling or approved land-consolidation as defined above is also supported by the objectives of the relevant Regulation No 1974/2006. The agri-environmental objectives of the Regulation are to be promoted through voluntary commitments by farmers. The Advocate General's Opinion and the judgment share the view that the achievement of the agri-environmental objectives pursued requires that they should not be deterred from making agri-environmental commitments by the possibility that they might not be able to fulfil their commitments because of a reparcelling measure and would therefore be penalised, i.e. would have to repay aid paid over several years.

It is understandable that, contrary to the Advocate General's Opinion, the CJEU only "allows" the applicability of the exception for nationalisation if from the point of view of the objectives of the Common Agricultural Policy, this position seems perfectly logical, but if we want to answer the question whether it can be included in the scope of the Member States' room for manoeuvre in the field of land policy, we have to take a completely different approach. In that case, the question is whether EU law prevents or allows the Member States to pursue their land policy objectives. From this point of view, it is not the achievement of the agri-environmental objectives set out in the relevant regulation that is being examined, but the feasibility of the land policy objectives, which in this context is reflected in the form of reparcelling or approved land consolidation.

In this respect, it must be held that the objective of a Member State to promote the rational cultivation of agricultural parcels by means of reparcelling is not precluded by EU law in cases such as the one in the judgment, even³⁵ where the farmer has undertaken agri-environmental obligations in respect of the land in question. All that is not altered by the fact that the judgment and the opinion provide for the application of reparcelling in different cases, since that does not affect the Member States' scope for regulating.

³⁵ Of course, it cannot be excluded that in situations similar to the Segro and Commission/Hungary judgments, the internal market control may still apply to national reparcelling measures.

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