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How the KOB SIA case altered the Member States' margin of appreciation: with particular attention to the judgment's possibly consistent characteristics and the relevant provisions of Directive 123/2006

Abstract

Several studies and scientific workshops have considered the member states' rules – within the framework of EU law – on the ownership and use of agricultural and forest property, considering that this area is significant not only for the member states that acceded after 2004, such as Hungary but also for the founding members. These examinations have focused on the public interests acknowledged by the Court of Justice of the European Union (CJEU), such as the preservation of the rural population, the promotion of small- and middle-sized, livable properties, and the easing of speculative pressure on the land market, which should be achieved in practice without compromising EU law – especially its fundamental freedoms. This characteristic of the CJEU's relevant case law primarily led to the application of the free movement of capital; nevertheless, the CJEU's judgment in the KOB Sia case resulted in a significant change in this area, the main subject of the current examination. This article will consider how the CJEU was altered. Moreover, we examine whether this change could be consistent. We find that the judgments referred by the CJEU in the KOB Sia case and Directive 123/2006's relevant provisions can serve as a starting point in deciding how the member states' margin of appreciation was altered.

Keywords: Member state's margin of appreciation in land policy, free movement of capital, targets of the CAP in the land policy, legal development in the KOB Sia case, freedom of establishment, Services Directive the possible consistency of the case law, relevant provisions of the directive

1. Introduction

Several authors[1] have considered member states' margin of appreciation in restricting the ownership and use of agricultural lands and forests within the framework of EU law. This issue is particularly significant for the former socialist member states but can also be relevant for the founding members.

The member states' margin of appreciation on land policy or legislation is defined by the targets of the member states and how they intend to reach these goals.

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[1] See Hornyák 2018, 107–131; Hornyák 2021, 86–99; Csák 2018, 5–32; Olajos 2017, 91–103; Olajos 2018, 157–189; Olajos & Juhász 2018, 164–193; Raisz 2022; Szilágyi 2017a, 214–250.

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The European Union has no power to regulate this field, but the member states own this power; however, this does not mean that introduced measures are free from EU control

Article 345 of the TFEU is often interpreted to exclude the EU's intervention in ownership issues. Nevertheless, this should be approached differently. As seen below, the member states cannot justify restrictions on internal market provisions like the free movement of capital and the freedom of establishment by invoking Article 345.

The CJEU established a practice that any measures of the member state that restrict or can restrict the free movement of capital, labor, goods or investment are subject to EU control. In this light, any measures taken by the member states that can be considered a barrier to exercising fundamental economic freedoms are generally incompatible with the EU law.

However, the member states' measures restricting fundamental economic freedoms can be justified in certain circumstances. Regulation on economic grounds may not be compatible with EU law.

The first criterion for examining a certain national measure is whether the legislation is directly discriminative on the grounds of nationality. Further examination is only possible if the national measure in question does not contain direct or indirect discrimination on the grounds of nationality.

After this, the member state's measure can be examined to decide whether the imposed restriction can be considered public interest. Social objectives can often be acceptable grounds for restricting fundamental economic freedoms. If the member state's measure is directed to reach the public interest, that does not necessarily mean it meets the criteria in EU law. In light of the CJEU's case law, the member state's measures should be examined by further criteria. It must therefore be examined whether the legislation is appropriate or necessary to achieve the objectives.

The principle of proportionality requires that the measures taken by member states are at most the necessary level to achieve the objectives. Under the principle of consistency, a member state's legislation can be considered as realizing public interest only if the member state consistently implements it. This means that a member state cannot derive restrictions on economic freedoms from a particular public interest if its activity is not in line with the public interest in question. For example, it cannot claim that it is in the public interest to discourage certain forms of gambling if the state owns a company carrying out such activities.

Several other - often overlooked – aspects should be taken into account: the fact that a member state's provision has been in force for decades does not involve that it meets the requirement under the EU law and can be transformed into other member state legislation.

On the one hand, unlike public international law, EU law cannot rely on the fact that a similar provision can also be found in other member states' laws. A provision incompatible with EU law may be applied in a member state for decades if the European Commission does not launch infringement proceedings or the CJEU does not examine it in a preliminary ruling.

On the other hand, deciding that a member state's legislation is compatible with the EU law cannot be automatically transposed into the legal order of another member state because the logic of the member states' legislation is different.

We will examine the specifics of the member states' margin of appreciation on land policy in light of the EU's control over fundamental economic freedoms. This will first consider the case law developed by the CJEU on the free movement of capital. Then we will examine how the judgment in the KOB Sia case altered this context.

2. The member states' margin of appreciation on land policy in light of the free movement of capital

Secondary EU acts do not cover the member states' margin of appreciation on land policy, but the CJEU developed them. The following will examine the CJEU's case law before the KOB Sia judgment.

In the Ospelt judgment, the Court of Justice of the European Union examined the compatibility of an act of the Republic of Austria with the free movement of the capital.[2] The provision in question required prior authorization for the acquisition of agricultural lands. The CJEU found the legislation compatible with the EU law as it aimed to preserve the rural population, prevent speculation and create viable farms.

According to the CJEU, these objectives align with Article 39 of the then-numbered Treaties, which, among other things, focuses on preserving farmers' quality of life. This latter objective is one of the main targets of the Common Agricultural Policy (CAP): besides the public interests, the positive integration form – the CAP's goals can also strengthen the limitation of the fundamental economic freedoms in this area.

The Court examined the requirement of residency in the Festersen case in light of the Danish regulation in question and found that this condition was incompatible with the EU law.

In one's view, in the Festersen and Osplet judgments, the CJEU recognized that the objectives of the land policy could restrict fundamental economic freedoms and are in line with the objectives of the CAP. Nevertheless, the control on the negative form of integration, i.e. the fundamental economic freedoms,[3] combined with the requirements of the general principles of EU law and fundamental rights – delivered from the ECtHR's case law – does not allow the enforcement of land policy's objectives. It should be noted, however, that judgments resulting from preliminary rulings are relatively rare in this area and that the European Commission does not typically launch infringement proceedings.

The Segro[4] and the Commission v. Hungary case judgments related to Hungarian usufruct rights' terminations cannot be considered purely related to the member states' margin of appreciation on land policy. These judgments are closely linked to the derogation period and its expiration on the Hungarian land market.

In one's view, a positive form of integration, i.e. the objectives of the CAP, would play a more prominent role in land policy to solve the uncertainties of the member states' margin of manoeuvre on legislation. This would strengthen the national legislation while not compromising the filtering of possibly protectionist measures. We will examine the CJEU's judgment in the KOB Sia case below, which has generated some particularly significant changes in land policy.

[2] CJEU C-452/01.
[3] See: Kurucz 2015; Szilágyi 2018 Szilágyi, 2015; Szilágyi 2017.
[4] CJEU C-52/16.

3. Analysis of the KOB Sia case

The case considered KOB, an agricultural company established in Latvia and owned by German nationals. In 2018, the plaintiff in the main proceedings concluded a sales contract to purchase a relatively small agricultural land area.

To conclude the sales contract, the consent of the national authorities was requested. They did not provide it for the KOB, which brought the case before the Latvian courts stating that the authorization in question is discriminative based on nationality and does not comply with the requirements of the freedom of capital and the freedom of establishment to prohibit direct discrimination on the grounds of nationality.

The Latvian legislation allows legal persons to acquire agricultural land. If the legal person's representatives are from another member state, the Latvian legislator has laid down two additional requirements. First is that the citizen from another member state shall be registered as an EU citizen in the member state in question; second, the citizen in question should have a certain knowledge of the Latvian language.

The interpretation of Article 345 TFEU[5] has not changed, as explained above. According to the consistent case law of the CJEU, the autonomy of property cannot justify a restriction of fundamental economic freedoms.

The CJEU examined whether the freedom of establishment or the free movement of capital should be applied. This is noteworthy because, according to the consistent case law of the CJEU, in the case of property transactions, the free movement of capital should be applied.

In the first decades of integration, the free movement of capital was the least significant freedom due to the low level of international investment and the state's important role in the economy. According to Jacques Pertek, the strengthening of the free movement of capital and other fundamental freedoms in the CJEU's practice began in the early 1980s,[6] inspired by economic theories. The EU's legislator codified these changes and amended the founding treaties in this light. The 1988 directive[7] implementing the free movement of capital also expresses adequately, among other things, through the non-limitative nomenclature, that national operations regarding this freedom must be interpreted broadly.

In the CJEU's case law prior to the judgment in the KOB Sia case, if the member state's provision was examined under the requirements of the free movement of capital, it should not be examined again in light of the other fundamental freedoms. In the present case, the Court referred to the 2017 judgment in the Van der Weegen case, in which the CJEU declared that a national measure should be examined only in the light of one fundamental freedom if the other fundamental freedoms play only a secondary role to the examined fundamental freedom.

The CJEU adds that the national legislation in question applies not only to the acquisition of agricultural land, which, according to settled case law, is subject to the free movement of capital. The free movement of capital applies to cross-border acquisitions

[5] CJEU C-206/19.
[6] Pertek 2005.
[7] Directive 88/361.

of real estate. The CJEU stated that the examined national legislation covered the continuous exploitation of agricultural land that belongs to the freedom of establishment, which can be applied when economic operators carry out permanent economic activity in the territory of other member states.

In the KOB Sia case, the CJEU found out that the provision's objectives did not allow to determine clearly whether the freedom of establishment or the free movement of capital[8] was decisively[9] at issue in the case. Consequently, in determining which of the fundamental economic freedoms are applied, the Court examined the factual elements[10] of the case.[11]

In the judgment, the CJEU, based on its decision that the freedom of establishment should be applied, and not the free movement of capital, that a company can only acquire land for agricultural use if it proves that its members and representatives have residency in the member state in question and have a certain knowledge of Latvian.[12]

Building on the judgment in Van des Weegen and others, the CJEU decided that, unlike in other cases, including the Segro case,[13] this case fell primarily within the scope of the freedom of establishment, and the national legislation[14] in question should therefore be examined solely based on the requirement of freedom of establishment.[15]

The CJEU mentioned the Segro judgment, which is not primarily related to the margin of appreciation on the land policy of member states and the Ospelt and Festersen judgments, in which[16] the parties also intended to acquire agricultural land for agricultural use.

The CJEU ultimately decided not to examine the free movement of capital and analyzed the member state's provisions only in light of the freedom of establishment.

According to the case law,[17] national measures introduced in areas subject to complete EU harmonization are not to be examined on the basis of primary law but on secondary EU law.[18] Therefore, the relevant provisions of Directive 2006/123 apply.

In the Court's interpretation, the additional requirements imposed by the Latvian legislation only apply to citizens of other member states. The provisions are, therefore, contrary to Articles 9, 10 and 14 of Directive 2006/123.

[8] CJEU C-206/19, para 25.
[9] However, according to the files, the CJEU noted that the party in the main proceedings intended to purchase agricultural property to use. The national legislation does not relate exclusively to acquiring agricultural land but also intends to provide its continued use for agricultural purposes.
[10] CJEU C-206/19, Point 25.
[11] As an analogy to the CJEU C-375/12
[12] CJEU C-206/19, para 26.
[13] CJEU C-52/16.
[14] European citizenship.
[15] CJEU C-206/19, paras 27-28.
[16] See: Vauchez 2019.
[17] Ibid. para 30.
[18] CJEU C-205/07, para 33.

4. Which Change was Caused by the Judgment in the KOB Sia Case?

One can assume that the judgment in the KOB Sia case belongs to the decisions related to land policy. Noteworthy, if the provisions in question were not discriminative based on nationality, and therefore, the provisions would have been subject to a compelling examination, we would know more about changes in the member states' margin of appreciation on land policy. If the member state's legislator makes agricultural lands' purchase conditional, these provisions should be examined in the light of the freedom of establishment and Directive 2006/123.

Mark Fallon emphasized that the internal market was never reformed comprehensively. However, the Single European Act and the Treaty of Maastricht introduced particular changes in this area.[19] In the Festersen case, the agricultural land in question was intended to be bought for agricultural reasons, but the free movement of capital was applied.

According to Valérie Michel,[20] fundamental freedoms mainly contain prohibitions against the member states, which means that the EU legislator has little role in this area. Individuals and economic operators can claim their entitlements derived from EU law against the member states before the member states' courts. With this, they are asserting their interest and becoming the EU's additional agent regarding the negative integration form.[21]

5. CJEU Judgments Related to Directive 2006/123

The CJEU cited the Rina Services case[22] in the judgment of the KOB Sia case. In the Rina Services case, the CJEU sought to determine that it was compatible with the provisions of Directive 2006/123/EC and the requirements of freedom of establishment and free movement of capital requiring a registered office in a member state for this particular activity. Article 14 of the Directive prohibits the requirement of a registered office in a member state.[23]

Advocate General Pedro Cruz Villalón's general opinion shall be considered as he recalls that the harmonization measures of the secondary law should be applied and not the primary law's provisions.[24]

According to the CJEU, the exception of freedom of establishment set in Article 51 of TFEU cannot be applied in cases mentioned in the main proceeding, and the member states' regulation is against Article 14 of Directive 2006/123, which requires the companies to be established in that member state.

[19] Dubout & Maitrot de la Motte 2013, 413–455.
[20] Azoulai 2011, 283.
[21] R. Lecourt realized first that the most efficient way to force member states to implement EU law is through the procedures started by individuals in the work *L'europedesjuges*. Lecourt 2008, 283.
[22] CJEU C-593/13.
[23] Ibid. paras. 26–27.
[24] General Opinion in 'European Commission v. Hungary' Case (2015) no. CJEU C-179/14, ECLI:EU:C:2015:619. [hereinafter: General Opinion in case no. CJEU C-179/14]. paras. 21–22.

6. Judgment in the Commission/Hungary Case[25]

The other referred decision is the judgment in the commission/Hungary case, in which the commission – among others – required the CJEU to determine whether Hungary violated Directive 2006/123 about the internal market services by introducing the so-called Szécheny Leisure Card. Furthermore, its term of use and the other related measures were also against the directive.

This general opinion raised the question of whether Directive 2006/123 could be applied in this case. According to the advocate general's interpretation, it should be examined that the directive includes a complete harmonization that should be judged in light of the case law and not decided by the primary law.[26] The advocate general noted that deciding whether an area is subject to complete harmonization would lead to consequences. In this case, justifications excluded from Directive 2006/123 – the ones regulated in Articles 52 and 62 of the TFEU – and the existence of imperative reasons for major public interest could not be claimed.[27] Yves Bot adds to the general opinion that this issue is debated in the legal literature.[28]

The general opinion[29] mentions the judgment in the Rina Services case, where the CJEU decided that Article 3 paragraph 3 of Directive 2006/123 cannot be interpreted in a way that allows the member states to justify the prohibited requirements of Article 14 by referring to the primary law because this would be a barrier to the directive's harmonization. The general opinion concluded that the Court considered Advocate General Pedro Cruz Villalón's general opinion of the Rina Services case. According to him, the directive's scope concerns a broad range of services, as it is horizontal. However, it does not aim to harmonize member states' different substantive rules. Despite this, certain factors lead to complete and accurate harmonization.

The European Commission – among others – asked the CJEU to determine that the Hungarian regulation, which reserved banks and other financial institutions for the possibility of issuing the SZÉP-card, was against Articles 15 (1), (2), and (3).[30]

The CJEU emphasized that these requirements did not contain discrimination based on citizenship or establishment.[31] In contrast, Hungarian regulation required institutions issuing the SZÉP-card to establish an office open to customers in each municipality with more than 35, 000 inhabitants. Only banks and financial institutions could meet the requirements of the rule. Therefore, the CJEU determined that this requirement of Hungarian rule was against the directive, led to discrimination, and was not in line with the requirements set in Article 15 (3) of the directive.[32]

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[25] CJEU C-179/14.
[26] General opinion in case no. CJEU C-179/14, paras. 68–69.
[27] Ibid. para. 69.
[28] Ibid. para. 70.
[29] Ibid. para. 71.
[30] During the hearing, the Hungarian Government acknowledged that the relevant Hungarian rules have no reference to the fact that issuing the SZÉP-card is only reserved for banks; however, the conditions set by the provision could, in practice, only be reached by banks and financial institutions.
[31] CJEU C-179/14 paras. 84-85.
[32] Ibid. para. 90.

The Hungarian government believed these requirements protected consumers and creditors with solvency, professionalism, and accessibility. The CJEU did not exclude these arguments; thus, it did not reject foregoing its indirect discriminative features, but these arguments could not be considered because the Hungarian government did not prove that the goals could be reached with provisions that are less restrictive to the freedom of establishment.[33]

It should be noted that the CJEU did not find it necessary to examine the commission's argument regarding violating Articles 49 and 56 of the TFEU, which is part of the primary law.[34]

The CJEU declared that the Hungarian provisions violated Article 14 (3) by excluding the companies' branches in other member states from issuing Szécheny Leisure Cards. The fact that Hungarian rule did not acknowledge companies that were not established by Hungarian law was against Articles 15 (1), (2), and (3). Only Hungarian banks and financial institutions can issue SZÉP-cards therefore, requiring the Hungarian establishment to issue SZÉP cards violates Article 16 of the directive.

7. Did the Judgment in the KOB Sia Case Damage the CJEU's Case Law Consistency?

Antoine Vauchez stressed that the CJEU's case law was designed to preserve the developed l'acquis as a CJEU working routine. The fluctuation of judges and the joining of new member states did not alter this phenomenon.[35]

The question arises: was the case law altered, or did the EU legislator create Directive 2006/123, which led to the change that in cases concerning member states' rules on agricultural property, the Court started to apply the free establishment and the directive instead of the free movement of the capital?

In the case of the latter, we cannot state that the consistency of the CJEU case law was damaged because the implementation period of the directive expired on 28 December, 2009, and the most significant judgment related to land policy – like the Ospelt[36] or the Festersen[37] judgments – was delivered way before the adoption of the directive.

Does it also emerge why the primary law and the free movement of capital were applied in the Segro[38] and commission/Hungary[39] cases when the examined regulations of the member states were adopted after the expiration period of Directive 2006/123?

[33] Ibid. para. 91.
[34] Ibid. para 118.
[35] See: footnote 21.
[36] CJEU C-452/01.
[37] CJEU C-370/05.
[38] CJEU C-52/16.
[39] CJEU C-235/17.

The reason for this could be that in the judgments in the Segro case and the commission/Hungary case, the land policy-related characteristics – that can be evaluated by the EU law's criteria[40] – of the examined rules were not too remarkable.

Undoubtedly, without creating Directive 2006/123 as an act of the EU, the case law's direction alternates.

8. Will the judgment of the KOB Sia Case be a Consistent Part of the Case Law?

The CJEU examined the factual basis of the case because the rule's purpose did not determine whether the free movement of capital or freedom of establishment should be applied.[41] The factual element referred to by the Court[42] is that a company can only acquire agricultural land in the member state to conduct agricultural activities if its representative and members prove that they have residency in the member state and have a certain knowledge of the Latvian language.

It is unclear why the CJEU finds the criteria of Latvian law as factual reasons. The judgment clearly expresses that Latvian regulation is relevant to agricultural lands intended for agricultural operation.

Freedom of establishment is applied if an economic actor permanently operates in another member state's territory. In the case of the free movement of capital, a permanent economic operation is not a requirement; instead, capital investment is highlighted, such as purchasing residential property or shares.

If a member state's regulation requires agricultural use to purchase agricultural lands, the freedom of establishment is applied by the reason behind the law.

This is underlined by the other parts of the CJEU's judgment when it refers to 'regulation' that can consider the freedom of establishment.[43]

9. How is the Member States' Margin of Appreciation on Land Policy Changing after the KOB Sia Case?

The preamble of Directive 2006/123 reveals that it aimed to strengthen negative integration. Thus, it is designed to break down the existing barriers of the internal market to achieve economic advantages. However, some of the preamble's provisions set exceptions: according to Recital (8), the specific activities' openness to competition is acceptable to determine how the freedom of establishment and the free movement of services are applied. In this light, member states are not obliged to liberalize the services of general economic interest and terminate the monopoles regarding certain services.

Recital (40) of the preamble mentions overriding public interest reasons related to the freedom of establishment and services referred to by the directive's provisions that the CJEU develops in the freedom of constantly evolving capital and services.

[40] The examined legal acts of these judgments are about agricultural lands. However, the regulation's goal is to prevent abuse of rights and shows a more substantial connection with the expiration of the derogation period.
[41] CJEU C-206/19.
[42] Ibid. para. 26.
[43] Ibid. para. 33.

The provision states that public interest includes several reasons.[44] This leads to the conclusion that the CJEU should consider other public interests. The preamble lists the overriding public interests, such as social policy objectives, the protection of the environment and the urban environment, and various social policy elements' protection.

Recital (42) of the preamble does not aim to harmonize the administrative procedures but to remove overly burdensome authorization schemes that obstruct – among others – the freedom of establishment. At the same time, the Recital (43) of the preamble mentions exceptions from prior authorization procedures that can be essential in certain circumstances.

Recital (56) also refers to the CJEU's case law and declares that public health, consumer protection, and animal health are overriding public interests that can serve as a reason to facilitate authorization systems and other restrictions. Regarding these restrictions, the principles of proportionality and necessity should be considered.

Recital (65) can also be relevant in light of the margin of appreciation on land policy: it prohibits requiring establishment or residency as a condition of an entitlement's enjoyment.

Recital (66) refers to the urban environment's protection as an exemption in the case of certain prior authorizations, but does not mention the CJEU's case law on land policy.

Recital (69) can also be relevant, as it requires evaluating the member states' measures that restrict the internal market in light of the CJEU's case law on the freedom of establishment. The evaluation examines whether these measures meet the CJEU's case law requirements for freedom of establishment. The evaluation can differ depending on the nature of the activity and should follow social policy objectives. Recital (71) emphasizes that this evaluation does not concern the member state's margin of appreciation to reach the public interest but highlights the services on general economic interest, public health, and social policy.

Recital (73) can also be significant concerning the member states' margin of appreciation requiring professional qualifications does not violate the directive. However, member states are not allowed to require service providers to operate in a particular form; for example, it cannot be required that only natural persons can provide services.

Article 1, paragraph 7, does not affect the exercise of fundamental rights recognized in member states' law and Community law. How this provision can be applied to member states' margin of appreciation for land policy is unclear.

[44] Public policy, public security and public health, within the meaning of Articles 46 and 55 of the Treaty; the maintenance of order in society; social policy objectives; the protection of the recipients of services; consumer protection; the protection of workers, including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment, including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives, including safeguarding the freedom of expression of various elements, in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy.

It is also worth mentioning that according to Article 4, paragraph 8, overriding reasons relating to the public interest are the reasons acknowledged by the Court, like environmental protection, urban environment protection, and social policy goals.

In light of Article 9, paragraph 1, member states are only allowed to introduce authorization schemes if there is no discrimination and they are based on overriding reasons relating to the public interest and if a less restrictive measure cannot reach the goal of the schemes. This is in line with the CJEU's case law[45] on land policy, where in the case of secondary properties, only ex-post authorization schemes are allowed but are related to the agricultural lands' specific features, and prior authorization is not against EU law.

Article 12, paragraph 3 allows overriding reasons other than the public interest if it is necessary to establish a selection procedure.

It is relevant to the member states' margin of appreciation for the land policy that Article 15, paragraph 2, subparagraph (a) allows them to evaluate their legal systems in case of quantitative or territorial restrictions, especially restrictions based on a minimum geographical distance between providers. Similarly, paragraph 2 subparagraph (b) prohibits providers from operating in a specific legal form.

According to the Directive's Article 15, paragraph 3, the requirements set in paragraph 2 should be examined in light of the necessity proportionality test.

10. Conclusion

It seems clear that there has been a change in EU law. Instead of the free movement of capital, the freedom of establishment and Directive 2006/123 should be applied in the case of member states' rules on land policy so that the member state requires agricultural activity or other conditions to acquire agricultural property. It can be assumed that the judgment in the KOB Sia case changed the consistent case law of the CJEU in this regard. However, in properties related to those different from the ones mentioned above, the free movement of capital is likely to be applied.

How this change alters, member states' margin of appreciation for land policy is still a question. In the KOB Sia case, the CJEU referred to its prior considerations related to Directive 2006/123, but we cannot gain information about the EU control mechanism within the framework of the directive that can be relevant in the context of the member states' margin of appreciation on land policy.

The directive does not mention the public interest goals developed in the CJEU's case law, like preserving the rural population, easing the speculative pressure on agricultural lands, and the fact that certain measures realize the positive integration's goals, in particular, the objective of the CAP related to the improvement of the farmers' life standard.

It can be assumed that during the Article creation, the drafters did not consider that the directive was applied in the case of the member states' measures on land policy.

Advocate General Yves Bot concluded in the general opinion on the Hungary/commission case that the directive realized a complete harmonization that excludes the member states from claiming to override public interest reasons that are not

[45] CJEU C-452/01.

listed in the Directive's Article 14 and are developed by the CJEU because this could be a barrier to the exhaustive harmonization aimed by the secondary legal act.

We think this opinion – debated in the legal literature – is irrelevant to Article 15 of the directive. This argument is evidenced by Article 4, graph 8, which declares that the overriding public interest reasons mean the reasons acknowledged by the CJEU.

In the decisions on land policy, the CJEU is likely to allow the public interest reasons developed in this field in the directive's scope. Therefore, the member states' margin of appreciation for land policy is not likely to be significantly changed because of the legal development of the KOB Sia case.

Nevertheless, the KOB Sia judgment carries the possibility of significant change. The member states' margin of appreciation to regulate with non-discriminative instruments on the land policy is a given. By modifying the directive, the EU legislature can incorporate the positive integration form's goals as overriding public interest reasons and consolidate the member states' margin of appreciation.

We can conclude that provisions on land policy are excluded from the directive, probably because the legislature did not consider that the directive is applied instead of the free movement of capital related to the EU control of the member states' regulations on agricultural lands. If the directive refers to the public interest related to the purchase of agricultural land, it would certainly ease the uncertainties in this area. However, this should be the subject of further research.

Bibliography

1. Andréka T & Olajos I (2017) A földforgalmi jogalkotás és jogalkalmazás végrehajtása kapcsán felmerült jogi problémák elemzése, *Magyar Jog* 7-8., pp. 410–427.
2. Azoulai L (2011) *Le législateureuropéenetl'entrave, in L'entravedans le droit du marché interieur,* Bruylant, Bruxelles.
3. Bianchi D (2012) *La politique agricole commune (PAC), 2 édition*, Bruylant, Bruxelles.
4. Csák Cs. (2018) Constitutional issues of land transactions regulation, *Journal of Agricultural and Environmental Law* 13(24), pp. 5–32, https://doi.org/10.21029/JAEL.2018.24.5
5. Dubouis L & Blumann C (2019) *Droitmatériel de l'Unioneuropéenne*, LGDJ Lextenso, Paris.
6. Dubout É & Maitrot de la Motte A (2013) *L'unitédes libertés de circulation*, Bruylant, Bruxelles.
7. Hornyák Zs (2018) Richtungenfürdie Fortentwicklungen: Beerbungdes Grundstückes, *Journal of Agricultural and Environmental Law* 13(25), pp. 107–131, https://doi.org/10.21029/JAEL.2018.25.107
8. Hornyák Zs (2021) Legal frame of agricultural land succession and acquisition by legal persons in Hungary, *Journal of Agricultural and Environmental Law* 16(30), pp. 86–99, https://doi.org/10.21029/JAEL.2021.30.86
9. Korom Á (2013) Az Új földtörvény az uniós jog tükrében. Jogegyenlőség vagy de facto más elbírálás?, in: Korom Á. (ed.) *Az Új magyar földforgalmi szabályozás az uniós jogban,* NKE, Budapest, pp. 11–25.
10. Korom Á & Gyeney L (2015) The compensation for agricultural land confiscated by the Benes decrees in the light of free movement of capital, in: Lancos P (ed.) *Hungarian Yearbook of International Law and European Law, 2014*, Eleven International Publishing, Haque, pp. 289–306.
11. Kurucz M (2012) Gondolatok egy üzemszabályozási törvény indokoltságáról, *Gazdálkodás,* 2012(2), pp. 118–130.
12. Kurucz M (2015) Gondolatok a magyar földforgalmi törvény uniós feszültségpontjainak kérdéseiről, in: Szalma J (ed.) *A Magyar Tudomány Napja a Délvidéken, 2014,* Vajdasági Magyar Tudományos Társaság, Újvidék.
13. Lecourt R (2008) *L'Europe des juges*, Bruylant, Bruxelles.
14. Navel L (2021) *L'argument de continuité jurisprudence de la Cour de justice de L' union européenne*, Bruylant, Bruxelles.
15. Olajos I (2017) The acquisition and the right of use of agricultural lands, in particular the developing Hungarian court practice, *Journal of Agricultural and Environmental La*w 12(23), pp. 91–103, https://doi.org/10.21029/JAEL.2017.23.91
16. Olajos I (2018) The special asset management right of nature conservation areas, the principal of the prohibition of regression and the conflict with the ownership right in connection with the management of state-owned areas, *Journal of Agricultural and Environmental Law,* 13(25), pp. 157–189 https://doi.org/10.21029/JAEL.2018.25.157

17. Olajos I & Juhász A (2018) The relation between the land use register and the real estate registration proceeding, with regard to the justification of the lawful landuse, *Journal of Agricultural and Environmental Law* 13(24), pp. 164–193, https://doi.org/10.21029/JAEL.2018.24.164
18. Pertek J (2005) *Droitmatériel de L'Unioneuropéenne*, Presses Universitaires de France, Paris.
19. Raisz A (2022) General Report of Commission I, in: Norer R (ed.) *CAP Reform: Market Organisation and Rural Areas, 1st edn*., Nomos, Baden-Baden.
20. Simon D (1997) *Le systeme juridique communautaire*, Presses Universitaires de France, Paris.
21. Szilágyi J E (2013) A földforgalmi törvény elfogadásának indokai, körülményi, és főbb intézményei, in: Korom Á (ed.) *Az Új Magyar Földforgalmi Szabályozás az Uniós Jogban,* NKE, Budapest, pp. 109–121.
22. Szilágyi J E (2015) Conclusions (Commission II), *Journal of Agricultural and Environmental Law* 10(19), pp. 90–102.
23. Szilágyi J E (2017a) General Report of Commission II, in: Norer R (ed.) *CAP Reform: Market Organisation and Rural Areas, 1st edn.*, Nomos, Baden-Baden, pp. 214–250.
24. Szilágyi J E (2017b) European legislation and Hungarian law regime of transfer of agricultural and forestry lands, *Journal of Agricultural and Environmental Law* 12(23), pp. 148–181, https://doi.org/10.21029/JAEL.2017.23.148
25. Szilágyi J E (2017c) A magyar földforgalmi szabályozás új rezsimje és a határon átnyúló tulajdonszerzések – kérdések a nemzetközi és az európai jog szemszögéből, *Miskolci Jogi Szemle*, 12(különszám), pp. 107–124.
26. Szilágyi J E (2017d) Az Egyesült Államok és szövetségi államainak mezőgazdasági földtulajdon szabályozása a határon átnyúló földszerzések viszonylatában, *Miskolci Jogi Szemle* 12(2. különszám), pp. 569–577.
27. Szilágyi J E (2018) Mezőgazdasági földjog: Soft law a soft law-ban, Avagy a FAO önkéntes iránymutatása megváltoztathatja-e az uniós jog értelmezési kereteit földforgalmi kérdésekben?, *Iustum Aequum Salutare* 14(4), pp. 69–90.
28. Szilágyi J E (2021) The Protection of the interest of Future Generation in 10-Year-Old Hungarian Constitution, With Special Reference to the Right to a Healthy Environment and Other Environmental Issues, *Journal of Agricultural and Environmental Law* 16(31), pp. 130–144. https://doi.org/10.21029/JAEL.2021.31.130
29. Szinay A (2020) Az Európai Unió Bíróságának mezőgazdasági földekre bejegyzett haszonélvezeti jogának törlése ügyében hozott ítélet áttekintése, *Gazdaság és Jog* 2020/7-8, pp. 40–45.
30. Vauchez A. (2019) *Le travailpolitique du droit, in Le rolepolitique de la Cour de justice de L'Unioneuropéenne,* Bruylant, Bruxelles.