Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 March 2018*

(References for a preliminary ruling — Article 63 TFEU — Free movement of capital — Rights of usufruct over agricultural land — National legislation permitting such rights to be acquired in the future only by close family members of the owner of the land and cancelling, without providing for compensation, the rights previously acquired by legal persons or by natural persons who cannot demonstrate a close family tie with the owner of the land)

In Joined Cases C-52/16 and C-113/16,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), made by decisions of 25 January and 8 February 2016, received at the Court on 29 January and 26 February 2016 respectively, in the proceedings

'SEGRO' Kft.

v

Vas Megyei Kormányhivatal Sárvári Járási Földhivatala (C-52/16),

and

Günther Horváth

v

Vas Megyei Kormányhivatal (C-113/16),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, E. Levits, C.G. Fernlund and C. Vajda, Presidents of Chambers, J.-C Bonichot, A. Arabadjiev, C. Toader, A. Prechal (Rapporteur), S. Rodin and F. Biltgen, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: I. Illéssy, Administrator,

having regard to the written procedure and further to the hearing on 7 March 2017,

* Language of the case: Hungarian.

after considering the observations submitted on behalf of:

– the Hungarian Government, by M.Z. Fehér, G. Koós and M.M. Tátrai, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, and P. Garofoli, avvocato dello Stato,

– the Austrian Government, by C. Pesendorfer, acting as Agent,

– the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and M.J. Castello-Branco, acting as Agents,

– the European Commission, by L. Havas, L. Malferrari and E. Montaguti, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2017,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Articles 49 and 63 TFEU and of Articles 17 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The requests have been made in proceedings brought, first, by 'SEGRO' Kft. against the Vas Megyei Kormányhivatal Sárvári Járási Földhivatala (Vas Region Administrative Department (Sárvár District Property Registry), Hungary) and, second, by Günther Horváth against the Vas Megyei Kormányhivatal (Vas Region Administrative Department), relating to decisions deleting from the property register rights of usufruct over agricultural land that were held by SEGRO and Mr Horváth respectively.

Legal context

EU law

3 Annex X to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the 2003 Act of Accession') is entitled 'List referred to in Article 24 of the Act of Accession: Hungary'. Chapter 3 of that annex, entitled 'Free movement of capital', provides in paragraph 2:

'Notwithstanding the obligations under the Treaties on which the European Union is founded, Hungary may maintain in force for seven years from the date of accession the prohibitions laid down in its legislation existing at the time of signature of this Act on the acquisition of agricultural land by natural persons who are non-residents or non-nationals of Hungary and by legal persons. In no instance may nationals of the Member States or legal persons formed in accordance with the laws of another Member State be treated less favourably in respect of the acquisition of agricultural land than at the date of signature of the Accession Treaty. ...

Nationals of another Member State who want to establish themselves as self-employed farmers and who have been legally resident and active in farming in Hungary at least for three years continuously, shall not be subject to the provisions of the preceding subparagraph or to any rules and procedures other than those to which nationals of Hungary are subject.

...

If there is sufficient evidence that, upon expiry of the transitional period, there will be serious disturbances or a threat of serious disturbances on the agricultural land market of Hungary, the Commission, at the request of Hungary, shall decide upon the extension of the transitional period for up to a maximum of three years.'

4 By Commission Decision 2010/792/EU of 20 December 2010 extending the transitional period concerning the acquisition of agricultural land in Hungary (OJ 2010 L 336, p. 60), the transitional period established in paragraph 2 of Chapter 3 of Annex X to the 2003 Act of Accession was extended until 30 April 2014.

Hungarian law

5 Földről szóló 1987. évi I. törvény (Law No 1 of 1987 on land) provided that foreign natural or legal persons could acquire the ownership or usufruct of agricultural land only with prior authorisation from the Minster for Finance.

6 171/1991 Korm. rendelet (Government Decree No 171) of 27 December 1991, which entered into force on 1 January 1992, and then termőföldről szóló 1994. évi LV. törvény (Law No LV of 1994 on arable land; 'the 1994 Law') precluded the acquisition of such land by natural persons not possessing Hungarian nationality. The 1994 Law precluded, in addition, the acquisition of such land by legal persons. On the other hand, any person remained free to acquire by contract a right of usufruct over such land.

7 The 1994 Law was amended, with effect from 1 January 2002, in order also to preclude a right of usufruct over agricultural land from being created by contract in favour of natural persons not possessing Hungarian nationality or legal persons.

8 Following subsequent amendments of the 1994 Law which came into effect on 1 January 2013, a right of usufruct over agricultural land could no longer be validly created by contract unless the right was created in favour of a 'close member of the same family'. At the same time, a new Paragraph 91(1)(a) was, moreover, inserted in the 1994 Law, laying down that 'any right of usufruct existing on 1 January 2013 and created, for an indefinite period or for a fixed term expiring after 30 December 2032, by a contract between persons who are not close members of the same family shall be extinguished by operation of law on 1 January 2033'.

9 Mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvény (Law No CXXII of 2013 on transactions in agricultural and forestry land; 'the 2013 Law on agricultural land') was adopted on 21 June 2013 and entered into force on 15 December 2013.

10 Paragraph 5(13) of the 2013 Law on agricultural land contains the following definition:

'"Close member of the same family" shall mean spouses, direct ascendants, adopted children, children and stepchildren, adoptive parents, step-parents, foster parents and brothers and sisters.'

11 Paragraph 37(1) of the 2013 Law on agricultural land maintains the rule that rights of usufruct over such land cannot be validly created by contract unless they are created between close members of the same family.

12 Mező- és erdőgazdasági földek forgalmáról szóló 2013. évi CXXII. törvénnyel összefüggő egyes rendelkezésekről és átmeneti szabályokról szóló 2013. évi CCXII. törvény (Law No CCXII of 2013 laying down various provisions and transitional measures concerning Law No CXXII of 2013 on transactions in agricultural and forestry land; 'the 2013 Law on transitional measures') was adopted on 12 December 2013 and entered into force on 15 December 2013.

13 Paragraph 108(1) of the 2013 Law on transitional measures, which repealed Paragraph 91(1) of the 1994 Law, states:

'Any right of usufruct or right of use existing on 30 April 2014 and created, for an indefinite period or for a fixed term expiring after 30 April 2014, by a contract between persons who are not close members of the same family shall be extinguished by operation of law on 1 May 2014.'

14 Paragraph 94 of ingatlan-nyilvántartásról szóló 1997. évi CXLI. törvény (Law No CXLI of 1997 on the property register; 'the Law on the property register') provides:

'1. With a view to the deletion from the property register of rights of usufruct and rights of use (for the purposes of this Paragraph referred to collectively as "rights of usufruct") extinguished under Paragraph 108(1) of [the 2013 Law on transitional measures], the natural person holding rights of usufruct shall, upon being notified by 31 October 2014 at the latest by the authority responsible for administering the property register, within 15 days of the delivery of such notice declare, using the form prescribed for that purpose by the Minister, the existence, as the case may be, of a close family relationship with the person shown as owner of the property in the document which served as the basis for registration. Where no declaration is made within the prescribed period, no application for continuation shall be accepted after 31 December 2014.

...

3. If the declaration does not reveal a close family relationship, or if no declaration has been made within the prescribed period, the authority responsible for administering the property register shall of its own motion delete the rights of usufruct from the register within six months following the expiry of the deadline for making the declaration and no later than 31 July 2015.

...

5. The authority responsible for administering the property register shall, no later than 31 December 2014, of its own motion delete from the property register any right of usufruct which was registered on behalf of a legal person or an entity not having legal personality but having the capacity to acquire a registrable right and which has been cancelled in application of Paragraph 108(1) of [the 2013 Law on transitional measures].'

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-52/16

15 SEGRO is a commercial company with its seat in Hungary. Its members are natural persons who are nationals of other Member States and resident in Germany.

16 SEGRO acquired rights of usufruct over two parcels of agricultural land in Hungary. Those rights were entered in the property register. More specifically, it is apparent from the written observations of the Hungarian Government that those rights were created before 1 January 2002 and were entered in the property register on 8 January 2002.

17 By two decisions dated 10 and 11 September 2014 respectively, the Vas Region Administrative Department (Sárvár District Property Registry) deleted those rights of usufruct from the property register, acting on the basis of Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 94(5) of the Law on the property register.

18 In support of the action brought by it before the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely, Hungary), SEGRO contended in particular that those provisions infringed both the Hungarian Fundamental Law and EU law.

19 That court brought the matter before the Alkotmánybíróság (Constitutional Court, Hungary), requesting, first, a declaration that Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 94(5) of the Law on the property register were unconstitutional in that they brought the previously created rights of usufruct to an end and required their deletion from the property register and, second, an order prohibiting the application of those provisions in the case in point.

20 In judgment No 25 of 21 July 2015, the Alkotmánybíróság (Constitutional Court) refused those requests.

21 The referring court states that, in that judgment, the Alkotmánybíróság (Constitutional Court) did, however, declare that the Hungarian Fundamental Law had been infringed because the legislature did not adopt, as regards the rights of usufruct and rights of use extinguished pursuant to Paragraph 108 of the 2013 Law on transitional measures, exceptional provisions permitting compensation, which compensation, even if it related to a valid contract, could not have been claimed in the context of a settlement between the parties to that contract. In the judgment, the Alkotmánybíróság (Constitutional Court) also called on the legislature to rectify that omission by 1 December 2015 at the latest. That period expired without any measure being adopted for that purpose.

22 The Hungarian Government has explained in this regard in its written observations that the request to legislate made by the Alkotmánybíróság (Constitutional Court) concerned only compensation for any losses suffered by the bare legal owners, in so far as compensation for such losses would not be available in the context of a settlement between the parties, under the rules of civil law, and that in the case of the usufructuaries the Alkotmánybíróság (Constitutional Court) held that the rules of civil law were sufficient to ensure any compensation.

23 The Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely) is of the view that the national provisions at issue amount to a restriction on the rights of nationals of Member States other than Hungary to freedom of establishment and free movement of capital, since they are such as to deter such nationals from exercising those rights by acquiring rights of usufruct over agricultural properties, given the risk that they run of being prematurely deprived of those rights even though they derive from valid contracts.

24 As regards the objectives pursued by the 2013 Law on agricultural land, the referring court sets out extracts from judgment No 25 of 21 July 2015 delivered by the Alkotmánybíróság (Constitutional Court), according to which, in particular, that law ‘achieves the national strategic objective, generally recognised and accepted after the change of regime, and constitutionally guaranteed by Article P of the Fundamental Law, under which, in essence, productive land can be owned only by the natural persons who work it’. The judgment adds that, ‘also, it is on account of that objective that that law provides that ownership of land cannot be acquired for the purposes of investment for the future, that is to say, in order to obtain a capital gain that would result from the increase of the price of land,’ and that, ‘as is apparent from the preamble to that law, other objectives of legal policy which led to the drafting of that law were, inter alia, that the sale of agricultural and forestry land and the creation of mortgages over such land for the purpose of securing loans effectively facilitate the working thereof by newly set up undertakings, that properties be created of a size that enables viable and competitive

agricultural production, that the organisation of agriculture based on ownership not be threatened by the harmful effects of the fragmentation of land, and that every farmer be able to pursue peacefully his agricultural production activity'.

25 As regards the provisions more specifically at issue in the main proceedings, the referring court observes that it is apparent from that judgment of the Alkotmánybíróság (Constitutional Court) that 'the specific reason given for Paragraph 108(1) of the 2013 Law on transitional measures being necessary and expedient was that, so far as concerns the ownership of productive land, in order to achieve fully the national strategic objective pursued by the new regime, that law had to eliminate the legal effects of a practice for the acquisition of productive land which had developed for nearly two decades and on account of which the right of usufruct had been applied in a dysfunctional manner'. That judgment explains that, 'in its operation, the new regime cannot, so far as concerns ownership, usufruct and the use of productive land, fail to incorporate the requirement that the situations specified in the property register must reflect legal relationships that are consistent with the Fundamental Law'. Consequently, according to the judgment, 'it was necessary to adopt measures preventing the application of legal arrangements known, in everyday language, as "pocket contracts" and, therefore, to provide that it is not possible to continue to apply rights or obligations, or any legal remedies, on the basis of existing legal relationships, so as to escape the previous prohibitions and restrictions concerning the acquisition of ownership'.

26 According to the referring court, the Hungarian legislature did not, however, sufficiently establish the necessity for and the proportionality of the rules at issue — as the grounds of the 2013 Law on transitional measures in particular neither enable a sufficiently demonstrated legitimate objective in the public interest to be identified in that law or those grounds nor reveal arguments justifying the indiscriminate cancellation of rights of usufruct, without compensation or an appropriate transitional period — or the necessity, in that last respect, to reduce to a few months the period, previously 20 years, during which the rights of usufruct concerned could continue to exist until they were cancelled.

27 In particular, according to the referring court, the legal presumption which, although not expressly set out in the legislation concerned, is at its base, that all the private contracts which created rights of usufruct and rights of use were entered into in order to avoid the previous prohibitions relating to the acquisition of ownership, is intended to bring alleged old infringements of the law to an end. The Hungarian legislature thus prescribed, by legislative measures, the effects of the alleged invalidity of those contracts, without however showing that that legislation was in the public interest; it also denied the persons concerned the possibility of proving that their contracts were valid in an administrative procedure and compromised their right, laid down in Article 47 of the Charter, to a fair hearing.

28 Furthermore, according to the referring court, the national provisions at issue in the main proceedings also undermined the right to property enshrined in Article 17 of the Charter, in particular by failing to ensure appropriate compensation for the dispossessed usufructuaries and by failing to comply with the principle of the protection of legitimate expectations, in the light of the fact that investment in a usufruct constitutes, in principle, a long-term legal transaction.

29 It was in those circumstances that the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Articles 49 and 63 TFEU and Articles 17 and 47 of the [Charter] be interpreted as precluding national legislation such as that at issue in the main proceedings, which — without considering other criteria — imposes the obligation to cancel the registration of the rights of usufruct and rights of use burdening agricultural land which have been registered in the name of companies or natural persons who are not close family relatives of the owner of the land, without

at the same time prescribing, in favour of the holders of the extinguished rights of usufruct and rights of use, compensation for the financial loss which, although it arises from valid contracts, cannot be claimed in the context of the settlement of accounts between the parties?

(2) Must Articles 49 and 63 TFEU and Articles 17 and 47 of the [Charter] be interpreted as precluding national legislation which — without considering other criteria — imposes the obligation to cancel the registration of the rights of usufruct and rights of use burdening agricultural land which have been registered, pursuant to contracts concluded before 30 April 2014, in the name of companies or natural persons who are not close family relatives of the owner of the land, and at the same time prescribes, in favour of the holders of the extinguished rights of usufruct and rights of use, compensation for the financial loss which, although it arises from valid contracts, cannot be claimed in the context of the settlement of accounts between the parties?'

Case C-113/16

30 Mr Horváth is an Austrian national residing in Austria who acquired rights of usufruct over two parcels of agricultural land in Hungary before 30 April 2014. Those rights were entered in the property register. At the hearing before the Court, the Hungarian Government stated that the entries were made on 2 November 1999.

31 By decision of 12 October 2015, the Vas Region Administrative Department deleted those rights of usufruct from the property register, acting on the basis of Paragraph 108(1) of the 2013 Law on transitional measures and Paragraph 94(1) and (3) of the Law on the property register.

32 Mr Horváth brought an action before the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely).

33 That court is uncertain, first, whether, inasmuch as the national provisions at issue make continuation of the rights of usufruct dependent on their holder proving the existence of a close family relationship with the person who granted those rights, who in the majority of cases will be a Hungarian national, they result in covert discrimination against nationals of the Member States other than Hungary. That could be so because the legislation previously in force expressly prohibited foreign natural and legal persons wishing to farm agricultural land in Hungary from acquiring the ownership of such land and the proportion of holders of rights of usufruct or rights of use is therefore higher in the case of nationals of the other Member States than in the case of Hungarian nationals.

34 As regards, second, the assessment of the necessity for the measures concerned in the light of the objectives pursued by the national legislature, the referring court supplements the analysis that it carried out in its order for reference in Case C-52/16. It thus observes that, in adopting the 2013 Law on agricultural land and the 2013 Law on transitional measures, the Hungarian legislature presumed that rights of usufruct over agricultural land created between persons other than close members of the same family had to be regarded as investments with a view to obtaining personal gain. However, according to the referring court, the existence of a close family tie does not mean that the existence of a ground connected with obtaining personal gain can be automatically ruled out.

35 It was in those circumstances that the Szombathelyi Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Szombathely) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must national legislation such as that at issue in the main proceedings, under which the continuation of rights of usufruct and rights of use created over agricultural land depends on proof of the existence of a close family tie with the person who created the rights of usufruct and

rights of use, and under which the rights of usufruct and rights of use are extinguished by operation of law, without any financial compensation, where the holder of those rights cannot establish that close family tie, be regarded as a restriction contrary to Articles 49 and 63 TFEU?

(2) Does national legislation such as that at issue in the main proceedings, under which the continuation of rights of usufruct and rights of use created over agricultural land depends on proof of the existence of a close family tie with the person who created the rights of usufruct and rights of use, and under which the rights of usufruct and rights of use are extinguished by operation of law, without any financial compensation, where the holder of those rights cannot establish that close family tie, operate in a genuinely equal manner vis-à-vis the nationals of the Member State concerned and the nationals of the other Member States, having regard to Articles 49 and 63 TFEU?'

36 Cases C-52/16 and C-113/16 were joined for the purposes of the written and oral procedure and of the judgment by decision of the President of the Court of 10 March 2016.

Consideration of the questions referred

37 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 49 and 63 TFEU and Articles 17 and 47 of the Charter must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

The Court's jurisdiction and the admissibility of the questions referred

38 The Hungarian Government contends, first, that, since the usufruct contracts at issue in the main proceedings were entered into before the 2003 Treaty of Accession entered into force, their validity depends exclusively on the rules of national law in force when they were entered into. Consequently, the Court lacks jurisdiction to assess those rules in the light of EU law and, therefore, to rule on the subsequent cancellation, by the rules at issue in the main proceedings, of rights of usufruct which, in this instance, were created unlawfully in the light of the national law prior to the accession of the Member State concerned to the European Union.

39 However, it is clear from settled case-law that the Court has jurisdiction to interpret EU law as regards its application in a new Member State with effect from the date of that State's accession to the European Union (see, to that effect, judgment of 10 January 2006, *Ynos*, C-302/04, EU:C:2006:9, paragraph 36 and the case-law cited).

40 In the present instance, and as is apparent from the orders for reference, the rights of usufruct at issue in the main proceedings still existed on 30 April 2014 and they were cancelled and deleted from the property register not pursuant to legislation which was in force and produced all its effects in their regard before the date of Hungary's accession to the European Union, but exclusively by virtue of the provisions at issue in the main proceedings, which were adopted nearly 10 years after Hungary's accession.

41 The Hungarian Government contends, second, that the questions submitted are inadmissible in so far as they relate to Paragraph 108 of the 2013 Law on transitional measures, since in the main proceedings only Paragraph 94 of the Law on the property register was applied. Paragraph 108 of the

2013 Law on transitional measures had already produced all its effects and the referring court is not able to decide upon the re-establishment or preservation of the rights of usufruct at issue in the main proceedings.

42 As to those submissions, it should be recalled that, according to settled case-law, in the context of the cooperation between the Court and national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU Union law, the Court is in principle bound to give a ruling (judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 40 and the case-law cited).

43 A reference from a national court may be refused only if it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or to its purpose, or where the problem is hypothetical or the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 42 and the case-law cited).

44 In the present instance, Paragraph 108 of the 2013 Law on transitional measures had the consequence that the rights of usufruct at issue in the main proceedings were extinguished by operation of law. Thus, that paragraph, like Paragraph 94 of the Law on the property register, is at the origin of the decisions deleting rights of usufruct from the property register that are at issue in the main proceedings. It follows, first, that the interpretation of EU law which is sought in the present instance and which is intended to enable the referring court to determine whether those national provisions comply with EU law bears a definite relation to the purpose of the main proceedings and, second, that the questions submitted are not hypothetical.

45 As regards the Hungarian Government's assertion that the referring court is not able to decide upon the preservation of the rights of usufruct cancelled by Paragraph 108 of the 2013 Law on transitional measures and deleted pursuant to Paragraph 94 of the Law on the property register, it should be noted that, according to the Court's settled case-law, provisions such as Articles 49 and 63 TFEU, which are directly applicable, may be relied on before national courts and may render national rules that are inconsistent with them inapplicable (see, to that effect, judgments of 5 November 2002, *Überseering*, C-208/00, EU:C:2002:632, paragraph 60, and of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraph 49 and the case-law cited).

46 Thus, both the administrative authorities and the national courts called upon, in the exercise of their respective powers, to apply provisions of EU law are under a duty to give full effect to those provisions, if necessary refusing of their own motion to apply any conflicting provision of national law, and without requesting or awaiting the prior setting aside of that provision of national law by legislative or other constitutional means (judgment of 14 September 2017, *The Trustees of the BT Pension Scheme*, C-628/15, EU:C:2017:687, paragraph 54 and the case-law cited).

47 Third, the Hungarian Government submits that the referring court calls into question certain guidance provided by judgment No 25 of 21 July 2015 delivered by the Alkotmánybíróság (Constitutional Court), although, under Hungarian constitutional law, that court's decisions are binding on the lower courts.

48 It should be recalled that, according to settled case-law, national courts have the widest discretion to refer to the Court of Justice questions of interpretation of relevant provisions of EU law and that a rule of national law cannot prevent a national court from using that discretion. Such a discretion is an inherent part of the system of cooperation between the national courts and the Court established in Article 267 TFEU and of the functions of the court responsible for the application of EU law which

are entrusted by that provision to the national courts (see, to that effect, judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraphs 32 and 33 and the case-law cited). The Court has thus held in particular that the existence of a rule of national law whereby courts against whose decisions there is a judicial remedy are bound on points of law by the rulings of a court superior to them cannot, on the basis of that fact alone, deprive the lower courts of that discretion (judgment of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 42).

49 It follows from all the foregoing that the arguments put forward by the Hungarian Government to contest the Court's jurisdiction to entertain the questions referred for a preliminary ruling or their admissibility must be rejected.

Substance

Applicability of Article 49 TFEU (freedom of establishment) and/or Article 63 TFEU (free movement of capital)

50 The national provisions at issue in the main proceedings essentially have the purpose of cancelling by operation of law previously acquired rights of usufruct over agricultural land where the holders of those rights do not satisfy the conditions to which the acquisition of rights of usufruct over agricultural land is henceforth subject under national legislation, and of arranging, consequently, for the deletion of such previously acquired rights from the property registers.

51 A preliminary point to note is that, whilst Article 345 TFEU, to which the Hungarian Government referred in its observations, expresses the principle that the Treaties are neutral in relation to the rules in Member States governing the system of property ownership, that article does not, however, mean that rules governing the system of property ownership current in the Member States are not subject to the fundamental rules of the FEU Treaty (judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraphs 29 and 36 and the case-law cited, and Opinion 2/15 (*Free Trade Agreement with Singapore*) of 16 May 2017, EU:C:2017:376, paragraph 107). Thus, although Article 345 TFEU does not call into question the Member States' right to establish a system for the acquisition of immovable property which lays down specific measures applying to transactions concerning agricultural and forestry land, such a system remains subject inter alia to the rule of non-discrimination, and to the rules relating to freedom of establishment and free movement of capital (see, to that effect, judgment of 23 September 2003, *Ospelt and Schlössle Weissenberg*, C-452/01, EU:C:2003:493, paragraph 24 and the case-law cited).

52 Also, since the questions submitted for a preliminary ruling refer to the provisions of the Treaty relating both to freedom of establishment and to the free movement of capital, it is necessary to determine which freedom is at issue in the main proceedings (see, to that effect, judgment of 5 February 2014, *Hervis Sport- és Divatkereskedelmi*, C-385/12, EU:C:2014:47, paragraph 20).

53 To do this, the purpose of the national legislation at issue must be taken into consideration (judgment of 5 February 2014, *Hervis Sport- és Divatkereskedelmi*, C-385/12, EU:C:2014:47, paragraph 21 and the case-law cited).

54 In the case of legislation such as that at issue in the main proceedings, the purpose of which has been stated in paragraph 50 above, it should be noted that, when the right to acquire, use or dispose of immovable property on the territory of another Member State is exercised as the corollary of the right of establishment, it generates capital movements (see, to that effect, judgment of 25 January 2007, *Festersen*, C-370/05, EU:C:2007:59, paragraph 22 and the case-law cited).

55 Thus, although that legislation is, prima facie, capable of being covered by both the fundamental freedoms mentioned by the referring court, the fact remains that, in the context of the main proceedings, any restrictions on freedom of establishment resulting from that legislation are an inevitable consequence of the restriction of the free movement of capital and, therefore, do not justify an independent examination of that legislation in the light of Article 49 TFEU (see, to that effect, judgment of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 51 and the case-law cited).

56 As is clear from the nomenclature of capital movements set out in Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the [EC] Treaty (an article repealed by the Treaty of Amsterdam) (OJ 1988 L 178, p. 5), capital movements include investments in real estate on the territory of a Member State by non-residents; that nomenclature still has the same indicative value for the purposes of defining the notion of capital movements (judgment of 25 January 2007, *Festersen*, C-370/05, EU:C:2007:59, paragraph 23 and the case-law cited).

57 That notion encompasses, inter alia, investments in real estate relating to the acquisition of a usufruct over agricultural land, as is attested, in particular, by the clarification, contained in the explanatory notes in Annex I to Directive 88/361, that the category of investments in real estate covered by the directive includes the acquisition of rights of usufruct over buildings and land.

58 In the present instance, as regards Case C-113/16, it is common ground that the dispute in the main proceedings concerns an Austrian national not resident in Hungary who acquired by contract rights of usufruct over agricultural land in Hungary of which he was subsequently deprived on account of the adoption of the national provisions at issue in those proceedings. That situation therefore falls within the free movement of capital.

59 The same is true of the situation in Case C-52/16. Whilst it is admittedly not in dispute that the rights of usufruct at issue in that case were acquired by a commercial company set up in Hungary, it is also apparent from what is stated in the order for reference that that company was set up by natural persons residing in another Member State. As the Advocate General has noted in point 55 of his Opinion, an acquisition of immovable property by non-residents is capable of falling within the free movement of capital even when it is carried out by means of a legal person set up in the Member State where the property concerned is located (see, to that effect, judgments of 11 December 2003, *Barbier*, C-364/01, EU:C:2003:665, paragraphs 58 and 59, and of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraphs 12, 13, 19, 20 and 39).

60 It follows that the legislation at issue in the main proceedings should be examined exclusively in the light of the free movement of capital.

Existence of a restriction on the free movement of capital

61 According to settled case-law, Article 63(1) TFEU generally prohibits restrictions on movements of capital between Member States (judgment of 22 October 2013, *Essent and Others*, C-105/12 to C-107/12, EU:C:2013:677, paragraph 39 and the case-law cited).

62 In the present instance, it must be found that, by virtue of its very subject matter, legislation such as that at issue in the main proceedings, which provides for the extinction of rights of usufruct acquired by contract over agricultural land, including those held as a result of exercise of the right to free movement of capital, restricts that freedom on account of that fact alone. The possible adoption, envisaged by the referring court in its second question in Case C-52/16, of a measure compensating the persons who, after acquiring such rights, have been deprived of them in this way by that legislation would not be capable of affecting that finding.

63 That legislation deprives the person concerned both of the ability to continue to enjoy the right which he has acquired, by preventing him, in particular, from using the agricultural land concerned for the purposes for which he acquired that right, and of the ability to dispose of that right.

64 By depriving in that way nationals of Member States other than Hungary, who are entitled to benefit from free movement of capital, of enjoyment of the property in which they invested capital, the national legislation at issue in the main proceedings constitutes a restriction on such free movement.

65 Furthermore, as is clear from settled case-law, the measures prohibited by Article 63(1) TFEU, as restrictions on the movement of capital, include those which are likely to discourage non-residents from making investments in a Member State (judgments of 25 January 2007, *Festersen*, C-370/05, EU:C:2007:59, paragraph 24 and the case-law cited, and of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraph 21).

66 It follows that national legislation such as that at issue in the main proceedings constitutes a restriction on the fundamental freedom guaranteed in Article 63 TFEU.

67 As to whether that legislation must, in addition, be regarded as discriminatory, a matter to which the second question in Case C-113/16 relates, it should be noted, as the Advocate General has done in point 72 of his Opinion, that a requirement relating, as in the present instance, to the existence of a close family tie between the usufructuary and the owner of the productive land makes recourse to a criterion which is ostensibly independent of the usufructuary's nationality and the origin of the capital, and which therefore is not directly discriminatory.

68 That said, it must be pointed out, first, that the probability that that criterion is met in the case of nationals of other Member States who have acquired such a usufruct is relatively low.

69 The national regulatory context described in paragraphs 5 and 6 above and the transitional measures laid down by the 2003 Act of Accession which are noted in paragraphs 3 and 4 above, from which it is apparent that the acquisition of ownership of agricultural land by persons not possessing Hungarian nationality was, over very many years, subject, in turn, to a system of prior authorisation and then to a system of prohibition, are such as to have reduced the possibility of foreign nationals becoming the owners of such land and, consequently, the probability of a foreign owner of a right of usufruct over such land meeting the requirement relating to the existence of a close family tie with the owner of the land.

70 Second, the fact that, for persons not possessing Hungarian nationality, the only possibility of acquiring rights *in rem* over agricultural land located in Hungary, between 1992 and 2002, was specifically to acquire rights of usufruct over that land led to an increase in the number of nationals of other Member States who were usufructuaries of such land.

71 It is true that, in its written observations, the Hungarian Government submitted in this regard that, out of more than 100 000 right holders who were affected by the cancellation of their rights of usufruct and rights of use resulting from Paragraph 108(1) of the 2013 Law on transitional measures, only 5 058 are nationals of Member States other than Hungary or of third countries.

72 However, even if the referring court, within whose jurisdiction such an appraisal falls, were to find those figures to be established, that would not, in itself, be capable of calling into question the fact that the legislation at issue in the main proceedings places nationals of other Member States at a particular disadvantage compared with Hungarian nationals.

73 The existence of any such disadvantage must be assessed by comparing the group formed by nationals of Member States other than Hungary directly or indirectly holding rights of usufruct over agricultural land and the group formed by Hungarian nationals directly or indirectly holding such rights of usufruct

and by determining the proportion of each of those groups affected by the measure extinguishing rights that was enacted. In the light of the matters referred to in paragraphs 68 to 70 above, it appears likely that that measure affected a markedly higher proportion of the members of the first of those groups than of the second (see, to that effect, judgment of 9 February 1999, *Seymour-Smith and Perez*, C-167/97, EU:C:1999:60, paragraph 59).

74 Accordingly, it appears, subject to checking which it is for the referring court to carry out, that the legislation at issue in the main proceedings is such as to operate to the disadvantage of nationals of other Member States more than Hungarian nationals, and that it is thus liable to conceal indirect discrimination based on the usufructuary's nationality or the origin of the capital.

75 However, even if the restriction on the free movement of capital resulting from that legislation and identified in paragraphs 62 to 66 above is indirectly discriminatory, the possibility remains that it may be justified.

Justification of the restriction on the free movement of capital

76 As is apparent from the Court's case-law, measures such as those at issue in the main proceedings, which restrict the free movement of capital while giving rise in all likelihood to indirect discrimination, are permissible only if they are justified, on the basis of objective considerations independent of the origin of the capital concerned, by overriding reasons in the public interest and if they observe the principle of proportionality, a condition which requires them to be appropriate for ensuring the attainment of the objective legitimately pursued and not to go beyond what is necessary in order for it to be attained (see, to that effect, judgments of 25 October 2007, *Geurts and Vogten*, C-464/05, EU:C:2007:631, paragraph 24, and of 5 February 2014, *Hervis Sport- és Divatkereskedelmi*, C-385/12, EU:C:2014:47, paragraphs 41 and 42).

77 Such measures may likewise be justified by the reasons referred to in Article 65 TFEU provided that they comply with the principle of proportionality (judgment of 1 October 2009, *Woningstichting Sint Servatius*, C-567/07, EU:C:2009:593, paragraph 25 and the case-law cited).

78 It must also be pointed out in this connection that national legislation is appropriate for ensuring attainment of the objective relied on only if it genuinely reflects a concern to attain it in a consistent and systematic manner (judgment of 26 May 2016, *Commission* v *Greece*, C-244/15, EU:C:2016:359, paragraph 35 and the case-law cited).

79 While it is ultimately for the national court, which has sole jurisdiction to assess the facts and interpret the national legislation, to determine whether those requirements are met in the case in point, the Court of Justice, which is called on to provide answers of use to the national court in the context of a reference for a preliminary ruling, may provide guidance, on the basis of the documents relating to the main proceedings and the written and oral observations which have been submitted to it, in order to enable the national court to give judgment (see, to that effect, judgment of 17 July 2014, *Leone*, C-173/13, EU:C:2014:2090, paragraph 56 and the case-law cited).

80 In the present instance, Hungary has submitted that the legislation at issue in the main proceedings is justified, respectively, by overriding reasons in the public interest that are recognised by the Court's case-law, namely, here, a public interest objective relating to the farming of agricultural land, and by grounds envisaged by Article 65 TFEU. As regards that article, the Hungarian Government relies, more specifically, on, first, the desire to penalise infringements of national legislation concerning exchange controls and, second, the desire to combat abusive purchase practices on grounds of public policy.

– Existence of a justification founded on a public interest objective relating to the farming of agricultural land

81 The Hungarian Government, referring to the considerations in judgment No 25 of 21 July 2015 delivered by the Alkotmánybíróság (Constitutional Court) which are set out in paragraph 24 above, submits that, inasmuch as the legislation at issue in the main proceedings makes the future acquisition of rights of usufruct over productive land and the preservation of such rights that already exist subject to compliance with the condition that the usufructuary has the status of close family member of the owner of the property concerned, it pursues public interest objectives. Thus, that legislation seeks to limit the ownership of productive land to the persons who work it and to prevent its acquisition for purely speculative purposes, and also to enable it to be farmed by new undertakings, to facilitate the creation of properties of a size that enables viable and competitive agricultural production, and to prevent a fragmentation of agricultural land as well as migration from rural areas and depopulation of the countryside.

82 As to those submissions, the Court has accepted that national legislation may restrict the free movement of capital on the ground of objectives such as those of preserving the farming of agricultural land by means of owner-occupancy and ensuring that agricultural property is lived on and farmed predominantly by the owners, as well as of preserving a permanent population in rural areas as a town and country planning measure and of encouraging a reasonable use of the available land by resisting pressure on land. These objectives are indeed consistent with those of the common agricultural policy which, under Article 39(1)(b) TFEU, aims 'to ensure a fair standard of living for the agricultural community' and in the working-out of which, according to Article 39(2)(a) TFEU, account must be taken of 'the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions' (see, to that effect, judgment of 25 January 2007, *Festersen*, C-370/05, EU:C:2007:59, paragraphs 27 and 28 and the case-law cited).

83 The same is true of the objective of maintaining a distribution of land ownership which allows the development of viable farms and sympathetic stewardship of green spaces and the countryside (judgment of 23 September 2003, *Ospelt and Schlössle Weissenberg*, C-452/01, EU:C:2003:493, paragraph 39).

84 In the present case, it must, however, be established, as has been pointed out in paragraph 76 above, whether the legislation at issue in the main proceedings is in fact justified by objective considerations independent of the origin of the capital concerned and whether it is appropriate for ensuring the attainment of legitimate public interest objectives and does not go beyond what is necessary in order to attain them.

85 In that context, it should also be pointed out that the reasons which may be invoked by a Member State by way of justification must be accompanied by appropriate evidence or by an analysis of the appropriateness and proportionality of the restrictive measure adopted by that State, and by specific details substantiating its arguments (see, by analogy, judgment of 23 December 2015, *Scotch Whisky Association and Others*, C-333/14, EU:C:2015:845, paragraph 54 and the case-law cited). Thus, if a Member State wishes to rely on an objective that is capable of justifying an obstacle to the free movement of capital arising from a national restrictive measure, it is under a duty to supply the court called upon to rule on that question with all the evidence capable of enabling that court to be satisfied that that measure does indeed fulfil the requirements arising from the principle of proportionality (see, by analogy, judgment of 8 September 2010, *Stoß and Others*, C-316/07, C-358/07 to C-360/07, C-409/07 and C-410/07, EU:C:2010:504, paragraph 71).

86 In that regard, first, as the Commission in particular has contended and as the Advocate General has observed in points 111 to 113 of his Opinion, legislation such as that at issue in the main proceedings, which permits existing rights of usufruct over agricultural land to be preserved only if

the usufructuary is a close relation of the owner of that land, does not appear appropriate for the purpose of pursuing the objectives relied upon by the Hungarian Government, objectives with which that legislation has no direct connection.

87 The fact that the required family tie exists does not guarantee that the usufructuary farms the land concerned himself and that he has not acquired the right of usufruct at issue for purely speculative purposes. Similarly, it cannot be assumed that a person outside the owner's family who has purchased a usufruct over such land would not be in a position to farm that land himself and that the purchase would necessarily have been made for purely speculative purposes, without any intention to cultivate the land.

88 Nor is it apparent from the information in the case file before the Court that that requirement relating to the existence of a close family tie between the owner and the usufructuary, laid down by the national legislation at issue in the main proceedings, would be such as to contribute to supporting and developing viable and competitive agriculture, in particular by preventing land fragmentation.

89 Nor, moreover, does the requirement relating to the existence of a close family tie appear to be capable in itself of ensuring achievement of the objective invoked of seeking to prevent migration from rural areas and depopulation of the countryside. The criterion chosen by the national legislature in the present instance is unrelated to the objective of taking steps to maintain the population in rural areas, since the fact that the usufructuary has a close family tie with the owner does not necessarily mean that the usufructuary lives near the agricultural land concerned.

90 Second, the legislation at issue in the main proceedings in any event goes beyond what is necessary in order to attain the objectives invoked by the Hungarian Government.

91 As regards the lack of compensation for the usufructuaries, it is true that the Hungarian Government has submitted that they should be able to obtain compensation in a settlement to be reached between the parties concerned, under the rules of Hungarian civil law. However, and in any event, such reference to the general rules of civil law places on those usufructuaries the burden of having to pursue the recovery, by means of procedures that may prove lengthy and expensive, of any compensation which might be payable to them by the landowner. Indeed, those rules of civil law, which are moreover not mentioned by the legislation at issue in the main proceedings, do not make it easy to determine whether compensation will in fact be obtainable at the end of such procedures or disclose the nature of the compensation. Nor do the usufructuaries have the assurance that they will be able to obtain full compensation for the loss that they have sustained, in particular in the event of insolvency of the owner of the land to which the usufruct relates.

92 Also, it is apparent that other measures less restrictive of the free movement of capital than those laid down by the legislation at issue in the main proceedings could have been adopted for the purpose of ensuring that the existence of a right of usufruct over productive land does not result in that land ceasing to be farmed by the person in occupation of it or that the acquisition of such a right neither has purely speculative aims nor leads to a use or fragmentation which might be incompatible with the lasting use of the land for agricultural purposes.

93 In this regard, it would, for example, have been possible, as the Advocate General has noted in point 114 of his Opinion, to require the usufructuary to preserve the agricultural use of the land concerned, as the case may be by actually farming it himself, under conditions ensuring the viability of farming it. The explanations provided by the Hungarian Government seem, moreover, to indicate that such a requirement was favoured in the case of acquiring full ownership of a parcel of agricultural land or being granted a long lease over it. In the light of the information in the case file before the Court, it is not apparent that such an approach could not have been adopted as regards acquisitions of a usufruct.

94 Since the national legislation at issue in the main proceedings appears, in the light of the foregoing, to be neither appropriate for securing in a consistent manner the attainment of the public interest objectives relating to the farming of agricultural land that are invoked nor limited to the measures necessary for the purpose of pursuing such objectives, the restrictions on the free movement of capital to which it gives rise cannot be justified by those objectives.

– Existence of a justification deriving from infringement of the national legislation concerning exchange controls

95 Article 65(1)(b) TFEU states that the provisions of Article 63 TFEU are to be without prejudice to the right of Member States to take all requisite measures to prevent infringements of national law and regulations, to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security. In accordance with Article 65(3) TFEU, such measures or procedures are not, however, to constitute a means of arbitrary discrimination or a disguised restriction of the free movement of capital and payments as defined in Article 63 TFEU.

96 As a derogation from the fundamental principle of the free movement of capital, Article 65(1)(b) TFEU must be interpreted strictly (see, to that effect, judgment of 14 September 2006, *Centro di Musicologia Walter Stauffer*, C-386/04, EU:C:2006:568, paragraph 31).

97 In the present instance, the Hungarian Government contends that, since acquisitions of a usufruct such as those at issue in the main proceedings took place before 1 January 2002 and were made by non-residents, within the meaning of the applicable national legislation concerning exchange controls, they were subject, under that legislation, to the grant of authorisation by the authority with responsibility for currency exchange, namely the National Bank of Hungary. However, according to the Hungarian Government, it is apparent from information supplied by the National Bank of Hungary that no exchange authorisation was ever sought in respect of the acquisition of rights of usufruct over agricultural land. It follows, in its submission, that the acquisitions that related to the rights of usufruct at issue in the main proceedings were invalid.

98 It should be recalled that, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, any assessment of the facts is a matter for the national court (judgment of 8 May 2008, *Danske Svineproducenter*, C-491/06, EU:C:2008:263, paragraph 23 and the case-law cited). Likewise, it falls exclusively to the national court to interpret national legislation (see, to that effect, judgment of 15 January 2013, *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 58 and the case-law cited). Finally, it is for the national court alone to determine the subject matter of the questions which it proposes to refer to the Court (judgment of 1 October 2009, *Gaz de France — Berliner Investissement*, C-247/08, EU:C:2009:600, paragraph 19 and the case-law cited).

99 In the present instance, the orders for reference do not set out at all the specific factual circumstances that surrounded the acquisitions of the rights of usufruct at issue in the main proceedings and do not mention any defects which might under national law have vitiated those acquisitions.

100 Furthermore, it is apparent from what is stated in the orders for reference that the main proceedings relate not to the lawfulness of those original acquisitions but to the cancellation of the rights of usufruct at issue in the main proceedings, pursuant to generally applicable national legislation cancelling all usufructs that are not held by a close relation of the owner of the land, irrespective of any particular circumstances that may have surrounded such acquisitions.

101 For the purpose of answering the questions submitted by the referring court, it must therefore solely be determined whether or not the legislation at issue in the main proceedings is capable of being justified by a desire to penalise infringements of the Hungarian legislation on exchange controls.

102 In that regard, it should be pointed out, first, that, in the light of the information in the case file before the Court, it is not apparent that the legislation relating to exchange controls actually resulted in acquisitions of a usufruct by non-residents being subject to grant of an exchange authorisation, failing which the acquisition would be invalid, or that adoption of the legislation at issue in the main proceedings was driven by the desire to penalise infringements of such legislation.

103 As regards the first of those aspects, it is apparent, furthermore, from the observations of the Hungarian Government that no authorisation of that type was ever sought for the purpose of acquiring a usufruct over productive land and that, notwithstanding that fact, a very large number of rights of usufruct acquired by non-residents, without such an authorisation, gave rise to entries in the property registers.

104 As regards the second aspect, it should be recalled that the legislation at issue in the main proceedings provides for the systematic extinguishment of rights of usufruct held over agricultural land by persons unable to demonstrate a close family tie with the owner of the land concerned. As the Advocate General has observed in point 94 of his Opinion, that family-tie criterion is unrelated to the legislation concerning exchange controls. Furthermore, by virtue of that criterion the cancellation of rights of usufruct is applicable in respect not only of non-residents but also of residents; indeed, the Hungarian Government itself stated in its pleadings that, of the 100 000 or so holders of rights of usufruct or rights of use affected by that measure providing for cancellation, roughly 95 000 are Hungarian nationals.

105 Second, even if adoption of the legislation at issue in the main proceedings was, even partly, driven by the desire to penalise infringements of the applicable exchange control rules, a matter which will, as the case may be, be for the referring court to establish, it would still remain necessary to check that the measure cancelling rights of usufruct which is laid down by that legislation is not disproportionate to that objective.

106 As the Advocate General has also observed in points 95 and 98 of his Opinion, it is clear that other measures with less far-reaching effects than the cancellation of the rights *in rem* concerned could have been adopted for the purpose of penalising from the outset any infringements of the applicable exchange control legislation, such as, for example, administrative fines (see, by analogy, judgment of 1 December 2005, *Burtscher*, C-213/04, EU:C:2005:731, paragraph 60).

107 In the light of all the foregoing, national legislation such as that at issue in the main proceedings, even if it is in fact driven by the desire to penalise or correct infringements of the legislation relating to exchange controls, does not appear capable of being regarded as a measure proportionate to that aim or, therefore, of being justified, on that basis, under Article 65(1)(b) TFEU.

– Existence of a justification founded on the prevention, on the ground of protection of public policy, of practices designed to circumvent national law

108 As has been recalled in paragraph 95 above, Article 65(1)(b) TFEU provides, inter alia, that the provisions of Article 63 TFEU are to be without prejudice to the right of Member States to take measures which are justified on grounds of public policy or public security.

109 First of all, it should be noted that, as has been stated in paragraphs 6 and 7 above and is apparent from the referring court's explanations relating to national law, after the legislative amendments made in 1991 and 1994 for the purpose of preventing natural persons not possessing Hungarian nationality

and legal persons from acquiring agricultural land, any person remained free, on the other hand, to acquire a right of usufruct over such land. According to those explanations, it was only from 1 January 2002 that the 1994 Law was amended so as also to preclude a right of usufruct over agricultural land from being created by contract in favour of those natural and legal persons.

110 Thus, as is indeed explicitly clear from the particulars supplied by the Hungarian Government that are set out in paragraphs 16 and 30 above, it is not in dispute that the usufructs at issue in the main proceedings were created before 1 January 2002, that is to say, at a time when the creation of such usufructs was not prohibited by the national legislation in force. Nor is it in dispute that those usufructs were entered in the property registers by the competent public authorities.

111 The Hungarian Government contends, however, that acquisitions such as those that related to the rights of usufruct at issue in the main proceedings were effected in fraudulent evasion of the law, to circumvent the statutory prohibition that prevented natural persons not possessing Hungarian nationality and legal persons from acquiring the ownership of agricultural land.

112 According to the Hungarian Government, the continuance of situations of that kind was contrary to public policy and it was therefore incumbent upon the State to remedy them. It states that the Hungarian legislature, instead of having recourse to the most classical approach, consisting in declaring, following a judicial examination on a case-by-case basis, that the contracts at issue were void, decided to remedy by force of law the deficiencies of the legal rule previously laid down or, indeed, the absence of any relevant rule of law. The Hungarian Government adds that that approach was favoured, in particular for budgetary reasons and reasons relating to the economising of judicial resources, in the light both of the large number of cases that potentially were to give rise to such an examination and of the need to amend the legislation relating to the acquisition of agricultural land before 1 May 2014, the date on which the transitional regime resulting from the 2003 Act of Accession was to expire.

113 However, in the light of the case-law recalled in paragraph 98 above and the considerations set out in paragraphs 99 and 100, it is not appropriate for the Court, with a view to answering the questions submitted by the referring court, to examine the particular circumstances that surrounded the acquisition of the rights of usufruct at issue in the main proceedings. To that end, it is incumbent upon the Court solely to determine whether or not the legislation at issue in the main proceedings is capable of being justified by a desire to combat practices which were allegedly designed to circumvent national law and, consequently, as the Hungarian Government contends, of being justified on grounds of public policy within the meaning of Article 65 TFEU.

114 As regards the prevention of practices intended to circumvent national law, the Court has already accepted that a measure restricting a fundamental freedom may in appropriate cases be justified where it is designed to combat wholly artificial arrangements, aimed at circumventing the national legislation concerned (judgment of 1 April 2014, *Felixstowe Dock and Railway Company and Others*, C-80/12, EU:C:2014:200, paragraph 31 and the case-law cited).

115 However, it is also settled case-law that such a justification is permissible only in so far as it specifically targets wholly artificial arrangements pursuing such an aim (see, to that effect, judgments of 12 September 2006, *Cadbury Schweppes and Cadbury Schweppes Overseas*, C-196/04, EU:C:2006:544, paragraphs 51 and 55 and the case-law cited, and of 13 March 2007, *Test Claimants in the Thin Cap Group Litigation*, C-524/04, EU:C:2007:161, paragraphs 72 and 74).

116 This rules out in particular any enactment of a general presumption of abusive practices that would be sufficient to justify a restriction on the free movement of capital (see, to that effect, judgment of 19 November 2009, *Commission* v *Italy*, C-540/07, EU:C:2009:717, paragraph 58 and the case-law cited).

117 In order to comply with the principle of proportionality, a measure pursuing such a specific objective of combating wholly artificial arrangements should, on the contrary, enable the national court to carry out a case-by-case examination, having regard to the particular features of each case and taking objective elements as a basis, in order to assess the abusive or fraudulent conduct of the persons concerned (see, to that effect, judgment of 17 September 2009, *Glaxo Wellcome*, C-182/08, EU:C:2009:559, paragraph 99).

118 It is apparent that legislation such as that at issue in the main proceedings does not satisfy any of the requirements noted in paragraphs 115 to 117 above.

119 First, whilst the extracts from judgment No 25 of 21 July 2015 delivered by the Alkotmánybíróság (Constitutional Court) which are set out in paragraph 25 above seem to show that the legislation at issue in the main proceedings had the aim, at least in part, of eliminating the legal effects of a practice for the acquisition of agricultural land by virtue of which the right of usufruct had been applied in a dysfunctional manner, those extracts also reveal that their elimination was above all considered necessary for the purpose of achieving fully the national strategic objective pursued by the new legal arrangement put in place, namely that productive land was to be owned solely by the natural persons who work it.

120 Accordingly, the view cannot be taken that such legislation pursues the specific aim of combating conduct that consisted in the creation of artificial arrangements aimed at circumventing national legislation relating to acquisition of agricultural land. It should, moreover, be noted that such legislation seeks, generally, to cancel by operation of law all rights of usufruct held by legal persons, or by natural persons in so far as they cannot demonstrate a close family tie with the owner of the agricultural land, without in any way linking those cancellations to the reasons which led the persons concerned to make such acquisitions (see, by analogy, judgment of 12 December 2002, *Lankhorst-Hohorst*, C-324/00, EU:C:2002:749, paragraph 37).

121 Second, assuming that the legislation at issue in the main proceedings can be regarded as having been adopted with such a specific aim of combating artificial arrangements, it cannot reasonably be inferred from the mere fact that the holder of a right of usufruct over a parcel of agricultural land is a legal person or a natural person who does not have the status of close relation of the owner of that land that the conduct of such a person when acquiring such a right of usufruct constituted an abuse. As has been pointed out in paragraph 116 above, the enactment of a general presumption of abusive practices cannot be allowed.

122 Thus, other measures less restrictive of the free movement of capital such as penalties or specific actions for a declaration of invalidity before the national courts in order to combat any circumventions of the applicable national legislation that are established could, provided that they comply with the other requirements arising from EU law, be prescribed for the purpose of combating those abusive practices.

123 In this connection, the Hungarian Government's line of argument that is based on budgetary considerations and considerations relating to the economising of judicial resources cannot be accepted. It is settled case-law that grounds of a purely economic nature cannot constitute overriding reasons in the public interest justifying a restriction of a fundamental freedom guaranteed by the Treaty (judgment of 17 March 2005, *Kranemann*, C-109/04, EU:C:2005:187, paragraph 34 and the case-law cited). The same is true of considerations of a purely administrative nature (see, to that effect, judgment of 23 November 1999, *Arblade and Others*, C-369/96 and C-376/96, EU:C:1999:575, paragraph 37 and the case-law cited).

124 The foregoing considerations are sufficient to preclude the restriction on the free movement of capital that is brought about by legislation such as that at issue in the main proceedings from being capable of being justified by the desire to combat purely artificial arrangements aimed at circumventing the applicable national legislation concerning the acquisition of agricultural property.

125 Finally, as regards Article 65 TFEU, it is sufficient to state that, even if the need for a Member State to combat artificial arrangements designed to circumvent a prohibition on the acquisition of ownership of agricultural land may also be covered by the concept of grounds of public policy within the meaning of that article, it is clear, in any event, from paragraphs 115 to 124 above that, because, in particular, it does not fulfil the requirements arising from the principle of proportionality, the legislation at issue in the main proceedings cannot be justified under that article either.

126 In the light of the foregoing considerations, even if legislation such as that at issue in the main proceedings is actually driven by a desire to combat abusive practices that were designed to circumvent the applicable national legislation concerning the acquisition of agricultural property, it cannot be regarded as being a measure proportionate to that aim.

– Articles 17 and 47 of the Charter

127 As is apparent from the reasoning set out in paragraphs 81 to 126 above, legislation such as that at issue in the main proceedings which restricts the free movement of capital cannot be justified, in accordance with the principle of proportionality, either by overriding reasons in the public interest that are recognised by the case-law or on the basis of Article 65 TFEU, so that it infringes Article 63 TFEU.

128 Accordingly, it is not necessary to examine the aforesaid national legislation in the light of Articles 17 and 47 of the Charter in order to resolve the disputes in the main proceedings.

129 In the light of all the foregoing considerations, the answer to the questions referred is that Article 63 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

Costs

130 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 63 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, under which rights of usufruct which have previously been created over agricultural land and the holders of which do not have the status of close relation of the owner of that land are extinguished by operation of law and are, consequently, deleted from the property registers.

[Signatures]