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Evaluation of Member State Provisions Addressing Land Policy and Restitution by the European Commission

- **ABSTRACT:** *The scope of action of EU Member States' land policies lies at the intersection of positive and negative integration. Therefore, if a Member State restricts the ownership and use of agricultural land, it implies both the legitimate restriction of fundamental freedoms and that it achieves the targets listed under the Common Agricultural Policy (CAP) on improving the quality of living for farmers in keeping with the case law of the Court of Justice of the European Union (CJEU). Despite this, it is worrisome that the EU's control over negative integration does not allow Member States to create sustainable regulations. In contrast, the EU law leaves it entirely to the Member States to introduce restitution measures vis-à-vis the properties that were confiscated before their accession. The EU's control prohibits direct discrimination against the citizens of other Member States. Under certain circumstances, according to the European Commission, the general principles of EU law and the provisions of the Charter can help individuals enforce restitution provisions. Bearing this in mind, we analysed the practice of the European Commission, its statements, and procedures against Member States, given that these are based on professional and/or political considerations. We examine the practice of the Commission and the CJEU vis-à-vis a Hungarian legislation on the so-called 'zsebszerződések'. We also propose recommendations.*
- **KEYWORDS:** range of the Member States in the field on land policy, restitution of property and the EU Law, analysis of the European Commission's practice.

1. Introduction

We examine the evaluation and practice of the European Commission with respect to two different provisions covering the free movement of capital by analysing an infringement proceeding in a third area, the agricultural agreements which are intended to

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sidestep regulations related to the acquisition of property. In the first part of this paper, we examine² the Commission's statements on the land policies of Member States that acceded in 2004. Following this, we study the judgement of the Court of Justice of the European Union (CJEU) on the so-called 'zsebszerződések'³ in Hungary and the Commission's infringement proceeding against Hungary, while striving to understand whether the judgement covers land policies. In the third part, we examine specific EU requirements concerning the restitution process and the relevant measures of the European Commission and its statements.

The range of the Member States is not similar in these areas; They each show different characteristics. Although both areas cover the free movement of capital, the scope of the land policy of a Member State is defined by the intersection of positive and negative integration. Therefore, the Common Agricultural Policy (CAP) aims to improve the farmers' quality of living, which as a general rule, can be in line with the restrictions imposed by the Member States on the use of the agricultural land. However, as we show in this paper, most Member States pursue negative integration policies.

In contrast, the CAP's goals do not affect the Member State's margin of appreciation on the restitution, and it is 'unrestricted' on imposing restitution measures concerning the properties confiscated before the accession.. In other words, the EU law does not require Member States to return properties that were confiscated before accession. At the same time, in case the *rationae temporis* is applicability of the EU rules, the criteria for the free movement of capital can be applied in such a way that only discrimination based on nationality is prohibited while defining the personal terms for the restitution measures. Control over negative integration cannot be applied to regulate the Member States' discretion around imposing restitution measures. With certain limitations, in the case of restitution, Article 17 of the Charter of Fundamental Rights vis-à-vis the right to property can be applied, just like the general principles of EU law, namely the principles of legitimate expectation and legal certainty and *lex derogat legi generali*,⁴ as well as provisions that restrict the Member States' procedural autonomy such as effectiveness and the principle of equal treatment.

How significant is the examination of the European Commission's statements in this field? It is well-known that the CJEU's interpretation defines the scope of action

2 I rely on a paper I co-authored with Réka Bokor, which was published in a volume in honour of Pál Bobvos. I compared the European Commission's practice vis-à-vis new Member States and the restitution cases with the EU's action against the Hungarian rule on the so-called 'zsebszerződések'.

3 The Hungarian word 'zsebszerződések' is not a legal term. It refers to contracts or acts that affect agricultural lands that violate legal provisions or that are not in conformity with relevant norms.

4 In Question No. E-004016/202, the Commission admitted that Member States should consider the general principles of EU law while imposing restitution measures.

for the Member States,⁵ that the written answers of the European Commission are non-binding, and that in both areas, the preliminary ruling procedures following individual cases dominate in the land policy, and launching these procedures is more likely.⁶ In this paper, we evidence the fact that the European Commission can be significantly important to both areas: in the field of the land policy and in the area of the restitution. We examine whether the Member States can give effect to the CAP's goals sustainably, so that they can regulate land policies appropriately.⁷ We also examine whether EU law can help those concerned return the properties that were confiscated after World War II.⁸ It may be interesting to examine the different practices of the European Commission that are relied on while addressing both land policy and the restitution of property, and to investigate whether the Commission's measures are compatible with the professional criteria relied on by the Commission or whether political decisions are considered more important.

While exercising its political margin of discretion, the European Commission aims to prove that the decisions on launching possible processes and reviews are not only based on political reasons, but also on professional considerations and the principle of equal treatment of Member States, just like individual entitlements derived from EU law, for instance, by considering individual complaints and the implementation of the CAP's goals as well as the compatibility with the requirements of the internal market.

We examine the infringement proceedings instituted against Hungary with respect to the so-called 'zsebszerzések', which can provide valuable inputs to both fields even though it did not cover both areas completely, in particular, that the Commission considered it was important to continue the proceedings related to the same rule, even after the individual case.

We analyse and evaluate the practice of the European Commission, and consider the judgements of the CJEU, the procedures launched by the Commission, and the Commission's answers to written questions. The similarities and differences between both areas offer a great opportunity to compare the practice of the Commission. Our recommendations are based on the relevant legal literature, especially on the land policy measures of the Commission concerning new Member States.⁹

5 The CJEU's case law is not as determinative in other fields of EU law. The European legislature has enjoyed wide amplitude in applying the CAP, especially in the case of medium- and long-term measures. In contrast, in the field of EU competition law, the European Commission's authority is significant.

6 The European Commission does not intend to start an infringement proceeding even if the situation is reasonable in light of substantive law and the enforcement of individual rights. We examine this in detail.

7 A lot of papers have examined the land policy, see: Szilágyi, 2017; Szilágyi, 2018; Szilágyi, Raisz, and Kocsis, 2017; Kurucz, 2015; Kurucz, 2001; Kurucz, 2003.

8 EU law does not mandate the return of properties that were confiscated within the concerned period. However, in several cases, it can help the individuals concerned.

9 This paper does not cover all aspects of the Member States land policies and restitution in detail. Several papers have considered these aspects. For more details on the Slovak restitution, see: Horváth and Korom, 2014.

2. The European Commission's investigations of Member States that acceded in 2004

The derogation period set by the Act of Accession allowed Member States to prolong existing rules concerning the ownership of agricultural lands that had already expired for Member States¹⁰ that acceded after 2004. After the end of the derogation period, the European Commission began comprehensive reviews and procedures against most of these Member States.¹¹ This paper studies the Commission's practice concerning the Member States that acceded in 2004. However, it is necessary to examine the scope of their land policies and the specific situations that prevailed in the new Member States.

The CJEU has acknowledged¹² through its case law¹³ that restrictions on fundamental freedoms in a land policy can be based on the CAP's goal of improving the quality of life for farmers, and on Member States' public interest, which is legitimate according to EU law. This has manifested at the Member State level as restrictions in order to prevent speculation, the maintenance of rural communities, and the facilitation of the equal distribution of agricultural lands.

In the phase of EU law development at the time of writing, because of Article 345 of the TFEU, which excludes the EU's intervention into property issues,¹⁴ the EU has no authority to determine the goals of a land policy. These provisions can be imposed by Member States alone.

The EU's control over fundamental freedoms, also called the 'European Economic Constitution',¹⁵ necessarily narrows down and makes the Member State's

10 Except Cyprus and Malta.

11 János Ede Szilágyi focused on significant developments pertaining to the free trade agreement between the EU and Canada (CETA). However, this falls beyond the scope of this paper, although closely related to the topic. Several aspects can cover agricultural land relations: *'It is a question, how the CETA's dispute settlement mechanism evaluate in the future the CETA's provision on the investments relationship with the regulations on the agricultural land in the states affected by the CETA. There is a danger that if do not clarify the Hungarian reservation extending to the agricultural lands, then in the light of the CETA's provision on the investor protection, Canadian citizens, Canadian companies, and legal persons, and with indirect land purchase, no one knows who could ask for the acquisition of the Hungarian land's ownership referring to the principle of national treatment'*. Szilágyi, 2017.

12 Court of Justice of the European Union: C-452/01, C-370/05.

13 János Ede Szilágyi pointed out that the CJEU's case-law is similar to the US Supreme Court case law on land relations in the US: *'Beyond the discrimination, related to the non-operational commercial clause, the federal state's regulation shall meet the requirements of a test which is familiar to the Court of Justice of the European Union's (CJEU) test in similar cases; namely, the regulation shall serve a public purpose and be appropriate (so it is an important requirement that the federal state's regulation should not be replaced with a provision which is less restrictive to the commercial.)'* Szilágyi, 2017.

14 Az EUMSZ 345. cikk azonban a gazdasági alapszabadságokkal szemben nem hozható fel.

15 Simon, 2013. The European Economic Constitution is one of the central areas of focus in the monograph. It builds on EU law's most important provisions, which are central to this area.

legislation uncertain.¹⁶ There are very few CJEU judgements in the area of land policy. This makes it difficult to determine the exact scope of the Member States' land policies. It is necessary to focus on the EU's control with respect to negative integration while analysing the scope of Member States' land policies in light of EU law and while proposing solutions, because without this, integration based on the internal market cannot take place.¹⁷

Valérie Michel stated¹⁸ that the Member States keep finding newer and more sophisticated ways to introduce protectionist measures, which mostly follow legitimate targets. The CJEU classifies these measures incompatible with EU law if they are indirectly discriminatory and protectionist. It is enough if it considers these measures barriers to the internal market. According to Valérie Michel, Member States' measures that are compatible with negative integration, should be used to address non-economic issues. The Member State's margin of appreciation on the land policy should be improved towards positive integration form, ensuring that the Member States' land policy measures should not be impossible because of the negative integration form. Following Valérie Michel's ideas, an attempt can be made to strengthen the point that the CJEU should not consider Member States' measures incompatible with the EU law – because of the positive integration form and the specific features of the agriculture sector – on the ground that these measures are barriers to the internal market or protectionists. This should be based only on direct or indirect discrimination.

The scope of Member States' land policy that lies at the intersection of positive and negative integration is skewed towards the latter.¹⁹ According to CJEU case law, if Member States' measures are incompatible with the criteria of national treatment or proportionality, conformity, and substitutability, the provisions cannot be applied. This ensures that, among other things, the aims of the land policy are legitimate in light of EU law. If a new Member State's land policy does not meet these requirements, which happened in two cases, then the Member State can be obliged to pay compensation²⁰ under EU law.

New Member States²¹ have a stronger need to regulate land issues that can only be done through a long-lasting regulation. The European Commission admitted, in its

16 Csilla Csák, Bianka Enikő Kocsis, and Anikó Raisz share a similar opinion. Csák, Kocsis, and Raisz, 2015, pp. 50–52. János Ede Szilágyi proposes—an EU level – solution to the uncertainty around land policy, which should be considered, and can impose a modification of primary EU legislation. See Szilágyi, 2015, pp. 99-101.

17 In light of the objectives of positive integration, the limited intensity of this mechanism can manifest in land policy, but without a modification of the founding Treaties, the reduction of EU control, which maintains negative integration is unimaginable. See Dubout and Maitrot de la Motte, 2013.

18 Michel, 2014, p. 66.

19 Mihály Kurucz also acknowledged the uncertainty in land policy.

20 See Lentner, 2013, pp. 39–54; Lentner, 2000, pp. 11–21; Lentner, 2004, pp. 74–90.

21 For more on the new Hungarian land purchase regulation and its background, see Bobvos and Hegyes, 2014, pp. 1–173; Bobvos et al., 2016, pp. 31-40; Csák and Nagy, 2011, pp. 541–549; Csák and Szilágyi, 2013, pp. 215–233; Hornyák, 2015, pp. 88–97; Hornyák, 2014, pp. 70–76; Kurucz, 2015, pp. 120–173; Szilágyi, 2015, pp. 44–50; Olajos, 2015, pp. 17–32; Olajos, 2014, pp. 53–55; Raisz, 2010, pp. 241–253; Téglási, 2015, pp. 148–157.

answer to a letter from the Hungarian National Assembly's Committee on Agriculture, that Member States have a right to an EU legal environment that enables the long-term existence of their land policies.

De jure, Member States that acceded after 2004 are treated equally. De facto, their situation is far worse when compared to that of older Member States. In the case of the new Member States – and this is related to the differences in the levels of economic development – more individual cases can be expected, because, among other things, the price of the agricultural lands has not yet reached the thresholds of the older Member States. Thus, a larger number of potential investors will be against the regulation of new Member States. The European Commission should be far more understanding of the situation challenging new Member States, or at least extend comprehensive reviews and procedures to the older Member States, too, to guarantee equal treatment.

The European Commission's practice should be more flexible with new Member States in this sensitive area. We examine the Commission's answers to particular questions, highlighting cases in which the answers are incoherent based on our assessment, and in which we believe that the Commission refrained from giving a proper answer.

3. Investigating all Member States equally

The European Commission exercises its discretion in determining the States against which a comprehensive review or infringement proceeding should be initiated. The Commission stated in its answer to Question No. P-00558/2015 that it continuously checks the application of EU law in every Member State and takes necessary steps in response to complaints against the Member State's laws and measures. This answer is not in line with the remark of the Commission given to the same question. According to the Commission, it is carrying a comprehensive review against the new Member States, and it traces back this discriminative treatment against the new Member States to the expiration of the derogation period.. The Commission also noted that after the expiry of the derogation period, most new Member States introduced rules and procedures based on the new system.

Member States that acceded in or after 2004 introduced new rules and procedures. This may have caused, in principle, the intense reviews with respect to compatibility with EU law. Nevertheless, Member States that acceded before 2004 often change their land policies. However, this did not lead to the comprehensive review of the Commission. If the Commission has no *locus standi* in this issue, the question arises as to whether the Commission acted in light of the CJEU's case law in every Member State's case or whether it treated this as a subject of informal or singular political agreement in its relationship with the Member State in question

4. Reviews launched as a result of complaints

The European Commission has repeatedly emphasised in its answers to questions on the equal treatment of Member States that comprehensive reviews are launched in response to individual complaints. It is difficult to imagine that the European Commission received complaints against all Member States that acceded in or after 2004, following the expiry of the derogation period. The Commission denied, in its answer to Question No. P-00558/2015 that it launched reviews in response to complaints, citing the expiry of the transitional exemption provided by the Acts of Accession as the reason. Even if we assume that the complaints pertaining to the land policies of all new Member States arrived after the derogation period expired, and that the answer of the Commission to Question No. P-00558/2015 bears no relevance, the fact that several cases against individual people²² were filed before the CJEU for a preliminary ruling against the land policy of the Republic of Austria makes it quite unlikely that no applicant turned to the European Commission with a complaint following a long legal dispute. It follows from the above that the derogation from the principle of equal treatment of the Member States cannot be justified by claiming that the comprehensive reviews and processes of the European Commission were initiated by individual complaints.²³

These arguments are strengthened by the Commission's answer to Question Nos. E-002940/16 and E-008719/2016 with respect to the land policy of the Republic of Austria and its answers related to the register of complaints and the inconsistency between them. When asked through Question No. E-002940/16 to indicate the number of complaints received against the Member States that acceded in or after 2004 and against the land policy of the Republic of Austria, the Commission answered saying that the complaints were recorded in a register created for this purpose from 2009 onward. The Commission emphasised in the answer to Question No. E-008719/2016 that as the complaints were registered before the register was set up in 2009, no discrimination could have occurred. This inconsistency shows that even if the Commission registered the complaints properly, it did not provide an adequate answer to Question No. E-002940/2016. Thus, it did not comply with the obligation of giving information.

It can be concluded from the answer to Question No. E-002940/2016 that the Commission received 35 complaints since 2004 against the Member States that acceded before 2004, with respect to the regulation of property, of which 8 were against the Republic of Austria. The relatively high volume of complaints shows that a practice that violates the equal treatment of Member States cannot be justified by claiming that comprehensive reviews against Member States that acceded after 2004 were initiated

22 CJEU, C-302/97.

23 In the following sections, we note that the Commission did not initiate an infringement proceeding where over 1000 persons' rights were violated, and where all these individuals turned to the Commission with individual complaints because of direct discrimination based on nationality.

by individual complaints because the 35 complaints against the Member States that acceded before 2004 could have led to comprehensive review.²⁴

5. Legal effect of the temporary exemption provided in the Acts of Accession

The Commission's Answer No. E-013450/2015 replied to the following two questions. The first question raised whether the derogation period provided by the Acts of Accession can be interpreted as an obligation to the Commission conducting comprehensive reviews. In case of a positive answer to this first question, the second question asked the Commission why are no comprehensive reviews against the 'old' Member States related to the expiration of the temporary exemption of the new Member States' workers. The Commission explained that EU law is fully applicable on the workers of the 'new' Member States after the expiration of the derogation period.. The Commission did not mention that any legal obligation, any kind of authorisation, or practice concerning all Member States exist with the intent to process comprehensive reviews after the expiry of the derogation period.

According to the Commission, if it conducts, in the narrow sense, comprehensive reviews against Member States that acceded after 2004 and against those that acceded before 2004 with respect to the derogation period concerning the property's purchase, then it should have conducted comprehensive reviews against the Republic of Austria, whose Act of Accession set a 5-year temporary exemption vis-à-vis secondary properties, shortly after the expiry of the derogation period. The fact that there are several preliminary rulings²⁵ by the CJEU in this field confirms that when the European Commission did not start a comprehensive review against the Republic of Austria – just like it processed against Member States that acceded in 2004 – the principle of equal treatment was not applied.

6. Transparency vis-à-vis the scope of the land policy of Member States

In Question No. E-013451/15, a Member of the European Parliament suggested the Commission carry out a consultation with the Members of the European Parliament and the relevant professional organisation related to the most significant issues of the Member States' land policy, not only discussing the issue case-by-case with the concerned Member States. This can allow these organisations to propose relevant recommendations pertaining to the Member States' regulations. Fabienne Peraldi Leneuf stated that

24 Answer of the Commission to question No. E-002940/2016. https://www.europarl.europa.eu/doceo/document/E-8-2016-002940-ASW_EN.html

25 CJEU, C-515/99, C-519/99, C-524/99, C-540/99.

the Commission discusses EU policies with civil society organisations, for example in the energy sector, and in the environmental protection and social policy contexts.²⁶

Despite the differences between the above-mentioned two areas, the discussion of individual policies can inform the approach in discussions on land policies, too: the intersection of negative and positive integration can be considered a form of negative legislation. The extension of the scope of Member States' land policies is directly related to aspects of positive integration, which is contrary to negative integration. Thus, even though it is highly likely that Article 345 of the TFEU may exclude European regulations in this area, a proposal in which, among others, the scope of the land policy of Member States can be extended by the participation of the European Parliament can be considered negative integration.

The Commission admitted in its answer to Question No. E-013451/15 that it is obliged to answer the MEP's questions under Article 230 of the TFEU, and that it aims to provide a proper answer to professional organisations.²⁷ However, the Commission emphasised that it is difficult to reply to the MEP's question as the state's circumstances should be considered, among others, if the fundamental freedoms are restricted. According to CJEU case law, if the Member States' land policy measures and its compatibility with EU law are examined, the Member State's regulation should be examined overall. This does not mean, theoretically, that there is no possibility to assess²⁸ the extent of the restriction on the fundamental freedom in the context of land policy, in advance. This can influence the scope of the Member States' land policy.

In Question No. P-001509/16 the European Commission was asked to provide an exact answer to Question No. E-013451/2015, especially to the question on how the fundamental freedoms concerned by the question, generally, before the examination of certain Member States' different contexts and regulations, can be applied to land policy, and to explain the relationship between the fundamental freedoms and the CAP's provisions. The MEP aimed to get information from the Commission that it shares the professional standing point that the CJEU examines the relevant EU provisions' applicability first – during deciding the national regulations compatibility with the EU law – and after this, it analyses the Member State's rule considering the certain circumstances of the case? The MEP asked the Commission, bearing in mind these considerations, to provide an exact reply to Question No. P-005526/2015. In

²⁶ Peraldi Leneuf-de la Rosa, 2013, pp. 190–194.

²⁷ Professional organisations in this context mean NGOs, civil organisations, which are affected by the Member State's regulation on land policy, or organisations that found it important to discuss the issue – e.g. environmental, rural development – with the EU institutions.

²⁸ Evaluating the scope of the Member State is relevant only for the Commission, as the CJEU has a monopoly over the authentic interpretation of EU law in this field. Despite this, assessing how 'old and new' Member States can regulate Member States' land policies according to the CAP's objectives can have a significant effect. On the one hand, it can affect the Commission's practice. On the other hand, a scientific proposal that fits into EU law through the Advocate General's opinion, can affect the CJEU's case law too, if the Advocate General would consider a proposal to this effect in a case before the CJEU.

Answer No. P-001509/2016, the Commission emphasised the evaluation of the national provisions and repeated the legitimate reasons behind the restrictions on agricultural lands. It explained that a national provision can restrict one or more fundamental freedoms and that ‘when they are deciding on the national measures, its conformity and proportionality should be considered in light of relevant EU principles’. We found that the Commission missed out on explaining whether it agrees with the professional argument, that the CJEU first examines the relevant EU law, when it evaluates the compatibility of a national provision with EU law, especially the CAP’s targets in relation to fundamental freedoms, and the examination of the concerned national provisions, which comes after this. However, the Commission has left it to Member States to evaluate the provisions introduced in light of EU law. By doing so, the Commission put them in an uncertain situation, in which their rules can be challenged by individuals before the CJEU, thus undermining the implementation of the CAP’s goals.

7. The Commission’s reaction to the Slovakian and Romanian restitutions

In evaluating Slovakia’s case, we examine Act No. 503/2003 on the Restitution of Agricultural Property, in which the provisions discriminate among individuals based on nationality and residence. We also evaluate whether the Act on Restitution is relevant to the Beneš Decrees. In Romania’s case, improper administrative practice produced negative consequences.

In Slovakia’s case, the European Commission refused to admit the violation with respect to the confiscation of properties in the communist era and to the ex officio appeal after complaints were filed. Fearing potential political resistance from the European Commission, the first question²⁹ was raised by a Dutch Member of the European Parliament. There was no reference made to any Member State or other criteria. In its answer, the Commission explained that EU law does not oblige Member States to return properties that were confiscated before their accession, but if a Member State decides to introduce such measures, in the case of *ratione temporis*³⁰ measures, the condition of the free movement of capital should be respected, especially the prohibition on discrimination based on nationality. When the Commission was asked about the Slovak Act on Restitution’s discriminative provision based on nationality and residence, which were applied for eight months after the accession, it should have answered the question within six weeks – according to the relevant rules – but it answered after over two and

29 This strategy and the questions were mostly developed by the Budapest-based NGO, the Institute for the Protection of Minority Rights (IPMR).

30 About the temporal scope, a special conference issue is under publishing within the Vojvodina Scientific Days, which points out that the CJEU interprets the temporal scope extensively, especially in those situations, where the procedural steps start before the accession of a Member State and finish after this.

a half years. This highlights the Commission's political resistance.³¹ In its answer,³² the Commission acknowledged the violation and stated that it was unjustifiable, with vague references to Article 345 of the TFEU, indicating that the violation concerned few people. It refused to initiate an infringement proceeding. Following this, over a hundred people voiced their concerns before the Commission and asked it to help them exercise their rights under EU law.

The European Commission stated in the spring of 2018, that concerned individuals could enforce their EU rights individually before the Slovakian courts and reasoned the refusal of the infringement proceeding by geopolitical reasons, and the violation's slight effect on the internal market. After this, the injured parties turned to the European Ombudsman, who had developed a practice that requires the Commission to act upon the receipt of legally relevant complaints and that does not allow the Commission to refuse to help European citizens on political grounds. The European Ombudsman can provide aid if there are meaningful comments by the Commission in response to the complainants' remarks.

However, the European Commission missed out on providing a proper answer to the complainants' comments and consistently breached deadlines, despite the European Ombudsman's referral. In the legal literature,³³ the weakness is of the European Ombudsman's decision is often concluded, in the light of the enforcement. In this case, the Ombudsman did not offset the Commission's discretion to launch infringement proceedings which shows political characteristics. One of the weakest parts of the procedure is that the European Commission can refuse to initiate infringement proceedings on political grounds.³⁴ The Commission was more willing to give answers which can facilitate the remedy before the Slovakian courts.³⁵ However, in the case of the Romanian violations, the Commission's answers were more supportive.³⁶

We find Mairead McGuinness' Answer No. E-000916/2021 on behalf of the Commission relatively not too professionally based,³⁷ but it can be considered as progress: according to the Commission, the Benes Decrees are historical documents, which

31 You can read more about the temporal scope and the regulation on agricultural property in the Segro case. Joined Cases C-52/16 and C-113/16.

32 The European Commission sent its answer through a letter in September 2016, instead of using the platform for the questions for written answers. The letter can be found in the archives of the IPMR.

33 Karagiannis and Petit, 2007, pp. 28–29.

34 Poirmeur, 2019, p. 65.

35 At first sight, it may seem hopeless to enforce EU law after over one and a half decades. However, it is not impossible. On the one hand, there is a Slovakian procedural rule, according to which final judgments can be opened again without a time limit. EU law can override, in certain circumstances, the limitation periods and periods for appeal if the Member State's courts developed a practice that goes against EU law and makes the enforcement of an individual's rights impossible.

36 Supportive means in this context that the answers help – as we will experience in the following – to prove remedy of a violation against EU law.

37 We do not go into this in detail in this paper.

should not be against the EU law. The latter answers³⁸ of the Commission stated that the scope of the Act on Restitution does not extend to the Decrees. The Commission refused to provide a clear answer to Question No. E-000916/2012, and instead, stated that the issue fell within the competence of the Member State's courts.

8. Answer to a Question on the Romanian restitution procedure

The Romanian laws on restitution are mostly compatible with EU law, whereas individual decisions and administrative practice are more likely to cause violations and other issues.³⁹ This is analysed in this paper. The Commission has provided greater or lesser help in its other answers related to this issue.

The answer to Question No. E-001140/2012 determined how a right, which was already confirmed in an earlier answer, can be enforced under a national legal order. In the previous answer, the Commission admitted that good administrative behaviour requires a review of the restitution of citizens of another Member State within a reasonable time.

There is a procedural rule⁴⁰ in Romanian law that can oblige competent bodies to give an answer or decide a case. The question emphasised on the principle of conforming interpretation, which requires a national court to interpret a Member State's procedural rule to allow, in keeping with good administrative practice, a decision on the application within a reasonable time. Didier Reynders explained⁴¹ that a Member States' autonomy over property regulated under Article 345 of the TFEU is not absolute while defining the criteria for the restoration of the previous owners' right to ownership; relevant treaties and secondary law⁴² should be considered, especially with respect to the free movement of capital.⁴³ Following this, the Commission adopted its opinion in two significant questions: it declared that the general principles should be considered, including good administrative behaviour, which requires a review within a reasonable time and emphasised that according to the principle of conforming interpretation,⁴⁴ in all ongoing procedures, competent courts should interpret EU law in a manner that contributes towards the enforcement of individual rights that originated from EU law.

38 For instance, answer given by Commissioner McGuinness on behalf of the European Commission Question reference: E-000916/2021.21 May 2021.

39 Korom, 2018

40 Government Regulation No. 890/2005. Article 5.

41 Written answer: E-001140/2021.

42 In the case of secondary EU law, the directive can be referred.

43 In Answer No. E-001140/2021, the Commission found EU law applicable under the condition that it covered the temporal scope. In line with the CJEU's extensive interpretation in the application of *ratione temporis*, the application of EU law cannot be excluded in cases that began before the Member State's accession and these restitution procedures did not end after the Member State's accession. .

44 Principle of conforming interpretation.

The Commission admitted the applicability of the general principles in restitution procedures,⁴⁵ especially good administrative behaviour, which is typically relevant to the CJEU's case law.⁴⁶ It is much more important than clarifying the general principles that the European Commission defined the standards of the EU law and gave help to the competent national court to enforce the EU law in the national legal system. If strictly professional and scientific standards are considered, the European Commission's answer has no value for the Members of the European Parliament. These answers are non-binding, except if the Commission initiates an infringement proceeding. Practice shows that the Commission was constrained to initiate a proceeding in the case of indigenous Hungarian minorities living in the Carpathian Basin.

The answer promotes legal enforcement before national courts. Member States shall enforce EU law in their national legal system following the interpretation of the CJEU. This is not like a textbook case, in reality. The literature mentions several cases in which national courts, including courts of the last instance, have either not applied EU law properly, or have not applied it at all.⁴⁷ The absence of a relevant CJEU case law on restitution is a barrier to legal enforcement. Moreover, we did not mention the possible political difficulties. Thus, a Member State can easily refuse to apply the requirements determined by EU law, the free movement of capital, and the general principles. If there is a written answer with an identification number by the Commission, the national courts cannot dismiss the arguments based on the EU law. The Commission's answers with identification numbers can be especially helpful for the courts of the last instance which can decide whether they are obliged to initiate a preliminary ruling according to the CJEU's case law, in the light of the Clifit formula or they can refuse to apply the EU law on the basis that its inapplicability is unambiguous at all.⁴⁸ The case⁴⁹ of Attila Dabis, who was prohibited from entering Romania, serves as a good example. By applying this guidance of the Commission by its answers with an identification number, the Romanian Court was able to make a judgement that meets the requirements of EU law.

The European Commission's written answers can facilitate restitution cases before the CJEU. Antione Vauchez demonstrated that advocates and judges are not experts in EU law. Thus, they may not want their case to be brought before the CJEU. In most cases, big corporations and legal entities' cases are brought before the CJEU.⁵⁰ A supportive answer from the Commission can be of great assistance to competent judges and advocates.

45 The case law and the legal literature are not unequivocal about whether the Member States apply EU law in the restitution procedure. . See Gyeney and Korom, 2020.

46 Coutron, 2014, p.p. 17-19.

47 L'obligation de renvoi préjudiciel á la Cour de justice: une obligation sanctionnée?.

48 Court of the European Union, 283/81.

49 Question No. P-004086/2020. According to this answer, the Romanian Supreme Court changed the judgement of the court of the second instance, which ruled that the case did not cover the scope of EU law. The answer of the Commission had a great influence on the enforcement of minority rights and thus on the dispute's advantageous outcome.

50 Vauchez, 2019, pp. 52–53.

9. Judgement in the Segro case⁵¹

The case concerned⁵² a Hungarian-based company whose members lived in Germany⁵³ and were citizens of other .⁵⁴ The company became a rightsholder of usufruct before Hungary accessed the EU and was registered to the land register. The competent authority removed the usufruct rights by applying the Hungarian Act on Transitional Rules. Hungarian courts⁵⁵ mostly turn to the CJEU to clarify whether particular Hungarian legal provisions are compatible with the fundamental freedoms and with Articles 17 and 47 of the Charter. Furthermore, the Hungarian courts asked the CJEU that these provisions eliminate by law – without further considerations – the right of use and the usufruct right of the persons who are not close relatives of the property’s owner. The literature and case law under Article 345 of the TFEU are consistent on the point that⁵⁶ the autonomy of the ownership is governed by private law in practice, and that Article 345 of the TFEU cannot justify the restriction of fundamental freedoms.⁵⁷

Finally, the CJEU examined the national rule in light of the free movement of capital. According to relevant case law, the CJEU first examined whether the concerned national rule restricted fundamental freedoms. All national measures that can serve as barriers to fundamental freedoms are restrictions and are only compatible with EU law if they can be justified according to it. The Court strengthened its stand when it decided that⁵⁸ the Hungarian rule was a barrier to the free movement of capital. This raises an interesting question of whether Hungarian rule is indirectly discriminative⁵⁹ to other Member States’ citizens. The Court admitted that the family-tie requirements less likely in the case of other Member States’ citizens, , particularly considering the fact that the Act of Accession authorised Hungary to restrict the ownership rights of foreigners.⁶⁰ The CJEU added that the rule prohibiting⁶¹ other Member States’ citizens from acquiring property till the expiry of the derogation period resulted in the growth of the usufruct rights of the citizens of other Member States. The Hungarian government pointed out during the negotiations that approximately 5% of the people concerned

51 Court of the European Union, C-52/16.

52 We did not examine the Horváth case as we did not find the explanation relevant.

53 The transboundary aspect is provided by this. The absence of this aspect results in difficulties in enforcing claims under EU law. However, case law may make an exception to the transboundary requirement.

54 Guiot and Mazille, 2018, p. 179. They explained that the literature is not unanimous on whether the transboundary aspect is necessary to exercise fundamental freedoms. Clément and Wiltz (eds.), 2018, 179.p.

55 Several cases were joined together before the CJEU.

56 Contrary to the arguments that were brought up in the case.

57 Court of Justice of the European Union, C-452/01, C-370/05.

58 Court of Justice of the European Union, C-52/16, paras. 61-66.

59 In light of the judgment, it can be concluded that the rule is not directly discriminatory based on nationality.

60 Court of Justice of the European Union, C-52/16, paras. 68-69.

61 Ibid. para. 70.

by the rule were citizens of another Member State or a third country. According to the Court, this did not disprove the fact that the rule resulted in greater disadvantage to the citizens of other States because in light of relevant case law,⁶² it is important to see how the citizens of Hungary and other States were concerned by the elimination of usufruct rights in situations like this.⁶³ The Court made it likely for other Member States' citizens to be more concerned by the rule,⁶⁴ as such citizens can acquire only usufruct rights.

This interpretation results in disadvantages to Member States whose Acts of Accession contain provisions for a derogation period vis-à-vis fundamental freedoms. After expiry, if a Member State decides to regulate the concerned area according to EU law, then, in light of this interpretation, the regulation is indirectly discriminatory. Member States that are not part of the derogation period do not face challenges like this. According to para 72 of the judgement, it should be decided by competent national courts that in line with the criteria set by CJEU, the termination of these rights is concerning their own citizens more or the citizens of other Member States. Despite this, the CJEU makes it likely for other Member States' citizens to be affected more in light of the derogation period.

Maria Fartunova explained⁶⁵ that the principle of *actori incumbit probatio* is a determining factor in the infringement proceeding as well, which means that the Member State's infringement cannot be based on presumptions, but should be evidenced by fact. EU law overwrites this principle before national courts only if it makes the enforcement of EU rights impossible; thus, it would be contrary to the principle of effectiveness, which narrows down the Member States' procedural autonomy.⁶⁶ We did not find any reasonable explanations for the CJEU's reference to the fact that after the expiry of the derogation period, in light of its interpretative logic, the concerned rule should be considered indirectly discriminatory towards other Member State's citizens even if most concerned individuals are Hungarians, whereas other Member States' citizens constitute only a small percentage of minorities. The Court reasserted that it considered an examined rule a barrier to the free movement of capital even in the absence of the abovementioned arguments,⁶⁷ and that if, despite this, it finds the rule indirectly discriminatory, it does not exclude the fact that it can be justified by considering EU law.⁶⁸ The Advocate General emphasised⁶⁹ that the restrictive measures, which were not discriminatory, could be justified by referring to public interest. He also noted that the injured parties were compensated according to Hungarian law. However, despite⁷⁰

62 Court of Justice of the European Union, C-167/97.

63 Court of Justice of the European Union, C-52/16, paras. 73.

64 Ibid.

65 Fartunova, 2013, p. 589.

66 Ibid. p. 590.

67 Court of Justice of the European Union, C-52/16, paras. 75.

68 Ibid.

69 Advocate General's opinion, para. 69.

70 Ibid. para. 85.

this compensation,⁷¹ the measure was inconvenient and the amount provided did not eliminate this fully.⁷²

In the following section, we examine the factors justifying the provision, which is indirectly discriminative according to the CJEU, within the scope of the criteria for the control mechanisms under negative integration.

10. Violating the rules of foreign exchange

In light of Article 63 of the TFEU, Member States can take measures to enforce compliance with their regulations on foreign exchange.⁷³ The Hungarian government stated that obtaining usufruct rights was *ab initio* unlawful because it was linked to an administrative authorisation and the authorities did not receive any requests to this authorisation.⁷⁴ The Advocate General referred to relevant case law – within the fundamental freedoms – which shows that the applied sanctions shall be proportional.⁷⁵ The Court strengthened the opinion's remarks on proportionality referring to the Brutscher⁷⁶ case.

11. The justification for the use of agricultural land

Case law allows the restriction of the free movement of capital for general interest objectives such as combating property speculation, promoting viable small- and medium-sized land use, avoiding the fragmentation of land, and ensuring that land is owned by those who cultivate it. The Hungarian government referred to the last general interest goal listed above. This motivated the prohibition of the acquisition of agricultural land. It was argued by the Hungarian government that the regulation allowed businesses to use land, and helped to create a competitive business size and prevent the land's fragmentation.

The Advocate General found that the general interest objectives provided by the Hungarian government could not be justified for several reasons, and thus, that the regulation was not compatible with EU law, which only allows the close relatives to maintain the rights of use.⁷⁷ This regulation is not capable of achieving the general interest objectives. One's close relatives may acquire land for speculative reasons, whereas

71 Ibid.

72 The Advocate General concluded that terminating the rights of those concerned against their will affects the citizens of other Member States more, and thus should be considered discriminatory. Ibid. paras. 86–87.

73 Particularly in the fields of taxation and prudential supervision.

74 General Advocate's opinion, para. 92.

75 Court of Justice of the European Union, C-213/04.

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

77 General Advocate's opinion, paras. 111-114.

those concerned by the provision may acquire land for agricultural goals; thus the close relationship requirement is not a suitable means to achieve the goals.⁷⁸ The Advocate General did not find the provisions suitable according to necessity, because other measures that were less restrictive in comparison with the requirement of personal cultivation may have been more suited to achieve these goals. The Advocate General also argued that the concerned provisions were discriminatory based on citizenship.⁷⁹ The discriminative measure of the Member State could be justified by general interest objects, but the CJEU had to clear this issue. According to the CJEU, the provision went beyond achieving the land policy goals. The compensation provided under Hungarian private law was not enough because it led to long and uncertain proceedings.⁸⁰

12. Preventing the misuse of rights

In principle, EU law does not prohibit the restriction of fundamental rights in preventing the misuse of rights.⁸¹ However, the justification should adhere to the principle of proportionality. Thus, the regulation should allow Member States' courts to examine the possible abuse of rights on a case-by-case basis. The concerned provisions could not prevent misuse according to the Advocate General, because close relatives could also realise misuse.⁸² The measures applied, according to the Advocate General's opinion, were more than what was necessary to attain the objective,⁸³ because they set a presumption of misuse on part of non-related individuals, without ascertaining whether there was an artificial agreement.⁸⁴ The CJEU does not seem to exclude the justification of the fundamental rights' restriction. It is encouraging that it provided for a broad range of objectives among the Member States' land policies.

13. The judgement in Hungary/Commission⁸⁵

The infringement proceeding against Hungary continued after the preliminary ruling in the Segro case. This is worth examining individually. In practice, after a preliminary ruling, a Member State is not likely to modify its regulations. The Commission then initiates infringement proceedings. Member States can occasionally refer to the *ne bis in*

78 The CJEU's judgement justified the Advocate General's position.

79 Advocate General's opinion, para. 115.

80 Court of Justice of the European Union, C-52/16, paras. 89-92.

81 Advocate General's opinion, para. 102. This is why the rule did not meet the requirements of the principle of proportionality in this case.

82 Ibid. para. 103.

83 Advocate General's opinion, para. 204.

84 The fully artificial agreement is mostly applied in the field of taxation, and is especially acknowledged by EU practice where the agreements pertain to fiscal fraud.

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

idem principle,⁸⁶ if the European Commission initiates multiple infringement proceedings against them. This happened in the Commission/Portugal⁸⁷ case. However, in the current case, there was a preliminary ruling. Unlike the Segro case, the Commission asked to address the violation of Article 17 of the Charter individually. Thus, the *ne bis in idem* principle cannot be used here.

According to the literature, the European Commission has enjoyed a wide margin of discretion vis-à-vis initiating an infringement proceeding, which include that the Commission should not reason the necessity⁸⁸ of the procedure, and that the termination of the infringement proceedings does not necessarily mean the end of the entire procedure altogether.⁸⁹ The reasons for this can be the following:⁹⁰ preventing Member States from ending the procedure with a ‘fraudulent intent’; the *res judicata* effect of the judgement in the infringement proceeding clarifies the application of EU law; and it can base compensation procedures against the Member States.

We examine the most relevant remarks of the Advocate General and do not analyse the CJEU’s considerations in the Segro case.⁹¹ The Advocate General examined the Hungarian regulation in the light of Article 17 of the Fundamental Charter of the European Union. According to the opinion of the Advocate General, the provisions should be applied if the usufruct right covers two aspects – the use and the possession – from the three aspects of the right to ownership. The Advocate General emphasised that the judgement marked the first occasion on which the Commission asked the CJEU to address the infringement of the Charter’s provisions.⁹² However, the Commission stated in a communication in 2010,⁹³ that it would object if Member States did not fulfil the Charter’s requirements, but this had not happened until then. The opinion clarified that this application at stake was the beginning of a series, but these judgements all concerned Hungary.⁹⁴

In proceedings pertaining to Article 17 of the Charter, the Hungarian government acknowledged, in the course of its examination of the right to ownership in an infringement proceeding, that no Hungarian Court had encountered the absence of the foreign exchange authority’s licence, which can *ab initio* annul the contract.⁹⁵ The reasons this rule generated a dispute in the CJEU should be also examined. It was mentioned several times⁹⁶ that the rules on agricultural land ownership and use are more likely to be brought before the CJEU in cases involving Member States that acceded in 2004 and 2007, because of a greater potential conflict of interest vis-à-vis economic

86 Simon, 2011, p. 242.

87 Court of Justice of the European Union, C-276/98.

88 Court of Justice of the European Union, 16/76.

89 Simon, 2011, p. 238.

90 Ibid.

91 The Advocate General referred to this in para. 2 of the opinion.

92 Advocate General’s opinion, C-52/16, para. 64.

93 Com (1010) 573 final.

94 C-66/18, and C-78/18.

95 Advocate General’s opinion, para. 147.

96 Korom, 2013.

reasons. Several cases from individual disputes were brought to the CJEU after the accession of the Republic of Austria. It can be the result of an economic conflict of interest too. It strengthens this conflict of interest if the concerned citizens or economic operators of other Member States are not just losing a possible investment or a possibility of land purchase after the expiration of the derogation period, but the regulation introduces measures against the existing agreements. This raises several questions on why the European Commission initiated and pursued the infringement proceedings⁹⁷ if it was aware that the preliminary procedure was ongoing against the same state on the same issue.

Initiating an infringement proceeding by the European Commission can have several reasons.⁹⁸ First, it may aim to demonstrate that it can effectively provide investor protection at the EU level, and thus, the Member States, especially old ones, would not have to join investor protection agreements within the framework of international law or other constructions. Second, as the Advocate General noted, the procedure cannot be separated from those initiated against Hungary based on political motives. Third, the regulation on the purchase of agricultural land is politically sensitive, particularly for Member States that acceded in 2004. The Commission possibly demonstrated with the infringement proceedings that it acts against the regulation on agricultural lands of a Member State which acceded in 2004 that is violating the interest of the founding Member States, and it would make it impossible for the Member States which acceded in 2004 to regulate properly after the expiration of the derogation period.

14. Conclusion and proposed solutions

In the current stage of development of EU law, we do not consider it possible for the CAP's objectives to be achieved sustainably because of the control imposed through negative integration if cases are brought before the CJEU. This issue especially concerns Member States that acceded in 2004 or 2007. The Commission can have a serious effect on this process. The principles and professional aspects that inform the Commission's land policy practice vis-à-vis Member States that acceded in 2004 cannot be considered well-founded, mostly because of their self-contradictory character.

The Commission's reaction to the Slovakian agricultural law is evident. Thousands of concerned people asked the Commission to resolve the violation of their rights by direct discrimination based on nationality, but in vain. The Commission's geopolitical reasons undermine the arguments according to which it acts against the violation concerning European citizens. It is difficult for those concerned to enforce their rights through individual proceedings. However, the Commission's answers vis-à-vis the

⁹⁷ In light of this, carrying out the procedure was justified by individual considerations of Article 17 of the Charter.

⁹⁸ Besides the abovementioned reasons in the literature and Article 17 of the Charter.

Romanian restitution process are encouraging. It may be of significant help to those concerned to reclaim their properties.

The reasons behind the Commission's action against the Hungarian regulation on the agricultural agreements, which are not in line with the current laws, a conflict of interest between the 'old' and the 'new' Member States can be found. This conflict of interest can be related to the ownership of the agricultural lands. Moreover, the Commission's aim to protect investments can also serve as a reason for this action. We should take into account that the Hungarian rule – unlike the Slovakian Act on Restitution – did not contain direct discriminative provisions based on nationality, and the Hungarian government brought up meaningful arguments, even though these failed on the control mechanism of the negative integration form.. The Commission also admitted that the Slovakian law's discriminatory provisions cannot be justified.

In the case of the examined Hungarian law, the Commission should have been more cautious, especially that it was not fully objective while deciding and considered political aspects: as far as we know, it was suggested in scientific events and the legal literature that the Brutscher judgement's considerations should be incorporated into the future regulation, especially in the case of individual discretion. In the case of fundamental freedoms, EU law neither accepts the wide discretion of Member States, nor the rule that makes such considerations impossible, whatever may be the cause of the Member State's public interest.

The fact, that the judgement on the Commission/Hungary case Article 17 of the Charter⁹⁹ – besides the free movement of capital – should be individually considered, can help in the restitution cases the persons concerned to enforce their rights derived from the EU law.¹⁰⁰ In our point of view, the Member States' range on land policy is less affected by article 17 of the Charter, except if the Member State would start to change the land structure in a greater volume, which would affect the owners' and the other's rights in rem. But the CAP's specific features can solve this¹⁰¹ from the perspective of the Member State's range on the land policy if its appliance would growing in importance in the land policy range. According to the case law, the CAP's targets overwrites the ownership rights.¹⁰²

It would be an optimal solution to establish an effective EU mechanism to address issues pertaining to the scope of Member States' land policies, which can sustainably implement the requirements of the internal market and the CAP's targets. The CAP can serve as an example for this optimal solution, as its part concerning the integral market preserves the agricultural sector's specifics and the entailing possibility of the state's – supranational – intervention. The legal literature also addresses such possibilities in other fields.

99 We assume that Article 17 would affect the restitution positively because it protects the former owners' interests.

100 A Romanian restitution rule can serve as an example, which reduced the enforcement of the rights derived from the EU law.

101 Biachi, 2012, pp. 63–65.

102 Court of Justice of the European Union, 44/79.

Ségolene Barbou des Places explained that EU law allows States to fulfil certain functions in general and to set fundamental rules for the community. The restriction is often determined not by the fact that the goal is economic, but based on the CJEU's examination of the goal set¹⁰³ through the exercise of state sovereignty.¹⁰⁴ Jean-Christophe Barbato noted that the CAP showed signs of protectionism at the beginning of integration. Therefore, it was difficult to manage the CAP to be accepted by the Member States – especially Germany – which considered the European construction based on liberal, free trade foundations. They were only willing to accept the ‘original sing’ of the CAP by the pressure of the USA.¹⁰⁵

According to Myriam Dorian-Duban, it is gaining attention because aside from fundamental freedoms, certain social objects should be emphasised within EU law, as doing so will contribute to the welfare of citizens.¹⁰⁶

In the case of restitution, the return of confiscated properties, especially, immovable properties, would have been useful in resolving challenges satisfactorily before accession. The consideration that EU law should oblige or currently requires Member States to return the properties that were confiscated before accession or at least pay compensation is not well-founded – this is strengthened by the *ratione temporis*' scope.

It seems hard to imagine that issues pertaining to land policy and restitution can be resolved with a practice that is compatible with EU law, and could be a solution for both areas' problems, especially, that in the field of land policy, the Member States' capability to provide a sustainable regulation is in the focus, while in the field of the restitution, the solution can be defined by opposite tendencies. Despite this, we assume that a solution that can be applied to both areas may be proposed.

The European Commission should develop a model involving NGOs to reduce the EU's control within negative integration by combining positive integration and the CAP's specification against the internal market, so that Member States can safely and sustainably regulate matters, both in light of EU law and the objectives permitted by the CJEU. Individual rights relating to fundamental rights can be implemented in full. The Commission should develop its position with due respect for the values of transparency and the principle of the equal treatment of Member States, which can, in turn, increase the trust of Member States that acceded in 2004, while also overshadowing practice motivated by political considerations that can harm the community in the long term.

Conversely, in the field of restitution, the Commission's efforts to promote individual rights cannot be considered dangerous.. According to the phase of development

103 Barbou des Places, 2014, pp. 20–21, 66.

104 The extension of a Member State's land policy is not feasible if it includes a reference to Article 345 of the TFEU or withdraws the land policy from the free movement of capital. However, it is worth examining relevant case laws from the CJEU's repertoire and propose solutions for the transformation of land policies.

105 Barbato, 2014, pp. 20–21, 66.

106 Doriati-Duban, 2014, pp. 305.

of EU law at the time of study, the Member States have full discretion to introduce restitution measures vis-à-vis immovable property and identify the period and goods that will be addressed by such a measure. EU law only prohibits discrimination based on nationality and withholds the Member States to make it impossible to enforce the individual's rights before courts or during administrative procedures, even though there is an existing regulation.. In cases like this, the application of common rules and EU law is well reasoned for all European citizens and Member States. In the long term, this practice can strengthen trust in the EU. Denying the enforcement of rights based on geopolitical reasons for a specific group of EU citizens will be counterproductive in the long run.

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