

THE ROLE OF AGRICULTURAL PROPERTY AGENCY IN SPATIAL DEVELOPMENT OF RURAL AREAS

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Abstract

The changes in the ownership structure were to be implemented by the Agricultural Property Agency of the State Treasury, which, under the Act of Law of 11 April 2003 on the structuring of agrarian system (i.e. The Journal of Laws of 2012, item 803, as amended), on 16 July 2003 became the Agricultural Property Agency with eleven local branch offices.

For the purposes of this article the monographic method was used for the overview of relevant literature and legal provisions, whereas the statistical analysis was employed in the data of the Central Statistical Office and reports on the activities of the Agricultural Property Agency. Until the end of 2015 the main objective of the Agricultural Property Agency was to restructure and dispose of the assets within the Agricultural Property Stock of the State Treasury. Since its foundation, the Agency expanded the Stock by 4.74 million ha. Over time, the operating conditions for the Agency were in a state of flux – they were being adjusted to the changing socio-economic situation. At the beginning, leasing was the basic form of disposal of the Stock land. After Polish accession to the European Union an increased interest in the acquisition of agricultural property was observed. By the end of 2014, as a result of land sale, free-of-charge land transfers or other transactions, approximately 3.2 million ha were disposed of, i.e. about 70% of the whole land which was taken over. Currently, according to the legal provisions, long-term lease is the basic form of disposal of the Stock land.

Key words: Agricultural Property Agency, rural areas, agricultural land, sale of property, land lease.

Introduction

The Act of Law of 19 October 1991 on the management of the agricultural real property of the State Treasury (i.e. The Journal of Laws of 2015, item 1014, as amended) legally regulated the issues connected with the management of the property of State Treasury after the closedown of state agricultural farms (PGR). It marked the onset of transformations in the agrarian structure in Poland. The Agriculture Property Agency (hereinafter referred to as ‘the APA’) is the legal successor of the Agricultural Property Agency of State Treasury (hereinafter referred to as ‘the APAST’), which was established on 1 January 1992. The APAST changed into the APA on 16 July 2003. The APA has continued the activities commenced by the APAST in compliance with the provisions under the Act of Law of 11 April 2003 on the structuring of agrarian system (i.e. The Journal of Laws of 2012, item 803, as amended). Primarily, the said Act provides for: the improved protection and development of family-run agricultural holdings, which, according to the Constitution of the Republic of Poland, are the basic building blocks of the agrarian system in the Republic of Poland; proper spatial management of agrarian land; food security for the citizens; and support for sustainable agriculture in line with environmental standards and requirements and contributing to the development of rural areas. Moreover, the scope of activities of the APA enlarged as the Agency was entrusted by the State Treasury with the proprietary right and other rights in rem to the State agricultural property and the Agency thus acted for and on behalf of the State Treasury as regulated by separate legal provisions.

The Agency’s activities, counting from its establishment, can be periodised (Nawrocki, Podgórski 2009). The following division into these characteristic periods is related to the socio-economic and political changes currently taking place in Poland.

- Period 1992 – 1995: land transfers to the Agricultural Property Stock of the State Treasury (hereinafter referred to as ‘the Stock’) and land development; lease as the main form of property disposal.

- Period 1996 – 2003: continued process of land disposal and completed processes of land transfer to the Stock; sale and lease as the main forms of property disposal. Characteristically, secondary demand for land emerged in places where it had been rather limited. Based on a statutory regulation, in 1999 a restricted tendering procedure became possible: no more than 500 ha of agricultural acreage could be sold to one entity. Under the amended Act of Law of 19 October 1991 on the management of agricultural real property of the State Treasury, the deadline for the property transfer from the State Land Fund to the Stock was set on 30 June 2000. The agricultural property which had not been transferred to the Stock became, in the light of law, the property of the communes in which the real estate was located (Suchoń, 2007). The Act of Law on the structuring of agrarian system was made effective on 16 July 2003,

whereby the Agency's scope of activities was enriched with the tasks related to the management of private transfers of agricultural land (Marks-Bielska, 2010).

- Period 2004 – 2015: the twelve-year period following Polish accession to the European Union, when the negotiated terms and conditions of property acquisition by foreigners were valid. The period saw: an annual growth in the price of agricultural land; an increased demand for agricultural land; and unchangingly high sales of the Stock land.

- Year 2016: new legal regulations on management of the Stock; introduction of statutory limitations for the sale of agricultural land; lease as the main form of the Stock land disposal.

The Agency is a trust institution. Being state-owned and having a legal personality, it exercises proprietary rights (rights to property and other rights in rem) with respect to the assets it has been entrusted with. The Agency, on its own behalf, executes the rights and fulfils the duties connected with the State Treasury assets which were entrusted to the Agency upon the closedown of state agricultural farms, including the rights vested and duties imposed by way of administrative decisions.

The concept of 'the stock' became a regulatory notion at the onset of system transformations. It first appeared in the Act of Law of 19 October 1991 on the management of the agricultural real property of the State Treasury (Pessel, 2008). This Act provided for the establishment of the Agricultural Property Stock of the State Treasury (the Stock), which is currently at the disposal of the Agricultural Property Agency (Klusek, 2013). Section 44 of the Civil Code distinguishes the category of state property administered by the State Treasury and other legal persons. The definition of the property indicates that proprietary rights and other rights in rem are applicable here.

The property entrusted to the Agency is a separate part of the State Treasury property – it constitutes the Agricultural Property Stock of the State Treasury. The Stock was created in the 1990s and included the assets of the liquidated state-owned agricultural holdings (together with their liabilities), state agricultural farms and other agricultural property belonging to the State Treasury, e.g. the State Land Fund.

The main objective of the Agricultural Property Agency was to transfer all the state-owned agricultural property to the Stock and to manage the Stock (Suchoń, 2013). What belonged to the APAST at that time was the transferred property of the State Treasury, which included, for instance:

- agricultural property as defined by the Civil Code, located in the areas dedicated for agricultural activities in the land-use plans, excluding land managed by the National State Forests and national parks;
- other property and items of property remaining after the closedown of state agricultural farms, cooperatives and associations;
- forests without subdivision survey within the real estate (Act of Law on the management of the agricultural real property of the State Treasury, section 1).

The above-mentioned assets include not only agricultural and forest land but also outbuildings and households, as well as a whole range of constructions and equipment which made social, technical, production, trade and service infrastructure. Thus, the APA's inventory also covered some distilleries, wineries, breweries, butcher's, slaughter houses, dairies, fruit and vegetable processing plants, mills and goat mills, grain and green fodder drying facilities, fodder mixing plants, grain warehouses, brickworks, sawmills, tanneries and furrieries, cold storage facilities, inns, pubs, shops, service points, common rooms, cultural and sport facilities, palaces and manor houses with surroundings, sewage treatment plants, infrastructure elements, and others.

Currently, property transfers are made to the Stock of the Agency under three legal provisions:

- Act of Law of 11 April 2003 on the structuring of agrarian system;
- Act of Law of 20 December 1990 on farmers' social security¹;
- Act of Law of 19 October 1991 on the management of the agricultural real property of the State Treasury.

The basic regulations governing the expansion of the Stock with agricultural property are covered by the Act of Law on the structuring of agrarian system. Upon the analysis of the data on APA's activities in particular years, it can be concluded that the Agency exercised its right to land acquisition to a small extent only. Similarly, the Agency acquired small acreages under the Act of Law on the management of agricultural real property of the State Treasury, which gave the Agency the pre-emptive right and the right of repurchase when acting for and on behalf of the State Treasury in cases when a buyer of property intended to sell it within five years from its purchase from the APA.

Under the subsequent amendments of the legal provisions, the nature and objectives of the Agency were reviewed in the following manner: the initial focus being on privatisation, later the centre of gravity was

¹ i.e. The Journal of Laws of 2015, item 704, as amended

on the support for positive structural changes. Preferably, agricultural property was to be acquired by people owning family-run agricultural holdings and having appropriate qualifications. The legislator waived the right to State intervention in these transactions. Until 2010 the APA wielded control over all agreements on transfer of proprietary rights to agricultural property. In 2010, consequent upon the amendment to the Act of Law, size restrictions were introduced: if agricultural property was below 5 ha in area, the transfer of the proprietary right was unsupervised. On 30 April 2016 owner supervision over all agricultural property in transfer was re-instated.

One of the APA's activities relies on transferring agricultural land. Transfer of agricultural land is any situation which leads to a change of business entities handling an agricultural holding (Maśniak, 2011). Thus, any change of the owner or tenant is a result of agricultural land transfer (Kozłowska-Burdziak, 2013). Until 2016, the APA was mostly responsible for privatisation of the State Treasury assets in forms prescribed by the Act of Law on the management of the agricultural real property of the State Treasury. Privatisation of agricultural land was supposed to improve the agrarian structure (Dzikowska, 2010). Through selling agricultural land the Agricultural Property Agency played a non-negligible role in the structuring of the agricultural property market (Jasińska, Preweda 2012).

Since its foundation, the Agency has transferred 4.74 million ha to the Stock. A lion share of these lands, over 80% (3.7 million ha), came from the former state agricultural farms, while the land from the State Land Fund constituted 13%.

Methodology of research and materials

The aim of the research is to summarise the activities undertaken by the Agency so far and to present its role in the spatial development of rural areas taking into account the changing conditions for managing the Agricultural Property Stock of the State Treasury. For the purposes of the analyses, different data sources were used, including: reports on the activities of the Agricultural Property Agency related to the Agricultural Property Stock of the State Treasury; data of the Central Statistical Office; studies conducted by the Institute of Agricultural and Food Economics; studies conducted by the Department of Economic Analysis and Agricultural Statistics (DEAAS); and a body of literature on the subject.

The abovementioned aim is reached by applying the statistical data, scholarly literature analysis, legal document analysis and synthesis, comparative analysis and descriptive methods of research. This year marks the 25th anniversary of the establishment of the Agency which is a good enough reason to summarise its foregoing performance and assess to what extent it has managed to meet its obligations. The research problem was also inspired by the transformations in the agrarian structure and the spell of a more intense interest taken in acquisition of agricultural property observed in the last few years.

Discussions and results

The regulations on the management of the Agency's property stock can be found in the Act of Law of 19 October 1991 on the management of the agricultural real property of the State Treasury. Section 24 thereof stipulates that the Agency manages the Stock by:

- leasing or selling agricultural property for enlarging or creating family-run agricultural holdings²;
- letting the property to legal or natural persons for chargeable use over a definite period;
- using the property in its entirety or in part to make contribution in any commercial-law company in which the State Treasury or a research centre has the majority of stocks or shares;
- letting the property in its entirety or in part to an administrator for management over a definite period;
- setting administration of property;
- exchanging the property.

The fact that in the first period of its work the Agency was statutorily obliged to fulfil other priorities with regard to the assets making the Stock is noteworthy as well. The Agency managed the Stock by:

- selling the property in its entirety or part;
- letting the property to legal or natural persons for chargeable use over a definite period;
- using the property in its entirety or in part to make contribution in a company;
- letting the property in its entirety or in part to an administrator for management over a definite period,
- setting permanent administration of property.

Apart from the above-mentioned forms of property management, the APA may also dispose of the property from its Stock by free-of-charge transfers to various entities.

² Effective as of 30 April 2016.

What should be emphasised is that until the end of 2015 property sale was far more common than lease. Not all of the property could be disposed of. For example, restrictions applied to: land with the right of perpetual usufruct and under permanent administration; land with unregulated legal status; and land dedicated for public use (Nawrocki and Podgórski 2011). The total area of land transferred to the Agricultural Property Stock of the State Treasury and forms of property disposal is shown in Table 1.

Table 1

Area of land transferred to the Agricultural Property Stock of the State Treasury and forms of property disposal (data of 31 December 2014)

Voivodship	Area of land transferred to the Stock ha	Area of sold ha	Land remaining in the Stock, including			
			Land lease ha	Perpetual usufruct ha	Permanent administration ha	Other forms of disposal ha
Dolnośląskie	509 587	249 169	155 249	6 304	1 213	3 454
Kujawsko-Pomorskie	275 632	125 021	73 597	3 322	1 619	503
Lubelskie	189 555	128 865	25 729	999	1 169	205
Lubuskie	354 304	204 757	70 879	1 706	876	1 528
Łódzkie	79 539	53 665	12 709	1 675	52	15
Małopolskie	38 945	18 128	7 779	2 994	39	5
Mazowieckie	117 490	75 194	17 966	3 788	342	149
Opolskie	181 613	100 272	62 443	1 715	266	91
Podkarpackie	153 412	100 678	17 381	2 199	1 976	17
Podlaskie	128 227	63 720	22 934	1 593	32	331
Pomorskie	431 569	269 780	78 433	4 331	1 288	503
Śląskie	87 015	40 082	22 677	2 169	469	61
Świętokrzyskie	50 334	35 423	5 386	28	170	40
Warmińsko-Mazurskie	820 744	495 428	124 977	4 654	2 125	1 983
Wielkopolskie	499 752	221 445	172 290	8 530	1 227	1 131
Zachodniopomorskie	821 618	426 845	218 956	6 107	7 309	3 916
Total	4 739 338	2 608 473	1 089 386	52 114	20 171	13 933

By the end of 2014, as a result of land sale, free-of-charge transfers or another form of permanent disposal, the Stock decreased by approximately 3.2 million ha, i.e. approximately 70% of all the land taken over. In 2014 the Agency had 1.49 million ha at its disposal, of which approximately 1.1 million ha were leased. Recently, land sale has been the dominant form of the Stock land disposal; the APA has been selling property by way of tenders, whereby it increased the number of restricted tendering procedures and significantly more eagerly sold property to lessees, who enjoyed pre-emptive rights (Report 2015). The area of land sold in each year since foundation of Agency is shown in Figure below (Fig. 1).

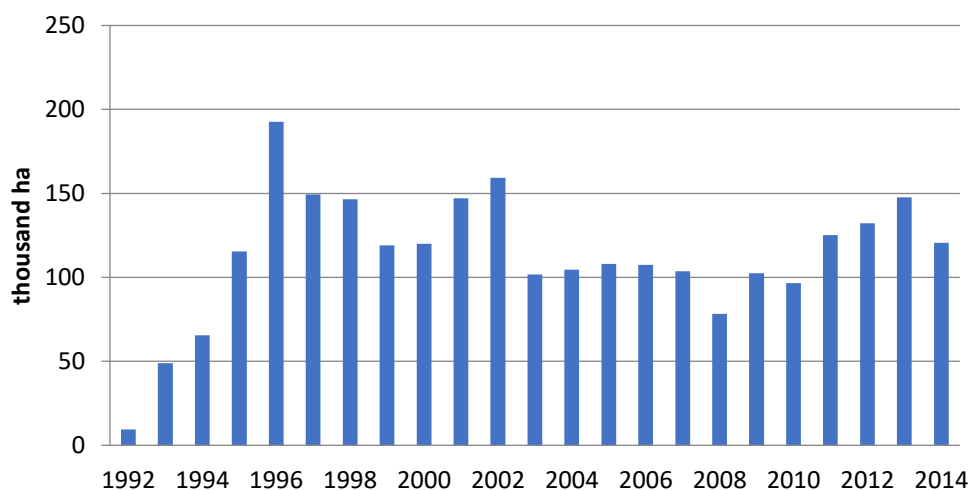


Fig. 1. Sold area from the Stock of the Agricultural Property Agency in the period of 1992-2014

Until the end of 2015 sale of property from the Stock was the major form of permanent property disposal. It arose, among other things, out of the legal provisions under which the Agency operated. At the onset of Agency’s work, land sale was rapidly gaining momentum, reaching the record-breaking level in 1996 with 192.6 thousand ha sold. The subsequent years (1997-2002) saw much lower sales figures, which oscillated around 120-160 thousand ha annually. In the period of 2003-2010 land sale dropped to 100 thousand ha per annum. Outstandingly, in 2008 the sales of the Stock land was as low as 78.2 thousand ha. Between 2011 and 2014 the sales bounced back and peaked in 2013 (147.7 thousand ha). It was consequent upon the accelerated privatisation of all property items within the Stock and a greater pressure exerted by the APA to prioritise land acquisition rather than long-term land lease. Another important form of property disposal from Agricultural Property Stock of the State Treasury is land lease. Land lease in Poland is a long-lasting phenomenon. So far it has not been on a large scale and usually it has not gone beyond informal oral agreements. The scope and the nature of land lease in Poland were conditioned by historical changes and agrarian development. The political system transformations initiated by the events of 1989 changed the economic and legal situation in Poland (Jarka 2010, Ostrowski 1999). At that time there was a considerable growth in the share of leased land in the land use structure of the State Treasury land. The period of 1993-1995 saw about 3 million ha leased, which then constituted a significant share of the Stock (4.7 million ha). The acreage of land leased from the Stock of the Agricultural Property Agency between 1992 and 2014 is depicted in Fig. 2.

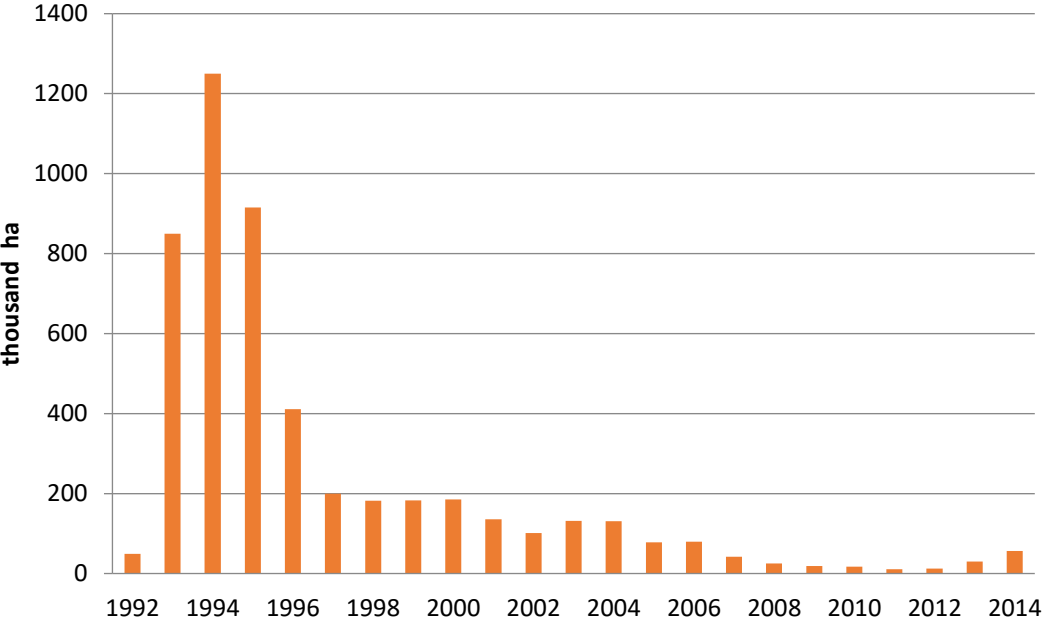


Fig. 2. Land leased from the Stock of the Agricultural Property Agency in the period of 1992-2014

Since its foundation, the APA leased incrementally 4.74 million ha. It is due to the fact that some property was repeatedly leased. Everything points to the fact that by 2012 there was a downward trend in the acreage of land leased in total. The lease of land from the Stock is circulatory in nature, which means that the leased land often returns to the Stock for further disposal. In 2011 a statutory obligation called for designation of 30% of agricultural acreage for sale (applied to lease agreements of land exceeding 400 ha in total area) (Majchrzak, 2012). The Agency used land lease as the basic form of land development predominantly when the land could not be sold. It was due to the fact that a given plot of land lacked a regulated legal status or it had to undergo subdivision survey. Short-term lease was also in place when it was possible to use a plot for other purposes or when it was requested by the Chamber of Agriculture. Recent years have also shown that acquisition of agricultural land as a form of investment has been remarkably attractive. It translated into high transaction prices of non-built-up agricultural property. The Agency’s core scope of duties is regulated by the Act of Law on the management of the agricultural real property of the State Treasury, section 6, whereby the Agricultural Property Agency fulfils objectives compliant with the state policy, particularly by:

- creating and developing the area structure of family-run agricultural holdings;
- creating conditions favouring rational utilisation of the productive potential of the Agricultural Property Stock of the State Treasury;
- restructuring and privatising the State Treasury assets used for agricultural purposes;
- transferring real estate and other items of property belonging to the State Treasury and used for agricultural purposes;
- administering the State Treasury assets dedicated for agricultural purposes;
- securing the State Treasury assets;
- initiating agricultural activities involving machinery on the State Treasury land and fostering the creation of private agricultural holdings on the State Treasury land;
- exercising the rights on stocks and shares.

The real estate, which was part of the Stock, underwent the following structural and proprietary transformations controlled by the Agricultural Property Agency: it was sold by way of restricted and non-restricted tendering procedures, in recognition of pre-emptive right to purchase; it was subject to secondary restructuring and then it was further committed. Particularly, that occurred in the case of large properties which had been leased and the lease agreement was nearing its expiry date or was terminated, or part of the land under the running lease agreement was excluded from the lease and dedicated for individual use by other tenants, including mostly individual farmers.

Another important obligation assigned to the Agency is the improvement of the area structure, especially creation of conditions for enlarging the existing family-run agricultural holdings.

Besides the above-mentioned tasks, the also Agency fulfils the duties imposed on it by separate legal provisions, chiefly the Act of Law on the structuring of agrarian system and the Act of Law on the management of the agricultural real property of the State Treasury, as well as by the stipulations on the execution of right to compensation for abandoning the real estate situated beyond contemporary borders of the Republic of Poland. Moreover, the Agency performs or participates in the performance of duties prescribed, for example, in the legal provisions on: the relation of the state to the church and religious communities; farmers' social security; environmental protection and nature preservation; forests and forest land; water law; and other (Report..., 2015).

On 16 July 2003 the Agency gained rights to wield control over some of the agricultural property transfers, which was in compliance with the Act of Law on the structuring of agrarian system. Legal provisions regulate the principles of the State Treasury agricultural property disposal and introduce restrictions on acquisition of that property (Laskowska, 2011). The Agricultural Property Agency, acting for and on behalf of the State, is to partially control the agricultural property market, and, if needed, intervene in the market through exercising the right of pre-emption enjoyed by the State. Consequently, the Agency is also competent in taking decisions on the form and mode of land disposal. The Agency exerts owner supervision through different forms of the Stock disposal. The supervision is to ensure that the State Treasury assets are properly utilised, i.e. used for the intended purposes by their users.

The Agency allocates funds for maintenance (renovating, servicing, modernising) of Stock buildings and constructions as well.

So far, the restructuring of agricultural property handled by the Agency has been mostly aimed at: curbing irrational concentration of land, e.g. by division of holdings; releasing some land for enlargement of individual holdings; separating the social activities run in the holdings from the agricultural ones; defining plots of land required for satisfaction of non-agricultural planning and zoning, e.g. plans related to motorways, environmental protection, forestation, and provision/maintenance of work places in as high a number as possible.

Ultimately, privatisation of the State sector in agriculture was supposed to create favourable conditions for effective management. It was reflected in resignation of the State from management of agricultural holdings and in exploitation of entrepreneurial flair exhibited by people undertaking their own holdings by means of their funds and at their risk. The legal regulations valid at the time enabled an individual approach to every single holding which was being transformed and the employment of various forms of property disposal, such as: sale, lease, administration, and creation of commercial-law companies. The law also provided for diverse forms of property disposal: bids, tenders, restricted tendering procedures, non-tender procedures, free-of-charge transfers; moreover, the law allowed various entities to participate in the privatisation of the State Treasury agricultural property: individual farmers, former employees of state agricultural farms, companies from agriculture-related branches, companies with foreign capital share.

In the course of time the operational conditions for the Agency were gradually changing. The most significant changes occurred in the last few years when, due to the solution of the problem of debts incurred together with property, the incomes surpassed the outcomes. The consequent surplus gave opportunities for more intensive activities in the social domain and for stimulation of the group of former employees of state agricultural farms. The Agency undertook activities aiming at maintenance or creation of work places; it also assisted children and teenagers from households whose members were formerly employed on state agricultural farms in obtaining access to educational facilities, for one thing, and helped residents of housing districts which used to belong to state agricultural farms with social matters, for another thing.

Whether the management of agricultural property of the State Treasury by the Agricultural Property Agency was reasonable or not was checked by the state authorities and, if needed, appropriate legal provisions were introduced. In 2002, the Act of Law provided that a Minister responsible for the State Treasury would be given stocks and shares which had been acquired or obtained by the Agency, excluding the shares in companies which were particularly important for the national economy i.e. those implementing breeding programmes.

After Polish accession to the European Union it was observed that acquisition of agricultural property started gaining in attractiveness. Land prices rocketed; however, it should be noted that land transfers in private market were stunted. Poland became a member of the European Union on 1 May 2004 and negotiated a twelve-year transition period for unrestricted transfers of agricultural land in Poland. On 1 May 2016 the transition period came to an end, thus, giving foreigners the right to acquire property. New legal provisions were drafted in order to render it impossible for people without Polish citizenship to acquire land.

On 30 April 2016 the Act of Law of 14 April 2016 on the suspended selling of real property from the Agricultural Property Stock of the State Treasury and on changes in certain Acts of Law (The Journal of Laws of 2016, item 585) came into force, which amended, for instance, the Act of Law of 11 April 2003 on the structuring of agrarian system (i.e. The Journal of Laws of 2012, item 803, as amended).

Upon analysis of this legislation it can be concluded that the new legal regulations primarily aim at: improving the protection of agricultural land against speculations and purchase by domestic and overseas entities (natural and legal persons); halting the unfavourable trend in the agrarian system; and strengthening the economical standing of Polish farmers. The Act is also supposed to guarantee real protection of the Polish land against uncontrolled purchasing, particularly that involving foreigners.

Consequent upon introduction of the new legal provisions, lease is to be the basic form of State land development. The legislator's intention was to implement solutions favourable to farmers (lease being the cheapest form of agricultural land acquisition). Lease agreements are to be long-term ones – made for a period as long as ten years or more. These solutions are supposed to enable individual farmers to rationally plan their production.

The fact that the Agency cannot identify itself with the State Treasury is vital. It acts as an individual entity and operates in compliance with the agricultural policy of the State Treasury, which, in fact, is the owner of the property transferred to the Agency stock. The Agency is not the owner of the acquired assets (assets within the Agricultural Property Stock of the State Treasury) but merely an entity which exercises on its own behalf the entrusted proprietary rights.

Conclusions and proposals

The Agricultural Property Agency has been playing an important role in the development of property in the rural areas which used to belong to the state agricultural farms (PGR) and the State Land Fund. From regional perspective, the Agricultural Property Stock of the State Treasury was heterogeneous. Therefore, a special role has been ascribed to the Agency in the north and west of Poland where the share of land ownership among natural persons was negligible. One of the outcomes of APA's transformative work was a change in the proportions between the private and public sectors in the ownership structure of agricultural land in Poland, which was achieved through activation of state land market and stimulation of an increase in the average size of the agricultural holding. Real estate market, owing to the Agency, experienced reorganisation and qualitative changes, including, first and foremost, a substantial growth in the value of agricultural property.

To a large extent, transfer of agricultural land in Poland is controlled by the Agricultural Property Agency. As a result of implementation of new regulations concerning the principles of management of agricultural land remaining in the Agricultural Property Stock of the State Treasury as of 1 May 2016 land lease is to be the major form of the Stock land disposal.

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