

## Amendments to legal regulations on trade in agricultural land

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### Abstract

Land is a national good and the State's duty is to protect it. With respect to the legal status of trade in property in Poland, the most important post-transformation legislation included: the Act of 1991 on management of agricultural property of the State Treasury, the Act of 2003 on shaping the agricultural system and the Act of 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendments to certain other acts. Legislation on the subject was drafted so as to give special treatment to a certain group of farms, i.e. the so-called family farms which, according to the Constitution of the Republic of Poland, are the basis of the agricultural system of Poland. Relevant regulations were developed so as to improve the agrarian structure and, at the same time, to prevent excessive concentration of agricultural land and to promote its transfer to the most appropriate users. Each of the legal regulations influenced, to a different degree and through different instruments, trade in agricultural property. When analysing the way agricultural land was traded, three main periods of introducing specific legal solutions may be identified. They differed primarily in the degree of liberalisation of the transfer of rights to agricultural property. However, regardless of amendments to legal regulations, market trade in agricultural land always took place in two separate segments, where different procedures with respect to rules for developing land from the Stock of the State Treasury existed, and in trade between natural persons. This difference, although to a limited extent, remained in legal regulations in force as of May 2016 as well.

**Keywords:** trade in agricultural property, the Act on shaping the agricultural system

### Изменения към законовите регулации за продажба на земеделска земя

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### Резюме

Земята е национално богатство и задължение на държавата е да го пази. Спазвайки законовия статут на търговията с недвижими имоти в Полша, най-важните последващи промени в законодателството включват: Закон от 1991 г. за управление на земеделската собственост от Държавната хазна; Закон от 2003 г. за оформяне на селскостопанската система и Закон от

2016 г. за спиране продажбите на имоти от фонда за земеделски имоти към Държавната хазна и измененията към някои други закони. Законодателството в тази област е така изготвено, че да осигурява специално отношение към някои групи от ферми, т.н. семейни ферми, които според Конституцията на Република Полша, са база на селскостопанската структура в Полша. Съответни регулации са подготвени с цел подобряване аграрната структура и в същото време, предотвратяване на прекомерно концентриране на земеделска земя и улесняване прехвърлянето ѝ на най-подходящите ползватели. Всяка от тези законови регулации оказва влияние до различна степен и с различни инструменти, на търговията със земеделски имоти. Анализирайки начина на търгуване със земя, можем да определим три главни периода на въвеждане на законови решения. Те се различават първо по степента на либерализация на трансфера на правата на земеделска собственост. Така или иначе, без да се вземат под внимание поправките към законовите регулации, пазарната търговия със земеделска земя винаги намира място в два отделни сегмента, с различни процедури по спазване на правилата за развитие относно земята от поземления фонд към Държавната хазна и търговията между физически лица. Тази разлика остава в законовите регулации в сила от май 2016 г., макар и с известни ограничения.

**Ключови думи:** търговия със земеделски имоти, Закон за формиране на селскостопанската структура

## **INTRODUCTION**

Although its function varies depending on taken actions, land is a resource required for any human activity. It may be only physical space on which an undertaking is located. At the same time, it may be a means of production when used to produce agricultural products. It is thus a special good whose social and economic features reach far beyond its importance as one of three basic factors of agricultural production and its resource may be used in very different ways. The phenomenon is extremely important with respect to its use for agricultural purposes.

Man cannot expand the total area of land, but can change its usage. Soil, i.e. the top layer of land, which is useful for agricultural purposes, is renewable and to some extent reproducible (Woś, 1996). Land is thus a specific means of production which makes agricultural economics stand out within the economy.

Regardless of socio-economic systems and the right of ownership, land is assumed to be a national good and the State's duty is to protect it. Legal regulations on trade in agricultural property

are to serve this purpose as well as to influence Poland's land structure, to ensure that agricultural activity is pursued by properly qualified persons and thus to seek a better environment for and higher competitiveness of agricultural activity. Compliance with this desiderata requires that statutory standards for trade in agricultural land, which take into account the specificity of agricultural land, i.e.: its necessity in production, spatial immobility<sup>1</sup>, the nature of a living factor, be constantly adapted.

## **MATERIAL AND METHOD**

Information for the analysis was derived from the wording of statutes and other studies on the agricultural land market, in particular: the Act of 19 October 1991 on management of agricultural property of the State Treasury, the Act of 11 April 2003 on shaping the agricultural system, the Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendments to certain other acts, the Act of 24 March 1920 on purchase of property by foreigners.

## **Amendments to legal regulations on trade in agricultural property**

Statutory regulations on trade in agricultural land<sup>2</sup> in Poland constantly evolved. This was (is) so because of the State's impact on the wording and exercise of the right of ownership (Czechowski, 2004). The evolution of legislation on trade in agricultural property reflects the basic period in the State's agricultural policy (Oleszko, 2004). Since the systemic transformation in Poland, with respect to legislation on trade in agricultural property, the following breakdown in the evolution of legal rules for trade in agricultural property may be assumed: liberal trade of 1990-2003 and the restriction of freedom of trade which began in 2003<sup>3</sup>.

Since the early 90s until Poland's accession to the European Union (EU), trade in agricultural property was governed mostly by the Civil Code and the Act on management of agricultural property of the State Treasury (Journal of Laws of 1991 No. 64, item 592 as amended).

They provided that every Polish citizen could, as a rule, possess an agricultural property of any size. The law was thus liberal, especially with respect to trade in agricultural land between natural persons. The amendment of 1990<sup>4</sup> to provisions on trade in agricultural property, which was a response to legal impediments to private trade in land in the pre-systemic transformation period, contributed to such a situation.

The legal freedom of private trade in agricultural land helped primarily recover and reorganise the market and ownership of agricultural property. However, adopted legal rules for trade between farmers had little impact on the pace of land concentration and farm polarisation processes which were primarily evident in the initial period of systemic changes, because these phenomena in longer time frames are determined mostly by economic factors.

A significant role in trade in agricultural property owned by the Stock of the State Treasury was played by the Act of 19 October 1991 on management of agricultural property of the State Treasury. It was introduced as a result of the systemic transformation whose basic assumptions included a move from a centrally planned economy based on State ownership to a free market economy based on private ownership.

Pursuant to the Act above, property taken over by the State to the Agricultural Property Stock of the State Treasury was administered by the Agricultural Property Agency<sup>5</sup>, i.e. a State legal person entrusted by the State Treasury with exercising the right of ownership and other real rights with respect to State property in agriculture.

The primary task of the Agricultural Property Agency was the restructuring and privatisation of purchased property, either permanent (sale, free transfer, in-kind contribution) or temporal (lease). These actions also took into account the need for improving the area structure of family farms which, according to the Constitution of the

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<sup>1</sup> Given that land is an immovable factor, the land market and trade in land are local.

<sup>2</sup> The concept of trade in agricultural property may, depending on how it is interpreted, be defined differently depending on the criteria used. However, it always involves the transfer of rights of ownership by way of a legal transaction (Czechowski, 2004). By type of rights to be transferred, the following transactions may therefore be distinguished: sale (sales transactions – transfer of the right of ownership or perpetual usufruct) and lease (lease transactions – acquisition of the title of dependent possession arising out of a binding contract (Czechowski, Korzycka-Iwanow, Prutis, Stelmachowski, 2002)). The transactions thus involve change in an owner or user of land.

<sup>3</sup> By scope of statutory intervention in processes of transferring rights of ownership of property, two periods may be distinguished, i.e. 2003-2015 and 30 April 2016-present.

<sup>4</sup> The amendment of 26 July 1990 to the Civil Code. However, the provision limiting rules for the intestate succession of farms was upheld and later abolished by virtue of the ruling of the Constitutional Tribunal of 31 January 2001.

<sup>5</sup> Until 16 July 2003, it operated as the Agricultural Property Agency of the State Treasury

Republic of Poland, are the basis of the agricultural system.

Provisions on the management of agricultural property of the State Treasury have undergone numerous modifications over the years. Their amendments were due primarily to practical problems in the application of specific provisions. They were also related to ongoing transformations of economic and political relations.

In the first years of distributing agricultural property from the Agricultural Property Stock of the State Treasury, individual farmers' demand for agricultural land was relatively small despite a favourable purchase environment. Due to the financial burden imposed on property which was taken over to the Stock, the Agency sought to distribute it as soon as possible. Its sale and lease were therefore free of any restrictions. The Stock's property could thus be purchased by any capital holder. Due to the Agency's financial difficulties, it could be purchased, be it in full or in part, for restructured receivables as well. As a rule, large-area property was thus sold. Therefore, the government took further decisions in 1995 to accelerate the distribution of agricultural property from the Agricultural Property Stock of the State Treasury and focus it more on developing family farms and improving their area structure. This purpose was to be served by solutions for the purchase of land on favourable terms and primarily by an increase in the upper limit of area purchased on such terms to 100, 300 and 500 ha, depending on the region of the country. Such terms could be enjoyed by broadly understood purchasers, including lessees of large farms, by purchasing some part of land (primarily economic centres), thus increasing their farming certainty.

Another modification of 6 May 1999 amending the Act on management of agricultural property of the State Treasury (Journal of Laws of 1999

No. 49, item 484) provided the Agency with an environment for being more active in shaping the area structure by enabling restricted tenders for the sale and lease of agricultural land from the Agricultural Property Stock of the State Treasury in which the persons referred to in the Act, mostly farmers who intended to enlarge their farms, could participate.

The privatisation process was implemented through the sale<sup>6</sup> and lease<sup>7</sup> of land, and other forms of land administration, e.g. the free transfer of land to authorised entities<sup>8</sup>. Consequently, the Agricultural Property Agency played a significant role, primarily in launching market trade in agricultural land, and substantially increased the private sector's share in the possession of agricultural land. This institution basically created the agricultural lease market in Poland.

### **Statutory restrictions on trade in agricultural property**

Draft revisions of the existing rules for trade in agricultural land appeared already in 2002. The planned amendments were to mitigate adverse effects of the purchase of agricultural land by foreigners following Poland's accession to the European Union (EU) and the related application of a national treatment clause. Therefore, the proposed legal amendments interfered with rules for the transfer of rights to agricultural property. This was reflected in the Act of 11 April 2003 on shaping the agricultural system (Journal of Laws of 2003 No. 64, item 803 as amended). Its provisions restricted the previously functioning free agricultural land market. It introduced the principle that family farms were only farms with no more than 300 ha of UAA in total. It also set out a limit for the sale of agricultural land by the Agricultural Property Agency. Such a transaction

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<sup>6</sup>At the end of the period under consideration, it was the predominant form of land distribution.

<sup>7</sup>Basically, the Agricultural Property Agency established an agricultural (Treasury) lease market in Poland.

<sup>8</sup>Non-market forms of trade in the Stock's agricultural property were of relatively little importance.

may take place if the resulting total area of agricultural land owned by a purchaser does not exceed 500 ha. Education for the farming profession was sanctioned. At the same time, account was taken of the specificity of agricultural activities requiring knowledge and skills in various fields (e.g. at present, knowledge of marketing rules becomes increasingly important). No stringent requirement of having learned agricultural skills was imposed on land purchasers and any secondary or higher education was accepted. Furthermore, the farming profession was opened to persons with five years of on-farm practice. In addition to having appropriate professional qualifications, farmers were required to reside in a municipality where one of agricultural properties, which belonged to their farms, was located.

The Act on shaping the agricultural system set out rules for trade in agricultural property which were designated to help improve the area structure of farms and prevent excessive concentration, while introducing an entity breakdown of farms into family and other farms.

With respect to individual agricultural land market entities, the adopted rules privileged the existing lessees in whom the right of first refusal was vested when leased land was sold by its owner. At the same time, the requirement of concluding a contract of lease with a certified date, at least three years before the date of sale, was introduced.

The introduced legal solutions regulated primarily rules for private trade in agricultural property. They were designated to prevent speculative purchases of agricultural land, excessive concentration and further fragmentation of farms, and to ensure that agricultural activity be pursued by qualified persons.

Control over the functioning of the Act on shaping the agricultural system was transferred from the State to the Agricultural Property Agency which was vested with new powers under which

it also entered the private agricultural land market in Poland in 2003, as the Act enabled the Agricultural Property Agency to intervene on the agricultural property market when the purchaser did not satisfy its terms and conditions.

In certain legal states, the Agency could purchase private agricultural property to resale it later to individual farmers so that they could enlarge their family farms. The purchase is based on the right of first refusal<sup>9</sup> (in the case of sales contracts) or the right of purchase (commonly known as the right of buy-out) when other transactions involving the transfer of agricultural property are concerned (e.g. in the case of contracts of donation, in-kind contribution, succession).

Initially, the powers of the Agency with respect to the right of first refusal and buy-out covered all agricultural property. Such a provision was very cumbersome for both purchasers (they could not purchase a parcel "right away", the need for drawing up two notarised contracts) and the Agricultural Property Agency, because it required a hundred thousand contracts to be verified. Unfortunately, any such transaction had to be reported, even if it was extremely unlikely that the Agency exercised the right of first refusal or buy-out. Failure to notify the Agricultural Property Agency of one's intention to acquire an agricultural parcel rendered a sales contract void.

The amendment of 2010 to the Act of 2003 on shaping the agricultural system (Journal of Laws of 2010 No. 110, item 725) partially limited the right of first refusal and buy-out of the agricultural parcel by the Agricultural Property Agency (agricultural property with an area of at least 5 ha).

Legal regulations introduced under the Act of 2003 on shaping the agricultural system were, according to the authors of the Act, primarily to strengthen the position of family farms and to demonstrate that this model of organisation of agricultural production would be permanently dominant in structures of Polish agriculture. At the same time, they were to prevent uncontrolled concentration of agricultural land outside indi-

<sup>9</sup> From the point of view of the statutory right of first refusal and buy-out, transactions involving the sale of agricultural property were controlled by notaries

vidual agriculture.

The introduced State control over private trade in agricultural land was to protect against speculative purchases, to safeguard interests of family farms, i.e. to facilitate their access to free land when competing for it with large-area units operating outside family agriculture. Drafters of the Act intended it to also protect against the buy-out of Polish land by potential purchasers from other EU Member States who would have the right to purchase land in Poland on the same terms as Polish citizens in 12 years.

The restrictions imposed by the Act on the area of traded land had little impact on the neighbourly market, as trade in land between farmers covered generally small areas and most frequently was to enlarge the existing farms whose users usually could easily demonstrate five years of agricultural practice.

The adopted legal environment for trade in agricultural land was also reflected in distributing land from the Agricultural Property Stock of the State Treasury. The judgement of the Constitutional Tribunal of 19 December 2002 provided grounds for persons, who lost their fortunes in the East (the so-called Bug River property), to seek compensation in the form of land from the Stock of the State Treasury. Although the Act in this respect entered into force as late as in 2004, the Agency refrained from holding tenders for the sale of agricultural property as early as since January 2003.

The Agricultural Property Agency focused on appropriate development of agricultural property of the State Treasury. Consequently, the area structure of individual farms in regions of large concentrations of such land (primarily western and northern areas) is definitely better than in other parts of the country. As the area of the Stock's un-

developed land is getting smaller, the Agricultural Property Agency's role is limited. At the same time, increasing demand for agricultural land and the approaching date (May 2016) of the full opening of the Polish land market for citizens of European Economic Area (EEA)<sup>10</sup> countries and the Swiss Confederation (SC) made the establishment of uniform rules for trade in agricultural land and the full monitoring of trends, which take place on the agricultural property market, an increasingly important problem.

The above circumstances encouraged another revision of provisions and the preparation of new prerogatives regarding trade in agricultural land. In particular, it became necessary to unify and further improve the coherence of rules in place within individual segments of the agricultural land market, i.e. the private segment and the Agricultural Property Agency's segment. It was also necessary to formulate provisions taking into account other legal arrangements having a significant impact on the functioning of the land market and rules for taking records of changes in the ownership and temporary use of agricultural land. These actions were necessary to restrict informal transactions which still took place in neighbourly trade in land property.

### **Amendments of 2016 to trade in agricultural land**

In view of the above, the Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendments to certain other acts<sup>11</sup> (Journal of Laws of 2016 item 585) was another amendment to legislation on trade in agricultural property. The introduced legal regulations thoroughly amended the earlier Act of 2003 on shaping the agricultural

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<sup>10</sup> The EEA covers Community countries, Norway, Iceland and Liechtenstein.

<sup>11</sup> The Act amended: the Act of 23 April 1964 – Civil Code, the Act of 6 July 1982 on land and mortgage registers and on mortgage, the Act of 17 May 1989 – Geodetic and Cartographic Law, the Act of 19 October 1991 on management of agricultural property of the State Treasury, the Act of 11 April 2003 on shaping the agricultural system and the Act of 8 July 2005 on exercising the right to compensation for property left outside the present borders of the Republic of Poland.

system. The provisions of the Act do not apply only to agricultural property (shares, parts of shares in co-ownership):

- designated in full in spatial planning for purposes other than agricultural purposes,
- developed, with an area of up to 0.5 ha (the so-called habitat which does not belong to a farm),
- with an area of less than 0.3 ha,
- being internal roads.

The amended Act on shaping the agricultural system, which is currently in force, significantly narrows the list of persons (entities) entitled to purchase agricultural property. Agricultural land can be purchased:

- as a rule, by individual farmers, i.e. natural persons who run the farm in person, who have documented agricultural skills and who have resided for at least 5 years in (who have been permanent residents of) a municipality where at least one parcel of their farm is located and who have run the farm in person, i.e. who have worked on the farm and who have taken all decisions relating to agricultural activity on that farm. The area of a purchased agricultural property, including the area of land belonging to the purchaser's family farm<sup>12</sup>, may not be more than 300 ha of UAA.

- by the entities and natural persons referred to in the Act, i.e. relatives of a seller (descendants, ascendants, siblings, children of siblings, a spouse, adoptive parents and adoptees), local government units, the State Treasury or the Agricultural Property Agency operating on its behalf, national parks, a church and religious legal person, a successor inheriting by succession and by special bequest, purchasing pursuant to Article 151 or Article 231 of the Civil Code and in the course of restructuring proceedings as part of remedial proceedings;

- by entities and natural persons authorised by way of an administrative decision of the President of the Agricultural Property Agency.

Furthermore, the Act introduced an obligation of running agricultural activity within the purchased agricultural property in person and a prohibition of selling it (transfer of the right of possession, use) to other entities within 10 years of the transfer of ownership<sup>12</sup>. This condition applies primarily to individual farmers and entities authorised by the President of the Agricultural Property Agency to purchase the agricultural property. This restriction does not apply if the agricultural property is purchased by relatives of individual farmers (descendants, ascendants, siblings, children of siblings, the spouse, adoptive parents and adoptees), local government units, the State Treasury or the Agricultural Property Agency operating on its behalf, national parks, the church and religious legal person, the successor inheriting by succession and by special bequest.

The statutory admissibility of the natural and legal persons referred to in the Act on shaping the agricultural system to purchase agricultural property does not equate to the complete freedom of trade in agricultural property by these entities as well. The Agricultural Property Agency enjoys the right of first refusal<sup>14</sup> with respect to the agricultural property or the right of purchase<sup>15</sup> of the agricultural property (also if the property is contributed to a company). The Agency is entitled to assume the purchaser's rights and purchase the property for the price and on the terms set out by contracting parties. If no consent is given, the Agricultural Property Agency, at the written request of the seller, is obliged to make a statement on the purchase of the agricultural property for the price equal to its market value<sup>16</sup>. The seller of the agricultural property may request a court to determine the monetary equivalent of the market value of the agricultural property purchased by the Agricultural Property Agency or make a written statement on the withdrawal of one's request to purchase the property by the

<sup>12</sup> The family farm means a farm run by an individual farmer, with no more than 300 ha, but no less than 1 ha of UAA in total.

<sup>13</sup> At the request of the purchaser, the court may consent that the property be sold earlier if it is due to force majeure.

### Agricultural Property Agency.

The current Act on shaping the agricultural system regulates in detail rules for trade in agricultural land, the purchase of the agricultural property, share or some part of share in the co-ownership of the agricultural property, the purchase of shares in a commercial company which owns the agricultural property – void if effected in breach of the provisions of the Act. In addition to persons with a legitimate interest, the Agency may take legal action to annul the legal transaction for the reasons referred to above. In particular, the following is void:

- the legal transaction without notice to a holder of the right of first refusal<sup>17</sup> or to the Agency,
- earlier sale or transfer of the right of possession of the agricultural property without the court's consent,
- purchase of the agricultural property based on false statements, or false documents or documents attesting to false information.

Generally, the Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury prohibits the sale of Treasury land. Despite its title, however, it does not absolutely prohibit the sale of the State Treasury's property. The wording of the Act provides that the prohibition is temporary and its term is 5

years so far, and the Agricultural Property Agency may sell non-agricultural property (its parts) and agricultural property of up to 2 ha<sup>18</sup>.

In accordance with statutory provisions, long-term (10-year) lease will be the basic form of distribution of land, which was taken over to the Agricultural Property Stock of the State Treasury, until 2021, thus enabling – according to the legislator – rational production planning. Land will be leased through tenders held<sup>19</sup> by regional offices of the Agricultural Property Agency. Individual farmers, who intend to enlarge or establish the family farm, will be able to participate in such tenders. Restricted tenders will cover – as a rule – agricultural land with an area of over 1 ha. When determining the area of a specific undeveloped agricultural property intended for lease through a restricted tender, regional offices of the Agricultural Property Agency will take into account the average UAA per farm in a specific voivodeship<sup>20</sup>. It will be possible to use a higher limit (exceeding 150%) of the average farm area only upon consultation with a social council<sup>21</sup>.

The Act on suspension of sale of property from the Agricultural Property Stock of the State Treasury authorised the minister responsible for rural development to fix rent rates. However, this is so only with respect to restricted tenders for

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<sup>14</sup> The Agency does not enjoy the right of first refusal if the purchaser is: a local government unit, the State Treasury, a relative of the seller; the transaction is effected: upon consent of the President of the Agency, between church and religious legal persons if the purchase enlarges the family farm up to 300 ha of UAA and the purchased agricultural property is located in a municipality where the purchaser resides or in a municipality adjacent to that municipality, in the case of transferring shares admitted to trading on the stock exchange, shares to a relative.

<sup>15</sup> The Agency does not enjoy the right of purchase of the agricultural property if the purchase: enlarges the family farm, is effected upon consent of the President of the Agricultural Property Agency, results from intestate succession or succession by the individual farmer, results from succession by special bequest by the individual farmer, results from a contract with the successor under provisions on farmers' social insurance, by a relative of the seller.

<sup>16</sup> Determined by the Agricultural Property Agency by using the methods of valuing the property provided for in property management provisions.

<sup>17</sup> By virtue of the Act on shaping the agricultural system, a lessee enjoys the right of first refusal if the contract of lease is concluded in writing with a certified date and has been executed for at least 3 years, and the property belongs to the lessee's family farm.

<sup>18</sup> It may sell larger property as well upon consent of the minister responsible for rural development if it is justified on socio-economic grounds.

<sup>19</sup> Depending on the situation in a region and the opinion of local farmers and agricultural organisations themselves, restricted tenders for lease, involving written bids, will be held.



the lease of agricultural land, involving written bids. Written bids submitted in response to the restricted tender for the lease of agricultural land will be evaluated based on established criteria, their weights and accepted scoring rules which do not include the rent criterion. In the absence of written bids, agricultural land from the Agricultural Property Stock of the State Treasury may be leased at public sale. If so, the only criterion for selecting a lessee-farmer will be the rent offered.

Tasks, which are similar to those performed by the Agricultural Property Agency in Poland under the Act on shaping the agricultural system, are performed in France – by Land Management and Rural Establishment Agencies (SAFER), in Italy – by Enti di Sviluppo Agrario (ESA), in Spain – by the Agricultural Reform and Development Institute (IRYDA), in Germany – by Land Valuation and Management Agencies (BWG), in the Netherlands – by the RVOB (since 1 August 2009). In Denmark, property management and regional development are the responsibility of the Department of Agricultural and Fisheries Structures (SLF), while in Belgium – of two land management associations (VLM and OWDR).

Experiences of these countries, primarily of France and Germany, underpinned the establishment of the Agricultural Property Agency. Although the Agency's tasks evolved, they were consistently shaped in accordance with current priorities of the State's agricultural policy.

### **Rules for trade in agricultural property involving foreigners**

There are separate legal regulations on trade in property involving foreigners (natural persons who are not Polish citizens and legal persons established outside Poland) – the property may be purchased after obtaining permits. Rules for purchasing and obtaining a permit for the purchase of property are laid down in the Act of 24 March 1920 on purchase of property by foreigners (as amended)<sup>22</sup>. The permit for the purchase of property<sup>23</sup> by a foreigner is issued at his/her request in the form of an administrative decision and covers a specifically designated property. The minister responsible for the interior issues that permit in agreement with the Minister of National Defence, while in the case of agricultural and forest property – respectively in agreement with the Minister of Agriculture and Rural Development, and upon consent of the Minister of the Environment<sup>24</sup>.

Community law is based on four basic principles for the free movement of goods, persons and capital, and the provision of services. The principle of free exchange applies to trade in property as well. Due to Poland's accession to the European Union, trade in property involving foreigners had to be amended so as to align the Polish legislation with Community law. As part of treaty commitments (Journal of Laws of 2004 No. 80, item 864), the Act of 20 February 2004 amending the Act on purchase of property by foreigners and the Act on

<sup>20</sup> In voivodeships where the average farm area is below the national average, the Agricultural Property Agency will use the national average. This applies to seven voivodeships: Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Śląskie and Świętokrzyskie. If justified, e.g. in order to avoid geodetic divisions, the Agricultural Property Agency allows for increasing the area of the tendered undeveloped agricultural property (up to 50%).

<sup>21</sup> Since 2012, social councils have operated at any regional office of the Agency. Their members are representatives of major social and professional organisations of farmers.

<sup>22</sup> Any purchase of property, purchase or acquisition of shares by the foreigner in breach of the Act is considered as void.

<sup>23</sup> A permit is also required to purchase or acquire shares in a commercial company established in the territory of the Republic of Poland, being an owner or perpetual usufructuary of property.

<sup>24</sup> In some cases, the legislator introduces exemptions from the obligation to obtain the permit, but they do not apply to the purchase of agricultural land with an area of over 1 ha.

stamp duty (Journal of Laws No. 49, item 466) was adopted. According to the amendments introduced, EEA and SC citizens and entrepreneurs have not needed, since 1 May 2004, any permit to purchase property or shares in commercial companies which are owners (perpetual usufructuaries) of property in the territory of Poland<sup>25</sup>. The only exception was the purchase of agricultural and forest property<sup>26</sup> with respect to which a transitional period of 12 years was introduced (i.e. until 2 May 2016). This condition does not apply to EEA and SC citizens who purchase agricultural or forest land 3 or 7 years (depending on a voivode ship where the property is located) after concluding the contract of lease with a certified date if they have run agricultural activity in person and have lawfully resided in the territory of the Republic of Poland for that time.

Since 16 July 2003, trade in agricultural property involving foreigners has been also regulated by the Act on shaping the agricultural system. It enables the Agricultural Property Agency to intervene if the foreigner, the property purchaser, does not meet the conditions referred to in the Act.

The above principles apply to all foreigners. Nevertheless, EEA and SC citizens and companies may purchase agricultural and forest land on the same principles as Poles since 30 April 2016.

## CONCLUSIONS

Having analysed legal regulations on trade in agricultural land, it may be concluded that the State's control function is common in EU Member States. The Polish legislation is no exception to this rule.

With respect to the legal status of trade in property in Poland, the most important post-transformation legislation included: the Act of 1991 on management of agricultural property of the State Treas-

ury, the Act of 2003 on shaping the agricultural system and the Act of 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendments to certain other acts. Legislation on the subject was drafted so as to give special treatment to a certain group of farms (i.e. the so-called family farms) which, according to the Constitution of the Republic of Poland, are the basis of the agricultural system of Poland. Relevant regulations were developed so as to improve the agrarian structure, but they were also to prevent excessive concentration of agricultural land and to promote its transfer to the most appropriate users. However, each of the legal regulations influenced, to a different degree and through different instruments, trade in agricultural property. Consequently, three main periods of introducing specific legal solutions in trade in agricultural land may be identified. They differed primarily in the degree of liberalisation of the transfer of rights to agricultural property, primarily in private trade in agricultural property. However, regardless of amendments to legal regulations, trade in agricultural land always took place in two separate segments, where different procedures with respect to rules for purchasing land from the Stock of the State Treasury existed, and in trade between natural persons.

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<sup>25</sup> This also applies to purchasing or acquiring shares in companies being owners or usufructuaries of property located in Poland, including agricultural or forest property.

<sup>26</sup> This also applies to the purchase of the so-called second homes.