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Legal frame for the succession/transfer of agricultural property between the
generations and the acquisition of agricultural property by legal persons
– in Poland**

Abstract

The article presents the most important rules concerning the transfer and inheritance of agricultural real estate in Poland, as well as the rules for the acquisition of such real estate by legal persons. In the part concerning the transfer of agricultural property, the methods and principles of acquisition agricultural property (including inheritance) by young farmers are indicated. In particular, the author focused on showing the facilities that favor the generational change in Poland. In the section on the acquisition of agricultural real estate by legal entities, the reader can find information about the conditions for such acquisition by entities from outside Poland. In particular, restrictions have been indicated, and the procedure for acquisition real estate has also been discussed.

Keywords: agricultural property, legal persons, acquisition, succession, transfer, generation change, young farmer, Poland

1. The rules of transferring agricultural property between generations

1.1. Introduction

Transferring farms between generations is an important element of agricultural land management, because favorable age structure of farm owners is one of the key elements that may affect the competitiveness of agriculture. In Poland, this structure is favorable. Only 8.4% are farmers over 65,¹ while in the EU countries, there are 33%² such farmers. However, it should be noted, that despite the financial situation of households in Poland, the average monthly disposable income per capita in the professional group of farmers is still at one of the lowest levels. Moreover, there are also significant disparities at the level of individual countries.³ The low profitability of the Polish agricultural sector, may significantly reduce the attractiveness of the farmer profession. Increasing the attractiveness of this profession, must therefore be associated with increasing the competitiveness and profitability of agriculture, which in

Artur Kubaj: Legal frame for the succession/transfer of agricultural property between the generations and the acquisition of agricultural property by legal persons – in Poland. *Journal of Agricultural and Environmental Law* ISSN 1788-6171, 2020 Vol. XV No. 29 pp. 118-132, <https://doi.org/10.21029/JAEL.2020.29.118>

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** *The research of this article was supported by the Ferenc Mádl Institute of Comparative Law.*

¹ Poczta 2013, 164.

² European Commission 2020.

³ Ministerstwo Rolnictwa i Rozwoju Wsi 2020, 8.



<https://doi.org/10.21029/JAEL.2020.29.118>

turn will give farmers financial satisfaction. The attractiveness of agriculture should be related with the attractiveness of rural areas in an integral way. Therefore, efforts to eliminate development disproportions in the urban-rural relationship, should not be limited. The high level of mobility, makes it easier for young and well-educated people to make decisions about changing jobs. Therefore farmers should be ensured, that their hard work is adequately rewarded and that living conditions in rural areas are comfortable. Access to good quality basic public services in rural areas is certainly an argument for young people to enter and to stay in agriculture and rural areas. Agriculture is characterized by high capital intensity, therefore, apart from barriers related to the access to agricultural land, also the cost of farm technical equipment constitutes a huge financial effort. Support for the farms modernization is therefore an indispensable element, and in the case of a young farmer, who starts farming for the first time, it should be correspondingly higher.

It should also not be forgotten, that agriculture varies greatly among Member States. Support from the Common Agricultural Policy is necessary to increase the attractiveness of agriculture and rural areas in individual countries and regions, while the effectiveness of this support will depend on the appropriate adjustment of the scope of support to the needs of a given region. Maintaining the Community approach, the Member States should have a certain freedom in shaping this support, e.g. by defining the group of recipients of support.

1.2. Inter vivos transfer of agricultural property

1.2.1. Types of contracts leading to a generational change in agriculture

In the Polish legal system, inter vivos transfer of ownership of an agricultural holding means, in principle, the transfer of ownership of agricultural property that is part of the holding. A farm in civil law turnover is a collection of things (*universitas rerum*). The transfer of the farm inter vivos is therefore synonymous with the transfer of agricultural property (which is part of this farm). On the other hand, an 'agricultural holding,' may be acquired according to the regulations of Act of 20 December, 1990 on the social insurance of farmers, Journal of Laws of 2020, item 174, as amended, hereinafter: 'Act on the social insurance of farmers'⁴ and Act of 23 April, 1964 - Civil Code, Journal of Laws of 2019, item 1145, as amended, hereinafter: 'Civil Code.'⁵

In Poland, there are four ways in which a farmer can transfer his agricultural property to the younger generation: (1) a contract of sale, (2) a contract of donation, (3) a contract of annuity, (4) a contract with a successor.

The contract of sale, is an agreement regulated in the Civil Code⁶. By the contract of sale, the seller shall assume the obligation to transfer to the buyer the ownership of a thing and to release the thing to him, while the buyer shall assume the obligation to collect the thing and to pay the seller the price.

⁴ Act on the social insurance of farmers, Art. 84.

⁵ Civil Code, Art. 981 and 1058.

⁶ *Ibid.* Art. 535.

Detailed regulations, regarding the sale of property, when it is agricultural, can be found in the Act of 11 April, 2003 on the shaping of the agricultural system, Journal of Laws of 2020, item 1655, hereinafter: 'Act on the shaping.' Agricultural property, can be purchased, by any Polish and foreign natural person (from the EU and outside the EU), under a number of requirements. These requirements apply to agricultural properties with an area of 1 ha and more. Other properties, not covered by the requirements, are properties that: are not part of the State Treasury's Agricultural Property Stock, are not internal roads, have not been sold to former tenants in a special procedure (Act of 19 October, 1991 on the management of agricultural property of the State Treasury, Journal of Laws of 2020, item 396, as amended hereinafter 'Act on management',⁷ and which are covered with ponds in less than 70%).

The most important limitation in the acquisition of such property by a natural person, is that the buyer should be a person who: (1) holds agricultural qualifications, (2) is an owner, holder of perpetual usufruct, owner-like possessor or lessee of agricultural properties with a total utilised area not exceeding 300 ha, (3) has resided for at least 5 years in a municipality where one of the agricultural properties is situated, (4) manages the farm personally for this period (5 years). A farm – should be understood as agricultural land if it constitutes (or may constitute) an organized economic unit – in which the area of the agricultural property is not less than 1 ha. A person who meets these requirements, is called an individual farmer.⁸

Exempt from the obligation to meet these requirements, includes seller's relatives. Relatives should be understood as descendants, ascendants, siblings, children of siblings, siblings of parents, spouse, adoptive and adopted persons and stepchildren.⁹ Undoubtedly, such an exemption has a positive effect (i.e. facilitates, due to the lack of the need to meet the above-mentioned requirements related to the purchase of property), the transfer of real estate to younger persons who are members of the seller's family. Other buyers exempt from these requirements are for example: local government units, the State Treasury, the Church and religious associations (including Catholic, Orthodox, Jewish religious communities).¹⁰

Other natural persons (i.e. those who do not meet the requirements and are not exempt from these requirements) must obtain the consent of the General Director of the National Center for Agricultural Support (hereinafter: the Government Agency), issued in the form of an administrative decision. In the first half of 2020, 4.293 such decisions were issued. Most of them (3.977) were positive.¹¹ There are two procedures the buyer can choose to obtain consent. In the first one, the seller submits an application for sale, in which he should prove that: (1) it was not possible to sell to an individual farmer, (2) the buyer undertakes to conduct agricultural activity on the acquired agricultural property, (3) as a result of the acquisition, there shall be no

⁷ Act on the management, Art. 42 sec. 1 and 6.

⁸ Act on the shaping, Art. 6.

⁹ Ibid. Art. 2 point 6.

¹⁰ Ibid. Art. 2a sec. 3.

¹¹ KOWR (2020), 2.

excessive concentration of agricultural land.¹² According to the second procedure, such consent may be obtained if buyer: (1) has an agricultural qualifications, (2) undertakes to conduct agricultural activity on the acquired agricultural property, (3) undertakes to reside for a period of 5 years, from the date of acquiring the agricultural property, in in the area of the municipality in which one of the agricultural property that will be part of his farm is situated.¹³ Of these two procedures, natural persons can use both procedures, while legal persons can apply for consent only under the rules of the first procedure.

When purchasing an agricultural property under a sale contract, the State Treasury has a pre-emption right. However, it does not serve when the pre-emptive right is used by the leaseholder of this real estate who meets the requirements (e.g. he has agricultural qualifications), his farm is not larger than 300 ha, and also when the agricultural real estate has an area of less than 0.3 ha.¹⁴

A natural person, after purchasing an agricultural property under a contract of sale, has significant limitations: (1) it is obliged to manage the agricultural holding that the agricultural property became the part of, for a period of at least 5 years; (2) for 5 years, it cannot sell acquired property or even give it to other entities. The obligation to manage a farm (limitation no. 1 in particular exempts those buyers, who purchased real estate as a seller's relatives. The ban on the dispose of real estate (limitation no. 2 does not apply, inter alia, to situations where the buyer disposes of it or gives it to his relative. Neither of these two restrictions, however, applies to those acquired properties that have an area of less than 0.3 ha, as well as those located in the city with an area of less than 1 ha. The five-year ban on the dispose of real estate, may be excluded after the acquisition, if Government Agency approves it. The consent to sell before the expiry of 5 years is granted by way of an administrative decision, in cases justified by the important interest of the purchaser of the agricultural property or the public interest.¹⁵

Another method of acquiring real estate, which may be applied in the case of a generational change in agriculture, is a contract of donation. This contract is also regulated in the Civil Code.¹⁶ By a contract of donation, the donor shall assume the obligation to make a gratuitous performance for the benefit of the donee at the expense of his property. As in the case of a sales contract, additional, important regulations are included in the Act on the shaping. Under these additional regulations, if an agricultural property has an area of larger than 1 ha, the buyer must meet the same requirements as the buyer under the contract of sale (e.g. must have agricultural qualifications) or obtain the consent. The only difference is when applying for consent, donor do not have to show that it was not possible to sell property to individual farmer. The same circumstances, as in the case of the sales contract, result in the lack of the necessity to meet the requirements (e.g. when the donee is donor's relative).

¹² See Judgement of Voivodship Administrative Court in Warsaw of 27 August, 2019 no. IV SA/Wa 2728/18.

¹³ Act on the shaping, Art. 2a sec. 4 points 1–3.

¹⁴ Ibid. Art. 3.

¹⁵ Ibid. Art. 1a and 2b.

¹⁶ Civil Code, Art. 888.

In the case of a donation contract, the State Treasury has no pre-emptive right (as in the case of a contract of sale), but the State Treasury has the right to acquire property for a price agreed by the parties to the donation contract.¹⁷ This right does not apply when the following circumstances occur jointly: (1) the donated property will enlarge the farm of the farmer who meets the mentioned requirements (e.g. he has agricultural qualifications), (2) the property is located in the municipality of residence (or the neighboring municipality) of the donee. Moreover, the State Treasury does not have this right, when the donee is donor's relative.

The third type of real estate acquisition, that can be used by farmers who want to transfer their property to the younger generation, is a contract of annuity. It is regulated in the Civil Code: "If, in exchange for the transfer of the ownership of an immovable property, the acquirer has assumed the obligation to provide the transferor with means of subsistence for life (...), he shall, barring a contract to the contrary, accept the transferor as a member of his household and provide him with food, clothing, accommodation, light and fuel, ensure him the proper help and care in illness, and give him, at his own expense, a funeral in accordance with the local customs."¹⁸ Additional regulations, as in the previous types of contracts, can be found in the Act on the shaping. The requirements, obligations and the right to acquire, are the same as for the donation agreement mentioned above.

The contract with the successor is the last of the presented contracts, which allows to transfer an agricultural property to younger farmers. It is an agreement designed to encourage aging farmers to transfer their agricultural property to a younger generation. It is regulated in the Act on the social insurance of farmers. By an agreement with a successor, a farmer who is the owner (co-owner) of a farm, undertakes to transfer to a person younger than him by at least 15 years (successor) the ownership (share in joint ownership) and possession of the farm upon acquiring the right to a retirement pension or invalidity pension, if the successor will be working on this farm till then. The contract with the successor may contain other provisions, in particular concerning mutual benefits of the parties¹⁹. Special provisions relating to this contract – like all those relating to agricultural property – can be found in the Act on the shaping. In relation to this contract, the same rules apply as the acquisition under the donation and annuity contract - with one difference: the right of the State Treasury to acquire property is excluded.

However, contracts with the successor are not concluded very often in Poland. It is caused by the lack of understanding of it by farmers and legal problems related to the overlapping (duplication) of some of its regulations with the provisions of the Civil Code. Significantly more often, farmers who want to donate their agricultural property to their children, choose a donation or annuity contract. In the case they want to sell their property to the younger generation, but outside the family – farmers choose a contract of sale.

¹⁷ Act on the shaping, Art. 4.

¹⁸ Civil Code, Art. 908.

¹⁹ Act on the social insurance of farmers, Art. 84.

1.2.2. The influence of the transfer of agricultural property on the lease

The sale of agricultural property under the agreements discussed above, often takes place during the lease. In such a situation, first of all, in the case of a contract of sale, the lessee has a pre-emption right²⁰. He is entitled to it, if he meets the requirements (i.a. he has agricultural qualifications) and his farm is not larger than 300 ha). Moreover, in each case, the buyer enters into a lease - he becomes the lessor. However, in a situation where the real estate is sold to a relative, the lease agreement may continue. The buyer from the seller's family is not obliged to cultivate the acquired property. However, if the sale is made to a natural person outside the family, the buyer has (inter alia) obligation to personally manages the farm, which includes the acquired property. This means that the current lessee, can no longer use the property. The lease agreement should therefore be terminated, in order to allow the new owner (from outside the seller's family) to fulfill his obligation to cultivate the acquired property for 5 years.

1.2.3. Impact of the transfer of agricultural property on the seller's retirement

Pursuant to the provisions of the Act on social insurance of farmers,²¹ the agricultural retirement pension is granted to an insured person who meets all of the following conditions: (1) has reached retirement age; the retirement age for women is 60 and for men 65; (2) has been subject to retirement and disability pension insurance for a period of at least 25 years. However, the amount of the pension is partially suspended until the end of agricultural activity (the suspended part may even constitute 95% of the full pension).²² The cessation of activities can be achieved, among others, by selling properties to younger farmers under the agreements discussed above. Such a structure is aimed, on the one hand, at encouraging farmers of retirement age to sell their property, and, on the other hand, at discouraging their purchase by other farmers who are also of retirement age. As a result, these properties are sold to younger farmers.

1.3. Inheritance of agricultural property/farms in Poland

In agriculture, generational change also takes place through mortis causa ordinances. In Poland, there are basically no separate regulations that would regulate the inheritance of agricultural property/farms in a different way than other (non-agricultural) property. Until 2001, such regulations did exist in the Civil Code (they specified the requirements for a heir), but were found by the Constitutional Tribunal to infringe, among others, the principle of equality set out in the Constitution of the Republic of Poland.²³

²⁰ Act on the shaping, Art. 3.

²¹ Act on social insurance of farmers, Art. 19 sec. 1.

²² Ibid. Art. 28.

²³ See Judgement of the Constitutional Tribunal of 31 January, 2001 No. P. 4/99.

Currently, the regulations concerning agricultural properties/farms also exist in the Civil Code, but they are applied only to inheritances opened before February 14, 2001. Currently, the only regulations distinguishing the position of heirs, can be considered the provisions of the Act on the shaping, which (in a specific factual and legal state) give Government Agency the right to acquire agricultural property from in the inheritance mass of the deceased owner²⁴. It applies only to the situation, where the inheritance takes place on the basis of a will, and the heir indicated by the testator is a person out from the family (i.e. he is not a relative), who does not meet the requirements. The purpose of this regulation is to protect family farms and ensure proper management and proper management of agricultural land.

1.4. Facilitations for young farmers

1.4.1. Facilitations in the field of taxation

Many young farmers acquire their first agricultural land by inheriting from their family members. Thus, an important incentive for such people to continue running a farm on inherited land, are tax remissions, obtained under the condition of starting agricultural activity.

According to the Act of 28 July, 1983 on inheritance and donation tax, Journal of Laws of 2019, item 1813 as amended,²⁵ hereinafter ‘Act on inheritance,’ acquisition by inheritance by natural persons properties located in Poland, thus also agricultural property, is in usual situations subject to inheritance tax. However, according to Art. 4 sec. 1 point 1 of the Act on inheritance, the acquisition of agricultural land, is tax-free, in a situation where, as a result of the acquisition, a farm is created or enlarged, and the area of the farm created or resulting from the extension will not be less than 11 ha and not more than 300 ha and the farm will be managed by the successor for a period of at least 5 years.

Another tax relief, for the young generation of farmers, is in the Act of 26 July, 1991 on personal income tax Journal of Laws of 2020, item 1426, as amended²⁶, hereinafter: ‘the PIT Act.’ The provisions of the PIT Act (and therefore the taxes resulting from it) do not apply to revenues from agricultural activities (except revenues from special departments of agricultural production and revenues from forest management).

Further exemptions, that can be used by young farmers, include the provisions of the Act of 15 November, 1984 on agricultural tax Journal of Laws of 2020, item 333. In their light, land intended for the creation of a new farm (or extension of an existing farm) to an area not exceeding 100 ha, is exempt from agricultural tax for 5 years.

Moreover, according to the provisions of the Act of 9 September, 2000 on tax on civil law transactions Journal of Laws of 2020, item 815, as amended, the sale of land constituting a farm is tax-free, in a situation where, as a result of the acquisition:

²⁴ Act on the shaping, Art. 4.

²⁵ Act on inheritance, Art. 1 sec. 1 point 1.

²⁶ PIT Act, Art. 2 sec.1 points 1 and 2.

a farm is created or enlarged, the area of this farm will not be less than 11 ha and not more than 300 ha and the farm will be managed by the buyer for a period of at least 5 years from the date of purchase.

1.4.2. Facilitations related to financial support

1.4.2.1. Informing

The European Union obliges the Managing Authority for the Rural Development Program (RDP) 2014-2020 to inform the public, recipients of activities and all interested parties that the projects co-financed by the European Agricultural Fund for Rural Development (EAFRD) could be implemented thanks to financial aid.²⁷ This obligation also applies to the support instrument for young farmers. Provision of advertising and promotion RDP 2014-2020, is implemented through the RDP Communication Strategy 2014-2020.²⁸ Conducted communication allows to implement certain goals in the Program, for example by effectively informing about the possibilities offered by the Program and presenting its effects. Information and promotion activities are matched to target groups and their needs. Full information on the implemented activities of the Program, including activities supporting young farmers, is available on the website of the Ministry of Agriculture and Rural Development, as well as on the website of the paying agency, i.e. the Agency for Restructuring and Modernization of Agriculture. In addition, a number of information activities are implemented, such as programs, news and spots broadcast on television and broadcasts on radio stations, informing about the possibility of using individual support instruments offered under RDP 2014-2020. Due to the increasing access to the Internet, there are also activities which publish information on the possibility of using support for young farmers via social media (mainly Facebook and Twitter) and on specialized internet portals. Some of these activities were dedicated (in whole or in part), to the young farmers – and thus, the generational change that takes place thanks to the support in rural areas. The RDP 2014-2020 information policy, including in the field of support for young farmers, results in a large number of applications submitted for support from RDP 2014-2020 by potential beneficiaries.

²⁷ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December, 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, Official Journal of the European Union L 347/487, Art. 66 sec. 1, lit. c and i.

²⁸ Prepared in accordance with the provisions of the Commission Implementing Regulation (EU) No 808/2014 of 17 July, 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the EAFRD, Official Journal of the European Union L 227/18.

1.4.2.2. Financial programs supporting the transfer of farms to young farmers in order to encourage them to a generational change

Payments to young farmers in the first pillar of the Common Agricultural Policy (CAP). The payment for young farmers in the first pillar of the CAP, is intended to facilitate the establishment of farms by young people and their structural adjustment after the start of their activity. This support is also intended to contribute to maintaining the vitality of rural areas by preventing land abandonment and depopulation of rural areas, and to maintain generational replacement in the countryside. Payment for young farmers, is granted in Poland to the area of land covered by the single area payment not exceeding 50 ha. Since the introduction of payments in 2015, the number of applicants for this support has been systematically growing: from 95.4 thousand in 2015 to approx. 162 thousand in the 2019 campaign. The area reported for support is also growing every year: from approx. 1.1 million ha in 2015 to approx. 1.8 million ha in 2019. The total amount of support under this instrument is on average approx. EUR 68 million per year, which is approx. 2% of the financial envelope. The amount of the payment rate is determined as a value between 25% and 50% of the national average payment per hectare. In the 2019 campaign, the payment rate is approximately EUR 37.7/ha.²⁹

Bank loan principal repayment. According to Polish regulations,³⁰ there is possibility of granting partial aid repayment of the capital of a bank loan intended to finance part of the costs of purchasing agricultural land by young farmers in order to create or enlarge a farm, under the special conditions.³¹ The total amount of aid in the form of a partial repayment of capital may not exceed 60% of the amount of the bank loan granted and may not be higher than the PLN equivalent of PLN 20.000 euro (converted according to the average exchange rate of the National Bank of Poland established on the day of granting the aid).

Support for farmers under existing rural development programs. In Poland, since 2004, young farmers have been supported by appropriate support instruments under following programs: Sectoral Operational Program 'Restructuring and modernization of the food sector and rural development 2004-2006' (SOP), Rural Development Program for 2007-2013 (RDP) 2007-2013) and the Rural Development Program for 2014-2020 (RDP 2014-2020). One of the main goals of each of the above-mentioned programs, is to improve the competitiveness of the agricultural sector, while support for young farmers is to serve this purpose through generational replacement in agriculture.

²⁹ Ministerstwo Rolnictwa i Rozwoju Wsi 2019, 3.

³⁰ Regulation of the Council of Ministers of 27 January, 2015 on the detailed scope and methods of implementing certain tasks of the Agency for Restructuring and Modernization of Agriculture, Journal of Laws of 2015, item 187, as amended, § 3.

³¹ Commission Regulation (EU) No 702/2014 of 25 June, 2014 declaring certain categories of aid in the agricultural and forestry sectors and in rural areas compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union, Official Journal of the European Union L 193/1, Art. 18.

It is important for the competitiveness of the Polish agricultural sector to maintain a favorable age structure in the agricultural population. Young farmers are better educated and have greater tendency to introduce new solutions and innovations. For these reasons, they determine the development of the agricultural sector. This means, that this kind of support is of great importance. The instrument supporting young farmers starting agricultural activity under RDP 2014-2020 is the sub-measure 'Assistance in starting business activity for young farmers,' operation type 'Bonuses for young farmers.' The support concerns the development of agricultural activity on a farm in terms of plant or livestock production, as well as preparation for sale of agricultural products produced on the farm, by a young farmer, i.e. a person who starts running a farm for the first time as the sole farm manager, is no more than 40 years old and has appropriate professional qualifications (resulting from education or work experience in agriculture) or will undertake to complete professional qualifications (education) within three years from the date of notification of the decision on granting aid. The start of agricultural activity on a farm should take place not earlier than 24 months before the date of submitting the application for aid and begins on the day when the person applying for the aid becomes the owner or takes possession of a farm with an area of at least 1 ha of agricultural land. The aid in the amount of PLN 150.000 is paid in two installments: 1st installment – 80% of the aid amount (within 9 months from the date of delivery of the decision on granting aid); 2nd installment – 20% of the aid amount (after the business plan is properly implemented). The applicant presents a business plan for the development of the farm in terms of agricultural activity or preparation for sale of agricultural products produced on the farm. The business plan should be implemented within 3 years from the date of payment of the first installment of aid. It is possible to extend the implementation of the business plan to a maximum of 4 years. A farm indicated in the business plan: (1) has an area of agricultural land equal to at least the national average; (2) at least 70% of the minimum size referred to in the point above (basic part of the holding) is owned by the beneficiary; (3) has an economic size of not less than 13,000 euro and no more than 150 thousand euro. As a result of the implementation of the business plan, it is necessary to document the increase in the economic size of the farm by at least 10% in relation to the baseline value. The beneficiary also undertakes to: (1) conduct business activity as a manager at least until 5 years from the date of payment of the 1st installment of aid; (2) to be a subject of social insurance for farmers, by a period of at least 12 months; (3) keeping simplified accounting on the farm. The head of an agricultural holding conducts business activity on an agricultural holding personally (he works on this holding and makes all decisions concerning the holding), on his own account and on his own behalf, bears costs and benefits in connection with its running.³²

³² Act of February 20, 2015 on supporting rural development with the participation of the European Agricultural Fund for Rural Development under the Rural Development Program for 2014-2020, Journal of Laws of 2020, item 1371.

1.4.2.3. Facilitation of real estate acquisition

Facilitations for young farmers in the field of real estate trading on the private market have already been mentioned above in Chapter 1.2. ('Inter vivos transfer of agricultural property'). The most important of the facilitation indicated there, supporting the generational change in agriculture, was the release from the requirements and obligations, in a situation where the buyer is the seller's relative.

However, it is also possible to purchase property from the State Treasury. The issues related to the acquisition of such land are regulated by the Act on the management. In order to sell the land, Government Agency organizes auctions, in the first place, for the individual farmers. It should be noted, however, that in that auctions may also participate persons who, in order to recognize them as an individual farmer, they do not meet only the requirement for a 5-year period of personal farming, if these persons are not more than 40 years old³³ (the so-called 'young farmers').

2. The rules of purchasing agricultural property by legal persons

2.1. Introduction

The most important regulations concerning the acquisition of agricultural property by legal persons can be found in the Act of 24 March, 1920 on real estate acquisition by foreigners, Journal of Laws of 2017, item 2278, and the Act on the shaping.

2.2. Acquisition of agricultural property by Polish legal entities and from other EU countries as well as Iceland, Norway, Liechtenstein and Switzerland

Legal persons, due to the fact that by their nature they cannot meet the requirements for a preferred purchaser of agricultural property (i.e. they cannot have agricultural qualifications), are forced to apply for the consent of the Government Agency. In order to obtain such consent, the seller submits an application for sale, in which he should prove that: (1) it was not possible to sell to individual farmer, (2) the buyer undertakes to conduct agricultural activity on this property (3) there will be no excessive concentration of agricultural land.

Showing, that it was not possible to sell to an individual farmer, is as follows. First, the seller should post an advertisement on a website specially created for this purpose. Such an advertisement should include: (a) the designation of the agricultural property being sold, including data from the land and building records regarding its designation, area, valuation class and type of agricultural land, and the land and mortgage register number or a set of documents kept for this property; (b) description of the buildings and other property components included in the sold agricultural property; (c) information on the intended use of the agricultural property sold in the local spatial development plan, in the local revitalization plan, in the local reconstruction plan, and in the absence of a local plan – information on the location of

³³ Ibid. Art. 3 sec. 1 point 6 lit. a.

the public purpose investment determined in the final decision on the location of the public purpose investment, information on the manner of development the area and development conditions specified in the final decision on development conditions; in the absence of a final decision on the conditions of development and land development – information on the findings of the study of conditions and directions of spatial development of the commune; (d) the price of agricultural real estate; (e) the time limit for submitting a reply to an agricultural property advertisement, which may not be less than 30 days from the date of its publication. The condition of the impossibility of sale will be met when: (a) no individual farmer submits a response to the advertisement and (b) the price of agricultural property, which is not built-up or without plantings, specified in the advertisement of agricultural property, does not exceed by 50% or more the average price of agricultural land for a given valuation class of land in a given voivodeship for the quarter preceding the date of reporting the average price of agricultural land by the Central Statistical Office (unless the seller of the agricultural property has an appraisal report which shows that the price of the agricultural property offered by his property is actually so high). As far as the lack of response to the advertisement is concerned, apart from its complete lack, it is considered that the reply to the advertisement about an agricultural property was not submitted also in the case when: (1) the price of the agricultural property proposed in response was over 5% lower than that specified in the advertisement and was not accepted by the seller or (2) has been submitted after the deadline. The response to the advertisement should contain at least: (a) the proposed purchase price of an agricultural property, (b) the name and surname of an individual farmer who intends to buy an agricultural property, together with an address, (c) a statement that he is an individual farmer. (There are also regulations preventing bogus advertisements. Both – the seller, who would place the advertisement without the intention to conclude a contract of sale, and the entity that would submit a response to the advertisement about agricultural real estate without the intention to conclude a contract, are obliged to repair any damage caused by their apparent actions). After completing the procedure related to the advertisement, the seller of the property has 6 months (from the expiry of the advertisement validity) to submit the application for consent to the sale the property.

The second condition, i.e. concerning agricultural activity, will be met, if the person representing the legal person submits a declaration in which he undertakes to conduct such activity.

The third condition will be met if there is no ‘excessive concentration’ of agricultural land on the buyer side after the transaction. Agricultural land is: arable land, orchards, permanent meadows, permanent pastures, built-up agricultural land, land under ponds and land under ditches.

After obtaining the consent, the legal person will have obligations: (1) for 5 years manage a farm which includes the acquired property; (2) for 5 years, it cannot sell it or even give it to other entities. However, in cases justified by the important interest of the purchaser of agricultural real estate or the public interest, Government Agency may consent to the earlier disposal (i.e. before the 5-year period expires).

2.3. Acquisition of agricultural real estate by legal entities other than the EU countries, Iceland, Norway, Liechtenstein and Switzerland

Legal persons from out of the EU countries, Iceland, Norway, Liechtenstein and Switzerland, are: (1) a legal person established in a country other than the EU, Iceland, Norway and Liechtenstein and Switzerland; (2) a company without legal personality, which has its registered office abroad, established in accordance with the legislation of foreign countries, belonging to a natural person without citizenship of one of the EU countries, Iceland, Norway, Liechtenstein or Switzerland or a legal person established outside these countries; (3) legal person and commercial company without legal personality, established in the territory of Poland, but controlled directly or indirectly by the persons or companies mentioned earlier (in points 1 and 2). Controlling the company means that a legal or natural person from out of the above-mentioned countries, holds directly or indirectly more than 50% of votes at the shareholders' meeting or general meeting or has a dominant position. The company has a dominant position when: (a) it is entitled to appoint or dismiss the majority of members of the management board of another capital company (subsidiary) or (b) is entitled to appoint or remove the majority of members of the supervisory board of another capital company (subsidiary) or (c) holds directly or indirectly a majority of votes in the subsidiary.

The rules for the acquisition of agricultural property by legal entities from out of the EU, as well as Iceland, Norway and Liechtenstein and Switzerland are the same as for legal entities from EU countries, as well as Iceland, Norway and Liechtenstein and Switzerland – with one difference. Namely, it is the obligation to obtain the permit of the Minister of the Interior. This document is issued, by way of an administrative decision, by the minister responsible for internal affairs, unless the Minister of National Defense and the Minister of Agriculture and Rural Development raise an objection. Such objection is expressed by way of a decision within 14 days from the date of delivery of the application by the minister competent for internal affairs (in particularly justified cases, it may be extended to 2 months). A permit is issued to a legal person if: (1) the acquisition of property does not endanger the defense, state security or public order, and is not opposed by social policy and public health considerations; (2) there are circumstances confirming ties with Poland. The circumstances confirming the ties of a legal person with Poland may include, in particular, the performance of economic or agricultural activities in the territory of Poland, in accordance with the provisions of Polish law. Such an application must contain (1) designation of the applicant and its legal status; (2) designation of the property being purchased; (3) name of the transferor; (4) specification of the legal form of property acquisition; (5) information about the purpose and possibility of acquiring property. A legal person should attach to the application documents confirming its relationship with Poland. The area of property, should be justified by actual needs resulting from the nature of the economic activity performed. Before issuing a permit, the Minister of the Interior may: (1) request the presentation of evidence and information necessary to consider the application; (2) verify (also with the help of the competent government administration bodies), that the transaction will not endanger the defense, state security or public order, and whether it will be in the interest of the state.

The permit may specify special conditions for the acquiring legal entity, the fulfillment of which will depend on the possibility of its acquisition.

3. End

The above rules for real estate transactions, both within the generational change and among legal entities, take into account the Commission's interpretative communication on the acquisition of agricultural land and European Union law.³⁴ According to it, the EU Treaties allow for the introduction of restrictions on foreign investment in agricultural land when they are proportionate, aim to protect the legitimate public interest (including limiting excessive land speculation), but at the same time these regulations cannot discriminate against citizens of other EU countries due to nationality. On the one hand, the discussed provisions very well protect agricultural properties against their speculative purchase at the expense of family farms, and on the other hand, they comply with the principle of proportionality, protect the legitimate public interest and do not discriminate buyers on the basis of nationality.

³⁴ European Commission 2017, 5.

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