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LEGAL PRINCIPLES OF MANAGING AGRICULTURAL LANDS IN POLAND AND THEIR IMPACT ON CHANGES IN THE AGRARIAN STRUCTURE

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Abstract

The article assesses legal regulations regarding managing agricultural lands in Poland. The paper presents, first of all, the scope of activity of the Agricultural Property Agency, which is a significant institution on the property market. This institution started its activity on 1 January 1992 and its main task was to take over all state agricultural property and to manage the property in compliance with the regulations. Secondly, the article analyzes basic regulations concerning the sale and lease. They both give legal title to organize family as well as large farms. It also presents information about perpetual usufruct. Additionally, the article shows the EU instruments which have an essential impact on changing the agricultural structure, namely structural pensions and bonuses for young farmers. In the summary the Author states that after the political transformation, the Polish legislator introduced new solutions regarding the management of agricultural lands. The agrarian structure is highly influenced by the activity of the Agricultural Property Agency and some economic instruments. Although in recent years many changes have been made, Polish agricultural farms are still not big enough compared with the farms in the old member states. Therefore, there is a big need for structural changes to be made.

Keywords

agricultural lands, agrarian structure, Agricultural Property Agency, sale, lease, EU funds, structural pensions, bonuses for young farmers.

1 Introduction

Running an agricultural activity requires an organized set of means of production. The most important means of production is, undoubtedly, land used to produce plant products. In order to ensure uninterrupted course of an agricultural activity based on agricultural lands it is essential to possess lands in an autonomous and stable way. It is guaranteed by the ownership title to lands. Except for the ownership title to lands, however, the running up and organizing farms in Poland is often based on lease and sometimes on the right of perpetual usufruct or usufruct. In Poland there is the biggest number of agricultural farms in the European Union. As of 30 June 2010, there were 1 583 000 agricultural lands bigger than 1 ha[1]. It is estimated, however, that only about 500 000 of them run a business activity to sell their produce on the market. One of the serious problems of Polish agriculture concerns too small surface area of agricultural farms. Therefore, it is crucial to change an agrarian structure. Although an average surface area of farms has increased in recent years, they are still too small compared with those from the old countries of the European Union. The biggest agricultural farms are in France (more than 50 ha), in Germany (43,6 ha) and Spain (26,9 ha). Polish agriculture is

[1] Since 2002, the number of small farms, of a surface area amounting to 1-5 ha, has decreased by 22,7 percent. At the same time, the number of farms bigger than 50 ha has increased by 28,8 percent, and the farms of a surface area from 30 to 50 ha – by 11 percent, http://www.stat.gov.pl/gus. [As on: May 2012].

characterized by a fragmented structure. The average surface of an agricultural farm amounted to about 7 ha in 2005 (CZYŻEWSKI, STĘPIEŃ 2009: 13), and to 10,38 ha in 2012[2].

Once Poland joined the European Union and started to be covered by the Common Agricultural Policy, the need of structural changes has undoubtedly increased. It results from the fact that only a stable agricultural activity on bigger agricultural farms is to make Polish agricultural producers competitive on the EU market and to help them to use the financial aid in an effective way. It refers, for example, to the aid coming from the programme designed to improve agricultural farms. At the same time, it should be indicated that some EU programmes, such as structural pensions[3] or bonuses for young farmers encourage the older generation farmers to stop an agricultural activity and promote bigger, more modern units set up by young farmers.

Agricultural farms of a small surface area usually do not generate sufficient income. That is why, agricultural producers have to look for employment in other branches of the economy or to start running a non-agricultural business activity. Persons running such farms usually do not have resources to develop a production unit, to introduce new technologies and to adjust the activities to the EU requirements. Moreover, a young generation of farmers is usually not interested in running such a small agricultural farm.

A very important role regarding managing lands is played by the Agricultural Property Agency. This state legal person acts as the trustee of the State Treasury in regard to managing state agricultural lands. It is thanks to the lease or purchase of state lands coming from the Agricultural Property Reserve of the State Treasury that many small farms expanded their surface area or started an activity in the past few years. As there has been less and less land coming from the Agricultural Property Reserve and due to some changes in legal regulations it is not always so easy to enlarge the farms. Additionally, as for purchasing private lands, there are also some legal barriers and difficulties regarding obtaining financial aid to enlarge the farms.

The purpose of this article is, therefore, to assess legal regulations regarding managing agricultural lands and to make an attempt to answer the question if the regulations facilitate enlarging the farms in Poland or if they make it more difficult. Moreover, the article aims at analyzing what EU tools, if any, help to change the agrarian structure in Poland.

2 Agricultural Property Agency as an essential institution on the market of agricultural lands

On 1 January 1992, the Agricultural Property Agency of the State Treasury started its activity[4]. Its main task was to take over all state agricultural property and to manage the property in compliance with the regulations. The Agricultural Property Reserve took over the property owned by the state which used to belong to the National Land Fund or used to be a part of organized production units in the form of state agricultural companies or state agricultural farms. It is worth mentioning at this point that the National Land Fund was established based on a decree of the Polish Committee of National Liberation of 6 September 1944 and it operated continuously for 48 years. Some lands included in the Fund were land properties taken over by the state from former owners.

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[2] Announcement of the President of the Agency for Restructuring and Modernization of Agriculture of 17 September 2012 on the size of an average surface area of agricultural lands in an agricultural farm in particular regions and an average surface area of agricultural lands in an agricultural farm in the country in 2012 http://www.arimr.gov.pl [As on: May 2012].

[3] Council Regulation No. 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD).

[4] Under the Act of 11 April 2003 on Formation of Agricultural System the name of the Agricultural Property Agency of the State Treasury was changed to the Agricultural Property Agency. The Agricultural Property Agency is a legal successor of the Agricultural Property Agency of the State Treasury.

Pursuant to Article 24 of the Act of 19 October 1991 the Agency manages the Reserve by: 1) selling the property in full or in part; 2) passing the property for a fixed period of time to be used, for consideration, to legal persons or natural persons; 3) contributing the property or its part to a company; 4) passing the property in full or in part to an administrator to manage the property for a fixed period of time; 5) creating a trust; 6) exchanging the property. Property included in the Agricultural Property Reserve can be, free of charge, given to a local government unit under an agreement for the purposes connected with the carrying out of the investment.

By the end of December 2010, the Agricultural Property Agency took over properties of a surface area amounting to over 4 740 424,00 ha. For many years lease was the main form of managing property. In 1995, more than 2 million 745 thousand ha was leased in Poland, in 1996 – 2 million 928 thousand ha, 1998 – 2 million 810,5 thousand ha, 2002 – 2 million 407,5 thousand ha (POCZTA, NOWAK 2007: 29). Towards the end of 2011, the Agricultural Property Reserve consisted of about 1,96 million ha and almost 1,47 million ha (75 percent of the surface area of the Reserve) was leased. The biggest amount of land is located in the department in Wrocław, Szczecin, Poznań, Olsztyn and Gdańsk. The sale of property, however, has recently become more popular (AGRICULTURAL PROPERTY AGENCY 2011:3).

It is possible to distinguish 3 main periods in the development of the Agency. The first one covers the years from 1991 to 1995. The main task of the Agency at the time was to liquidate state agricultural companies and to transfer lands to the new users as quickly as possible (LICHOROWICZ 2005: 130). The second period covers the years from 1995 to 2003. The Agency stopped being a liquidator and started to be a manager of a substantial amount of state lands acting as the trustee of the State Treasury. Most lands were leased at that time. It is worth explaining that the State Treasury entrusts the Agency to exercise the ownership rights and other property rights for the benefit of the State Treasury with respect to the property that was taken over. The Agency, taking the possession of some elements of the property of the State Treasury exercises on its own behalf the rights and obligations towards third parties. Moreover, the Agency, on its own behalf, carries out the statutory duties relating to these elements.

The third period in the development of the Agency was marked by the Act of 11 April 2003 on Formation of Agricultural System. Apart from carrying out its current duties, the Agency was given additional tasks concerning building private trade in agricultural lands and improving the land structure of Poland. It includes, in particular, protecting and strengthening the position of domestic farms, preventing too big concentration of agricultural lands and preventing the property from being bought out by the foreigners. The Agricultural Property Agency was provided with two tools, namely the right of preemption and the right of buy-out. The lands purchased by means of these rights by the Agency fall into the Agricultural Property Reserve of the State Treasury (LICHOROWICZ 2005: 130).

3 Basic principles of selling agricultural lands in Poland

The main principles of transferring ownership of property, including agricultural property[5] have been laid down in the Act of 23 April 1964 Civil Code[6]. The Act does not currently prescribe any separate requirements regarding the purchasers of agricultural properties. Any legal entity, namely an individual, legal person or an entity not having legal personality can act both as a seller and a purchaser. The limitations that existed in the past were removed after the political transformation. The basic rule says that the agreement transferring ownership of

[5] Pursuant to the Article 46^1 of Polish Civil Code immovable property which is or may be used for carrying out agricultural production activity within the scope of plant and animal production, not excluding gardening, horticulture and fishery production shall be agricultural immovable property (agricultural land).

[6] Journal of Laws from 1964, No. 16, Item 93, as amended.

property (sale, donation, life estate contract) has to be made in the form of a notarial deed. Pursuant to Article 158 of the Civil Code, a contract obliging to transfer ownership of property should be also made as a notarial deed. At the same time, the Civil Code sets out, regarding agricultural lands, the right of preemption for the co-owner of agricultural property and, additionally, it regulates dissolution of co-ownership of agricultural land. Therefore, pursuant to Article 166 of the Polish Civil Code,where a co-owner of an agricultural property sells a share in the co-ownership or a part of that share, a right of preemption is vested in the remaining co-owners if they run an agricultural farm on a land owned in common. However, it does not apply in the case where a co-owner who at the same time runs the agricultural farm sells his share in the co-ownership along with that farm or where another co-owner or a person who would inherit the farm from the seller is the acquiring party.

It should be, however, indicated that some restrictions concerning trade in agricultural lands result from other legal acts, in particular from the Act of 11 April 2003 on Formation of Agricultural System. The Act came into force on 16 July 2003. After 13 years of a lot freedom regarding trading in private lands, the Polish legislator decided to introduce some restrictions. The Agricultural Property Agency was provided with the tools making it possible for the Agency to interfere in the trade, namely with the right of preemption and the right of buy-out (rights under Article 4 of the Act on Formation of Agricultural System). Pursuant to Article 1 of the Act this effect is to improve the area structure of farms, counteract excessive consolidation of agricultural property and ensure agricultural activity in farms is run by adequately qualified individuals. The statutory right of preemption is the basic instrument modifying the agrarian system of the state.

The Act of 11 April 2003 on Formation of Agricultural System introduced the long awaited definition of a family farm. The family farm refers to the farm: 1) run by an individual farmer[7] and 2) where a total surface area of agricultural land does not exceed 300 ha. Due to the fact that the Constitution of April 1997 prescribes that it is the family farm that serves as the basis for the agricultural system of the state, it is now easier for individual farmers who want to enlarge their farm to purchase the lands, compared with agricultural producers who run large farms or do not qualify as individual farmers.

Pursuant to Article 3 of the Act on Formation of Agricultural System, if there is no eligible entity to exercise the right of preemption of lease or if the entity does not exercise the right, the right of preemption goes, under the Act, to the Agency acting for the benefit of the State Treasury if the object of sale is the agricultural property not smaller than 5 ha. The right of preemption, however, does not apply if as a result of the purchase of the agricultural property the family farm gets bigger, but not exceeding 300 ha, and the agricultural property in question is located in the commune resided by the purchaser or in the adjacent commune.

The Article 4 of the Act prescribes that if the ownership of the agricultural property whose surface area is not smaller than 5 ha is transferred by means of making a different agreement than a sale agreement, the Agency acting for the benefit of the State Treasury may make a statement about purchasing that property by paying money equivalent.

The above-mentioned rights of the Agricultural Property Agency do not apply if the ownership of the agricultural property is transferred for the benefit of: a) an agricultural production cooperative – in the case of the property constituting land contribution of a cooperative, b) person next of kin in view of the regulations on property management;

[7] An individual farmer is a natural person who is an owner, perpetual lessee, autonomous possessor or a lessee of agricultural property whose total surface area of agricultural lands does not exceed 300 ha, having agricultural qualifications and residing for at least 5 years in the commune where one of the agricultural properties included in the agricultural farm is located, and running the farms in person (Article 6 of Act of 11 April 2003 on Formation of Agricultural System).

The Agricultural Property Agency does not often use its right of preemption or the right under Article 4 of the Act, known as the right of buy-out. From 16 July 2003 to December 2010, there were 630 thousand agreements transferring the ownership of agricultural properties of a total surface area of about 880 thousand filed with the Agency. The Agency submitted purchasing declarations in 583 cases regarding the surface area of 14,2 thousand ha (Agricultural Property Agency 2011: 14).

Since the Polish accession to the European Union the prices of agricultural lands, especially private ones, have started to grow every year. Additionally, fewer and fewer farmers are interested in selling land. That is why purchasing properties coming from the Agricultural Property Reserve of the State Treasury has become of particular interest of agricultural producers. Since the beginning of its operation until the end of 2011, the Agency sold the properties of a total surface area of 2 203 200 ha of lands, namely 46,5% of a surface area taken over to the Agricultural Property Reserve of the State Treasury (AGRICULTURAL PROPERTY AGENCY2011:3). Sale of property of the Agricultural Property Reserve is the main form of permanent allocation of the property.

Sale of property included in the Agricultural Property Reserve of the State Treasury is usually executed by tender. The regulations of the Act of the 19 October 1991 provide for its following forms: open oral auction, open auction on closed bids, oral auction open to selected persons and auction on closed bids open to selected person (SUCHOŃ 2008: 147). Due to the fact that the Agency carries out tasks under the state policy, in particular those relating to creating and improving area structure of family farms, it has organized for many years closed tenders. Usually the following entities are eligible to participate: 1) individual farmers, in the view of the regulations on formation of agricultural system, intending to enlarge a family farm if they live in the commune where the property in question is located or in the adjacent commune or 2) a person of agricultural qualifications prescribed in the regulations on formation of agricultural system, intending to set up a family farm in the view of these regulations. It should be mentioned, however, that it is possible to purchase the property without a tender. Pursuant to Article 29 of the Act of October 1991, the right of preemption to purchase property without a tender is reserved to:

1) the former owner of sold property or their heirs, if the property was taken over for the State Treasury before the 1 January 1992,
2) a farming cooperative, actually managing the sold property, in relation to which usufruct for this cooperative expired on the basis of Article 16(2) as of 31 December 1993,
3) the leaseholder of the transferred property if the lease lasted at least for three years.
4) a person managing special economic zone in relation to the property located within special economic zones.

In case when there is an eligible person (e.g. a leaseholder), the Agricultural Property Agency sends a notice in writing. It needs to include data which were incorporated in the sale notice, supplemented with the price, the deadline for the application to purchase (this date may not be shorter than 21 days from the date of receipt of the notice) and other conditions concerning the purchase of the property.

Since the Act of 11 April 2003 on Formation of Agricultural System that amends the Act of 19 October 1991 came into force, the principle laid down in Article 28a has applied. The principle says that the Agency can sell the property if as a result of sale a total surface area of agricultural lands owned by the purchaser does not exceed 500 ha.

4 Basic principles of lease of agricultural lands in Poland

Lease is a legal title to organize both family and large farms. It has been, undoubtedly, the activity of the Agricultural Property Agency that made lease popular in agricultural relations. Farmers use lease as means to enlarge their agricultural farms mainly due to financial reasons as it does not entail such big costs as, e.g. purchasing agricultural land. A dependent possessor can invest their financial resources into development of a business activity, not into buying the land. Owing to the Polish accession to the European Union more and more farmers are interested in this form of setting up and running their agricultural farms. It results from the fact that the prices of agricultural lands are continuously increasing and the lessees can run agricultural production within the Common Agricultural Policy according to the similar rules as the owners (SUCHOŃ 2006: 8).

The provisions on lease agreement itself are included in the Polish Civil Code (from Article 693 to 709). They mainly apply to so-called "private" lease whereas so-called "state"[8] lease is regulated by other legal acts, namely the Act of 19 October 1991 on Managing Agricultural Property of the State Treasury and its executive orders[9]. As for the lease of agricultural lands from local government units, both the Civil Code and the Act of 21 August 1997 on Management of Property[10] are applied. Currently applicable legal regulations are, indeed, diversified.

Owing to the Polish accession to the European Union and the possibility to obtain financial aid from the EU budget by agricultural producers, long-term lease agreements are of particular importance. As for private land lease, the parties to and the provisions of an agreement decide about the stability of the lease relationship as most provisions in the Civil Code are not mandatory. The Civil Code does not provide a wide range of instruments ensuring appropriate stability of farming the leased lands, i.e. the stability regarding the agricultural activity. Such stability is supported by introducing statutory minimum term of lease agreement. A shorter term of lease agreement agreed on by the parties is then extended under applicable statutory regulations to the statutory term of lease agreement (LICHOROWICZ 1986: 100). Polish legal regulations do not provide such institution but it exists in other countries[11]. The Polish Civil Code allows the parties to freely decide on the term of lease agreement. The parties can make a lease agreement for a short period of time or for an indefinite period of time. It makes lease agreements, however, not stable enough. The longer the lease term is the bigger stability it guarantees. Additionally, it ensures higher certainty regarding the rights and obligations of the parties (SUCHOŃ, SCHÜRMANN 2009: 379).

When it comes to the lease of the property coming from the Agricultural Property Reserve of the State Treasury, it does not allow to make lease agreements for an indefinite period of time. Pursuant to Article 24 of the Act of 19 October 1991 on Managing Agricultural Properties of

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8 So-called "state" lease was connected with the lease of lands from National Land Fund and as of 1992 – fromAgricultural Property Agency of the State Treasury.

9 The Regulation of the Minister of Agriculture and Rural Development of 19 October 2009 on detailed conditions of and procedures for the deferment, spreading into installments or remission of receivables of the Agricultural Property Agency (Journal of Laws, No. 210, Item 1619, as amended), the Regulation of the Minister of Agriculture and Rural Development of 14 January 2009 on detailed procedures for inviting tenders for lease of property from the Agricultural Property Reserve of the State Treasury (Journal of Laws, No. 17, Item 93).

10 Journal of Laws of 2010, No. 102, Item 651, as amended.

11 For example, in Belgium there are three types of agricultural lease: standard one, so-called "professional" one (*bail de carriere*) and a long-term one. The term of the standard lease is agreed on by the parties with the reservation that it cannot be shorter than 9 years. If the parties agreed on less than 9 years, the lease is extended to 9 years under statutory regulations. So-called "professional" lease is made for the time until the lessee retires, i.e. until the lessee is 65 years old. The long-term lease is made for the period of at least 27 years. In Italy the minimum lease term is 15 years. In Switzerland the lease term of agricultural farm is 9 years and regarding the lease of particular land parcels – 6 years. (LICHOROWICZ, 1986: 107).

the State Treasury, the legislator obliged the Agricultural Property Agency to make lease agreements for a definite period of time, making it possible for the parties to decide on the term. The lease agreements are usually made for many years (typically for 10 years). If it is economically justified, e.g. due to a production or an investment cycle, the lease agreement can be made for a longer period of time but it cannot exceed 30 years.

The main obligation of a lessor is to pass the agricultural land to a lessee. To "pass" refers to making it possible for the lessee to use the land and enjoy the benefits as well as to refraining from actions which could prevent the lessee from exercising their rights. The lessee is obliged to pay a lease rent. The rent can be in the form of a sum of money, another benefit (e.g. agrotechnological services) or in the form of natural benefits (the lessee is then obliged to pass to a lessor a given number of benefits obtained from the object of lease). It is worth mentioning that the provisions make it possible to lower the rent. Pursuant to Article 700 of the Civil Code, if owing to circumstances which the lessee is not liable for and which do not concern his person, the usual revenue from the lease object has been subject to a substantial reduction, the lessee may demand a reduction of the rent due for a given economic period.

Agricultural producers who conclude agricultural lands lease agreements enlarge their agricultural farms. It is not, however, a permanent way of extending production units. These agreements can often be terminated and the lease rent amounts are higher and higher. That is why, the lessees tend to purchase the leased property. Therefore, it is worth mentioning the basic institutions making it easier for lessees to purchase the object of lease, namely statutory right of preemption and the priority right to the property without a tender.

Pursuant to the Act of 11 April 2003 on Formation of Agricultural System, lessee of the agricultural property has under the Act the right of preemption if the following conditions are met: the agricultural property is leased by agricultural production cooperative or a natural person (as for the natural person the leased property must constitute a part of lessee's family farm); the lease agreement with certified date was made in writing; the lease agreement has been performed for at least 3 years starting from the certified date; the seller of the agricultural property is a natural person or a legal person other than the Agricultural Property Agency.

The scope of application of the right of preemption is limited. It does not apply to, among others, the commercial companies. That is why it is advisable to include into a contract a contractual right of preemption. While establishing the preemption right resulting from some acts in law, there are no limitations concerning the property or the conditions of exercising the right itself. The parties may decide that the right of preemption is to be applicable upon its establishment or after a few years from the moment of making a lease agreement (SUCHOŃ, BOBEŁ, 2008:163).

The right of preemption under the Act on Formation of Agricultural System does not apply to the lands coming from the Agricultural Property Reserve of the State Treasury. Then, the lessee has the priority right to purchase the property without a tender. Pursuant to the Act of 19 October 1991, the lessee, after 3 years from the date of making an agreement, is entitled to purchase the leased lands without a tender. It is essential to indicate that the priority right applies to all lessees, no matter if they are natural persons, legal persons, agricultural production cooperative or any other entity. There are, however, two restrictions. First of all, it is the Agricultural Property Agency that makes a decision about selling the lands and, secondly, the lessee can exercise this right only if the former owner or their beneficiaries do not exercise the right.

While analyzing the lease, it is worth mentioning that this institution is used by farmers as part of an agricultural activity not only in Western Europe but also in Asia, Central and South America, USA and in a substantial part of agricultural regions in Africa (LICHOROWICZ 2006:156). An important role for the development process of the institution of agricultural

lands lease in Western Europe was played by the European Economic Community, which established agricultural policy common for all Member States. It was already the Mansholt Plan that dedicated a lot of attention to the institution of agricultural lease, recommending that it should be changed so that a lessee's rights are protected and that the lessee has right to purchase the ownership of the leased lands (LICHOROWICZ 2006: 156). In the "old" Member States, for instance in France, the Netherlands, Great Britain or Germany, the institution of lease is a very popular way to enlarge agricultural farms. In Germany, after 1990, lease became the main legal title to use state agricultural lands in 5 new lands. Agricultural lease was used while taking actions aimed at the improvement of the agrarian structure to make it more similar to the one in the western part of Germany. The lease of agricultural lands played an important role in the transformation of the political system not only in Germany but also in some of the former Communist bloc countries in the '90s. For example, in the Czech Republic, Slovakia and Hungary lease was, and in some countries it still is, a common form of privatization of state-owned agricultural property (SWINNENA, BUCKWELLA, MATHIJSA, 1997: 63)

5 Perpetual usufruct of agricultural property in Poland

Another popular form of possessing lands is perpetual usufruct. This right, however, does not refer to all types of property. The objects of perpetual usufruct may only be landed property: 1) owned by the State Treasury, located within the administrative borders of towns and land located outside these borders, but included in the land development plan of the town and implemented to carry out the tasks of its economy 2) as well as land owned by entities of local government or their unions; 3) moreover, in cases stipulated in the special regulations the object of perpetual usufruct may also be other land owned by the State Treasury, units of local government or their unions (Article 232 of the Civil Code). The legal regulation concerning the institution of perpetual usufruct is contained in the Civil Code and in the Act of 21 August 1997 on property management. In turn, problems connected with the transformation of perpetual usufruct right into property right to landed property were discussed in the Act of 29 July 2005 on the transformation of perpetual usufruct right into property right to property.

Perpetual usufruct has been functioning in the Polish legal system since the Act of 14 July 1961 on land management in towns and housing districts[12] (GNIEWEK 2001: 120). For several years perpetual usufruct was used mainly for the purpose of building development. At present it was decided to extend the scope of this narrow term and the limitation of perpetual usufruct only to built-up land or land allocated to building development is no longer binding. Now all land, including agricultural land, may be perpetually leased, irrespective of their intended use. According to statistical data, the land let as perpetual usufruct is mainly used for investment purposes (GNIEWEK 2001: 121).

The agreement on letting land property as perpetual usufruct prescribes, above all, the term of perpetual usufruct and the manner of using the property, in compliance with Articles 236 and 239 of the Civil Code. The long term of perpetual usufruct agreement has to be, therefore, perceived as an advantage. The term is 99 years but the legislator makes it possible to make an agreement for a shorter period of time, but not shorter than 40 years, "in exceptional cases where the economic purpose of perpetual usufruct does not require letting the land for 99 years" (Article 236 of the Civil Code). During the last five years before the lapse of the time limit reserved in an agreement, the holder of perpetual usufruct may demand the term to be prolonged for a further period from 40 to 99 years. Such a long term of the agreement helps to maintain stability of farming on lands let as perpetual usufruct and to make investments (DOBEK, SUCHOŃ, WAJSZCZUK, WIELICKI, 2009: 36).

[12] i.e. Journal of Laws of 1969 no. 22, Item 159 with amendments. This Act revoked temporary ownership and replaced it with perpetual usufruct.

In the case of perpetual usufruct of developed land the legal situation is complex. Land (land property) constitutes one property and is owned by the State Treasury or local government unit and, at the same time, it is let as perpetual usufruct to another person. The building built on this land, on the other hand, constitutes a separate from land object of ownership (building property). That is why letting developed land property as perpetual usufruct entails selling the buildings and other facilities built on the property.

6 Selected EU instruments influencing the agrarian structure

Undoubtedly, the EU instruments have influenced the agrarian structure in Poland. It refers mainly to structural pensions and bonuses for young farmers. It is worth indicating that the European Union has long been taking actions influencing the formation of agrarian structure and demographic changes. As early as in the 70s, two Council directives were adopted: No. 159/72 (so-called modernization directive) and No. 160/72 (so-called reallocation directive). The directives introduced the solutions aiming at making the generation changes in agriculture faster. It refers mainly to the possibility of being granted earlier pension benefits in exchange of passing the agricultural farm and additional money to a young person.

As for the structural pension, the farmer had to be 55 years old but not at the retirement age. Additionally, the farmer could not have their entitlements to pension or disability allowance established and had to stop running an agricultural activity. According to the regulation of the Minister of Agriculture and Rural Development of 19 June 2007 on the detailed conditions and procedures for granting financial aid under the measure Structural pensions under the Rural Development Programme for 2007-2013[13], to get a structural pension an agricultural producer had to transfer the ownership of an agricultural farm of a surface area amounting to at least 6 ha or 3 ha (depending on a region), firstly, in full for the benefit of a successor. The surface area of agricultural lands constituting the agricultural farm of the successor after the transfer could not be smaller than the average surface area of agricultural lands in a country; or, secondly, in full in order to enlarge one agricultural farm, but the surface area of agricultural lands constituting the agricultural farm after the enlargement could not be smaller than an average surface area of agricultural lands in an agricultural farm in a country. Structural pensions were of a particular interest of farmers and affected demographic changes in the country, in particular passing the farms to younger generations and forming bigger units. Due to the fact the EU funds allocated for this purpose have finished, it has not been possible to apply for the aid since September 2010.

It is still possible, however, to apply for the financial aid within the measure “Helping young farmers to set up in business”. The aid is granted to a natural person starting agricultural activity for the first time and meeting a range of requirements. According to these requirements, among other things, the applicant has to be younger than 40 years old; has to be a citizen of the EU country and has to have appropriate qualifications; the surface area of agricultural land cannot be smaller than an average surface area of agricultural lands in an agricultural farm in a country and cannot exceed 300 ha. The last condition is of particular importance for changes in the agrarian structure in Poland and for establishing more modern and bigger agricultural farms.

[13] Journal of Laws, No. 109, Item 750, as amended.

7 Purchasing lands, including the lands leased by foreigners

Pursuant to the Act of 24 March 1920 on Acquisition of Real Estate by Foreigners[14] a permit is typically required in order for a foreigner[15] to acquire real estate. Permits are issued, by administrative decision, by the minister in charge of internal affairs, if the Minister of National Defence does not object to the acquisition, and in the case of agricultural land, also if the minister in charge of rural development does not oppose to the acquisition.[16] The purposes of this Act, acquisition of real estate shall mean acquisition of ownership of real estate or perpetual usufruct of real estate following any legal event.

Article 8 of the Act lays down, however, that permits are not required of foreigners who are nationals or entrepreneurs of States that are a party to the Agreement on the European Economic Area or of the Swiss Confederation, except in order to acquire agricultural land and forests in the period of 12 years from the day of accession of the Republic of Poland to the European Union.

Permits are not required of foreigners who are nationals of States that are a party to the Agreement on the European Economic Area or of the Swiss Confederation in order to acquire agricultural land located in: a) the regions of Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkopolskie and Zachodniopomorskie - after the lapse of 7 years from the day of conclusion of a lease agreement with a certified date, if in that period they personally conducted agricultural activities and were legally resident in the territory of the Republic of Poland, b) the regions of Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie and Świętokrzyskie after the lapse of 3 years from the day of conclusion of a lease agreement with a certified date, if in that period they personally conducted agricultural activities on that land and were legally resident in the territory of the Republic of Poland.

8 Conclusion

With the purpose of this article in mind and on the basis of the presented analysis, the following conclusions can be reached. The legal regulations concerning the possibility to enlarge agricultural farms are changing. After the political transformation, the Polish legislator introduced new solutions regarding the management of agricultural lands, which facilitated enlarging and setting up new agricultural farms. Special attention should be given to the Agricultural Property Reserve of the State Treasury, set up on 1 January 1992, which later changed its name to the Agricultural Property Agency. It is owing to the activity of this institution that the lease of agricultural lands, the enlargement of agricultural farms or setting up new farms became more and more popular. A large number of farmers leased lands in the 90s. Having analyzed the regulations it can be noted that family farms enjoy greater stability of possession and the possibility of enlarging agricultural lands, compared with other entities. It relates, among other things, to purchasing agricultural lands from the Agricultural Property Reserve of the State Treasury, as well as private lands. It is confirmed also by giving the right of preemption regarding leased lands to an individual farmer running a family farm, by the principles of tenders limited by the Agricultural Property Agency regarding lease or sale. It results mainly from the state policy on agriculture. It is a family farm that serves as the basis

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[14] Journal of Laws of 2004, No. 167, Item 1758, as amended.

[15] A foreigner shall mean: 1) an individual who is a non-Polish national; 2) a legal person whose registered office is located abroad; 3) an unincorporated partnership of the persons referred to in subparagraph 1 or 2, whose registered office is located abroad, established in accordance with the legislation of a foreign country; 4) a legal person and an unincorporated commercial partnership whose registered office is located in the territory of the Republic of Poland, directly or indirectly controlled by the persons or partnerships referred to in subparagraphs 1, 2, and 3.

[16] Journal of Laws of 2004, No. 167, Item 1758, as amended.

for the state system and, therefore, the legislator tries to introduce the regulations favourable to the development of family farms. Since the Act on Formation of Agricultural System came into force, however, large farms have been struggling with more barriers relating to expanding agricultural farms. They face the obstacles or legal barriers relating to purchasing lands from the Agricultural Property Reserve of the State Treasury as well as private lands.

With reference to the second purpose of the article, it should be stated that creating bigger, modern agricultural farms is more and more impacted by financial instruments, including the EU instruments.

The right of preemption and buy-out prescribed in the Act on Formation of Agricultural System and exercised by the Agricultural Property Agency has not help to substantially improve the agrarian structure of Polish agriculture. The economic instruments, undoubtedly, have bigger impact on establishing larger, more modern agricultural farms. It was mainly them that helped to enlarge the farms after the Polish accession to the European Union. They include structural pensions, bonuses for young farmers, opportunity to use preferential loans to purchase lands, agricultural tax incentives connected with enlarging agricultural farms. Although in recent years many changes have been made, Polish agricultural farms are still not big enough compared with the farms in the old member states. Therefore, structural changes are vital. It is not going to be easy. The prices of lands go continuously up, in the Agricultural Property Reserve of the State Treasury there is less and less land. Moreover, a new EU plan of rural development for 2014-2020 does not continue the programme of structural pensions. The loans to purchase property or agricultural tax incentives are treated as state aid (public aid) and, therefore, they are subject to some restrictions.

In the recent years, however, an opportunity for small agricultural farms is seen in an ecological activity. Additional European funds make it possible to run a profitable production. Another way of obtaining additional income by small farms is to set up a non-agricultural business activity by an agricultural producer and to get the European funds coming from, e.g. Diversification into Non-Agricultural Activities Programme within Rural Development Programme for 2007-2013.

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