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Intervention on the agricultural land market in relation to the end of the transitional period for purchasing agricultural land by foreigners

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Keywords: state intervention; agricultural land market; transitional period; foreigners

Abstract

Research background: A traditional form of state intervention in agriculture comprised regulating the rights to ownership. One of the often discussed aspects of regulations refers to those binding for foreigners.

Purpose of the article: The objective of the article was to analyse the position (of the European Economic and Social Committee and the Polish legislator) regarding the phenomenon of purchasing agricultural property by foreigners as well as the opinions of farmers on the consequences for the agricultural land market resulting from ending the transitional period in Poland for purchasing agricultural property by foreigners as on 1 May 2016.

Methods: Direct studies were conducted in 2015 among 86 farmers in the Warmian-Masurian Voivodeship.

Findings & Value added: The main reason for such a discussion conducted globally and in Europe is the phenomenon of excessive concentration and the use of land for non-

agricultural purposes. Whereas, the European Economic and Social Committee indicates that in order to limit unfavourable practices in the EU member states, activities directed at preventing speculation, preserving local traditions and ensuring a proper usufruct of land should be permitted. The majority of farmers were afraid of the changes in the agricultural land market after the end of the transitional period in purchasing agricultural property by foreigners. They emphasised the above by expressing opinions on regulations binding in the transitional period and their effectiveness. With regard to the provisions of the Act of 5 August 2015, farmers were afraid of an increase in prices of agricultural land and the capital advantage of foreigners.

Introduction

A strong belief that active operations of the state are especially needed in agriculture is based on the market failure theory. One of the main prerequisites of agricultural interventionism comprises the use of a specific production factor in agriculture, that is, soil which simultaneously fulfils many important social functions (Wilkin, 2003).

In contemporary times, interventionism in agriculture results from the necessity to prevent undesirable processes connected with excessive concentration and the use of the land for non-agricultural purposes, and in particular, for purposes not related with food production. Another symptom of the negative processes is also manifested in the mass purchase of land, and especially of agricultural land (land grabbing¹), which has been observed globally in the recent years (Sobiecki, 2015, pp. 40–41).

A traditional form of state intervention in agriculture comprised developing an institutional framework for the functioning of this sector, including in particular, regulating the rights to ownership (Yucer *et al.*, 2016). The rights to ownership in economic and legal terms comprise a bundle of so-called property rights that are significant for the effectiveness of farming (Marks-Bielska, 2010, p. 114; Sobiecki, 2015, p. 45).

Each governmental intervention, however, infringes the interests of one social group to the benefit of others. Undoubtedly, in the case of a policy of developing an agricultural system, individual farmers comprise a social

¹ The term “global land grabbing” appeared as a comprehensive understanding of the phenomenon of a boom of transactions in land with international entities that has been observed in recent years. The real and potential role of current transactions regarding land in establishing new limitations in the land market is deservedly underlined therein (Borras & Franco, 2010). This phenomenon is of an international character. The following are the most frequently indicated as reasons for such operations: searching for countries relatively rich in natural resources, and, at the same time, institutionally unstable in order to be able to extend own influences therein, achieving economic and strategic objectives of international corporations, providing citizens of own country with food and energy security (biofuel) (Zawojcka, 2014; Tomeia & Helliwellb, 016).

group benefiting from this policy, since they are privileged in the access to land (Maśniak, 2015, p. 269).

The demand for land depends directly on the economic benefits it provides to the owners and the income situation of potential purchasers. The latter in particular depends on the macro-regulatory mechanisms, especially on so-called market regulators. The decisions regarding purchasing agricultural land are also influenced by forms of financial support e.g. supplementary payments to subsidised loans or a possibility of obtaining financial resources from aid funds (Kozłowska-Burdziak, 2006, p. 67).

The flow of land to family farms is stimulated within the policy of developing an agricultural system, since this social group is privileged over other land market participants. Thus, such a state intervention in the land market is intended to direct the flow of land irrespective of the economic justification and to form a predetermined model of agriculture. The access to the resources is therefore, decided by the legal status of an economic unit and not its economic effectiveness (Maśniak, 2011, p. 115).

One of the often discussed aspects of regulations used in the agricultural land market refers to those binding for foreigners. Therefore, attempts at assessing the potential results of purchasing agricultural property by foreigners are made with regard to the situation in the agricultural land market, developing the area structure of farms and the situation of farmers (Marks-Bielska, 2015). Whereas, the second aspect is related to the factors that can determine specific solutions implemented in particular countries. On the grounds of the research results, Hodgson and co-authors (1999) stated that due to the diverse range of practices and techniques undertaken by states in relation to foreign land property only one conclusion can be drawn, that is, there is no direct correlation between the character and the scope of limitations regarding foreign land property and the economic power of the country, the development level and the political system. At the same time, they emphasise that legal limitations regarding the land property and usufruct by foreigners is designed as to achieve various objectives of the policy, but can also manifest other, undisclosed motives. Even the definition of a foreigner can be subjected to those motives (Hodgson *et al.*, 1999, p. 44).

The use of land is also closely related with social relationships and cannot be separated therefrom (Borras & Franco, 2010). Now, these relationships are the most frequently characterised by inequality and unilateral dominance, therefore, the use of land becomes an area of competition over direct access to land. Thus, the assessment of the land use is far from a seemingly neutral technical problem. In principle, it becomes the most important, strategic matter of the state policy (Exner *et al.*, 2015).

The objective and research methodology

The objective of the article was to analyse the position (of the European Economic and Social Committee and the Polish legislator) regarding the phenomenon of purchasing agricultural property by foreigners as well as the opinions of farmers on the consequences for the agricultural land market resulting from ending the transitional period in Poland for purchasing agricultural property by foreigners as on 1 May 2016.

Direct studies were conducted in 2015 among farmers in the Warmian-Masurian Voivodeship. The studies were conducted as a result of, on one hand, at that time approaching end of the aforementioned period; and on the other hand, adopting new regulations regarding the agricultural land market in the Act on the Shaping of the Agricultural System passed by the Sejm on 05.08.2015. Those research concentrated on, in particular, the assessment of the effectiveness of the proposed regulations as well as identifying benefits and threats resulting from the end of the transitional period.

Achievement of specific objectives required conducting direct surveys among farmers to whom agricultural property was sold and/or leased from the APA Stock in the Warmian-Masurian Voivodeship. Thus, the survey was directed in 2015 within pilot studies to 10 farmers and upon introducing modifications to the survey, proper studies were conducted. At this stage of the studies, the survey was sent to 500 farmers in the Warmian-Masurian Voivodeship. A part of questionnaires (83) were returned with annotation that the addressee is unknown or moved out, whereas, 61 completed surveys were received.

In relation to a relatively low level of the return of surveys, supplementary studies were conducted as a result of which 25 completed surveys were received. In total, 86 surveys were received, which constituted a 20.6% return. Considering the relatively low inclination of farmers to participate in surveys, the obtained level of return may be deemed to be high.

The results obtained due to the conducted studies were subjected to analysis in the form of a calculation of the evaluation of the meaning of legal regulations proposed in the Act regarding purchasing agricultural property with the use of an index² calculated in compliance with the formula 1:

² Used index corresponds to the solution proposed by Karaszewski and Sudół (1997, pp. 17–18).

$$W = \frac{\sum_{i=1}^k n_i w_i}{k \cdot N}, \quad (1)$$

where:

W – the importance index, i – the evaluation index, n_i – the number of respondents who indicated the factor at the i -th position, k – the maximum score on the scale from 1 to k (indicating a sequence of factors was equivalent to assigning them with marks in the reverse order), N – the number of respondents who answered the question, w_i – the mark which corresponds to the place of factor i .

Terms and conditions of regulations in the agricultural land market according to the European Economic and Social Committee and Polish legislation

Accession of Poland and other countries of Central-Eastern Europe determined new terms and conditions of developing the agricultural land market in those countries. Nevertheless, each country has autonomy within the issue of detailed legal regulations in this scope, although, those regulations cannot hinder conducting activity or differentiate the access to common facilitations. They must arise from the public order, public security or health considerations of the country (Marks-Bielska & Zielińska, 2015).

Such an opinion is also underlined in the position of the European Economic and Social Committee (EESC). Countries are permitted to introduce limitations, if they are directed at preventing speculation, preserving local traditions and ensuring proper usufruct of land. However, they impede the principle specified in the treaties regarding free movement of goods and capital. Therefore, the European Economic and Social Committee (EESC) in its published document (*the Opinion of the European...*, 2015, p. 22) proposed that the European Parliament and the Council analyse, if the freedom of movement of capital with regard to the sale and purchase of agricultural land and agricultural farms must be guaranteed at all times — predominantly with regard to third countries, but also within the Union itself. The issue, if the free movement of capital and a free market ensure equal chances of purchasing land to everybody might be debatable.

According to the Committee, member states must have more possibilities to regulate their own markets of agricultural land. Agricultural land constitutes a limited natural resource and cannot be threatened with mass buy-out. Therefore, the EESC requested the European Commission and the

European Parliament to take action regarding regulation of the usufruct of land (*the Opinion of the European ...*, 2015, p. 23).

The end of transitional periods should, as a rule, signify liberalisation of provisions. Nonetheless, the agricultural land market in some states is perceived as exceptionally sensitive; therefore, it was decided to provide further protection thereto against foreigners (Marks-Bielska & Lizińska, 2015, p. 44; Polauf & Tiba, 2015, p. 2). As emphasised in the justification to the Bill on suspension of sale of property from the Agricultural Property Stock of the State Treasury, agricultural land should be treated as a unique public asset and as such it should be subject to specific legal regulations³. In principal, legal protection should be established as quantitative and qualitative protection. The quantitative protection should ensure keeping the existing acreage of agricultural land and ensure its proper use, whereas, the qualitative protection is to assure the maintenance of production characteristics of land and restoration of lost characteristics of agricultural land.

Legal regulations included in the Act on suspension of sale of property from the Agricultural Property Stock of the State Treasury are intended to strengthen the protection of agricultural land in Poland against its speculative buy-out by domestic and foreign persons, who do not guarantee the use of purchased land for agricultural purposes in compliance with social interests. Binding legal provisions in this scope in no way counteract speculative buy-out of agricultural property and do not guarantee the use of purchased property for agricultural purposes.

The terms and conditions of purchasing agricultural land pursuant to the amended Act on the Shaping of the Agricultural System and potential consequences thereof — opinions of farmers

Particular legal regulations can be characterised with diverse effectiveness and therefore, to a varied degree influence the situation in the agricultural land market. Farmers in Poland have a broad experience related to implementing regulations determining the agricultural land market. Some of them have experience from as far back as before the period of economic transformation, whereas, others started their activity in the period, when the Stock of Agricultural Property of the State Treasury began being distributed. New terms and conditions are also characteristic for the period related with Poland's accession to the European Union and implementing transitional

³ Justification to the Bill on suspension of sale of property. APA, Warsaw. <http://www.sejm.gov.pl/Sejm8.nsf/druk.xsp?nr=293>.

terms and conditions of purchasing agricultural property by foreigners. The end of this period as well as a return to the discussion on developing the agricultural land market resulted in binding legal regulations in this market.

As the studies were conducted in the 2nd half of the year 2015, there had not yet been information on the amendments introduced in December 2016⁴ or provisions of the *Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendment to certain acts*⁵. Therefore, farmers participating in the studies expressed their opinions accordingly to the legal status valid at that time. That is, the Act passed by the Sejm on 5 August 2015 on the amendment to the Act on the Shaping of the Agricultural System⁶. Pursuant to the provisions of the aforementioned act, agricultural land could be purchased by foreigners (natural and legal persons) in compliance with the same principles as domestic purchasers. However, regulations that could limit the access to the agricultural land in Poland for some persons and entities were to be binding as of 1 January 2016⁷. Farmers from the Warmian-Masurian Voivodeship were asked to express their opinions on the aforementioned regulations and potential benefits and threats resulting from the introduction thereof.

As results from the data presented in the Figure no. 1, in the opinion of farmers, the most effective among proposed regulations, was the 10-year ban on trading in land purchased from the state resources under pain of severe penalties (score 3.19 in the 1 — 4 scale, where, 1 — unsatisfactory limitation and 4 — satisfactory limitation). Remaining conditions (residence for at least 5 years in a given municipality or a neighbouring municipality, inspection of professional qualifications of land buyers, limitation on dividing the land among too many owners, a ban on purchasing land for persons and companies jointly owning over 300 ha) were assessed by farmers as a weak limitation or a rather satisfactory limitation.

⁴ On 16 December 2015 the Sejm passed an amendment to the Act of 5 August 2015. Pursuant to the passed amendment, the Act on the Shaping of the Agricultural System was to become legally valid not on 1 January 2016, as planned, but on 1 May 2016.

⁵ Acts: of 23 April 1964 – the Civil Code, the Act of 6 July 1982 on Land and Mortgage Registers, of 17 May 1989 – the Surveying and Cartographic Act, the Act of 19 October 1991 on the Management of the State Treasury Agricultural Property, of 11 April 2003 on the Shaping of the Agricultural System and of 8 July 2005 on Exercising the Right to Compensation Arising from Leaving Real Property Outside the Current Borders of the Polish State – Journal of Laws of 2016, item 585.

⁶ Journal of Laws of 2015, item 1433.

⁷ More on the regulation under this act in Marks-Bielska & Lizińska (2015, pp. 42–55).

Doubts as to the effectiveness of indicated regulations may also result from previous experiences of farmers related to binding regulations and modification thereof in the transitional period. As results from conducted studies (Lizińska, 2016), according to farmers, the introduction of regulations in the transitional period was justified; yet, those were too modest to bring the assumed effects in the land market. According to farmers, neither did such an effect result from the amendments introduced in 2013 intended to tighten the sales system⁸.

The farmers were also asked to give their opinion on the topic of other solutions in the scope of trading in agricultural land in Poland. Although, out of a group of farmers that participated in the studies, 3 persons stated that limitations are not necessary at all, a vast majority (34 persons) proposed implementing additional solutions or more restrictive regulations and at the same time stated that those proposed in the act do not ensure the assumed effects. Propositions made by farmers included, among others, a complete ban on selling land to foreigners, extending the transitional period or providing a better access of individual farmers to the land (e.g. preferences for 5–10 years and even 15 years with regard to other purchasers).

Taking into consideration the situation in the agricultural land market during the period of conducting the studies and the perspective of introducing new regulations, the farmers from the Warmian-Masurian Voivodeship were asked to indicate the most important, in their opinion, benefits and threats resulting from ending the transitional period in Poland in purchasing agricultural land by foreigners as of 1 May 2016. Among 86 farmers, who participated in the studies, 18 of them identified the possibility of selling land to foreigners at higher prices than in case of selling land to Poles as a benefit, whereas, 10 farmers indicated the possibility of cooperation with a foreigner. Some of them also noticed the opportunity of development in a form of foreign capital inflow enabling an increase in investment and, as a consequence, establishing new workplaces (Figure 2).

Nevertheless, as results from the data illustrated in picture no. 3 many farmers were afraid of the end of the transitional period. Most frequently farmers (72) are afraid that a foreigner will be in a better competitive position (greater financial capital) in the case of purchasing Polish land. The apprehension also resulted from the forecast increase in prices. Furthermore, the farmers were afraid that the legal regulations that were to enter

⁸ Among others: participation of the representatives of farmers indicated by the Chamber of Agriculture as members of the Committee with regard to restricted tenders and tightening the sales system to the benefit of individual farmers (agreements made between the Minister of Agriculture and Rural Development, the President of the Agricultural Property Agency, and the Inter-Union Protest Committee of Farmers of the West Pomeranian Voivodeship).

into force did not guarantee legal protection of purchasing land.

However, as results from preliminary analyses conducted by the property market specialists, limitations regarding trading in agricultural land resulting from current regulations can cause not an increase, but a decrease in prices of agricultural land. Furthermore, the consequences of the *Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and amendment to certain acts* for the agricultural land market in Poland will be possible to determine as soon as data on the transactions in this market are available. However, it may be noticed that due to the regulations of the Act concerning not only the state property, but also agricultural property in general and the land situated within cities and towns as well as sub-urban investment areas, the results of the introduced regulations may be seen not only in the agricultural land market, but also in the investment areas market.

Conclusions

As results from the analyses conducted in the article, the discussion on the state intervention in the agricultural land market in a form of developed legal regulations has been conducted not only in Poland. The main reason for such a discussion conducted globally and in Europe is the phenomenon of excessive concentration and the use of land for non-agricultural purposes. Whereas, the European Economic and Social Committee indicates that in order to limit unfavourable practices in the EU member states, activities directed at preventing speculation, preserving local traditions and ensuring a proper usufruct of land should be permitted.

The results of the studies conducted among farmers in the Warmian-Masurian Voivodeship, who base the functioning of their farms on, among others, resources of the agricultural land originating from the Treasury Stock (purchase or lease), indicated that the majority of them were afraid of the changes in the agricultural land market after the end of the transitional period in purchasing agricultural property by foreigners. Farmers' fears could have resulted from the fact that they were not entirely convinced of the effectiveness of the implemented solutions. They emphasised the above by expressing opinions on regulations binding in the transitional period and their effectiveness. With regard to the provisions of the Act of 5 August 2015, farmers were afraid of an increase in prices of agricultural land and the capital advantage of foreigners.

The currently valid Act of 14 April 2016 on suspension of sale of property from the Agricultural Property Stock of the State Treasury and related limitations to the demand for agricultural land determined with the terms and conditions to be met by land purchasers and regarding selling land for non-agricultural purposes could cause not only a decrease in the number of transactions in the agricultural land market, but also a decrease in prices.

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Annex

Figure 1. Assessment of conditions (restrictions) for the purchase of agricultural land in Poland specified in the Act on shaping the agricultural system

the assessment on the scale:1-4, where 1 - unsatisfactory limitation, 2 – weak limitation, 3 – rather sufficient limitation 4 - satisfactory limitation

Figure 2. The benefits associated with the end of the transitional period in Poland in the acquisition of agricultural land by foreigners

Figure 3. Threats associated with the end of the transition period in Poland in terms of acquisition of agricultural land by foreigners