

International Land Acquisition in the Polish Legal System and Its Impact on Economic Development¹

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Abstract:

Since May 2004, when Poland joined the European Union, the legal framework concerning land acquisition has changed radically. Implementation of European standards in Polish law has made an impact on both the perception of land as an investment and the price of land. Acquisition of land was treated as a good investment shortly after the collapse of communism. In the years 2005-2010 the price of Polish land increased by over 200%. The existence of relatively cheap prices and the current financial crisis have multiplied interest in international land acquisition. Between the enlargement of the EU and 2009 foreigners acquired 8532 hectares of Polish land. However, not all purchases of land were profitable for investors. Many requirements and obstructions in the legal system have had an impact on investments, especially when investors lack the appropriate knowledge and skills. This article examines the legal requirements that must be fulfilled by foreigners to acquire Polish land. It analyzes the impact of legal rules on economic development. The first part of the article uses critical analysis methodology to examine the legal framework of international land acquisition in the Polish legal system. The second part of this article investigates statistical data of international land acquisition, prices of land, and their impact on the Polish economy. The entire article uses data collected from reports of The Central Statistical Office (Główny Urząd Statystyczny), the Agricultural Property Agency (Agencja Nieruchomości Rolnych) and The Ministry of Interior² (Ministerstwo Spraw Wewnętrznych).

Introduction

This article aims to investigate the Polish legal institutions in accordance with foreign land acquisition on Polish market and its possible impact on economic growth. Therefore: First, factors which shape the land market in Poland will be subject of examination; Second, features of Polish land market and factors which influence the law-making body will be analyze. The article will present the legal framework and the main conditions of the legal regulations. Then, the quality of laws and their impact on investor's decision will be discussed. Also, the statistical data according to foreign land acquisition will be examined along with the eventual impact of the regulations on economic growth.

1. Factors which shape the land market in Poland

The Polish agricultural land market is divided into two parts (1) private owned land (dominated in Poland) and (1) state land, which is owned by the State Treasury and managed by the Agricultural Property Agency (APA) (Marks-Bielska, 2013, 791). In its peak, the State Treasury owned around 19 per cent of total land, and was responsible for 18 per cent of total agricultural production (Marks-Bielska, 2013, 798).

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² The Ministry of Interior before known as the Ministry of Interior and Administration

The APA is responsible for public sales and operates on within the limits of Polish laws. However, the private sector entities operate on free, but highly regulated market.

There are a number of factors that influence the shape of the market. These include: (1) Polish specified attitude toward land, which was developed throughout history and has symbolic meaning as well as cultural value. It can be expressed by the tendency to own the land, rather than leasing. (2)The socialist legacy: the state owned land that is managed by APA. (3) The perception of land as a multifunctional good. (4) The integration with the EU (the Common Agricultural Policy) and the number of available rents (Marks-Bielska, 2010, 7). This was greatest impact on the land market.

According to studies conducted by Renata Marks-Bielska, in Poland, there is a strong tendency to pass the land on to younger generations, from parents to children or grandchildren. A study conducted by Marks-Bielska showed that 84.84 per cent of Polish families benefited from a land grant that was from a family member. Also 80.34 per cent of respondents declared that they would pass the land further to their children or grandchildren (Marks-Bielska, 2013, 791). Only 7.95 per cent of the respondents were willing to sell their land. From the other side, farmers are motivated to expand the size of their farm in order to gain from production, EU subsidies (which are available after the EU accession) and profit from growing price of the land (Marks-Bielska, 2013, 797).

The accession to the EU in 2004 had great impact on the shape of the Polish land market. The number of subsidies and rents that became available to Polish farmers resulted in new investment in farms and increasing efficiency.

The growth of the financial sector (after the EU enlargement) also had an impact on the market by improving farmers' access to credit. This encouraged them to acquire additional land space. The access to Common Agricultural Policy (CAP) also had a positive influence on farm income and price of land (Report from the Commission to the Council, 2008, 4-5).

However, in 2008, turmoil on the financial markets had a negative impact on the European economy, which was reflected in the setback of growth in agriculture land prices. Except Poland, all Central and Eastern European countries experienced financial depression. But despite decrease in GDP, some member states saw an increase in land prices, especially in those where money flow from non-agriculture sectors was restricted. In Poland, during the global financial crisis, prices increased nominally; however, depreciation of Polish currency caused a decrease in 2009 by 10.1 per cent (private land) and 3.3 per cent (APA market) (Zadura, 2010, 44).

The land is also perceived as insurance, especially during economic instability. Therefore, the role of securitization and growth of land's price did not favour disposal of land even if the owner had income from other sources. Also, according to Polish regulation, land owners can benefit from cheaper insurance (provided by the Agricultural Social Insurance Fund and subsidized by the Treasury) than the rest of the citizens. Therefore, this feature of land does not encourage the owner to sell the land, which makes the market essentially smaller (Sikorska, 2010, 28).

During the last three decades, the agriculture land market changed radically. In order to understand today's market shape the two most important milestones and the factors that accompanied them will be briefly described. The first breakthrough took place in 1989 with the collapse of Communism. The changes made in legal system had great influence on ownership rights. In accordance with the

Act 19 October 1991, the Management of Agricultural Property of the State Treasury (Journal of Laws No 107, item 465 with further amendments) the land of collective farms and from the State Land Fund was transferred to a specially created fund (the Agricultural Property Stock of the State Treasury) and managed by Agricultural Property Agency. The Agency at its peak was responsible for over 4.7 million hectares of land of which 52.87 per cent was transferred to other institutions (e.g. state forest, local authorities, churches etc.), sold or leased. Now, the agency is in possession of 0.3 million hectares, which still can be distributed; however, the remaining land is mostly of low soil quality or for other reason useless (Report on the Activities, 2010, VII).

As it was in past and is nowadays, foreign land acquisition is a controversial issue and causes many concerns within society. Large part of society consider it as a disposal of national treasure or even identity. Therefore, before EU accession most of the new member states negotiated legal restrictions and transnational periods with old EU countries according to this issue. These restrictions usually have a form of clearly defined regulation, but in many cases occur as complicated procedures (Surowiec, 2003, 52). The opponents of the integration with EU had claimed that liberalization of the regulations according to foreign land acquisition would cause mass purchase of Polish land by foreigners (Sobol, 2011, 100).

In order to give more time to introduce necessary reforms, especially those involved with unfinished privatization and protection of socio-economic issues, the EU agreed to introduce transitional periods. These transitional periods relied on derogation in Article 56 of the European Community (EC) treaty, which expresses the fundamental rule of the freedom of capital movement within the EU instead of the application of Polish laws (Swinnen and Vranken, 2009, 1). Undoubtedly, Polish accession to the EU had a positive impact on political and economical changes, which in turn improved the investment climate in Poland. According to the report made by Ernst&Young, managers of international companies indicate Poland as an attractive place for Foreign Direct Investments in this part of Europe.

2. Features of the Polish land market

Poland has one of the largest agricultural land areas in the European Union, which is estimated at 9 per cent of total community surface. However, in 2009 in Poland there were 2.5 million farms which constituted 17 per cent of the total number of farms within European Union. It placed the country in second place in respect to the total number of farms in EU, after Romania. From the other side, shortly after the accession, the average size of a farm was two times smaller (6ha) then in the EU (11.9 ha)(Marks-Bielska, 2009, 240).

In Poland the ownership of agricultural land mostly belongs to the user of the land. Even under Communism, private ownership of agricultural land dominated in Poland. For example, the collective farms at their peak were responsible for 18 per cent of total production (possessed 19 per cent of land) and 21 per cent of commodity production (Marks-Bielska, 2013, 798). After 1989, when Poland transformed from state planning into a free market economy the APA took over 4.7 million hectares of Polish land. The 52.87 per cent of it was distributed into a number of institutions such as local authorities, state forests, special economic zones or even churches. However, around 2 million hectares of land was the subject of sale. It should be mentioned that the agency still holds 46.8 per cent of the total land, but most of it is leased (1.7 million ha)(Report on the Activities, 2010, VII). In Poland only 28 per cent of land is leased, which in comparison to other countries is relatively small

(Slovakia 96 per cent, France 84 per cent, Belgium 75 per cent - data from 2005) (Marks-Bielska, 2013, 793).

3. Factors which influenced law-making bodies

Even though Polish culture and history can influence law-making bodies to adopt certain regulations, these factors are very difficult to define and measure. Therefore, concentration is turned into legal regulations such as adaptation in the Polish legal system, European norms of law, or creation of legal acts in order to solve the problems such as unfinished privatization (and restitution) or socio-economical challenges. Unsolved ownership is the legacy of system transformation that occurred in 1989 in Poland (Ciain, Kandcs, Swinnen, Herck and Vranken, 2012, 20). Uncertainty in ownership rights deters potential buyers from making the transaction; however, over the years the size of land area owned by state agency reduced significantly. Adaptation of the legal system by candidate member states is a hard and time-consuming process. All the national regulations should fit into the main norms of law that are currently in force within the European Community. During the negotiation process, most of the candidate countries requested transitional derogation of Article 56 of the EC Treaty, which protect the freedom of capital movement. The restriction mainly referred to land and forest acquisition by foreigners or foreign entities. The necessity of derogation was justified by the suspicion that foreigners would try to acquire large quantities of agricultural land, and that massive land acquisition would have a negative impact on socio-economic agricultural structure, especially when large differences in prices of land between old and new member states were noticed. Another important issue was unfinished privatization in most of the New Member States countries (NMS) (Report from the Commission to the Council, 2008, 3). Therefore, seven NMS (NMS7) were granted additional provisions included in Annexes to the Act of Accession of 2003 (Swinnen and Vranken, 2009, 1). The existing national provisions, which usually restricted possibility to acquire land by foreigners, were also maintained during the transitional periods (Swinnen and Vranken, 2009, III). From the other side, temporary character of transitional provisions aimed to enlarge in the future a single free market within the EU. A single market would enable citizens of other member states to acquire land and forest that would enhance the economic development. The assumption was that through the free market, transfer of technology, knowledge, and capital would strengthen the productivity and then stimulate the economic growth (Swinnen and Vranken, 2009, 2). It should be mentioned that the restriction to foreign land cultivation was only referred to acquisition of land but not leasing. Therefore, the possibility of land leasing by foreigners would give some characteristics of a single free market. However, there are still significant economic and legal differences between new and old member states (Report from the Commission to the Council, 2008, 4).

4. Legal Framework

There are number of legal acts on both the national and EU level which regulate the agricultural land market and influence the behavior of entities that act on them. Starting with the Act of 19 October 1991, the Management of Agricultural Property of the State Treasury, (Journal of Laws No 107, item 465 with further amendments) which was imposed in Poland after the system transformation; it was aimed to regulate, liquidate the collective land and incorporate them to the Agricultural Property Stock of the State Treasury. The incorporated land later on was managed by Agricultural Property Agency (Report on the Activities, 2010, VII). This regulation is mentioned in this article because of its role in shaping the agricultural land market in post-Communist Poland.

However, the foreign land acquisition in Poland is regulated by (1) the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners with further amendments. (2) the Ordinance of the Ministry of Internal Affairs and Administration of 26 April 2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present (Official Web Page of the Ministry of Interior) (3) Regulation of the Council of Ministers of 23 November 2004 on the procedure and principles of keeping record of real estates, shares and other securities acquired by foreigners (Żróbek and Żróbek, 2007).

Some aspects of foreign land acquisition included in the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners³ are specified in other regulations. For example, Article 1.3 of the Act, defines when the commercial partnership is considered as 'controlled:' when a foreigner or foreigners have directly or indirectly over 50 per cent of votes at the shareholders' assembly or at the general assembly; when a pledgee or user is under agreements with others; when they have a dominant position. However, dominant position is regulated in the Act of 15 September 2000 Code of Commercial Partnerships (Journal of Laws No 94, item 1037 with further amendments).

Other regulations which are indirectly related to the real estate law in Poland are: (1) The Act of 24 June 1994 on ownership of premises (Journal of Laws of 2000, No 80, item 903) in accordance to definition of separate living accommodation. (2) The Act of 13 June 2003 on foreigners (Journal of Laws of 2006, No 234 item 1694 with further amendments) in accordance to permission of residence. (3) The Act of 11 April 2003 on shaping of agricultural organization (Journal of Laws No. 64, item 592) in accordance to acquisition of land by a foreigner. (4) The Investment Funds Act of 27 May 2004 (Journal of Laws of 2004, No. 146, item 1546 with further amendments) in accordance to closed-end investment funds and specialized open-ended fund (Global Practice Guide, 2012, 67).

On the EU level there are many regulations that protect the general rule of law on which the EU is based. However, the Article 56 of the EC Treaty which protects the freedom of capital movement regulates the issue according to foreign land acquisition within the EU. As was previously discussed, the seven countries which have joined the European Community are covered by a special transitional period during which the national regulations play a dominant role. These provisions are included in the Annexes V, VI, VII, IX, X, XII, and XIV by the virtue of Article 24 of the EC Treaty (Report from the Commission to the Council, 2008, 2).

To regulations which are not strictly related with foreigners, but shape indirectly the behavior of Polish farmers on the agricultural land market, we can count laws which regulate the farmers' insurance, distribution of EU subsidies, and rents, etc.

5. Main legal conditions which regulate Polish land

Nowadays, the main act which regulates the issue of land purchase by foreigners in Poland is the Act of 24 March 1920 on the acquisition of real estate by foreigners. This Act provides foreigners (or foreign entities) with the possibility of acquiring Polish land (or perpetual usage), but only after obtaining special permission. The permission is obligatory and lack of it causes invalidity of the purchase transaction. The necessity of permission is also applicable in the case when the foreign

³ the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners is also known as the Act of 24 March 1920 on Purchase of Real Estate by Foreigners

entity or person wants to acquire a share or right to ownership in the commercial company (partnership) of which is the individual is the owner or perpetual user (usufructuary) of land real estate (Nosek 2006, 39). The permission is issued by the Minister of Interior and Administration (MSWiA) and has a form of administrative decision (Sobol 2011, 90). The permission is valid for two years from the date of issue. The obligation of having permission is applicable in both cases, when the subject of acquisition is the real estate or just a separated part of it. The issue is regulated more precisely in Article 140 of the Act of 23 April 1964, Civil Code. The acquisition of land in accordance to joint ownership, both fractional and aggregated, should be understood as the normal acquisition that requires permission from a foreigner (Hartwich 2010, 69). According to the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners with further amendments, the foreigner that wants to buy real estate can apply for the 'premise' which provides the foreigner with the possibility of acquiring identified real estate in the future (Szafranski 2002, 41). The premise of acquiring real estate, in case of no opposition of Ministry of Defense, is issued by the Minister of Interior and Administration. However, in accordance to land acquisition, no opposition of the Minister responsible for rural development is required. The premise lasts one year, which means that during this time the permission cannot be refused unless there was a substantial change in factual status to resolution of the case. This institution is very beneficial for foreigners and foreign investors participating in auctions, tenders, or in a case of bringing contribution in form of real estate to a newly created company. The foreigner or foreign entity has a guarantee and therefore insurance against situations when a transaction cannot be completed because of lack of permission (Szytk 1996, 98 - 99).

The institution of premise, shortens the time of the transaction of land or real estate acquisition because eventual counterparties are able to pay greater attention on acquisition of new real estate rather than concentrating on permission itself (Zdyb 2000, s. 372).

Another important regulation according to foreign land acquisition is the Annex to the Treaty of Accession, which states that after 1 of May 2016, EU member states or other countries within the European Economic Area (EEA) will be allowed to acquire Polish agricultural land. However, the restrictions included in the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners outside the EEA will be still applicable (Swinnen and Vranken, 2009, 6-7). As it was mentioned before, every foreigner or foreign entity who wants to purchase Polish land needs the permission that has to be issued in a form of administrative decision. In the case of no contradictions of the Minister of Interior and Administration, and the Minister responsible for Agriculture and Rural Development, a foreigner or foreign entity can acquire land. However, in the Regulation of Minister of Interior and Administration of 26 April 2004 on detailed information and types of documents, which a foreigner, applying for a permission to purchase real estate, is obliged to present, in §4.2 the foreigner which wants to acquire Polish land, has to present to the Ministry of Interior and Administration, a statement from the Agricultural Property Agency that the agency will not exercise its rights to pre-emption to the land of which foreigner is willing to purchase. The right to pre-emption is regulated in the law of 11 April 2003 on Shaping of Agricultural Organization (The Journal of the Laws No. 64, item 592).

The same procedure is applicable, when the foreigner wants to overtake the shares or stocks of the company that is the owner of Polish land or possessor of the right to perpetual usufructuary (Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners, Art. 3e). The limitations and

restrictions applicable to foreigners are directed to both natural persons, who do not possess Polish citizenship, and legal persons or corporate bodies (and their partnerships) which are based outside the territory of Poland. The restrictions are also applicable to the companies based in Poland but owned by a natural person or persons who do not have Polish citizenship. However, there are also exceptions from obligations of having permission (Ciain, Kandcs, Swinnen, Herck and Vranken, 2012, 11). For example, foreigners can acquire Polish agricultural land when: (1) the foreigner will be married to Polish citizen, (2) the foreigner will be a Polish resident for at least two years, (3) the acquired property will belong to both husband and wife as a joint property. Also according to Article 8.1 of the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners, the foreigner is able purchase Polish land when he/she had received permanent resident status followed by five years of living in Poland. It should be added that the above-mentioned exceptions are not applicable if the subject of acquisition is the land located in border areas or the agriculture real estate that exceeds 1 hectare (Article 8.3) (Swinnen and Vranken, 2009, 6-7). In comparison, in Estonia, the restrictions according to the transitional periods (which is shorter then in Poland) are applicable for the areas of agricultural land smaller than 10 hectares. But Hungary allows foreigners to purchase only plots of 6000m² or smaller with addition of farm buildings required for livestock breeding. However, in any of the NMS7 countries, there are no limitations according to lease or renting of agricultural land (Report from the Commission to the Council, 2008, 4).

The restrictions included in the transitional period are not applicable when the EU or EEA citizenship rented the agricultural real estate for at least three years in the following areas: Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie and Świętokrzyskie, or for at least seven years in the provinces of: of Dolnośląskie, Kujawskopomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-mazurskie, Wielkopolskie and Zachodniopomorskie (Art. 2a) (Sobol 2011, 91).

In order to acquire agricultural real estate in the above-mentioned regions after the required period of renting, the foreigner must (1) use the land for agricultural production in person, (2) have a right to stay legally in Poland and (3) the rental contract must include certified data. There is also a possibility of acquiring the rights of acquisition when the company rents land. In this case a self-employed farmer can acquire the right to purchase the land after the renting period, which is relevant for a natural person (Swinnen and Vranken, 2009, 6-7).

Analyzing the restrictions included in transitional periods, one can find that there are significant differences in their implementations. The general rule which is applicable to each NMS7 means that the foreigners are not allowed acquire agriculture land of New Member States during the transitional period. The length of transitional period in all NMS7 is seven years except Poland. In Poland the length is prolonged until 2016 what means that the transitional period will last 12 years. The differences in legal systems, institution, and environment also differ. However, in all NMS7 countries there are no legal limitations in agricultural land leasing (Swinnen and Vranken, 2009, IV).

After 1 May 2016 every foreigner from the EU or EEA will be allowed to acquire Polish agricultural land without the restrictions included in transitional period; however, the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners will be applicable to other foreigners (non-EU or non-EEA citizens).

6. The quality of regulations

According to Swinnen and Vranken (2009) the efficient market of agriculture land plays a substantial role in economic growth. First of all, the well-functioning market enables the most productive farmers (or agricultural companies) access to land when they possess less land than they are able to use. Secondly, it would have a positive impact on the land transfer, especially in cases of off-land economy growth. Thirdly, the land ownership facilitates access to credit (Swinnen and Vranken, 2009, 2).

According to the Theory of Ownership Rights, the private ownership and fully exchangeable rights, are the foundation of the most productive use of land (Iwanek, 1992, 8).

The ownership is usually defined as a set of rights that are usually codified or restricted in a number of legal acts. In general, the ownership is composed of possibility to use the property in the greatest number of ways in order to achieve a particular goal or gain (in this case output of agricultural production). The ownership is also strongly tied with the right to decision-making in accordance to owned property (Milewski, 2005, 20–21).

The ownership is indeed one of the most important institutions that influences efficient allocation of resources. In Poland, after 1989 large areas of land belonged to the state, so privatization was necessary. However, the process of transformation from state-owned land into private was not so easy; sometimes even not possible. There are number of obstacle which law-makers had to face. One of them was lack of financial resources in the private sector that would enable private parties to buy the state-owned land (Kozłowska-Burdziak 2006, 35)

7. Impact of the regulations on investors' decisions

Polish accession to European Union undoubtedly made a positive impact on the country's perception by investors. However, the restrictions included in Polish regulations during the transitional period significantly reduced the investors activities according to agricultural land and forest. Therefore, between 2004 and 2009 the foreigners acquired only 8531 hectares of land from which 74.1 per cent were agricultural and forest (Sobol 2011, 95).

Also, from the statistical analysis the average price of Polish land between 2005 and 2013 tripled (8403zł – 1 November 2005, 26274zł 1 March 2013) (Official Web Page of the Agency for Restructuring and Moderation of Agriculture). The public sales of land also had an important impact on prices of land (privatization programmes) (Report from the Commission to the Council, 2008, 5). Also the farmers were willing to lease the land from the Agriculture Property Agency, and then use the pre-emption right to acquire this land before offering it to public. According to empirical studies conducted by Marks-Bielska, about 81.75 per cent of leaseholders confirmed that they would use the right and buy the land. However, statistic data collected by the APA says that 57.52 per cent of farmers used the right of pre-emption (Marks-Bielska, 2013, 791). This data shows that the legal institutions of the Polish legal system effectively reduce the activity of foreigners in the Polish agricultural land market.

8. Analysis of statistical data

The foreigners acquired 8531 hectares of Polish land (land properties) from which 74.1 per cent was agricultural land and forests. It is easy to notice that the majority of buyers were from EEA countries (Sobol 2011, 95-97).

According to the Ministry of Interior and Administration, in three Polish regions (Opolskie, Dolnośląskie and Lubuskie), foreigners acquired 71.6 per cent of total land, which was purchased between 2004 and 2009. In total 1258 hectares of land was acquired (Report of Minister of Interior and Administration, 2010, 30-33). According to the Central Statistical Office in Poland: "An average value of a single purchase/sale transaction of built-up agricultural land ranged from PLN 93.6 thous. in Lubelskie Voivodship to PLN 372.7 thous. in Pomorskie Voivodship" (Report - Real Estate Turnover in 2011, 2012, 89).

It should be mentioned that in all NMS7 countries, the number of transactions where one of the parties was a foreigner or foreign entity was relatively small to the total transactions that occurred on the market. For example, in Hungary less than 0.2 per cent of the total number of transactions (in 2005 and 2006) involved a foreign party. In Latvia, the highest rate of foreign land acquisition was recorded, but it still did not exceed 2 per cent during the same time period. However, many experts suggest that official statistics may include error because they do not include the transactions proceeded by local intermediaries or informal agreements (Report from the Commission to the Council, 2008, 4).

According to the EUROSTAT, between 2000 and 2006 there was a considerable increase in land prices. For example in Poland, prices rose around 10 per cent per year, measuring nominally in Polish Złoty, and adjusted for inflation. However, prices of land leasing (rentals) rose by 4 per cent per year in the same period (Report from the Commission to the Council, 2008, 5). According to the Report from the Commission to the Council, in 2005 and 2006 land sales prices were assessed in Euro in all NMS7. The lowest prices recorded in Estonia and Lithuania were below €800/ha, in Poland €1927/ha and the highest price in Latvia €3591/ha. However, the rental prices was in Poland €32/ha (middle), Slovakia €18/ha (lowest) and Hungary €67/ha (the highest) (Report from the Commission to the Council, 2008, 5-6).

However in 2007 – the lowest annual rental prices were recorded in Slovakia €24/ha, (highest €123 Poland and middle €87 Hungary). Land price in the same year in Poland was €3100 (Swinnen and Vranken, 2009, 46).

According to World Bank, the other key indicator is the change in agricultural output. Between 2000 and 2011, Poland has increased gross agricultural output by 40 per cent in a decade (Csaki, Jambor, 2013, 2).

9. Impact on economic growth

The foreign land acquisition is rather small in comparison to the total number of transactions on the market. However, the foreign activity remains consistent over the years. According to Sobol, the consistency of foreign transactions indicates the success of Polish legal restrictions and land liberalization of both land leasing and real estate. It gives the right to foreigners to be able to acquire

Polish land; however, in great restriction. Therefore the control necessary for national security, in a broad sense, is granted (Sobol 2011, 99).

The investments in agriculture do not pay off in the short term. Rather, it is an eventual long-term benefit, which may have forms of additional capital, know-how, and increased productivity. In the year of accession to EU (2004), total Foreign Direct Investment stock was equal to € 170 billion (data from the report 2003) in all NMS7 countries. Only a small amount of this sum was dedicated to agriculture (less than €1 billion). Despite this, this represented a significant inflow of capital to the agricultural sector; keeping in mind the limitations under the provisional periods (Report from the Commission to the Council, 2008, 4).

Notably, after the EU accession, the gap between prices of land between so-called old member states and NMS7 countries decreased. This was mainly caused by an increase of land prices in new member states. There still existed a big difference between countries. It is worth mentioning that the rental prices did not increase as fast, even though there were no restrictions for foreigners. However in all NMS7 countries there was observed growth in production, land efficiency and labour productivity (Report from the Commission to the Council, 2008, 6). There was not any visible impact on the system that would cause any socio-economic problems.

The limitations towards foreigners are not the only element that prevents the most efficient functioning of the agricultural land market. The next element is unfinished privatization, which is currently in its final phase in Poland. High transaction cost may also have significant impact on investment decision (Swinnen and Vranken, 2009, IV).

The limitations in land acquisition effectively protect Polish farmers; therefore, the FDI were directed into food industry and agribusiness. This phenomenon had positive impact on the transfer of technology, know-how, and also capital, which indirectly improved the structure of farms (Swinnen and Vranken, 2009, IV). It is not clear how much the economy would benefit without restriction, but full market liberalization would cause serious socio-economic problems and have political consequences.

But even imposed restrictions did not cause the discontinuation of reduction in gap prices, productivity, and farm efficiency. The Common Agricultural Policy increased flow of money to Polish farmers that resulted moderate economic development together with strong resistance against turmoil on financial markets.

Conclusion

Before EU enlargement in May 2004, Poland negotiated with the European Union principles of law that were necessary to implement in a national system for member accession. However, due to the significant differences in prices of land between old member states and the NMS7, seven candidate countries requested a provisional period during which national restrictions on EU and EEA foreigners would be imposed.

Poland has had the right to maintain this provisional period for the longest time among all new members—12 years. During this time, Poland has had to finish the privatization process, strengthen

the farms' structures, and improve efficiency in production. However, from the other side, the national obligations would be in force until 2016.

Restriction in foreign land acquisition has had an impact on the size of agricultural land sale market. The farmers' perception of land, culture, history and tendencies also did not foster the number of transactions on the market. Therefore, foreigners who required permission in order to purchase agriculture land were not very active on the market, even though the prices increased significantly. Another limitation was the institution of pre-emption, which was applicable for both foreigners (APA had the pre-emption right) and Polish farmers (after renting a land from the APA, a farmer could use the right to pre-emption).

One of the legal institutions that facilitate agricultural land acquisition for foreigners is a "premise". A "premise" enables an investor to concentrate more on a transaction rather than permission. However, according to the lease there is no restriction imposed. Also, there is a number of exceptions in acquiring the permission, e.g. after a marriage, etc.

These above mentioned institutions undoubtedly had an impact on the size of the agricultural land market and therefore on economic growth. However, the impact of these institutions was rather small. In all, NMS7 countries did not exceed 2 per cent of total land sales transactions. Also, the Foreign Direct Investments turned to the food industry and agribusiness, which had impact on efficiency, production, and structure of farms. Therefore, legal institutions protected Polish farmers and broadly defined national interest rather than economic growth.

References

Legal regulations:

1. The Act of 13 June 2003 on Foreigners (Journal of Laws of 2006, No 234 item 1694 with further amendments).
2. The Act of 15 September 2000 Code of Commercial Partnerships (Journal of Laws No 94, item 1037 with further amendments).
3. The Act of 19 October 1991, the Management of Agricultural Property of the State Treasury (Journal of Laws No 107, item 465 with further amendments).
4. The Act of 23 April 1964, (Journal of Laws No. 16, item 93 with subsequent amendments).
5. The Act of 24 June 1994 on ownership of premises (Journal of Laws of 2000, No 80, item 903).
6. The Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners (Journal of Laws No 167, item 1759).
7. The Act of 27 May 2004 Investment Funds (Journal of Laws of 2004, No. 146, item 1546 with further amendments).
8. The Annex IX to the Treaty of Accession 2003.
9. The Annex V to the Treaty of Accession 2003.
10. The Annex VI to the Treaty of Accession 2003.
11. The Annex VII to the Treaty of Accession 2003.
12. The Annex X to the Treaty of Accession 2003.
13. The Annex XII to the Treaty of Accession 2003.

14. The Annex XIV to the Treaty of Accession 2003.
15. The law of 11 April 2003 on Shaping of Agricultural Organization (The Journal of the Laws No 64, item 592).
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