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### **Commission I**

#### **National report for Poland**

Statut juridique des conjoints et de leurs enfants dans l'entreprise  
agricole – **Legal status of cohabitees and their children in the agri-  
cultural enterprise** – Rechtliche Stellung der Partner und deren Kinder  
im landwirtschaftlichen Unternehmen

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## The Legal Status of Cohabitees and their Children in an Agricultural Enterprise

### Summary

The typology of basic attitudes European legislators manifest with respect to the issue of cohabitation may be characterised as either progressive (favourable to the institutionalization of cohabitation relationships) or traditional (allowing for the institutionalization of marriage, construed as a relationship of a woman and a man only). The Polish legislator has consistently supported the latter view. In consequence, *de facto* relationships imitating marriage, i.e. cohabitation relationships (both of hetero and homosexual nature) do not enjoy the protection and care of the state guaranteed by the Constitution, which, of course, does not mean that the law prohibits such relationships. However, as a rule, cohabitation has remained unregulated, and all attempts to institutionalize relationships of this type, undertaken since 1990s, have ended in failure. To a small extent the social phenomena of cohabitation is reflected at the level of social norms which employ expressions referring to cohabitees, such as “sharing common domestic life”, “being in a de facto relationship”, “close (closest) person”. These expressions are found in many specific legal regulations, including tax law, housing law and social insurance law. In a small number of cases, they may be also found in agricultural law, including in particular the act on the determination of the agricultural system specifying the rules for trade in farmland in Poland. Therefore, these rudimental legal norms only allow for outlining the legal status of cohabitees in Poland, including cohabitees in agricultural enterprises.

There are also no general regulations governing the status of women in rural areas, though it should be emphasized that Polish regulations do not contain any formal manifestation of discrimination due to gender, which should be appreciated. Nonetheless, Poland still lacks a more comprehensive state policy aimed at motivating women to enter the job market, which in turn is reflected by scarcity of legal regulations in this respect. Poland’s membership in the European Union has served as a trigger for positive change, and various mechanisms stipulated by the Rural Development Programme, including the Leader approach in particular, contain incentives for higher involvement of women in work for the rural

community. Nevertheless, these mechanisms continue to be insufficient and are rather first steps in the process of promoting activeness of women in rural areas than the final touch. Therefore one should hope that in future the Polish state will intensify its actions aimed at improving the situation of women in rural areas

### A. Stocktaking

1. In the Polish legislation currently in force, the terms “partner” or “civil union” do not appear at all. In the literature – legal or otherwise – and, increasingly often in common speech, such terms are used to refer to relationships between people of the same sex. In a similar way, the traditional institution of cohabitation remains outside the scope of legal regulations. In the common understanding this term mainly denotes heterosexual relationships, nonetheless the legal literature tends to extend this term also to same-sex relationships<sup>1</sup>. On the other hand, pursuant to the judicial practice of the Supreme Court, cohabitation means the legally unregulated permanent cohabitation of a man and a woman, and therefore is characterized by the permanence of the relationship, marriage-like common domestic life and the lack of a legal event which would regulate the relationship<sup>2</sup>. However, other judgements issued by common courts extend the scope of application of this definition to homosexual relationships as well. To harmonise the ambiguous terminology referred to above, for the purpose of this study, the terms “partner”, “cohabitee”, “common law marriage” and “cohabitation relationship” will be used interchangeably as synonyms referring to permanent informal relationships, irrespectively of the sex of the persons in such relationships.

The interest of doctrine and judicial practice in the issue of cohabitation should not overshadow the fact that from a legal perspective this institution has not been regulated. The typology of basic attitudes European legislators manifest with respect to the issue of cohabitation may be characterised as either progressive (favourable to the institutionalization of cohabitation relationships) or traditional (allowing for the institutionalization of marriage, construed as a relationship of a woman and a man only). The Polish legislator has consistently supported the latter view. This situation is a consequence of the norm included in Article 18 of the Constitution of the

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<sup>1</sup> cf. M. Nazar, *Konkubinat* [in:] *System Prawa Prywatnego. vol 11, Prawo rodzinne i opiekuńcze*, T. Smoczyński (ed.), Warszawa, 2009 p. 909.

<sup>2</sup> The Supreme Court Judgement of 5 December 1997 II CKN 485/97

Republic of Poland of 2 April 1997 which provides that marriage, being a relationship of a woman and a man, a family, maternity and parenthood enjoy the protection and care of the Republic of Poland. In consequence, *de facto* relationships imitating marriage, i.e. cohabitation relationships (of both a hetero and homosexual nature) do not enjoy the protection and care of the state guaranteed by the Constitution, which, of course, does not mean that the law prohibits such relationships<sup>3</sup>. Nonetheless, according to the representatives of the doctrine, Article 18 decisively determines that it is inadmissible to introduce, interpret or apply legal provisions in a way which would blur the legal differences between cohabitation and marriage or, for some reason would allow for the better treatment of cohabitantes and their children than spouses and their families, indirectly encouraging cohabitation (as alternative *quasi*-marriages)<sup>4</sup>. The constitutional provision referred to above is made more specific at the level of acts of law, including in particular the Family and Guardianship Code of 25 February 1964, which governs the legal effects of marriage that cannot be extended in any way to cohabitation.

In consequence, as a rule, the current legal situation of common law marriages in Poland may be described by quoting Napoleon Bonaparte, who addressed the authors of the French Civil Code saying that cohabitation should be left outside the law and the law should take no interest in it<sup>5</sup>.

However, provisions currently in force in Poland – although they do not employ the general term of a “common law marriage” or “civil union” – contain expressions which, as commonly believed in the literature, refer also to cohabitantes, such as “*de facto* sharing common domestic life”, “sharing common domestic life”, “being in a *de facto* relationship”, “a close (closest) person”. These expressions are found in many specific legal regulations, including tax law, housing law and social insurance law. Therefore, the legal status of cohabitantes in Poland may be outlined only on the grounds on such rudimentary provisions.

The foregoing general comments are also fully applicable to the legislator’s approach to the issue of cohabitation on the grounds of agricultural law. Polish law lacks a general regulation of the legal status of cohabitantes in the context of an agricultural enterprise. There are only specific provisions containing the expressions referred to above (e.g. a close

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<sup>3</sup> T. Smoczyński, *Rodzina i prawo rodzinne w świetle nowej Konstytucji*, Państwo I Prawo, 1997, no. 11-12, p. 187 et seq.

<sup>4</sup> M. Nazar, *Konkubinat...* op.cit. p. 937

<sup>5</sup> R. Savatier, *Bonaparte et le Code civile*, Paris, 1927, p. 22.

person) suggesting that they are addressed also to partners living in informal relationships. In consequence, attempts to establish a special status for partners in the context of agricultural enterprises, which would distinguish them from the status of partners on the basis of non-agricultural regulations, are *de lege lata* doomed to fail due to scarce research material. One could only mention a few detailed agricultural law provisions which are addressed also to persons in *de facto* relationships.

The issue of non-formalised couples living on farms cannot be examined independently from the general situation of women in rural areas. There is no general legal act in Poland which would govern their status. There are also no detailed statistical data as to the number of women living in informal relationships in the countryside. The only indirect source of such data may be questionnaires carried out among women living in rural areas, as e.g. *Study on the situation of women in agriculture and in rural areas. Specific nature, standards, parities and expectations*, commissioned by the Ministry of Agriculture and Rural Development in March 2012. The research has shown that 63.8% of the respondents were married, 27.5% identified their marital status as “single” [maiden], 4.6% as a “widow”, 2.0% - “divorced”, 0.6 “in separation” and 1.6% failed to respond to this question at all. This data suggests that married women significantly prevail among women in rural areas. What is more, in the countryside the institution of marriage is more stable than in cities, where for many years the ratio of dissolved marriages has been higher than the number of the solemnized new ones (in 2010 the difference was -21,285). Meanwhile, in rural areas traditionally we have observed the contrary situation – the number of newly solemnized marriages prevails over the number of dissolved ones (in 2010 the surplus amounted to 28,073). However, the foregoing is insufficient to draw any decisive conclusions as to the marginal importance of cohabitation in rural areas. In order to determine the actual number of such relationships it would be necessary to carry out valid statistical research accompanied by analogous studies performed countrywide, including in the cities. The last research in this area was carried out in 2002, within the National Census of Population and Housing, where cohabiting partners were distinguished for the first time as a type of family. In 2002 in Poland nearly 400,000 people lived in partnerships, creating almost 200,000 families. The small fraction of families of this type (1.88%) disclosed in the 2002 study has continued to fuel the arguments of opponents of the institutionalisation of common law marriage, who claim that this phenomenon is of marginal importance.

The problem of the number and significance of *de facto* couples in rural areas is complicated even further due to the phenomenon, observed much more frequently in the countryside than in cities, of solemnizing religious

marriages only, i.e. relationships created on the basis of the church and religious law (usually the law of the Catholic Church), without observing the civil form of solemnizing marriage or the alternative “Concordat” form available since 15 November 1998. A typical justification for the partners’ decision to solemnize a religious marriage only is the will of one of them to keep the farm for his or her relatives only (e.g. children from a previous marriage) and to disregard the “spouse’s” rights. Despite the doctrinal attempts to recognize such *de facto* couples as “qualified” and cohabitees as “actual spouses”, the prevailing opinion is that such relationships have no legal effects from the perspective of civil law. The frequency of such relationships in the countryside is, in turn, a factor influencing the legal status of affected women. In practice, these are usually woman who, following the solemnization of a religious marriage, start working on their partner’s farm without acquiring any of the rights a spouse would be entitled to in the light of civil law. The problem of settlements between such cohabitees has been discussed in the literature and in judicial practice, but no general conclusions have been drawn in this respect; there have been rather detailed settlements issued on a case to case basis<sup>6</sup>.

2. As discussed above, the specification of regulations introducing a special status for cohabitees and their children in agricultural enterprises in comparison to enterprises of a non-agricultural nature is practically impossible in Polish law, due to the lack of relevant norms in the Polish legal system. Likewise, the recognition of differences in the status of male and female partners on farms is not feasible from the perspective of the Polish law. Furthermore, it should be emphasized that, with respect to the last issue, the Polish legislator formally obeys the principle of equality, and does not employ the criterion of gender to discriminate against certain persons running agricultural enterprises. The need to ensure the equality of women and men and to eliminate all manifestations of discrimination due to sex, emphasized so strongly in the Rural Development Programme 2007-2013 and in EU law, has been satisfactorily implemented in Polish legislation.

In consequence, the following discussion is intended to present those few specific regulations in the area of agricultural law which are addressed to persons in informal relationships, either directly or indirectly:

**2.1.** With respect to **subsidy law**, including aid from the European Agricultural Fund for Rural Development, Polish law has been consistently compliant with the assumption that informal relationships do not fall within

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<sup>6</sup> Cf. A. Policki, *Rozłączenia konkubiny z tytułu u pracy u wiadzonej w gospodarstwie rolnym konkubenta*, Nowe Prawo, 1970, p. 505-514

the scope of interest of the positive law. Such a conclusion may be drawn on the basis, for instance, of specific terms and conditions for granting financial aid within the measure “Structural pensions” or detailed terms and conditions for granting financial aid within the measure “Facilitations for young farmers”, covered by the Rural Development Programme for the period 2007-2013. Moreover, one may even venture the opinion that on the grounds of the foregoing regulations married persons are treated more favourably than persons in informal relationships. This is a consequence, e.g. of the fact that a married farmer leaving his farm in exchange for a structural pension is entitled to receive the allowance in a higher amount in the case of having a spouse. There is no analogous solution if a farmer is in an informal relationship. Moreover, in specified cases a farmer’s spouse may apply for a structural pension in his or her place; meanwhile such a competence has not been granted to farmer’s partner. On the other hand, in the light of the regulations aimed at supporting young farmers, partners are not allowed to apply for such support, since the application may be submitted only by spouses and the assistance will be awarded to one of them on condition that the farm used to run agricultural business will constitute an element of their joint marital property. Any other forms of co-ownership or co-possession (e.g. which co-ownership partners living in informal relationships are entitled to) of a farm on which the applicant intends to start running an agricultural enterprise automatically disqualify his or her application. Therefore, the example of two measures of high significance to Polish agriculture shows that on the level of internal regulations governing aid, partners in an informal relationship must face far more difficulties and obstacles than persons who are formally married.

**2.2.** As far as the regulations regarding **land law and tenancy** are concerned, one may observe a clear tendency to harmonise the legal status of cohabitees – as members of a broadly construed farmer’s family – with the status of his or her relatives and spouse. This is a consequence of the fact that the major legal act governing the trade in farm land in Poland *inter vivos*, i.e. the act of 11 April 2003 on the determination of the agricultural system<sup>7</sup>, uses the term “close person” who should be construed as: successors, ancestors, siblings, siblings’ children, a spouse, adopting and adopted persons and the person **actually sharing common domestic life with the person disposing of property**. As already mentioned above “sharing common domestic life” is usually construed by the Polish legislator as informal partnerships. In consequence, farmers’ partners may acquire from them farmland on the same terms and conditions as their spouses and

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<sup>7</sup> Consolidated text: Journal of Laws 2012.803

other relatives, i.e. without limitations arising from the rights vested in a legal person – Agricultural Property Agency – including the pre-emption right to the sold real estate or the right to purchase (acquire) such property if the ownership is transferred on the basis of an agreement other than the sales agreement. Sales of farmland to such a person are also exempted from the pre-emption right of the lessee. However, due to the lack of institutionalisation of cohabitation in the Polish law, in a specific case when an agreement on the transfer of farmland is concluded, certain problems may arise as to the evidence needed to determine whether specific persons, who are not married, are indeed “actually sharing common domestic life”. There may be a justified doubt as to whether it is sufficient for the parties to make a representation in this respect or rather whether further determinations are needed, e.g. of the fact of living together (having the same registered place of residence). These problems are not insignificant in view of the fact that if the buyer of some farmland is not a close person to the seller, the agreement concluded disregarding the pre-emption or purchase right of the Agricultural Property Agency is subject to the sanction of absolute invalidity.

**2.3.** With respect to the **law of succession**, the rule that a common law marriage is an actual relationship indifferent from the perspective of the law applies to partners managing agricultural enterprises – as partners living in common law marriages in general – and, in consequence, the cohabitee has no right to statutory inheritance after their deceased partner on the grounds of the act. This regulation poses an obvious threat to the existence of an agricultural enterprise following the death of one of the partners if the farm was co-owned by both of them. In this situation, the statutory heirs (the closest relatives or even a spouse) inherit the share in the co-ownership of the agricultural enterprise after the deceased partner and become the co-owners of the enterprise together with the other cohabitee. In practice, there may be problems with settling interpersonal relations between the co-owners of such a production unit, leading even to the elimination of co-ownership and thereby putting the agricultural enterprise at risk of being irrationally divided from the perspective of correct agricultural management. On the other hand, if the deceased cohabitee was the sole owner of the farm and their partner had made some investments in it, they would only be entitled to a claim under groundless enrichment against the heirs of the deceased, and only in very few cases to “stronger” claims under mandate or employment agreements treated as liabilities accounted towards the inheritance mass.

In consequence of the unfavourable regulations of positive law referred to above, the Polish literature advises cohabitees to take advantage of

various forms of so-called succession planning<sup>8</sup>. In practice, the most commonly used form in this respect is the preparation of a last will by the cohabitee. However, the content of such a will may vary; one of the options is to entitle the partner to inherit the entire property or its part, namely to appoint them as one's heir. Another option is to bequeath the agricultural enterprise to the partner, though as from 2011 the testators have the option to choose between a regular bequest (having the nature of an obligation only) and a specific bequest (with *in rem* effects, coming into force on the testator's death). The introduction of the latter institution to the Polish legal system was substantiated by the need to protect organized business units, such as an enterprise or a farm, in the process of inheritance. Nonetheless, regardless of the fact of whether the partner was appointed as an heir and then a specific bequest was made to their benefit, they must take into account the right of their partner's descendants and spouse, as well as their parents, to claim the legitim and enforce its collection. Although this claim is of a pecuniary nature, the need to satisfy it may result in the division of the farm or its disposal by the partner.

Meanwhile, the institution of the specific bequest may turn out to be useful from the perspective of satisfying the housing needs of partners. Such a bequest may also involve establishing the usufruct or servitude right to the benefit of the heir – including the servitude of an apartment in a residential building forming an element of an agricultural enterprise. Therefore, in this way, the testator may guarantee the life-long right to live on the farm to their partner, significantly exceeding the general regulation of Article 923 of the Civil Code pursuant to which close persons of the testator (and, therefore, also cohabitees) who lived with them until the day of their death, are entitled to use the apartment and its equipment as before for a period of three months after the inheritance procedure has been initiated.

**2.4.** Polish **family law** does not stipulate any separate solutions applicable to persons managing agricultural enterprises. The general rule included in the Family and Guardianship Code (FGC) provides that such persons should be construed as strangers. In the meaning of this act, cohabitees are not a family which – pursuant to FGC – is defined as a social group created by a woman and a man as a result of solemnizing marriage. In the Polish literature the opinion that cohabitees and their children form a family based on the maternity of the woman and confirmed paternity of the man is a minority view<sup>9</sup>. Nonetheless, the cohabitees' will to have children

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<sup>8</sup> S. Jaworski, *Prawne aspekty konkubinatu*, Monitor Prawniczy, 2012, no. 21.

<sup>9</sup> J. Winiarz, *Pravo rodzinne*, Warszawa, 1992, p. 16.

together means that, as a rule, pursuant to Article 93 FGC, both of them are entitled to parenting rights, since such rights are not derived from relations between parents, but from blood relationship exclusively. In consequence, both cohabitees have the right and the obligation to take care of the child and its assets and bring it up; moreover, they make common decisions on significant issues regarding the child (Article 97 FGC). Furthermore, pursuant to Article 128 FGC, both cohabitees are obliged to provide for the child by means of alimony.

As far as the remaining issues are concerned, the cohabitees are treated as adult strangers, both with respect to non-proprietary and proprietary regulations. In particular, a cohabitee is not entitled to a claim for alimony against the other, since pursuant to FGC such a claim may result only from marriage or blood relation. If a woman living in a common law marriage gives birth to a child, to determine paternity the cohabitee's recognition of paternity or a court judgement are required. Moreover, if the woman is formally married, pursuant to Article 62 FGC, the presumed father is the mother's husband. This presumption may be quashed only by a claim denying paternity. Furthermore, FGC does not stipulate a possibility of common adoption of a child by cohabitees, regardless of the fact whether their relationship is homo or heterosexual, due to the fact that pursuant to the Polish law common adoption by two people is allowed only in marriage. Although it is possible for one person, a man or a woman, to adopt a child, in practice the intent to ensure the wellbeing of a child usually prevents a family court from issuing a judgement consenting for adoption if the adopting person lives in a common law marriage. What is more, pursuant to the judicial practice of the Polish courts, if one of cohabitees wants to adopt a child of the other, they must solemnize marriage; otherwise, the parent of the child loses their parenting rights to the benefit of the adopting partner.

With respect to the proprietary relations between cohabitees, the Polish law has consistently supported the view that the creation of a *de facto* relationship does not involve the establishment of any system of property. This view is compliant with the opinion – supported by the resolution of the Supreme Court dated 2 July 1955 (II CO 7/55) – that the common law marriage in itself does not have any legal and proprietary effects between cohabitees. What is more, in the resolution referred to above the Supreme Court agreed with the position prevailing today that if any proprietary relations are created between cohabitees, rights and obligations thereunder are to be assessed on the basis of provisions applicable to such relations. This is the so-called case concept, requiring the application of separate legal bases to cohabitees' settlements in various situations occurring during their relationships which resulted in common property of cohabitees. This

concept was confirmed, among others, in the resolution of the Supreme Court dated 30 January 1970 (III CZP 62/69) in which the Court assumed that the provisions governing the elimination of co-ownership of items constituting joint property may be applicable to the settlements of claims concerning property a man and a woman cohabiting without being married have earned while running an agricultural enterprise together and concerning expenditures incurred by one of them on real property or movables belonging to the other, but being a part of such an agricultural enterprise. The following provisions are applied to such settlements: with respect to claims regarding real properties and movables acquired jointly, by means of ownership or possession, and concerning expenditures incurred on such items – the provisions on the elimination of co-ownership, meanwhile, while with respect to claims concerning expenditures incurred by one of such persons on items belonging to the other, where such items make part of the common agricultural enterprise – the provision on groundless enrichment. In its subsequent judgements, the Supreme Court has consistently defended its opinion as to the lack of grounds for the development of one, universal legal basis applicable to all settlements between cohabitants. In particular, the court rejected the option of applying – by analogy – the provisions governing the statutory joint property or, a solution suggested by the doctrine<sup>10</sup>, which involves the application of provisions on partnerships (the resolution of the Supreme Court of 30 January 1986, III CZP 1979/86, the Supreme Court Judgement of 5 October 2011, IV CSK 11/11).

**2.5.** Insofar as regulations governing **social insurance** are concerned, it should be emphasized that Poland has introduced a special agricultural insurance system, involving its partial separation from the common insurance system. This separation is mainly of organizational nature: agricultural insurance is managed by a dedicated administrative structure – Agricultural Social Insurance Fund (KRUS) and of systemic nature: farmer’s insurance is governed by the act of 20 December 1990 on the farmers’ social insurance. Pursuant to this legal act, the insurance is extended to “farmers”, i.e. substantially: natural persons aged 18 and above, residing and running agricultural activity on the territory of the Republic of Poland in person and on their own account within an agricultural enterprise in their possession. If the criteria specified above are met by both partners – e.g. both are co-owners of a farm – there are no obstacles for extending the farmers’ social insurance to both of them. However, if only one of the partners runs agricultural activity on their own account, the other may be

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<sup>10</sup> A.Policiski, *Roszczenia konkubiny ...op.cit.*, p. 512.

covered by KRUS insurance as a “household member”, namely a close person of the farmer of they: a) have completed 16 years of age, b) share a common household with the farmer or reside on the area of their agricultural enterprise or in its close vicinity, c) work in this agricultural enterprise on a permanent basis and is not in an employment relationship with the farmer. The term “close person” has not been defined in the act. However, pursuant to the general understanding of this term referred to above, one may apply it not only to farmer’s relatives, but members of their broadly construed farming family – including partners. However, it should be emphasized that the act requires that the “household” member worked on a permanent basis in farmer’s agricultural enterprise; it is not sufficient for them to do household work involving, for instance, care for the apartment. Therefore, in this respect, the legislator differentiates between the situation of a farmer’s partner and a spouse who, pursuant to Article 5 of the act, may be covered by the farmers’ insurance also if working in a household directly related to the agricultural enterprise. A farmer’s partner may also conclude with them an employment contract. However, should that be the case, he or she will be subject to general employee’s insurance, losing the benefits related to the insurance within the farmers’ insurance system (e.g. significantly lower contributions).

**2.6.** As far as the Polish **tax law** is concerned, the situation of cohabiting partners is particularly unfavourable when compared to spouses. As a rule, from the tax law perspective, cohabitees are strangers for each other and in consequence their common proprietary transactions are taxable depending on the transaction type. To illustrate this with an example, if one of the cohabitees uses a bank account of the other, tax authorities may qualify this activity as a loan or donation. By analogy, if one of the cohabitees lives in a flat the legal title to which is held by their partner only, he or she obtains a taxable income in the form of a performance in kind. Moreover, persons in *de facto* relationships have no option – contrarily to spouses – to settle jointly their tax liabilities, and alimony paid by one of the cohabitees to the partner’s child is also taxable. However, partners are treated as a taxpayer’s family members on the grounds of regulations pertaining to extended tax liability (so-called third party tax liability). Pursuant to Article 11 of the Tax ordinance act, a member of taxpayer’s family is jointly liable with all their property with the taxpayer running business activity for tax arrears arising of such activity and pertaining to the period during which such a person permanently collaborated with the taxpayer in running business and deriving profits from it; for this purpose, the definition of the taxpayer’s family members includes people sharing common domestic life with the taxpayer.

However, the provisions of the tax ordinance mentioned above, which classifies cohabitantes as members of the taxpayer's family, is of exceptional nature in view of the remaining tax law regulations. The act on tax on inheritance and donations is particularly unfavourable to persons in *de facto* relationships as it classifies them into the 3rd tax group (strangers), subject to the highest tax rate. The situation of partners running agricultural enterprises together is slightly improved by an exemption, stipulated by Article 4 of the act, from the tax on the acquisition of ownership or perpetual usufruct right to real property or its part with its constituents, except for, inter alia, residential buildings, on condition that as of the acquisition date the real property is an agricultural enterprise or its part, in the meaning of the provisions on the agricultural tax, or will become a part of an agricultural enterprise owned by the acquirer and such agricultural enterprise will be managed by the acquirer for the period of at least 5 years from the acquisition date. However, it should be emphasized that it is a general exemption, which does not apply to partners only, but to all persons acquiring a farming estate by inheritance or donation, and concerns land exclusively. All the other forms of property increase to the benefit of a cohabitant will be taxable in line with general rules<sup>11</sup>.

**2.7.** With respect to the **corporate law** regulations it should be emphasized that Polish legislator manifests a relatively unfavourable attitude to various forms of cooperation in agriculture. In particular, despite ready-made foreign models, has failed to introduce an "agricultural company" as a specialist form of joint agricultural activity, or the institution of a "complex farming estate" managed by a family of farmers. Therefore partners running an agricultural enterprise and intending to institutionalise their operation in the form of a company may choose from general types of companies stipulated by the Code of commercial companies, or base their business on the civil partnership agreement governed by the Civil code. It is worth noticing that the postulates of introducing general regulations governing the mutual proprietary relationships of partners running an agricultural enterprise by applying to them, by analogy, the provisions on civil partnership<sup>12</sup> have appeared in the doctrine. However, they have not found any reflection in the judicial practice of the Supreme Court, which has consistently upheld its position that the provisions on civil partnerships cannot be automatically applied to settlements between cohabitantes, unless they have formally established such a partnership (a resolution of the

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<sup>11</sup> More on this issue: B. Brzeziński, J. Jeziński, *Konkubinaty a polskie prawo podatkowe*, Nowe Prawo, 1990, no. 4-6, p. 91-101.

<sup>12</sup> A. Policiński, *Rozłączenia konkubiny ...op.cit.*, p. 513.

Supreme Court of 30 January 1986, III CZP 79/85). Meanwhile, more recent literature suggests that the cohabitees based their agricultural activity on the so-called tacit company type which is not regulated by the law. Its nature is to involve a contribution (sometimes in the form of one's work) made by one of the partners – a tacit partner, possessing tangible or financial assets – to the benefit of the other partner – explicit partner, running agricultural activity on his or her own behalf; in exchange for their contribution, tacit partner would participate in benefits from the activity, without disclosing themselves outside the partnership and without any rights to its assets<sup>13</sup>. However, failure to formally describe such companies by including them into the typology of companies may prevent broader application of this model in rural areas.

**2. 8.** The Polish law dedicates relatively little attention to the process of **transfer of business with respect to agricultural enterprises**. In particular, as a rule, no special forms of *inter vivos* transfer of agricultural enterprises which could be used by cohabitees have been established. The only exception in this respect is the institution of the so-called agreement with the successor, governed by the provisions of the act on farmers' social insurance referred to above, by which a farmer being an owner (co-owner) of a farming estate undertakes to transfer the ownership (share in co-ownership) and possession of such a farming estate to a person younger from them by at least 15 years (successor) once he or she acquires the right to receive pension or a disability allowance, provided that the successor will work on such a farming estate until that time. Due to the significant age difference required between the farmer and the successor, the agreement will be applicable to relationships between partners only exceptionally. Moreover, other circumstances, including in particular structural defects of this agreement make it – despite favourable taxation – rarely used in practice. In consequence, partners are left with typical civil law agreements, including in particular the donation which, as mentioned above, involves negative tax consequences.

*Mortis causa* legal succession concerning agricultural enterprises was to be facilitated by the institution of the specific bequest referred to above, which may pertain to such a production unit in particular. Nonetheless, the discussed circumstances, including the liability of the heir for legitim and unfavourable taxation, make this form of transfer of an agricultural enterprise to a partner costly enough to threaten the very economic bases for the operation of the enterprise.

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<sup>13</sup>G. J. drejek, *Spółka cicha*, Warszawa, 2008, p. 45.

## B. Legal developments

3. Generally speaking, one may conclude that the legal status of persons in informal relationships, including the ones running agricultural enterprises, has not changed much in Poland over the years. Consistency in the implementation of the assumed approach to the issue of cohabitation, which boils down, substantially, to ignoring this social phenomenon, is typical of the Polish legislator. This was the situation observed in the previous political system before 1989; the systemic changes over the two last decades have brought about little changes in this respect. It is symptomatic that the postulates to regulate the legal situation of a common law marriage in the context of relationships in rural areas were put forward already in 1970s<sup>14</sup>. However, they have not been implemented until today. The coming into force of the Constitution of the Republic of Poland of 1997, which makes a family agricultural enterprise the basic unit of the agricultural system in the state, gave rise to hopes for more comprehensive institutionalisation of family relationships within agricultural production units, comprising the inclusion of partners as members of a broadly construed farming family. Unfortunately, scarce regulation included in the quoted act establishing the agricultural system of 2003, which made the constitutional term of a family agricultural enterprise more specific, failed those hopes and did not refer in any way to proprietary and non-proprietary bonds between a farmer and members or his or her family.

What is more, agricultural law is not the only area where the legal situation of persons in informal relationships has remained unchanged. The same pertains to general regulations. Repeated attempts to institutionalise relationships of this type, supported by doctrinal studies<sup>15</sup>, have been consistently rejected by the Parliament. This was already the fate of the first draft regulating proprietary relationships between cohabitees developed in the middle of 1990s. The substantiation for the rejection of the draft was lower popularity of such relationships in Poland than in Western Europe. The draft assumed, among others, the quashable presumption of the acquisition of assets for common purpose by cohabitees, joint liability of cohabitees for liabilities incurred to satisfy their regular common needs, an alimony obligation between former cohabitees, statutory inheritance and right to the legitim, and, additionally, regulation of the legal status on the grounds of the tax law, social insurance law and provisions on social

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<sup>14</sup> A. Policki, *Roszczenia konkubiny* ...op.cit., p. 513.

<sup>15</sup> A. Szłak, *Stosunki majątkowe między konkubentami. Zagadnienia wybrane*, Poznań, 1992, p. 103 et seq.

assistance<sup>16</sup>. Sejm refused to accept also a draft of the act on the registration of relationships between same-sex persons of 22 December 2004 submitted by the Senate<sup>17</sup>. The aim of the draft was to protect the common property of persons living in permanent homosexual relationships and to protect the third party interest of persons establishing legal relationships with them. Finally, the attempt in January 2013 to adopt the act on partnership relationships<sup>18</sup>, drawing vastly on the draft of 2004, but extending its scope of application to heterosexual relationships as well, ended in failure. The draft stipulated that civil unions would be solemnized before a registrar on condition of prior conclusion of a civil union agreement – in the form of a notarial deed – setting forth the rights and obligations between partners. In the content of the agreement, the partners would be able to settle such issues as: 1) the obligation to provide each other with mutual assistance and support during the relationship, 2) the obligation to satisfy, within one's capacity and possibility, justified material needs of the relationship, 3) the right to act on behalf of the partner with respect to affairs falling into the scope of general management, 4) the establishment of a contractual joint property within the civil union, 5) the assumption of a mutual or unilateral alimony obligation. Moreover, partners would be entitled to inherit after each other as spouses and would be classified into the first inheritance group for the purposes of the tax on inheritance and donations. Additionally, they would be entitled to legitimize after the deceased partner during the effective period of the contract. Furthermore, partners would be entitled to joint settlement of revenues for the purpose of calculation of the personal income tax, to obtain social benefits after the deceased partner, to receive caretaker's leave from work to take care for the sick partner, to apply for the family allowance after the deceased partner and to assume the rights and obligation under tenancy agreement after the deceased partner. The draft was rejected as a groundless transfer of foreign models of legal institutions to the Polish law, creating a legal institution of a second category of marriage<sup>19</sup>.

4. As shown by the foregoing reasoning, Polish legislator has manifested a high degree of resistance to global and European trends in the area of institutionalisation of common law marriages and determination of the status of cohabitantes in agricultural enterprises. A slightly different approach may be observed with respect to legal regulations addressed to women

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<sup>16</sup> M. Nazar, *Konkubinat...* op.cit. p. 944

<sup>17</sup> Sejm print no. 3664

<sup>18</sup> Sejm print no. 554

<sup>19</sup> M. Nazar, *Konkubinat...* op.cit. p. 944

living in rural areas, irrespectively of their marital status. Also in this area there is no general legal act dedicated to this issue; for many years this subject was rather dealt with by social or demographic sciences than by law. Nonetheless, recently, and during the implementation of the Rural Development Programme 2007-2013 in particular, one may observe a slight increase of the legislator's interest in the problems of women living in the countryside.

**4.1.** As far as **national legal regulations** are concerned, the situation of women living in rural areas still has not been taken into account to a satisfactory extent. This is mostly a consequence of the policy of the Polish state, particularly the rules of the policy governing the development of the state established in the act of December 2006 on the rules governing the development policy<sup>20</sup>. This legal act was used to develop three documents of key strategic importance: Mid-term National Development Strategy (SRK), National Regional Development Strategy 2010 (KSRR) and the Rural and Agricultural Development Strategy for the period 2007-2013 (SROWiR). The analysis of these documents from the perspective of taking advantage of the potential of women living in rural areas does not lead to a satisfactory conclusion. SKR is the only document to contain provisions relating to actions aimed at increasing the professional activity of women; the diagnostic analyses and the section devoted to forecasts suggest actions targeted at taking advantage of the women's potential, including the implementation of programmes involving the activation of labour market reserves and gradual extension of the pension age, making it equal to the pension age for men. This target was attained to some extent by the act of 11 May 2012 amending the act on pensions and social allowances from the Social Insurance Fund and certain other acts by which the act on farmers' social insurance, referred to above, was amended, extending the pension age of women covered by this insurance. However, this regulation can hardly be considered favourable for women working in rural areas. On the other hand, KSRR which does point to the threat of depopulation and the outflow of people in the productive age – mostly women – from rural areas, does not suggest any activity directly aimed at women. This strategy does not stipulate the attainment of any targets or performance of any activities which would directly aim at taking advantage of the potential of women in rural areas. Meanwhile, SROWiR points to three phenomena: the fact that women prevail among students at faculties of agriculture, including the PhD programmes, 2) high unemployment among women in rural areas, 3) the tendency among women to limit themselves to tasks related to agricultural

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<sup>20</sup> Journal of Laws 2009.84.712, as amended.

production only. However, also in this case no actions directly aimed at taking advantage of the potential of women or preventing problems identified in this area were suggested.

In consequence, one should conclude that the issues related to boosting the activeness of women, which includes also increasing their share in the labour market, has not been emphasized sufficiently in the state development policy and, as a result, are not adequately reflected in the legal acts at the national level.

**4.2.** The measures undertaken to **attain the targets and implement the assumptions of the Common Agricultural Policy** turned out to be the actions with the greatest impact on the status of women living in rural areas in Poland. The number of programmes and measures targeted directly at women living in rural areas or involving a large share of women has increased significantly after Poland joined the European Union in 2004. One should emphasize that most of these measures were co-financed with the EU funds.

As far as programmes implemented directly following Poland's joining the European Union structures (2004-2006) are concerned, one should mention mainly the Sectoral Operational Programme: Restructuring and Modernisation of the Food Sector and Rural Development (SPO) and the Rural Development Plan (PROW). SPO and PROW measures for the period 2004–2006 were compliant with the EU legislation with respect to the equal status of women and men. The access criteria to the aid within PROW were determined in compliance with the rule of equal status of both sexes. In the case of SPO, the share of both sexes with respect to particular measures within the Programme was monitored and was the following: measure “Investments in agricultural enterprises” – women corresponded to 14% of beneficiaries of the measure; measure “Facilitations for young farmers” – women corresponded to 28% of beneficiaries, measure “Training” – women corresponded to 26% of beneficiaries, measure “Support for agricultural consulting” – women accounted for 30% of beneficiaries; measure “Diversification of agricultural and agriculture-related activity to ensure diversity of actions or alternative sources of income” – women corresponded to 23% of beneficiaries.

Currently Poland has been implementing the Rural Development Programme 2007-2013. In this Programme the issues of equal status of men and women are implemented at the level of programming (access criteria are defined in a way preventing any discrimination or privileges for any of the sexes), implementation (the application for aid takes place on the basis of objective criteria without differentiation between sexes) as well as monitoring and reporting (information collected taking into account the

gender of beneficiaries). With respect to some measures, the prevalence of men among beneficiaries is observed, though often imbalance in this respect is lower than suggested by general statistics, e.g. the percentage share of women running farming estates. Women living in rural areas may take advantage of support offered within particular measures of the Programme, which have positive impact on increasing the level of social and professional activeness of people living in the countryside. Of many measures implemented within this Programme, the two following aim at developing entrepreneurship in rural areas: Diversification towards non-agricultural activity and Establishing and development of micro-enterprises. These measures involve support for undertaking or developing non-agricultural business activity in rural areas with respect to: services for agricultural enterprises or forestry, general services, wholesale and retail sale, craftsmanship and handicraft, construction and installation-related works and services, services related to tourism, sport, recreation and relaxation, transport services, municipal services, processing of agricultural products and edible forestry products, storage or warehousing of goods, production of energy from biomass, accounting, consulting or IT services. The studies have shown that these two measures were the most popular ones among women in rural areas: the total of 49% female beneficiaries of the Programme took advantage of the offered support.

Also other measures implemented within PROW 2007-2013 play a significant role in promoting the activeness of women in rural areas. Such measures include: professional training for people employed in agriculture and forestry, facilitations for young farmers, consulting services for farmers and possessors of forests, modernisation of agricultural enterprises, increasing the value added of the basic agricultural and forestry production, farmers' participation in the food quality systems. Moreover, PROW 2007-2013 supports the development of fora for the exchange of expertise, best practices and experiences at the national and international level with respect to the situation of women by means of the National Rural Network. The measure Rural reconstruction and development is also very popular among women, mostly due to its usefulness when it comes to financing activities in the area of culture, identity and broadly construed initiatives of social nature (e.g. overhauls of village clubs which allow for developing social activity).

However, the initiative with the strongest impact on the promotion of activeness of women in rural areas has been the "Leader" approach aimed, inter alia, at mobilising the inhabitants of rural areas by developing the social potential of rural communities. Leader is an approach to the development of rural areas based on bottom-up local strategies outlined by a local rural community and the implementation of innovative projects

within such strategies combining resources, expertise and skills of representatives of the public, business and social sectors. This approach has triggered psychological and social changes in women living in rural areas. Related studies have demonstrated the increased level of women's activeness and the development of organisational skills related to community, cultural and business events. Moreover, there has been a noticeable development in the field of artistic activity, as well as personal and social potential of women living in rural areas. The involvement of women living in rural areas in the implementation of the Leader approach is closely connected to their participation in decision-making authorities of the Local Action Groups enjoying the NGO status and supported with PROW 2007-2013 funds. In 29% of these organisations, women correspond to more than 50% of their participants. Furthermore, Local Development Strategies implemented by Local Action Groups (LGD) allow for the implementation of the so-called "small projects" (i.e. projects contributing to the improvement of the quality of life or diversification of business activity on the LGD operational area which do not qualify for the support within the measures stipulated by the PROW 3 axis – Quality of life in rural areas and diversification of rural economy). Women account for a significant share of beneficiaries in this group, corresponding to 67% of natural persons without business activity and 50% of persons running business activity.

The total share of women in the implementation of PROW 2007-2013 is the following: Facilitations for young farmers – 15%; Structural pensions – 25%; Consulting services dedicated to farmers and holders of forests – 11%; Modernisation of agricultural enterprises – 17%; Participation in food quality systems – 26%; Support for farming on mountainous areas and other areas unfavourable to farming – 4%; Agricultural-environmental programme – 21%; Forestation of farmland and other land than farmland – 29%; Diversification towards non-agricultural activity – 24%; Establishing and development of micro-enterprises – 21%<sup>21</sup>.

Among projects co-financed with the European Union funds other than typically agricultural funds, one should mention the Sectoral Operational Programme: the Development of Human Resources for the period 2004-2006 and the Human Capital Operational Programme for the period 2007-2013. These programmes involved the implementation of projects aimed at increasing the professional activeness of women and men from rural areas by providing them with support in the field of training, consulting on

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<sup>21</sup> Source: Report on the implementation of PROW for the period 2007-2013 – 1<sup>st</sup> HY – data collected on year to date basis as of 30 June 2010.

establishing one's business activity, psychological and professional advice. What is more, actions promoting bottom-up local initiatives have been undertaken. The projects mostly aimed at integrating social communities in rural areas, developing education, increasing the level of qualifications and motivating professional activeness. The measures referred to above enabled the implementation of projects aimed at informing women and men inhabiting rural areas of their rights. In the period 2006 – 2008 Polish government implemented a project “Stereotype, equal opportunities for men and women in rural communities” co-financed from the European Social Fund. The purpose of the project was to overcome the stereotypical perception of social roles of women in rural environment, reinforce their position on the local job market and to eliminate disproportions with respect to the possibility of developing local initiatives between urban and rural areas. This was made possible by disseminating the idea of equality of women and men on the labour market, promoting entrepreneurship and self-organisation, developing social activeness and professional integration. The project was addressed directly to women living in rural areas. Thanks to the involvement in the project, women had an opportunity to become local leaders, motivating others to social and economic activity to the benefit of the local community. The project involved the establishment of the Active Women Academy. The participants were 640 women inhabiting rural areas. Beneficiaries included female heads of rural communes, commune counsellors, women running social and business activity or the ones interested in becoming actively involved in such activity. Knowledge acquired during training offered within the project allowed local female leaders to establish a number of non-governmental organizations, local partnerships and initiatives and to obtain funds to be used for the purposes of social and economic development. Moreover, in the period 2006 – 2008, Polish government implemented two research projects co-financed with the EU funds: “A diagnosis of social and professional situation of women in rural areas in Poland” and “Multi-aspectual diagnosis of women on the Labour market”. The results of the studies supplemented knowledge on various aspects of women's activity on the labour market and contributed to the modification of strategies targeted at improving their participation in the labour market also in rural areas.

Furthermore, the Post-Accession Rural Support Programme (PPWOW) was implemented in Poland in the period of 2007-2010 on the area of communes in 13 provinces. The programme involved the preparation of tools supporting the development of a commune. For instance, local governments received support in drafting local strategies solving social problems. Moreover, communes received support in the area of promoting

activeness of local community and assistance in identifying local male and female leaders, motivating them to act and encouraging inhabitants to active involvement in solving social issues. In consequence, the Programme included actions aimed at developing local leaders. It should be particularly emphasized that nearly 90% of them were women for whom social activeness have become not only a source of satisfaction, but also personal development.

Despite the diversity of measures addressed to women following Poland's joining the EU which have been discussed above, one should add that the popular view is that the support offered to women in order to promote their professional activity is still insufficient. Surveys carried out among women living in rural areas have shown that many of them responded negatively to the questions on the impact of PROW 2007-2013 on the improvement of qualifications and professional activity of women in the countryside. It has been noted that the access to support provided within PROW is much more difficult than in the case of other programmes. The need to complete the application and a complex and lengthy procedure of awarding funds discourage women from activity of this type and have an adverse impact on the number of application submitted by women. It is also quite symptomatic that more than 40% of women living in rural areas do not know what PROW is at all, and out of the remaining group a significant part declares no intent to use it in the future. Women with knowledge about PROW and taking advantage of this form of support or the ones that intend to do it in the future account for only 30% of women in rural areas<sup>22</sup>.

**4.3. Poland joined the UN Convention on the Elimination of All Forms of Discrimination against Women<sup>23</sup>** as early as in 1980. On the basis of this Convention, Poland became obliged, among others, to submit every four years to the Committee for the Elimination of Discrimination Against Women a report on “legislative, judiciary, administrative or other measures” taken by a state in order to implement the Convention”. One should conclude that Poland has not been meeting this obligation adequately. As until today, the Government Plenipotentiary for the Equal Treatment has not completed the combined government report VII and VIII on the implementation of the Convention for the period 2002-2010 – these reports are still at the drafting stage. Consequently, the last report prepared by the Polish government is the VI periodical report covering the

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<sup>22</sup> Source: *Study on the situation of women in agriculture and in rural areas. Specific nature, standards, parities and expectations*, commissioned by the Ministry of Agriculture and Rural Development in March 2012, p.64-75

<sup>23</sup> An international convention adopted by a resolution no. 34/180 of the General Assembly the United Nations on 18 December 1979 – came into force on 3 September 1981.

period from 1 June 1998 to 31 May 2002. This report, just like the draft of combined reports VII and VIII, broadly refers to the situation of women in rural areas. Nonetheless, the content of the report is rather descriptive and generally “optimistic”; suggestions as to the improvements of the situation of women living in rural areas in Poland are scarce, and thereby one can hardly speak of any actual impact of this document on internal legal regulations governing the status of women in rural areas in Poland.

### **C. Prospects**

**5-6.** As shown above, in the near future one can hardly expect that any general regulations aimed at regulating the status of civil unions in Poland will be adopted. The lack of favourable political atmosphere and the reluctance of the majority of the society effectively block any initiatives aimed at adoption of such measures.

What is more, it seems rather unlikely that a general regulation improving the status of women in rural areas will come into force. However, in this respect the Polish legislator adopts a different legislative technique by regulating specific issues on the grounds of specific legal acts.

**6.1.** The problem of ageing of persons working in agriculture is not an issue of significant importance in Poland. An average Polish farmer is still relatively young. In 2003, more than 21% managers of agricultural enterprises in Poland were under 39 years of age, while in the European Union this group accounted on average only for 8%<sup>24</sup>. Likewise, the threat of depopulation of rural areas, being a consequence of the exodus of women from the countryside to cities, has not reached in Poland the same dimension as in Western Europe. At this point it is also worth noticing that the results of surveys carried out among women living in rural areas show that only about 14% of them intend to leave their village. However, one should note that women are slightly more oriented towards professional career, self-development, individual development and relations with other people. About 67% of women declare immediately they are certain not to leave the village. To a large extent, this situation is a consequence of the hierarchy of values internalized by women living in rural areas, where the family comes first, and the remaining areas of their lives are subordinated to it. It may come as a surprise, but most of the female inhabitants of the countryside are satisfied with their village life. Women appreciate the

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<sup>24</sup> Source: Rural Development Plan for the period 2004-2006, available at: <http://www.cie.gov.pl>

contact with nature, the sense of security or the opportunity to relax in the fresh air, i.e. the benefits of living in the countryside<sup>25</sup>.

The foregoing optimistic data should not serve as an excuse for neglecting measures which prevent ageing of the rural population and the exodus of women from rural areas. Unfortunately, in this respect the regulations of the Polish law are relatively scarce, and limited to the PROW 2007-2013 tools exclusively. The ageing of the population is to be prevented primarily by the following measures: Structural pensions and Facilitations for young farmers. The share of women in this measures corresponds to 20 and 15% of beneficiaries respectively.

In particular, modest share of women in the measure Facilitations for young farmers, at least from formal perspective, may give grounds to doubts as to whether young women won't leave rural areas, but this situation may be as well a consequence of traditional Polish rural customs, according to which men are the ones entrusted with the task of managing farms. However, without doubt the most important instruments preventing women from leaving rural areas are the PROW mechanisms aimed at ensuring multi-functionality of rural areas, in particular by stimulating non-agricultural activity of women in the countryside (see below), as well as tools aimed at improving the quality of their life (renovation, improving the condition of cultural and natural heritage), taking into account important social and cultural functions performed by women in rural areas.

**6.2.** Among tools aimed at ensuring multi-functionality of agriculture and diversification of production, which, at the same time, emphasise the importance of women from rural areas for the attainment of those targets, one should mention mainly the measures undertaken within axis 3 of PROW 2007-2013, including in particular Establishing and development of micro-enterprises and Diversification towards non-agricultural activity. The support awarded within these measures is highly popular among women in rural areas – the total of 49% of female beneficiaries of PROW took advantage of these forms of support specifically. The gender issue has influence on the type of activity of the newly established companies. Women more often than men open businesses offering (agri) touristic and municipal services. The same share of men and women has been recorded in the case of newly established consulting companies, companies providing accounting or IT services, as well as in the field of transport services and activity based on the processing of agricultural products or edible forestry

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<sup>25</sup> Source: *Study on the situation of women in agriculture and in rural areas. Specific nature, standards, parities and expectations*, commissioned by the Ministry of Agriculture and Rural Development in March 2012, p.5-6.

products. Therefore, the foregoing observations may lead to a conclusion that support targeted at rural areas allows women to satisfy their professional ambitions to some extent. However, one should note that the measures undertaken within the axis 3 of PROW – as compared to the impact this programme has had on the intensification of social and cultural life of women in the rural areas (Leader approach) – has contributed to the development of entrepreneurship among women to a much lesser extent. This conclusion forces us to search for the reasons for the limited growth of entrepreneurship among women in the countryside in the period of implementation of PROW 2007-2013. In questionnaires, women from rural areas list the following key barriers preventing the development of entrepreneurship: the lack of funds (77.5% of responses), the lack of knowledge on the process (49.1%), conviction that obtaining and settling aid involves a lot of red tape (45.7%) and the lack of self-confidence. In consequence, it should be emphasized that examples of women-entrepreneurs are still rare and refer to the traditional domains of their activity: e.g. trade, hair styling, beauty-related services and catering. This situation is a consequence of the degree of complexity of the PROW procedure when it comes to obtaining funds; the lack of comprehensive approach within PRWO which would combine the financial support with technical, professional and psychological support; the circumstance that many persons undertaking and developing business activity have access to consulting concerning agricultural and agriculture-related business only, while the remaining types of activity are covered to a much lower extent; the fact that the development of agricultural and food processing sector is hindered by sanitary and epidemiological provisions; insufficient promotion of business development in rural areas, with particular emphasis on facilitating diversity of business activity, establishing new small enterprises and creating work places, as well as improving the accessibility of telecommunication and IT technologies in rural areas. Furthermore, barriers hindering the development of entrepreneurship among women in rural areas and their participation in the labour markets include scarce flexible or remote work options (some of these difficulties are a consequence of underdeveloped road infrastructure or communication) and insufficient access to social infrastructure, especially in the area of caretaking for children and the elderly. The Polish legislator has dealt with such barriers insufficiently. There is no doubt that more decisive measures are needed in order to remove such barriers effectively, especially given that the research

has shown that women in the rural areas form a social group with large aspirations to undertake non-agricultural activity<sup>26</sup>.

**6.3.** It should be emphasized that from the perspective of the formal education level Polish women are in the middle of the European ranking list; the share of women with university education in the total number of women is 21.7%. Moreover, we have been observing a growing rate of women from rural areas with a university degree. Currently, one fifth of such women are university graduates, while nearly a half has secondary education. This data allows one to assume that women in rural areas often have better education than men. Nevertheless, women living in the countryside continue to face numerous barriers with respect to the possibility to obtain university education. The most important one are women's limited financial resources, obligations related to household and caretaking duties, and even transport or infrastructural difficulties. There are no decisive measures undertaken at the national level to deal with these issues, while indirect actions aimed at eliminating these problems include mainly various measures offered within PROW. The most important PROW tools aiming at improving the qualifications of women include Professional training and Consulting services for farmers and possessors of forests.

Apart from PROW, women in rural areas may take advantage of commonly available agricultural consulting services offered on the basis of the Act of 22 October 2004 on Agricultural Consulting Units<sup>27</sup>. Women usually ask for advice concerning modernization of the rural household, development of agritourism, promotion of local and regional products and they participate in training sessions organized by consulting centres or various fests and fairs promoting agricultural products and foods, ecological food, regional and local products, events disseminating local tradition and cultural heritage, as well as in agri-tourism fairs promoting countryside as an attractive place for recreation. Unfortunately, consulting units do not keep any statistics on the activity of women, which makes it difficult to determine the actual scope of women's participation in these measures.

**6.4.** While analysing the participation of women in political associations and organisations, it should be emphasized that the entities with the broadest impact on the development of agricultural and economic policy in

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<sup>26</sup> According to the research *Study on the situation of women in agriculture and in rural areas. Specific nature, standards, parities and expectations*, commissioned by the Ministry for Agriculture and Rural Development in March 2012, p. 5, as many as 14.4% of surveyed women declared their will to establish their own company and resign from work in an agricultural enterprise, usually in the near future (period up to 3 years).

<sup>27</sup> Consolidated text: Journal of Laws 2013.474.

Poland are unions of individual farmers, social-professional farmers' organisations and farmers' self-governing organisation (chambers of agriculture) representing sectoral and economic interests of their members. These organisations operate on the basis of legal acts which grant them the right to participate in the development and implementation of agricultural policy, i.e. the act of 7 April 1989 on unions of individual farmers<sup>28</sup>, the act of 8 October 1982 on social-professional farmers' organizations<sup>29</sup> and the act of 14 December 1995 on the chambers of agriculture<sup>30</sup>. Members of these agricultural organisations include both women and men from rural areas, who are members of authorities managing these organisations. The organisation of agricultural associations (kółko rolnicze) is based on a rule pursuant to which each structure of an organizational unit, starting from an agricultural association in a village, through communal or regional associations to the National Society of Farmers, Agricultural Associations and Organisations, a woman is always a vice-chairman, even if another woman performs the function of a chairman. One should also note that pursuant to the act on the chambers of agriculture, membership in the agricultural self-governing organization is obligatory for all payers of agricultural tax (regardless of their gender). The share of women in the total number of delegates to the chambers of agriculture remains at the level of 13%, though an increased share of women among members of general meetings of regional chambers of agriculture and a decreased share of women in management boards of regional chambers of agriculture has been observed.

A specific form of organisation of women in rural areas are rural women's associations. They are social-professional organisations of farmers, operating on the basis of the provision of the act on social-professional organisations of farmers referred to above. Rural women's associations, being separated units of farming associations, act to improve the social and professional situation of women in rural areas and their families. These associations are represented in all statutory authorities of agricultural associations. Their activity is based on the adopted regulations specifying, inter alia, purposes and tasks, rights and obligations of members and the procedure of adopting resolutions by the authorities of the association, along with rights and obligations of such authorities. Membership in associations is open also to women who are not members of an agricultural association, but the nature of their work is related to rural environment. The

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<sup>28</sup> Journal of Laws 1989.20.106 and 1989.21.115 as amended

<sup>29</sup> Journal of Laws 1982.32.217 as amended.

<sup>30</sup> Journal of Laws 2002.101.927, as amended.

rules of co-participation of the rural women's associations in the development and implementation of agricultural policy and the cooperation of government and local administration authorities with such organisations is governed by the regulation of the Council of Ministers of 5 May 1983 on the execution of certain provisions of the act on social-professional organizations of farmers<sup>31</sup>. Pursuant to this regulation, commune and district authorities are obliged to inform the rural women's associations on intended directions for the development and implementation of agricultural policy and to collaborate with them in all matters pertaining to farmers' social and vocational interests. These authorities are obliged to send legal acts to social-professional organizations of farmers, including rural women's associations, for the purpose of obtaining their opinions, holding common sittings and meetings and including representatives of such organizations in consultation-advisory teams. Furthermore, the act referred to above obliges the government administration authorities at the regional level and the local government authorities to obtain the opinion of locally competent chamber of agriculture on the local law drafts concerning agriculture, rural development and agricultural markets. What is more, there are other active associations of women living in rural areas.

7. As far as the Polish method of regulation of the status of persons in partnership relationships is concerned, including also the cohabitants within agricultural enterprises, it is difficult to identify any elements of use for other countries. Polish approach to this matter is a consequence of the assumed system of values, manifested by traditional (conservative) attitude to the issue of legal institutionalization of a common law marriage. What is more, Polish legislator seems to be very consistent in this respect, which has been proven by the fact that the legal situation of persons in partnership relationships has remained unchanged for decades. In consequence, in this respect, Polish regulations may serve as an axiological point of reference accepted in countries with a similar system of values, and rejected in states with preference for a more progressive approach to this issue.

However, as far as legal regulation of the status of women in rural areas in Poland is concerned, it should be emphasized that Polish regulations do not contain any formal manifestation of discrimination due to sex, which should be appreciated. Nonetheless, Poland still lacks a more comprehensive state policy aimed at motivating women to enter the job market, which in turn is reflected by scarcity of legal regulations in this respect. Poland's membership in the European Union has served as a trigger for positive change, and various mechanisms stipulated by PROW

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<sup>31</sup> Journal of 1983.27.132, as amended.

contain incentives for higher involvement of women in work for the rural community. However, these mechanisms continue to be insufficient and are rather first steps in the process of promoting activeness of women in rural areas than the final touch. Therefore, one should hope that in future the Polish state undertakes more intensive actions aimed at improving the situation of women in rural areas.