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**AGRICULTURAL COMPETITIVENESS: DRIVERS AND OBSTACLES IN
NATIONAL LAW**

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I. Legal regulations concerning structural policy of agricultural lands (Teresa Kurowska,).

The Polish legislator after political transformation in 1989, disregarding experience gained by other countries, through the amendment to the Civil Code¹ has liberalized the trading of agricultural properties leading to decomposition of the legal regulations concerning ownership transactions. Basically, the amendment removed restrictions for the acquisition of real estate by means of agreements. From structural transformations point of view, division of agricultural lands – as a rule – may be performed without limitations. The only restrictions are in force at removal of joint ownership of agricultural lands, however their effectiveness were and remains insignificant, since: 1/ the acceptance criterion for division based on the broadly formulated principle for compatibility the division with the proper management rules and 2/ it is applicable merely regarding the disputable removal of joint ownership.² The amendment has removed the particular order for inheritance of agricultural farms only regarding the testamental inheritance. Not earlier but after 13.02.2001 when the judgment of the Constitutional Tribunal (the CT) of 31.01.2001³ had been delivered, in which the CT stated inconsistency of the provisions of the Civil Code with the Constitution of the Republic of Poland Polish, that impacted on the establishment of legal successors of the inheritance covering a farm or land contribution into an agricultural production cooperative, the special order for statutory inheritance was cancelled. As of then, no limitations regarding statutory and testamental inheritance of agricultural farms are applicable, and the circle of successors shall be determined under the general inheritance principles. The Poland's legal system, like legal orders in the European countries, interferes in the statutory law applicable to the succession of agricultural farms, dopier, not earlier but at a stage when the inheritance is distributed, while the future of the farm covered by the inheritance has been determined. The division of an agricultural farm is admissible only for a benefit of the one of the successors, which guarantees to run the agricultural farm diligently, and merely in the case when successors may not agree the way to leave the joint ownership.⁴ The acceptance criteria for division have been widened with regard to the agricultural lands by the Act of 21.08.1997 on the real estate management.⁵ In respect to the principle, the division of real estate located on areas intended in local spatial development plans for agricultural and forestry purposes, and if a local spatial development plan of the real estate provided for agricultural and forestry purposes is absent – the division for land plots of area smaller than 0.3 ha (Article 92 and 93 of the Regulation) has been prohibited/banned. But, the trade of agricultural properties of the State Treasury is regulated by a separate Act of 19.10.1991 on the management of agricultural

¹ The Regulation of 28th July 1990 on the amendment of the Act - the Civil Code. Journal of Laws: Dz. U. No. 55, pos. 321, which became applicable as of 1st October 1990,

² Z. Truszkiewicz (in:) P. Czechowski, Prawo rolne (The Agricultural Law). Wolters Kluwer, 2015, p. 156,

³ Journal of Laws: Dz. U. No. 11, pos. 91,

⁴ A. Lichorowicz, Nowy etap rozwoju polskiego modelu dziedziczenia gospodarstw rolnych. PiP 1991, mag. 11, p. 39, also by A. Lichorowicz, Normatywna konstrukcja pojęcia spadkowego gospodarstwa rolnego w ustawodawstwie krajów zachodnioeuropejskich. (Normative structure of the concept for succession of agricultural holding in legislation of Western European countries) (in:) Z zagadnień prawa cywilnego. (Issues under the civil law) Białystok 1991, pp. 109-124.; Z. Truszkiewicz, therein, p. 156 and 227,

⁵ The consolidated text. Journal of Laws: Dz. U. 2015, pos. 1774, including amendments.

properties of the State Treasury,⁶ which sets forth the special rules, inter alia, of sales, exchange and lease of agricultural properties included in institutionally designated parts of the state ownership fund - Agricultural Property Stock. The management of the Stock was delegated to Agencja Nieruchomości Rolnych (the Agricultural Property Agency). As of 1.09.2017 its functions and tasks will be assigned to Krajowy Ośrodek Wsparcia Rolnictwa (the National Assistance Centre for Agriculture).⁷

Too excessive liberalism with regard to the agricultural properties trade implemented in to the Polish legal system (the Civil Code) and associated with low prices of agricultural lands contributed to the excessive concentration of the lands by huge agricultural farms and the investors outside the agricultural sector, especially by foreign capital companies. That legal status disadvantageous for the Polish agriculture fostered competitiveness of the lands on the internal European market of agricultural lands, while not on the national one. It slightly changed due to adoption of the Act dated 11th April 2003 on shaping the agricultural system.⁸ The Act in concern, adopted hastily, under *aquis comminatoire*, has its basis in Article 23 of the Constitution of the Republic of Poland, which recognise the family farm as the basis for the agricultural system, as well as in the EU Treaty grounded on the assumption that it constitutes the primary production unit of the European agriculture model. The Act's title suggests itself that it concerns the Act of significant importance for the Polish agriculture, however its role from the entry into force (16.07.2003) has been marginal. The goals of the Act defined in Article 1: improvement of the area structure of agricultural farms and assurance for running agricultural activity in the agricultural farms by farmers adequately qualified shall be executed, generally, through implementation for trading agricultural lands of two instruments assumed to have positive impact on to the agricultural system: the statutory pre-emption right and the rights to purchase agricultural properties, to which the Agricultural Property Agency⁹ is entitled. They constitute the main influence and control tool over real estate trade. They refer to transactions covering transfer of the ownership to agricultural properties; the first one concerns agreements for disposal of the area not less than 5 ha (Article 3 of the Act), and the other one another agreement than the agreement for disposal of the same minimal area. For their execution the provisions of the Civil Code concerning the pre-emption right shall be applicable, respectively. The Act was amended several times.¹⁰

The Act of 14.04.2016 on withholding disposal of real property of Treasury Agricultural Property Stock (Zasób Własności Rolnej Skarbu Państwa) and the change to some of the

⁶ The consolidated text included in Journal of Laws: Dz. U. of 2016 , pos. 1491, including amendments

⁷ See: the Regulation of 10.02.2017 – The provisions implementing the Act on Krajowy Ośrodek Wsparcia Rolnictwa (the National Assistance Centre for Agriculture). Journal of Laws: Dz. U. 2017, pos. 624 and the Act of 10.02.2017 on Krajowy Ośrodek Wsparcia Rolnictwa. Dz. U. 2017, pos. 623,

⁸ Journal of Laws: Dz. U. No. 64, pos. 592; the regulation became applicable on 16.07.2003

⁹ A. Lichorowicz, Instrumenty oddziaływania na strukturę gruntową Polski w ustawie z dnia 11 kwietnia 2003 o kształtowaniu ustroju rolnego (Instruments for influencing the land structure in Poland in the Act of 11th April, 2003 on shaping the agricultural system). KKP 2004, No. 2

¹⁰ Of the greatest importance: Journal of Laws: Dz.U 2010, No. 217, pos. 1427; Dz. U. 2016, pos. 585, pos. 1159; pos. 2052, pos. 2260; Dz. U. 2017, pos. 60, pos. 624,

acts¹¹ has significantly altered not only the Civil Code, the content of the Act on shaping the agricultural system, the Act on management of agricultural properties owned by the State Treasury and many other acts, as well. There are no doubts that the implemented alterations were motivated by the belief that agricultural lands trade does not need to be just free as the trade of other forms of capital, since the area of agricultural lands may not be increased.¹² In the view of the European Parliament, the agricultural land constitutes a public good providing the basis for human rights to healthy and sufficient food and therefore is subject to social responsibilities. In view of the fact that land resources ignite conflicts not only with regard to use of the lands and also rivalry between agricultural investors and investors not connected with the agriculture, as well as between generations of farmers, management and control of agricultural lands purchase shall be of the decisive importance. The attention can be drawn to the fact that young persons wishing to undertake agricultural activity are faced with increasing problems with access to agricultural lands given the rise in their prices, hence the importance of the succession of agricultural farms. Member States shall bear the responsibility for the internal policy on agricultural land market. It may be differently regulated in legislation of particular Member States. It has significant impact on the competitiveness of agricultural on the internal market.¹³ Therefore, national legislation concerning *inter vivos* and *mortis causa* legal transactions regarding the agricultural properties trade and its restrictions has a crucial role to play. Acquisition of agricultural land by foreigners, after the expiry of transitional period (i.e. after 1.05.2016), is particularly significant for the new Member States, including for Poland. Until then, in the Polish legal order – as a rule – the farmland acquisition by the persons in concern was prohibited. It related to stakes and shares in commercial law companies. It seems that the Polish legislator following the guidelines of the European Parliament resolution of 27.04.2017 on the state of play of farmland concentration in the EU, introduced far-reaching changes to the trade of private and state agricultural properties (in the Civil Code and particular acts). They do not have the positive impact on the competitiveness of agricultural holdings.

a. Legal forms of land acquisition and restrictions on agricultural properties trade.

In the Polish agricultural law the concept of acquisition of agricultural land is a very broad one. In the Act on shaping the agricultural system the scope of the concept ‘acquisition of agricultural property’ is comprehensive and complete¹⁴. It is read as the transfer of ownership of agricultural property or the acquisition of ownership of property through carrying out other legal transaction or court ruling or public administration bodies or other legal occurrence, including prescription and succession, as well. Agreements (on for example: the disposal, the

¹¹ Journal of Laws: Dz. U. of 2016, pos. 585; it became applicable on 30.04.2016

¹² The similar approach was expressed by the German Constitutional Tribunal already in 1967 [in the decision of 12th January 1967 (1 BvR 196/63, BVerfG 21, pp. 73-87)] through explanation that they were necessary while fair legal and social order required taking into consideration the general interest regarding the land (including agricultural lands) much more than regarding other types of the property.

¹³ Such approach was expressed by European Parliament in the Resolution of EP dated 27th April 2017 on the current concentration position of the agricultural lands in EU: how to facilitate farmers the access to lands?; P8_TA-PROV(2017)0197

¹⁴ Compare with J. Bieluk, *Ustawa o kształtowaniu ustroju rolnego. Komentarz.* (The Act on shaping the agricultural system. Commentary.) C.H.Beck, Warsaw 2016, p. 56-60,

exchange of life annuity, the donation, the removal of joint ownership title to the property, share in the heritage, the division of the real property, the contract with a successor are the most frequent method of acquiring agricultural properties, the settlement, the transfer of ownership title under the bequest, etc.)¹⁵ are the most frequent method applied to acquire agricultural properties.

The amended provisions of the Act on shaping the agricultural system¹⁶ have implemented the regulations which ensure the widest possible range to control the trade of agricultural properties. Thus, the competitiveness for their acquisition has become substantially reduced. The point of these regulations is to grant specified participants of the trade a favour regarding acquisition of agricultural properties which results, as a rule, from the statutory pre-emption right (Article 3) or the right to acquire (Article 4) by Krajowy Ośrodek Wsparcia Rolnictwa (KOWR) (the National Assistance Centre for Agriculture). Regarding the substance, the legal position of trade participants depends on fulfillment of the requirements formulated in the Act not explicitly, but by reference to the legal definitions such as the 'individual farmer' and the 'agricultural farm'.

The Act provides for a principle that the individual farmer can only be the acquirer of the agricultural property. It removes legal entities from the market, regardless they run or intent to run agricultural activity, except the specified ones (in Article 2a sec.3). Among the exceptions there are: persons related to a seller, local government units, the State Treasury, Krajowy Ośrodek Wsparcia Rolnictwa acting in its name, as well as churches and religious communities, national parks in the case of acquiring real properties for the nature conservation purposes. The persons in concern need not be the individual farmer and the restrictions with regard to maximal area of the family farm (up to 300 ha of agricultural area) shall not be applicable to them. The legally binding exceptions shall be interpreted strictly, and the extensive interpretation (beyond the statutory catalogue) is not possible. The entities without a legal personality however possessing the legal capacity (Article 33¹ of the Civil Code), including partnerships (spółki osobowe) have been removed from the market, as well. The prohibition discriminates the existing family partnerships (rodzinne spółki jawne), or to be established by farmers, which carry out agricultural activity, as well as limited liability companies (spółki z ograniczoną odpowiedzialnością) or joint stock companies (spółki akcyjna) which carry out agricultural activity. The referred entities are not allowed without the consent of General Director of KOWR, to acquire agricultural properties effectively. The rationale set forth in Article 2a sec. 4 determining giving the consent is of excessively casuistic nature and substantially restrict the acquisition of agricultural properties. Above all, the Act removes other physical persons than the individual farmer from the market of agricultural properties.

The individual farmer may only be a physical person which comply many other additional conditions relating to 1/ forms of managing the land, 2/ the prerequisite to have a place of

¹⁵ Article 84 -90 of the Act of 20.12.1990 on social insurance. The consolidated text. Journal of Laws: Dz.U. of 2016 pos. 277

¹⁶ Article 7 of the Act of 14.04.2016 on withholding disposal of real estate of Treasury Agricultural Property Stock (Zasób Własności Rolnej Skarbu Państwa)

residence in a commune, 3/ personal running an agricultural farm, 4/ agricultural qualifications.

1. A physical person who is a proprietor, a perpetual usufructuary, an owner-like possessor or a leaseholder of agricultural real property has a status of the farmer. These terms shall be understood in the sense of the civil law. The Act sets precisely the personal scope of the individual farmer, while specifies the leaseholder as a beneficial owner. It means that the referred status shall be assigned neither to the usufructuary nor the leaseholder.

2. The farmer should have a place of residence for at least 5 years in the commune, where one of agricultural real properties forming the agricultural farm is located. The evidence that proves a place of residence is a permanent residence registration certificate. In the case of its absence, other means of proof shall be allowable, for example testimonies of witnesses or statements made by a landlord where the given person stays permanently. The requirement of 5-year residence in the commune was provided for in 2011¹⁷, which extended the hitherto 3-year residence period up to 5 years. In the doctrine view, it constitutes rather an obstacle to obtain by foreigners the status of the individual farmer.¹⁸

3. Within the meaning of Article 2 sec. 1 of the Act the individual farmer is obliged to satisfy jointly two criteria: personally work in an agricultural farm which he runs and to undertake himself any decisions which relate to the agricultural activity carried out in it.¹⁹ The referred criteria, in legislation of the Western European countries, often more stand in opposition to each other and considered as separate and distinct requirements.²⁰ Moreover, in the case of agricultural real property acquisition, the individual farmer is actually obliged to run the agricultural farm, which was integrated in to the acquired agricultural real property for at least 10-year period from the date of acquisition. During such a period the acquired agricultural real property may be disposed or put in possession to other entities merely on the basis of the consent of the court, where the random reasons so warrant beyond the acquirer's control. The consent of the court shall not be required, if a related person²¹ is a purchaser.

4. The obligation to have agricultural qualifications is provided for by the Article 6 sec. 2 of the Act and actually it complies with the criteria applicable in the legislation of the Western European countries²². The detailed rules shall be governed by the Regulation of the Minister of Agriculture and Rural Development of 17.1.2012 concerning agricultural qualifications of the persons carrying out agricultural activity²³.

In the absence of authorised leaseholder or if the authorised person fails to use its right, the pre-emption right shall be vested in KOWR (Krajowy Ośrodek Wsparcia Rolnictwa (the National Assistance Centre for Agriculture)) acting for the benefit of the State Treasury. The

¹⁷ By virtue of the Act of 16.09.2011 on managing agricultural real properties of the State Treasury. Journal of Laws: Dz. U. No. 233, pos. 1382, which entered into force on 3.12.2011

¹⁸ Compare with A. Lichorowicz, *Instrumenty oddziaływania...*, p. 402

¹⁹ Compare with the decision of the Supreme Court of 13.11.2014, C CSK 52/14, Legalis,

²⁰ Compare with P. Blajer, *Definition*, p. 479,

²¹ Resolution of the Supreme Court of 22.06.2017, III CZP 24/17, Legalis,

²² Compare with P. Blajer, *Wymóg kwalifikacji rolniczych w obrocie nieruchomościami rolnymi (studium prawnoporównawcze)* [Requirement for agricultural qualifications in the trade of agricultural real properties (comparative law studies)]. PPR 2008, No. 2, p. 51 and the next ones.

²³ Journal of Laws: Dz.U. of 2012, pos. 109

pre-emption right shall not be applied, if: 1/ the acquirer of real property is: a) a local government unit, b) the State Treasury c) a person related to a seller; 2/ the acquisition of agricultural real property requires a consent (a decision of General Director of KOWR); 3/ the disposal is transacted between legal persons of the same church or religious community. The pre-emption right shall not be vested where the acquisition results in the area increase of the family farm above 300 ha, and the real property subject to the acquisition is located in a commune where the acquirer lives (is registered for permanent residence) or in a commune adjacent to the referred commune. The exceptions provided for on applying the act have been determined extremely casuistic, what in practice makes the properties acquisition by other entities than the authorised ones under the pre-emption right aggravated.

The right to acquire is only vested in KOWR, if: 1/ other agreement than on disposal has been concluded; 2/ an unilateral act, or 3/ a decision of the court, a public administration body, or an order of a judgment of the court or an executive body made pursuant to the provisions on the enforcement proceedings, or 4/ other legal actions or other legal event, and in particular: a) prescription of an agricultural real property, succession or vindicatory legacy which covers an agricultural real property or an agricultural farm, b) the division, transformation or merge of commercial companies. KOWR acting for the benefit of the State Treasury may make a statement on acquisition of the referred property paying monetary equivalent corresponding to its market value. The act envisages the complicated proceedings procedure, including numerous exceptions what negatively impacts on to the competitiveness of the land market.

Generally, in respect to agricultural real properties, the pre-emption right or the right to acquire by KOWR is vested in, except:

1. agricultural real properties with area smaller than 0.3 ha,
2. agricultural real properties, which at the date of entry into force of the Act of 14.04.2016 on withholding disposal of real property of the Stock, which in final decisions on land development and management conditions are intended for other purposes than the agricultural ones,
3. agricultural lands developed with area not exceeding 0.5 ha, which at the date of entry into force of the Act are occupied by residential buildings, structures and equipment not currently used for the agricultural production (...) – if the referred lands create an organized whole and have not been excluded from the agricultural production.²⁴

The applicable provisions of a.s.a.s. (the Act on shaping the agricultural system) have implemented the new restrictions on the market of companies' stakes and shares. The structure of the referred provisions is different regarding capital companies (spółki kapitałowe) and partnerships (spółki osobowe). In the case of disposal stakes or shares in whole, KOWR is entitled to the pre-emption right, while in the case of change of a

²⁴ More: Appendix no. 1 to the Order of President of the Agricultural Property Agency (APA) (ANR – acronym of the Polish name) No. 20/16 of 13.5.2016. Guidelines on the acquisition of agricultural properties for Treasury Agricultural Property Stock (Wytyczne w sprawie nabywania nieruchomości rolnych do Zasobu Własności Rolnej Skarbu Państwa). Item II,

shareholder or joining a partnership by a new shareholder, KOWR is entitled to the right to buy-back the agricultural property belonging to a partnership. The implemented regulations raise questions of interpretation and some of them raise concerns regarding reasonability to apply them for the benefit of a farmer.²⁵

Generally, the Act of 14.04.2016 on withholding disposal of real property of the Stock introduces the prohibition on disposal of such real properties for 5-year period from the date of entry into force. It is not applicable to the disposal of: 1/ real properties and their parts intended in: a) a local spatial development plan or b) study of conditions and directions for spatial planning in the commune area, or c) final decisions on land development and management conditions for the purposes different than the agricultural ones (...), 2/ real properties located within special economic zones; 3/ residential houses, farm buildings, garages as well as home gardens, or 4/ agricultural properties with area up to 2 ha. At the request of General Director of KOWR minister of rural development, in the cases which are justified by social and economic reasons may give the consent for disposal of other real properties than the other specified.

A sanction for an infringement of the discussed acts is invalidity of a legal transaction. There is a lack of a closed catalogue of activities included by the invalidity sanction, for example a.s.a.s. specifies exemplary activities. However, in Article 9 sec. 2 of a.s.a.s. a range of actors which may bring an action on annulment of the legal transaction or other event has been determined. The action for determination under Article 189 of the Code of Civil Procedure²⁶ shall be the appropriate basis.

In conclusion of this part we note that the substantive changes regarding the trade of real properties which negatively affects the competitiveness in respect of acquisition of agricultural land has been introduced by the Act of 14.04.2016 on withholding disposal of real property of Treasury Agricultural Property Stock (Zasób Własności Rolnej Skarbu Państwa) and on amendment of some other acts. The changes strongly tend to tighten the control over the trade of agricultural real properties as far as to prohibit provisionally (for 5-year period) the disposing the State Treasury real properties. Better agrarian structure and greater competitiveness of agricultural farms has become attributable to the economic incentives. The key role is played primarily by the legal regulations introduced to the Polish legal system, the legal regulations connected with preparation and later with Poland's accession to EU, as for example structural pensions.²⁷ However, the provisions on social insurance of individual farmers fail to play such a role, what will be discussed in item 3.

²⁵ For more information, compare with J. Bieluk, The Act on shaping the agricultural system. Comment. (Ustawa o kształtowaniu ustroju rolnego. Komentarz.) S.H. Beck, Warszawa 2016, pp. 146-200,

²⁶ Ibidem, pp. 262-274,

²⁷ T. Kurowska, Pozycja gospodarstwa rodzinnego a proces kształtowania rolniczej przestrzeni produkcyjnej. (in:) Prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego w Polsce i innych państwach Unii Europejskiej. (Family farm position and the process of shaping the production space in agriculture. (in:) Legal mechanisms for support and protection of family farm in Poland and other European Union countries.) (editorship M. Podstawka), FAPA, Warsaw 2015, p. 65,

b. the right to production and payment entitlements purposed for agricultural production

Poland after the accession to EU (1.05.2004) has gained access to European Union funding which supports: the European agricultural markets inter alia in a form of: milk, sugar and isoglucose production quotas²⁸ and for the implementation of the actions covered by the Rural Development Programme²⁹ and the single area payment scheme³⁰.

Whereas, following the 2013 reform of the Common Agricultural Policy, which was reflected in prescriptive form in Regulation of the EP and the Council (EU): no. 1305/2013, no. 1307/2013 and no. 1308/2013, as well as in implementing regulations, the new legal solutions were implemented in 2015. The acts which regulate: organisation of some agricultural markets³¹, the tasks and the jurisdiction of authorities regarding rural development support,³² direct payments³³ as well as the control procedure and payments constitute the sources of national law.

1. *The right to production*, it means the production quota system, which is a typical component of the Union protectionist policy subject to the premium scheme, from which EU bit by bit moves away. Premiums gave rise to the risk of overproduction, since farmers had the guarantee for the disposal of the produced agricultural products. Thereby, upon the producer, in case a relevant production quota is exceeded, is imposed the obligation to pay for surplus levy pursuant to the special scheme specified for each of the referred markets. The Agency for Restructuring and Modernisation of Agriculture (ARMA)³⁴ (milk quotas) and Minister for Agricultural Markets (sugar quotas) provide the task delegated within the limits set by the EU rules.

²⁸ Currently the system of agricultural market system is governed by the European Parliament and the Council (EU) no. 1308/2013 of 17.12.2003 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No.922/72, (EEC) No. 234/79, (EC) No.1037/2001 and (EC) No. 1234/2007, EU Journal of Laws: L 347 of 20.12.2013, 671, including amendments

²⁹ Regulation no. 1305/2013 of 17.12.2013 of the European Parliament and of the Council of 17th December 2013 on support for rural development by the European Agricultural Fund for Rural Development and repealing Council Regulation (EC) No. 1698/2005, EU Journal of Laws: L 347 of 20.12.2013,

³⁰ Regulation no. 1307/2013 of 17.12.2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 641/2009, EU Journal of Laws: L 347 of 20.12.2013, p. 608 including amendments

³¹ Act of 11.03.2004 on organisation of certain agricultural markets. The consolidated text, Journal of Laws: Dz. U. of 2017, pos. 624; as of 1.09.2017 Agencja Rynku Rolnego (the Agricultural Market Agency) shall be liquidated and its powers shall be taken over by Agencja Restrukturyzacji and Modernizacji Rolnictwa (the Agency for Restructuring and Modernisation of Agriculture)

³² The Act of 20.2.2015 on support for rural development with the participation of the European Agricultural Fund for Rural Development within the framework of the Rural Development Programme 2014-2020, Journal of Laws: Dz. U. of 2015, pos. 349,

³³ The Act of 5.02.2015 on payments under the direct support schemes, Journal of Laws: Dz. U. of 2015, pos. 308,

³⁴ By virtue of Article 25 of the Act of 10.02.2017 – The provisions which introduce the Act on Krajowy Ośrodek Wsparcia Rolnictwa (the National Assistance Centre for Agriculture) (Journal of Laws: Dz.U. 2017, pos. 624), which shall take the tasks over from Agencja Rynku Rolnego (the Agricultural Market Agency) to be liquidated as of 1.09.2017.

a. *Milk quotas* have been abolished since 1.04.2015. by virtue of the Act of 20.04.2004 on organisation of the market for milk and milk products.³⁵ Regional Director of ARMA shall hold a register of the first recognised collectors of milk within the meaning of Article 151 of Regulation no. 1308/2013 and the recognised producers' organisations, associations of producer organisations and inter-branch organisations. Director, for the referred entities' request, shall issue an administration decision on recognition, which is the basis to enter into an appropriate register. The entities entered into the register shall subject to be controlled once every two years. Preventing such control or failure to communicate information on changes shall lead to the application of the penalty payment equal to: EUR 500 - 1000, except non-fulfillment of the obligation due to random events. Currently dairies may purchase milk only from farmers having milk quotas (app. 140 thousand holders). The liberation of milk collection significantly has reduced the profitability of milk-specialised farms through imposing the surplus levy; spread into instalment slightly has decreased the risk of milk production failure in Poland. On the other hand, the competitiveness of milk products has notably increased.

b. Sugar and isoglucose production quotas (*sugar quotas*) has been assigned, pursuant to the delegated tasks, to Krajowy Ośrodek Wsparcia Rolnictwa (the National Assistance Centre for Agriculture), within the limits set by the EU provisions relating to the sugar market. Minister for Agricultural Markets, at the producer's request within 30.11. of a calendar year preceding the subsequent year, with an administrative decision grants a sugar or isoglucose production quota, under a proportional respect to growers of sugar beet. The lodged requests constitute the basis for changes to cultivation contracts with sugar beet suppliers. As of 30.09.2017 sugar quotas will be abolished, however the European legislators have decided after that deadline to maintain the framework of concluded cultivation contracts between growers and producers of sugar purposed for sugar beet deliveries.³⁶

2. **payment entitlements purposed for agricultural production**

Under the direct support schemes for farmers that one is the simplified scheme of direct payments the support is directed only towards active farmers. Taking into account the agrarian structure of agricultural farms in Poland (the average size in 2014 amounted to 10.48 ha) relatively a great number of farmers has been automatically placed in a category of active farmers. Farmers may receive direct support under the payments linked to production (in plant and animal production) which shall not exclude to obtain the other payments [single area payment scheme, payments: for the afforestation, for young farmers, additional, provisional national support (for tobacco)]. They are to give agricultural producers incentives to maintain current levels of production. The support includes:

³⁵ The consolidated text, Journal of Laws: Dz. U. of 2017, pos. 1037

³⁶ In Poland sugar production in the 2016/2017 marketing year increased by 44%, i.e. by 420 thousand tonnes more as compared to the preceding marketing year, which amounted to 2 million tonnes. In the 2017/2018 marketing year the European Commission fixed for Poland the limit amounting to 1.4 million tonnes, of which consumption on the national market amounts to 1.6-1.7 million tonnes. The Association of Sugar Producers - Krajowa Spółka Cukrowa S.A. brings together four sugar companies, with the share of foreign capital.

a. *payments related to the livestock*, which are granted as the payments to a particular number of bovine (EUR 70), payments for the cows (EUR 70), payments for the sheep (EUR 25) and payments for the goats (EUR 15),

b. *payments related to the plant production*, which are granted as the payments to soft fruits [strawberries and raspberries (50 EUR/ha), the payments to protein crops (326 EUR/ha- the limit up to 150 ha), the payments to hops (480 EUR/ha), payments to sugar beet (400 EUR/ha), the payments to starch potato (400 EUR/ha), the payments to tomatoes (400 EUR/ha), the payments to flax (200 EUR/ha), the payments to fibre plants (200 EUR/ha).

2. Taxation of Agriculture (Dorota Lobos-Kotowska)

a. and b. Imposition of agricultural tax on agriculture

Agricultural tax³⁷ is the primary tax which burdens agriculture. It is assumed that it replaces other taxes, first and foremost, all income taxes with regard to the tax burdens on agriculture. On the contrary, the agricultural activity in Poland is not subject to income tax, except special agricultural production sections³⁸. They cover the especially profitable directions of agricultural production enumerated in the Personal Income Tax Act as well as in the Corporate Income Tax Act³⁹, which can be conducted – in respect of the principle – regardless of the weather and soil conditions.

The agricultural tax was regulated under the regulations of the Act of 15.11.1984 on agricultural tax⁴⁰. By virtue of Article 1 of the referred Act, all the lands classified in the register of land and buildings as agricultural area, except the lands engaged in conducting the activity different than agricultural, are subject to such taxation. It is wealth tax, where the land value for tax purposes is expressed by conversion rates/hectares, such as: a kind of agricultural land, a soil quality class and location in a particular tax region. Only with regard to the agricultural areas up to 1 hectare, a number

³⁷ Compare with J. Bieluk, (in:) *Prawo rolne (The Agricultural Law)* published under the editorship of P. Czechowski, Warszawa 2015, p. 440 and the next ones; L. Etel, *Podatek rolny. Podatek leśny. Komentarz (Agricultural tax. Forest tax. Commentary)*, Warszawa 2013

³⁸ Compare with J. Bieluk, *Działy specjalne produkcji rolnej. Problemy prawne (Special agricultural production sections. Legal aspects)*, Białystok 2013.

³⁹ They are, according to Article 2 sec. 3 of the Personal Income Tax Act of 26.07.1991 (i.e. Journal of Laws: Dz.U. of 2016, pos. 2032, including amendments) and Article 2 sec. 3 of the Corporate Income Tax Act of 15.02.1992 (i.e. Journal of Laws: Dz.U. of 2016, pos. 1888, including amendments), crops growing in glasshouses and heated plastic tunnels, production of mushrooms and mycelium, production of in vitro plants, farm production and breeding of slaughter and laying poultry, poultry brooders, rearing and breeding of fur and laboratory animals, worm-farming, entomophags rearing, silkworm rearing, beekeeping and breeding of other animals outside the farm

⁴⁰ Consolidated text: Journal of Laws: Dz.U. of 2016, pos. 617, including amendments

of hectares resulting from the register of lands and buildings is the tax basis for agricultural tax. However, imposing agricultural tax is not dependent on real running agricultural activity and income gained from such activity. Agricultural tax is not a high burden for the agriculture. It is established on the basis of an average rye purchase price for 11 quarters preceding the quarter of the given calendar year. It is calculated according to the announcement provided by the President of the Central Statistical Office of Poland (GUS – acronym in Polish), and though in 2017 the rate amounts to PLN 52.44 per 1 decitonne⁴¹, the adopted model, which owing to failure to depend the tax amount on the gained incomes has disadvantageous impact on the competitiveness of the Polish agriculture.

The instruments, which improve the competitiveness of the agricultural sector, while at the same time they express the legislator's preference for particular taxpayers and which subsequently stimulate development of agricultural farms (farms) in the desired direction, are agricultural tax exemptions and exclusions. The Polish legislator has provided the legal instruments in a form of exemptions of material (inter alia exemptions in respect of the lowest land quality classes, areas located in the border zone, or ecological farms) and personal nature (inter alia relating to public and non-public universities, Polska Akademia Nauk (the Polish Science Academy), sheltered workshops and establishments of professional activity as well as research institutes and research and development centres) and tax allowances (an investment allowance, a relief for a loss resulting from the natural disaster, an allowance for mountain and foothill areas).

The legislator, through applying instruments in agricultural tax, has partially transferred the competences with regard to shaping the desired model for agriculture to the municipality (gmina, i.e. local authority). The sign of this is the competence assigned to the council of the municipality to set the rye price purposed for calculation agricultural tax lower than the one resulting from the announcement of the President of GUS, to classify a village in a particular municipality in another tax region than it results from the Regulation of Ministry of Finance⁴² or to make a decision on the referred reliefs and exemptions in agricultural tax different than the ones under the Act.

c. Imposition of income tax on agriculture

Although, as a general rule, personal income tax and corporate income tax are not imposed on agriculture, the instruments having impact on the competitiveness of agriculture shall be simply sought in solutions assumed in the acts in concern. The referred acts adopt that incomes from agricultural activity are not subject to income tax. However, agricultural activity is defined in a very wide range, as the activity consisting in the production of plant products, livestock products in the unprocessed

⁴¹ Announcement of GUS President of 18.10.2017 on the average rye purchase price in a period of 11 quarters which is the basis to set agricultural tax for the fiscal year 2017, (Official Gazette of the Republic of Poland: 'Monitor Polski (M.P.) of 2016, pos. 993).

⁴² Regulation of Minister of Finance of 10th December 2001 on classifying municipalities and cities to one of the four tax regions, Journal of Laws: Dz.U. no. 143, pos. 1614.

(natural) state from own farming, raising or breeding, including also the production of seeds, nursery stock, breeding and reproductive material, the production of open-grown, protected and in foil tunnels vegetables, the production of ornamental plants, cultivated mushrooms and horticulture, production of breeding material of animals, birds and useable insects, animal production of industrial and farm type as well as fish farming, moreover, also the activity where minimal periods of maintaining animals and plants, when their biological growth occurs, amounts to a period prescribed by the laws. Therefore, the Poland's legislator has unambiguously and clearly determined the principles of excluding the agricultural activity from imposition of income tax. While the provisions of the acts on personal income tax and corporate income tax are applied, practically slight doubts are connected with distinction of the agricultural activity from the agri-food production.

However, the assumed exemption from tax represents a financial obstacle to establish companies, as the revenue gained from a company is subject to income tax based on general principles. It has led to unjustified differentiation of legal position of entities running an individual farm from the position of entities, which run an agricultural farm as companies. In this regards we should call to exclude incomes gained from the agricultural activity, by shareholders of capital companies, from imposing personal income tax.

Fiscal measures concerning diversification of the agricultural activity, consisting in carrying out supplementary agro-touristic activity in the agricultural farm, needs to be recognised as supporting the competitiveness. Pursuant to Article 21 sec. 1 item 43 of the personal income tax act, taking up such an activity shall not increase the farmer's public and legal charges. However, it relates to the agro-touristic activity conducted on a small scale, only. The cited regulation provides that tax exemption from the revenues gained for rental, to persons having a rest, of guest rooms in residential buildings located within rural areas in an agricultural farm, as well as from the revenues for meals for them, unless a number of rented rooms exceeds five.⁴³

d. VAT in agriculture

Making in 2000 farmers subject to VAT tax was of particular importance for competitiveness of the Poland's agriculture.⁴⁴ The currently effective Polish Act on VAT of 11.03.2004⁴⁵ divides farmers into two groups. The first group covers flat-rate farmers who, for the supply of agricultural products from their own activity and provision of services for agriculture, are entitled to VAT tax exemption. Flat-rate farmers who sell agricultural products or provide services to VAT taxpayer are entitled to flat-rate reimbursement of the tax incurred on purchases of some means of production which were

⁴³ The Personal Income Tax Act of 26.07.1991, Journal of Laws: Dz.U. 2016, pos. 2032, including amendments

⁴⁴ Act of 20.07.2000 on the amendment to the Polish Law on VAT and excise tax and the stamp duty act, Journal of Laws: Dz.U. no. 68, pos. 805.

⁴⁵ i.e. Journal of Laws: Dz.U. of 2016 pos. 710.

subject to the referred tax. In 2017 the flat rate of agricultural tax amounts to 7% and is paid a farmer by a purchaser of agricultural products. Another simplification consists in shifting to a purchaser of a product or an agricultural service the obligation to draw up an invoice. Then, this procedure is substantively different from VAT treatment under the general principles. In particular, a flat-rate farmer is given a certain price for an agricultural product paid in the net amount and reimbursement of tax at a flat-rate.

The other group of VAT taxpayers is subject to the tax in concern under the general principles. The VAT tax is accounted in that manner by the farmers who are obliged to keep accounting books under the accounting act⁴⁶ as well as the farmers who voluntarily choose this form of VAT treatment.

3. Social insurance for farmers (Teresa Kurowska)

Transfer of agricultural holdings/farms in return for an old-age pension or a benefit.

According to the current applicable Act of 20.12.1990 on social insurance for farmers,⁴⁷ compared to the preceding regulations⁴⁸, the Polish legislator has demonstrated far-reaching liberalism of the legal regulation making the right to agricultural pension (disability pension) less dependent on further fates of the agricultural holding. The legislator has replaced a concept of the “transfer of the agricultural holding” with a new concept of the “ceasing agricultural activity”⁴⁹. Thus, “the focus has moved to from managing land ownership to “ceasing professional agricultural activity”⁵⁰. Practice proves that *an agreement with a successor*⁵¹ is only one of the forms of acquisition, to which the Act on shaping the agricultural system shall not be applicable. It means that the disposal of the agricultural holding (a part of it) in the referred form is admissible, practically, without special restrictions. The wide personal and material range of the Act demonstrates that the legislator’s intent was to include the broad social protection under the agricultural old-age pension (benefit) for the farmer⁵² and persons close to him (a spouse, a member of the household -

⁴⁶ The Accounting Act of 29.09.1994, Journal of Laws: Dz.U. of 2016, pos.1047, including amendments

⁴⁷ The consolidated text, Journal of Laws: Dz.U. of 2016, pos. 277, including amendments; acronym in Polish language: u.ub.sp.roln.

⁴⁸ The Act of 27.10.1977 on the old-age pension and other benefits for farmers and their families. Journal of Laws: Dz.U. no. 32, pos. 140 replaced by the Act of 14.12.1982 on the social insurance for individual farmers and their family members. The consolidated text. Journal of Laws: Dz. U. no. 24, pos. 133, including amendments.

⁴⁹ They were implemented under the Act of 27.10.1977

⁵⁰ B. Banaszkiwicz, Reforma ubezpieczeń społecznych rolników. (The reform of social insurances for farmers) PUG 1991, no. 4, pos. 3,

⁵¹ It is governed by the provisions of Articles 84-90 of u.ub.sp.roln.

⁵² The farmer is a physical person, who lives and personally and for its own benefit conducts within a territory of the Republic of Poland agricultural activity in an agricultural holding, which is in his possession, including

Article 6 item 1 and 2), as well as the ones which subject to the full extent to social insurance pursuant to the Act, and who continuously for at least 3 years, will start to conduct non-agricultural economic activity or will start to cooperate at conducting the referred activity provided that they meet the additional conditions (Article 5a). Therefore, it is not surprising that a donation and life estate agreement are still the forms for changing the generation in the agriculture preferred by farmers. The concept of the agricultural holding/farm has been very broadly defined, in view of the fact that the term refers to the holding for the performance of agricultural activity, which include agricultural areas above 1 conversion hectare or a special section of the agricultural production.⁵³

It is difficult not to notice that the construction of the Act provisions (and in the successive amendments) was underlain by the extension of the social protection range, however the absence of relationship between a generational change and assurance of livelihood for the farmer (and his spouse) is visible. The assumed solutions, contrary to the agreement for transfer of the agricultural holding in return for the structural pension, neither provide any incentive to “in the movements” transfer of the agricultural holding, nor have the impact on to its competitiveness on the market of agricultural lands. The structural pension enjoyed popularity with farmers, and significantly influenced the change of the agrarian structure of the national agriculture under the “Structural Pensions” Measure covered by the RDP 2004-2006 and RDP 2007-2013.

4. The employment in agriculture (Dorota Lobos-Kotowska).

a. Legal forms of the employment in agriculture.

The law regime in Poland fails to regulate employment relationships in agriculture in special way. The rights and obligations of employees and employers, types of employment contracts, the remuneration policy are provided for by general provisions of the Labour Code. By virtue of Article 3 of the Labour Code⁵⁴, each organisational unit (also without legal personality) and also a natural person, if engages employees shall be the employer. Then, such a broad definition does not exclude farmers from the category of employers. Moreover, a farmer may employ persons in an agricultural farm under civil law contracts, such as an order contract or a contract for specific work. Then, the rights and obligations of such a contract shall be governed by the Civil Code (C.C.), while regulations of the Labour Code shall not apply at all.

Then, an employment contract is considerably more formalised method of employment. If it is

also within a group of agricultural producers, as well as a person which has purposed the lands of the agricultural holding run by him for afforestation.

⁵³ See appendix to the Act: Tabela rodzajów i rozmiarów działów specjalnych produkcji rolnej. (Table of types and sizes of special sections of the agricultural production.)

⁵⁴ Labour Code of 26.06.1974, the consolidated text, Journal of Laws: Dz.U. of 2016 pos. 1666, including amendments

regular work, performed all year long, a farmer is limited to conclude a contract for a trial period for maximal 3 months, and later next three contracts for unspecified period of time for total period not exceeding 33 months. Next employment contract shall be concluded for unspecified period of time what, as a general rule, increases the employment certainty. But, if it is employment for casual or seasonal works⁵⁵, and such employment the most likely occurs in agriculture, restrictions relating to the limit of employment period and the number of contracts umów do not apply. Besides, conclusion of an employment contract causes that legislation concerning minimum wage for work, which in 2017 amounts to PLN 2000 gross, shall be applicable⁵⁶.

Statutory charges for persons employed in agriculture.

With regard statutory charges the situation of workers employed in agriculture is also in line with the legal situation of workers employed outside agriculture. The employees' social insurance contributions are paid both for remuneration under an employment contract and a civil law contract, as well as income deriving from the referred contracts is subject to personal income tax. Such approach in this respect results in unequal treatment between persons which run agricultural activity as a sole proprietor and legal position of persons employed in agricultural farms. Incomes from agricultural activity, as a general rule, are not subject to income tax, and farmers running an agricultural farm and their household members⁵⁷ are covered by farmers' social insurance on preferential principles. Such approach results in the decreased competitiveness of agricultural production and the increase of employment in so called 'grey area'.

b. The employment of foreigners in agriculture.

Both nationals of the EU Member States and nationals of the other countries may be employed in agriculture. Provisions of the Act of 20.04.2004 on the *promotion* of employment and labour market institutions⁵⁸, which regulate employment of foreigners within Poland, divide foreigners in the

⁵⁵ In the Poland's legislation a phrase: 'work of casual or seasonal nature' has not been defined. It is the phrase as being vague, which in practice, arises many doubts. The Supreme Court in a decision of 3rd April 1986, reference symbol of files: II URN 20/86, OSNC 1987/2-3/45 and of 8th May 2008, reference symbol of files: I UK 378/07 clarified the notion: 'seasonal work' where it explained that it referred to the works carried out only in a part of a year, connected with a particular season, i.e. with features of year seasons, and in particular with atmospheric conditions. If the activity is all-year-round, than it is impossible to say that seasonal work takes place.

⁵⁶ Act of 10.10.2002 on minimum wage for work (the consolidated text, Journal of Laws: Dz. U. no. 2017, pos. 847).

⁵⁷ The notion of a household member has been defined in Article 6 item 2 of the Act on Social Insurance for Farmers of 20.12.1990, (the consolidated text, Journal of Laws: Dz.U. of 2016 pos. 227, including amendments) as a farmer's next of kin (a relative of a farmer) aged 16, remains with a farmer in the common household or lives on the premises of his holding or in the immediate vicinity and permanently works in the referred holding not bound by a relationship of employment.

⁵⁸ The consolidated text, Journal of Laws: Dz.U. of 2017, pos. 1065.

nationals originated from EU Member States and the nationals from other countries – so called the third countries, adopting different way of treatment towards them with regard the employment.

It is worth noting that free movement of workers with regard to the EU nationals within the European Union is one of the fundamental principles guaranteed by the Treaty on the Functioning of the European Union⁵⁹. Therefore, the EU national are entitled to undertake the employment within a territory of another country which is the EU Member State according to the legal regulations applicable in the given country.

A work permit shall be required with regard to the foreigners originated from the third countries issued by a competent voivode (wojewoda)⁶⁰. As a general rule, the employer which intends to employ a foreigner in Poland shall apply for Work Permit for a foreigner. The employer shall be a party of the administrative proceedings, while the voivode shall be the competent authority in such a case. The completed application to issue Work Permit for a foreigner, including the required documents shall be lodged within at least 30 days before scheduled date of the employment or prolongation of the employment of a foreigner. The work permit shall be issued for a specified period of time, not longer than 3 years and subject to prolongation. Work permits shall be issued for the specific employer and the specific foreigner.

One of the possibilities for departing from the general principle of the employment of foreigners is to apply so called simplified procedure, which is applicable by virtue of provisions of the Regulation of Minister of Labour and Social Policy of 21.04.2015 concerning the cases when entrusting performance of work to the foreigner within the territory of the Republic of Poland is acceptable without necessity to get Work Permit⁶¹. The Regulation allows a national from one of 6 countries: the Republic of Armenia, the Republic of Belorussia, the Republic of Georgia, the Republic of Moldavia, the Federation of Russia or the Ukraine to carry out work in Poland during a period not exceeding 6 months in 12 consecutive months without the need to obtain Work Permit. Registration in a powiat labour office (Powiatowy Urząd Pracy) of a statement made by an employer on its intent to entrust performance of work to a foreigner and enjoying by such a foreigner the right of residence which involves the ability to perform work within the territory of the Republic of Poland are the prerequisites to benefit from the simplified procedure. In view of minimal formalities and absence of expenses (registration of the statement is free of charge), the procedure in concern is very popular in Poland.

⁵⁹ Journal of Laws of UE: L 326 of 26.10.2012, p. 47 and the next ones

⁶⁰ Regulation of the Minister of Labour and Social Policy of 1 April 2015 on issuing Work Permits for foreigners, Journal of Laws: Dz.U. of 2015, pos. 543.

⁶¹ Dz.U. of 2015, pos. 588.

c. Organisations representing farmers and workers employed in agriculture. Collective agreements.

The Constitution of Poland⁶² in Article 12 and 58 guarantees farmers the right of memberships in associations by their choice in order to represent and defend their professional interests towards public authorities' bodies. The organizations representing farmers are independent from central and self-government administrative bodies and they are not subject to their supervision. They are self-governed, what means they have their own internal autonomy in order to define goals of their activity, the organisational structure and the statute. The Polish legal system provides for the following legal forms to represent farmers: social and professional organisations⁶³, trade unions⁶⁴, trade unions foreseen for workers in agriculture⁶⁵. Thus, not only farmers running agricultural farms but also their relatives working permanently with them in an agricultural farm may benefit trade union freedoms. This entitlement shall refer also to workers employed in agriculture, agri-food processing, agricultural scientific institutes. The trade unions of agricultural workers may conclude with the employers collective agreement in compliance with the principles set forth in the Labour Code⁶⁶.

5. The provisions concerning agricultural activity (Dorota Lobos-Kotowska).

a. Legal forms for running agricultural activity.

Organisation and conduction of agricultural activity may be established in various civil and legal forms. Specific nature of agricultural production shall force a farmer to choose such a civil and legal form, which creates the basis to establish and conduct an agricultural farm, as well as its relevant functioning.

In the Polish legal system agricultural activity may be run by a self-employed farmer, (an individual farm), though in practice such farms are conducted with participation of members of farmer's family, while the agricultural activity may be also conducted in a form of a civil law partnership [spółki prawa cywilnego] (private partnership [spółka cywilna]) and commercial companies [spółki prawa handlowego] (private unlimited company [spółka jawna], limited partnership

⁶² Constitution of the Republic of Poland of 2.04.1997, Journal of Laws: Dz.U. of 1997, no. 78, pos. 483, including amendments

⁶³ They operate on the basis of the Act 8.10.1982 on social and professional organisations of farmers, Journal of Laws: Dz.U. of 1982, no. 32, pos. 217, including amendments

⁶⁴ Created on the basis of the Act of 7.04.1989 on trade unions of self-involved farmers, Journal of Laws: Dz.U. of 1989, no. 20, pos. 106, including amendments

⁶⁵ Created on the basis of the Act of 23.05.1991 on trade unions, the consolidated text, Journal of Laws: Dz.U. of 2015, pos. 1881, including amendments

⁶⁶ Compare with E. Tomkiewicz, (in:) Prawo rolne (Agricultural Law) published under the editorship of P. Czechowski, Warszawa 2015, s. 336 and the next ones

[spółka komandytowa], limited liability company [spółka z ograniczoną odpowiedzialnością] and joint stock company [spółka akcyjna]).⁶⁷

Prior to the analysis of the impact of organisational forms on to competitiveness of the Polish agriculture, it should be noted that the agricultural activity in the Polish legal system is the economic activity category, and the farmer has the entrepreneur status⁶⁸. Article 2 of the Act of 2nd July 2004 on freedom of economic activity⁶⁹, which defines economic activity as gainful manufacturing, trade and construction activity as well as exploration, evaluation and extraction of mineral deposits, and also professional activity, performed in organized and permanent manner is of the key importance to further deliberations. Status of the entrepreneur is connected with conducting such activity in own name. However, despite the definition is of such wide range, the legislator has set out the exclusion of objective nature stating that the provisions of the regulations shall not be applied to manufacturing activity on agriculture with regard to agricultural crops as well as rearing and raising animals, horticulture, vegetable growing, forestry and inland fisheries, and moreover, also the exclusion of subjective nature stating that the provisions of the Act on freedom on economic activity shall not be also applied to rental of rooms by farmers, sale of home-made meals and provision in farms of services other than the ones connected with stay of tourists and wine manufacturing by producers who are farmers and which manufactures less than 100 hectolitres of wine per marketing year⁷⁰, *expressis verbis* provided for in Article 3 of the cited Act. However, by virtue of Article 3 of the Act on freedom of economic activity, it cannot be raised that the activity performed by farmers is not of the economic activity nature under the meaning of [Article 2](#) of the referred Act. Manufacturing activity in agriculture - if it is of the gainful nature and is orientated 'towards disposal' and is not performed merely to meet own needs, and which is characterised by organisation and continuity - is at the same time economic activity, while a farmer conducting it satisfies the conditions for his eligibility as the entrepreneur.

Viewed in this light, agricultural activity, which a status of economic activity is to be assigned to, may be the subject of activities of companies. It allows to cumulate capital and ensures better work organisation and use of equipment. But, the Polish legislator failed to decide to introduce a conception of 'agricultural company' ['spółka rolna] to the legal system, and a farmer may choose the one among the companies available in the legal system.

⁶⁷ Compare with D. Łobos–Kotowska, *Gospodarstwo rodzinne. Prawne formy organizacji* (Family-run farm. Legal forms of organisations), Sosnowiec 2006

⁶⁸ Compare with D. Łobos–Kotowska, *Działalność rolnicza w przepisach prawa publicznego i prywatnego* (Agricultural activity in the provisions of public and private law), *Studia Iuridica*, no. 59/2014, s. 217 and the next ones as well as the literature there referred to.

⁶⁹ The consolidated text, *Journal of Laws: Dz.U.* of 2016, pos. 1829, including amendments.

⁷⁰ Exclusion refers to the farmers pointed out in Article 17 sec. 3 of the Act of 12.05.2011 on wine manufacturing and bottling, trade and organizing wine market, the consolidated text, *Journal of Laws: Dz. U.* of 2014, pos. 1104, including amendments

Assessing the suitability of partnerships regarding running agricultural activity in minor extent (family-run farms), it is particularly important to point at private partnerships. The assessment of their suitability involves partners character of the company, the interest of all partners' participation in achieving their mutual aim, formal requirements related to setting up a company and its operation limited to minimum, liberal legal regime regarding company contribution which admits inter alia partner's work contribution. However, partnerships also have some disadvantageous that affect their popularity, which is inconsiderable. It is determined by several, personal liability of the partners for the commitments and the method of settlement with a departing partner, who through necessity of return of contributions, in practice, forces liquidation of the agricultural farm.

Private unlimited company seems to be definitely more beneficial to conduct agricultural activity. It allows farmers for better sharing in trading owing inter alia to potential access to the institutions provided for by the provisions of the Civil Code, such as an establishment/company and power of attorney (proxy) and being subject to entry into the Register of Entrepreneurs of the National Court Register. They facilitate operation of an establishment and ensure the greater certainty for trading. Also in this case, liability for establishment's commitments is personal and unlimited, and its slight mitigation - through the application of the principle of subsidiary - negatively influences farmers' decisions on selection of this form of cooperation (partners shall be personally liable not until execution on establishment's property proves to be unsuccessful). Limited joint-stock partnership [spółka komandytowo – akcyjna], in view of the complexity, both at its organisation and operation, is not a form selected by farmers to conduct mutual agricultural holding.

On the other hand, capital companies seem to be a form adequate to run agricultural activity in greater extent (agricultural holdings/ big farms [gospodarstwa farmerskie]).⁷¹ Such companies have legal identity and exclude partners' personal liability for company's commitments. However, it is not a legal form corresponding to family-run farms, which pursuant to Article 23 of the Constitution of the Republic of Poland form the backbone of the farming system of the Republic of Poland. Such a state of affairs is due to relatively high capital requirements, the impossibility to contribute own work and separation of ownership and management functions through the extensive structure of company's governing bodies.

The structural disadvantageous outlined for the companies in the Polish legal system arose farmers' low interest in such a form of management and therefore, in agricultural law doctrine demands as regards regulating 'agricultural company' have been increasingly repeated.

⁷¹ Compare with J. Bieluk, *Prowadzenie działalności rolniczej przez osoby prawne* (Carrying out agricultural activity by legal persons), (in:) *Kwestia agrarna. Zagadnienia ekonomiczne i prawne* (Agrarian aspects. Economic and legal issues), published under the editorship of P. Litwiniuk, Warszawa 2016, p. 271 and the next ones

b. The transfer of agricultural farms

The agricultural farm, regardless its organisational and legal form may be subject to trading, both by mortis causa and inter vivos. The following legal events resulting in legal succession shall be mentioned: the death, winding-up of the legal person or the organisational unit without legal personality which carries out an agricultural farm, transformation of it, as well as the disposal in whole or in a part of it.

The Poland's legal system, like legal orders in the European countries, interferes in the law applicable to the succession of agricultural farms during the inheritance distribution. Thus, the Polish model of farms succession corresponds to Romanesque model, while the legislator's attention is focused on selecting such a successor which guarantees the proper conduct of the farm, whilst reserving indivisibility of the farm.⁷² The significant change in the legislation regarding the succession of agricultural farms was implemented by virtue of the judgment of the Constitutional Tribunal of 31.01.2001⁷³. The Constitutional Tribunal had concluded that the provisions of Civil Code affecting the determination of legal successors of the inheritance including a farm or land contribution into an agricultural production cooperative open after judgment delivery (13.02.2001) were inconsistent with the Constitution of the Republic of Poland. From the date of judgment delivery of the Constitutional Tribunal no limitations regarding statutory and testamental inheritance of agricultural farms have been in effect and the circle of successors shall be determined under the general inheritance principles. Hence, the court shall not have to examine whether a farm is involved in the succession, and successors of an agricultural farm and their shares in such a farm and in other part of the succession shall not be specified separately in the decision regarding the confirmation of the inheritance acquisition (the certificate of inheritance)⁷⁴.

⁷² Compare with A. Lichorowicz, *Nowy etap rozwoju polskiego modelu dziedziczenia gospodarstw rolnych* (New stage in the development of the Polish model for agricultural farms succession), *PiP* 1991, book 11, p. 39 and A. Lichorowicz, *Normatywna konstrukcja pojęcia spadkowego gospodarstwa rolnego w ustawodawstwie krajów zachodnioeuropejskich* (in:) *Z zagadnień prawa cywilnego* (Normative concept structure of agricultural farm subject to succession in legislation of the Western European countries), Białystok 1991, pp. 109-124, A. Stelmachowski, (in:) P. Czechowski, M. Korzycka – Iwanow, S. Prutis, A. Stelmachowski, *Polskie prawo rolne na tle ustawodawstwa Unii Europejskiej* (Poland's Agricultural Law in terms of European Union's legislation), Warszawa 1994, pp. 120-121, Z. Truskiewicz (in:) *Prawo rolne* (Agricultural Law), published under the editorship of P. Czechowski, Warszawa 2015, p. 227.

⁷³ The judgment of the Constitutional Tribunal of 31.01.2001, P. 4/99, (*Journal of Laws: Dz.U.* no. 11, pos. 91; *OTK* 2001, no. 1 pos. 5 including approval gloss of B. Wierzbowski, *PS* 2001, no. 5).

⁷⁴ Compare with B. Wierzbowski, *Glosa do orzeczenia Trybunału Konstytucyjnego z dnia 31.01.2001* (Gloss to the judgment of the Constitutional Tribunal of 31.01.2001), *PS* 2001/5/103, A. Lichorowicz, *Szczególny porządek dziedziczenia gospodarstw rolnych po orzeczeniu Trybunału Konstytucyjnego z dnia 31.01.2001* (Special order for inheritance of agricultural farms after judgment of the Constitutional Tribunal dated 31.01.2001), *Rejent* 2001/9/88; Z. Truskiewicz, *Szczególny porządek dziedziczenia gospodarstw rolnych w świetle Konstytucji RP* (Special order for inheritance of agricultural farms in the light of the Constitution of the Republic of Poland), *Studia Iuridica Agraria*, t. II, Białystok 2001, E. Kremer, Z. Truskiewicz (in:) *Prawo rolne*

However, cancellation of co-ownership of agricultural farms is referred to the provision of the Civil Code. In this regard, the primacy of a division of an agricultural farm by virtue of the co-owners' consent is provided for in the Polish provisions of the Civil Code (Article 213 of C.C. and the next ones). Should the co-owners' consent be absent, the courts shall judge a division of an agricultural holding in kind, if it is consistent with the principles of adequate agricultural management, then they award the farm to the one of successors, which runs it or permanently works on it, or ultimately to such a successor which gives the best guarantee to run it diligently. Distribution under the Civil Code is admissible, only when all successors amicably apply for such cancellation of co-ownership, or when none of successors consents to be awarded a farm in kind.

Disposal of a farm, by means of activities between living persons is governed by Article 55.2. of the Civil Code, while liability for obligations relating to running the agricultural farm, which is disposed, is regulated under Article 55.4 of C.C. In this case the Polish legislator has applied the institution of a statutory debt accession. Pursuant to the cited provision, the acquirer of an agricultural farm is liable jointly and severally with the seller /alienator for the seller's/alienator's obligations related to running the agricultural farm unless, at the time of acquisition, the acquirer was not aware of those obligations despite having used due care. The acquirer's liability is limited to the value of the acquired farm as at the moment of acquisition and according to the prices as at the time the creditor is satisfied. This liability cannot be excluded or limited without the creditor's consent.

Negative effects, with regard to trading activities covering agricultural real properties, for competitiveness of the Polish agriculture, should be noted after the amendment to the Act on shaping of the agricultural system has come into force, which substantially limited trade of such properties, as well as stakes and shares of companies being owners or perpetual usufructuaries of agricultural real properties. The detailed overview of the matter is provided in the first part of the report.

In contrast, implementation in the regulations concerning the support for the Polish agriculture, and more generally, the development of rural areas, specific regulations relating to a transfer of the payment entitlements under the direct support schemes or the aid from EAFRD should be evaluated as positive. The regulation covering the transfer of entitlements shall be a question to national law. The Polish legislator has differently regularised the position of legal successors (acquirers), depending on whether legal event resulting in legal succession (disposal) occurred prior to granting the aid or after the aid was awarded. The legislator in a way not arising debts has regulated the situation, when procedural succession – in the course of the proceedings – occurs as a result of legal succession caused by natural person's death, winding-up of the legal person or the organisational unit without legal personality, transformation of an entity, or disposal in whole or in a part of the

(The Agricultural Law), published under the editorship of P. Czechowski, Warszawa 2015, p. 227 and the next ones

agricultural farm. In such event, legal successors are included in to the ongoing proceedings. However, controversies arise when person's replacement takes place after the funds have been granted. Then, the procedure for granting the aid shall be restarted, what is contrary to a principle of the universal succession which occurs in connection with the inheritance of an agricultural farm.⁷⁵

6. Environmental regulations (Monika Król)

Water management instruments

A law regulating issues related to water management in Poland is the Act of July 18, 2001 - Water Law⁷⁶, introducing basic principles of inland surface waters and groundwater management. The principle of regulating water use, its protection and management is the principle of sustainable development, aimed at achieving a good ecological status of water, by preserving a rich and sustainable ecosystem. Water management should be based on the principle of rational and comprehensive treatment of surface and groundwater resources, taking into account their quantity and quality, having in mind the principle of common interests of all water users⁷⁷.

The law distinguishes three types of use of water: common, ordinary and special:

1) widespread use of water serves to meet personal, household or agricultural needs without the use of special technical equipment and amateur fishing (Article 34, par. 3 of the Act);

2) normal use of water includes the use of water by its owner and the use of groundwater in its soil. However, this law does not constitute the right to make water equipment without the required water permit. Normal use is used to meet the needs of own household and farm, however, it cannot be used within: 1) irrigation of land or crops with underground water by means of plant irrigation; 2) draining water surface or underground water in quantities greater than 5 m³ per day; 3) use of water for business purposes; 3) agricultural use of sewage or introduction of treated wastewater into the water or ground, if their total volume is exceeds 5 m³ per day;

3) particular use of water means any use that goes beyond ordinary use, which is possible after obtaining a proper water permit. These include: removal and disposal of surface or

⁷⁵ D. Łobos–Kotowska, Umowa przyznawania pomocy z Europejskiego Funduszu Rolnego na rzecz Rozwoju Obszarów Wiejskich (Agreement for granting aid from European Agricultural Fund for Rural Development), Warszawa 2013, p. 282 and the next ones and J. Bieluk, D. Łobos–Kotowska, Przeniesienie posiadania gruntów rolnych w wyniku spadkobrania, a prawo do płatności (Transfer of possession of agricultural lands as a result of succession and entitlement to payment), *Przegląd Prawa Rolnego (Agricultural Law Review)*, no. 3/ 2008, pp. 79 – 97.

⁷⁶ *Journal of Laws* from 2015, p. 469 as amended further as: „p.w.”. On April 26, 2017, the Polish Parliament has received the governmental draft of Water Law Act aimed at enforcing European Union law, Parliament document no. 1529.

⁷⁷ A. Kaźmierska-Patrzyzna, M.A. Król, Public administration tasks in water management (*Zadania administracji publicznej w gospodarowaniu wodami*) [w:] B. Rakoczy, M. Szalewska, K. Karpus (ed.), *Prawne aspekty gospodarowania zasobami środowiska. Korzystanie z zasobów środowiska*, Toruń 2014, p. 187-188.

underground waters, introduction of sewage into waters or to land, use of water for energy purposes, fisheries use of inland surface water (Article 37 of the Act).

Entitlement to general and ordinary use is granted directly on the basis of the Act, whereas special use requires the consent of the competent authority in the form of a water permit. Charges for the use of the water are as follows: 1) a charge for the use of the environment - for water intake and waste disposal, in accordance with Art. 273 par. 1 pt. 3 of Environmental Law Act of 27 April 2001⁷⁸; 2) fees constituting the income of the National Fund for Environmental Protection and Water Management, above all for donation in the use of the fishing circuit and under contracts for the fishing of inland fisheries, in accordance with the principles set forth in art. 142 pt. 2 together with art. 13 par. 3 and art. 142 par. 5 together with art. 217 par. 6 of Water Act.

a. Legal instruments used to fight with contamination

1. Legal instruments aimed at protecting elements of the environment against the effects of excessive chemisation in agriculture

Agriculture is one of the major sources of threats to the environment, directly through contamination of waters and soils and indirectly to the marine environment. Water contamination mainly results from spreading or dumping of farm effluents and the excessive use of fertilizers and pesticides. However, excessive or inadequate use of fertilizers leads to serious contamination of soils, surface and groundwater, and thus poses a threat to human health and life. In Poland, the authorization to use or trade in plant protection products, fertilizers or plant aids is strictly regulated. According to art. 5 of the Act of 10 July 2007 on fertilizers and fertilizers⁷⁹: "only agents which when properly used, intended for use, do not pose a risk to human health, animal or the environment may be authorized to use and sell"⁸⁰. In particular, plant protection products must not contain active substances presenting such a hazard, for which the European Commission has issued a decision on the non-application. The authorization of a plant protection product to the market requires authorization of the minister responsible for agriculture. Fertilizers and plant growth aids authorized by the minister competent for agriculture or admitted to trading in another EU Member State, the Republic of Turkey or a Member State of the European Free Trade Association (EFTA) may be marketed if the national rules on the basis of which they were produced and marketed, provide protection for human and animal health and the protection of the environment.

The Act introduces several rules concerning the use of fertilizers and plant improvement aids: 1) order for fertilizers and measures in a way that does not endanger the health of humans, animals or the environment; 2) order to use only fertilizers and fertilizers that have been authorized; 3) determining the maximum dose of fertilizer that can be used during the year; 4) order to use soil improvers and growth promoters in accordance with instructions for use and storage.

⁷⁸ Journal of Laws from 2017, p. 519, further as: "P.o.ś".

⁷⁹ Journal of Laws from 2015, p. 625 as amended further as: "u.n.n".

⁸⁰ List of fertilizers and plant improvement agents that can be marketed on the basis of the authorizations of the minister competent for agriculture, pursuant to Art. 8 par. 1 and 2 of u.n.n, can be found on the website of the office of the designated minister, <http://www.minrol.gov.pl/Informacje-branzone/Produkcja-roslinna/Nawozy-i-nawozenie/Wykaz-nawozow/Wykaz-nawozow-i-srodkow-wspomagajacych-uprawe-roslin2>

The implementing provisions⁸¹ of the law laid down detailed rules for the application of fertilizers, preventing threats to human and animal health and the environment, among others. Use of appropriate equipment, prohibition of use at a distance of at least 20 m from the protection zone of water sources, water intakes, reservoir banks and watercourses, surface waters and coastal waters, as well as restrictions applied at low levels of groundwater.

The rules for the prevention of environmental pollution through the use of plant protection products are governed by two legal acts in Poland: the Plant Protection Act of 18 December 2003⁸² and the Act of 8 March 2013 on plant protection products⁸³. It is: 1) the principle of taking into account first the agrotechnical, physical, mechanical or biological protection methods that minimize the use of chemicals; 2) the obligation to strictly apply the recommendations of the use of measures to prevent contamination of the environment; 3) establishment of a number of control instruments, which were provided by the State Inspectorate for Plant Protection and Seed Production, Land entry, sampling, plant and protection measures, document control⁸⁴.

The Agricultural and Food Quality Inspection bodies supervise the marketing of fertilizers and plant health aids, and under this supervision they have the right to enter the land, inventory these resources, carry out compliance inspections, access to facilities where these resources are stored, free of charge sampling for testing.

b. Protection of waters against nitrates from agricultural sources

According to art. 47 of water law, agricultural production should be conducted in such a way as to prevent water pollution. This provision establishes two instruments for the qualitative protection of waters: 1) the designation of surface and subterranean waters and areas particularly exposed to pollution by nitrates from agricultural sources (OSN); 2) action programs aimed at reducing the outflow of nitrogen from agricultural sources⁸⁵.

Ministers of Environment, Agriculture and Rural Development and the Minister of Health are required to identify areas that may be susceptible to nitrate pollution from agricultural sources. For these areas the minister in charge of agriculture should develop a set of principles of good agricultural practice and disseminate them.

⁸¹ Regulation of the Minister of Agriculture and Rural Development dated on 18 June 2008. On the implementation of certain provisions of the Act on fertilizers and fertilization, *Journal of Laws* from 2008, Nr 119, p. 765 as amended.

⁸² *Journal of Laws* from 2016, p. 2041 as amended.

⁸³ *Journal of Laws* from 2017, p. 50.

⁸⁴ More on this subject: M.A. Król, Protection of the biosphere from excessive chemisation in agriculture (Ochrona biosfery przed nadmierną chemizacją w rolnictwie) [w:] M. Górski, *Prawo ochrony środowiska*, Warszawa 2014, s. 632 – 634 or M.A. Król, A. Niewiadomski, Family farms in the legal system for environmental protection and sustainable development (Rodzinne gospodarstwa rolne w systemie prawnym ochrony środowiska i zrównoważonego rozwoju) [w:] M. Podstawka (ed.), *Ekonomiczne i prawne mechanizmy wspierania i ochrony rolnictwa rodzinnego*, Warszawa 2015, p. 243- 244.

⁸⁵ More on this subject: M.A. Król, Impact of agri-environmental regulation on the development of rural areas (Wpływ regulacji rolno-środowiskowej na możliwość zagospodarowania terenów wiejskich) [w:] A. Fogel, M. Geszprych, A. Kosieradzka-Federczyk, M.A. Król, I. Zachariasz, *Limitations in land development and management and spatial order. Provisions separate to the law on planning and spatial development (Ograniczenia w zabudowie i zagospodarowaniu terenu a ład przestrzenny. Przepisy odrębne wobec ustawy o planowaniu i zagospodarowaniu przestrzennym)*, Warszawa 2014, s. 133-136.

The Director of the Regional Water Management Board is required to specify - by regulation - surface and underground waters sensitive and areas particularly vulnerable to such pollution. In these areas the outflow of nitrogen from agricultural sources to water should be limited. For the areas indicated within 2 years of their designation, a repair program is developed within the meaning of art. 84 of environmental laws to limit the outflow of nitrogen from agricultural sources. The program is developed by the regional director of the water management board. In addition, the act imposes on the Voivodship Environmental Inspector obligation to carry out every four years an assessment of the extent of eutrophication of inland surface waters⁸⁶.

c. Legal instruments for the protection of biodiversity

Agricultural activities cause numerous threats to biodiversity. The factors that cause the degradation of natural values and the depletion of biodiversity are in particular: urbanization and fragmentation of the land, wetland drainage in the wetlands, reduction of water retention, monocultures connected with the intensification of agricultural production, soil and water pollution due to excessive agricultural chemistry, introduction of extraneous biogeographical species into the environment and genetically modified plant varieties, the disappearance of breeding of traditional breeds of animals⁸⁷.

The care of rural biodiversity is subject to many legal regulations. Apart from the abovementioned acts regulating the application of fertilizers and plant protection products, The Organic Agriculture Act of 25 June 2009⁸⁸, the Law of 3 February 1995 on the protection of agricultural and forest land⁸⁹, the Act of 5 February 2015 on payments under direct support schemes⁹⁰, together with the implementing acts, and the 20 February 2015 support for rural development with the European Agricultural Fund for Rural Development funds under the Rural Development Program for 2014-2020⁹¹ with its implementing regulations.

The legal instrument known as the "requirements of cross compliance" is successively introduced into the Polish legal system. Currently under art. 91 of Regulation (EU) No 2013/1306⁹² of the European Parliament and of the Council, these requirements are a fundamental obligation for beneficiaries of support for European agriculture. EU bans and prohibitions, which fall within the scope of cross-compliance requirements, set out in EU

⁸⁶ More on the water's eutrophication and other threats to the aquatic environment caused by agricultural activities: K. Rószczka, Legal protection of water in the process of agricultural production (Prawna ochrona wód w procesie produkcji rolnej), „Przegląd Prawa Rolnego” 2007, nr 2, p. 80 – 81.

⁸⁷ B. Poskrobko, T. Poskrobko, K. Skiba, Biosphere protection (Ochrona biosfery), Warszawa 2007, s. 178. Szerzej na ten temat: M.A. Król, Usable protecting biodiversity in agriculture, fisheries and fisheries (Użytkowa ochrona różnorodności biologicznej w rolnictwie, rybołówstwie i rybactwie [w:] M. Górski, J. Miłkowska-Rembowska (ed.), Prawo ochrony różnorodności biologicznej, Warszawa 2013, p. 47-163.

⁸⁸ Journal of Laws from 2017, p. 1054.

⁸⁹ Journal of Laws from 2015, p. 909 as amended.

⁹⁰ Journal of Laws from 2015, p. 1551 as amended, further as: „u.p.r.s.w.b.”

⁹¹ Journal of Laws from 2017, p. 562.

⁹² Regulation (EU) No 2013/1306 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy, and repealing Council Regulation (EWG) nr 352/78, (WE) nr 165/94, (WE) nr 2799/98, (WE) nr 814/2000, (WE) nr 1290/2005 and (WE) nr 485/2008, Official Journal L 347 from 20.12.2013, p. 549 as amended.

legislation, address the protection of biodiversity and are implemented primarily in the Nature Conservation Act of 16 April 2004⁹³.

By contrast, under art. 45 sec. 1 on payments under the direct support schemes, set standards for good agricultural and environmental conditions that take into account soil and climate conditions, existing management systems, use of agricultural land, farming methods and farm structure⁹⁴. The obligations set out in the implementing rules can be divided into two categories: (a) bans and prohibitions regulated by the Law on Nature Protection and the Law on the Protection of Agricultural and Forest Lands, such as the ban on the destruction of habitats for plants and animals of protected species; natural habitats located in areas covered by forms of nature conservation, banning the burning of grasses on farmland or cutting down trees that are natural monuments, and banning the destruction of water meshes of less than 100 m² b) prohibitions and prohibitions not yet known to Polish legislation such as: order to shift, mowing the lawn on meadows and pastures, rules relating to the use of arable land on slopes of more than 20 degrees or minimum soil cover on land threatened by water erosion.

From the standpoint of biodiversity protection of rural areas in Poland, the importance of agri-environment and climate change, the implementation of the Natura 2000 network and the dissemination of organic farming are of great importance.

6.4. Legal instruments for the protection of the neighborhood

In order to protect neighboring estates against the negative impact of agricultural activity, buildings and agricultural objects and their location should meet the technical conditions specified in art. 7 sec. 2 pt 2 of the Act of July 7, 1994 - Construction Law⁹⁵. Each building should be used in a manner consistent with its purpose and environmental requirements and maintained in a sound technical and aesthetic condition⁹⁶.

Special conditions must be met during storage of natural fertilizers. Slurry and slurry are only stored in tight sealed containers with a capacity of at least 4 months of production (article 25 par. 1 law on fertilizers and fertilization). According to art. 25 par. 2 law on fertilizers and fertilization entities that collect natural fertilizers should keep them on impermeable slabs so that spills do not get to the ground. At the same time, content of §29 of the regulation implements the principle that "the manure storage plate should have a bottom and impermeable walls", which in fact protects against leaks into the ground. In § 6 par. 3 specifies the required distance of equipment for storing natural fertilizers from rooms reserved for people on neighboring properties. These are measures that minimize the negative impact of farming activities on neighboring properties, but do not eliminate the total emissions from agricultural holdings.

⁹³ Journal of Law from 2016, p. 2134 as amended.

⁹⁴ Minister of Agriculture and Rural Development Regulation of 9 March 2015 on standards of good agricultural and environmental condition, Journal of Laws from 2015, p. 344 as amended.

⁹⁵ Journal of Laws from 2016, p. 290 as amended, further as: „p.b.”.

⁹⁶ See Regulation of the Minister of Agriculture and Food Economy of 7 October 1997 on the technical conditions to be met by agricultural buildings and their location, Journal of Laws from 2014, p. 81.

7. Legal provisions on product marketing (Izabela Lipińska)

What needs to be noticed is that the marketing of agricultural products is positively influenced and supported by current legal instruments. Agricultural producers are given a wide range of support and their position in the supply chain should be strengthened by new solutions adopted in the field of preventing unfair market practices.

a. Marks of quality

One of a crucial aspects of the carried out agricultural policy is to support the trade in domestic agricultural products and foodstuffs. The support involves providing consumers and buyers with reliable information about the qualities of agricultural products and foodstuffs and, often, about the used production methods. It helps to ensure fair competition among agricultural producers and, therefore, it makes their market position stronger. Agricultural producers can be beneficiaries of relevant programs which make it possible to indicate marketed products to specially promote them. It relates to participating in domestic food quality systems under Article 5(2) of Act of 20 February 2015 on supporting the development of rural areas with the contribution of the European Agricultural Fund for Rural development as part of the Rural Development Programme for the years 2014-2020⁹⁷. Under the above-mentioned regulation, the Minister of Agriculture and Rural Development recognizes, by way of an administrative decision, quality systems laid down by the European regulations⁹⁸. Currently, there are 5 systems functioning in Poland, including: Integrated Production, Quality Tradition, Quality Meat Program (QMP), Quality Assurance for Food Products (QAFP) and Pork Quality System (PQS). There are numerous benefits which agricultural producers can enjoy if they participate in the systems. Apart from strictly marketing issues, it enables the producers to enhance their bargaining power in the agricultural and industrial chain. A product gains recognition and consumers' trust in its quality. Additionally, every new participant of the above-mentioned systems can obtain financial support within the first 3 years of its production since joining the systems entails incurring additional costs relating to making necessary changes to a farm and subjecting it to control according to set system standards. Therefore, the support is designed to facilitate the production under new conditions, required by a particular quality system.

⁹⁷ Journal of Laws of 2015, Item 349.

⁹⁸ See: Article 16(1)(b) of the Regulation of the European Parliament and of the Council No. 1305/2013 of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005, OJ L 347, p. 487.

Moreover, some legal solutions regulating distinguishing domestic products from others were included in Act of 21 December 2000 on trade quality of agricultural products and foodstuffs⁹⁹. The Act lays down unified criteria for marking unprocessed and processed agricultural products and foodstuffs as “Produkt polski” (Polish Product), provided they were produced in Poland (Article 7b of the Act). As for unprocessed products, it refers to basic production, namely cultivation, harvesting or breeding and, as far as cows are concerned, also milking, where the rules and requirements of food law in terms of food safety were applied¹⁰⁰. As for marking a processed agricultural products and foodstuffs, the marking is used as long as an agricultural product or foodstuff was produced from the ingredients meeting certain statutory requirements relating to their place of origin and total mass. What needs to be mentioned is that the solutions in question are a kind of novelty as they came into force on 1 January 2017.

b. National competition law

The issues on competition law in agriculture have been included in a few legal acts mostly relating to certain gross practices used towards other market participants. The first act is Act of 16 April 1993 on Combating Unfair Competition¹⁰¹. Under Article 10(1), the act of unfair competition means such indication of products or services or its lack, which may mislead customers in relation to the origin, quantity, quality, components, manufacturing process, usefulness, possible application, repair, maintenance and another significant features of products. It can be exemplified by using the “Polski produkt” (Polish Product) indication without fulfilling the statutory obligations in that respect. Additionally, the incorrect use of a certificate or a quality mark can be regarded as unfair misleading commercial practice in the meaning of Act of 23 August 2007 on combating unfair commercial practices¹⁰². Pursuant to Article 5(1), a commercial misleading practice means a misleading action which makes a consumer take a transactional decision that they would not have taken otherwise. An unfair practice therefore is using a certificate, quality mark without being authorised to do so (Article 7(2)).

⁹⁹ Journal of Laws, of 2016, Item 1604, as amended.

¹⁰⁰ As for meat production, using an indication depends on whether or not the animals were born, bred and slaughtered in Poland – the whole process of getting the meat must take part within Polish territory. As for animal products other than meat – they must come from animals which were bred in Poland.

¹⁰¹ Journal of Laws of 2003, No. 153, Item 1503, as amended.

¹⁰² Journal of Laws of 2016, Item 3.

New legal solutions were laid down in Act of 15 December 2016 on counteracting the unfair use of contractual advantage in the trade in agricultural and food products¹⁰³. The Act aims at eradicating unfair commercial practices from the supply chain of agricultural raw materials and food. It particularly refers to putting pressure in order to lower the prices of particular products, which may lead to limiting or stopping the production and replacing good quality raw materials with worse ones in the production process. Pursuant to Article 6, any unfair use of contractual advantage by the purchaser against the supplier or by the supplier against the purchaser is prohibited. It refers to a situation where the agricultural producer (supplier) does not have sufficient and actual opportunities to sell agricultural or food products to other purchasers and where there is a significant disparity in economic potential which puts the purchaser at an advantage (Article 7(1)). The legislator claims that the use of a contractual advantage is unfair if it poses a threat to the vital interests of the other party or infringes such interest. The unfair use of contractual advantage may involve: 1) unreasonable termination or threatened termination of a contract; 2) arrangements whereby only one of the parties is entitled to terminate or withdraw from a contract or to rescind such contract; 3) making the conclusion of a contract contingent upon the acceptance or fulfilment by the other party of other consideration, having neither substantive nor customary relation with the subject of such contract; 4) unreasonable extension of payment periods for the agricultural or food products supplied.

c. Producer associations and marketing

In order to enhance the market and marketing position of agricultural producers, the national legislator incentives them to form and function within producer groups. They can do it after meeting the requirements included in Act of 15 September 2000 on agricultural producers' groups and their unions and on changing other acts¹⁰⁴. As for agricultural producers, membership in the group gives them stable sales of products and increased production profitability. Setting up the group entails the possibility to get a subsidy within measure "Setting up producer groups and producer organisations" financed by the Rural Development Programs for the years 2014-2020. The action is designed, among other things, to strengthen the organization of food supply chain, including processing and marketing agricultural products, with special attention given to improving the competitiveness of agricultural producers. The support in question constitutes a flat percentage rate from net income obtained

¹⁰³ Journal of Laws of 2017, Item 67.

¹⁰⁴ Journal of Laws, No. 88, Item 983, as amended.

by a group or producer organisation from sale of products or a group of product produced in agricultural farms of their members in particular years and sold to purchasers who are not members of that group or organization. The support is granted in the period of the first 5 years of the functioning of the group or interbranch organisation.

8. The legal provisions for implementing the CAP (Radosław Pastuszko)

Before analysing the selected content-related dimensions of the domestic legal solutions influencing the competitiveness of Polish agriculture (points a-c), it is necessary to draw attention to the changes in the organisation system of the entities (paying agencies) responsible for the completion of tasks in respect of market measures (the first pillar) and structural measures (the second pillar) within the Common Agricultural Policy.

Under the existing legal status, the functions of the paying agencies have to date been performed in Poland by the Agricultural Market Agency (ARR)¹⁰⁵ and the Agency for Restructuring and Modernisation of Agriculture (ARiMR)¹⁰⁶. On 1 September 2017, the newly established National Centre for Agricultural Support (KOWR)¹⁰⁷ will take over most of the responsibilities of the ARR and the tasks performed by the Agricultural Property Agency (ANR)¹⁰⁸. In turn, the ARiMR will become the only paying agency performing all the tasks related to CAP financing.

Notwithstanding the issue of whether the organisational transformations are justified, it can be assumed that the system reform in the initial stage of the KOWR's operation will be connected with negative consequences in respect of the efficiency of administrative procedures in matters concerning the granting of support and subsidy payments, which in turn has a direct effect on the competitiveness of agricultural producers operating within the EU single market.

a. The allocation criteria for subsidies under the first pillar (coupled with production and the calculation of eligible hectares ...)

The adopted allocation criteria for subsidies are the outcome of political decisions at the European Union level - hence the limited significance of domestic law. Without doubt, the adopted principles (in particular the available financial envelope) resulting in lower levels of

¹⁰⁵ The Act of 11 March 2004 on the Agricultural Property Agency and the Organisation of Certain Agricultural Markets (consolidated text, Journal of Laws of 2017, item 1006).

¹⁰⁶ The Act of 9 May 2008 on the Agency for Restructuring and Modernisation of Agriculture (consolidated text, Journal of Laws of 2016, item 1512, as amended)

¹⁰⁷ The Act of 10 February 2017 on the National Centre for Agricultural Support (Journal of Laws, item 623). See also: the Act of 10 February 2017 - Implementing Provisions to the Act on the National Centre for Agriculture Support (Journal of laws, item 624).

¹⁰⁸ The implementation of tasks in respect of intervention activities on agricultural markets, and the pro-active development of the ownership structure of arable land (which has been the jurisdiction of the ANR), might raise certain doubts.

subsidies for Polish farmers as compared to the producers from the old EU Member States, are factors bearing negative consequences¹⁰⁹. On the other hand, it is worth noting that the principles applicable to Poland and the other states which joined the EU in 2004 are much more favourable than the principles applicable in the case of states which joined the EU later. Due to the fact that direct support is a substantial part of agricultural support within the CAP, this influences the conditions of farmers' competition on the EU single market. It seems justifiable to depart from the allocation of funds for direct payments which was calculated on the basis of the agricultural production volume established over twenty years ago, and to complete the process of converging the direct-payment levels per hectare across Member States¹¹⁰.

The domestic factors in respect of direct support, indirectly influencing competitiveness include detailed principles of identifying eligible agricultural land plots (Art. 8 of the Act of 5 February 2015 on the Payments within the Direct Support Scheme¹¹¹). The assumption that the de-facto owners and users of agricultural land are the only ones entitled to obtain subsidies is of great significance here. It is not enough to be a dependent or an independent owner of the land, within the meaning of the civil law, as the use of the land for agricultural purposes is a mandatory criterion for obtaining subsidies.¹¹²

b. The specific provisions relating to eco-conditionality under the first pillar (greening: agricultural practices beneficial to the climate and the environment)

The condition for granting greening payments is to pursue agricultural practices beneficial to the climate and the environment, across all the eligible hectares qualifying for single area payment, or the so-called equivalent measures in the field of crop diversification, maintaining existing permanent grassland, and maintaining ecological focus areas. The principles of implementing the system in the domestic legal regulations are defined in the quoted Act of 5 February 2015 on Payments within the Direct Support Scheme. The detailed criteria are governed by the Regulations of the Minister of Agriculture and Rural Development: of 6 March 2016 on the Periods for Calculating the Share of Various Crops for the Purpose of Crop Diversification¹¹³; of 9 March 2015 on Marking Permanent Grassland Valuable in

¹⁰⁹ The average rate of direct payment per hectare in Poland amounts to 86% of the EU average.

¹¹⁰ Cf.: A joint declaration of the Ministers of Agriculture of the Visegrad Group countries and Bulgaria, Romania and Slovenia about the Common Agricultural Policy (CAP) after 2020.

¹¹¹ Consolidated text - Journal of Laws of 2017, item 278. See also: the Regulation of the Minister of Agriculture and Rural Development of 6 March 2015 on the Landscape Elements Defined as Part of the Agricultural Plot Area and Their Width (Journal of laws, item 336); the Regulation of the Minister of Agriculture and Rural Development of 6 March 2015 on the Tree Species, the Cultivation of which Constitutes a Short Rotation Coppice, and on the Maximum Harvest Cycle for Each of the Tree Species (Journal of Laws, item 339); the Regulation of the Minister of Agriculture and Rural Development of 6 March 2015 on Defining Maximum Tree Density. (Journal of Laws, item 338).

¹¹² See also: the Decision of the Voivodeship Administrative Court in Rzeszów of 19 January 2017, ISA/Rz 860/16; Statement of Reasons for the Decision of the Voivodeship Administrative Court in Olsztyn of 23 March 2017, I SA/1 85/17; Statement of Reasons for the Decision of the Voivodeship Administrative Court in Białystok of 26 April 2017, I SA/Bk 9/17.

¹¹³ Journal of Laws, item 340, as amended

Terms of Environment¹¹⁴; and of 11 March 2015 on Ecological Focus Areas and the Principles of Joint Implementation of Maintenance Measures for the Areas¹¹⁵.

It seems that the CAP legal solutions concerning “greening” are irrelevant to competitiveness. The objective of the said solutions, at both the European and national levels, relates to environmental-value goals, without significant relation to the production dimension. It is pointed out that certain legal norms are casuistic and too formalised in nature. However, it can be stated that the adopted legal structures will be beneficial to the condition of natural resources in agriculture in the long-term perspective, and in consequence to the production potential.

c. The selection of options and detailed criteria for the granting of subsidies under the second pillar

The Act of 20 February 2015 on Supporting Rural Development within the European Agricultural Fund for Rural Development as Part of the 2014-2020 Rural Development Programme (RDP)¹¹⁶ is the principal Polish law in the sphere of implementing instruments within the second pillar of the CAP in the current financial perspective. The detailed conditions for the procedures of granting, making payments, and refunding financial support for operations within the RDP, were laid down in the Regulations of the Minister of Agriculture and Rural Development.

The basic factor which might have a positive influence on the competitiveness of Polish agriculture (as compared to previous solutions) is the reduction in measures of a social nature, at the same time introducing structures fostering development included in Priorities 1-3 (“Fostering knowledge transfer and innovation in agriculture, forestry, and rural areas”, “Enhancing farm viability and competitiveness of all types of agriculture”, and “Promoting food chain organisation and risk management in agriculture”)

A full presentation of the detailed legal structures is not possible, due to the wide range of conditions to be met in order to obtain support, and the limited scope of this study. However, it seems that the legal factors of great significance to the actual development of competitiveness in the dimension in question are those which directly influence the beneficiaries’ risk assessment as regards a given investment (operation). The controversial nature and scope of the sanctions in this respect, laid down in national legal regulations, should be stressed here. Sanctions including the obligation to refund part or the whole of the

¹¹⁴ Journal of Laws, item 348, as amended

¹¹⁵ Journal of Laws, item 354. The equivalent measures for crop diversification include the implementation of Package 1 “Sustainable Agriculture”, as part of the agri-environment and climate measures within the 2014-2020 Rural Development Programme. See: the Regulation of the Minister of Agriculture and Rural Development of 20 March 2015 on the Implementation of Equivalent Measures (Journal of Laws, item 433).

¹¹⁶ Consolidated text - Journal of Laws of 2017, item 562, as amended. The 2014-2020 Rural Development Programme was approved by the European Commission pursuant to Implementing Decision No. C (2014) 9783 of 12 December 2014.

subsidies may be imposed in the case of failing to comply with the formal requirements established in a casuistic way, without taking material aspects into account.

Abstract

Influence of very numerous legal regulations on the competitiveness of agricultural holdings is differentiated. Among them the ones relating to the trade of agricultural real properties, tax regime, as well as social protection for farmers, employment and remuneration for agricultural workers, and other ones can be identified.

After political transformation in 1989, the Polish legislator disregarding experience gained by other countries, through the amendment to the Civil Code¹¹⁷ has liberalized the trading of agricultural properties leading to decomposition of the legal regulations concerning ownership transactions. Basically, the amendment removed restrictions for the acquisition of real estate by means of agreements. Until 16.04.2016 the only restrictions were in force at removal of joint ownership of agricultural lands, however their effectiveness were insignificant. From structural transformations point of view, division of agricultural lands – as a rule – was allowed without limitations until the Act of 14.04.2016 on withholding disposal of agricultural real properties of the State Treasury came into effect. It implemented far-reaching amendments concerning the referred issue to the Civil Code and the acts on: shaping the agricultural system, management of agricultural properties owned by the State Treasury and other ones on importance for the trading. Too excessive liberalism with regard to the agricultural properties trade and associated with low prices of agricultural lands contributed to the excessive concentration of the lands by huge agricultural farms and the investors outside the agricultural sector, especially by foreign capital companies. Although that disadvantageous legal status fostered competitiveness of the lands on the internal European market of agricultural lands, while not on the national one. It slightly changed due to the Act, adopted hastily, under *aquis comminatoire*, of 11th April 2003 on shaping the agricultural system. However, its role after entry into force of the Act of 14.04.2016 was marginal. It may be stated that it had a positive impact on the competitiveness of the Polish agricultural lands on the European agricultural market. The Act of 11.04.2003 has implemented in to the trade of agricultural lands two instruments positively affecting the agricultural system: the statutory pre-emption right and the rights to acquire agricultural properties vested in the State body: Agencja Nieruchomości Rolnych (Agricultural Property Agency). They constitute the main influence and control tool of the trade. The implemented alterations were motivated by the belief that agricultural lands trade does not need to be just free as the trade of other forms of capital and the key point shall be management and control over the acquisition of agricultural lands. In the view of the European Parliament, the agricultural land constitutes a public good providing the basis for human rights to healthy and sufficient food and therefore is subject to social responsibilities, what shall be reflected in the national legislations. The economic incentives make a significant contribution to improving the agrarian structure, the increase of profitability and the maintenance of agricultural land in good agricultural condition, consistent with the environmental conditions. The key role is played primarily by the legal regulations introduced to the Polish legal system, it means the ones connected with preparation and later with Poland's accession to EU, as for example structural pensions, subsidies scheme, including: the right to production (milk, sugar quotas), direct payments

¹¹⁷ The Act of 28th July, 1990 on amendment of the act - the Civil Code. Journal of Laws: Dz. U. No. 55, pos. 321, came into effect as of 1st October 1990.

increasing farmers' profitability. There is no doubt that they significantly support the competitiveness of agricultural holdings. Such a role is not played by the provisions on social insurance for individual farmers, where the social function is predominant.

The competitiveness of agriculture shall be materially related to some regulations concerning taxation of agriculture, principles and terms of employment in agriculture, forms of running and transfer of agricultural farms, as well as instruments: water management, measures combating pollutants of particular environmental elements relating to extensive chemicals-based approach to agriculture, nitrate pollutions from agricultural sources, as well as protecting biodiversity, or neighbourhood protection governed the provisions of the Building Law. However, their positive impact on the competitiveness varies.

The impact on growth of the competitiveness of agricultural holdings in the Polish agriculture, in addition to the financial support from EU, is largely driven by personal and corporate income tax as well as value added tax (VAT). As a general rule, income tax is not imposed on revenues from agricultural activity. Statutory criteria for excluding this type activity from taxation are unambiguous. The competitiveness is supported by fiscal measures supporting diversification of the agricultural activity, consisting in agro-touristic activity run on a small scale (for example, rental of up to 5 guest rooms in an agricultural holding).

Then, this procedure is substantively different from VAT treatment under the general principles. In particular, a flat-rate farmer is given a certain price for an agricultural product paid in the net amount and reimbursement of tax at a flat-rate

VAT tax is subject to slightly different VAT settlement mechanism towards flat-rate farmers and the farmers treated under the general principles. It gives a farmer the free choice of more advantageous tax treatment. In the model of agricultural tax adopted in Poland, which fails to depend the tax amount on the gained incomes only subjective and objective exemptions as well as allowances (for example investment ones) stimulate development of agricultural holdings in the desired direction.

The agriculture is one of the contamination sources for water, soil and indirectly for the environment, thereby the provisions determining the method of running agriculture production, water management, protecting biodiversity, for which legal system called as the "the cross-compliance requirements", or the requirement to observe standards regarding the good agricultural condition, consistent with the environmental protection imposed on beneficiaries of direct payments.

The provisions implementing the rules of fair competition in a group of producers which make a real contribution to increasing competitiveness of agricultural products and foodstuffs to be placed on the national market are of significant importance. Their position shall increase as the participants (and beneficiaries of trade marks) of the national food quality schemes. Participation in adequate programmes, for example the "Quality, Tradition" increases the competitiveness of the products placed on the market. Elimination of unfair commercial practices from agricultural raw materials and food supply chain is equally important.

Implementation of the Common Agricultural Policy in to the national legal system is connected with the support allocation criteria adopted to the extent of market activities (Pillar I) and structural ones (Pillar II). There is a proposal to move away from distribution of direct payment envelopes on the basis of the agricultural production extent over 20 years ago and completion of the process of convergence of the direct payments level per hectare between the Member States. Legal solutions relating to „greening” are for the competitiveness of the

indifferent nature. With regard to structural activities (Pillar II), limitation of the activities of a social nature for the benefit of structures supporting the development may have the positive impact on to the competitiveness of the national agriculture.