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OWNERSHIP TRANSFORMATIONS IN POLISH AGRICULTURE

I. Introduction

During the period of communist regime, Polish agriculture retained domination of private ownership of land, whereby 3/4 of total arable land remained in private hands. The remainder was used mostly by State-owned farms and, to a lesser extent, by agricultural cooperatives.

The regional structure of farmland ownership in Poland is quite diversified. There exist regions with extreme comminution of farms and those where large, State-owned farms dominate. Structural transformations in farms depend mainly on the overall growth of the economy and, in particular, on the ability of people employed so-far in agriculture, to undertake employment in other sectors.

Polish intervening policy includes, besides actions bearing market type features, also those ventures which intend to improve agrarian structure. The key to structural changes taking place is found in the widely taken economic environment; however, current macroeconomic conditions do not stimulate changes in this respect.

II. Privatization of State-owned Agricultural Enterprises

Because of the special nature of State-owned farms, privatization in the State-owned sector has been vested with a special governmental agency, the Agricultural Property Agency of the State Treasury, established in the Law of 19th of October 1991 on disposing with agricultural real property of the State Treasury¹.

The Agency is a trust-type institution the purpose of which is to take-over and subsequently dispose with agricultural property owned by the State Treasury. The Agency implements its purpose mainly through restructuring and privatization of agricultural property of the State Treasury. Restructuring is effected by creating an environment which allows for reasonable use of the production capacities of a given Resource both by administrating such Resources as well as through creating of new farms or conducting agricultural development works. Privatization, in turn, is to be understood as altering of

ownership relations through dealing in agricultural real property or organizing private farms on land formerly in possession of State-owned farms.

The performance of Agency's objectives within ownership transformations and organization of agriculture takes place within the general assumptions established for the State's agricultural policy.

In particular, the Agency is to conceive conditions which will allow to continue the creative growing of plants and breeding of animals, previously performed in specialized farming enterprises. To achieve this objective, the Agency establishes its companies for conducting creative farming and activities related thereto, or specialized pedigree breeding farms of the State Treasury.

The Agency is a State-owned legal person operating on national scale. Supervision over the Agency is performed by the Minister of Agriculture and Food Economy, to whom the President of the Agency reports.

The Agency is managed by a President, who represents the agency externally. The President is appointed and recalled by the Prime Minister. The Polish Parliament does not perform supervisory functions and is entitled only to consider the annual report of the Agency's activities submitted by the President. Moreover, Agency's President is appointed without any opinioning by Parliamentary Committees, which in turn are entitled to provide their opinions as to appointing of members of the Agency's Council. Members of the Agency's Council are appointed for a tenure of 4 years by the Minister of Agriculture in consent with the Minister of Finance, Minister of Ownership Transformations and Minister of Labor and Social Policy. The Law does not impose an appointing structure to the Council from among representatives of agricultural organizations or institutions; and it can be doubted whether simultaneous consent of four ministers will give a guarantee sufficient to assure professionalism of Council members². The Agency's Council is an opinioning and advisory body to the President, consisting of 9 members, the role of which is in particular to opinion: 1) directions of Agency's activities, 2) regional directions of activities, 3) quarterly and annual reports of the Agency's President. The Agency performs self-dependent financial policy based on an annual financial plan. The plans as well as main directions of allocating available resources are determined by the Agency's President in consent with the Minister of Agriculture and Food Economy and Minister of Finance.

The Agency derives its revenue from: 1) sums due on sale of real property owned by the State Treasury, 2) fees on title of administrating, use, rental fees and leasing of property within a given Resource, 3) profit derived from the operation of State Treasury's properties, 4) from other sources.

The Law entitles the Agency to draw short-term credits to cover its expenditures; on consent of the Minister of Finance the Agency may also procure long-term debt and issue debentures. Such authorization is fully understandable in light of the multi-billion debt of enterprises which are being taken over by the Agency,

Note that analysis of the law not provide any answer as to what agricultural system is to be built.

Therefore, it seems that the final result will depend much on the privatization technique to be applied, the law itself devoting more attention to land related issues. But, though the Law provides, vaguely, for the purposes of the Agency in dealing with agricultural real properties of the State Treasury, much less can be concluded as to the manner in which new farms are to be established and, even more, how are new jobs to be created during the restructuring process³. Any Resource of the Agency of Agricultural property of the State Treasury consists of the following real properties: remaining in administration of State-owned entities; remaining in the use or factual possession of natural persons, legal persons and other organizational entities; included into the State Land Fund, established on the basis of provisions implementing agricultural reform; property appropriated by the State Treasury pursuant to administrative decisions or on other titles. The appropriation of property remaining within any of the above sources takes place in adherence to the established procedures, each leading to the physical transfer of a real property by way of a transfer and acceptance protocol prepared by the transferee and the Agency.

In case of State-owned farms, transfer is preceded by the founding authority's decision to liquidate the enterprise. The Law establishes an autonomous legal basis for liquidation of the enterprise, different than that provided for in the law on State-owned enterprise⁴. and in the law on privatization of State-owned enterprises⁵. Liquidation takes place to transfer property of the liquidated entity to the Agency. The liquidation decision is adopted by the founding authority: 1) on its own initiative, 2) on joint motion of the enterprise director and Employees' Council, 3) on Agency's motion.

Factually, the decision depends on the Agency as its motion in obligatory, while in the remaining situations the decision to liquidate is adopted on Agency's consent. On the date of the liquidation decision taken by the founding authority (Minister of Agriculture and Food Economy, or Voivod), the enterprise is deleted from the register of State-owned Enterprises. The enterprise is liquidated only as a legal person, while the organized property components are transferred by the founding authority to the Agency.

In case of State-owned agricultural enterprises, the Agency takes over both property of the State Treasury remaining so far under administration of the being liquidated enterprise (administration expires upon deleting of the enterprise from the register) as well as own property of the said enterprise. The founding authority transfers to the Agency the property as well as all claims and liabilities of the liquidated enterprise; the Agency, next, appoints a temporary administrator of the property and operates it employing principles provided for in the Law.

Legal importance of the process of taking over State-owned property by the Agency has to be emphasized once again. This is because the Agency is taking over not only the State Treasury's property components but also assumes all the rights and obligations related thereto in respect to the State Treasury and third parties. The performance by the Agency of its ownership title and other material rights of the State Treasury encompasses the property included in the Resource, i.e. the property which has been taken over by the Agency. The Agency has no right to exercise authority of the State Treasury until it takes over such property because there exists no structure which would allow for the Agency to assume the title by operation of the law, only.

Authority of the Agency in using of the State Treasury's property is based on the legal structure of a trust. A trustee is a person managing third party's matters in its own name. Thus, the Agency does not become the owner of the assumed property, but only a subject performing in its own name authority vested in it by the State authorities. The Polish legal system does not contain general provisions on trust relations⁶, so the legal relationship between the Agency and the State Treasury is determined solely in the provisions of the discussed here law. Legislator's will replaces the role of the owner and trustee with whom rights are vested, together with an obligation to act as a trustee. But, trusteeship does not determine which concrete rights in respect to defined entities are vested with the Agency. Performance of rights is vested on principles provided for in the law - substantiation takes place by transferring property to the Agency. This is because the Agency receives rights from trusteeship only in respect to property comprising a Resource of agricultural property of the State Treasury. The principle of substitution operates between the Agency and the State Treasury, by which property acquired by the Agency within its activities and included into a Resource, remains property of the State Treasury and not of the Agency as a legal person.

The performance by the Agency of ownership rights in respect to State Treasury's property takes place by way of two different legal regimes. The operation of property allocated for agricultural purposes takes place on principles provided for in the said law, while performance of ownership rights

in respect to real property allocated for non-agricultural purposes takes place according to provisions of the Law of 1985 on Land Economy and Expropriation of Real Property⁷. III. Disposing with the agricultural resources of the State Treasury The factual consequences of implementing the Law are generally reflected in the manner in which property comprising the Resource of Agricultural property of the State Treasury is being operated. The Resources is assumed to be an interim organizational structure. The Agency is to rapidly and reasonably dispose of the Resource. The Law provides for: disposing by use for agricultural purposes allocating of property for other purposes securing unused property against destruction or damage. Agricultural use of the Resources comprises: sale of real property leasing of arable land contribution of the property or any of its parts into a company transfer into administration issue into administration for a fixed term for purpose of use. Arable land may be protected without altering its use in agriculture by fallowing it in economically justified situations. The non-agriculture use of real property and other property components includes: free of charge transfer of land within a resource to State Forests organizations for afforestation; such transfer takes place on motion of the Agency, by decision of a regional general administrative authority; free of charge transfer of real property to the commune for infrastructural investment by way of an agreement executed between the Agency and a commune; developing of flats and property used for social, cultural and sports separated out of the Resource. Development of the institution of a company is a new legal solution applied to the disposal of State-owned land. A separation should be made here between single-person companies of the State Treasury and of a company established by the Agency. Transformation of a State-owned agricultural enterprise into a single-person company of the State Treasury is performed by the Minister of Ownership Transformations after obtaining of an opinion of the Minister of Agriculture and Food Economy⁸. This type of transformation is the only case provided for in the Law, in which property of the enterprise before ownership transformation is not included into the Resource of the State Treasury. The commercial law company, which provides for transformation of an organized corporate entity without liquidation, have been introduced aiming at specialized plant cultivation and pedigree breeding enterprises - and should not be employed elsewhere. To organize such specialized enterprises, the Agency also uses the vehicle of single-person Agency companies. The Agency will either contribute the whole farm or its individual property components and, therefore, will hold shares (stock) of commercial law companies. The Law does not restrict the type of commercial companies to be established - i.e. the limited liability and joint stock solutions are both available.

Another new solution in disposing with real property of the State Treasury comprises appointing of an administrator operating an organized part of State Treasury's property in the Agency's name. Legal and natural persons made be

appointed administrator. Mutual liabilities of the parties are set by the Agency by way of a contract executed as a notary deed.

Any sale of real property takes place through a civil law agreement which has existed in the Polish law since 1958. However, the law provides an novel and specific procedure for sale and setting of the price. Real property to be sold are listed in an announcement published in a manner conventionally adopted in the given locality 14 days before commencing with the sale. If the approximate value of the real property exceeds the equivalent of 5000 q. rye, an announcement will also be required in centrally circulated press.

Sale takes into consideration preemptive rights provided for in the Civil Code. If no exercise of preemptive rights is eligible, an auction takes place. The auctions conducted by the Agency either as direct bidding or through a comparison of bids submitted in writing. If justified by economic reasons, the buyer of an agricultural real property may be nominated on the basis of bids comparison, provide that preemption is given to farmers intending to expand their farms or to employees and employee companies of the liquidated State-owned agricultural enterprise, who intend to establish a farm.

No decision has been made as to priority of individual preferences (i.e. farmer or employee or employee enterprise of the liquidated State-owned agricultural enterprise). In practice, prospective buyer are recruited mostly from neighboring farms - farmers, or from former employees wanting to create a source of living. Art. 30 of the Law provides for the starting auction price for the real property and its component parts; provided, however, that price of land is set 1) with consideration of market prices, or 2) by multiplying the approximate price of one hectare of land by price of one quintal of rye set with consideration of agricultural tax applicable for the date of the sales agreement.

State-owned organizational entities not possessing personality at law and State Forests receive property of the State Treasury within any Resource into administration. Such transfer takes the form of a decision adopted by the Agency on motion of the entities involved. Also, agricultural real property maybe acquired by State-owned organizational entities not possessing personality at law; and are obliged to notify the Agency thereof. Also, the Agency leaves real property in administration of any such entities. Administration expires by decision of the Agency upon: expiration of the time period for which such administration had been established (it may also be established for unlimited duration) if the real property or its part ceases to be useful to the existing administrator; if administration is performed contrary to routine business principles; if provisions of the local spatial development plan make further use of the real property according to its current purpose

impossible. Property included into the Resource may be leased or rented to natural or legal persons. Natural or legal persons may be lessees. Terms of lease are agreed with the candidates who are selected out of a tendering procedure. Just like in the case of sale, preference is given to farmers intending to expand their farms or establish new farms, and to employee companies or employees of the liquidated entity who will establish a farming enterprise. If more than one bidder has preference rights, one who gives the best performance guarantee will be selected. Rent is defined in the agreement signed pursuant to the tender; statutory or contractual exemptions from rental payments are allowed.

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Initially, the Agency took over 1620 State-owned agricultural enterprises with a total surface area of 3,408,249 ha (end of March 1994) and 314,926 hectares of land from the State Land Fund. 78,902 ha were sold, in that 62,451 ha from former State-owned agricultural enterprises.

Resources of the Agency comprise (end of March 1994) 2,223,245 ha (61% of all land), in that 2,066,052 ha in farms administered by temporary administrators and 157,193 ha in farms managed by administrators. Also:

- 1,191,087 ha were leased
- 12,951 ha were let into use (by former employees)
- 80,474 ha lie fallow
- 132,349 ha are used by pensioners and retirees within non-contractual use, or await disposal.

Together with the property assumed from liquidated State-owned agricultural enterprises, 186,184 employment contracts were assumed. In result of restructuring of such enterprises, total employment decreased by 88,613 persons. In conclusion, the form of disposing with Resources of the Agricultural Agency of the State Treasury depends principally on economics. Sales comprise only a small portion of all transactions; because of limited financial resources of prospective buyers and reprivatization claims filed by former owners. Lease agreements form the bulk of transactions. Therefore, it seems purposeful to develop a framework lease agreement which would better consider the interests of agricultural activities performed within the lease structure.

IV. Opinions of farmers relating to ownership transformations in State-owned agriculture (based on research studies)⁹ Tasks vested with the Agricultural Property Agency of the State Treasury were from the onset implemented in a climate of contradictory opinions as to their purposefulness and enacting in time. From the very beginning this was an organizationally, economically and specially difficult maneuver; moreover, because it was taking place during a

period of overall systemic transformations, mounting recession and "difficult" money.

The hope that agricultural property resources taken over by the Agency will serve to expand (or create from grass-roots) family farms has not been fulfilled, as yet. Farmers become interested in land of the former State-owned farms only when those are adjacent to land already in their possession. Those few who are interested, often have difficulties in receiving credits at preferred rates for purchase of land or current assets when the whole farm is under lease. Employees of liquidated enterprises were disinterested in ownership transformations, afraid of losing jobs and having just a vague picture of an uncertain future. It's not just the 8-hour working day habit, but simply lack of cash needed to acquire an ownership title, what makes them reluctant.

The team of Dr. Sa3uda conducted research in former State-owned farms which underwent four different privatization processes. One was purchased as a whole entity (a rare event) by a private person from Warsaw., Another farm was taken over by a company with foreign equity. Two others were taken over by: employee company and certain foundation the purpose of which is to assist the unemployed. Though material for comparison is inadequate, the latter two forms are proving to be most effective.

Those who are working state that now their work has a purpose. In the post-State-owned farm housing settlement, where people established an employee company, a new group emerged, i.e. shareholders. Even though prospects of dividend are distant, they already today identify themselves with their company more than before. There are no longer families which would dwell on unemployment allowance, any more. But, such situation is not common; these companies are few, and post-State-owned farm villages are often in a dramatic situation.

It's not easy to provide a single answer to which took place recently with State-owned farms. Everyone agrees that existence of socialist giants, continuously subsidized and "reorganized" had to come to an end. But, some voices are heard that we have light-heartedly destroyed a great wealth achieved by two generations of Poles.

Liquidation of State-owned farms by privatizing after bankruptcy has been viewed negatively both by interested parties as well as by the economists. This route often leads to sell-off of property (mainly of machines and stock) below its market value.

Conclusions of Prof. J. Hozer's team point to the issue of restructuring properties of State-owned farms without regional or up-dated commune level

plans of developing agriculture. Hence, communes without such up-dated general and specific plans cannot become partners to the Agency.

Unemployment among former State-owned farm workers is both common and serious (many of those people have already lost their right to unemployment allowances). Buying on credit has become there a commonplace procedure. Alcohol abuse is widespread; therefore, social workers pay allowances in "goods tickets" or use the money to directly pay bills of the unemployed.

Do employees of former State-owned farms have any ideas for their own future? Some of them wait passively, till the time when they again will be needed by the land they live on. Others, however, have left their jobs and make a living in services or trade. There is a relations between level of activity and distance to the nearest town - the closer the better.

Such "own recipes for life" are few. Even preferred credits would not be a great help - lack of education and deep conviction that someone else should care immobilize those people. A defensive majority of them are nostalgic about the good old State-owned farm times and dream of full time jobs.

Endnotes:

1 Journal of Laws No. 107 item 464, as amended.

2 S. Prutis in: P. Czechowski, M. Korycka-Iwanow, S. Prutis, A. Stelmachowski: Polish Agricultural Law in Comparison with Legislation of the European Union, Warsaw, p. 164.

3 See: R. Budzinowski, Problems of Functionality of Agricultural Law During the Period of Transformation of the Economy. Ruch Prawniczy, Ekonomiczny i Socjologiczny, Edited by Wydawnictwo Naukowe Uniwersytetu Poznańskiego, No. 1 of 1995, p. 15.

4 Pursuant to the law on State-owned enterprises (unified text in Journal of Laws of 1960 No. 18 item 111) liquidation of an enterprise takes place because of its bad economic and financial standing.

5 Liquidation pursuant to the Law of July 13m, 1990 on privatization of State-owned enterprise (Journal of Laws No. 51 item 90 as amended), take place to privatize irrespectively of its economic and financial standing. The legal person is liquidated, but the physical existence of the enterprise is retained.

6 The notion of trust is known, e.g. in German law (Treuhand).

7 Unified text: Journal of Laws of 1991, No. 30 item 127, as amended).

8 Provisions of the Law of July 13, 1990 on privatization of State-owned enterprises (Journal of Laws No. 5, item 90, as amended) apply; however, it is not permitted to make shares in such companies available to third parties or to dispose with any such shares.

9 Based on research conducted in 1992 and 1993 ordered by M. Rataj Foundation: 1) research of B. Sa3uda's team from the W. Kjrzyqski Research Center in Olsztyn assessing situation in five selected post-State-owned farm housing settlements, 2) expert opinion of Prof. J. Hozer team at the Polish Economics Society in Szczecin on transformation of large-area farms. Published in pamijtnik instytutu im.Rataja, no. 1, Warsaw 1994.