

Poland case study

State pre-emption right of agricultural land in Poland

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The State pre-emption right is defined by the Law of 11 April 2003 *on Formation of Agricultural System* (hereinafter called FAS) that came into force in July 2003. The Law is aimed at:

- improving the structure of farms;
- preventing an excessive concentration of agricultural property;
- ensuring that farms will be managed by persons with proper qualifications.

FAS regulations are executed by the Agricultural Property Agency (APA) and connected to EU structural policy supporting development of family farms. In that way the State has an influence on the private land market in order to improve structure of family farms. APA exercises control over agricultural land market in the form of applying the pre-emption right of agricultural property (sale contracts) or repurchase right concerning agreements other than sale contracts (e.g. donation, exchange, bringing into company possession). APA is entitled to entry in place of purchaser on terms defined by parties of contract. However, the first entity entitled to exercise the pre-emption right is the leaseholder fulfilling the following terms defined by law:

- lease contract with certified date concluded in writing;
- purchased land, operated by leaseholder, will constitute a part of family farm or is leased by agricultural co-operative;
- the lease contract has been performed for, at least, 3 years.

APA is also not entitled to pre-emption right if, as a result of ownership transfer, a family farm grows to an area not greater than 300 hectares of agricultural land or where the transfer of land is realised among family members.

The family farm is understood as an agricultural holding with total area of agricultural land not exceeding 300 hectares, led by individual farmer i.e. natural person being the owner or leaseholder of that property. The individual farmer has to operate that farm personally, having agricultural qualifications (practical or theoretical) and residing in the commune where, at least, one part of that farm is situated.

In any case where the acquiring of agricultural property by a natural person does not fulfil any from above mentioned terms, or by a legal person that is not an agricultural co-operative, APA is entitled to pre-emption or repurchase right. If the price of offered property or its cash equivalent (contract other than sale) exceeds its market value, APA can sue the case to court for its settlement.

APA is informed by the obliged sellers or notaries about the potential transfer of property ownership, if in reference to those contracts, it can be entitled to pre-emption or repurchase right. The terms of the preliminary contract, after consideration, are the basis for possible intervention into a given transaction. When APA wants to use the

pre-emption or repurchase right it can express that declaration in one month of the date of notification received.

FAS does not contain the order for the further issue of executive regulations relating to the application of APA pre-emption and repurchase rights. Therefore, APA has defined principles for applying those rights. The most important ones are as follows:

- Pre-emption and repurchase rights are legal measures serving implementation of major FAS objectives. The superior principle is an occurrence of the effective land demand from the side of individual farmers on a given territory;
- APA started surveying regional land demand in co-operation with local authorities, farmers organizations and agricultural chambers;
- In principle, property not acquired includes homesteads, small plots of land, and land that has not been used for agricultural purposes for many years. That type of land is not relevant for enlarging the size of family farms;
- Pre-emption or repurchase right is used with taking into account the possibility of future land distribution in reasonable term of time;
- Purchased land is sold or leased by APA through closed tenders for individual farmers willing to increase the size of their family farms.

In the first 18 months of the implementation of FAS, APA received over 113,000 notifications. It means that about 60 percent of transactions on Polish private land market was under APA's control. The average area of notified property was 1.6 ha. Only 23 percent of contracts concerned properties with an area larger than 1 ha. So far, APA has bought totally over 2,000 ha valued of 10.5 million PLN. The area of the greatest purchased properties exceeded 200 ha, the smallest ones – 1 ha.

The predominant part of properties entitled for use the pre-emption or repurchase right concerned small pieces of land or non-agricultural land. Those plots were not suitable for enlargement of family farms and not purchased. Contracts transferring ownership rights of greater agricultural properties, in many cases, caused an increase of farms led by farmers who, as a matter in fact, did not fulfil all terms allowing the exclusion of the APA pre-emption and repurchase rights, but their hitherto existing, agricultural activity allows the assumption that the acquired land will be managed according to FAS principles. In those cases, in spite existence of the APA pre-emption and repurchase rights, there was no value in exercising those rights.

At the beginning of FAS implementation, some journalists and real estate agents were the opinion that FAS would paralyse the turnover of land, or would be a cause of many abuses and irregularities or, at the end, FAS would become a dead legal act. FAS execution shows that these black scenarios did not come true. Moreover, FAS has limited “bad practices” in the turnover of agricultural property. It is not a secret that parties of contracts, wanting to save the VAT, notary tax or other civil and legal expenses, declare lower sums than the real value of transactions. When APA has a right to acquire the property on the basis of pre-emption or repurchase right in the price (money equivalent) defined by contract, the scale of those practices is significantly restricted.

The first experiences have shown the necessity of the following improvement and tightening the FAS regulations.

1. FAS does not define the period of time after which an agricultural holding becomes a family farm. Moreover, “personal leadership” defined by FAS, means personal management but there is no obligation to work and live on a farm. As a result, it is too easy to “become an individual farmer” and participate in closed tenders organised by APA and to purchase agricultural land out of APA control. Therefore, APA proposed that acquiring the status of an individual farmer would be possible after 3 years of residence in a commune where, at least, one part of agricultural holding is located as well as after 3 years of personally leading the farm operations.
2. There is also reason to maintain an exact definition of farm supported by the State agricultural policy. FAS treats in the same way farms led by persons with agricultural qualifications and farms led by persons with any secondary or university education. There are also no preferences for farms led by families or for farms, which are only one source of income for farmers and their families.
3. The lack of minimal size of land which is excluded from FAS consideration (e.g. 1 ha proposed by APA) caused unnecessary engagement of work on recording, analyses and the storage of written documents. That was often held instead of deepened analyses the purchase of greater pieces of land. The FAS execution has revealed the problem of spatial planning because as a result of expiration of local master plans in many communes, APA received contracts concerning, in fact, the building plots and APA officials had to take many actions not connected with FAS purposes.

Thanks to the State pre-emption and repurchase rights there is a chance to improve the structure of Polish agriculture, characterised by excessive land crumbling and slow transfer of land to developed and commercial farms. That possibility is conditioned by State policy which will use, on wider scale, already functioning measures (agricultural pensions, consolidation and land exchange systems) as well as the newest one (structural pensions, direct payments). There is also necessary to introduce new legal measures (restrictions for property fragmentation, tax and credit systems). It is particularly important now, when direct payments and better prices of agricultural products can act in opposite direction i.e. consolidation of existing land structure.