

## DEVELOPMENTS IN THE AGRICULTURAL REAL ESTATE MARKET IN THE CONTEXT OF THE ACQUISITION OF REAL ESTATE BY FOREIGNERS

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**Purpose:** The aim of the study was to analyse the legal provisions regulating the acquisition of real estate by foreigners and to indicate the area of agricultural real estate acquired by foreigners in the years 2010-2021. The analysis attempts to describe the problems resulting from the lack of coherence between the Act on shaping the agricultural system and the Act on the acquisition of real estate by foreigners.

**Design/methodology/approach:** The research methodology is based on an analysis of the existing legal and organisational regulations concerning the possibility of acquiring rights to real estate in the territory of the Republic of Poland. The authors have also reviewed the available literature in which authors have addressed issues related to the acquisition of real estate by foreigners. The annual reports made available by the Ministry of Interior and Administration on the implementation of the aforementioned Act were also used.

**Findings:** Polish legislation favours the establishment and enlargement of family farms. At the same time, the law does not prohibit the running or enlargement of farms other than family farms, as persons running such farms may conclude agricultural land lease agreements or purchase land with the consent of the National Agricultural Support Centre. Importantly, foreigners from EU countries who decide to run an agricultural holding in Poland and obtain the status of an individual farmer have the same rights as Polish farmers with regard to not only the acquisition of agricultural land, but also direct payments, insurance in the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego) or other rights and obligations related to agricultural activity in Poland.

**Originality/value:** The publication addresses important issues concerning the acquisition of real estate in Poland by persons from both EU and non-EU countries. The subject matter is important in the context of the current socio-economic and political situation.

**Keywords:** agricultural real estate, acquisition of real estate by foreigners, real estate market.

**Category of the paper:** market research.

## 1. Introduction

The land market is characterised by great sensitivity due to changes in the economic, legal, financial as well as demographic environment. For reasons of both attachment and long-standing struggles over land, the nation's desire to preserve its identity and secure its interests has led to many legal regulations (Swinnen, Vranken, 2010). Each state controls socio-economic relations by introducing a number of different restrictions, making the performance of a particular legal act subject to a number of requirements (Suchoń, 2017). In most cases, this was and is dictated by rational reasons, while sometimes it is for reasons understood only by the legislator.

The legal norm contained in Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 1 to the Convention for the Protection of Human Rights ...) states that "every natural and legal person has the right to respect for his or her property. No one shall be deprived of his property except in the public interest and under the conditions provided for by law and in accordance with the general principles of international law" (Protocol No. 1 to the Convention for the Protection of Human Rights ..., art. 1). The above provisions of the Convention should in no way limit the right of States to enact such laws as they deem necessary to regulate the use of property in accordance with the general interest. A. Lichorowicz pointed out that in the adopted Treaty of Rome it was stipulated that all matters touching the legal regime of property, especially ownership, are the exclusive sphere of the internal law of the member states (Lichorowicz, 1998). Therefore, the impact of the European Union on agricultural property in member countries is always through the internal legislation of these countries.

The literature on the subject indicates that the trade in agricultural real estate in Poland has always been subject to restrictions. Initially, agricultural real estate could only be owned by a certain privileged group of society, and over time the regulations were liberalised, nevertheless, some restrictions still exist today (Blaszkę, 2018).

The main objective of the article is to present the basic issues related to the restrictions on the circulation of agricultural real estate to which foreigners are a party, with particular emphasis on the changes in legal norms introduced after 2016.

An analysis of the source literature has been carried out to discuss the issues addressed. In order to illustrate the size changes, empirical data on the area of agricultural real estate acquired in the West Pomeranian Voivodeship by natural and legal persons were used, with particular emphasis on protected areas, as these areas are a characteristic element of the landscape of the West Pomeranian Voivodeship. The source data were obtained from the Ministry of Interior and Administration and relate to the period 2010-2021.

## 2. Restrictions arising from the acquisition of real estate by foreigners

The agricultural land market is a complex phenomenon, strongly linked to the national economy. Its efficient functioning makes it possible to rationally manage the inherently limited spatial resources from the area of municipalities to the area of the country. An efficient agricultural land market is of great importance for economic development, especially in rural areas (Blajer, 2022). Land is an important factor in the production of agricultural commodities. Well-functioning land markets (and especially market transactions: both sales and leases) enable the transfer of land to more efficient producers (Żróbek-Różańska, Zielińska-Szczepkowska, 2019; Bórawski et al., 2019). Furthermore, land can be a source of political power. It is a good investment of capital and is used as a hedge against inflation, making it attractive to investors who lack the skills and/or interest in agricultural production (Skotarczak, Blaszcze, 2019). This creates an urgent need for continuous market research to identify the mechanisms of the market. In addition, the functioning of the agricultural land market is important for the conduct of European Union policy. The Common Agricultural Policy is a Community-wide policy providing various types of support for the agricultural sector and rural development (Bórawski, 2020). It has undergone quite a thorough evolution since its establishment in 1962, but some of the main objectives remain the same: to support farmers and improve agricultural productivity, to ensure a stable supply of affordable food and to protect EU farmers so that they can earn an income from their activities (European Commission, 2021). To what extent these objectives can be achieved depends on the specific characteristics and regulations of each country. Each Member State had and has its own regulations that legally restrict foreigners from acquiring property (Blaszcze, 2018). Given the importance of land and the functioning of land markets, it is not surprising that government interventions affecting the land market are widespread (Dudek, Wrzaszcz, 2020). There has been widespread introduction of land trading regulations that can restrict both supply and demand for land and affect both sale and lease transactions.

The fundamental Polish legal act that deals with the regulation of the acquisition of the right of ownership or perpetual usufruct of real estate by foreigners is the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners (Act of 24 March 1920 on the Acquisition of Real Estate ...). The Act introduces the general principle that the acquisition of real estate by a citizen of a foreign state requires a permit from the Minister of Internal Affairs and Administration (Wereśniak-Masri). It also regulates the acquisition by such persons of shares or stocks in commercial law companies with their registered office in the territory of the Republic of Poland that are owners or perpetual usufructuaries of real estate. A foreigner within the meaning of the provisions of the said Act is (Urban, Urban, 2019):

- a natural person who does not have Polish citizenship,
- a legal person with a seat abroad,
- an unincorporated company of natural persons who do not have Polish citizenship or legal persons with their seat abroad, established in accordance with the legislation of foreign countries, and
- a legal person and a commercial company without legal personality established on the territory of the Republic of Poland, controlled directly or indirectly by natural persons who do not have Polish citizenship, legal persons with their seat abroad, or an unincorporated company of natural persons who do not have Polish citizenship or legal persons with their seat abroad, established in accordance with the legislation of foreign countries.

In its current form, the Act has been in force since 1 May 2004, the date of Poland's accession to the European Union. The provisions of the Act are aligned with the requirements of European law, and in particular with European freedoms, such as the freedom of movement of capital or the freedom of movement of persons (Stacherzak, 2019), enjoyed by entities from states-parties to the Agreement on the European Economic Area and the Swiss Confederation (Report of the Minister of the Interior and Administration on implementation in 2015; Bórawski, 2019). The result of the adaptation of Polish legislation to European requirements is the possibility for foreigners from the European Economic Area and the Swiss Confederation to acquire real estate and shares in commercial law companies without a permit. The only exception to this rule concerned agricultural and forestry real estate, for the acquisition of which foreigners from the European Economic Area and the Swiss Confederation were required to obtain a permit for a period of twelve years from the date of Poland's accession to the European Union, i.e. until 1 May 2016. In the case of foreigners from outside the European Economic Area and the Swiss Confederation, there is, in principle, an obligation to obtain a permit for the acquisition of any real estate (Brożyna, Pijanowska, 2019). Since 1 May 2016, only foreigners from outside the European Economic Area and the Swiss Confederation have been formally obliged to do so (Łobos-Kotowska, 2022). The Polish legislator, in response to the end of the transitional period in restricting the acquisition of agricultural real estate, decided to amend the Act of 11 April 2003 on the shaping of the agricultural system, which resulted in far-reaching restrictions on the circulation of these properties (Bórawski et al., 2019; Klimach et al., 2020). The introduction of these changes was met with criticism from doctrine and practice, so by the Act of 26 April 2019 amending the Act on shaping the agricultural system, the rigour of the previous solutions was slightly mitigated. As a rule, agricultural real estate in Poland may be acquired by individual farmers. A number of exceptions to this rule are provided for, resulting directly from the provisions of the Act (Klimach, 2020). The definition of an individual farmer is regulated in detail in the Act on Formation of the Agricultural System. It has also been allowed that agricultural real estate may be purchased by other persons

(than an individual farmer and entities listed in the Act) after obtaining the consent of the Director General of the National Centre of Agricultural Support.

In addition, a principle has been introduced that the purchaser of agricultural real estate is obliged to run an agricultural holding, of which the acquired agricultural real estate is a part, for a period of at least 5 years from the date of its acquisition by the purchaser, and in the case of a natural person - to run the holding personally. At the same time, during this period, he may not dispose of the acquired real estate or give possession of it to other entities, although a number of exceptions are also provided for in this case.

The qualification of real estate as agricultural takes place on the basis of the local zoning plan, and in the absence of a current plan, the information contained in the land register is taken into account (Judgment of the WSA in Warsaw of 10.05.2006). With regard to citizens or entrepreneurs of the United Kingdom of Great Britain and Northern Ireland, in accordance with the agreement of 12 November 2019 on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, there was a transitional period during which these entities were treated as before, i.e. citizens of a Member State of the European Union. The transitional period began upon the entry into force of the aforementioned agreement and ended on 31 December 2020 due to the failure to decide on its extension.

The administrative proceedings on the permit for the acquisition of agricultural real estate shall be initiated at the request of a foreigner. The minister in charge of internal affairs issues a permit for the acquisition of agricultural real estate, unless the Minister of National Defence and the minister in charge of rural development raise objections. The 14-day period for these authorities to express their objections then begins to run. If none of the ministers expresses an objection within this period, the minister responsible for internal affairs issues a decision authorising the acquisition of real estate by a foreigner. The position of these ministers is constitutive, which means that the lack of consent from one of them prevents the issuance of a positive decision. The effectiveness of an issued permit thus depends on the consensual expression of will by the authorities mentioned in the provision, with the consent of the Minister of Defence and the minister competent for rural development taking the form of a decision. The minister responsible for rural development may, before taking a decision, request information from other authorities necessary for the decision to be issued and ask them to take a position (Kawecka-Pysz, 2004). Moreover, the minister competent for rural development, when assessing the application for granting a permit for the acquisition of agricultural real estate by a foreigner, is entitled to take into account the social interest by referring to the provisions of the Act of 11 April 2003 on shaping the agricultural system, according to which the preferred acquirer of agricultural real estate is a farmer running a family holding, having agricultural qualifications and residing in the municipality where at least a part of the acquired agricultural real estate is located (Judgment of the WSA in Warsaw of 15.04.2009).

Permission to acquire agricultural real estate shall be granted to a foreigner if:

- it will not cause a threat to defence, state security or public order, and it is not opposed by considerations of social policy and public health (Act of 24 March 1920 on the Acquisition of Real Estate ..., art. 1a.1.1),
- he demonstrates that there are circumstances confirming his ties to the Republic of Poland (Act on the Acquisition of Real Estate ..., art. 1a.1.2).

Circumstances confirming a foreigner's ties with the Republic of Poland may be, in particular (Act on the Acquisition of Real Estate by Foreigners, art. 1a.2):

- having Polish nationality or Polish origin,
- entering into marriage with a citizen of the Republic of Poland,
- possession of a temporary residence permit (excluding residence permits for foreigners who are victims of trafficking in human beings and due to circumstances requiring a short-term stay), permanent residence or a residence permit for a long-term EU resident,
- membership in the governing body of an entrepreneur who is a legal person or a commercial company without legal personality with its seat on the territory of Poland, controlled by foreigners,
- performance of economic or agricultural activity in the territory of the Republic of Poland in accordance with the provisions of Polish law.

The area of the agricultural real estate acquired should be justified by actual needs resulting from the nature of the activity performed, and moreover, the provisions of the Act on shaping the agricultural system must be observed during the acquisition.

Table 1 presents the total area of agricultural real estate acquired by foreigners in the Zachodniopomorskie Voivodeship in 2010-2021, broken down by natural and legal persons.

**Table 1.**

*Area of agricultural real estate acquired by foreigners between 2010 and 2021 in the Western Pomeranian Voivodeship (in hectares)*

Specification	Years											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
natural persons	2,09	95,67	13,88	105,11	6,38	2,21	1,23	1,06	0,98	0,96	0,83	1,36
legal persons	13,6	32,66	12,7	39,01	73,84	33,35	0	0	0	0	0	0
total	15,69	128,33	26,58	144,12	80,22	35,56	1,23	1,06	0,98	0,96	0,83	1,36

Source: own compilation based on data from the Ministry of Interior and Administration.

A total of 436.92 ha of land was sold between 2010 and 2021. In the case of individuals, a wide variation in the area of land acquired can be observed. The largest area of agricultural real estate was purchased in 2011 (95.67 ha) and 2013. (105.11 ha) and the smallest in 2020 (0.83 ha). In the case of legal entities, foreigners bought more than 10 hectares of agricultural land per year in every year surveyed until 2016, and in 2014 alone the area of acquisition was 73.84 hectares. The data shows that sales mainly took place between 2010 and 2015. During this period, 94 permits were issued to foreigners for the acquisition of agricultural real

estate in the West Pomeranian Voivodeship with a total area of 430.5 ha, of which natural persons purchased 225.34 ha and legal persons 205.16 ha.

Increasingly, there is a noticeable intensification of activities undertaken in order to preserve the natural character of the environment as much as possible, guaranteeing the continuity of the most important processes in the biosphere and maintaining the environment in a state that ensures optimal conditions for human existence. There is a growing interest in the idea of protecting the natural environment. In the West Pomeranian Voivodeship, as in the whole of Poland, protected areas function not only in a specific natural reality, but also in a certain social reality. The quality of agricultural land and its area are the main factors influencing agricultural activity (Przygodzka, 2006). Areas covered by various forms of nature are a characteristic element of the landscape of the West Pomeranian Voivodeship. The total area of all forms of nature protection established in the Zachodniopomorskie Voivodeship is 493,969 ha, which is about 21.58% of the area of the voivodeship. Table 2 presents the total area of agricultural real estate in protected areas acquired by foreigners in the Zachodniopomorskie Voivodeship in the years 2010-2021, broken down by natural and legal persons.

**Table 2.**

*Surface area of agricultural real estate located in protected areas acquired by foreigners between 2010 and 2021 in the Zachodniopomorskie Province (in hectares)*

Specyfification	Years											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
natural persons	1,23	13,21	2,25	19,62	0,48	0,91	0,05	0,04	0,03	0	0	0
legal persons	3,87	10,41	1,78	13,14	3,18	1,78	0	0	0	0	0	0
total	5,1	23,62	4,03	32,76	3,66	2,69	0,05	0,04	0,03	0	0	0

Source: own compilation based on data from the Ministry of Interior and Administration.

The data presented shows that the share of agricultural real estate located in protected areas in the total area of agricultural real estate purchased by foreigners between 2010 and 2021 was 71.98 ha or 16.47%. The largest area of agricultural real estate located in a protected area was purchased by individuals in 2013. (19.62 ha) and the smallest in 2018 (0.03 ha). In the case of legal entities, foreigners purchased only until 2016, and the size of the area of land acquired did not exceed 13.14 h in any year. After 2015, properties with a small area were traded and the total area sold was less than 0.05 ha. Foreign natural persons acquired about 52.46% of the total agricultural properties located in protected areas and legal persons 47.54%. As of 2016, only natural persons were purchasers of agricultural land and the total area of properties acquired was 0.12 ha. Analysing the purchasers by country of origin, it should be noted that the highest number of permits for the acquisition of agricultural real estate was received by natural and legal persons coming from: Germany (40 permits), Denmark (10 permits), the Netherlands (8 permits), Sweden (5 permits), Spain (4 permits). In the analysed period, the highest number of transactions involving agricultural real estate and foreigners as buyers was in 2010-2013, which accounted for 79.79% of all transactions. In the following years, sales decreased, which

could have been caused by the expectation situation related to the end in 2016 of the period with restrictions on the acquisition of agricultural real estate by citizens of the Member States of the European Economic Area and the Swiss Confederation.

### 3. Summary and conclusions

On 1 May 2016, twelve years passed since Poland's accession to the European Union. On that date, the transitional period of the provisions concerning the need to obtain a permit for the acquisition of agricultural real estate by citizens of the Member States of the European Economic Area and the Swiss Confederation also expired. From that moment on, the aforementioned foreigners may acquire ownership rights to agricultural real estate located within the territory of the Republic of Poland on equal terms with Polish citizens.

At the same time, the possibility to acquire agricultural real estate on the basis of the principles regulating the formation of the agricultural system has been restricted for foreigners and Polish citizens, which has not been included in the research of this work, but will be undertaken later.

It should be stated that the introduced restrictions do not fully limit the activity of foreign citizens on the Polish agricultural real estate market, as exceptions have been made to the restrictions on foreign ownership of agricultural land.

It should be emphasised that the change in the zoning plan (location of the agricultural property in areas designated in the zoning plan for non-agricultural purposes) makes the agricultural property not subject to the following restrictions:

- rationing to purchasers of agricultural real estate,
- the National Support Centre for Agriculture does not have the right of pre-emption and redemption,
- the right of pre-emption does not apply to inheritance under a will,
- holders of shares may use such agricultural land as an in-kind contribution.

In conclusion, it should be emphasised that Polish legislation favours the establishment and enlargement of family farms. At the same time, the law does not prohibit the running or enlargement of farms other than family farms, as persons running such farms may conclude agricultural land lease agreements or purchase land with the consent of the National Agricultural Support Centre. Importantly, foreigners from EU countries who decide to run an agricultural holding in Poland and obtain the status of an individual farmer have the same rights as Polish farmers with regard to not only the acquisition of agricultural land, but also direct payments, insurance in the Agricultural Social Insurance Fund (Kasa Rolniczego Ubezpieczenia Społecznego) or other rights and obligations related to agricultural activity in Poland. Moreover, as a rule, all European Union Member States apply more or less restrictive



and complex instruments for the protection and marketing of agricultural real estate. Despite the lack of a definition of a family farm in EU law, it is the family farm that is the basis of the European agricultural model.

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