How foreigners buy agricultural properties in Poland

2014-02-28 14:37:30

Foreigners become owners of agricultural properties in Poland by buying shares in Polish companies being the land owners. It remains unknown, though, how much land goes to the hands of foreigners as the data of the Ministry of the Interior are 3-4 times lower than the figures confirmed by NIK. This is the outcome of unclear law which does not oblige companies controlled by overseas investors to provide information on the land owned by them. The Agricultural Property Agency responsible for selling the state-owned land does not monitor how much agricultural land is traded on the secondary market.

The Supreme Audit Office looked into the sale of land owned by the State Treasury in three branches of the Agricultural Property Agency (APA).

Audit findings

APA calls for tenders for the sale of land and conducts them in line with effective law, and also properly secures interests of the State Treasury. APA branches rarely used the pre-emptive right on the secondary market for several reasons: the Agency’s land on a given area was still unused, the transactional price of the land was too high and the land was often charged with mortgages, lease contracts or loan agreements.

Foreigners acquired rights from the European Economic Area (EEA) to agricultural land in Poland by buying shares in companies with the Polish capital that were the land owners. In order to do so the foreigners must have a permit from the Ministry of the Interior (MI). All transactions were concluded legally, on the secondary land market. Foreigners most often represented the Dutch, Danish and Luxembourgish capital.

In the audited period, in the APA Branch in Szczecin foreigners purchased only 23 hectares of land directly from the Agency, whereas companies with the minority share of foreign capital purchased as much as 2.995 ha in open tenders. Besides, after the branch did not use the pre-emptive right, the foreigners bought the shares of companies that owned 4.577 ha of land in total.

According to the law, foreigners (also from the EEA) that want to buy farm and forest land in Poland have to get a permit from the MI (Act on acquisition of land by foreigners). The transitional period for unlimited purchase of agricultural land by foreigners is finishing only after 1 May 2016. The purchase of stocks and shares needs to be reported each time with the National Court Register. The same requirements apply when the company status changes into the foreign controlled company. Though, foreign controlled companies are not obliged to submit information on how much land they own to court registers. That is why, the National Court Register did not send to the MI the data needed to record transactions where foreigners were involved.

As a result of legal gaps, the MI did not have full data on how much land foreigners bought in Poland. According to the MI’s data, it was about 1.900 ha in the period 2011-2012. NIK audit revealed, however, that the actual figures were 3-4 times higher (about 6.150 ha).

Irregularities identified in the audit

The Agency improperly performed its tasks related to the area structure of farms. APA
branches did not know the area structure of farms in individual municipalities, although they should have been considered during the property sale. The sales offers were developed mainly based on the experience of the Agency employees and the average area of farms in the province.

**Besides, APA did not monitor developments on the secondary agricultural land market although it is important in terms of preventing excessive concentration of land** (in line with the state agricultural policy). During the audit it was agreed that from 2011 to 2012 in Zachodniopomorskie Province 12 of 509 buyers purchased as much as 33.7 percent of the areas of offered land, i.e. 9.835 ha.

**NIK also stated that the procedures for selecting agricultural properties for sale, as well as their area, were unclear.** The land selection was not preceded by any documented analysis. Such practices pose a risk of arbitrary actions and corruption.

**The effective system of qualifying tender participants gave a green light to farmers who bought the land for other reasons than to expand their farm.** Only at the beginning of 2013, the APA President limited such practices by adding appropriate clauses to APA internal procedures. NIK stands in a position, though, that the adopted principles should be provided for in the statutes.

**Proposals of law changes (de lege ferenda)**

The audit results imply that legislative initiative needs to be taken by the following bodies:

- **Minister of the Interior** to make sure complete information is provided on the stocks or shares acquired by foreigners, in companies being the owners or perpetual lessees of agricultural properties;
- **Minister of Agriculture and Rural Development** in consultation with the President of Agricultural Property Agency to provide statutory definition of circumstances justifying the reasons why a candidate for purchasing an agricultural property from APA resources should be excluded from the limited tender.