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State Ag Land Sales to be Suspended.

Report Categories:

Agricultural Situation

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Report Highlights:

Polish Ministry of Agriculture proposes new legislation suspending for 5 years sales of the state owned agricultural land from former state farms currently administered by the Agricultural Properties Agency (APA). According to the justification of the Ministry of Agriculture, the proposed legislation aims to strengthen the protection of agricultural land in Poland from speculative purchases by domestic and foreign buyers after May 1, 2016 when the grace period for sales of agricultural land to foreigners granted to Poland after EU accession will expire.

General Information:

The Ministry of Agriculture and Rural Development (MARD) published a draft Land Law suspending for 5 years sales of State owned agricultural land currently administered by the Agricultural Properties Agency (APA). According to the justification for the draft Land Law, the proposed legislation aims to strengthen the protection of agricultural land in Poland from speculative purchases by domestic and foreign buyers, who do not guarantee use of the acquired land for agricultural purposes in accordance with the public interest. The existing legislation does not prevent the speculative purchase of agricultural properties and do not guarantee the use of the acquired property for agricultural purposes.

The project assumes that state owned agricultural land should remain under administration of the APA and the basic form of its use should be via permanent lease. The restrictions will not apply to land used for public purposes like housing, business centers, sports facilities and plots smaller than 1 hectare.

The APA currently administers approximately 1.5 million hectares of land. According to the justification of the draft law there is a high probability that after May 1, 2016, when the grace period for sales of agricultural land to foreigners granted to Poland after EU accession will expire, there will be increased interest in the purchase of agricultural land by people who are not individual farmers.

According to MARD, increased interest in purchases of agricultural land is already observed. There are numerous transactions for acquisition of agricultural land by foreign individuals and legal entities that use Polish citizens for that purpose, named “poles”, which are financed by the real buyers. Foreign entities which bought agricultural land through such fictitious transactions are preparing for the formal acquisition of their property after May 1, 2016, when restrictions on sale of land after EU accession will terminate. According to the justification for the Land Law, it is estimated that this situation could affect hundreds of thousands of hectares of agricultural land in Poland. The draft land law is expected to enter into force on April 30, 2016.

According to the draft law, only farmers will be eligible to purchase agricultural land. The exception will be the vendor's relatives, local government units and the APA. Additionally, the proposed law will not apply to acquisition of agricultural land by inheritance.

The project clarifies the definition of an individual farmer. According to the draft law, an individual farmer is a person with agricultural skills, who runs a farm not larger than 300 hectares, and has been living in a rural municipality for at least 5 years. In addition the individual farmer must work personally on the farm and its income from the farm shall not be less than a quarter of all its revenue.

According to the justification for the draft Land Law published by the MARD, a suspension of sale of state-owned agricultural land is not incompatible either with the Polish Constitution or the law of the European Union. The State Treasury as the owner of land is under no obligation to sell it. In addition, provisions of the Land Law will apply to both Polish citizens and foreigners seeking to acquire or lease agricultural land in Poland. One justification for the law has been expressed as it will have a positive impact on rural areas because the bill will speed up agrarian transformation and limit the acquisition of agricultural property by unauthorized persons acquiring the land for purposes other than agricultural production. The draft law entails budgetary consequences for the loss of part of the proceeds from the

sale of agricultural property belonging to the APA, but the State Treasury will retain ownership and will be able to sell the land in the future in more favorable conditions. Moreover, this loss will be offset by proceeds from rents. According to the justification, the draft Land Law is compatible with European Union law.

The justification also explains that the proposed Land Law does not differentiate restrictions to the right to acquire agricultural property on grounds of nationality of buyers. It proposes stricter rules, but equal and the same for every buyer, regardless whether it is a Polish buyer or from another EU Member State.

In relation to potential buyers of agricultural land from non-EU countries, restrictions contained in the Act of 24 March 1920 remain in force regarding acquisition of real estate by foreigners (Law Paper of 2014; Position 1380). It refers in particular to the Article 345 of the Treaty on the Functioning of the European Union, which explicitly states that treaties do not prejudice the principles of property law in the Member States and the formation of the principles of the acquisition of property, and the use of legitimate and reasonable limitations in this respect is left to the sovereign decisions of the Member States. Poland therefore takes advantage of the Article 345 of the Treaty and the rules governing the acquisition of agricultural land are regulated in a way that ensures the best use of Polish agricultural land.

Comment: Although the proposed Land Law addresses the concerns of farmers that after termination of the 12-year grace period granted to Poland after EU accession, agricultural land will be acquired by foreign investors, this action by the new government indicates that their agricultural policy will focus on maintaining the current, inefficient structure of Polish farms based on small and medium size family farms. Such an approach of the new government is a continuation of the agricultural policy of the previous government, which treated the structure of agricultural holdings as a political tool and not as an economic tool for more efficient production. End comment.

End of Report