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Public control of share deals in companies owning agricultural real estate in a comparative perspective[1]

1. Preliminary remarks

The amendment to the Act of 11 April 2003 on the shaping of the agricultural system,[2] implemented by the Act of 14 April 2016 on the suspension of the sale of real property of the Agricultural Property Stock of the State Treasury and on the amendment of certain acts[3] (entered into force on 30 April 2016) introduced into the Polish legal system innovative instruments of public control of transactions concerning shares and stocks in companies owning agricultural real estate. According to the justification of the draft of the above-mentioned Act,[4] the use of new tools of control was dictated by the aim to "prevent speculative trade in agricultural real estate and to realise the principle resulting from Article 23 of the Constitution of the Republic of Poland (i.e. protection of family farms)." As the legislator goes on to point out, in the previous practice of economic transactions, there were often situations in which partners of companies – owners of agricultural real estate – were entities interested only in a profitable investment of capital,

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[2] Journal of Laws 2022, item 461 as amended; hereinafter: ASAS.
[3] Journal of Laws 2022, item 507.
[4] Explanatory Memorandum to the Government's Act on the suspension of the sale of real property of the Agricultural Property Stock of the State Treasury and on the amendment of certain acts, 8th Cadence Parliamentary Print No. 293.

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and not in conducting agricultural activity, or substitutes which, through a number of legal and organisational links, made it possible to circumvent the currently binding provisions on the acquisition of agricultural real estate. Indeed, thanks to such legal and economic links (e.g. through the creation of a number of interconnected companies or partnerships, often with minimum share capital as in the case of companies), the use of agricultural land was actually, albeit indirectly, decided by an entity that could not directly acquire this kind of property. The introduction of new control instruments was therefore intended to eliminate speculation in agricultural real estate. In this context, the author of the draft also referred to studies carried out by several research institutes and non-governmental organisations, in particular the World Bank's estimate that, in 2008–2009, a massive land buy-out covered an area of 45 million hectares, and to the contents of the 'Land Matrix' report indicating that a total of 83.2 million hectares of agricultural land, i.e. 1.7% of the world's arable land, had been disposed of in 1217 large-scale transactions in developing countries. It further highlighted that in Europe, agricultural land overall is shrinking, with more and more land concentrated in the hands of a few large companies. In the European Union, 1% of agricultural companies control 20% of agricultural land and 3% of agricultural companies control 50% of EU agricultural land.

A remedy for the undesirable phenomena described above, as well as a means to a more thorough realisation of the principle of the family character of Polish agricultural farms, was to be the granting to the public authorities, initially to the Agricultural Property Agency and then to the National Agricultural Support Centre,[5] of a number of powers to intervene in transactions concerning shares and stocks in companies owning agricultural real estate, as well as powers to control personal changes in partnerships and the event of a transformation, merger or division of commercial companies owning agricultural real estate. The innovative nature of these instruments of public control has met with significant resonance in the Polish doctrine, both that of commercial law and agricultural law.[6]

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[5] Hereinafter: NASC.

[6] Among many publications cf. e.g.: J. Grykiel, *Ograniczenia obrotu nieruchomościami rolnymi oraz prawami udziałowymi w spółkach po nowelizacji ustawy o kształtowaniu ustroju rolnego*, "Monitor Prawniczy" 2016, no. 12, pp. 628–629; Sz. Byczko, *Ustawowe prawo pierwokupu udziałów i akcji spółek będących właścicielami nieruchomości rolnych*, in: P. Księżak, J. Mikołajczyk (eds.), *Nieruchomości rolne w praktyce notarialnej*, Warszawa 2017, pp. 236–246; J. Bieluk, *Zastaw na udziałach i akcjach w spółkach będących właścicielami lub użytkownikami wieczystymi nieruchomości rolnych – paradoks art. 3a ust. 3a ustawy o kształtowaniu ustroju rolnego*, "Przegląd Prawa Rolnego" 2021, no. 1, pp. 59–68; idem,

The purpose of this study is to assess in a comparative perspective Polish concepts of public law control of transactions concerning shares in companies owning agricultural real estate. The passage of almost seven years from the entry into force of the provisions creating the relevant control instruments and the experience acquired in connection with their practical application already entitle us to formulate certain conclusions in this respect. The outlined objective is to be achieved by the structure of the work. Its first part will present the general shape of the Polish model of control of transactions concerning shares of companies owning agricultural real estate. The second part of the work will refer to attempts to subject such transactions to public law control, as undertaken in other European states. It should be emphasised that Polish solutions are not entirely unique on the European scale. The need to subject the transactions concerning shares in companies owning agricultural land to public control is also recognised by other European legislators. Their reaction in this regard often consists in introducing new legislative solutions. Conclusions flowing from the comparison of Polish and foreign legal regulations, as well as resulting from the observations made concerning the most serious problems related to the solutions adopted in Poland will be the subject of the concluding remarks. It should also be emphasised that due to the limited size of this study, the issues related to constitutionality and compliance of regulations concerning the control of transactions in shares in companies owning agricultural real estate with the European Union law will remain outside the subject of consideration. These extremely interesting issues certainly deserve a separate, in-depth analysis.

The choice of the subject of the research carried out within the framework of this study is certainly justified by both theoretical and practical considerations. On the theoretical level, it is interesting to observe the gradual widening of the scope of the agrarian regulation and its embracing the areas of law hitherto free from any form of "agrarisation" – in this case company law.[7] This phenomenon entails significant problems in terms of

Przekształcenia spółek kapitałowych a ustawa o kształtowaniu ustroju rolnego, "Przegląd Prawa Rolnego" 2019, no. 2, pp. 113–124; M. Muszalska, *Spółki handlowe a znowelizowana ustawa o kształtowaniu ustroju rolnego – uwagi z praktyki notarialnej*, "Studia Prawa Publicznego" 2020, no. 4, pp. 63–86; D. Buszmak, W. Kocot, *Przekształcenie spółki handlowej będącej właścicielem nieruchomości rolnej*, "Przegląd Prawa Handlowego" 2017, no. 7, pp. 4–11; J. Stranz, *Wpływ nowelizacji ustawy o kształtowaniu ustroju rolnego na procedurę podwyższania kapitału zakładowego spółki akcyjnej*, "Przegląd Prawa Handlowego" 2016, no. 12, pp. 5–9.

[7] For more on this topic: P.A. Blajer, *Rozważania o rozszerzaniu się zakresu regulacji prawnorolnej z uwzględnieniem perspektywy notariusza*, "Przegląd Prawa Rolnego" 2021, no. 2, pp. 113–133.

the need to reconcile traditional corporate mechanisms with instruments of agrarian, or in this case, public law, regulation. On a practical level, it should be pointed out that the control of the transactions concerning shares in companies owning agricultural real estate is seen as a tool to prevent the undesirable phenomenon of the so-called "land-grabbing,"[8] the effectiveness of which should therefore be reviewed.

2. The Polish model of public control of share deals in companies owning agricultural real estate

Regulations implementing the assumptions of the Polish model of control of transactions concerning shares in companies owning agricultural real estate are currently contained in Articles 3a and 4.6 of the ASAS. Already at this point it should be emphasised that these regulations are completely separate from the mechanisms of control of transactions concerning agricultural real estate *tout court*, using autonomous instruments and solutions. General control tools, such as preferences reserved for individual farmers (Article 2a.1 of the ASAS) are not applicable in their case, nor does the necessity to obtain the consent of the Director General of the NASC for the purchase of shares pursuant to Article 2a.4 of the ASAS ever arise.

Pursuant to Article 3a of the ASAS, the NASC acting on behalf of the State Treasury has the right of pre-emption in respect of shares in a company which is the owner (or perpetual usufructuary) of agricultural real estate with a total area of at least 5 hectares. The subject of the right of pre-emption is therefore shares in a limited liability company, as well as shares in a joint stock company, and in a so-called simple joint stock company. The directive prescribing a restrictive interpretation of the provisions on the pre-emption right also makes it necessary to assume that the restrictions provided for in the article in question do not apply to any entities other than the above-mentioned companies, in particular they do not apply to cooperatives. Moreover, the pre-emption right of the NASC does not come into effect in the case of the sale of a part of a share or a fractional part of a share.[9]

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[8] Cf. e.g. R. Pastuszko, *Land grabbing. Podstawowe zagadnienia prawne*, "Studia Iuridica Lublinensia" 2017, vol. XXVI, no. 1, pp. 147–156; idem, *Dostęp do zasobu gruntów rolnych w procesach globalizacji: zagadnienia prawne*, Lublin 2019; A. Opel, *Ausländische Agrarinvestitionen. "Land-Grabbing" im Spannungsfeld zwischen Menschenrechtsschutz und Investitionsschutzrecht*, Berlin 2016.

[9] J. Grykiel, *Ograniczenia obrotu...*, pp. 628–629.

Shares in a limited liability company as well as in a joint stock company are subject to the pre-emption right of the NASC if that company is the owner or perpetual usufructuary of an agricultural real estate within the meaning of the ASAS with an area of at least 5 hectares. The interpretation of this provision leads to the following conclusions:

– the pre-emption right applies to shares in a company which is the direct owner or perpetual usufructuary of agricultural real estate; it does not apply to shares in a company which is a partner to or shareholder in another commercial company, the latter being the owner or perpetual usufructuary of an agricultural real estate;

– only an agricultural real estate which is the subject of the company's ownership or perpetual usufruct should be taken into account for the calculation of the 5-hectare area standard; other legal titles to the agricultural real estate, e.g. lease or usufruct, remain irrelevant from the point of view of the area standard provided for in the article under consideration;

– when calculating the 5-hectare area standard, only an agricultural real estate within the meaning of Article 2.1 of the ASAS, i.e. an agricultural real estate within the meaning of the Polish Civil Code, with the exclusion of real estates located in areas zoned in local development plans for purposes other than agricultural, should be taken into account. The applicable local development plan, in which the real estate's designation is changed to non-agricultural purposes, eliminates the need to take it into account when calculating the area standard,[10]

[10] The issue of individualisation of agricultural real estate for the purposes of the application of the legal definition contained in Article 2.1 of the ASAS remains one of the most problematic issues in Polish literature, jurisprudence and trading practice. On this notion cf. e.g. B. Wierzbowski, *Pojęcie nieruchomości rolnej w prawie polskim*, "Studia Iuridica Agraria" 2005, vol. IV, p. 96 et seq.; W. Fortuński, M. Kupis, *Pojęcie nieruchomości rolnej i gospodarstwa rolnego z uwzględnieniem wybranego orzecznictwa,* "Nowy Przegląd Notarialny" 2019, no. 2, pp. 37–50; K. Czerwińska-Koral, *Pojęcie nieruchomości rolnej jako wyznacznik zasad obrotu nieruchomościami rolnymi*, "Rejent" 2016, no. 6, pp. 52–73; K. Marciniuk, *Prawne instrumenty ingerencji władzy publicznej w obrót nieruchomościami rolnymi jako środek kształtowania ustroju rolnego*, Białystok 2019, p. 76 et seq.; idem, *Pojęcie nieruchomości rolnej jako przedmiotu reglamentacji obrotu własnościowego*, "Studia Iuridica Lublinensia" 2017, vol. XXVI, no. 1, p. 94 et seq.; Z. Truszkiewicz, *Wpływ planowania przestrzennego na pojęcie nieruchomości rolnej w rozumieniu Kodeksu cywilnego*, "Studia Iuridica Agraria" 2007, no. 6, p. 152 et seq.; idem, *Nieruchomość rolna i gospodarstwo rolne w rozumieniu u.k.u.r.*, "Krakowski Przegląd Notarialny" 2016, no. 2, pp. 139–172; P. Wojciechowski, *Pojęcie nieruchomości rolnej*, in: M. Korzycka (ed.), *Instytucje prawa rolnego*, Warszawa 2019, p. 147 et seq.; A. Suchoń, *Pojęcie nieruchomości rolnej, gospodarstwa rolnego i działalności rolniczej w ustawie o kształtowaniu ustroju rolnego – wybrane kwestie z praktyki notarialnej*, "Przegląd Prawa Rolnego" 2019, no. 2, pp. 91–111.

– shares in companies with their registered offices outside the territory of the Republic of Poland, even if they are owners or perpetual usufructuaries of an agricultural real estate located in the territory of the Republic of Poland, are not subject to the pre-emption right limitation.

In accordance with the general conception of the pre-emption right adopted in Polish law, the pre-emption right set out in Article 3a of the ASAS also only comes into effect in the event of the conclusion of a contract for the sale of shares. In this regard, it should be emphasised that – subject to the exceptions provided for in Article 3a.2 of the ASAS – the number of shares sold,[11] as well as the status of the entity selling[12] or purchasing shares [13] is of no significance for the realisation the pre-emption right of NASC. Moreover, the mode in which shares are sold is irrelevant; the pre-emption right applies to the NASC in each case of the sale of the aforementioned objects.

In practice, the above conclusions force the interpreter to carefully consider in each particular case what juridical act is intended to lead to the acquisition of shares in a company. If it is a sale – the provision of Article 3a of the ASAS providing for the pre-emption right of the NASC will apply. If, on the other hand, it is a contract other than a sale – or a juridical act other than a contract – then the so called right to purchase resulting from Article 4.6 of the ASAS will apply to NASC. The pre-emption right provided for in Article 3a of the ASAS will never apply to the NASC in the case of an acquisition of shares following an increase in the capital of a company – this act in-the-law is covered by the disposition of Article 4.6 of the ASAS.

The Act on the Shaping of the Agricultural System also introduces certain limited exemptions from the NASC's pre-emption right in the event of the sale of shares in a company. These exemptions concern situations where the objects of the sale are:

– shares in companies whose stocks are admitted to organised trading, in particular on a stock exchange market,

– shares sold to a relative within the meaning of the ASAS,[14]

– shares or stocks sold by the State Treasury.

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[11] Even the sale of one share in a company that owns or is the perpetual usufructuary of an agricultural real estate of at least 5 hectares generates a pre-emption right of the NASC.

[12] The right of pre-emption shall apply to NASC in the event of a transfer of shares by way of sale, e.g. by a local authority, a state or local government legal entity.

[13] In particular, it may be a local authority, the Treasury or another commercial company, also within the same capital group, or even a company acquiring its own shares, if this is done pursuant to a sale contract in the cases indicated in the Polish Commercial Companies Code.

[14] I.e. shares are sold to descendants, ascendants, siblings, children of siblings, siblings of parents, spouse, adoptee and adopters and stepchildren.

If the conditions resulting in the pre-emption right of the NASC arise, the sale contract of shares should be of a conditional nature; its content should be enriched with a condition that the NASC does not exercise its pre-emption right to which it is entitled pursuant to Article 3a.1 of the ASAS. In other words, the effect in the form of the transfer of shares should be made conditional in the sale contract on a future and uncertain event, namely a failure to exercise the pre-emption right by the NASC within a statutorily defined deadline. The absence of this element in the content of the contract entails literal 'invalidity of the acquisition of shares or stocks,' as it was made in contravention of the provisions of the ASAS (Article 9.1 of the ASAS).

The company whose shares are the subject of sale should notify the NASC of the content of the conditional contract. This regulation requires cooperation between the parties to the conditional sale contract and the company itself even before notifying the NASC. Thus, by placing the burden of notifying the NASC on the company, the legislator forces the company, or rather its management board, to co-operate with the parties to the conditional sale contract. Failure to make this notification on the part of the company, resulting in the 'invalidity of the acquisition of shares or stocks,' may result in liability for damages on the part of those responsible for the negligence.

The mere notification to the NASC of the content of the conditional contract should take place "immediately" (Article 598 § 1 of the Polish Civil Code), i.e. "without undue delay," "as soon as possible." It should include information on the content of the conditional sale contract, i.e. on all its material provisions. This is because it constitutes the basis for the NASC to decide whether or not to exercise its pre-emption right. To this end, the provision of Article 3a.3 of the ASAS also confers upon the NASC, prior to the acquisition of shares in a company, the right to inspect the books and documents of that company and to request information from that company concerning encumbrances and liabilities not included in the books and documents. Following the exercise of this right, the NASC obtains full knowledge of the legal and economic situation of the company.

Pursuant to Article 3a.4 of the ASAS, the time limit provided for the NASC to make a declaration on exercising the pre-emption right is two months, counting from the date of receipt by the NASC of a notification on the content of a conditional sale contract made by the company whose shares constitute the subject of the contract. If the NASC requests additional documents or information from the company, this period starts to run from the date of receipt of such additional information or documents. A declaration on the exercise of the pre-emption right shall be made by the NASC in the

form of a deed (notarial act).. This declaration should be sent by the NASC to the obliged party (i.e. the seller) by registered mail with acknowledgement of receipt at a post office and then published on the NASC's website. The obliged party is deemed to have become acquainted with the content of the NASC's statement on exercising the right of pre-emption from the moment it is published on the NASC's website.

As a result of the exercise of the pre-emption right by the NASC, a sale contract of the same content as the contract concluded by the obliged party with a third party (Article 600 § 1 of the Polish Civil Code) is concluded between the obliged party (the seller under the conditional sale contract) and the NASC acting on behalf of the State Treasury. Thus, the exercise of the right of pre-emption leads to the conclusion of a contract between the seller and the entitled NASC on the sale of the object covered by that right – i.e. shares in a company. As a rule, therefore, the exercise of the pre-emption right in respect of shares leads to their transfer to the State Treasury, subject, however, to separate regulations of the Polish Commercial Companies Code and the Civil Code, which in order to achieve this effect may provide, for example, for notification of the company (Article 187 of the Commercial Companies Code), transfer of possession of a registered stock (Article 339 of the Commercial Companies Code) or issue of a bearer stock document (921^{12} of the Civil Code). Pursuant to the content of Article 8 of the ASAS, the aforementioned objects are part of the Agricultural Property Stock of the State Treasury, which means that the rights and obligations pertaining to them are exercised with respect to third parties by the NASC, acting in this case as a substitute of the State Treasury.

The exercise of the pre-emption right by the NASC means that the seller and the NASC are bound by the provisions contained in the conditional contract on the sale of shares – in particular as regards the amount of the price, but also other transaction terms. However, if the price of the sold shares grossly deviates from their market value, the NASC may – within 14 days from the date of submission of the declaration on exercising the pre-emption right – apply to A court to determine their price. In addition, the NASC may pay the undisputed part of the price of the shares before applying to a court for establishing their price (Article 3.8a of the ASAS).

A failure by the NASC to exercise its pre-emption right within the statutory 2-month period implies the fulfilment of a condition which is an element of the contract on the sale of shares and therefore – in principle – ensures that the contract is fully effective. In this case the need for the parties to conclude an additional agreement covering their consent to the

unconditional transfer of shares (a disposal agreement) is problematic. In the literature, however, the position seems to prevail on the need to comply in this respect with the rules provided for real estate transactions (Article 157 of the Polish Civil Code), i.e. the construction of two separate contracts – i.e. an obliging one and then a disposing one[15] .

A characteristic feature of the Polish construction of the right of pre-emption is the fact that it only becomes effective in the event of the conclusion of a sale contract.[16] Thus, no other event leading to the transfer of shares in a company owning agricultural real estate may be effectively limited by the pre-emption right vested in the NASC. As a consequence of this state of affairs, it has become necessary to introduce into the Polish legal system an instrument that would supplement and seal the regime of public law control of transactions concerning shares or stocks in companies being owners or perpetual usufructuaries of agricultural real estate. This instrument, known as the right to purchase, is provided for in Article 4.6 of the ASAS. As in the case of the right of pre-emption, this right is vested in the NASC only when the company is the owner or perpetual usufructuary of agricultural real estate with a total area of at least 5 hectares. However, the scope of juridical acts covered by the NASC's control exercised by means of the right to purchase is much wider than in the case of the right of pre-emption referred to in Article 3a.1 of the ASAS. This is because the right to purchase will apply to NASC in all cases of acquisition of shares or stocks as a result of:

– a contract other than a sale contract;

– a unilateral legal act,

– decisions of a court, a public administration body or decisions of a court or an enforcement body issued on the basis of the provisions on enforcement proceedings,

– another legal transaction or another juridical act, in particular inheritance,

– division, transformation or merger of commercial companies.

In 2019, by virtue of the Act of 26 April 2019 amending the Act on shaping the agricultural system and certain other acts[17] it has been determined that the NASC's right to purchase referred to in Article 4.6 of the ASAS

[15] J. Grykiel, *Ograniczenia obrotu…* p. 638.

[16] This characteristic feature of the Polish pre-emption right construction against the background of European regulations is pointed out by P. A. Blajer, *Sąsiedzkie prawo pierwokupu a struktura gruntowa polskich gospodarstw rolnych – panaceum czy pandemonium?*, "Przegląd Prawa Rolnego" 2015, no. 2, pp. 45–65.

[17] Journal of Laws 2019, item 1080.

generates not only the instances of acquisition of shares described above, but also the acquisition of shares as a result of an increase in the capital in companies. However, the application of the NASC's right to purchase shares in newly established companies remains doubtful. However, it should be concluded that the NASC's right to purchase the shares should not apply in this case since in the described situation, pursuant to Article 4.1 of the ASAS it already has the right to purchase, but only with regard to agricultural real estate acquired by a newly established company. Furthermore, it is worth noting that in the case where, for example, as a result of a merger of commercial law companies, the share capital of the acquiring company is increased, leading to the acquisition of shares, then, in accordance with the literal wording of Article 4 of the ASAS, such an event will entail, on the one hand, the NASC's right to purchase with regard to the company's agricultural real estate (Article 4.1 of the ASAS) and, on the other hand, the NASC's right to purchase with regard to the acquired shares (Article 4.6 of the ASAS). The degree of complication of this regulation is further increased by the fact that in both cases different types of norms apply with regard to agricultural real estate of which the company is the owner or perpetual usufructuary. For the application of the right to purchase an agricultural real estate, an area standard of 0.30 hectares applies, and for the right to purchase of shares – 5 hectares.

The provision of Article 4.6 of the ASAS also introduces an autonomous catalogue of exclusions from the NASC's right to purchase. In particular, this right will not apply when the acquirer of shares is the State Treasury or a relative of the transferor, as well as when the acquisition of shares occurs as a result of statutory inheritance or when their inheriting acquirer is a so-called individual farmer (Article 6 of the ASAS).

If the conditions resulting in the application of the NASC's right to purchase arise, an obligation arises on the part of the company whose shares are the subject of the acquisition to immediately notify the NASC of its right. It should be emphasised that the commencement of this period is determined by the final, "definitive" acquisition of shares by their purchaser. Consequently, the start of the period is determined by a separate regime of transactions concerning shares resulting from the provisions of the Polish Commercial Companies Code and the Civil Code, under which, for an effective acquisition by the acquirer, it may be necessary to perform certain actions, such as, for example, the transfer of possession of a registered stock (Article 339 of the Commercial Companies Code) or the issuance of a bearer stock document (921^{12} of the Civil Code). On the other hand,

if the acquisition of shares takes place following an increase in the share capital, the deadline for making the notification starts on the day the increase is entered in the register of entrepreneurs kept pursuant to the provisions on the National Court Register. The notification itself should also include information on the ‘price’ of the shares (Article 4.2 of the ASAS), as the lack of such information poses a risk of a unilateral determination of the market value of the shares or stocks by the NASC.

An important problem is the determination of the sanction for the failure to notify the NASC of the right to purchase. Pursuant to the content of Article 9.1 of the ASAS, an acquisition of shares in a commercial law company which owns an agricultural real estate made in breach of the ASAS is invalid. However, this sanction can only be applied if the acquisition of shares takes place on the basis of a legal action. Thus, in fact, a failure to comply with the obligation to notify the NASC of its right to purchase when the acquisition of shares occurs as a result of events other than a legal actions (i.e. court rulings, administrative decisions or *ex lege*) cannot entail the invalidity of the acquisition of shares. The same conclusion must be drawn in the case of the acquisition of shares in the increased share capital – the event resulting in the acquisition of shares is, in this case, a court decision on the entry of the increase in the National Court Register, which simply cannot be invalid. Consequently, it should be considered that in all the cases mentioned above, the obligation to notify the NASC is of an informational and recording nature only, and a failure to do so is not actually sanctioned.[18]

The NASC, prior to the exercise of the right to purchase shares, has the right to inspect the books and documents of the company whose shares have become the subject of the sale and to request from this company information concerning encumbrances and liabilities not included in the books and documents. The deadline for the NASC to exercise the right to purchase itself is two months, counting from the date of receipt by the NASC of a notification made by the company whose shares are being purchased. A declaration on the exercise of the right to purchase should be made in the form of a deed (notarial act). This declaration should then be published on the NASC website. The acquirer is deemed to have become acquainted with the content of the declaration of the NASC on the exercise of the right to purchase as soon as it is published on the NASC website. As in the case of exercising the right of pre-emption, shares in companies acquired by the NASC acting on behalf of the State Treasury as a result of the exercise of

[18] A.J. Szereda, *Problematyka orzeczenia sądu w ustawie o kształtowaniu ustroju rolnego*, “Krakowski Przegląd Notarialny” 2016, no. 4, p. 112 et seq.

the right to purchase become part of the Agricultural Property Stock of the State Treasury. However, of decisive importance for the transfer of shares are the regulations of the Polish Commercial Companies Code and the Civil Code, which, in order to achieve this effect, may provide for e.g. notification of a limited liability company (Article 187 of the Commercial Companies Code), or transfer of the possession of a registered stock (Article 339 of the Commercial Companies Code).

3. Public law control of share deals in companies owning agricultural real estate in the light of the regulations of selected European countries

The introduction of instruments of public law control of share deals in companies owning agricultural real estate is not an exclusive feature of the Polish system of agricultural law. Also some foreign legislators use this type of tools, although it should be emphasised that their application is not universal. However, in several legal orders it is possible to distinguish this type of institutions, and their legal construction is slowly becoming a subject of increasing interest in the doctrine.[19]

Within the Roman legal tradition, the solutions adopted in France deserve special attention. The literature points out that, formally, the French Rural Code (*Code rural et de la pêche maritime*[20]) does not make transactions concerning shares in companies owning agricultural real estate subject to official authorisation, which is the rule in the case of agricultural real estate transactions. The Code does, however, limit the range of organisational entities legitimate to acquire agricultural real estate by listing in detail their legal forms. What they have in common, however, is the fact that they must include farmers.[21] However, since 2014, there has been a separate instrument of public law control in France concerning the trading of the shares of companies owning agricultural real estate. This is a statutory pre-emption right reserved to so-called Agricultural Equipment and Settlement Companies (*sociétés d'aménagement foncier et d'etablissement rural* – SAFER), i.e. companies under commercial law, but supervised by the State and pursu-

[19] Cf. in this respect, for example, the valuable publication by F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle von Share Deals. Beteiligungserwerb an Agrargesellschafte*, Hamburg 2022.

[20] https://www.legifrance.gouv.fr/codes/id/LEGITEXT000006071367/ [accessed on 3.11.2022].

[21] F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, p. 229.

ing the public interest.[22] However, the application of this right on the part of SAFER requires the fulfilment of certain conditions, which include the following (Article L143-1 of the Rural Code):

– the disposal of shares should be subject of consideration, which means that the scope of transactions covered by SAFER's pre-emption right is not limited to the sale only,

– the object of the disposal should be the entirety (100%) of the shares(*la totalité des parts ou actions*), which means that the right of pre-emption does not come into play if only part (or even a majority) of the shares in the company in question are disposed of,

– the object of the disposal should be shares in a company whose main business is agricultural activity or the conservation of agricultural land.

If the aforementioned prerequisites exist, the transferor must inform of it the competent local SAFER. In the event of a failure to comply with this obligation, SAFER may, within six months of becoming aware of the transfer, apply to the court to be recognised as the actual purchaser of the shares (i.e. to be substituted for the purchaser) or to declare the transfer inadmissible. It is also worth emphasising that the exercise of the right of pre-emption by SAFER must be legitimised by the pursuit of a specific purpose, i.e. the settlement of the farmer on the agricultural land; in other words, when exercising the right of pre-emption, SAFER must indicate the purpose and justification for carrying out this action.[23]

Instruments of public law control of share deals in companies owning agricultural real estate are used relatively frequently in legislations belonging to the Germanic legal tradition. They also have a more comprehensive and administrative character. The best example in this respect are the Swiss

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[22] On these companies cf. P. Blajer, *Koncepcja prawna rolnika indywidualnego w prawie polskim na tle porównawczym*, Kraków 2009, p. 85.

[23] F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle*..., p. 230. The author further points out to the fact that in 2017, Law No. 2017-348 against land grabbing and biocontrol development (LOI n° 2017-348 du 20 mars 2017 relative à la lutte contre l'accaparement des terres agricoles et au développement du biocontrôle, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034228050/, accessed on 3.11.2022), which was intended to extend the scope of SAFER's pre-emption right to cases of disposal of part of the shares of the company concerned. This regulation was therefore intended to eliminate one of the most controversial elements of the current regulation, according to which SAFER's pre-emption right only applies in the event of the disposal of all shares in a given company. However, this regulation was declared unconstitutional by the French Constitutional Court as disproportionately interfering with the property right and the freedom to conduct business (Décision n° 2017-748 DC du 16 mars 2017 – https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034228077/, accessed: 3.11.2022).

regulations where the general rules on the acquisition of agricultural real estate are extended to certain acquisitions of shares in commercial companies as well as other legal persons (e.g. cooperatives), consisting in particular in the obligation to obtain administrative authorisation from the competent cantonal office (Article 61 of the Act of 4 October 1991 – *das bäuerliche Bodenrecht* – BGBB).[24] The necessity to obtain the relevant authorisation is actualised when the following prerequisites exist (Article 4.2 BGBB):

– the object of the acquisition is a majority of shares (*Mehrheitsbeteiligung*) in the legal person in question; in contrast to French solutions, controlled is not only the acquisition of the entirety of shares, but also the acquisition of a 'majority of shares,' which is to be understood as shares representing more than 50% of the capital of the legal person in question and providing more than 50% of the votes at the shareholders' meeting of the legal person in question;

– the main asset of the legal person in which the majority of shares is acquired is the agricultural farm (*das landwirtschaftliche Gewerbe*); which means that the assets of the legal person in question should consist mostly (closer to 100% than 50%) of objects intended for agricultural activities within the agricultural farm (e.g. agricultural land, buildings, other means of production).[25]

A failure to obtain the authorisation of the competent public administration, in the case of the conditions described above, results in the invalidity of the acquisition (Article 70 BGBB).

Administrative control of share deals in companies owning agricultural real estate is also introduced by acts in force in some Austrian federal states (*Länder*).[26] In this context, however, it should be emphasised that the solutions adopted under the individual acts differ significantly. By way of example, in Burgenland, the applicable legislation makes it mandatory to obtain authorisation from the competent public administration when acquiring shares in a limited liability company that owns or has a claim to acquire agricultural or forestry real estate. The number of shares which are the subject of the acquisition is not relevant in this regard.[27] In contrast, in light of the regulations adopted in Vorarlberg, authorisation is required

[24] https://www.fedlex.admin.ch/eli/cc/1993/1410_1410_1410/de [accessed on 3.11.2022].

[25] F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, p. 233.

[26] In Austria, the legal regulation of agricultural real estate is the competence of the individual *Länder*.

[27] Gesetz vom 1. Feber 2007 über die Regelung des Grundverkehrs im Burgenland (Burgenländisches Grundverkehrsgesetz 2007 – Bgld. GVG 2007), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrBgld&Gesetzesnummer=20000615 [accessed on 3.11.2022].

for the acquisition of shares in any legal person as well as in a partnership, but with the proviso that, following the acquisition, the existing majority shareholder loses its influence over the company's activities.[28]

Even more comprehensively, the issue under examination in this study is regulated by the legal acts in force in Oberösterreich[29] and Tirol.[30] The special rules provided for therein apply both to the company whose shares are traded and, possibly, to the legal entity acquiring these shares. The obligation to obtain authorisation from the competent public administration therefore arises when the following conditions are cumulatively met:

– the subject of the acquisition is a "majority" of shares in a limited liability company or cooperative owning agricultural or forestry real estate,[31]

– the main object of the company or cooperative is agricultural or forestry activities,

– even if the main object of the company or cooperative is not agricultural or forestry activities, the area of agricultural or forestry real estate owned by the company is at least 2 hectares in total and its market value represents at least 15% of the company's or cooperative's assets.[32]

If, on the other hand, the shares in the company are acquired by another legal person (or partnership), the general personal conditions for obtaining an authorisation for the acquisition of agricultural real estate, so-called *Genehmigungsfähigkeit*, should be fulfilled by a natural person who exerts a dominant influence on the activities of the legal entity. In the absence of such a person, these prerequisites should be fulfilled by a member of a corporate body. It is noteworthy that the legislator thus seeks to extend the general regulations on the acquisition of agricultural real estate to cases of share deals where a legal person is on the acquiring side.

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[28] Gesetz über den Verkehr mit Grundstücken, https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrVbg&Gesetzesnummer=20000597 [accessed on 3.11.2022].

[29] Landesgesetz vom 7. Juli 1994 über den Verkehr mit Grundstücken (Oö. Grundverkehrsgesetz 1994 – Oö. GVG 1994), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=10000413 [accessed on 3.11.2022].

[30] Gesetz vom 3. Juli 1996 über den Verkehr mit Grundstücken in Tirol (Tiroler Grundverkehrsgesetz 1996) https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000005 [accessed on 3.11.2022].

[31] The Tirolean regulations further indicate that the acquisition should result in the purchaser acquiring significant influence over the company with regard to the use or disposal of its real estate.

[32] This is the requirement of the law in force in Oberösterreich. In Tirol, the drafting of the prerequisite in question is slightly different; the company or cooperative should own at least 5,000 m^2 of agricultural or forestry real estate, and this real estate should constitute a significant part of its assets.

A peculiarity of the regulations in Oberösterreich and Tirol is the fact that the acquirer of the shares applies for the relevant authorisation not before, but within a certain period of time after the acquisition of the shares.[33] Until the issuance of the relevant authorisation (or determination of the lack of necessity to obtain it), the acquisition is ineffective, while in the case of a refusal to issue the authorisation – it is absolutely invalid with *ex tunc* effect. In such a situation, as well as in the event of a failure to make an appropriate application within the statutorily specified time limit, the transferor does not lose the shares and the acquirer does not acquire them, and therefore does not become a shareholder of the company. Any further actions he takes with respect to the shares remain ineffective.[34]

Legislative initiatives on the regulation of public control of share deals in companies owning agricultural real estate, which have been undertaken for more than 10 years in some German federal states, are also of significance for the subject matter of this paper. It is worth emphasising, in fact, that the general German law on agricultural real estate transactions, i.e. – *Gesetz über Maßnahmen zur Verbesserung der Agrarstruktur und zur Sicherung land- und forstwirtschaftlicher Betriebe* (*Grundstückverkehrsgesetz*) of 28 July 1961[35] does not contain any regulations in this respect. The task of regulating this issue, in view of the increasing threat of so-called *land-grabbing*, was therefore taken on by the legislatures in the individual German states, although to date, none of the drafts presented below has been given the status of binding law.[36]

Chronologically, the first attempt to regulate this issue was made in 2012 in Niedersachsen. According to the draft law on agricultural real estate transactions drawn up at that time, a general obligation to obtain administrative authorisation should apply to the acquisitions of shares in companies owning agricultural real estate made on the basis of a sale contract, except if the buyer is the spouse, partner or close relative of the seller. This draft has been criticised as being too vague and general, because it narrows the control only to the case where the acquisition of the shares would take place

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[33] Four weeks in Upper Austria, eight weeks in Tirol.

[34] Description of the above procedure after: F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, pp. 237–239.

[35] https://www.gesetze-im-internet.de/grdstvg/BJNR010910961.html [accessed on 3.11.2022].

[36] For a further description of the legislative projects for the legal regulation of the public control of the share deals in companies owning agricultural real estate developed in the individual German *Länder*, see: F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, pp. 99–137.

as a result of a sale. Moreover, it insufficiently specifies both the material and personal scope of the restrictions introduced. In the same year 2012, a draft law on the improvement of agricultural structures in Sachsen was also drafted, providing for the obligation to obtain administrative authorisation in the case of the acquisition of shares in companies owning agricultural or forestry real estate, where such real estate does not constitute an insignificant component of the company's assets and when, as a result of the acquisition, the acquirer obtains a specific influence on the company's activities. The provisions of this draft have also been criticised as being too vague, in particular with regard to the legal events resulting in the acquisition of shares and covered by public control, as well as regarding the understanding of terms such as "real estate not constituting a significant component of the company's assets' or specific influence on the company's activities."

The draft law on agrarian structures drafted in 2016 in Sachsen-Anhalt should undoubtedly be regarded as much more elaborate and detailed. In fact, it formulated for the first time a separate and comprehensive system of public law control of the share deals in companies owning agricultural real estate, and does not merely extend the general regulations on the transactions concerning agricultural real estate to cases of share deals, as was the case in earlier drafts. In the light of the proposed regulations, the acquisition of shares in companies owning or holding agricultural or forestry real estate would be subject to the Act, with the above unspecified concepts being further specified in detail in the draft and a separate procedure for obtaining approval (*Zustimmung*) of the acquisition being regulated.

The personal scope of control is defined by the term 'company.' It includes all companies established under German law, as well as cooperatives, provided that agricultural or forestry real estate account for at least 40% of the value of their assets. The material scope of control is in turn determined by the concept of "acquisition of shares." As a general rule, it is not limited to acquisitions by an act in the law , but also includes the acquisitions of shares as a result of mergers or divisions of companies, as well as acquisitions by the operation of law with the exception of acquisitions by inheritance. However, not every acquisition of shares would be subject to public control. It would only come into play if, as a result of the acquisition, the acquirer obtained a specific influence over the company's activities. The latter is in turn understood to be the case if, as a result of the acquisition, the acquirer has at least 40% of the shares in the company concerned.[37]

[37] The control instruments would therefore not be applicable if, prior to the acquisition of further shares, the acquirer already held at least 40% of the shares.

The originality of the draft is further manifested in the fact that it replaces the familiar *Grundstückverkehrsgesetz* procedure for obtaining authorisation (*Genehmigung*) for the acquisition of agricultural real estate[38] with a special procedure for obtaining approval of the acquisition (*Zustimmung*). In contrast to authorisation, approval is not a prerequisite for the validity or effectiveness of the acquisition. However, as is the case in the authorisation procedure, the application for approval of the acquisition should precede the acquisition and only in exceptional situations (e.g. acquisition at a stock exchange) could it be submitted after the acquisition. The rationale for refusing to approve the acquisition would be that the acquisition of shares in a company would endanger or be detrimental to the agrarian structure. The latter would in turn be understood as a situation where the acquisition of shares would lead to the purchaser acquiring a dominant market position that could lead to a distortion of competition on the market.

However, the failure to obtain approval, also following the failure to submit the relevant application, would not lead to the questioning of the validity or effectiveness of the share acquisition. Such a situation would, however, entail two important legal consequences. Firstly, the public administration authority competent to approve the acquisition would be able to require the parties to the agreement within three years of its conclusion to terminate it or amend its content accordingly.[39] In addition, the authority would be entitled to declare the acquisition unlawful and, consequently, to impose a fine of up to €1 million and, in certain cases, even more than this amount.

The assumptions of the project developed in Sachsen-Anhalt, described above in general terms, were in turn the starting point for subsequent draft laws prepared by the authorities in other federal states, i.e. Mecklenburg-Vorpommern (2016), Niedersachsen (2017) and Brandenburg (2019). Their assumptions differed only slightly from the model outlined above. So far, however, none of the mentioned drafts have achieved the rank of binding law, which is particularly fostered by doubts about the competence of the German federal states to enact such regulations also from the perspective of their constitutionality and compatibility with European Union law.[40]

[38] More extensively in the Polish literature: P.A. Blajer, *Koncepcja prawna...*, p. 146 et seq.

[39] The literature points out to an apparent omission on the part of the drafter, since in principle administrative control would not be limited to the acquisition of shares by contract, but also covers other legal events, including acquisition by operation of law. Cf. F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, p. 114.

[40] These are discussed in detail in F.F. von Bredow, *Grundstückverkehrsrechtliche Kontrolle...*, p. 137 et seq. It is worth noting that on 1 September 2022 in Niedersachsen, the law of 29 June 2022 on actions concerning agricultural real estate (*Gesetz über Grundstücksges-*

4. Summary and conclusions

The above considerations allow for the formulation of several conclusions of a comparative nature with regard to the construction of Polish instruments for the public control of share deals in companies owning agricultural real estate against the background of solutions pursuing similar objectives in other European countries.

First of all, it should be noted that the very idea of public-law control of transactions concerning shares in companies owning agricultural real estate is gaining importance as a reaction to the increasingly perceptible phenomenon of land-grabbing, treated as a major threat to the family nature of farms, which constitutes a paradigm in the agricultural law systems of many European countries. Assuming that this position is justified, one would consequently have to conclude that the introduction in 2016 in Poland of the first instruments of control of share deals in companies owning agricultural real estate was purposefully correct. In the comparative context, it should be noted that the Polish legislator created specific instruments for the control of share deals, separate from the general regulations on transactions concerning agricultural real estate. In this respect, therefore, the Polish regulation resembles the solutions adopted in France, as well as those resulting from certain projects developed in the German federal states, modelled on the Sachsen-Anhalt project. It seems, moreover, that taking into account the specificity of share deals, manifested in the separateness of principles concerning their disposal in comparison with the transfer of real estate – this solution is fundamentally correct.

Leaving aside the above general observations, the Polish regulation of the principles of control of share deals in companies owning agricultural real estate, against the background of the regulations adopted in some European countries, unfortunately seems to show many weaknesses and inconsistencies.

First of all, attention should be drawn to doubts related to the issue of correct determination of the material scope of public law control. In the light of Polish solutions, the right of pre-emption or the right to purchase vested in the NASC materialises when shares are purchased in a company which is the owner of agricultural real estate within the meaning of the ASAS, having the total area of at least 5 hectares. In this context, the ar-

chäfte im Bereich der Landwirtschaft NGrdstLwG, https://www.nds-oris.de/jportal/?quelle=-jlink&query=GrdstGLwG+ND&psml=bsvorisprod.psml&max=true&aiz=true, accessed 3.11.2022), came into force, but it does not include provisions on share deals.

ea-based standard of 5 hectares of agricultural real estate is of fundamental and at the same time exclusive significance. On the one hand, therefore, from a comparative perspective, it appears that this standard has been set somewhat too high. On the other hand, however, it should be pointed out that the very determination in a particular case whether a given real estate as an agricultural real estate is subject to the regime of the ASAS is often an extremely complicated and risky task in practice, which has been repeatedly pointed out in the literature.[41] In addition, the tendency to interpret the term "agricultural real estate" as broadly as possible, visible in the practice of trading, should be noted. According to this position, in the case of doubts as to the agricultural qualification of real estate from the point of view of Article 2.1 of the ASAS, the real estate should be subjected to the regime provided for in the said legal act, and the justification for this thesis is the "security of trade."[42] The problem becomes all the more apparent since from the perspective of the control instruments provided for in the ASAS, neither the actual activity carried out by the company whose shares are the subject of the transaction nor the value of the agricultural real estate in relation to the other assets of the company is relevant. In practice, this means that, for example, a company carrying out a non-agricultural activity (e.g. a development or transmission company) owning 5 hectares of undeveloped real estate not covered by a local development plan, regardless of the location of this real estate, will be affected by the control instruments arising from the ASAS. Meanwhile, the solution commonly adopted in the analysed foreign legal orders is to subject to public law control share deals in companies whose main object is agricultural activity. From the point of view of the real goals of shaping the agricultural system and improving the agrarian structure, such solutions certainly deserve recognition.

Another circumstance which significantly differentiates Polish solutions from their counterparts in other European countries is the regulation according to which control instruments apply in the event of acquisition of any number of shares in a company, even a trivial number from the point of view of their total number in a given company. Meanwhile, within the framework of the foreign legal orders analysed in this papersis – with only a few exceptions – only cases of acquisition of shares in a number significant from the point of view of the company's activity are subject to public law control. In some cases, this is the "entirety" of shares, sometimes the "majority," and at other times, a number which allows the acquirer to exert

[41] P. A. Blajer, *Rozważania…*, p. 122.

[42] Ibidem, p. 127.

a "specific influence" on the company's activity. As it seems, the above solutions should become an inspiration for appropriate changes in Polish regulations in this area.

In creating a system of control of share deals in capital companies owning agricultural real estate, the Polish legislator used civil law instruments in the form of the right of pre-emption or the so-called right to purchase, which is indeed similar to the French solutions described above. On the other hand, it has not opted for the administrative model of control over the share deals used in Switzerland and Austria, or proposed in the projects developed in some German federal states. What is more, not even the existing Polish regulations on the acquisition of real estate by foreigners have been taken into account.[43] What was considered, however, was a reference to instruments of a private-law nature instead of the system of administrative permits, in order to justify the draft act amending the ASAS as a manifestation of the pro-market, liberal attitude of the Polish legislator. In reality, however, the instruments used raise doubts as to their functionality. Without going into details, it may be stated that the very exercise by the NASC of the pre-emption right or right to purchase of shares or stocks may put a question mark over further operation, and thus the sense of existence, of a given company, due to numerous restrictions in Polish law related to ownership supervision of companies with State Treasury shareholding. The question of sanctions for failure to take into account the pre-emption right or the right to purchase vested in the NASC raises even more doubts. On the one hand, in the case of a juridical act , the sanction is extremely serious – it is defined as absolute invalidity of the acquisition. This sanction, the actual consequences of which are often difficult to determine in the light of the regulations of the Polish Commercial Companies Code, may nevertheless put a question mark over the functioning of the company concerned.[44] On the other hand, however, in the case where the acquisition of shares takes place by means of acts other than a juridical act (e.g. by means of a court decision or *ex lege*), sanctions for failure to comply with the control instruments provided for in the ASAS are in fact non-existent, which is a consequence of the inapplicability of the sanction of absolute invalidity in this case. The system developed by the Polish legislator thus appears to be internally inconsistent. In this context, the solutions adopted or suggested in other legal orders, in which either the scope of regulated events leading to the acquisition of shares is limited to

[43] Cf. Article 3e of the Act of 24 March 1920 on the acquisition of real estate by foreigners (Journal of Laws 2017, item 2278).

[44] Sz. Byczko, *Ustawowe prawo pierwokupu...*, p. 136.

juridical acts only, or the sanction of absolute invalidity of the acquisition is abandoned in favour of a sanction of a different type, e.g. a sanction of revocability of the acquisition or financial sanctions, deserve all the more attention.

In conclusion, it should be stated that the solutions analysed in this work adopted in some foreign legal orders could certainly become an inspiration for the Polish legislator, in the event that it aims to optimise the model of public control of the share deals in companies owning agricultural real estate.

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PUBLIC CONTROL OF SHARE DEALS IN COMPANIES OWNING AGRICULTURAL REAL ESTATE IN A COMPARATIVE PERSPECTIVE

Summary

The aim of the research carried out within the framework of the publication is to evaluate, in a comparative perspective, the Polish concepts of public law control of share deals in companies owning agricultural real estate. In its first part, the general shape of the Polish model of control of transactions concerning shares of companies owning agricultural real estate is presented. The second part of the work refers to attempts to subject such transactions to public law control, undertaken in parallel in other European countries, i.e. France, Switzerland and some Austrian federal states. This part also discusses some interesting legislative projects being developed in this respect in some German federal states, which, however, have not, as yet, entered into force. Conclusions drawn from the comparison of Polish and foreign legal regulations, as well as the resulting observations relating to the most serious problems of the solutions adopted in Poland are, in turn, the subject of the concluding remarks.

Keywords: agricultural law, agricultural real estate, shaping of the agricultural system, share deals, agricultural enterprises

IL CONTROLLO PUBBLICO DELL'ACQUISTO DI QUOTE O AZIONI IN SOCIETÀ PROPRIETARIE DEGLI IMMOBILI AGRICOLI IN UNA PROSPETTIVA COMPARATIVA

Riassunto

L'articolo sottopone a esame il modello polacco di controllo pubblico dell'acquisto di quote o azioni in società proprietarie degli immobili agricoli nella sua impostazione attuale. L'analisi, svolta in una prospettiva comparata, prende in considerazione regolazioni in materia vigenti in Francia, Svizzera e in alcuni Stati federati dell'Austria, come anche proposte legislative relative al controllo pubblico di questo tipo di transazioni elaborate in alcuni Stati federati della Germania. Nella parte conclusiva l'autore ribadisce la necessità di esercitare il controllo pubblico dell'acquisto in esame, il che permette di fornire una risposta a un fenomeno denominato come "land-grabbing", rileva anche evidenti carenze della normativa polacca in materia. Tali carenze concernono in particolar modo l'ambito di applicazione del controllo esercitato dal Centro nazionale per il sostegno agricolo, perché non determinato in modo adeguato, riguardano anche alcuni strumenti del controllo controversi, quali diritto di prelazione oppure diritto d'acquisto di competenza del Centro. L'autore fa notare che soluzioni adottate in alcuni ordinamenti giuridici stranieri potrebbero diventare fonte d'ispirazione per il legislatore polacco, qualora esso decida di apportare modifiche agli strumenti di controllo pubblico dell'acquisto in esame.

Parole chiave: diritto agrario, immobili agricoli, impostazione del sistema agricolo, transazioni di vendita, società agricole