REGULATIONS
FOR THE POLISH AGRICULTURAL
LAND MARKET COMPARED
WITH OTHER EU MEMBER STATES:
IMPLICATIONS FOR MARKET EFFICIENCY

INTRODUCTION

Even though the family farm is the basic unit of management in European agriculture, the EU legislation does not directly guarantee the stability of such entities. Therefore, the EU member states regulate the principles for turnover of agricultural land, and these principles favor the ownership of agricultural property by family farms active in agricultural production. The sale and purchase of farmland in individual countries are regulated by national law. The basic legal acts concerning the turnover of land include civil codes and agricultural codes that are supplemented by detailed acts. Regulation implemented in individual countries differs, reflecting among others, the origin of the agriculture law in the doctrine of a given region (Stelmachowski, 2008, pp.15–28).

Therefore, the institutional environment of the land market in the EU consists of legal norms and institutions that ensure their enforcement and protect the family model of management in agriculture. Accordingly, this (family) model does not only equate to a unique division of ownership rights to the resources involved in agricultural production, but a desired social goal of the common agricultural policy (CAP) in the UE is to guarantee an appropriate level of income that will ensure for farm families a decent standard of living, farm development

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and participation in social processes occurring in the surrounding environment. Only in such conditions the agriculture and rural areas can provide public goods desirable in the European society and maintain a sustainable development path. There is much evidence that a concentration of land through a leasehold to the economically viable size causes negative externalities in social and natural environment depriving society of mentioned public goods (i.e. landscape, biodiversity, rural culture and tradition, the unique food quality, food safety, food security). A non-farmer proprietor (for example a bank) cares only about profit and a leaseholder is forced to do the same industrializing agricultural production. Thus, the institutions of the land market should complement the agricultural policy of the state and the market, thereby enabling effective allocation of land resources. In other words, farmland flows should be conditioned institutionally and commercially to allow for the maintenance of an optimal agrarian structure from the perspective of farm incomes and public goods creation. Obviously, there is an underlying premise of CAP that family ownership of agricultural land of the appropriate scale to produce a decent standard of living and to preserve public goods are desired social goals. This premise is not only a testable proposition but a given element of agrarian policy in the UE (carried out through “single payment scheme”, “decoupling”, “cross-compliance” or “greening payment”) expressed in the European Commission’s acts. Therefore, the aims of this paper are, first, to compare land market institutions in selected EU member states; and second, to assess the influence of limitations with respect to the turnover of land on farmland market efficiency. We pose the following research hypotheses:

- Land market institutions in the “old” EU-15 countries have common features that ensure stability of agrarian structures.

- Land market regulations in the new member states, including Poland, differ so significantly from those of the old EU-15 that they do not guarantee the optimization of the agrarian structure. Consequently, the legislation of the “old” EU-15, in particular that of Germany, France and Denmark, can be treated as a model for the land market legislation reforms in Poland.

- Limitations concerning the turnover of agricultural land do not exert negative influences on the allocative and informational efficiencies of the land market.

European democratic institutions assume that a stable farm structure controlled in terms of farm size, ownership qualifications, residence and citizenship of the owner, greening plans, cross-compliance requirements etc. is a desired

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1 Currently, in the European Union member states in the optimal agrarian structure at least 75% of agricultural land should be in possession of developing farm, which should constitute 25% of the total farms. Developing farm should be at least 16 ESU, as such farm is capable of carrying out expanded reproduction. Other farms are not (as a rule) providing production on the market, and therefore their direct or indirect role is provision of public goods.

2 In the sense of Pareto’s allocative efficiency and information efficiency according to the Fama’s Efficient Market Hypothesis (EMH).
goal from the point of view of sustainable development. The agrarian transformation that occurred in different regions of the world over the last 60 years (for example in North America, Australia and the UK) causing regular increases in farm size and industrialization of agricultural production inevitably comes to the end because it has already exceeded environmental capacity. It has not been a desirable development path for European agriculture since the MacSharry reform in 1992 when the public goods provided by agriculture and rural areas (unique food quality, food safety, rural tradition, green production, biodiversity etc.) became a hallmark of the UE. To realize aims mentioned above, a qualitative comparative analysis was conducted. We compared the regulations of the farmland market and the institutional solutions in Poland with selected countries that represent the dominant concentration, i.e., Germany, France and Denmark.

2. PRINCIPLES OF AGRICULTURAL LAND TURNOVER IN POLAND

Agricultural property management in Poland is regulated by provisions of the civil code and by specific acts, in particular, the Agricultural System Act of 2003 and the Act on the Management of Treasury Agricultural Property of 1991, as well as regulations adopted in the secondary legislation. These regulations do not, however, directly determine which conditions must be met by a citizen to become an owner of agricultural property. Therefore, while any physical or legal person is entitled to this right, some entities (individual farms) are treated in a privileged way by the legal system to support the enlargement of family farms. Simultaneously, there exist limitation instruments concerning the maximum land purchase on favorable condition from the Agricultural Property Stock of the State Treasury. Above all, however, the principles of agricultural land purchase or lease in Poland should be divided into those that regulate the distribution of land included in the Agricultural Property Stock of the State Treasury (APSST), managed by the Agricultural Property Agency – APA, and those that concern transactions between private entities (Stankiewicz, 2006, p. 4).

The regulations for private turnover of agricultural property are aimed at creating favorable conditions for the concentration of agricultural land ownership in the hands of entities active in agricultural production, including, in particular, family farms. This premise is supported by the application of the right of preemption under the APA when selling agricultural property of an area exceeding 5 ha. The APA sells land acquired in this way by means of tenders, including limited tenders addressed to individual farmers, persons with adequate agricultural qualifications, members of farming cooperatives or persons connected with

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3 The APA has the preemption right to purchase land under the conditions provided for by the agreement. The entity is informed about it after concluding a conditional sale agreement. The sale agreement is effective in the case that within 30 days, the Agency does not declare willingness to exercise its right of preemption.
liquidated state farms. According to the Act on Agricultural System, this instrument prevents the excessive concentration of agricultural property and ensures that the agricultural activity is conducted by persons with adequate qualifications (art. 1 section 17 of the Act of 16 September 2011). Furthermore, in situations determined in the Act, the right of preemption by the APA was excluded to support the enlargement of family farms up to 300 ha and the purchase of land by former leaseholders (art. 3 of the Act of 11 April 2003, art. 3 section 1 of the Act of 16 September 2011).

Thus, it is worth noting that in the case of private turnover of agricultural land in Poland, the rule states that the purchase of agricultural land by family farms is unlimited. According to the legal definition, a family farm is an agricultural farm managed by an individual farmer where the total surface area of the agricultural land (owned and leased) does not exceed 300 ha (art. 5 of the Act of 11 April 2003, art. 3 section 3 of the Act of 16 September 2011). Moreover, the Act defines an individual farmer as a “natural person who is an owner, perpetual lessee, autonomous possessor or lease-holder of agricultural property of a surface area not exceeding 300 ha, who possesses agricultural qualifications, and for at least 5 years has been a resident of a community in which one of the agricultural properties included in the agricultural farm is located, and who has been managing the farm personally during that period”. Furthermore, the Act also determines the agricultural qualifications and job seniority. It needs to be stressed that amending the provisions of the Act on Agricultural System limited the group of entities regarded as individual farmers. As a result, the APA enlarged the scope of application of the right of preemption. Consequently, the extent of state interventionism in the private turnover of agricultural land in Poland depends on the policy adopted by APA.

At the same time, we must consider the fact that the management of the state agricultural land included in the Agricultural Property Stock of the State Treasury in Poland was regulated in a special way. The provisions in this scope can be found in the State Treasury Agricultural Property Management Act and in the most recent amendment of 16 September 2011, which aims to support the sustainable use of the state agricultural land in order to sell it. The Act regulates, among others, the way by which the state agricultural land can be managed, defines a group of entities that are entitled to priority land purchase, and identifies the conditions for organizing limited tenders. Each transaction requires the application of a statutory stipulation that assumes that the APA may sell agricultural property providing that the surface area of the agricultural land belonging to a purchaser does not exceed 500 ha. The above restriction aims at limiting, for an individual entity, the benefits of purchasing land from the reserve of the Agricultural Property Stock of the State Treasury, e.g., at prices lower than the market price. Preferential conditions of the transactions concluded with the APA are also manifested in financial terms, which, under strictly determined conditions, provide for the possibility of dividing the price into instalments for a period not exceeding 15 years.
Changes concerning leased land are a significant modification of the amendment to the State Treasury Agricultural Property Management Act. While, on the one hand, the Act retains the institution for leasing the state agricultural land, on the other, the new agreements will be given provisions of possibility to exclude from the lease 30% of the surface area of the agricultural land that is the subject of the agreement. The purpose is to acquire by the APA more land in order to sell it or re-lease to individual (family) farm and to limit the concentration of leasehold by the biggest entities. At the same time, the amendment of 16 September 2011 proposes modifications in the previously concluded agreements which now can be provided with the similar exclusion of 30% of the surface area on condition that a party to the lease agreement concluded before the new provisions are in force would accept it. In exchange for giving consent to the proposed modifications, the leaseholder is entitled to purchase the whole or a part of the remaining leased surface area under reserve of statutory conditions, including the above mentioned limit of 500 ha within a period ranging from 3 months to 2, 4 or 6 years, depending on the lease agreement termination date. However, the lack of the leaseholder’s consent to the APA’s proposition will result in the exclusion of the current leaseholder from priority in the acquisition of the property in question after the termination of the agreement binding the parties, as well as the exclusion of the possibility to re-lease the land by the same entity. The presented rules do not concern lease agreements when the total surface area of the agricultural land of the APSST resource leased by a given entity after exclusion does not exceed 300 ha unless the leaseholder files a request to the APA to exclude 30% of the surface area of the agricultural land that is the subject of the contract relationship between the parties.

The above principles regarding turnover of state agricultural land show that the new statutory regulations contribute to bringing forward the privatization of the State Treasury Property and the improvement of the area structure of family farms. Therefore, in Poland, one might expect a shift in part of the farmland resources from the state sector to the private sector. In conditions such as “land hunger”, often declared by family farms, the changes seem to be positive, although it is worth considering the income limits of family farms, which may become crucial in reaching the goals of the introduced amendment. However the regulations for the private turnover of agricultural property in Poland do not fully prevent speculative turnover of agricultural land and there is a concern that bringing forward the privatization of state agricultural land will contribute to the intensification of the turnover of land as an investment good.

It should be emphasized that in Poland there are limitations on the purchase of agricultural property by foreigners. In such a case, it is necessary for the intended purchaser to obtain permission from the minister in charge of Internal Affairs and Administration. This situation changed after Poland’s accession to the European Union. As a result, citizens of the European Economic Area (EEA) member states can, without permission, purchase land they have leased for at least 3 to 7 years (depending on the voivodeship) and on which they con-
ducted agricultural activities for the duration of that period as legal residents of Poland. The conditions with respect to obtaining permission from the Ministry of Internal Affairs and Administration will be subject to further liberalization beginning in mid-2016, when this requirement for citizens of the EEA member states who wish to purchase land will be abolished. As a result, they will have the opportunity to purchase agricultural land under the same principles as the citizens of Poland (Appendix, 2003, p. 787; Sprzedaż, 2010, pp. 8–13).

Taking into consideration the current binding provisions, the rules for managing agricultural property in Poland are not highly restrictive. Despite the introduced amendments regarding the private turnover of agricultural property, which resulted in an increase in the role of the Agricultural Property Agency (APA) in structuring the agrarian system, the discussed regulations remain relatively liberal comparing to the provisions assumed in the West European countries. Furthermore, the amendments do not prevent, to a satisfactory extent, the speculative turnover of agricultural land. It is also worth noting that the land market legislation in Poland does not deliberately link the surface area of owned agricultural land with the profitability of a family farm. The crucial assumption of land use policy in Poland (and in the UE) is to retain agricultural land in agriculture for the purpose of the European food security and the public goods provision. A speculative land turnover distorts its market valuation and sends false signals to family farms making it impossible for them to improve agrarian structure. Apart from that, a speculative bubble in a market of very inelastic supply (such as land market) could be very destructive, as we could see in the example of the U.S. subprime mortgage crisis of 2008.

3. AGRIcULTURAL PROPERTY MANAGEMENT IN SELECTED EUROPEAN UNION MEMBER STATES

3.1. FRANCE

The first acts concerning protection of family farms in France appeared as early as in the Napoleon Code. At that time, a traditional multigenerational farm model was taken into account. However, by the end of the 19th century, the model had collapsed in favor of employing hired workers. Consequently, the need arose to create new acts adjusted to the new reality whereby actions aiming at protecting small farms against collapse were taken. The law stated, among others, that it was forbidden to divide property of a surface area less than 1 ha. Further changes in the French legislation with respect to agricultural property occurred in the 1960s when, after more than a 20 year period of frequent changes and amendments, the new agriculture act was introduced. Despite the fact that it was thereafter replaced by other legal acts, its principles remain the basis of the agrarian system in France to this day, and it supports the superior significance of the family farm in relation to the nation’s agriculture (Lichorowicz, 2000, pp. 40–42). Furthermore, the new
act indicated the direction of agriculture development that the French, together with the entire European Union, follow to this day.

Currently, the key role in agricultural land turnover in France is performed by the French land agency, SAFER (Federation Nationale des Societes d’Aménagement Foncier et d’Etablissement Rural – Land Management and Rural Establishment Agencies), which is vested with broad powers and therefore affects the agricultural land market. Since the agency functions at the local level, it is knowledgeable about the region’s needs and can therefore implement an efficient agriculture development policy. The agency’s most significant right is the right of the preemption of land. The agency is in position to practically eliminate speculative land turnover and, consequently, to maintain relatively low prices, to favor chosen groups of farmers when reselling land and to perform all functions determined by the legislator, which include, among others, the control of demand and supply, land consolidation or fragmentation, land treatment to improve its quality and further resell it, the change of the farmland status, the management of forest land and environmental protection, and land lease for the period of 1 to 6 years with the possibility of extension. To sum up, SAFER co-operatives are definitely more active in the local controlling of the agrarian structure of family agriculture in France than is the APA in Poland.

After it exercises the preemption right, the SAFER agency determines the use of the purchased land. Apart from the sale and lease, it is also possible to keep the land, e.g., when the supply is too high, which may increase prices. At the same time, it should be noted that a person declaring willingness to purchase agricultural land in France must meet the following criteria:

- secondary or higher agricultural education,
- 5-years of agricultural work experience within the previous 15 years (exception: a diploma from an institution of higher education combined with 3-year experience),
- in the case of operating a non-agricultural activity, proof from the tax office of net profits generated from such activity,
- not exceeding given production thresholds (e.g., breeding of no more animal heads than determined statutorily).

As far as foreigners are concerned, the EU citizens are treated as the French. However, citizens from outside the EU are required to have regulated legal status, which includes having, at the minimum, a 10-year permit of residency (Stankiewicz, 2002, pp. 5–6). This condition, however, stands in contradiction to the provisions generally included in an agreement between SAFER and a new land purchaser in which the purchaser commits himself to fulfil the 15-year period during which he must personally manage the farm and engage in the physical labor associated with maintaining the farm. Moreover, he cannot sell or lease the land without the permission of the SAFER agency. Such permission is given only in special cases.
Fulfilment of the above conditions does not imply an automatic consent for the purchase of land. When selling land, SAFER favors the two following groups of farmers:

- a group of unemployed farmers who have lost their jobs due to external conditions (i.e., unfavorable inheritance provisions, end of a lease, etc.) but who are active and willing to work,
- a group of young farmers\(^4\) who wish to set up their own new farms.

Through the SAFER co-operatives, the legislature supports family farms and farmers who want to manage such farms. Therefore, the legislature significantly limits cases where non-farmers take over the land, which further contributes to the loss of family character on the farms. The analysis of the agricultural structure in France shows that it is an extremely effective system. At the same time, it is worth noting that the term ‘family farm’ is regulated in France. Although there is no definition of a family farm in French law, the law determines the conditions that must be met to be qualified as a family farm, and while such a system is common practice in countries all over the world, there are many who oppose it (Lichorowicz, 2000, pp. 43–44). The basic criterion for a family farm is its surface area. Therefore, a new surface area unit, the SMI\(^5\), was created. An SMI equals approximately 25 hectares. It was assumed that a family farm will occupy a surface area of no more than 4 SMIs (approx. 100 ha) and that an optimal area is between 2 and 4 SMIs. However, the legislature also recognized the rights of small farmers, which resulted in special protection of their rights. Furthermore, France adopted a policy that prevented the fragmentation or liquidation of farms of a surface area greater than 1 SMI, and limiting their enlargement to a maximum of 4 SMIs regardless of whether the land was leased or purchased. This significantly minimizes the possibility that SAFER will treat farms unequally. However, it was not the sole reason for creating the characteristic “brackets” for the surface area of a family farm. An additional justification acknowledged that the surface area of a minimum of 1 SMI is able to provide an average family with an 8-hour workday and fair earnings to ensure decent living conditions. Meanwhile, the upper limit of the surface area (i.e., 4 SMIs) protects the family nature of agriculture. It is assumed that a family is not able to cultivate anything above this limit on its own and they would therefore need to hire external workers (Stankiewicz, 2002, p. 5). Accordingly, here are two sub-types of farms distinguished in France:

- a family farm run for the farmer’s personal gain and at the farmer’s own expense and responsibility; one nuclear family (married couples with chil-

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\(^4\) The term “young farmer” in most countries in the world refers to farmers below the age of 40.

\(^5\) SMI (fr. Surface Minimale d’Instalation en Agriculture, minimum surface area of installation) is a surface area unit of agricultural land that can provide employment for 2 persons working on a full-time basis. The French provisions also include a new unit – UR (fr. Unite de Reference) used in departments. It describes a surface area providing for the economic viability of a farm whereby 0.5 to 1.5 UR corresponds to 2 to 4 SMIs.
children) operates a family farm, which is an expression of a new model formed in the 20th century,

- a group family farm operated by an extended family with relationships between family members of not only the first but also the second and third degree. While there are several types of such farms, they have no influence on the agricultural land market itself. Therefore, such farms are not a subject of interest in the study (Sobota, 2004, pp. 4–5).

To sum up, it may be stated that provisions concerning the agricultural land turnover in France are very restrictive and focus primarily on the family character of farms. It is noted that the surface area of a farm must ensure fair earnings and work for a farmer and his family, which is the key difference when compared with the regulations in Poland. Instead of central land management, local co-operatives with broad competences were created, a policy that is undoubtedly more efficient than that of central land management. It is also worth noting that relatively low land prices in France are an indirect result of such actions as is the limited speculative land turnover. In fact, many countries (among others, Belgium) based their provisions on the French ones or adopted several initiatives from France (e.g., attempts to introduce a minimum farm surface area unit in Italy). The regulation that deserved a positive assessment is, undoubtedly, the introduction of the farm surface area unit similar to the SMI, which ensures good living conditions for the farming family.

3.2. DENMARK

As a consequence of limited agricultural land resources, the provisions regulating agricultural property management are also highly restrictive in Denmark. In this country, a “boundary” unit of 30 hectares, which determines the degree of binding turnover limitations, was established. When purchasing a surface area of less than 30 ha, the potential purchaser is required to meet fewer conditions. In such a case, the following conditions must be met:

- age of majority; in Denmark, this means 18 years of age,
- citizenship in an EU or EFTA member country, together with the right to purchase a property located in Denmark on the basis of the person’s national provisions,
- the farmer’s (and that of his spouse and children) lack of a deed of ownership or co-ownership of agricultural property located outside Denmark at the moment of purchasing Danish property,
- the right of permanent residence in Denmark,
- permanent residence in the territory of Denmark before the end of a 6-month deadline.
On the other hand, for the farmer who wishes to purchase agricultural property of a surface area that exceeds 30 ha, the farmer is required to meet two additional criteria:

- the independent management and operation of a farm,
- having qualifications recognized by the Danish Ministry of Agriculture (Stan-kiewicz, 2002, p. 11).

Moreover, the Danish agriculture act regulates the number and the surface area of agricultural properties that may belong to one person (Borowski, 2007, pp. 3–4).

Therefore, it can be concluded that the Danish legislature protects the national agriculture properties against the purchasing of land by foreign investors, including international agricultural conglomerates. The counter-factual is that the EU aspires to remove barriers on the movement of goods and factors of production between member states. However, in some cases there are strong speculative premises. In the case of Denmark, it is very limited land supply (for the geographical reasons), in Poland – relatively low prices of land. In these conditions restraining the foreign capital from investing in agricultural land market seems to second best solution. Perhaps such regulations should be considered for the Polish farmland policy as there is a real concern of excessive foreign capital investing after the end of the protective period, motivated by the possible exponential growth of the value of agricultural land in Poland. The most interesting provision that can limit this risk is the prohibition of ownership or co-ownership of agricultural land outside the country, which is a significant barrier to purchasing land by foreigners or foreign companies. In such an event, investors would have to move their entire business to Poland or abandon the investment. To sum up, this type of regulation links a major part of the land rents with the territory of a given country or its citizens.

3.3. GERMANY

As for the agricultural land in Germany, the process that has its special place in the history of the country is the national agricultural ownership transformation in the eastern part of Germany, which formed the German Democratic Republic (GDR) prior to 1990. The state property in Germany, which at the beginning of the 1990s had a surface area of 2.4 million ha, was created, for the most part, between 1933 and 1989 as the result of expropriations that took place during that period. After the unification of Germany, attempts were made to restore private ownership of the land. Initially, this was the responsibility of the public trust office – Treuhandanstalt. Since 1992, however, the agriculture and forest property privatization process has been conducted by a newly created land valuation and management agency – Bodenververtungs und Verwaltungs GmbH (BVVG). In the 17 years following its formation in 1992, the agency sold 1.12 million ha of land and forests (Zadura, 2009, p. 252). The privatization processes involved
both giving preference to a specific group of entities that were enabled to purchase state agricultural land and offering preferential purchasing conditions. In terms of the latter element, the purchased land was subject to special restrictions in the event of its resale, which, in turn, prevented speculative turnover (Czternasty, Majchrzak, 2009, pp. 328–329; Zadura, 2010, pp. 40–41).

The provisions regulating purchase and sale transactions of agricultural land between private entities are two separate questions under German law. The legal act that regulates this question is the 1961 act regarding agricultural land turnover (Lichorowicz, 2000, p. 189). According to this act, an administrative body has the right to refuse to give consent for agricultural land purchases and sale transactions if:

- it results in an irrational configuration of land understood as a situation when the transaction contributes to the excessive concentration of land in the hands of one person, when the land purchaser is not a farmer, or when the purchase of land is speculative in nature,
- as a result of signing the agreement, an economically unjustified division or reduction of the farm’s surface area results (in this case, the question of the farm’s self-sufficiency after possible reduction is particularly important),
- the entity expressing the will to purchase land offers an amount grossly inadequate to the land value.

When the supervising body refuses to give consent for purchasing land, the right of preemption is granted to the German land settlement cooperatives, which then allot the purchased land to enlarge or create family farms (Stankiewicz, 2000, pp. 9–10). Therefore, we emphasize, above all, the validity of anti-speculative instruments and tools that prevent the excessive concentration of agricultural land. At the same time, what deserves particular attention is the possibility to differentiate provisions in force depending on the local conditions of the land market.

To conclude, in the countries with established traditions of family farming, such as France, Germany and Denmark, the land market regulations aim at the realization of land rents by the national farms while simultaneously managing their economic and social balance. However, a question arises as to whether the control over the flow of agricultural land resources, as described above, impedes the informative properties of the agricultural land prices and the ability of a market mechanism to estimate the real value of land.

4. FORMS OF LIMITATIONS IN AGRICULTURAL LAND MANAGEMENT IN THE EU MEMBER STATES, AND THEIR INFLUENCE ON MARKET EFFICIENCY

As the above discussion indicates, in the analyzed countries of the European Union, there are various limitations levied on the agricultural land turnover,
which concern, among others, the prohibition to sell land for purposes that do not fulfill the assumptions of the spatial development plan, the requirements concerning the purchaser’s agricultural education or vocational training in agriculture, the requirements connected with residing in a given area and the limitations concerning the further resale of the land (Zadura, 2008, p. 17). It should be emphasized that although community law does not regulate the agricultural land turnover in detail, the member states exchange their experiences with respect to the improvement of the agricultural land structure within the European Association for Rural Development Institutions (Association Européenne des Institutions d’Aménagement Rural – AEIAR), an organizational body that is comprised of 26 member organizations from different European countries, including Poland (AEIAR, 2009). As the existing regulations of agricultural land management most often concern land turnover, they tend to favor transactions concluded between individual farmers operating family farms. However, in the case where the property owner is a non-farmer, the regulations serve to reinforce the position of leaseholders as the direct agricultural producers. The above solution is essential because after the Mansholt reform, land lease was accepted by the EU legislation as the basic method for enlarging a farm (Sadowski, 2009, pp. 227–230). Therefore, the European legislature focuses on retaining the agricultural use of property even after the sale of the land. To reach this goal, specific land turnover requirements were introduced, which should be analyzed from the perspective of their complementarity with the market mechanism. Essentially, it is all about one simple question: Do the above mentioned land market regulations “spoil or correct the market”, and if so, to what extent? This question leads to the verification of the second hypothesis formulated in the introduction. There is a well-known observation of public choice theory that a free market doesn’t ensure optimal (in Pareto’s sense) supply of public goods. That assertion was presented, among others, in E. Lindahl model and game theory (Mueller, pp. 67–70). According to E. Lindahl free market offers private goods to all customers in different quantities for the same equilibrium price. However public goods are delivered in the same quantity for all society but the individual willingness to contribute to its production differs. For that reason some entities should be more or less burdened with contribution to public goods. Assuming that agricultural land generates the public goods (i.e. landscape, biodiversity, rural culture and tradition, the unique food quality, food safety, food security) speculative land investors have lower willingness to contribute to its creation than family farms. This is why agrarian policy levies more duties (institutional barriers) on them and favors the farmers. The choice of whether to sell agricultural land for profitable industrial purposes or to create more public goods in family farm could be compared to the prisoner’s dilemma or chicken game (Mueller, pp. 18–20, Myerson, pp.37–87.). In the first case, rational solution (the Nash equilibrium) is “to betray”, that means “to sell a land”, but then no public goods would be created. In the chicken game, the dominating solution is that one of drivers swerve away. It could be easily translated into situation when one farmer draws profit from
selling a land and simultaneously he becomes a free rider of public goods provided by the other family farms. The result is not optimal in Pareto sense because the quantity of created public goods is lower than possible. As we can see, there are economic theories which confirm that market allocation is not efficient if we consider public goods. Thus it is possible that some institutional restrictions could improve the allocative efficiency of a market. This issue will be the subject of deliberations that follow.

4.1. REQUIREMENTS CONCERNING AGRICULTURAL EDUCATION AND EXPERIENCE

The first group of requirements addresses agricultural education and experience in working on a farm. This type of limitations may be more or less restrictive. However, the limitations concerning competences in operating a farm in Poland are not as restrictive as the regulations in other EU member states. As previously mentioned herein, in France, upon graduating from a university of agriculture, it is required that one have an additional three years of work experience on a farm. In Great Britain, it is necessary to have at least 5 years of experience operating a farm as the educational criterion is considered insufficient. Agricultural education is also a requirement for purchasing agricultural land in Denmark if the surface area exceeds 30 ha and is located in an agricultural zone. The key question thus remains: How do the restrictions of the market liquidity concerning education and experience influence the market efficiency at the allocative and informational levels? Regarding the allocative efficiency, the restrictions described above lower the effective demand for agricultural land. As a result, land prices are below the balance price depending on the price flexibility coefficient (demand) and the income flexibility of the demand for agricultural land, both of which are connected with demographic, geographic and macroeconomic characteristics of a given country or region, in particular with respect to the density of the population, the quality of the agricultural production environment, the intensity of management in agriculture, the purchasing power parity and the agricultural income parity. However, it is worth emphasizing that, in this way, the effective demand is limited, especially in its speculative part, which positively affects the allocative efficiency. The potential land purchase is justified by the analysis of profitability of real cash flows, i.e., flows accompanied by the flow of goods and services. Similarly, as far as informational efficiency is concerned, higher qualifications reduce informational asymmetry and the possibility of incorrect estimations regarding expected rates of return.

4.2. AREA NORMS

Among other limitations, there are the so-called area norms. In Poland, the question of minimum and maximum area norms that must be met by a family farm is solved quite liberally in comparison with other UE member states. Dur-
ing the development of the Act on the Agricultural System, the minimum area norm was deleted from the draft. It stated that to enlarge the farm a farmer had to own 4 to 20 ha depending on the region, while at the same time, the surface area of the seller’s farm could not fall below this limit (Naszkowska, 2003). Therefore, throughout the country, a minimum area norm, 1 ha, in agricultural property turnover (excluding succession) and a maximum area of a family farm, as well as limitations concerning the surface area of farms with the right to purchase land from the resources possessed by the APA is applied. Hence, there are no solutions stimulating land flows to reach an optimal area of agricultural land from the perspective of the economic and social balance.

Area norms, as mentioned herein, are also present in the UE member states. However, the legislation of the member states directly or indirectly determines the desired area of a farm most often to ensure a specific level of employment and income (Sadowski, 2009, p. 233; Stankiewicz, 2000, pp. 1–11). From a theoretical perspective, the presented area norms create entry and exit barriers to the agricultural land market. The question is whether they should be treated in terms of market failure according to the classic approach. In our opinion, the answer is negative because their introduction aims at maintaining the agricultural use of farmland and at determining farm profitability and agricultural production efficiency. It is widely acknowledged that the threshold of a profitable scale of agricultural production is relatively high due to many general environmental conditions as well as to the low mobility of the production factors. Therefore, while area norms eliminate a determined volume of demand with speculative motives and motives other than operating a farm, they also cause a decrease in land market prices proportional to the restrictiveness of the regulations. Nonetheless, the process comes down to providing the actual market value of the land and the expected rate of return, which, after all, is the phenomenon that increases allocative efficiency. The fact that agricultural land (as well as the agricultural production area) is an extremely heterogeneous and immobile good is also significant. Accordingly, the assumptions of the perfect competition cannot be used to assess the efficiency of this market. On the other hand, the monopolistic models do not describe the agricultural land market well enough. This may be due to the relatively weak bargaining power of its owners “non-market” hierarchy of goals of individual farms or because land is a very stable production factor rather than a product with intrinsic utilities6.

4.3. LOCALIZATION OF A FARM VERSUS PLACE OF RESIDENCE

Another factor limiting land market liquidity is the localization of the farm and the place of residence of its owner. This is a relatively restrictive limitation that is included explicite in legislatures of a few countries of the European Union. In

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6 Exceeding the utilities generated on the basis of goods and services produced with the use of the land factor.
Poland, the amended Act on the Agricultural System states that one of the conditions to recognizing a physical person as an individual farmer is the fact that the person has resided in a community (parish) in the area of which one of the agricultural properties included on his farm for at least 5 years is located (art. 3, item 4 of the Act of 16 September 2011). It will lead to, among others, limiting groups entitled to participation in limited tenders organized by the APA that aim at developing state land resources. As we know, the legislation in Denmark provides for even more restrictive limitations. However, in 2007, the Danish regulations were the subject of a ruling of the European Court of Justice, which stated that such provisions as the Danish provisions break the Treaty Establishing the European Community.

The above regulations aim at ensuring the use of land by individual farmers and their families in accordance with their agricultural intended use. Under Polish conditions, there is an additional reason to develop already existing farms by stimulating the improvement of the local agrarian structure. The above solution is arguable in terms of land market efficiency as it reduces not only the speculative demand but it also reduces the offers of those entities that would like to establish new farms. This issue can be even more significant in the situation where the existing farms do not possess resources to purchase land in the amount offered by the APA. One solution to this situation is to introduce in the amendment to the Act on the Management of Treasury Agricultural Property the so-called “three steps” – leaseholder preemption rights, farmer preemption rights to enlarge their farms and an open tender (Bujoczek, Bromnerek, 2008, p. 32), although there exists the risk that an open tender may lead to speculating in land prices. Nevertheless, it is difficult to assess how the above-mentioned regulations may disrupt land market operations and the possibility to adequately estimate the rate of return on that resource. In Poland, under the condition of commonly occurring “land hunger”, this influence seems to be of little importance.

4.4. PERSONAL USE OF FARMS

The personal use of agricultural property is one of the most popular limitations of land turnover in the EU as it constitutes one of the conditions for a farm to be considered a family farm and therefore entitles the preferential purchase of land or the exemption from the preemption clause in favor of the state agencies. Such a solution is applied in France, Germany, Great Britain, the Netherlands and Denmark. In Poland, however, the definition of “personal use” is relatively broad. “It is believed that a natural person personally operates a farm when a) they work on the farm, b) they make all the decisions concerning operating agricultural activity on the farm” (art. 3 section 4 of the Act of 16 September 2011, art. 7 item 1 of the Act of 11 April 2003). The “personal work” criterion

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7 Consequently, purchasing land under preferential conditions, except for the rights of preemption of the APA.
occurs also, e.g., in the French law in relation to family farms of a team character such as the GAEC cooperative farming group (Groupement Agricole d’Exploitation en Commun) (Lichorowicz, 2000, p. 57; Stankiewicz, 2000, p. 4). In terms of land market efficiency, the personal work criterion seems to be of significant importance. In terms of land market efficiency, the personal work criterion seems to be of significant importance. In fact, we think that the absence of such a limitation lowers both the allocative and informational efficiency of management, assuming that the existence of family farms is consider as a public good. In individual farms, the own labor cost of a farming family is not counted in the profit and loss account (according to the FADN system). As in mentioned dilemmas, there are market incentives to transform family farms into industrial farms which use only hired labor. Nevertheless, it would result in disappearing of some public goods concerning rural culture and tradition Therefore, the real remuneration for own labor has a very individual character depending on the farm management structure and the farming family work productivity. Thus, theoretically, estimating ex ante the alternative own labor cost on an individual farm is indispensible as it is not possible to determine allocative efficiency without it. It is also difficult to correctly determine the expected rate of return, thus lowering informational efficiency. Therefore, from this vantage point, changes in the Polish agricultural legislation should be considered positive.

4.5. THE OWNER’S INCOME STRUCTURE AND OTHER LIMITATIONS

The limitation of agricultural land market liquidity in the form of conditions regarding the owner’s income structure does not exist in Polish law. In Germany, however, a farm cannot forfeit its “economic self-sufficiency” as a result of agricultural land transactions (Stankiewicz, 2000, pp. 7, 9). The above limitations force potential land purchasers not only to maintain the agricultural intended use but also to effectively organize production structure in terms of profitability to limit the flow of the farm’s added value to its environment. In terms of possible applications of the above solutions to the Polish law, it needs to be acknowledged that the impossible cannot be required of the farmers. The above requirements can, theoretically, increase the allocative and informational efficiency of the agricultural land market but only under the conditions of developed institutional structures within the agriculture sector, which would protect farms against the unfavorable influence of the market and would enable the realization of the “institutional surplus”8 (Czyżewski, 2009, pp. 37–42).

Next to the French legislation, the German legislation is one of the most interfering with respect to the agricultural land market legal provisions in Europe. Apart from the questions discussed in the previous paragraph, the

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8 “Institutional surplus” refers to O.E. Williamson’s transaction cost theory and occurs in a situation when the advanced contractual integration in agri-food sector protects both producer (a farmer) and buyer of specific product (a food-processing plant) against market risk lowering the transaction costs.
essential instrument that links transactions concerning the land market solely with family farms is found in the provisions on inheritance. In fact, the so-called “indivisible inheritance” aims at ensuring a high level of productivity of the farming family’s labor. In accordance with this rule, a farm should not be divided when inherited because the provisions favor the heirs working on the farm, assuming the favorable conditions of settlement with the other heirs. An additional expression of the restrictiveness of the German legislation is the above mentioned provisions that protect the agricultural land transactions against speculative price inflation. According to such provisions, if “the mutual consideration of the purchaser is grossly inadequate to the value of the plot”, the basis for determining the land’s value is its income value (Stankiewicz, 2000, p. 9). This solution suggests that the discounted stream of land rents should be used to valorize the market value of rents (that is, comparing the market rent with the actual realized rent of the farm). Theoretically, the goal is for the residual income of individual farms to be at least equal to the land rent value resulting from the prices of land as only under such conditions the extended reproduction in agriculture is viable. According to German legislation, in over 70% of agricultural land transactions in Poland, the prices of land should be lowered administratively, which, needless to say, is impossible for a number of reasons. Therefore, if the prices of land cannot be decreased, it is necessary to equalize the market and the realized values of land rent with the use of other agricultural policy instruments. However, under the conditions of the developed institutional environment, the German solutions controlling the agricultural land turnover favor allocative efficiency of the land market and entirely eliminate speculative demand. In Poland, there is no reference to the income value of land being partially compensated by temporary restrictions concerning the citizenship of the agricultural land purchaser, which limits the purchase of land by foreigners until 2016. Theoretically, in this way, the value of demand resulting from higher purchasing power of foreign incomes, in particular from countries of the old EU, is eliminated. However, a question arises whether the transition period negotiated in Copenhagen is sufficient in this context. We should be aware of the fact that the purchasing power of agricultural incomes in Poland and in the highly developed EU countries will not equate until the transition period is completed. Therefore, it seems justifiable that the amendments to, among others, the Act on the Management of Treasury Agricultural Property and the Act on Agricultural System aim at privatizing the largest possible land acreage from the APA resources before 2016.

5. CONCLUSIONS

To sum up, there are not only a social policy reasons for maintaining restrictions on agricultural land turnover but also the valid theoretical premises referring to

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9 On the basis of the individual farm analysis in the FADN system.
the public choice theory. The task of the agrarian policy concerning land market in the UE is not to be “least market distorting” but to correct market failures in public goods allocation as much as possible. All in all, it can be concluded that all the hypotheses formulated in the introduction have been confirmed. In many aspects, France, Germany and Denmark are characterized by similar and far-reaching agricultural land market regulations that enable the optimization of resources of family farms in terms of economic and social goals. Therefore, it can be stated that the first and the second hypotheses are confirmed: the land market legislation in the analyzed EU countries created strong economic structures based on family farms and ensured the maintenance of such status quo. In this respect, the land market legislation in Poland differs from that of France, Germany and Denmark, and they do not stimulate processes of the concentration of resources in agriculture, which is desirable from an economic perspective. At the same time, we found that, despite their interventionist characteristics, neither the Polish nor the Western European institutional solutions decrease efficiency of the market mechanism. Rather, they solely eliminate market failures such as speculative demand for agricultural land (Czternasty, Majchrzak, 2009, pp. 325–339; Czyżewski, Majchrzak, 2010, pp. 80–100), thus confirming the third hypothesis.

However, it should be considered that the 2003 CAP reform from Luxemburg enforces changes in the agrarian structure of the EU countries, though it is a long-lasting process, whereas the land market regulations applicable in some countries of the old EU-15 influence the agrarian structure in an opposite direction, that is, they consolidate it. Therefore, the current character of the CAP reforms may unsettle the land market institutions’ complementarity with the agricultural policies in Western European countries. Thus, the problem involves the introduction of such changes in the land market legislations that would restore their complementarity with the new directions of the agricultural development initiated in 2003. However, the paradox is that from the economic and social perspectives, the more desirable solutions for Poland are the old solutions that were proven effective in Western Europe as they stimulated land market concentration following the example of the German or French model. That is why, in our opinion:

– introduction of new regulations that would allow the intensification of pre-emption rights and reselling agricultural land by institutions supervising agricultural system (APA or new entrants),
– introduction of new – complement regulations of the lease of agricultural land,
– introduction of the limits of the possibility of farm fragmentation, as well as the excessive concentration of agricultural land,
– linking the category of family farms to the income aspect,
– introduction of the limits in possessing agricultural land abroad can be recommended for the Polish land management system.
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ABSTRACT

Despite the fact that the family farm is the basic unit of management in the European agriculture, the European Union (EU) legislation does not directly guarantee the stability of such entities. For this reason, the EU member states regulate the principles for turnover of agricultural land that favor ownership of agricultural property by family farms active in agricultural production. The goal of such principles is to enable the effective allocation of land resources assuming that European model of agriculture also provides desirable public goods. However, such allocation requires the maintenance of an optimal agrarian structure from the perspective of farm incomes. A supply of public goods is never optimal in market conditions and should be institutionally supervised. The aim of this paper is to compare land market regulations in selected EU member states and to assess the impact of farmland trade limitations on the respective market efficiency in chosen EU member states. For this purpose, a qualitative comparative analysis was conducted. The institutional solutions of Poland were compared with selected countries that represent the dominant concentration, i.e., Germany, France and Denmark. The paper shows that land market institutions in the countries of the old EU-15 have common features that ensure the stability of agrarian structures. Furthermore, land market regulations in the new member states, including Poland, differ so significantly from those of the old EU-15 that they do not guarantee the optimization of the agrarian structure. Consequently, the legislation of the old EU-15, in particular that of Germany, France and Denmark, can be regarded as a model for the land market legislation reforms in Poland. Moreover, limitations concerning the turnover of agricultural land do not exert negative influences on the allocative and informational efficiencies of the land market supposing that agricultural area in the UE is expected to provide public goods.
Keywords: agricultural land market; land market institutions; regulations; land turnover; agrarian structures.

JEL Classification: E02, H41, K11, Q15, R52

REGULACJE RYNKU ZIEMI ROLNICZEJ W POLSCE NA TLE WYBRANYCH PAŃSTW UNII EUROPEJSKIEJ: WNIOSKI DLA EFEKTYWNOŚCI RYNKOWEJ

STRESZCZENIE

Podstawową jednostką gospodarowania w rolnictwie europejskim są gospodarstwa rodzinne, jednak ustawodawstwo unijne nie gwarantuje w sposób bezpośredni trwałości tych podmiotów. W związku z tym państwa członkowskie Unii Europejskiej regulują zasady obrotu ziemią rolniczą, preferujące posiadanie nieruchomości rolnych przez aktywne w produkcji rolnej gospodarstwa o charakterze rodzinnym. Celem tych zasad jest zapewnienie efektywnej alokacji zasobów rolniczych przy założeniu, że europejski model rolnictwa przewiduje między innymi dostarczenie przez obszary wiejskie pożądanych społecznie dóbr publicznych mających źródło w czynniku ziemi. Taka alokacja wymaga jednak utrzymania optymalnej struktury agrarnej.

Dostarczanie dóbr publicznych nie jest optymalnym działaniem w warunkach rynkowych, w związku z czym powinno być instytucjonalnie nadzorowane. Celem opracowania jest porównanie instytucji rynku ziemi w wybranych krajach UE oraz ocena oddziaływania ograniczeń obrotu ziemią na efektywność rynku ziemi rolniczej w tych państwach. Realizacji tego celu posłużyło przeprowadzenie analizy jakościowej, w której otoczenie instytucjonalne rynku ziemi rolniczej w Polsce zostało porównane z regulacjami obowiązującymi w Niemczech, Francji i Danii. W pracy wykazano, że instytucje rynku ziemi rolniczej w krajach starej UE-15 mają wspólne cechy, które gwarantują stabilność struktur agrarnych. Ponadto regulacje rynku ziemi w nowych państwach członkowskich, w tym w Polsce, różnią się w znacznym stopniu od obowiązujących w UE-15, nie gwarantując optymalizacji tych struktur. W związku z powyższym przepisy obowiązujące w UE-15, w szczególności w Niemczech, Francji i Danii, mogą być uznanne za wzór dla reformy przepisów dotyczących rynku ziemi w Polsce. Co więcej, ograniczenia dotyczące obrotu gruntami rolnymi nie wywierają negatywnego wpływu na alokacyjną i informacyjną efektywność rynku ziemi rolniczej przy założeniu, że funkcją gruntów rolnych w UE jest także dostarczanie dóbr publicznych.

Słowa kluczowe: rynek ziemi rolniczej, instytucje rynku ziemi, regulacje prawne, obrót gruntami, struktury agrarne.