

LEGAL AND MARKET-RELATED CONDITIONS UNDERLYING MANAGEMENT OF STATE TREASURY AGRICULTURAL REAL ESTATE IN POLAND

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Abstract. The administration and management of agricultural real estate properties that belong to the State Treasury in Poland are regulated by national laws. The Polish state, under the policy of agricultural system formation, oversees the distribution of farmland among the private and public sectors. The state supports the flow of land to enterprises, which are classified as family-owned farms, thereby constraining the development of other business entities. This contradicts the principles of rational economics because the above model of agriculture can block the flow of farmland to agricultural farms distinguished by the greatest ability to satisfy consumer needs. The objective of this article is to discuss the role of the state policy in operations on the farmland market in Poland. In it, dependences between average transaction prices of agricultural land and average lease fees will be presented, relative to the changing legal as well as socio-economic circumstances in Poland. Land trade in some European Union member states will also be described. Interest in the purchase of farmland is driven by several factors, including agricultural production profitability, one of the strongest stimulants, which depends on price relations. The demand for land is also dependent on revenues earned by farmers and on the level of financial support offered by the state. However, the strongest impact on the farmland market is generated by legal regulations.

Keywords: agricultural real estate properties, farmland market, the State Treasury Stock.

Introduction

In Poland, the market of agricultural real estate properties encompasses the state market and the private market, also known as the local or neighbour-to-neighbour market. The Civil Code [1] in art. 44, defines the category of a state property, where ownership and other property rights are vested in the State Treasury or other legal persons. The definition of a property suggests that it comprises the ownership and other property rights. The term 'stock' as a legal concept was coined in the early days of the state transformation in Poland. It first appeared in the Polish Law in the Act on the Management of Agricultural Real Estate of the State Treasury, passed on 19 October 1991 [2]. Pursuant to this law, the Agricultural Property Stock of the State Treasury (the Polish acronym: ZWRSP) was constituted to incorporate properties of dissolved state-owned farms and other agricultural properties that belonged to the State Treasury, for example, from the liquidated State Land Fund.

A legal state person to manage the State Treasury Stock was established, which in the early years of its operations, that is from 1992 to 2002, was named the Agricultural Property Agency of the State Treasury (the Polish acronym: AWRSP). In 2003, it was transformed into the Agricultural Property Agency (the Polish acronym: ANR). The assets transferred to the Agency are a separated part of the State Treasury's assets, and compose the Agricultural Property Stock of the State Treasury.

One of the tasks of the ANR is to carry out farmland trade, which consists of all situations where economic entities on a farm are exchanged [3]. What results from farmland trade is a change of the land owner or user [4]. As the time passed, the conditions underlying the Agency's operations altered through constant adjustment to the changing social and economic circumstances [5]. Prior to the access to the European Union, which took place on 1 May 2004, Poland had negotiated a twelve-year transitional period to postpone free trade of agricultural land in our country. Until 2016, the principal responsibility of the ANR had been to privatize the property owned by the State Treasury, in the mode envisaged by the Act on the Management of Real Estate of the State Treasury [6]. The aim of agricultural land privatization was to improve the agrarian structure [7]. The Agricultural Property Agency, through the sale of farmland, played a crucial role in shaping the agricultural real estate market [8].

The transitional period withholding the purchase of real estate properties by foreigners elapsed on 1 May 2016. New legal regulations had been elaborated to allow persons who are non-Polish citizens to buy land in Poland. The Act of 14 April 2016 on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury and Amendments to Certain Acts entered into force on 30 April 2016 (Dz. U. of 2016, item 585). As implicated by the legislator's assumptions, the main

aims of the new legal regulations are to strengthen the protection of farmland against speculative acquisitions by domestic and foreign subjects (physical and legal persons), to overhaul the undesirable trend in the agrarian system, and to improve the economic position of Polish farmers. The Act is also meant to ensure an adequately effective protection of Polish land resources from uncontrolled purchase, especially by foreigners. The new legal regulations should result in land lease becoming the dominant form of management of state-owned land. The legislator's objective has been to introduce solutions beneficial to farmers (land lease as the least expensive way of acquiring farmland). Land lease contracts are to be drawn for periods of over ten years. The above regulations should enable farmers to plan their operations rationally. Farmland is leased only through limited tender bids organized by the Agricultural Property Agency, which can be entered only by individual farmers who intent to expand or create a family farm.

On 1 September 2017, subsequent changes will come into life regarding the management of properties held in the Agricultural Property Stock of the State Treasury. These will be organizational changes concerning agricultural agencies involved in the provision of services for agriculture and rural areas. The National Centre for Support of Agriculture (the Polish acronym: KOWR) will be instituted, and it will take over the tasks managed until that time by the Agricultural Property Agency. The KOWR will be responsible for administration of the State Treasury land resources and for the performance of tasks related to formation of the agrarian system in Poland, including its improvement.

Over the past years, the trade in agricultural real properties on the private market has been restricted. The State Treasury's agricultural real estate properties held in the Agricultural Property Stock of the State Treasury play an important role on the market. Until the end of 2015, a provisional form of allocation of agricultural real properties from the Stock had been to lease it on the same conditions and provisions as applicable to land sale. In its early years, the Agency distributed the land resources from the Stock mainly through lease contracts. With time, especially after Poland's accession to the European Union, the interest in farmland purchase was growing. Meanwhile, prices of land were rising distinctly and, noteworthy, the land trade on the private market continued to be restricted.

Materials and methods

The scope of this study covers the principles, which underline the management of agricultural real properties of the State Treasury since 1992, when a state institution was instituted to administer the resources incorporated into the Agricultural Property Stock of the State Treasury to December 31, 2016. The purpose has been to assess the impact of changing legal regulations and socio-economic conditions on the agricultural land market in Poland. To this end, a monographic approach was used to review the relevant literature as well as the laws and documents that regulate the administration and management of agricultural real estate in Poland. Additionally, a comparative analysis was made between the scale of land leased and land sold over the analyzed period. Data on sale and lease contracts were extracted from reports on activities of the Agricultural Property Agency, while such information as the average transaction prices of farmland and land lease fees was derived from records of the Main Statistical Office, Agency for Restructuring and Modernization of Agriculture and the Agricultural Property Agency.

A stimulus for undertaking this research problem arose from two sources: the changing spatial structure of rural areas and the growing interest in agricultural real properties over the past few years. The focus was to explore preferences on the real estate market under the European economy conditions and to analyze the new legal regulations governing the management of agricultural properties in Poland.

Results and discussion

Since its establishment, the Agricultural Property Agency of the State Treasury, renamed to the Agricultural Property Agency, has incorporated 4,470,000 ha of farmland into the Agricultural Property Stock of the State Treasury. The actual amount of the resources fluctuate constantly as more land is incorporated into the Stock, some is sold or transferred has in-kind contribution to companies, forests or farmland are transferred free of charge to the State Forests for afforestation, some real estate properties are transferred free of charge to other subjects, or leased for a fee to physical or legal

persons for specific periods of time, or transferred for administration to the General Directorate for National Roads and Motorways [9]. As of the end of 2016, the Agricultural Property Agency (ANR) had in its stock about 1.38 million of land, including 1.02 million ha leased out. At the same time, the ANR held over 267,000 ha to be distributed [data APA].

In agricultural economics, an agricultural lease is a form of organization of a farm, but from the perspective of law and agricultural policy it is an instrument of shaping the spatial structure of farms. Leasing farmland has a long tradition in Poland. Until these days, it has not been used on a large scale and lease contracts have not often extended beyond oral agreements. The scale and character of land lease in Poland have been formed against the background of historical changes and development of agriculture. The state transformation initiated in 1989 changed the economic and legal conditions in Poland [10; 11]. According to Marks-Bielska [12], the effectiveness of farmland lease is comparable to farming one's own land provided there are stable lease conditions, guaranteed by law, and it is based on a long-term contract. An advantage and, simultaneously, a disadvantage of leasing land is that the activities of a lessee under the binding lease contract depend on the lessor's approval [13]. Thus, the lessee has little freedom in conducting business activity on the leased property. This regards undertaking investment decisions including both modernization and production. However, agricultural lease enables one to enlarge or create a farm without the need for capital-consuming inputs to buy land [14]. This has been particularly important over the recent years, when values of agricultural properties have risen significantly, both on the private market and with respect to agricultural land distributed from the Agricultural Property Stock of the State Treasury. In 1992-1995, about 3 million ha of land were leased, which at that time corresponded to a large share of the whole Stock (4.7 million ha). The area of farmland leased from the Stock in 1992-2016 relative to the land sold from the Stock is illustrated in Figure 1.

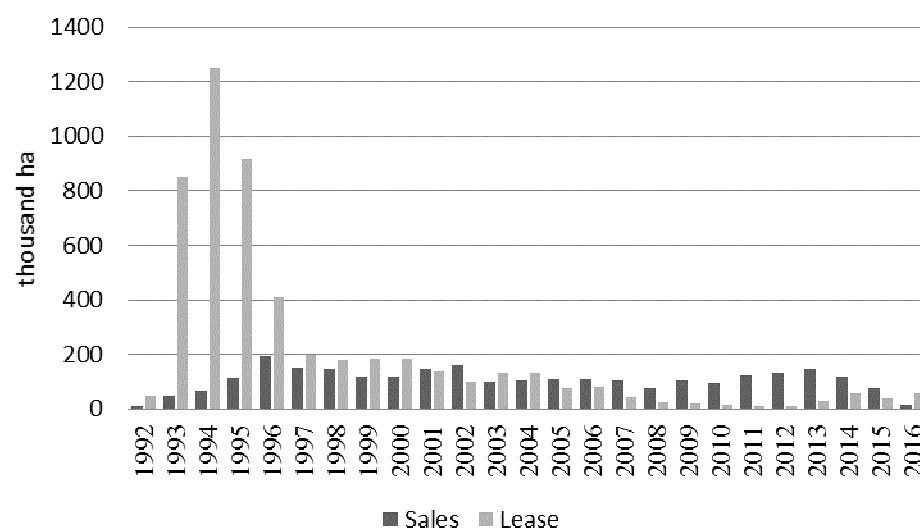


Fig. 1. Sale and lease of agricultural land from the Agricultural Property Stock of the State Treasury in 1992-2016

It is evident that until 2012 there had been a decreasing tendency of the total leased area of farmland (Fig. 1). The lease of land from the Stock of the Agricultural Property Agency has a circulatory character, which means that leased land is often returned to the Stock for further distribution. The return of farmland is frequently due to the expiry of lease contracts. Most of the farmland returned has been already sold. At the end of 2015, the binding lease contracts covered 1 million ha. With the agrarian fragmentation, which is characteristic for Polish agriculture, land lease has been a relatively unpopular solution, although it plays a significant role in strengthening processes of land concentration. It is estimated that about 20 % of individual farms run agricultural production on both own and leased land. Approximately 50 % of farmers with farms covering at least 20 ha of agriculturally used land (an average size of farms in about 10 ha of agricultural land) manage both own and leased land [15].

With respect to land sale, since the establishment of the Agency, i.e. since 1992, until the end of 2015, a total of 2,685,700 ha of farmland was sold, which corresponded to 56.7 % of the total area of land included into the Agricultural Property Stock of the State Treasury. In the early years of the then Agricultural Property Agency of the State Treasury, there was a rapid increase in the sale of farmland (Fig. 1), reaching a peak in 1996, when 193,000 ha were sold. In the following years (1997-2002), land sale decreased considerably and oscillated around 120,000-160,00 ha sold annually. From 2003 to 2010, this figure fell to 100,000 ha a year, with the exceptions of 2008, when the total area of farmland sold from the Stock was the lowest, down at 78,200 ha. In 2011, following an important amendment to the Act on the Management of Agricultural Real Estate of the State Treasury [6], a renewed increase in the area of farmland sold was noted (in 2011-2014). The new provision consisted of exclusion of 30 % of the agricultural land area from lease contracts, and the excluded land was put up for sale (the regulation pertained to lease contracts for a total area of over 400 ha) [16].

The price of land on the local market will increase as the demand for land is higher while the supply is limited [17]. Although the macroeconomic conditions and socio-economic transformations have been favorable for a higher supply of land made available for sale, the local supply in most regions did not satisfy the demand. On the demand side, a growing interest in enlarging the size of farms is mainly dictated by the market economy and stronger competition on agricultural markets. In the fragmented agricultural system in Poland, the main factor which can help to strengthen the economic standing of most farms is to make investment inputs into production assets, mainly farmland. The motivation for many farmers has been to maintain the farmland in good agricultural condition so as to receive direct payments to agricultural land, to join agri-environmental programmes or to have some agricultural land afforested [5; 18].

Considering the fact that the local demand for agricultural land was determined by the characteristics of the agricultural system of farms located in a given area, clusters of economically strong farms generated a higher demand for land, which translated into relatively high prices for land in Poland. Among the factors which have had a significant effect on the limited supply of agricultural land in Poland over the past ten years, the fact worthy of attention is the increasingly intensive process of converting land to non-agricultural uses. The reasons can be searched for in the development of infrastructure in rural areas, construction of transport routes, as well as the increasing degree of urbanization of villages exposed to the impact of large urban agglomerations. Agricultural real properties are also bought with an intention of using them for other than agricultural or forestry purposes in the future. This is particularly true about land lots located conveniently with regards to large cities, easily accessible or endowed with valuable landscape assets [15]. However, the Agricultural Property Agency has not put up for sale as typical agricultural properties such land parcels that have uniquely attractive location for possible development projects, which could play an important role in the economic activation and creation of new jobs, or in the execution of other investments. These land lots have been sold in view of their non-agricultural potential, which has an influence on their prices.

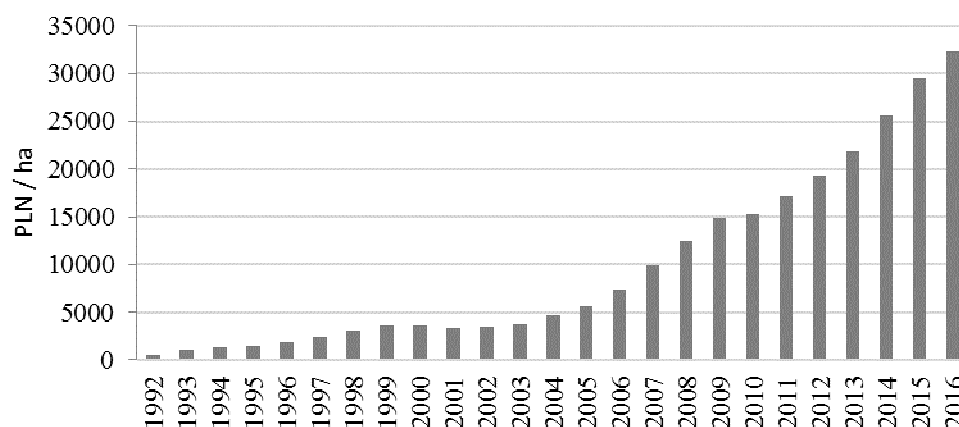


Fig. 2. Average transaction prices of land sold from the Agricultural Property Stock of the State Treasury in 1992-2016

Considering the whole period when the Agency has been operating, that is since 1992, it is evident that prices of land sold from the Agricultural Property Stock of the State Treasury began to rise after Poland's accession to the EU. This trend is illustrated by the diagram below (Figure 2). A large increase in the value of real estate has been observed since 2004. Since 2011, the average transaction prices of undeveloped agricultural land have risen considerably, reaching a peak in 2015. The reason is the current policy of managing the agricultural properties which remain in the resources administered by the Agricultural Property Agency, i.e. the Agency puts on the market of agricultural properties sold its stock such land that has been maintained in good agricultural condition and has been excluded from land lease contracts. The level of transaction prices has also been affected by the finishing transitional period restricting land purchase by foreigners (May 2016).

Considering the European farmland market, it can be concluded that prices for agricultural land in Poland are on a medium level. It is worth emphasising that the average land price in Poland is higher than in Estonia, Romania, Slovakia, Sweden, the Czech Republic or France, but lower than in Spain, Germany, Italy, the UK, Denmark, Ireland, Belgium and the Netherlands [19]. Observing the trends on the European market, a further increase in prices for agricultural real estate properties could have been predicted. However, the situation changed dramatically, when the Agricultural Property Agency suspended the sale of agricultural land at the end of 2015.

In West European states, land lease is the legal foundation of the organization of farms. In some countries, e.g., England, France, Italy or Holland, land lease contracts occur on a massive scale and cover over 50 % of agricultural land [20]. Farmland lease favours an increase in the labour factor effectiveness, for example by raising the production scale effects in agricultural enterprises [10]. Farms run on leased land have the same legal status as the ones based on owned land [20].

However, most Polish farmers believe that an ownership right to farmed land is a proof of the farmer's status and investment potential [10]. The vast majority of individual farms are based on the land owned by farmers. In very rare cases, whole farms are located on leased land. After Poland's accession to the European Union, this attitude has been changing slowly. The wish to obtain more farmland coinciding with the rising prices of land in Poland stimulated an interest in leasing agricultural land from the resources remaining in the Agricultural Property Stock of the State Treasury. This contributed to the use of lease as a form of non-permanent distribution of state-owned land administered by the Agricultural Property Agency. Initially, long-term contracts were drawn. Three years after entering in a lease contract, the lessee acquired the pre-emption right and could apply to the APA /ANR for permit to buy the leased property. As the prices of agricultural land kept increasing and the interest in agricultural land increased, short-term contracts appeared. The average lease fees for land from the Agricultural Property Stock of the State Treasury are illustrated in the diagram underneath (Figure 3).

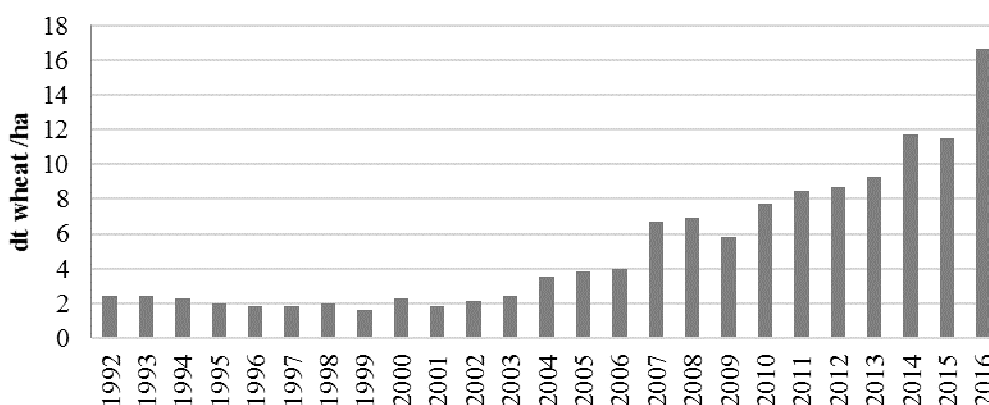


Fig. 3. Average lease fees per 1 ha of land in 1992-2016

From 1992 to 2004, the lease fees oscillated around the same level, and equalled about 2 dt wheat/ha. The year when Poland joined the EU was a breakthrough moment, and since 2004 the land lease fees have been increasing every year. Over the past few years, they have reached a relatively high level. In the Polish economic conditions, the fees declared in tender bids seem slightly irrational

from the perspective of a farm's economics. The lease fees can be said to correlate with the quality of soils and their suitability for agricultural production [5].

The growing demand-supply imbalance on the agricultural land market was to some extent mollified by the activity of the Agricultural Property Agency. Initially, relatively inexpensive leases prevailed, as they attracted much interest. In the following years, sale of farmland was gaining in importance, which became particularly evident once Poland had joined the European Union. From 2010 to 2015, land sale was the dominant form of the distribution of farmland from the Stock. At present, most of the land from the Stock of the State Treasury has been distributed permanently and its supply does not have such a strong impact on the land market. The new regulations effective since 2016 and pertaining to agricultural land trade in Poland have created a completely new situation on the market. A broad spectrum of restrictions in the purchase of agricultural real estate properties has led to a decrease in the number of sales transactions (especially with regard to land bought from the Stock of the State Treasury), which has also resulted in decreased values of agricultural properties. In the early years of the Agency's activity, land lease was the basic form of management of farmland held in the Stock, mostly because of a large supply of land from the State Treasury and limited financial capabilities of potential buyers [21]. Over the recent years, land leasing has again become an increasingly widespread form of land management. However, as the interest in leasing land has grown, so have the lease fees. The level of lease fees and the dynamics of their changes are affected by numerous factors [14]. It is worrying that the lease fees in Poland remain very high (particularly ones reached under unlimited tenders in 2016).

Conclusions

1. Privatization of the state sector in the Polish agriculture was aimed at creating conditions conducive to effective economy. This objective was manifested by the state's abandoning the administration and management of state-owned farms. Instead, the entrepreneurship of individual persons, willing to take the risk of managing farms on their own, was to be promoted.
2. The chance of gaining support from the CAP, and especially the widespread offer of direct payments, encouraged farmers to enlarge the area of farmland they managed and, simultaneously, it created opportunities to acquire more farmland.
3. The prospective end of the transitional period of restricted farmland purchase by non-Polish EU citizens had given rise to such legislative activities that would strengthen the institutional control on the market land trade. The expected unification of conditions imposed on potential land buyers, as well as fears of further land price increase stimulated a distinctly higher interest in land purchase in 2015.
4. The Act on Suspension of Sale of Property from the Agricultural Property Stock of the State Treasury, which has been effective since 30 April 2016, has overhauled the sale of state-owned land. Provisions of this legal act changed the principles underlying the agricultural land trade in Poland. The objective was to prevent the purchase of land for purposes other than agriculture, but in practice this new law has given rise to very severe restrictions imposed on land trade.
5. Since 2016, the basic form of land distribution has been land lease. This solution is advantageous to farmers because it is the least expensive way of securing land for farming. Land lease will facilitate making rational production plans and long-term investment projects on leased lands.

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References

1. ACT of April 23, 1964 The Civil Code (Journal of Laws of 2016, item 380 as later amended).
2. Pessel R. Nieruchomości Skarbu Państwa (Property of the Treasury). LexisNexis Warszawa, 2008. (In Polish).

3. Maśniak J. Znaczenie polityki rolnej państwa rozwoju rynku ziemi rolniczej w Polsce (The importance of agricultural policy in the development of farmland market in Poland), *Roczniki Nauk Rolniczych, Seria G: Ekonomika Rolnictwa*, 98 (3), 2011, pp. 108-117.
4. Kozłowska-Burdziak M. Rola Agencji Nieruchomości Rolnych w obrocie ziemią rolniczą w Polsce (The role of the Agricultural Property Agency in the marketing of agricultural land in Poland), [In:] *Rola Agencji Nieruchomości Rolnych w unowocześnianiu rolnictwa i obszarów wiejskich (Role of the Agricultural Property Agency in modernization of agriculture and rural areas)*, R. Marks-Bielska, R. Kisiel (red.). Uniwersytet Warmińsko-Mazurski w Olsztynie, 2013, pp. 51-72. (In Polish).
5. Kurowska K., Ogryzek M., Kryszk H., *Rola Agencji Nieruchomości Rolnych w gospodarowaniu i kształtowaniu przestrzeni obszarów wiejskich (Role of Agricultural Property Agency in spatial development of rural areas)*, Wydawnictwo UWM, Olsztyn 2016. (In Polish).
6. ACT of October 19, 1991 on management of the agricultural real properties of the State Treasury (Journal of Laws of 2015, item 1014 as later amended).
7. Dzikowska T. Management of agricultural real estate belonging to the Treasury in order to improve the area structure of individual farms, *Acta Sci. Pol., Administratio Locorum*, 9 (1), 2010, pp. 17-28.
8. Jasińska E., Preweda E. Sale of land by the Agricultural Property Agency on the example of Podkarpackie Province. *Infrastructure and Ecology of Rural Areas*, No 1/III 2012, pp. 31-40.
9. Klusek T. Land Forming Agricultural Property Reserve of the State Treasury - Current Condition, Value, Changes. *Więś i Rolnictwo*, No 4 (149), 2010, pp. 168-185.
10. Jarka S. The meaning of leasing agricultural area in Poland. *Zesz. Nauk. SGGW – Ekon. Org. Gosp. Żywn.* 84, 2010, pp. 47-53.
11. Ostrowski L. Międzysąsiedzkie dzierżawy gruntów rolnych w Polsce w latach 1991-1997 (The neighbouring lease of agricultural land in Poland in 1991-1997). [In:] *Dzierżawa ziemi jako czynnik przemian struktury agrarnej w Polsce (Land lease as a factor of agrarian transformation in Poland)*. SGGW Warszawa, 1999. (In Polish).
12. Marks-Bielska R. Rynek ziemi rolniczej w Polsce – uwarunkowania i tendencje rozwoju (The market of Agricultural land in Poland – conditions and development trends). Wydawnictwo Uniwersytetu Warmińsko-Mazurskiego w Olsztynie, 2010. (In Polish).
13. Stańko M. Rights and obligations of the Agricultural Property Agency as the lessor of the agricultural properties owned by the Treasury. *Studia Iuridica Agraria*, T. 9, 2011, pp. 60-71, <http://hdl.handle.net/11320/1742>
14. Kurdyś-Kujawska, A, Oleńczuk-Paszal, A. Changes of levels of rent and risk in the activity of rural farms in Poland. *Journal of Agribusiness and Rural Development*, 2 (28), 2013, pp. 151-159.
15. Raport z działalności Agencji Nieruchomości Rolnych na Zasobie Własności Rolnej Skarbu Państwa w 2015. (Report of activity of the Agricultural Property Agency of the State Treasury in 2015) 2016. Sejm Rzeczypospolitej Polskiej, Warsaw.
16. Majchrzak A. Lease of agricultural land of the Treasury in the light of new regulations. *Journal of Agribusiness and Rural Development*, 2 (24), 2012, pp. 159-166.
17. Well E., The determinants forming of prices agricultural land prices, *Roczniki Akademii Rolniczej w Poznaniu, CCCLVIII*, 2003, pp. 153-168.
18. Kryszk, H., Kurowska, K., Ogryzek, M. Transaction prices analysis of the undeveloped land real estate being the property of “ANR OT Olsztyn. *Studia i Prace Wydziału Nauk Ekonomicznych i Zarządzania* Nr 36, T. 1, 2014 pp. 292-302. (In Polish).
19. Kurowska K. Kryszk H. Identification of factors influencing the transaction price of agricultural real estate, 14th International Scientific Conference on Engineering for Rural Development, Jelgava, 20-22.05.2015, Vol. 14, pp. 688-693.
20. Lichorowicz A. The necessity to provide legal regulations for farmland lease in Poland (based on experiences of other EU countries). *Przegląd Prawa Rolnego*, 2 (7), 2010, pp. 63-78.
21. Nawrocki T. The Management of Agricultural Property Owned by the State Treasury in the Activity of ANR, *Więś i Rolnictwo*, 3 (148), 2010, pp. 167-178.