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FINANCIAL AID FOR WATER-LAW COMPANIES UNDER THE POLISH RURAL DEVELOPMENT PROGRAMME 2014 – 2020 AS AN ELEMENT OF CREATING A CULTURE OF NATURAL RESOURCES USAGE

ABSTRACT

This paper focuses on the normative solutions established under the Polish Rural Development Programme (RDP) 2014–2020 for the support of water-law companies involved in the protection of agricultural production against the consequences of adverse weather conditions such as flooding, partial flooding or torrential rain. The paper aims to determine to what extent, if any, the aid ensures the continued operation of an agricultural producer (farm sustainability). In terms of methodology, the research relies chiefly on a dogmatic analysis of legal texts. Legal considerations are supplemented with statistical data under access to public information regulations. The study of the research material has revealed that water-law companies are more inclined to invest in the protection of the producer's workplace when presented with favourable financial terms and clear legal regulations.

KEYWORDS: *Polish Rural Development Programme (RDP) 2014–2020, financial aid, water-law companies, investment, farm*

INTRODUCTION

Agricultural activity is subject to external factors which remain largely beyond the control of the farmers. But while agricultural producers cannot eliminate the risk, they may address the issue to minimise its adverse consequences. The array of potential countermeasures includes the instruments of support offered at national and European level, such as financial aid from the resources of the European Agricultural Fund for Rural Development. In Poland, the programme runs as a single aid scheme, entitled the Rural Development Programme (RDP) 2014–2020 (Act of 20 February 2015 on supporting the development of rural areas with the contribution of funds from the European Agricultural Fund for Rural Development under the Rural Development Programme for 2014-2020, Dz. U. [Journal of Laws] of 2020, item 217). The main goal and specific objectives of the RDP reflect the mission and aims of the Common Agricultural Policy (Giemza, 2017, p. 90; Stankiewicz, 2008, p. 62), as well as the European priorities in the scope of rural development (Kuś, 2014, p. 87). The instruments of support for investments preventing damage to rural production potential were integrated within these aims (Tomkiewicz, Bocheński, 2012, p. 240).

This publication will focus on only one out of the many support instruments of the RDP 2014–2020: “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events” (Stoksik, 2013, p. 100; Giemza, 2016, pp. 303–316). The paper presents an in-depth analysis of the operations performed by water-law companies to protect agricultural production against the consequences of adverse weather conditions such as flooding, partial flooding, or excessive dampness caused by flooding or torrential rain. Production risk in agriculture has been discussed by both lawyers (Budzinowski, 2006, pp. 9–21; Lipińska, 2019, pp. 39–70; Jeżyńska, 2008) and economists (Rembisz, 2013). Yet, the research topic presented herein has not been explored by more than a handful of authors (Lipińska, 2019, pp. 378–385) or investigated in any extensive analysis.

This paper aims to determine to what extent (if any) this form of support affects the sustainability of the producer’s workplace. The author focuses on

an analysis of normative solutions established under the RDP 2014–2020 aid instrument which supports investments for the protection of agricultural production potential. This initiative is intended to promote preventive measures that mitigate the consequences of probable natural disasters, adverse climatic phenomena and catastrophic events. In extreme cases, the lack of adequate protection may push agricultural producers to terminate their activity.

The paper uses the method of dogmatic analysis of legal texts, characteristically adopted in a lawyer's work. In recognition of the practical importance of applying legal instruments to risk management in agricultural activity, legal considerations are supplemented with statistical data obtained under access to public information regulations from the Agency for Restructuring and Modernisation of Agriculture (ARMA). The data present the current use of public aid by water-law companies.

RURAL DEVELOPMENT PROGRAMME 2014–2020

RDP 2014–2020 is based on European legislation, particularly the Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (*OJ L 347*, p. 487), as well as the delegated and implemented acts adopted by the European Commission. In accordance with the European law, RDP 2014–2020 is integrated within the comprehensive national policy for growth (Jurcewicz, Kozłowska, Tomkiewicz, 2007, p. 40), particularly under the mechanism called the Partnership Agreement. The Agreement defines the strategy for using European resources for the attainment of common European objectives outlined in the European strategy for growth (“Europe 2020: A strategy for smart, sustainable and inclusive growth”) in consideration of the development needs of the member state in question (Błażejczyk, Kazimierczuk, 2018, p. 169).

In line with the mission and aims of the Common Agricultural Policy (Jurcewicz, 2019, pp. 83–85; Sychalski, 2004, p. 88), the main goals of RDP 2014–2020 include the enhancement of agricultural competitiveness,

sustainable management of natural resources, climate-oriented measures and sustainable territorial development of rural areas (Mickiewicz, Mickiewicz, 2014, p. 155; Wigier, 2011, p. 7). Public funding for the programme amounts to a total of €13.6 billion, including more than €8.6 billion from the EU budget plus more than €4.9 billion in national funding (Stoksik, 2013, p. 100).

The implementation of RDP 2014–2020 comes under the purview of the Minister of Agriculture and Rural Development, who serves the role of the Managing Authority. Thus, the minister responsible for agriculture fulfils the member state's responsibilities in the scope of programme monitoring and evaluation, appoints the monitoring committee and submits annual reports to the European Commission. Particular tasks and sub-tasks have been assigned to a range of institutions listed the act. The role of the Intermediate Body falls to the Agency for Restructuring and Modernisation of Agriculture (ARMA), which assumes responsibility for the secure electronic system for the registration, storage and submission of statistical information on the programme and its implementation (Jarosiewicz, Kozikowska, Wujczyk, 2001, pp. 188–191). In particular, the Agency agrees to support endeavours for the restoration of production on farms and in special branches of agricultural production subjected to damage from natural disasters in the meaning of regulations on crop and livestock insurance (see Art. 4.2 of Act on Agency for Restructuring and Modernisation of Agriculture of 9 May 2008, Dz. U. of 2019, item 1505, consolidated text). The tasks relating to community-led local development (CLLD) and the LEADER initiative fall within the competence of the provincial self-government (Litwiniuk, 2015, pp. 337–345).

PREVENTION OF DAMAGE TO AGRICULTURAL PRODUCTION POTENTIAL

The aid that increases farm sustainability may take two forms: *ex-post* and *ex-ante*. The former follows an event which caused damage. The latter – provided prior to the occurrence of a natural disaster – is exemplified by the RDP 2014–2020 measure referred to in the Ordinance of the Minister of Agriculture and Rural Development of 14 July 2017 on detailed conditions and modes for

the award and disbursement of financial aid for the operations “Investments for the prevention of damage to agricultural production potential” under the sub-measure “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events” (Dz.U. of 2020, item 223, consolidated text). The measure is implemented under two operations: (1) limiting the potential spread of the African Swine Fever (ASF) and (2) protecting agricultural production against adverse weather phenomena (Lipińska, 2017, pp. 90–94).

Both areas of support have been identified based on multiple premises. In the first case, the primary aim is to ensure the health and safety of the livestock. ASF outbreaks in pig farms lead to considerable production drops and, typically, the death of 100% of the animals. The efforts to eradicate ASF in affected farms bring devastating financial losses. These considerations justify the initiation of preventive measures in line with the biosecurity programme (Lipińska, 2017, p. 435) to limit the spread of the disease (Ordinance of the Minister of Agriculture and Rural Development of 24 January 2018 on the introduction of the “Programme aimed at early detection of viral infections causing the African swine fever, further research into the disease and its eradication” in the territory of Poland, Dz.U. of 2018, item 316).

The other area of support covered in this paper was selected in consideration of the climatic change. Excess and shortage of water are the decisive factors behind crop yields in a large part of agricultural land across the country. The scale of these weather phenomena may be systemic and, consequently, affect many agricultural producers across a vast area. In light of the foregoing, the legislation provides water-law companies with support for the improvement and maintenance of the drainage and water management systems. In accordance with Art. 195 of the Act of 20 July 2017 – the Water Law (Dz.U. of 2020, item 310), this involves water regulation efforts to improve soil productivity, facilitate cultivation and protect farmland against flooding.

ORGANISATION OF WATER-LAW COMPANIES

Water-law companies are non-public organisational bodies which do not operate for profit, associate natural and legal persons on a voluntary basis, and aim to satisfy water management needs. A water-law company must be incorporated by at least three people who have filed their declarations of will and signed a relevant agreement. Additionally, the company needs to be registered. The supervision of water-law companies falls under the purview of the local starost. The starost is in power to effectuate not only the registration of a water-law company, thus granting it the status of a legal entity, but also its dissolution, which points to the far-reaching engagement of the public administration. However, a water-law company is neither an administrative body nor an auxiliary body of public authorities since its funding comes from premiums paid by the beneficiaries (Sommer, 2002, p. 409). The payments made by company members are structurally similar to the contributions made to commercial companies and partnerships or civil-law partnerships (Rakoczy, 2013, p. 23). However, water-law companies may be incorporated only for the provision of public services rather than for an economic purpose.

In their effort to meet the water management needs of their members, water-law companies may generate net profit, which has to be allocated for the attainment of their statutory goals. Members cannot receive profit in the form of dividends, either. For the founders, healthy organisational principles underpinning the organisation of a water-law company are a guarantee that when they assume their responsibilities (such as participation in the project costs) as members, they will essentially do what the situation requires – complete drainage and water management projects or implement rational management of the meliorated areas to uphold a sound level of agricultural production – but at a reduced cost and with better results achieved through the shared organisational effort (Paczuski, 2006, pp. 11–12). For this reason, there are two approaches to performing the public-law responsibility to keep the drainage and water management facilities in good condition, i.e. to maintain the drainage ditches and canals constituting the water regulation system: 1) individual, as the landowners operate in the absence of a water-law company, or 2) organised, as a water-law company operates in the framework of an established management system.

TERMS OF SUPPORT FOR WATER-LAW COMPANIES UNDER RDP 2014–2020

Under the measure “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events”, the aid is granted to the first category of beneficiaries, i.e. the water-law companies referred to in the Act of 20 July 2017 – the Water Law – or to an association of water-law companies for the purveyance of equipment for the maintenance of water facilities that protect farms against flooding, partial flooding, or excessive dampness caused by flooding or torrential rain (Lipińska, 2019, p. 381). The aid takes the form of a partial refund of the eligible operational costs borne and evidenced by the company, in the amount of up to 80% of eligible costs. In the case of a water-law company or an association of water-law companies, financial aid is awarded and disbursed up to the limit set for the entire duration of the programme at the level of 1 million PLN per beneficiary, provided that more than a half of company members are farmers who own agricultural land.

Additionally, to receive the aid, the company must be incorporated to manufacture, maintain and operate the facilities for the protection of members’ farms against flood or for the performance of irrigation and draining, as well as to uphold reasonable management on the meliorated lands owned by company members. The order of eligible beneficiaries is established on the basis of either the budget resolution or the financial plan presented by the company or the company association for the application year, or a certificate issued by the commune head, the mayor, or the president confirming that the company or the company association in question has operated in a commune affected by flooding or a torrential rain at least twice since 1 January 1997.

The measure allows the water-law companies to use the co-funded equipment in line with its intended purpose and the operation objectives, i.e. to render services related to the maintenance of water facilities that protect farms against flooding, partial flooding, or excessive dampness caused by flooding or torrential rain. The use of the equipment to render services to the benefit of other entities (not associated in the water-law company) is not a breach of the support agreement. However, the documents that constitute the proof

of sale (such as invoices) must contain precise information on the services rendered, so that there is no doubt regarding their actual purpose.

As part of the measure “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events”, the company receives support under the support agreement concluded with the director of the regional ARMA branch. The civil-law relationship ensures proper control over the use of funding. As aptly observed by S. Prutis, the agreement is a flexible instrument which – in line with the freedom of contract – allows to specify the distribution of resources individually, which is particularly important in the case of investment aid (Prutis, 2009, p. 198). The civil procedure ensures that the conditions of eligibility will be respected and grants eligible beneficiaries the right to receive aid.

PUBLIC AID USE

The support focuses strictly on investment and leads to the restoration of some relationships and dependencies between productive activity and unforeseen changes in the natural environment. The investments suggested in the legislation may indirectly enhance farm viability, competitiveness, and stability.

The analysis of data obtained from the Agency for Restructuring and Modernisation of Agriculture (ARMA) under access to public information regulations indicates in the assistance provided under the RDP 2014–2020 measure entitled “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events” generated the strongest interest among water-law companies operating in the following voivodeships: Mazowieckie, Kujawsko-Pomorskie, Wielkopolskie and Warmińsko-Mazurskie. The calls for applications made in 2017, 2018, 2019, and 2020 attracted a total of 277 Polish water-law companies which applied for the total amount of more than 108 million PLN. Undoubtedly, keen interest in this form of aid follows from the perspective of 80% refunds. For comparison, other RDP 2014–2020 measures

offer aid at the level of 50%. The analysed form of support significantly improves the protection of the producer's workplace. Detailed information is presented in Tables 1 and 2.

Table 1.

The use of aid by water-law companies in years 2017 and 2018

Voivodeship	2017		2018	
	number of applications	total amount requested [PLN]	number of applications	total amount requested [PLN]
Dolnośląskie	2	655 680.00	1	470 062.40
Kujawsko-Pomorskie	12	3 657 710.40	15	4 481 082.40
Lubelskie	6	1 497 041.20	2	852 800.00
Lubuskie	5	2 035 668.00	2	887 328.00
Łódzkie	8	2 152 944.00	6	1 579 800.80
Małopolskie	2	709 288.00	1	498 350.00
Mazowieckie	22	7 339 075.10	12	2 794 385.47
Opolskie	1	64 000.00	2	137 600.00
Podkarpackie	6	1 753 258.00	2	197 440.00
Podlaskie	14	4 536 422.20	4	1 122 944.00
Pomorskie	2	1 000 000.00	0	0
Śląskie	1	417 600.00	2	603 097.60
Świętokrzyskie	0	0	1	306 240.00
Warmińsko-Mazurskie	11	4 272 441.40	7	3 146 939.20
Wielkopolskie	19	6 141 458.00	12	4 508 876.00
Zachodniopomorskie	3	1 020 000.00	1	291 200.00
Total	114	37 252 586.30	70	21 878 145.87

Source: Own research based on data from the Department of Analyses and Reporting in the Agency for Restructuring and Modernisation of Agriculture (ARMA).

Table 2.

The use of aid by water-law companies in the years 2019 and 2020.

Voivodeship	2019		2020	
	number of applications	total amount requested [PLN]	number of applications	total amount requested [PLN]
Dolnośląskie	3	1 900 000.00	3	2 179 437.60
Kujawsko-Pomorskie	5	2 149 476.00	3	710 641.60
Lubelskie	3	1 876 025.20	2	1 151 200.00
Lubuskie	3	1 111 612.00	2	1 641 531.20
Łódzkie	3	1 152 412.00	6	2 505 056.80
Małopolskie	1	990 192.00	0	0
Mazowieckie	10	3 250 882.80	8	5 046 662.00
Opolskie	1	173 600.00	1	173 600.00
Podkarpackie	2	890 400.00	2	388 784.00
Podlaskie	5	1 684 474.40	1	136 224.00
Pomorskie	0	0	0	0
Śląskie	0	0	0	0
Świętokrzyskie	1	230 320.00	1	237 000.00
Warmińsko-Mazurskie	13	9 231 840.00	7	5 000 000.00
Wielkopolskie	8	3 608 960.00	2	565 661.60
Zachodniopomorskie	1	1 000 000.00	0	0
Total	59	29 250 194.40	38	19 735 798.80

Source: Own research based on data from the Department of Analyses and Reporting in the Agency for Restructuring and Modernisation of Agriculture (ARMA).

CONCLUSIONS

The considerations presented above lead to several conclusions. Protection of farm sustainability often creates the need to invest concrete financial resources, especially for operations intended to limit the risks inherent to agricultural activity to mitigate their potential adverse consequences. The Preamble to the Basic Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (*OJ L 347*, p. 487) indicates that the agricultural sector, more than other sectors, is subject to damage caused by natural disasters, adverse climatic phenomena and catastrophic events. Therefore, to enhance farm viability and competitiveness in the face of such disasters and events, the farmers or the water-law companies they incorporate should receive aid for the protection of the agricultural production potential. That is precisely the goal of the financial support from the European Agricultural Fund for Rural Development, implemented in Poland as a single aid scheme (Litwiniuk, 2018, pp. 79–82). The Rural Development Programme (RDP) 2014–2020 has the instruments that support investments for the prevention of damage to the agricultural production potential before a natural disaster occurs (Stankiewicz, 2008, p. 62; Niewiadomski, 2019, p. 566).

With regard to operations performed by water-law companies to protect agricultural production against the effects of adverse weather conditions such as flooding, partial flooding, or excessive dampness caused by flooding or torrential rain, this aid has a narrow thematic scope and addresses the need for public intervention due to drainage and irrigation hazards. In consideration of the scale of the phenomena, their potential safety implications which stretch beyond the rural environment, and the cost factor, the legislation includes them in the scope of aid. The preventive support allows farmers to make investments that prevent damage to agricultural production potential in the face of specific events. In the light of the climate changes which affect water retention, it seems reasonable to include an instrument enhancing the producer's workplace sustainability in the future financial perspective for the years 2021–2027. The analyzed form of support significantly increases the

protection of the farmer's workshop and contributed to the development of water companies.

It may be assumed that the analysed form of *ex-ante* support dedicated to water-law companies – “Support for investments in preventive measures for the mitigation of damage caused by probable natural disasters, adverse climatic phenomena, and catastrophic events” – ensures farm sustainability with respect to the explicitly identified risks. Favourable financial terms and clear legal regulations encourage farmers to take a new approach to active risk management in their agricultural activity, thus increasing their resilience to emergencies.

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