



Executive summary of the public audit report

MANAGEMENT OF PUBLIC LAND WHILE IMPLEMENTING THE PROGRAMME FOR THE MANAGEMENT OF PUBLIC LAND

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DEFINITIONS AND ABBREVIATIONS

SAI: Supreme Audit Institution

The Programme; Land Management and Administration Programme: a programme for land management and administration and spatial information infrastructure development

The Service: National Land Service under the Ministry of Agriculture of the Republic of Lithuania

EPNS (VSEP): economic projects of national significance

MA (ŽŪM): Ministry of Agriculture of the Republic of Lithuania

SUMMARY

One of the areas assigned to the Minister of Agriculture¹ is land management: land reform, land-use planning, geodesy, cartography, Cadastre of Real Estate, and state control of land use.

The implementation of the state policy in the fields such as land management and administration (including restoration of property rights to land and other land reform-related work), rational use of the land fund, geodesy, and cartography was entrusted to the National Land Service under the Ministry of Agriculture of the Republic of Lithuania.

As a public land agent, the Service manages approximately 869.3 thousand ha of land (244.3 thousand ha of registered public land, 625.0 thousand ha of unoccupied public land). Land (just as all State-owned assets) must be managed and used in accordance with the principles of public benefit, efficiency and rationality.

The state policy in this field is implemented via implementation of the Land Management and Administration Programme, for which the appropriations of 27,581.2 thousand euros were allocated in 2015.

The Land Management and Administration Programme was created to satisfy the need of the public, private persons and legal entities for the rational use of land and performance of economic activities while maintaining and improving the natural environment, natural and cultural heritage, protecting land ownership and rights of usage and management.

When implementing the programme measures, the Service performs the functions of the public land agent, makes decisions on recovery of citizens' ownership of land, selling or otherwise transferring land ownership or leasing public land to persons or entities, updates spatial data of unoccupied public land plots in both rural and urban areas, carries out the state control of land use, etc.

The audit was conducted to assess whether the state policy shaped and implemented in the field of land management and administration ensures proper management of the State property, i.e. land and money:

- by creating the Land Management and Administration Programme,
- by leasing public land or selling it by instalments,
- by exercising control over the use of land to make sure that the land is being used as intended,
- by purchasing the land reform land management project and other similar land plot plan preparation and implementation services.

The audit covered the year 2015. In some cases, data from the year 2014 and previous periods were used.

The following public audit conclusions and recommendations were drawn upon the assessment of the data collected during the audit.

The recommendations were issued to the Ministry of Agriculture and the National Land Service, and the plan for their implementation is presented in Annex 5.

¹Resolution No. 330 of the Government of the Republic of Lithuania on the Management Areas Assigned to Ministers, 24/03/2010.

CONCLUSIONS

The Supreme Audit Institution notes that land (being the State's assets with a maximum value) must be managed and used carefully. The public property is not a goal in itself. Instead, it should be used to maximize the benefits to the public. Unfortunately, in its strategic action plans, the Ministry of Agriculture that shapes the land management policy neither names the management of public land as a priority nor establishes most important work in the field.

1. As the only strategic planning document shaping the state policy in the field of land management, the Land Management and Administration Programme:
 - does not include the efficient management of such significant public property as land, focusing instead on restoration of property rights and transfer of land ownership. It does not provide any measures aimed at seeking direct benefit to the State through the use of the land, earning a more substantial income, and making better use of unoccupied public land. Also, there is no calculation of added value created while managing public land;
 - does not encourage the institutions shaping and implementing this policy to direct their activities towards all problematic areas of land management and administration, and does not assess the results achieved, thus preventing measurement of the efficiency of activities of these institutions;
 - does not promote quality changes, progress and satisfaction of public needs when carrying out the land management and administration functions,

does not promote the rational use of public land that could secure increase in the State income because the programme assessment criteria lack ambition and prevent measurement of the results of the whole programme and their impact.

2. The National Land Service neglected the public land control function assigned to it, because:
 - it failed to control information on all illegally used public land built up with buildings and structures not owned by the State, and carry out timely actions to discontinue or legalize illegal use of public land;
 - it failed to develop a systemic coordinated control in order to assess whether the land leased on preferential terms is being used as intended. In most cases, such control was only exercised after receiving complaints or certain information;
 - it failed to exert control over the use of the land leased for economic projects of national significance because it did not take active steps to invalidate the status of clearly discontinued projects and terminate public land lease agreements where the land was not used as intended,

as a result, the National Land Service failed to ensure a faster recovery of citizens' ownership of the illegally used public land or lease of the said public land via auction at a market price.

3. The legal framework established for the cases of leasing public land to make use of buildings and structures owned by private persons does not allow an objective and transparent use of public land in order to obtain maximum benefits for the public:
 - the criteria were not specified: what size a land plot should be to make use of a specific building or structure. As a result, the Service was entering into land lease agreements without having objectively assessed the required plot area, and land plots greatly varying in size were leased for similar buildings and structures.

- in the absence of clearly defined criteria allowing to assess the possibility of a new construction, the Service failed to assess the actual circumstances despite providing such a possibility in all cases of land lease agreements;
- there is no clear vision of the State as the owner of the land or what could be the most useful way of using the land, because the right to choose whether to buy or lease public land is left leaseholders themselves.

Having to pay a relatively small rental fee, building owners have no interest in purchasing the public land they use. As a result, not only does the State not receive any income from the sale of such land, but also bears the land administration costs not reimbursed by the income from leasing of this land.

4. Having leased land plots on preferential terms, leaseholders may use this public property both to make use of their buildings and to obtain additional income from this public property by transferring the lease right or constructing new buildings and selling them, thereby allowing private persons (even those not owning buildings on public land) to seize these land plots without properly paying to the State.

One such case happened in the "X" municipality: after preparing a detailed plan of transforming an unused boiler-house into recreation buildings, a private person sold a long-term preferential lease of public land at a market price (23.7 thousand euros/a). In the meantime, the Service does not control the leased land plot or terminate a land lease agreement concluded for exploitation of the now redundant building that has not been used for its intended purpose in the course of fifteen years.

5. When purchasing public land by instalments, not all buyers fully settle accounts with the State: the overall amount of their overdue debts, interest and penalties exceeds 14.5 million euros, part of which the State will not be able to recover. However, the Service has not even assessed the number of bad debts from the sale of the land. The actions to be performed by the Service when administering these debts must be strengthened, so that the State could receive payments for the land sold under the said agreements:
 - not all debt recovery opportunities are currently used because the Service fails to impose compulsory debt recovery measures in a timely manner;
 - the Service does not adequately address the matter of proper representation of the State's interests in cases of bankruptcy of persons or entities that purchased public land, but failed to fully settle accounts with the State: cases were discovered, where the State does not participate in debtors' bankruptcy proceedings, shows no interest in the progress of debtors' bankruptcy cases, unfavourable decisions are not appealed. In some cases the State did not even have information on bankruptcy cases;
 - obligations of all buyers were not secured by registering a compulsory mortgage specified by the Civil Code: so far, mortgages of 1,240 public land instalment sale agreements remain unregistered. As a result, the buyers, who failed to fully settle accounts with the State, are able to freely dispose of the land, selling or mortgaging it, and so on. If such buyer becomes bankrupt or insolvent, the State loses the opportunity to recover the outstanding amounts;
 - evaluation of buyers' solvency is not carried out. Also, there is no analysis of whether the buyer will be able to pay deposits and interest on the purchased land. To this day, legal disputes exist concerning default of payments or buyers' applications to reduce prices of land specified in agreements, buyers do not pay deposits, interest and penalties, which results in the State not receiving income and no longer owning the assets. According to the

National Land Service, the current legislation does not grant the Service the right or the obligation to check the solvency of natural persons and legal entities purchasing public land.

RECOMMENDATIONS

To the Ministry of Agriculture

In order to purposefully implement the state policy in the field of land management and administration for it to bring the greatest benefits to the public, the Ministry should set up ambitious programme assessment criteria allowing to evaluate the qualitative impact of the programme implementation, or whether public land is being used efficiently and rationally.

To the National Land Service

As the public land agent, the National Land Service should strive to perform its agent's functions as efficiently as possible, in particular through control of the leased public land, instalment sales of public land and administration of debts relating to such sales:

- establishing the procedures for informing persons and entities about the illegal use of public land, notifying them of administrative responsibility, application of such responsibility and collection of evidence required, which would allow speeding up discontinuation or legalization of illegal use of public land;
- deeming control over the use of public land designated for other uses leased on preferential terms a priority, with a particular focus on leased high value land plots in commercially attractive locations, etc. If cases of misuse of buildings and constructions on the land leased on preferential terms are discovered, taking action to terminate the land lease agreements and demolish unused buildings;
- checking whether the boiler-house on the leased public land plot in the "X" municipality is used for its intended purpose and taking action to terminate the land lease agreement;
- taking active interest in the progress of EPNS implemented on public land leased without an auction and, after discovering that the land is not used for the project implementation, notifying the Government and relevant ministry about the situation in order to make the decisions necessary to terminate the public land lease agreements;
- initiating (together with the Ministry) legislative amendments in order to establish the buyer solvency (financial status) assessment procedures, which conclusion of the public land instalment purchase and sale agreements and securing performance of obligations established therein would then depend on;
- determining specific terms and sequence (scheme) of detailed actions to be performed by territorial divisions if buyers fail to observe their contractual obligations, i.e. regarding sending promptings to debtors, termination of agreements, recovery of debts, mortgage registration and implementation of related rights, recognition of bad debts, and so on.