

Protection of Agricultural Lands in Poland

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SUMMARY

Agricultural lands are considered the major areas in the European Union countries. This results, first of all, from subsidies to the agricultural production implemented in all member states. The context of protection of agricultural lands in Poland is much wider. Directions of that protection are connected with both, legal regulations concerning lands, and individual farmers who use those lands. Protection of lands relies upon the necessity to get permissions for changes in lands destination in planning documentation, as well as to get the agreement for the real change from the agricultural into the non agricultural use of lands. Protection of individuals who administer agricultural lands is connected with determination of special, preferential rules of tax calculations for agricultural properties, development of a special system of retirement pension insurance, health insurance for farmers or the above system of subsidies to the agricultural production. Moreover, according to the act on development of the agricultural system, the trade in agricultural lands is the subject to special limitations. The paper presents methods and effects of protection of agricultural lands in Poland.

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1. INTRODUCTION

Issues concerning protection of agricultural and forest lands are mainly regulated in Poland by the Act on protection of agricultural and forest lands. Agricultural lands were for the first time covered by protection since January 1, 1972 after the Act on October 26, 1971 on protection of agricultural and forest lands and on re-cultivation of lands was issued. The present Act on protection of agricultural and forest lands has been binding since March 25, 1995. Protection of those lands is connected with the obligation to get permissions to change the destination of lands and to exclude them from the agricultural production in cases when investments are performed on agricultural lands. Protection of agricultural lands also includes the rules of calculation of taxes, preferential for farmers and regulated by the Act on the agricultural tax [Ustawa, 1984], as well as the rules of insurance - other than those applied for non-farmers - regulated by the Act on social insurance of farmers [Ustawa, 1990]. The issue of re-cultivation of agricultural lands has been also specially considered in those regulations.

As a result of those regulations agricultural lands, as well as individuals running farms, are also protected by the state. Subsidies to the agricultural production should be also mentioned as an additional factor which supports agriculture.

2. THE AGRICULTURAL TAX

In Poland, agricultural lands is the subject of soil classification, disclosed in the real estate cadastre. The type of paid tax depends on this classification introduced to the land cadastre. The agricultural land tax applies to lands classified as agricultural lands in the land and buildings register, with the exception of lands used for business activities other than farming.

In the case of lands classified as agricultural lands, the agricultural tax is paid by the real estate owner; the value of that tax depends on the land use, the soil class, the fiscal district and the size of the farm. The agricultural tax is based on the Act [Ustawa, 1984]:

1) for the lands of farms - the number of conversion hectares is determined basing on the size, the types and the classes of types of lands, resulting from the land and buildings register and from assigning a farm to a specified fiscal district - the tax value equals to the monetary value of 250 kg of *rye*.

A farm is considered as an area exceeding the size of 1 hectare or 1 conversion hectare, being the property or being in the possession of an individual, a legal entity or an organisational unit, including a company which is not a legal entity.

In the land and buildings register agricultural lands are considered as:

- 1) agricultural lands, including: arable lands - R,
orchards - S,
permanent meadows - Ł,
permanent pastures - Ps,
built-up agricultural lands - Br,
lands under ponds - Wsr,
lands under ditches - W,
lands covered by trees and bushes on agricultural lands - Lzr;
- 2) wastelands – N

The following soil classes are distinguished, depending on the agricultural land type:

I, II, III, IIIa, IIIb, IV, IVa, IVb, V, VI. VIz

Although wastelands belong to agricultural lands, they are not classified.

Other lands, which are not assigned to a soil class in the real estate cadastre, are the subject of the real state tax. Location of a real estate within rural areas does not mean that those lands are classified and are the subject of the agricultural tax. It depends on the definition of a farm and the definitions of built-up arable lands in the Law of geodesy and cartography [Ustawa, 1989] and administrative regulations, in particular, in the decree on the land and buildings register [Rozporządzenie, 2001], being the basis for the real estate cadastre in Poland.

3. Soil classification of lands and exclusion of lands from the agricultural production

Soil classification issues are defined in the decree on soil classification of lands of 2012 [Rozporządzenie, 2012]; however, binding soil classification maps were created basing on the decree of 1956 on land classification [Rozporządzenie, 1956]. At present, lands classification may be changed (classification differing from classification based on the decree of 1956) only when the following cases occur:

- 1) on lands which have not been classified yet;
- 2) on meliorated lands - after 3 years since construction of water melioration facilities;
- 3) on lands covered by land consolidation works;
- 4) on lands where modernisation of the land and buildings register or the temporary verification of the register data were ordered by the starost (the head of the district) - in the case when the land use is being changed in lands being the subject of classification;
- 5) after the occurrence of a natural disaster resulting in changes of the soil environment;
- 6) after forestation of lands according to regulations concerning the support for development of rural areas using funds from the European Agriculture Guidance and Guarantee Funds or basing on regulations concerning the support for rural areas using the European Agriculture Fund for the Development of Rural Areas.

The state control of unjustified changes of soil classes results from the Act on protection of agricultural and forest lands [Ustawa, 1995]; basing on that act, an investor willing to invest in business activities other than the agricultural production (or in building activities other than agricultural farming building operations) is obliged to make the financial contribution for exclusion of lands from the agricultural or forest production. Trying to avoid those payments, investors make attempt aiming at decreasing the soil class and order appropriate documents from a person who is authorised by the starost to perform such classification. Any legal regulations determining who is authorised to perform soil classification of lands do not exist in Poland since 2012; the starost is responsible for making the decision and authorising a person competent to perform such classification.

In the case when local spatial development plans are developed, which are the local law acts (binding within a municipality), destination of agricultural lands for non-agricultural or non-forest purposes are specified in those plans, which are developed according to the

procedure described in regulations concerning the spatial planning and development [Ustawa, 2003]. According to the act [Ustawa, 1995], in the case of agricultural lands being agricultural fields of classes I - III, the approval of the minister for rural areas development is required (with some exceptions, if they are met and the size of exclusion does not exceed 0.5 hectare). For forest areas being the property of the State Treasury - the approval of the minister of environmental protection, the natural resources and forestry or a person authorised by that minister. For other forest lands the approval of the marshal of the province is required; that decision is issued after collecting of an opinion of the agricultural chamber by the marshal.

Apart from local spatial development plans, the resolution of which is not binding in majority of areas, when changes of destination of agricultural or forest areas into urban areas are decided, the starost is the authorised body in *issues related to agricultural land protection* and the director of the regional State Forest Directorate is responsible in the case of issues related to forest areas. It does not concerns national parks where the park director is an authorised person.

The act on protection of agricultural and forest lands defines the agricultural lands in the following way:

- 1) lands specified as agricultural lands in the land register;
- 2) the lands under fish ponds and other water reservoirs serving exclusively for the needs of agriculture;
- 3) lands under dwellings, being elements of a farm and under other buildings and installations exclusively serving for the needs of agriculture and agriculture-and-food processing;
- 4) lands under buildings and installations directly used for the agricultural production recognised as a special section, according to regulations concerning the income tax from individual and the income tax from legal entities;
- 5) rural parks and lands under trees and bushes, including lands under wind protection belts and installations protecting against erosion;
- 6) allotments and botanic gardens;

- 7) lands under: water melioration installations, flood protection and fire protection installations, installations for water supplies, sewage disposal and sewage and waste treatment installations for the needs of agriculture and village inhabitants;
- 8) lands re-cultivated for the needs of agriculture;
- 9) peatlands and water bodies;
- 10) lands under access roads to agricultural lands.

The act says that exclusion of agricultural lands from the agricultural production may be performed after the decisions allowing for such exclusion is issued. The obligation to acquire the decision allowing for exclusion applies to agricultural lands developed on mineral and organic type soils, classified into I, II, III, IIIa, IIIb classes and agricultural fields of IV, IVa, IVb, V and VI, generated on organic type soils, as well as lands mentioned above and forest lands, intended for non-agricultural and non-forest purposes. The discussed decision specifies fees for exclusion of those lands, providing that issuing of that decision is not equivalent with exclusion of lands; it allows for such exclusion only.

Such decision is an annex to a building permit; as a result an investment which will not serve for the agricultural or forest production will be implemented on such lands. An investor, having the building permit and the decision allowing for exclusion of lands from production, is obliged to make the financial contribution for such exclusion since the moment of the real exclusion of lands from production, i.e. since the investment process was started. Commencement of the investment process is defined in the Building Law and it is considered as one of the following operations:

- 1) laying out the objects on the ground;
- 2) terrain levelling;
- 3) arrangement of a construction site including construction of temporary facilities;
- 4) making connections to the technical infrastructure network for the needs of building operations.

It is worth to add that the obligation to pay fees, and, in the case of forest lands, also a single compensation, does not concern exclusion of lands from the agricultural or forest production for the purposes of housing [Ustawa, 1995]:

- 1) up to 0.05 ha in the case of a single-family house;
- 2) up to 0.02 ha, for each premises, in the case of multi-family houses.

However, those regulations result in many cases of fraud, in particular in the case of small parcels intended for investment purposes. Such a solution generates problems in the real estate cadastre, since a typical building plot covers 0.10 ha approximately, and, due to release plots smaller than 0.5 ha from payments, real estate owners try to prove that they did not exclude more lands than that building plot; however, usually the entire building plot is excluded (accompanying facilities, such as a garage, a dump, a gazebo etc. which are located within the entire area of a building plot). Therefore, a real estate owner should contribute a double payment (including the penalty for exclusion performed without the permit for exclusion) for the remaining part of exclusion, for which the permitting decision has not been issued. At the same time, such cadastral objects are generated (e.g. a fragment of a classified field) which cause some difficulties in disclosing them in the real estate cadastre (due to small areas of classified agricultural lands between urban lands).

4. RE-CULTIVATION OF AGRICULTURAL AREAS

The Act on protection of agricultural and forest lands [Ustawa, 1995] also specifies obligations of re-cultivation (restoring the useful value of degraded agricultural or forest lands) to be met by a person responsible for the loss or limitation of the useful value of agricultural or forest lands. In such cases the legislator imposes high penalties when that obligation is not met.

When it is stated that lands were excluded from production without the decision permitting for such exclusion, the offender is charged a penalty of a doubled amount due. If it is determined that lands intended for non-agricultural or non-forest purposes in the local spatial development plan were excluded from the production without the decision authorising such exclusion, such a decision is officially issued and the amount due is increased by 10%.

5. SOCIAL INSURANCE OF FARMERS

The insurance of farmers is currently regulated by the Act of December 20, 1990 on the social insurance of farmers [Ustawa, 1990], but its prototype was resolved as early as in 1977

[Ustawa, 1977]. According to regulations specified in the Act of 1990, the social insurance of farmers covers the farmers and housemates working with the farmers, farmers' assistants having the Polish citizenship or authorised to work in the Republic of Poland. This insurance distinguishes the accident insurance, the health insurance, the maternity insurance, as well as the pension insurance.

In the case when the size of the farm does not exceed 50 hectares the monthly fee for the pension insurance for each insured person equals to 10% of the basic pension. In the case when the farm is bigger, fees are higher and they are equal to 12% (in the case of farms up to 100 hectares), 24% (in the case of farms up to 150 hectares), 36% (in the case of farms up to 300 hectares) and 48% for the farms bigger than 300 hectares. The average size of agricultural farms in Poland is presented in Table 1. In 2018 the average area of agricultural lands in farms in Poland equalled to 10.81 hectares [www.arimr.gov.pl]

Table. 1 The average area of agricultural lands in farms in particular provinces in 2018 [www.arimr.gov.pl]

The unit of the administrative division of the country	Average size of agricultural land on a farm in 2018 [ha]
Voivodeship dolnośląskie	16,72
Voivodeship kujawsko-pomorskie	16,14
Voivodeship lubelskie	7,86
Voivodeship lubuskie	21,52
Voivodeship łódzkie	7,84
Voivodeship małopolskie	4,10
Voivodeship mazowieckie	8,68
Voivodeship opolskie	18,69
Voivodeship podkarpackie	4,83
Voivodeship podlaskie	12,44
Voivodeship pomorskie	19,42
Voivodeship śląskie	7,85
Voivodeship świętokrzyskie	5,77
Voivodeship warmińsko-mazurskie	23,05

Voivodeship wielkopolskie	13,74
Voivodeship zachodniopomorskie	30,78

In the case of other fees it is worth to notice that when the size of the farm does not exceed 6 hectares, fees for the health insurance are paid by the State Treasury.

Considering the average area of farms in Poland those regulations result in insurance fees paid by the farmers which are even several times lower than in the case of individuals who do not run farms.

6. CONCLUDING REMARKS

To summarise it may be stated that:

- an investment performed on agricultural lands, which leads to the loss of agricultural production capabilities of lands is more expensive than an investment performed in urban areas, if excluded lands are the subject of fees for exclusion. In the case of soils of high soil classes or organic soils, fees are high and they considerably increase the costs on an investment process.
- exclusion of lands from the agricultural and forest production for the needs of housing requires the approval for exclusion, but areas released from those fees do not consider real area of parcels intended for housing.
- owners of real estates (in particular owners of real estates consisting of single-family houses) tend to recognise the lands they possess as agricultural lands, due to considerably lower agricultural tax than the alternative real estate tax; that is why provisions included in the real estate cadastre are highly important from the fiscal perspective; the tax is calculated depending on location of buildings are located on agricultural or on built-up areas in the real estate cadastre.
- important changes introduced in the Act on development of the agricultural system, which aim at limitation of real estate trading caused that agricultural real estates are considered by the Act as real estate bigger than 0.3 ha. In many operations, including land division and mortgage land division this provision leads real estate owners to

acquire areas smaller than 0.3 ha; this allows them to acquire a building plot of the relatively higher value and higher investment possibilities,

- Particular rules of insurance of farmers and the definition of a farm result in creation of "fictional" farms and "fictional" farmers which are created for the needs of acquiring lower insurance fees only.

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