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Analysis of selected legal methods of supporting the development and protection of agricultural land in Poland

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Abstract:

Supporting the development and protection of agricultural land in Europe takes place at many different levels. In Poland, such support is already implemented at the stage of spatial planning and urban design. The law regulations of spatial planning provide a special procedure, required when changing the use of agricultural land to other, non-agricultural purposes, or fees for changing the use of land, from agricultural to non-agricultural. The article presents the law regulations for changing the land destination for non-agricultural purposes, implemented at the municipal and central levels, including changes in the intended use of areas in local municipal plans and restrictions related to protection when issuing decisions on building conditions and land development.

Analysis of Selected Legal Methods of Supporting the Development and Protection of Agricultural Land in Poland (11366)

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1. Introduction

As we consider subsidies for agricultural production, we can observe that various forms of farmland protection—however indirect they may be—are found in every EU country. In Poland, this protection is much broader and it provides many interesting legal and technical tools apart from the above-mentioned subsidies for agricultural production. An important fact is that many of these mechanisms were introduced under communism in the previous century and they have survived until today with only small modifications. The protection mechanisms selected for discussion in this paper were designed to limit changing land destination into non-agricultural purposes for one thing, and to support farming for the other.

2. History of farmland protection in Poland

The first laws on protection of farmland and forests became binding in Poland on January 1, 1972.

- October 26, 1971, the Law on farm and forest land protection and land reclamation (Journal of Laws No. 27 item 249),
- March 26, 1982, the Law on farm and forest land protection and land reclamation (Journal of Laws No. 11 item 79),
- February 3, 1995, the Law on farm and forest land protection (Journal of Laws No. 16 item 78).

The principles of farm and forest land conversion evolved with the adoption of each new law. At the present moment, the Law of 1995 is in force. Each new legislation replaced the previous one although they all contained similar rules designed to limit the conversion of farm and forest land destination into purposes other than agriculture and forestry.

The obligation to pay the land conversion fee and related annual charges was introduced by the Law on protection of farm and forest land and land reclamation adopted on **October 26, 1971**.

This law linked the fee payment obligation not with the actual plots being set aside from production but with the very fact of acquiring a piece of farm or forest land whenever that land

was destined for purposes other than farming or forest use. The buyer of such land had to pay the conversion fee and related charges even if he has not yet made any change in the hitherto use of the land. This legal solution did not properly protect land against conversion because it allowed phasing out agricultural or forestry-type production in a purchased land for a relatively small charge.

The next Law on farm and forest land protection adopted on **March 26, 1982**, brought about a major modification of the mechanisms meant to provide a more rational protection of such land. This law, in the first place, introduced the institution of excluding land from agricultural and forest use. The introduction of monetary obligations in the form of one-off fee followed by annual charges was linked with the fact of excluding—by each stakeholder, not just the buyer—of a certain area from production defined as phasing out the hitherto use. At the same time, this law dramatically increased the amounts of charges due for the conversion of each single square metre of land area. This solution was intended to stop wanton and hasty setting aside of many large plots from their current use and to reduce such exclusions down to the absolutely necessary needs. The provisions of this law also explained that the basis for the calculation of the charge amounts was the combined value of production and environmental benefits which are lost after land conversion.

The Law on farm and forest land protection adopted on **February 3, 1995**, did not actually introduce any new solutions here. It only added precision to the concept of "excluding land from production" by stressing that exclusion consists in commencing a land use other than agricultural or forestry in a given plot and explained that the obligation to pay the fees and charges starts on the day of the land's exclusion from production. It also said that the land owner who gives up all or part of his earlier acquired right go ahead with land conversion within 2 years would be eligible for a refund of the paid charges proportionately to the area of his land which was not subject to conversion.

The provisions of the particular relevant laws are described in a clear way in Resolution of 7 Judges of the Supreme Administrative Court OPS 13/96, Feb. 3, 1997.

3. Current land protection rules

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Today, whoever wants to set aside some land for purposes other than farming or forest use is subject to the Law adopted in 1995 which defines two basic and important concepts:

- **destination of land for purposes other than farming or forestry**—construed as planning a land use other than farming or forest use in an agricultural plot and land use other than forestry in land under forest. This definition was adopted for the planning purposes because land use is being defined in the area development plans (MPZP).

- **exclusion of land from production**—construed as commencing land use other than farming or forestry. According to this law, a plot of land is not excluded from production if the intermission in its use for farming purposes is caused by a change of farm production type and takes not longer than 5 years.

Exclusion is the physical fact, not a legal status. No decision can exclude land from farm or forest production—it may only give a permission for a lawful exclusion.

Exclusion always takes place at the moment of commencing a land use other than farming or forestry. This may be legal after obtaining a decision permitting such exclusion, or it may be illegal. Anyone who commits illegal exclusion will have to pay the regular fees and charges as well as the law-prescribed fines.

District leader (*Starosta*) is the authority competent in matters related to arable land protection, while Head of the regional directorate of the State Forests is competent in matters related to the protection of land under forest, except for national parks for which the park's Manager is the appropriate authority.

Any allocation of farm and forest land to non-agricultural and non forest use which requires permission is shown in the local area development plan. A permission for such land conversion must be obtained in the course of building this plan. The investor must pay the due fees and charges right at the start of the investment process.

The exclusion from production of farmland with soils of mineral and organic origin which represent classes I, II, III, IIIa, IIIb and farmland representing classes IV, IVa, IVb, V and VI representing soils of organic origin, as well as areas which are:

- ✓ under fish ponds and other water reservoirs which serve solely agriculture-related purposes;
- ✓ under residential buildings being part of farmsteads and under other buildings and installations which serve solely agricultural production or farm-food processing;
- ✓ under buildings and installations directly used in agricultural production of special type in conformity with the respective personal income tax and corporate income tax law;
- ✓ under village parks, forest patches and field woods, in this, also areas under wind-stopping strips and anti-erosion protective installations;
- ✓ under family allotment gardens and botanical gardens;
- ✓ under installations which provide: irrigation and drainage, anti-flood, fire-protection, rural water supply, sewage, municipal water treatment and garbage disposal systems which serve local agriculture and population;
- ✓ areas reclaimed for agriculture;
- ✓ peatlands and ponds;
- ✓ under access roads leading to arable land,

and also land under forest which is destined for non-agricultural and non-forest use—may be done after issuing a decision which grants permission for such exclusion.

The decision is issued before granting a building permit or before a construction or building works is registered. The obtained decision is attached to the building permit application or to the registration of construction or building works.

The decision on exclusion from production of farmland with soils of mineral and organic soils representing classes I, II, III, IIIa, IIIb, includes a definition of obligations arising from the fact of exclusion.

The obligation to pay land conversion fees and charges motivates land owners to seek reduction of their soil classes so as to avoid financial cost. On top of that, there is the procedure of obtaining the decision on building conditions and the land development conditions decision (WZiZT).

Whenever there is no local area development plan (MPZP) in place (as it is not mandatory in Poland) the decision is granted. But the law says that obtaining this decision is possible if the area involved requires no permission for farmland's conversion to non-agricultural and non

forest use, that is, if it represents soil classes I, II, III, IIIa, IIIb of mineral or organic origin. This is just one more motivation for land owners to seek lower soil classes because—when there is no local area development plan in place—an investment process may be launched only and exclusively on the grounds of land development conditions decision (WZiZT), and this can be issued after fulfilling certain conditions, including the one described above.

A commenced investment process creates a *Bp* plot—undeveloped urbanised area or area under construction—*Bp*. According to the law, urbanised undeveloped areas or areas under construction include, *i.a.*, land on which unfinished construction has caused the plot's exclusion from agricultural or forest use.

The size of a *Bp* plot under the new legislation introduced on July 31, 2021, should match with the plot or area development plan produced by the designer and it should match with the construction project described in the Building Act. The *Bp* plot defined in this way should be disclosed in the real estate cadastre. The disclosure of a *Bp* plot in the cadastre creates new and much higher tax obligations on the side of the land owners. To have a *Bp* plot disclosed in the cadastre, a geodetic documentation must be produced. Until July 31, 2020, such documentation was made by a surveyor staking out a building object in the field and this—in line with the Building Act—automatically opened the investment process which, in turn, would create a *Bp* plot. Unfortunately, the law adopted on July 31, 2020, no longer required registration of the surveyor's staking out with the National Geodetic and Cartographic Resource as a surveying work which included the production of a basic trig data. This is why surveyors do not produce the basic trig data for the *Bp* plots as a result of their stake-out job. Thus, the sole source of information saying that a *Bp* plot was created is the documentation the land owner is supposed to submit within 30 days since the start of the investment process. However, land owners rarely take care to fulfil this obligation. As a result, the property tax (not the rural tax) is never collected until the end of the investment process when the surveyor comes to make his as-built survey of the finished building and produces the required documentation for the plot *B*—residential area or *Ba*—industrial area, or *Bi*—other developed area, depending on the given investment project type and on the building permit or on the registered construction. But it would be just sufficient for the law to put an obligation on construction supervisors to report

commenced investment process to the district leader (*Starosta*) who keeps the cadastre because the investors are anyhow obliged to report the commenced investment process to the construction supervisors and they duly fulfil this obligation. Such a minor modification of the law would keep the cadastre updated and would increase the municipal tax inflow.

4. Summary

The instruments of farm and forest land protection chosen for discussion in this paper have played their role for many years now. Their efficiency can be considered as sufficient. The described procedure of land conversion and its exclusion from agricultural production and, as a result, a change of the actual land use, is accompanied by a number of conditions and extra fees. This is why in practical life land with the best soils is seldom converted to non-agricultural purposes and development plans are usually located on lands with poorer soils which are less useful in agriculture. A problem identified in this paper is: registration of the way in which land is actually used during a transition phase between the time when it is still used for agricultural purposes and the end of conversion resulting from the finished investment project. Regulations governing this problem require further refinement and more precision.