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LEGAL ISSUES OF SPATIAL PLANNING IN AGRICULTURAL AREAS IN THE LIGHT OF THE AMENDMENT OF THE SPATIAL PLANNING AND DEVELOPMENT ACT OF 7 JULY 2023

Abstract

The author analyses the impact of the law reforming the spatial planning system on issues of shaping agricultural production space and, more broadly, on spatial management in rural areas. Passed on 7 July 2023, the Act represents the largest and most ambitious reform of the spatial planning system in at least 20 years. The new law introduces a number of provisions relating strictly to agricultural areas. The most significant change from this point of view is the expansion of the catalogue of values that must be taken into account by entities participating in spatial planning to include issues related to the shaping of agricultural production space and the development of agricultural production. The consequence of these changes will be an increase in the importance of agricultural space-shaping issues in the spatial planning process. The author also analyses other changes affecting agriculture, including, above all, a further extension of the protection of agricultural land from uncontrolled use for non-agricultural purposes.

KEYWORDS

spatial planning, rural areas, agriculture, agricultural land, agricultural land protection

SŁOWA KLUCZOWE

planowanie przestrzenne, obszary wiejskie, rolnictwo, obszary rolnicze, ochrona obszarów rolniczych

1. INTRODUCTION

Even a cursory review of the sources of law relating to economic activity leads to the conclusion that agriculture is of particular interest to the legislator. Both the farmer himself and the farm constituting a workshop of the farmer's work, as well as the agricultural activity understood as an activity connected with plant cultivation and breeding and rearing of animals[1] are subject to many legal regulations fundamentally different from those addressed to other types of economic activity. These regulations seek to pursue a variety of political, social and economic objectives. Of these objectives, the one that stands out is of course the implementation of the constitutional principle, according to which the basis of the agricultural system of the state is the family farm,[2] while an equally important factor determining the shape of legal regulations on agriculture is the implementation of the current agricultural policy of the state closely correlated, and in many aspects even subordinated to the implementation of the common agricultural policy of the European Union.[3] This special interest of the legislator in regulating issues

[1] Agricultural activity includes: all agricultural crops (including edible mushrooms), vegetable and horticulture, nursery, breeding and seeding of agricultural and horticultural plants, rearing and breeding of livestock, i.e.: cattle, sheep, goats, horses, pigs, poultry, bees, rabbits, other fur animals, wild animals kept on the farm for meat production (e.g. wild boar, roe deer, fallow deer) and bees, as well as the activity of maintaining agricultural land no longer used for production purposes in accordance with good agricultural and environmental conditions.

[2] Article 23 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No.78, item 483).

[3] The EU Common Agricultural Policy is primarily aimed at providing EU citizens with affordable, safe and high-quality food, guaranteeing a fair standard of living for farmers and protecting natural resources and the environment. The EU agricultural policy is divided into two pillars and covers three main areas of action: direct support (Pillar I), market measures (Pillar I) and rural development (Pillar II). The issue of spatial planning is precisely linked to rural development policy. Rural areas, which cover almost half of Europe, are home to around

related to agriculture undoubtedly results from the importance of this sector in the Polish economy and Polish socio-political reality. Indeed, attention should be paid to the characteristics of agriculture and rural areas in Poland. Rural areas and agricultural areas cover 85% and 52% of the country's area respectively. Rural areas are inhabited by approximately 15 million people – 38% of Poland's total population. A total of around 1.4 million farms are identified.[4] The unique challenges faced by agriculture must also be taken into account. These challenges can create uncertainty and unpredictability in the conduct of business in this sector. In addition to weather and climate pressures, farmers also face persistent market volatility due to unstable demand patterns and fluctuating prices.

As far as the classification of laws regulating agricultural issues according to the regulatory method of laws is concerned, there are mainly two categories: laws belonging to the public-law complex and laws belonging to private law (contained in the Civil Code itself or in other laws of a civil nature). In this regard, it is necessary to share the view expressed many years ago by A. Stelmachowski that the legal situation of the addressees of norms is, as a rule, determined by both categories of laws. For example, in particular, it is not the case that only restrictions of private law nature limit the right to property. In practice, restrictions of public law nature are also very important.[5] It is only by taking the restrictions of both private and public law nature together that the legal situation of the owner can be determined.[6]

There are also many laws which, while regulating issues not *strictly* related to agriculture, consider the specific problems and special nature of this type of activity. An example of such a regulation is precisely the title spatial planning regulated primarily by the provisions of the Spatial Planning and Development

20% of the EU's population. Most of these areas are disadvantaged regions in the EU, with a GDP per capita significantly lower than the EU average. EU rural development measures under the CAP help to: modernise farms by promoting the use of technology and innovation; boost rural development, e.g. by investing in connectivity and basic services; increase the competitiveness of the agricultural sector; protect the environment and mitigate climate change; enhance the vitality of rural communities; ensure generational turnover in agriculture. Rural development policy is a very important tool to support sustainable rural development and agriculture, including organic farming, in the EU. EU funding facilitates the modernisation of farms while encouraging diversification of activities in rural areas. In many respects, rural development policy is complemented by the EU's cohesion policy. It supports sustainable territorial development in particular. The policy consists of the European Regional Development Fund (ERDF) and the European Social Fund (ESF).

[4] https://www.gov.pl/web/wprpo2020/plan-strategiczny-dla-wpr-na-lata-2023-2027-wersja-pelna-22-i-wersja-skrocona-22

[5] For more information, see: F. Longchamps, Ograniczenia własności nieruchomości w polskim prawie administracyjnym, "Przegląd Prawa i Administracji" 1939, No. 1-2.

[6] A. Stelmachowski, *Treść i wykonywanie prawa własności, in: System Prawa Prywatnego, vol. 3: Prawo rzeczowe,* T. Dybowski (ed.), Warsaw 2007, p. 218.

Act.[7] In jurisprudence, attention has long been drawn to the specificity of shaping spatial policy in rural areas,[8] as well as to the specific needs related to the impact on the area structure of Polish agriculture.[9]

2. CHARACTERISTICS OF SPATIAL PLANNING

Spatial planning issues should not be considered by sectors, i.e. from the point of view of individual areas of the economy. This is because the spatial planning issues are horizontal – taking into account a very wide range of conditions, not only economic but also environmental and social. The predominant view in science is that of the need for an integrated approach to spatial planning, which involves the need to combine strategies, policies, plans and actions in such a way as to avoid the formulation of mutually contradictory policies. In practice, legal regulation in the field of spatial planning should create conditions for the broadest possible analysis of conditions in the planning process in order to eliminate contradictions. The indicated principle can also be considered through the prism of the purpose of the current regulation of the Spatial Planning and Development Act. The literature emphasises that this objective is not only to reconcile conflicting interests.[10] Viewed this way, the objective was often understood in a way that required the municipal authorities to take into account the expectations of all property owners. Thus, for example, if the municipal authorities agreed to rezone the land of one of the owners, they should also have agreed to rezone the land of other owners who expected this and who were in a similar legal situation. The effect of such an understanding of reconciling conflicting interests was a significant surplus of land provided in municipalities' spatial development studies (as well as in local plans and decisions on development conditions) for development purposes. Undoubtedly, such an approach was not favourable from the point of view of shaping agricultural productive space, and additionally generated the negative phenomenon of uncontrolled spillover of extensive residential and service development into agricultural areas. This caused numerous conflicts related to the mutual negative impact of agricultural, residential, and service functions,

[7] Act of 27 March 2003 on spatial planning and development, i.e. Journal of Laws 2023, item 977.

[8] See e.g., P. Czechowski, *Kształtowanie terenów budowlanych na obszarach wsi. Zagadnienia prawno-organizacyjne*, Warsaw 1980.

[9] See e.g., K. Marciniuk, *Prawne instrumenty ingerencji władzy publicznej w obrót nieruchomościami rolnymi jako środki kształtowania ustroju rolnego*, Białystok 2019.

[10] M. Szewczyk (in:) Z. Leoński, M. Szewczyk, M. Kruś, *Prawo zagospodarowania przestrzeni,* 2nd ed., Warsaw 2019, p. 200.

and additionally generated substantial costs related to the construction and maintenance of technical, road, and social infrastructure in these areas.

As it was noted by M. Szewczyk, pursuant to Article 1, paragraphs 3 and 4 of the Spatial Planning and Development Act, instead of the previous injunction to seek a compromise, the current wording of the Act introduces a directive to weigh conflicting interests, however not in an arbitrary manner, but on the basis of objective criteria based on the results of economic, environmental and social analyses preceding a given decision. The provisions of the following paragraphs of Article 1 of the Spatial Planning and Development Act introduced requirements to take into account in the studies, in particular, the development needs and possibilities of the municipalities resulting from the economic, environmental and social analyses, demographic forecasts, the possibilities of financing technical and social infrastructure by the municipality and the balance of land allocated for development.[11]

Without denying the special conditions and needs of agriculture,[12] it should be noted that also in rural areas, spatial planning is multifaceted. The changing role and importance of both agriculture and the countryside cannot be overlooked. On the one hand, although nowadays agricultural production contributes less and less to the creation of gross domestic product, to the employment of the population, and to household incomes, still more than half of the country's area is developed as agricultural land, and in some regions agricultural activity is the primary form of economic activity. From this point of view, the spatial development of rural areas is largely determined by agricultural development. On the other hand, rural areas, despite the lower intensity of land use in comparison to cities, perform, apart from agriculture and production, other functions – residential, services, environmental, cultural, and production (to the extent other than agricultural) – which may expose them to the occurrence of conflicting situations in spatial development. Therefore, taking into account the need for multi-functional development of rural areas, it is particularly important to take into account and weigh up the indicated multi-faceted conditions and functions when making decisions on spatial planning in these areas, including, first of all, the creation of spatial planning acts.[13]

[11] M. Szewczyk, *ibid*.

[12] This specificity is pointed out by P. Czechowski, A. Niewiadomski, *Obszary wiejskie a planowanie przestrzenne*, "Studia Iuridica Agraria" 2012, Vol. 10, pp. 227-238.

[13] For more information, see: *Nowe zadania planowania miejscowego w kształtowaniu i zagospodarowaniu przestrzennym obszarów wiejskich*, Z. Ziobrowski, J. Pijanowski (eds.), Kraków 2008.

3. SPATIAL PLANNING IN RURAL AREAS

The Spatial Planning and Development Act – in its previous wording – took into account the specificity of rural areas only to a limited extent. This approach was probably based on the assumption that planning regulations should focus primarily on areas subject to urbanisation processes. With regard to agricultural areas, the legislator's attention was primarily focused on protecting agricultural land from uncontrolled use for non-agricultural purposes and – to a small extent – on shaping the principles for the location of homestead and agricultural-production buildings. At the same time, it should be noted that the main part of the regulations on the protection of agricultural land is the subject of a completely separate law – i.e. the Law on the protection of agricultural and forestry land.[14] Also outside the scope of the Spatial Planning and Development Act, there are extremely important, from the point of view of shaping the agricultural production space, regulations concerning management and agricultural works, i.e. first of all, consolidation and exchange of agricultural land,[15] as well as land melioration.[16] In addition, which is worth emphasizing, a number of issues related to spatial planning in agricultural areas have been regulated in the so-called special laws enacted by the legislator in order to facilitate and accelerate the construction of certain types of technical and road infrastructure, as well as the implementation of housing investments.[17] Special legal conditions for the use of agricultural real estate also result from other regulations of an administrative-legal nature[18] relating to: construction law,[19] nature protection[20] and environmental protection,[21] which – in the most general terms – are aimed at protecting the farmland resource

[14] Act of 3 February 1995 on the protection of agricultural and forest land (consolidated text, Journal of Laws 2022, item 2409).

[15] Act of 26 March 1982 on land consolidation and exchange (consolidated text, Journal of Laws 2023, item 1197).

[16] Act of 20 July 2017 Water Law (consolidated text, Journal of Laws 2023, item 1478).

[17] For example Act of 10 April 2003 on special rules for the preparation and implementation of investments in the field of public roads (consolidated text, Journal of Laws 2023, item 162), Act of 24 July 2015 on the preparation and implementation of strategic investments in transmission networks (Journal of Laws 2023, item 1680, as amended), Act of 5 July 2018 on facilitations in the preparation and implementation of housing investments and accompanying investments (consolidated text, Journal of Laws 2021, item 1538, as amended).

[18] For more information, see: Z. Czarnik, *W sprawie pozaustawowych ograniczeń prawa własności*, "Casus" 2001, No. 1.

[19] Act of 7 July 1994 - Construction Law (consolidated text, Journal of Laws 2018, item 1202 as amended).

[20] Act of 16 April 2004 on nature protection (consolidated text, Journal of Laws 2018, item 1614).

[21] Act of 27 April 2001 - Environmental Protection Law (consolidated text, Journal of Laws 2018, item 799, as amended).

irrespective of the legal title of the entity in possession.[22] A consequence of such a dispersion of the regulations on spatial planning in rural areas is the relatively low importance of the regulations in this respect from the point of view of implementing the assumptions of agricultural policy with regard to shaping the area structure of Polish agriculture. In this context, the question arises to what extent this – in my opinion highly unsatisfactory – state of affairs will change with the entry into force of the most serious reform of the Polish spatial planning system in twenty years. On 24 September 2023, an extensive amendment to the Spatial Planning and Development Act[23] came into force, which also includes a number of changes relevant to agriculture.

4. THE PRINCIPLE OF SHAPING THE AGRICULTURAL PRODUCTIVE SPACE

Perhaps the most significant issue from the point of view of the considerations carried out here is the expansion of the catalogue of values that the legislator requires to be respected and protected when making decisions on spatial planning, including, above all, in the process of shaping and establishing spatial planning acts, as well as when issuing administrative acts on land development. Pursuant to Article 1(1)(a) of the Act of 7 July 2023 amending the Spatial Planning and Development Act, "the needs related to the formation of agricultural production space and the development of agricultural production" were added to the catalogue of these values. Consequently, the extension of the catalogue of values to be taken into account in spatial planning by the needs related to the development of agricultural production space will translate into the necessity to take these needs into account when drawing up the indicated analyses and, consequently, to take the amending act in question into account in the preparation of planning acts (both existing and new).

Moreover, the legislator's action consisting in the extension of the catalogue of values established in the Planning Act, which are to be – by virtue of the Act – taken into account in the spatial planning process, seems to be a rational and systemically correct solution. It should be noted that pursuant to the provision of Article 1(1)(2) of the Act on spatial planning, spatial order and sustainable development are the basis for the public authorities' actions in the matters of allocating land for specific purposes and establishing the principles of its development and

[22] A. Oleszko, (in:) *Prawo rolne,* 2009; B. Rakoczy, *Ochrona środowiska w procesie produkcji rolnej*, (in:) *Prawo rolne*, A. Stelmachowski (ed.), Warsaw 2009, p. 357 *et seq*.

[23] Act of 7 July 2023 amending the Act on spatial planning and development and certain other acts (consolidated text, Journal of Laws 2023, item 1688).

construction. This principle is of key importance when establishing all planning acts, including, in particular, the adoption of a study of the conditions and directions for the spatial development of a municipality, the adoption of local spatial development plans, as well as when making decisions in the form of administrative acts (decisions on land development conditions, decisions on the location of public purpose investments). This principle constitutes a substantive directive resolving in an unequivocal manner that the entire scope and manner of proceedings in the matter of allocating land for specific purposes and establishing the principles of its management must be aimed at shaping and protecting the spatial order and creating conditions for sustainable development. Consequently, the legislator unambiguously requires that all spatial planning activities should aim, first and foremost, at shaping the space in such a way as to create a harmonious whole and, moreover, take into account in orderly relations all functional, social, environmental, cultural and compositional and aesthetic conditions and requirements.

Equivalent to the principle of spatial order is the principle of sustainable development, which is understood as a socio-economic development in which political, economic, and social activities are integrated while maintaining the natural balance and sustainability of basic natural processes in order to guarantee the possibility of satisfying the basic needs of individual communities or citizens of both the present and future generations.

The guiding directive of spatial planning taking into account the principle of shaping spatial order and ensuring conditions for sustainable development is complemented by an extensive catalogue of values indicated in Article 1(2) of the Act on spatial planning, which according to the legislator must be taken into account in the spatial planning process. Without denying their importance, however, it should be pointed out that these values only supplement and, in some cases, clarify the prime directive. Moreover, it is in principle the rule that not all of the values listed in the indicated provision can be fully achieved in every case. However, they must be taken into account in each case and the authorities involved in the drafting of planning acts are obliged to weigh conflicting interests and values.

As already indicated, as a result of the amendment of the Spatial Planning and Development Act of 7 July 2023, the catalogue of these values explicitly includes issues related to both the shaping of agricultural production space and the creation of conditions for agricultural development. Thus, the legislator has already prescribed that the broadly defined interests of agriculture should be taken into account in the spatial planning process, although of course, it does not make this the guiding or dominant principle. The planning decisions must still, above all, implement the principle of spatial order and sustainable development, as well as take into account the other values listed in Article 1(2) of the Act, while implementing the principle of proportionality.

According to this principle developed by the jurisprudence and doctrine, the bodies creating local laws should use such means which are necessary to achieve

a socially useful objective with the least possible detriment (cost) to the individual whose rights will be violated in order to achieve this objective. In administrative jurisprudence, the view has become established that the consequence of the principle of proportionality in spatial planning and development is the necessity to demonstrate each time, when limiting rights and freedoms, that the protection of the environment cannot be ensured in another way and that in a given situation, the good of the environment and human health prevails over the private interest, and that the applied legal instruments provided for in the local plan are the least burdensome for the subject of the right or freedom. The essence of the municipality's planning authority includes, of course, the power to legally interfere in the sphere of the exercise of property right, but in the exercise of this power, the municipality is obliged to be guided by the public interest and to appropriately balance it against the private interest while taking into account the principle of proportionality and rationality in the perspective of the impact on the property right and environmental protection in accordance with the principle of sustainable development.[24]

Issues related to spatial planning in agricultural areas are also the subject of a number of specific amendments. They mainly concern the inclusion of agricultural and rural issues in the creation of new types of planning acts introduced on the basis of the amendment under discussion – municipal general plans.

Thus, in accordance with Article 13b pt. 3(q), the municipal authorities, in formulating the arrangements of the general plan, are to take into account the conditions of spatial development of the municipality, in particular, the agricultural land in the area of the municipality which is agricultural land of the I-III classes and forest land. Thus, the legislator has designated agricultural land of the highest quality classes as a special resource to be protected, which is fully correlated with the provisions of the aforementioned Act on the protection of agricultural and forest land, which covers this type of land with special protection against uncontrolled use for non-agricultural purposes.

5. ENHANCING PROTECTION OF AGRICULTURAL LAND

One of the means of preventing spatial conflicts arising more and more frequently as a result of the coexistence, mainly in the areas surrounding urban agglomerations, of the hitherto predominant agricultural production function with the residential, production, and service functions entering the area, is to be the designation in general plans of agricultural production zones. Pursuant to

[24] See, for example, the judgment of the Supreme Administrative Court of 14 March 2018, II OSK 1281/16, LEX No. 2469106.

Article 13c introduced into the Spatial Planning and Development Act, the area covered by the general plan shall be divided into planning zones in a separable manner. As a result of the division referred to in subsection 1, it is envisaged that municipalities may also designate separate agricultural production zones, in which the risk of the occurrence of the indicated conflicts will be excluded or significantly reduced, as agricultural activity is to be, as a rule, the exclusive use of the properties located in these zones.

The spatial planning system reform under discussion also introduces significant changes with respect to the application of the hitherto common, and in the case of many municipalities even dominant, spatial planning instrument, i.e. decisions on land development conditions. As it is known, according to the hitherto wording of the Act, such decisions may be issued, as a rule, anywhere where local development plans are not in force, provided that the prerequisites for issuing such a decision provided for in Article 61 of the Act on spatial development are met. Pursuant to the solutions introduced under the discussed amendment, the admissibility of issuing such decisions determining the possibility of making changes to land development will be limited only to areas explicitly indicated in the general plan as areas for complementary development. Such a solution will significantly limit the possibility of designating agricultural land for other purposes, as such changes will, as a rule, require the adoption of a local development plan. The method of delimiting the areas on which the possibility to issue development conditions decisions will be retained (i.e. the areas of complementary development), pursuant to the disposition of Article 13m(1) added to the Act, is to be established by way of a regulation by the minister in charge of construction, planning and spatial development and housing in agreement with the minister in charge of rural development. At the same time, the rationale for designating this area of supplementary development is to be based not only on the need to shape spatial order but also on the need for rational agricultural land management, including counteracting the occurrence of spatial conflicts and dispersion of development. Such a solution will force municipalities to look for planning solutions which, on the one hand, will enable new investments to be implemented on agricultural land but at the same time will not hinder agricultural activity. However, as it has been mentioned, after the amendment to the Spatial Planning and Development Act, such solutions are to be of exceptional character. The basic planning instrument is to be local spatial development plans.

The amended Act also changes the rules for making investments in agricultural land involving the construction of installations for the generation of energy from renewable sources. Pursuant to *Article 14(6a),* added as a result of the amendment under discussion, a change in land use concerning unmounted installations of renewable energy sources located: (a) on agricultural land of class I-III and forest land, (b) on agricultural land of class IV, with an installed electrical capacity of more than 150 kW or used for the business of electricity generation – shall be

made solely on the basis of a local plan. This equals the elimination of the possibility of realising such investments on the basis of decisions on development conditions. Such a solution is an expression of the legislator's intention to increase the protection of agricultural land from being used for non-agricultural purposes and, consequently, to aim at preserving the largest possible area of agricultural land in the country. The obvious consequence, however, is to hinder the implementation of investments involving renewable energy sources, which may be problematic from the point of view of the implementation of the energy transition and, in the longer term, the achievement of climate policy objectives.

The aspiration to strengthen the quantitative protection of agricultural land against urbanisation processes is also evident in the solutions concerning the simplified procedure for the adoption of a local spatial development plan introduced under the amended Act. This procedure was intended by the legislator to simplify and shorten the procedure of formal preparation of new investments, and thus to reduce investment barriers. Despite a very limited range of cases,[25] in which such a simplified procedure could be applied, such a solution should be welcomed. However, it should be noted that also in this case the legislator has given primacy to the quantitative protection of agricultural land. Pursuant to Article 27b paragraph 2 added by virtue of the amendment, the simplified procedure does not apply if the local plan or its amendment, referred to in paragraph 1, subparagraph 1 and 2, letters d-l, concern the use of agricultural and forest land for non-agricultural and non-forest purposes requiring the consent referred to in Article 7, paragraph 2, of the Act of 3 February 1995 on the protection of agricultural and forest land. This means that such a procedure will not be applicable to land of the best quality classes (i.e. land of classes I-III).

As a result of the amendment to the Act on spatial planning and development, the legislator introduces another interesting and completely new solution – the integrated investment plan. In the intention of the legislator, this document is a special form of a local plan. Its characteristic feature is a special mode of enactment. The legislator assumes that a draft of such a document will be developed by an investor interested in the realisation of a specific investment in a given area. Although the draft of such a document will obviously have to meet the formal requirements for a local plan and be consistent with the general plan, a private entity such as an investor will have a great deal of freedom in shaping the content of the document. Moreover, both the solutions adopted in the content of this document, as well as the content of the investor's obligations towards the municipality concerning outlays for the necessary technical infrastructure (utility networks), roads and social infrastructure (e.g. kindergartens, schools) will be subject to negotiations conducted between the investor and the municipality. The

[25] The scope of application of the simplified procedure for the adoption of the local plan is set out in Article 27b(1) of the amended Act on Planning and Spatial Development.

arrangements made during these negotiations are to be recorded in the form of an agreement concluded in the form of a notarial deed. The final decision as to the approval of the negotiated document, i.e. the adoption of the integrated investment plan, is to be taken by the municipal council, but it will not be able to introduce any changes to the project presented to it. If, however, the council decides that changes are necessary, it will be necessary to reopen negotiations with the investor regarding his obligations towards the municipality. This is, therefore, a very flexible and potentially very interesting solution which may accelerate and facilitate investment preparation procedures while securing the municipality's interests regarding the costs of constructing the relevant infrastructure. Even in this case, however, the legislator did not agree to limit the protection of agricultural land. Pursuant to Article 37ec, paragraph 2, introduced into the Act, the procedure for adopting the integrated investment plan retains the obligation to obtain consent for changing the purpose of agricultural and forest land for non-agricultural and non-forest purposes if required by separate provisions (i.e. in the case of agricultural land of class I-III). The competence to request such consent was left in the hands of the mayor.

6. OTHER RURAL PLANNING DEVELOPMENTS

The amended Act also contains a number of other specific solutions directly or indirectly concerning agricultural areas. For example, the amendment simplifies the rules for locating farm buildings intended exclusively for agricultural purposes within an existing farm by eliminating the requirement to provide access to a public road for newly constructed facilities of this type (Article 61(3)). However, another amendment concerning development within an agricultural holding goes in the opposite direction. Indeed, under the previous legislation, the issuance of a decision on development conditions for the homestead development was significantly simplified. In the case of this type of investment, in accordance with Article 61(4), the provisions of Article 61(1)(1) of the Spatial Planning and Development Act[26] rule do not apply to homestead development where the area of the farm associated with this development exceeds the average area of a farm in a given municipality. Farmers can, therefore, carry out homestead developments in

[26] Pursuant to Article 61(1) of the Planning and Spatial Development Act, the issuance of a decision on development conditions is possible only if at least one neighbouring plot, accessible from the same public road, is developed in a manner that allows for the determination of requirements for a new development in terms of continuation of parameters, features and indicators of development and land development, including the overall dimensions and architectural form of buildings, building lines and intensity of land use.

areas not covered by local plans without regard to the urban planning parameters of existing developments in the vicinity. This is undoubtedly an important entitlement, especially as in Polish reality local plans for agricultural areas have been adopted very rarely. However, the legislator noticed that in practice this entitlement was relatively often abused. There were cases in which a farmer applied for a decision on development conditions for an area not covered by a local plan, and after obtaining such a decision, using the entitlement arising from Article 63(5) of the Act demanded that the rights arising from such a decision be transferred to an entity which, according to the previous regulations, did not have to be a farmer. In this way, market participants sought to circumvent the provisions protecting agricultural land from conversion to other functions. As a consequence, the non-farmer acquired the right to develop the property by erecting structures on it only nominally constituting the residential facilities of the farm but in practice serving the housing (or economic) needs of persons in no way connected with the farm. Recognising this problem, the legislator limited the possibility of transferring the rights arising from decisions on development conditions issued pursuant to Article 61(4). Such decisions may be transferred to another person provided that the development will be part of that person's agricultural holding and that the area of that agricultural holding exceeds the average area of an agricultural holding in the municipality. In essence, the amendment is a housekeeping one and consists in clarifying the requirements in such a way as to fully maintain the previous intention of the legislator. In particular, this change is neutral from the point of view of the legal situation of a farmer who meets the prerequisites indicated in Article 61(4) in its hitherto wording.

One of the consequences of the discussed amendments to the Act on spatial planning and development is the liquidation of the institution of the study of land development conditions and directions. The subject matter of such documents is to be taken over by the already mentioned general plans. It should be noted, however, that the subject matter of general plans does not coincide with the content of studies of land development conditions and directions. The content of the general plan focuses primarily on determining the purpose (function) of the land. Only to a very limited extent is it supposed to include arrangements concerning the conditions for the development of a given municipality. Issues related to this are to be analysed and determined by the municipalities in strategic documents which are to be created in accordance with the requirements of the Act on municipal self-government.[27]

Pursuant to Article 10e, which, as a result of the entry into force of the Act of 7 July 2023, will be added to the Act on municipal self-government, it will constitute the basis for the preparation of the municipal development strategy.

[27] Act of 8 March 1990 on municipal self-government (consolidated text, Journal of Laws 2023, item 40 as amended).

The municipal development strategy will have to include the conclusions of the diagnosis prepared for the purposes of this strategy and, in particular, determine the findings and recommendations for shaping and conducting the spatial policy in the municipality concerning the principles of shaping the agricultural and forest production space. Such a solution introduces a directive to take into account strategic studies, which are to be the basis for the development of plans and the general principles of shaping the agricultural production space.

The discussed amendment to the Spatial Planning and Development Act also introduces significant changes to a number of other laws. In particular, it is worth noting the amendments to the Act on the protection of agricultural and forest land. As has already been mentioned, the amendment limits the possibility to issue decisions on development conditions only to the areas indicated in general development plans as development supplementation areas, thus very significantly limiting the possibility to use this planning tool. Perhaps it is precisely due to the limited scope and exceptional character that the decisions on development conditions will have as a result of the entry into force of the amending act. In such cases, the legislator decided to eliminate the necessity to obtain the consent of the Minister of Agriculture to change the designation of agricultural land for non-agricultural purposes, even in the case of land of the highest classes. The amendment in question changes the content of Article 7(2a) of the Act on the protection of agricultural and forest land. Pursuant to this provision, the designation for non-agricultural and non-forest purposes of agricultural land constituting agricultural land of the I-III class located in the area of complementary development within the meaning of the provisions on planning and spatial development does not require the consent of the minister competent for rural development. This change seems to be completely rational, especially that, as mentioned in the legislator's intention, the indicated areas of complementary development will be relatively small and, when delimiting them in general plans, the municipal councils will be obliged to take into account the needs of rational management of agricultural land, including prevention of spatial conflicts and uncontrolled dispersion of development. Other, less significant changes in the Law on the protection of agricultural and forest land serve to simplify and rationalise the procedure for obtaining consents for the change of use of agricultural land for non-agricultural purposes in cases where such consents will be required.[28]

[28] Article 7(3) of the Law on the protection of agricultural and forestry land sets a 60-day period for consenting or objecting to the use of certain land for non-agricultural and non-forest purposes, whereby failure to consent or refuse to consent within this period will be tantamount to consent. In addition, Article 7(5), on the basis of which the consenting authority could require the submission of an application in several variants showing different directions of the proposed spatial development, is repealed.

According to the wording of Article 22 of the Amendment Act, the Act on the formation of the agricultural system is also to be amended.[29] However, the main part of these changes is to enter into force only on 1 January 2026. Of these changes, perhaps the most significant is the extension of the scope of application of the Act to all agricultural properties located within the administrative boundaries of cities. This is a consequence of the repeal of Article 1b of the Act on formation of the agricultural system. Pursuant to that provision, limitations in trading in agricultural real estate resulting from the Act did not apply so far to agricultural real estate located within administrative borders of cities, if in relation to such real estate a resolution was adopted on determining the location of a housing investment or an accompanying investment within the meaning of the Act on facilitating the preparation and implementation of housing investments and accompanying investments[30] or if the sale of such agricultural real estate took place in order to implement a housing investment, or an accompanying investment within the meaning of the aforementioned Act. Resignation from this exception (i.e. restriction of the scope of application of the Act on shaping the agricultural system) is a consequence of the intention to repeal the Act on facilitating preparation and implementation of housing investments and accompanying investments as of 1 January 2026[31] (Housing Investment Act). By the way, it is worth explaining that the repeal of this Act is connected with the introduction of the already mentioned integrated investment plan, which, according to the legislator's intentions, is to replace the solutions contained in the repealed Housing Investment Act. Another consequence of the abandonment of the existing special solutions concerning the location of residential development is the repeal, also as of 1 January 2026, of Article 9a of the Act on the formation of the agricultural system, which constituted the basis for the acquisition by the National Support Centre for Agriculture (KOWR) of the ownership of an agricultural property located within the administrative borders of a city, which was acquired under the exceptions concerning the realisation of residential investments and subsequently such an investment was not completed. Such a change is, therefore, also an obvious consequence of the repeal of the said Housing Investment Act. The discussed amending act also introduces a number of housekeeping changes to the Act on the management of agricultural properties of the State Treasury,[32] as well as to the Act on suspension of the sale of the agricultural properties of the State Treas-

[29] Act of 11 April 2003 on the formation of the agricultural system (consolidated text, Journal of Laws 2022, item 2569, as amended).

[30] Act of 5 July 2018 on facilitations in the preparation and implementation of housing investments and accompanying investments (consolidated text, Journal of Laws 2021, item 1538, as amended).

[31] Article 45(6) of the Act of 7 July 2023 amending the Act on spatial planning and development and certain other acts (consolidated text, Journal of Laws 2023, item 1688).

[32] Act of 19 October 1991 on the management of agricultural properties of the State Treasury (consolidated text, Journal of Laws 2022, item 2329, as amended).

ury and Amendments to Certain Acts.[33] Those changes consist in correlating the terms used in those acts to the changes introduced in the Spatial Planning and Development Act – above all by replacing the references to the study of spatial development conditions and directions with references to a new institution, i.e. the general development plan of the municipality.

7. CONCLUSIONS

Summing up the discussion on the significance of the discussed amendment to the Act on spatial planning and development for the spatial management in rural areas, it should be noted that although the scope of the changes introduced is very broad, it concerns the issues of rural areas only to a small extent. Of the changes discussed, the most important one seems to be the extension of the catalogue of spatial planning principles, i.e. the extension of the catalogue of values which the legislator requires to be respected and protected when establishing spatial planning acts, as well as when issuing administrative acts concerning land development. Pursuant to Article 1(1)(a) of the Act of 7 July 2023 amending the Spatial Planning and Development Act, the needs related to the formation of agricultural production space and the development of agricultural production were added to the catalogue of these values. The consequence of these changes will be the increased importance of the issue of shaping agricultural space in the spatial planning process. Another important change is the strengthening of quantitative protection of agricultural land consisting in further restriction of the possibility of changing the designation of this land for non-agricultural purposes. Of course, the question may be asked to what extent such a solution has been dictated by concern for the development of agriculture, and to what extent it is a consequence of the rationalisation of urbanisation processes consisting in limiting the exponentially increasing economic, social and environmental costs of uncontrolled development spreading into poorly urbanised agricultural areas around large urban agglomerations, i.e. the so-called urban sprawl. Nevertheless, from the point of view of agricultural economy, the adopted solutions seem favourable, as they significantly reduce the risk of spatial conflicts resulting from the interpenetration (or direct neighbourhood) of farming activity and, for example, residential or recreational functions. However, the analysis of the discussed amendments to the Spatial Planning and Development Act does not change the general observation that, also after the amendment, the Law takes into account the specificity and needs of shaping the agricultural production space and more broadly – the rural

[33] Act of 14 April 2016 on suspension of the sale of the agricultural properties of the State Treasury and amendments to certain Acts (consolidated text, Journal of Laws 2022, item 507).

areas only to a small extent. In particular, issues related to the consolidation and exchange of agricultural land and the main part of issues related to the protection of agricultural land shall remain outside the scope of the Spatial Planning and Development Act. One can only regret that in the work on the most comprehensive reform of the spatial planning system in over twenty years, the legislator took so little account of the needs and specifics of agriculture. Such a profound reconstruction of the legal regulation on spatial planning created an opportunity to strengthen the impact on the reconstruction of the area structure of Polish agriculture also at the level of spatial planning.

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