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## **Analysis of Changes in Procedure of Designating Agricultural and Forest Lands for Investment Purposes\*\***

### **1. Introduction**

Agricultural and forest lands in Poland are subject to particular protection. *Agricultural and Forest Land Protection Act* clearly stipulates, that for the non-agricultural purposes may above all be intended lands which are defined as wastelands in Land Register, and in case of the lack of such – other lands of the lowest production suitability (art. 6 section 1).

The possibility of utilization of agricultural and forest lands for the investment purposes is associated both with the change in their purpose, as set forth in a local development plan, as well as with administrative proceedings which would allow their actual exclusion from production.

The amended *Agricultural and Forest Land Protection Act* [2] liberated the hitherto regulations as of 1 January 2009. The obligation of obtaining higher authorities' approval to designate agricultural and forest lands for investment purposes in local development plans were limited.

The following were concurrently excluded from the act regulations:

- agricultural and forest lands subject to decisions on determining the railway location (exclusive of a charge for and a one-off compensation for a premature felling of a tree stand in forest lands) – art. 5 of the act [2];
- agricultural and forest lands subject to decisions on road investment realization permit – art. 21 section 1 of *Particular Principles of Investment Projects Implementation in the Scope of Public Roads* (Journal of Laws of 2008 No. 193, item 1194 as amended);
- agricultural lands located within city corporate limits – art. 5b of the act [2].

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## 2. Designating Lands for Investment Purposes in a Local Development Plan

Designating agricultural and forest lands for non-agricultural and non-forest purposes is stipulated in a local development plan. The local plan, which defines a manner of land development and build-up considerations, is devised in accordance with a procedure specified in regulations of the *Act of 27 March 2003 on spatial development and planning* (Journal of Laws No. 80, item 717 as amended). A local Council makes a decision on proceeding with its elaboration by way of adopting a resolution, which is due to the fact that, according to the current legal regulations, the Councils are not obliged to devise the local plan, with the exception of as stipulated in special regulations.

The change in the purpose of the land may result from the property owner's application (taken into account in the course of plan elaboration procedure) or from realization of a specific spatial policy in a given commune. The Council makes a decision on designating agricultural or forest lands for investment purposes, however, in some cases, *Agricultural and Forest Land Protection Act* imposes an additional obligation of obtaining such an exclusion approval from competent administrative authorities (Tab. 1).

The local development plan, which results in a change in the purpose of agricultural and forest lands for non-agricultural and non-forest purposes, is devised within the area defined in a commune study of land use conditions and directions.

In case of agricultural and forest lands in a local development plan not being subject to investment purposes (e.g. housing development, services, industry), a change in their purpose is possible exclusively pursuant to plan amendment.

As it is presented in the table 1, as of 1 January 2009 a significant limitation of the land types which require permission for change in their purpose in a local development plan was introduced.

Granting approval for the change in the land purpose is carried out exclusively upon head of a commune (town mayor, president of the city)'s application. To the application regarding forest lands which remain the property of the State Treasury, the head of a commune (town mayor, president of the city) shall attach an opinion of the director of Regional Directorate of State Forests, and with reference to the national parks – park director's opinion.

Regarding the lands, the change in the purpose of which requires the minister's approval, the marshal of voivodship attaches their opinion and submits the application to a competent minister within 30 days from the date the application was submitted by the head of a commune (town mayor, president of the city).

**Table 1.** Authorities granting approval to change the purpose of the land in a local plan

Land types requiring permission for change in their purpose	The period from 24 March 1995 to 31 December 2005	The period from 1 January 2006 to 31 December 2008	Since 1 January 2009
Agricultural lands which are crop lands of I–III categories, if their contiguous area planned to be changed in its purpose exceeds 0.5 ha	Minister of Agriculture and Food	Minister of Agriculture and Food	Minister of Agriculture and Food (currently Minister of Agriculture and Rural Development)
Forest lands owned by State Treasury	Minister of the Environment, Natural Resources and Forestry or other person authorized by them	Minister of the Environment, Natural Resources and Forestry or other person authorized by them	Minister of the Environment, Natural Resources and Forestry (currently Minister of the Environment) or other person authorized by them
Agricultural lands which are crop lands of IV category, if their contiguous area planned to be changed in its purpose exceeds 1 ha	Voivode (from 31 May 2004 permission granted upon opinion of Chamber of Agriculture)	Marshal of voivodship (permission granted upon opinion of Chamber of Agriculture)	No permission required
Agricultural lands which are crop lands of V and VI categories, made from soil of organic origin or peat lands, if their contiguous area planned to be changed in its purpose exceeds 1 ha	Voivode (from 31 May 2004 permission granted upon opinion of Chamber of Agriculture)	Marshal of voivodship (permission granted upon opinion of Chamber of Agriculture)	No permission required
Other forest lands	Voivode (from 31 May 2004 permission granted upon opinion of Chamber of Agriculture)	Marshal of voivodship (permission granted upon opinion of Chamber of Agriculture)	Marshal of voivodship (permission granted upon opinion of Chamber of Agriculture)

The act does not specify a manner of granting permission for the change in the purpose of the land by public administration authorities defined in table 1. The matter, however, was ultimately resolved by article 46 section 4 clause 6a sub-clause c of the *Act of 27 April 2001 Environment Protection Law* (Journal of Laws of 2008 No. 25, item 150), which directly indicated a decision regarding granting approval for designating agricultural and forest lands for non-agricultural and non-forest purposes, with reference to *Agricultural and Forest Land Protection Act*.

However, in a situation when for a given location the development plan has not been devised, there is a possibility of changing the purpose of the land within the framework of planning permission. Pursuant to article 61 section 1 of the *Spatial and Development Planning Act of 27 March 2003*, the issuance of land development decision for the area utilized in accordance with the land register for the agricultural or forest purposes may occur exclusively upon joint fulfilment of special conditions regarding, but not limited to, confirmation that the land does not require gaining competent authorities' approval (Tab. 1) for changing the purpose of agricultural and forest lands for non-agricultural and non-forest purposes, or that it was subject to such an approval granted during the procedure of devising local development plans which are no longer valid. Therefore, pursuant to article 7 section 2 of *Agricultural and Forest Land Protection Act*, the change in their purpose for the lands which do not require an competent minister's or marshal of voivodship's approval may occur on the basis of a decision regarding the location of public utility investment or land development conditions, issued by the head of a commune, town mayor or president of the city.

Amended on 19 December 2008 the *Agricultural and Forest Land Protection Act* excluded agricultural lands utilized as crop lands located within city corporate limits from the effect of the act (art. 5b) as of 1 January 2009. Subject to legal privilege have remained the following lands: all forest lands and other agricultural lands (which are not crop lands) specified in art. 2 section 1 clauses 2–10 of this act, i.e. (non-exhaustive list) lands under fish ponds and other body of water, which serve exclusively for the agricultural purposes; under residential buildings which constitute parts of farms, as well as other buildings and appliances which serve exclusively for the agricultural purposes; under appliances for: water melioration, fire protection, flood protection, as well as rural parks and allotment gardens.

Therefore, the city commune at its own discretion is allowed to intend lands which are defined in the Land Register as crop lands for other purposes, both in the local development plan and in planning permissions.

### **3. Administrative Proceedings to Exclude Land from Agricultural Production or Forestry**

The next step in the process of changing the designation of agricultural and forest lands for investment purposes are the administrative proceedings to allow the de facto exclusion of land from production.

An application for an exclusion of a land from agricultural production or forestry may be submitted by the owner, perpetual lessee, owner-like possessor, manager, user, or tenant (article 4 section 4). Depending on the land type, the decision is issued by the district governor, director of the Regional Directorate of State Forests or the director of the National Park. Not all lands are subject to being excluded (Tab. 2), however, in any case when the land is intended for investment, an application must be submitted. Whether or not in a particular case it is necessary to issue a decision on exclusion is determined by an administrative authority. The amendment to *Agricultural and Forest Land Protection Act*, which entered into force on 1 January 2009 reduced the cases of an obligation to initiate administrative proceedings regarding the exclusion. The changes are presented in table 2.

**Table 2.** Changes in the scope of crop land types requiring a decision on exclusion

No.	Type of crop land	From 24 March 1995 to 31 December 2008	Since 1 January 2009
1	Crop lands composed of soil of mineral and organic origin, ranked as categories I, II, III, IIIa, IIIb, located outside city corporate limits	District governor's decision permitting the exclusion and determining the obligations regarding the exclusion	District governor's constitutive decision permitting the exclusion and determining the obligations regarding the exclusion.
2	Crop lands composed of soil of mineral and organic origin, ranked as categories I, II, III, IIIa, IIIb, located within city corporate limits	District governor's decision permitting the exclusion and determining the obligations regarding the exclusion	No decision required
3	Crop lands composed of soil of organic origin, ranked as categories IV, IVa, IVb, V i VI, located outside city corporate limits	District governor's decision permitting the exclusion and determining the obligations regarding the exclusion	District governor's declaratory decision permitting the exclusion
4	Crop lands composed of soil of organic origin, ranked as categories IV, IVa, IVb, V i VI, located within city corporate limits	District governor's decision permitting the exclusion and determining the obligations regarding the exclusion	No decision required
5	Crop lands composed of soil of mineral origin, ranked as categories IV, IVa, IVb, V i VI	No decision required; the possibility to cover the lands with protection subject to commune Council's resolution	No decision required
6	Agricultural lands referred to in art. 2 section 1 clauses 2–10 of the act	District governor's decision permitting the exclusion and determining the obligations regarding the exclusion	District governor's constitutive decision permitting the exclusion and determining the obligations regarding the exclusion

Table 2 cont.

7	Forest lands intended for non-agricultural and non-forest purposes	Decision of Director of Regional Directorate of State Forests, permitting the exclusion and determining the obligations regarding the exclusion	Constitutive decision of Director of Regional Directorate of State Forests permitting the exclusion and determining the obligations regarding the exclusion
8	Lands included in the territories of national parks, which require obtaining a decision on exclusion, specified as items 1, 3, 6 and 7 herein	Director's of national park decision, permitting the exclusion and determining the obligations regarding the exclusion	Director's of national park constitutive decision permitting the exclusion and determining the obligations regarding the exclusion

A decision on exclusion of a specific land from agricultural production should take place prior to obtaining a building permit. In case of lands set out as item 5 of the table, the district governor shall issue a certificate pursuant to the provisions of the *Code of Administrative Procedure*. The decision is not required if the agricultural land is to be used for forestry purposes. The documents necessary to submit to the competent authority on condition that the exclusion from agricultural production and forestry is to extract peat (article 11 section 5) have been specified separately.

The content of a decision authorizing the exclusion of land from production is:

- permission for exclusion,
- determining the obligation to pay charges as well as annual fees,
- determining other obligations, such as photos and making use of humus layer of the soil.

If the decision to exclude agricultural land or forests concerns lands temporarily excluded from production due to urgent interventions resulting from natural disasters or fortuitous events (article 8), it may be issued after the effective date of exclusion (article 11 section 3).

### 3.1. Encumbrances Resulting from Exclusion of Lands From Agricultural Production or Forestry

A person who has obtained a permission to exclude lands from agricultural production or forestry, is obliged to pay respective charges and annual fees. In case of the exclusion of forest lands, the person who received it is obliged to pay a one-off compensation if the person prematurely carries out felling of the tree stand. The payment obligation emerges on the day of factual exclusion of lands from production.

The charges resulting from the exclusion of lands from agricultural production or forestry are divided into:

- charges – it is a one-off payment due to the permanent exclusion of land from production;
- annual fees – they are payments due to non-agricultural or non-forest utilization of lands excluded from production amounting to 10% of charges, which are paid as follows:
  - for 10 years in the event of permanent exclusion,
  - in the event of non-permanent exclusion for the whole period of this exclusion, no longer, however, than 20 years after the exclusion of the land from production.

The amount of charge due for the exclusion from the production of 1 ha of agricultural land has been specified in article 12 section 7, 9 and 10 of *Agricultural and Forest Land Protection Act*. Since 1 January 2010 these values are specified in Polish zloties, and not in the equivalent of tons of rye grain. For example, the amount due for excluding 1 hectare of I category arable land equals 437.175 zloties, and for a V category meadow, it amounts to 145.725 zloties. The due amount for exclusion from the production of 1 ha of forest land without tree stand is specified in article 12 section 11 based on the equivalent price of 1 cubic meter of timber in the amount announced by the Central Statistical Office. The amount of due charges resulting from the permanent exclusion of land from production, is reduced by the value of the land, determined at real estate market prices applicable in a given location on the day of the factual exclusion of the land from production. Thus, if the value of the land exceeds the due amount to be charged, the charge equals 0 zloties.

In case of a land of protected category being subject to exclusion from production, upon making enquiries about head of the commune's opinion, the decision on exclusion may comprise an obligation to remove the humus layer of soil and use it for the purpose of improvement of land quality. In the event of default to fulfil this obligation, the person excluding the land from production is obliged to pay a charge in the amount specified on the date the decision on its size is made for every 1 cubic meter of inappropriately used humus layer of soil. Since 1 January 2010 these charges are specified in Polish zloties, and not in the equivalent of tons of rye grain, and they account for 291.45 zloties for I and II category soil of organic origin.

In the current *Agricultural and Forest Land Protection Act*, shelterwoods have been placed under special protection, as the charges and annual fees for exclusion forest lands from production in shelterwoods have been increased by 50%.

Deadlines for the payment of fees for exclusion are governed by article 12 section 13 and 14 of the *Agricultural and Forest Land Protection Act*. And so:

- the charge shall be paid within 60 days from the date on which the decision becomes final,
- the annual fee for a given year (amounting to 10% of the fixed charges) shall be paid before 30 June of each year, assuming:
  - in relation to agricultural lands, the amounts specified pursuant to article 12 section 7 of the *Agricultural and Forest Land Protection Act*;
  - in relation to forest lands, as the basis for determining, the price of 1 cubic meter of timber applied for tax assessment of forest land in a given year.

Charges, annual fees, fees resulting from the failure of fulfilling an obligation to remove the humus layer of soil and use it for the purpose of improvement of land quality as well as increased fees and annual fees are revenues of Agricultural Land Protection Fund.

The owner, who within two years resigns, in whole or in part, from the gained right to the exclusion of land from agricultural production or forestry, will be liable to receive a refund of the charges that he has paid, proportionally to the area of land not excluded from production. Reimbursement of the paid due amount shall be made within three months from the date of the submission of the waiver. In the event of sale of the land subject to the exclusion from production, the obligation to pay the charges and annual fees is conveyed upon the purchaser. The transferor is obliged to warn the purchaser about such an obligation (art. 12 section 3 and 4).

### 3.2. Possibilities of Reducing Fees

In its initial version, the *Agricultural and Forest Land Protection Act of 2 February 1995* did not take into account the possibility of remission of all or part of the charges and annual fees. On 29 June 1997 exclusions from agricultural production and forestry were introduced, with no fees for housing development, and discounts were allowed in the case of public investments designed to meet the local community needs, as mentioned in the act. In the course of the validity of the act, the competences of given authorities were changed several times, as presented in table 3 (on the interleaf). The latest amendment to the *Agricultural and Forest Land Protection Act*, which entered into force on 1 January 2010, extended the list of public purposes to all set out in article 6 of the *Act of August 21, 1997 on Real Estate Management* (Journal of Laws of 2004 No. 261, item 2603, as amended).



## 4. Summary

Analysis of changes in the provisions of the *Agricultural and Forest Land Protection Act* showed that the legislature seeks to narrow the catalogue of protected lands. Excluding from the effect of this act agricultural lands utilized as crop lands and located within the cities corporate limits seems to be a too far-reaching simplification. Due to a huge shortage in local development plans for urban areas, this may result in a chaotic build-up of green areas. It seems that the emphasis should be placed on spatial planning, since the existence of a local plan disciplines the build-up. However, exclusion of lands intended for linear investments (rail, roads) from the act seems to be a positive step for both the public and economic development at local and national levels.

## References

- [1] Radecki W.: *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz.* Wydawnictwo Difin, Warszawa 2009.
- [2] *Ustawa z dnia 3 lutego 1995 r. o ochronie gruntów rolnych i leśnych.* Dz. U. z 2004 r. Nr 121, poz. 1266 z późn. zm.

**Table 3.** Changes in competences of authorities and possibilities of reducing fees for exclusion of lands from agricultural production and forestry

Land designation	Condition of remission	Period of regulation	Applicant	Authority deciding about remission	Effect
Public utility investment in the scope of education and learning, culture, health protection and welfare, which serves to meet the needs of local community and regards the extension of or establishing a cemetery	-	From 24 March 1995 to 28 June 1997	-	-	-
	<ul style="list-style-type: none"> <li>- Investment realized by local government unit</li> <li>- Area of excluded land does not exceed 1 ha</li> <li>- There is no possibility to realize the investment on a land not being subject to protection</li> </ul>	From 29 June 1997 to 3 December 1998	Commune Council	Regional office manager – agricultural lands, director of Regional Directorate of State Forests – forest lands, national park territories – director of the national park	Remission of the total or part of charges and annual fees regarding forest lands, also one-off compensation in case of premature felling of forest
	-	From 1 January 1999 to 22 February 2000	Commune Council	District governor – agricultural lands, director of Regional Directorate of State Forests – forest lands, national park territories – director of the national park	-
Public utility investment in the scope of education and learning, culture, religious cult, health protection and welfare, if the investment serves to meet the needs of local community and regards the extension of or establishing a cemetery	<ul style="list-style-type: none"> <li>- Area of excluded land does not exceed 1 ha</li> <li>- There is no possibility to realize the investment on a land not being subject to protection</li> </ul>	From 23 February 2000 to 26 October 2002	Management of local government unit	Marshal of voivodship – agricultural lands, director of Regional Directorate of State Forests – forest lands, national park territories – director of the national park	-
-	-	Since 27 October 2002	Executive body of local government unit	-	-
Exclusion for the purpose of housing development	Area of excluded land is respectively: <ul style="list-style-type: none"> <li>- up to 0.05 ha in case of a single-family building</li> <li>- up to 0.02 ha, per each dwelling quarters in case of a multi-family building</li> </ul>	Since 29 June 1997	-	-	No obligation of payment of charges and annual fees
Investments aiming at reaching goals stipulated in art. 6 of <i>Real Estate Management Act of 21st August 1997</i> , intended for purposes other than these set out above	<ul style="list-style-type: none"> <li>- Area of excluded land does not exceed 1 ha</li> <li>- There is no possibility to realize the investment on a land not being subject to protection</li> </ul>	Since 1 January 2010	Executive body of local government unit	Marshal of voivodship	Remission of the total or part of charges and annual fees regarding agricultural lands