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## CONVERSION OF AGRICULTURAL LAND INTO NON-AGRICULTURAL LAND IN POLAND

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**ABSTRACT:** The main aim of the work is to present legal procedures related to the transformation of agricultural land into non-agricultural land in Poland. Based on the analysis of selected legal regulations, activities and steps to be taken to start non-agricultural land use have been described. Both stages related to the transformation, i.e. change of land use and exclusion of land from agricultural production, have been extensively discussed. Interpretation of selected legal regulations made it possible to organize information on the procedure for transforming agricultural land into non-agricultural purposes. Moreover, on the basis of selected statistical data, the legal aspect has been supplemented with information on the current level of conversion of agricultural land in Poland.

**KEY WORDS:** agricultural land, change, destination

## Introduction

It is not easy to analyze the legal aspects of the conversion of agricultural land into non-agricultural land. This is due to the continuity of changes that have occurred over the last few years in Polish law, which takes into account the change in the destination of real estate. Not without significance is also the issue of implementation of these new provisions of law by the authorities applying them, which can be problematic, especially when taking into account the undoubted need to interpret the changing regulations. They are often subject to uneven interpretation, which may have (also negative) impact on the legal situation of an entity which is the owner of real estate intended for construction purposes because as we know *scire leges non hoc est verba earum tenere, sed vim ac potentatem*.

It is important to note that rational agricultural land management is a key issue in the context of the principle of sustainable development, which has been given the status of a fundamental right in Poland. In accordance with Article 5 of the Polish Constitution: "The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development" (<https://www.sejm.gov.pl>; <https://www.gov.pl/web/rozwoj/zrownowazony-rozwoj>). The definition of sustainable development is regulated by the Environmental Protection Law. In accordance with Article 2 point 50 sustainable development is such a socio-economic development in which political, social and economic activities are integrated to protect the environment and secure the opportunity to meet the basic needs of present and future generations. It should be emphasized that land use significantly affects social and economic development as well as the quality of life of people. Planning the structure of land use in Poland is faced with a number of challenges, the main ones include the development of suburban areas, which is associated with an increase in demand for new infrastructure and functions that often cause conflicts with existing forms of land use; tendencies to distraction and depopulation in some rural communes or the small-area and fragmented individual agricultural farms (OECD, 2018).

It should also be noted that the indicators of the transformation of agricultural land in Poland are among the highest in Europe (Ustaoglu, Williams, 2017).

Therefore, the priority aim of this work is to present legal procedures related to the transformation of agricultural land into non-agricultural land in Poland. This study focuses on emphasizing the importance of the Act of 3

February 1995 on the Protection of Agricultural and Forestry Lands (Journal of Laws No. 16 item 78, as amended, with the latest amendment dated 26 May 2017, Journal of Laws 2017 item 1161) concerning the possibility of transforming land and agricultural real estate for non-agricultural purposes in Poland. The first part of the work presents the location of the process of transforming agricultural land for non-agricultural purposes in the general investment process. The procedures necessary for (colloquially speaking) “land reclamation” were also traced, including the change of land use for non-agricultural purposes, as well as the related exclusion of land from agricultural production. Moreover, legal aspects have been supplemented with statistical data illustrating the level of conversion of agricultural land in Poland.

### Conversion of agricultural land into non-agricultural land as part of the investment process

As it is commonly known, an investor generally cannot independently (through an actual action) start using his land or agricultural real estate in a manner different from its intended use. It is not only illegal but also sanctioned by the state through restrictions of a financial nature, which will be discussed later in this article.

There is no doubt that an investor wishing to act by the law must undergo appropriate procedures (if required) before the commencement of non-agricultural land use. The proceedings related to the transformation of agricultural land for non-agricultural purposes consist basically of two stages, which are part of the broadly understood investment proceedings.

As already mentioned, the change of land use for non-agricultural purposes is, in most cases carried out in two stages. The first stage is the change of land use (within the local spatial development plan – in short also the LSDP or the relevant location decision), while the second stage is the exclusion of land from agricultural production.

The process of conversion of agricultural land into non-agricultural land is based on several legal acts such as Act of 3 February 1995 on the protection of agricultural and forestry land, Act of 27 March 2003 on spatial planning and development (Journal of Laws No. 80, item 717, as amended), Act of 14 June 1960 on the Code of Administrative Procedure (Journal of Laws No. 30, item 168, as amended), Regulation of the Minister of Infrastructure of 26 August 2003 on the method of determining the requirements for new development and land use in the absence of a local spatial development plan (Journal of Laws No. 164, item 1588) and Regulation of the Minister of Infrastruc-

ture of 26 August 2003 on the required scope of the local spatial development plan project (Journal of Laws No. 164, item 1587).

Only by taking into account all the above regulations will it be possible to effectively trace the process of transformation of agricultural land into non-agricultural land in Poland. It should also not be forgotten that the main objective of the above-mentioned regulations is to regulate land-use changes, i.e. to limit the determination of other than agricultural use of agricultural land (Strzelczyk, 2019, p. 126). Therefore, frequently decisions taken in the process of “de-agriculturalization” of soil have a negative character.

### Agricultural land – a subject to conversion

As already mentioned, the ‘de-agriculturalization’ procedure is another way of converting agricultural land into non-agricultural land. It is a statutory rule (Article 6 of the Act on Protection of Agricultural and Forestry Lands) that land designated in the land register as wasteland should be used for non-agricultural purposes, and in case of lack of such land – another land of the lowest production utility.

Therefore, it seems crucial for the procedure of agricultural land transformation to define these lands for statutory purposes (Nowak, 2014, p. 19), and thus also related to the change of their destination. Particular doubts may arise in connection with the scope of the concept of agricultural land.

The type of land considered to be agricultural is located in article 2(1) of Act of 3 February 1995 on the protection of agricultural and forestry land.

It should be remembered that the real estate on which the construction of facilities classified as agricultural structures is planned does not lose its character of “agricultural land” or “agricultural use” (National Administrative Court (Supreme Administrative Court (NSA) decision in Warsaw, 2012, II OW 65/12). Also, the land occupied for access roads to agricultural land remains agricultural land, and if occupied for such a road, it is considered that in such a case it is not excluded from agricultural production (Regional Administrative Court (WSA) ruling in Łódź, 2018, II SA/Łd 140/18).

In conclusion, the concept of agricultural land itself is usually linked to the land register. A given land is an agricultural use where it is entered as such in the land register (Małyśa, 2003, pp. 24-25). However, it should be noted that not only land entered in the land register as agricultural is considered as such by the legislator. A proper interpretation of this provision leads to the conclusion that also land which is not specified as agricultural land in the land register may be agricultural land within the meaning of the Act, such as ponds – Article 2, paragraph 1, point 11 of the Act on the protection of

agricultural land and forest land (Regional Administrative Court ruling in Kraków, 2010, II SA/Kr 816/10).

### Land-use change – the first stage of transformation

The first step in converting agricultural land into non-agricultural land is to change its use. It is carried out at the municipal level under the so-called planning procedure. It consists in adopting (or changing) a local spatial development plan (in short: LSDP) within the planning authority of the commune, where private persons are allowed to participate in the procedure if they own (or intend to buy) land properties in the area covered by the plan.

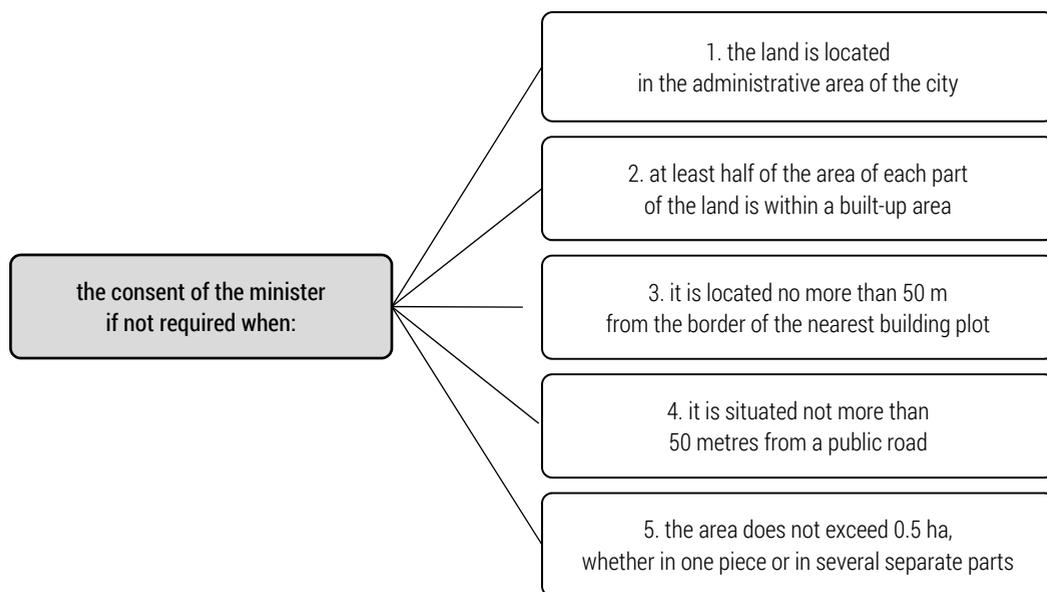
The key element to be discussed is precisely this “change of land use”. Therefore, within the planning authority, the commune authorities may change the designation of any area, taking into account both the interests of the owner protected by the Constitution (Tomaszewska, 2017, p. 35) and the provisions of the study of conditions and directions of the spatial development of the commune. Establishing the plan cannot lead to modification of directions and indicators of spatial development or exclude such development (Regional Administrative Court ruling in Wrocław, 2013, II SA/Wr 886/12).

It should be noted here that the seemingly unrestricted planning authority of the commune experiences further restrictions also in the case of changes in the destination of agricultural land of high class. In this case, only the will of the commune authorities is not sufficient to change their destination (as it is the case with land in classes IV-VI). The consent of the minister in charge of rural development (acting as an agricultural land protection authority) is also necessary when the allocation of agricultural land in categories I to III, i.e. the highest land classification classes available in Poland, is changed. Thus, the possibility of any transformation of land subject to special protection is secured due to its high usefulness in agriculture.

The role of the state (in the discussed case acting through the minister) is to protect agricultural and forest land and to enable their best use. Legal protection of land aims at counteracting the contraction of agricultural resources by introducing, on the one hand, procedures conducive to effective use of land and, on the other hand, limiting exclusion from agricultural use of soils of particular cultivable value (Panek, 2018, p. 4). Agricultural land is an example of a specific category of goods, used in almost all areas of human activity. The progressive development of civilization, including industrial development, but also the increase in the population, contributes to a continuous increase in demand for this type of good. Research indicates that the land flow between particular economic sectors is most often one-way in

nature, i.e. land changes its use from agricultural to non-agricultural purposes, while land reclamation is extremely rare (Górska, Michna, 2010, p. 58).

However, the minister's consent to a change in the use of land of a higher category is not required in all cases. The Act on the protection of agricultural and forestry land also provides for exceptions to the need for an appropriate agreement (figure 1).



**Figure 1.** The omission of the Minister's consent to the transformation

Source: author's own work based on art. 7 of the act of 3 February 1995 on the protection of agricultural and forestry land.

In relation to the above drawing, it should be pointed out that the premise from point 1 is of an independent nature, i.e. the mere statement that the land lies within the administrative boundaries of the city means that it does not need to undergo the transformation procedure (the mere subsequent exclusion of the land from agricultural production is sufficient). However, the conditions from points 2 to 5 must be met jointly so that the executive body of the commune can disregard the agreement procedure for the highest class land when drawing up the LSDP. For a fuller understanding of the above conditions, the notion of "compact development" referred to in point 2 should also be understood as a grouping of no less than 5 buildings, except for buildings with a purely economic function, where the greatest distance between adjacent buildings does not exceed 100 meters (judgment of the Regional Administrative Court in Rzeszów, 2017, II SA/Rz 312/17).

The procedure of adopting local spatial development plans in Poland is regulated by the provisions of the Act of 27 March 2003 on spatial planning and development (Journal of Laws No. 80, item 717, as amended). This results in several circumstances that are important from transformations. It should be remembered that the adoption or change of the LSDP may take place at the request of the investor addressed to the head of the commune (mayor of the city) or ex officio by the executive body of the commune.

As an introduction, it should be noted that when examining the application for a plan, the mayor takes into account the legitimacy of introducing changes to the LSDP in terms of its compliance with the study of conditions and directions of the spatial development of the commune and prepares appropriate documentation (surveying, and financial). If the investor's request is accepted, the mayor shall submit the request to the commune council to adopt a resolution to proceed with the adoption/amendment of the local spatial development plan in force. Importantly, the motion to adopt the plan is exempt from any fees.

As follows from the provisions of the Act on spatial planning and development, the procedure of adopting and amending the LSDP in at least a few places (in its initial and final part) requires that the authorities conducting it consult the matter being developed at a given moment with representatives of the society, i.e. de facto owners or investors of land covered by the future plan. This is also of considerable importance in the context of land-use change for non-agricultural purposes.

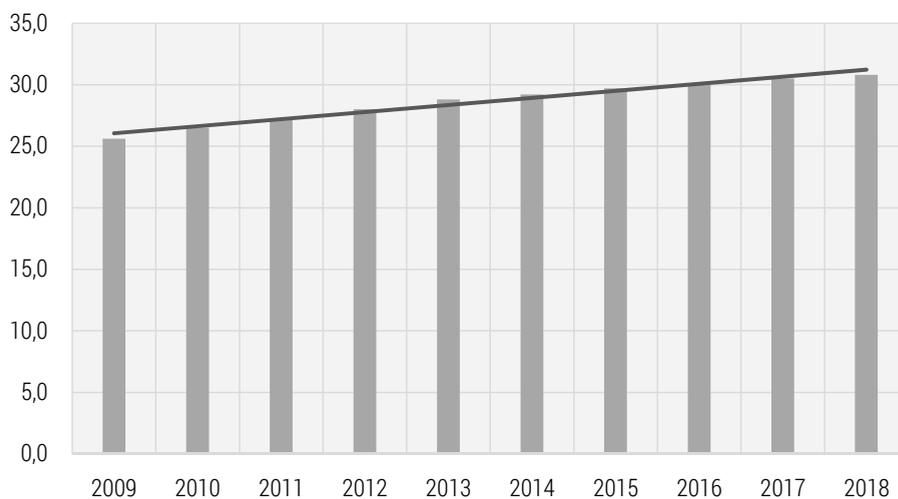
From the very beginning, when the plan does not even have a project form yet, all interested parties (i.e. owners, users, but also third parties) can comment on the future use of the land. Even after agreements have been made (e.g. with the minister in charge of rural development), the public may express their opinion on a ready-made draft plan and express their possible dissatisfaction. This is also the last moment to introduce changes to the plan. An extremely important element is also the possibility to appeal the ready plan to the locally competent Regional Administrative Court, which assesses the procedure and substance of the LSDP from its compliance with generally applicable law (Szustakiewicz et al., 2016).

Confirmation of the above also results from the practice of law. The Supreme Administrative Court in Warsaw in one of its judicatures stated, inter alia, that entities actually interested (positively or negatively) in the change of agricultural land use for non-agricultural purposes, before the commune applies for permission, may express their intention with regard to the use of real estate by submitting planning applications to the commune. (...) Only when the commune council adopts a resolution adopting the local spatial development plan, pursuant to Article 101 paragraph 1 of 15 Septem-

ber 2017 (Journal of Laws of 2017, item 1875), the owners (perpetual usufructuaries) of real estates included in the plan will have the right to file a complaint with the administrative court against this resolution (judgment of the Supreme Administrative Court in Warsaw, 2017, II OSK 2279/15).

It is well known, however, that the local spatial development plan is not an obligatory document. The lack of a statutory obligation for Polish municipalities to draw up local plans translates into the state of their coverage.

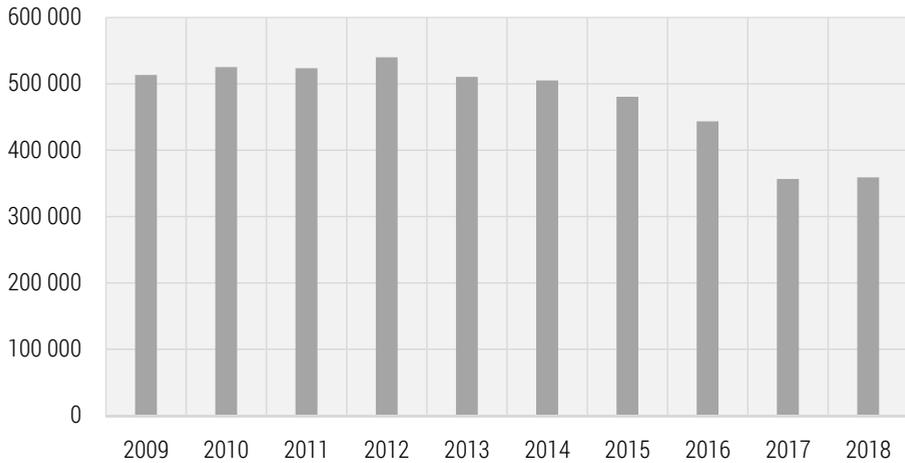
Referring to statistical data (the Local Data Bank of the Central Statistical Office), a systematic increase in the coverage of the country with the local spatial development plans in force can be observed. In 2009, the share of the area covered by the local spatial development plans in the total area was 25.6%, in 2013 – 28.8%, and in 2018 – 30.8% (figure 2).



**Figure 2.** Share of the area covered by current local spatial development plans in the total area of Poland [%]

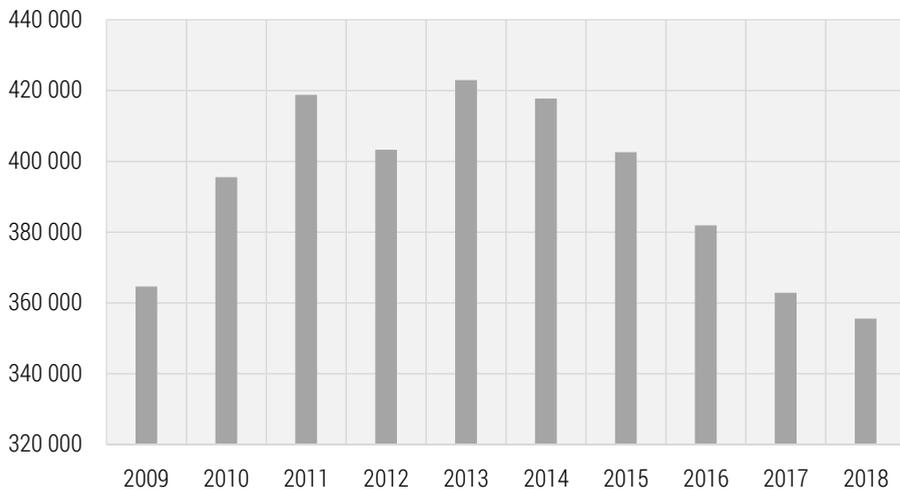
Source: author's own work based on data from the Central Statistical Office.

In addition to planning coverage, it is also worth paying attention to the total area of agricultural land, which were designated in plans for non-agricultural purposes (figure 3) and area of land indicated in the study of conditions and directions of spatial management requiring to change the designation of agricultural land for non-agricultural purposes (figure 4).



**Figure 3.** The total area of agricultural land, which was designated in plans for non-agricultural purposes [ha]

Source: author's work based on data from the Central Statistical Office.



**Figure 4.** Area of land indicated in the study requiring to change the designation of agricultural land for non-agricultural purposes [ha]

Source: author's work based on data from the Central Statistical Office.

Based on statistical data (figures 3 and 4), one can notice a significant decrease in both the area of land indicated in the study requiring to change the designation of agricultural land for non-agricultural purposes, as well as the decrease in the area of agricultural land for which non-agricultural purposes were changed in local plans.

Despite the growing trend, management of modern space-based on local plans takes place only in 30% of Poland's territory, in other areas the basis for spatial planning are the so-called decisions on zoning and development conditions, which can be divided into decisions on zoning conditions and decisions on determining the location of public purpose investments – concerning only the objectives referred to in Article 6 of the Act of August 21, 1997 on real estate management (Journal of Laws of 2015, item 782 with amendments). The number of decisions issued in recent years is shown in figures 5 and 6. It is worth noting that the number of decisions on zoning conditions systematically decreased until 2015, after which it increased to over 146 thousand in 2018. Importantly, most of the decisions on zoning conditions in 2018 concerned single-family housing (figure 7). In the case of the decision on determining the location of public purpose investments, their number increased in the analyzed period, in 2018 over 28 thousand were spent, which may indicate increased investment activities in Poland.

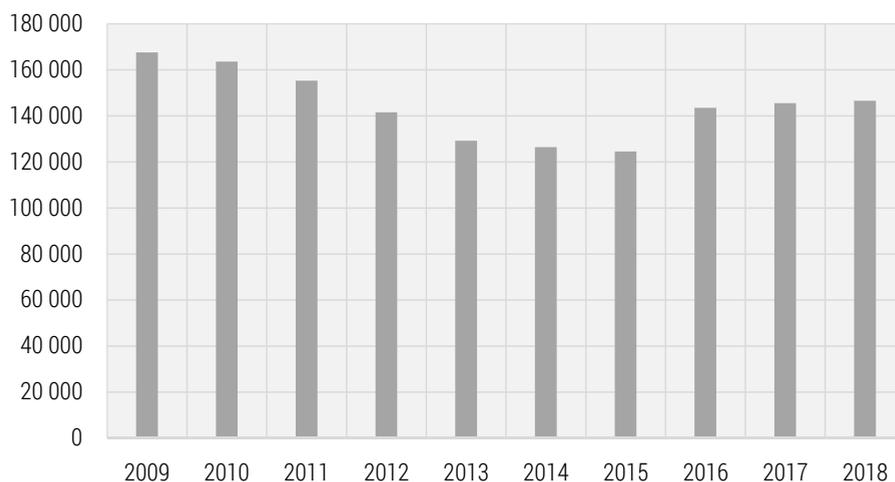
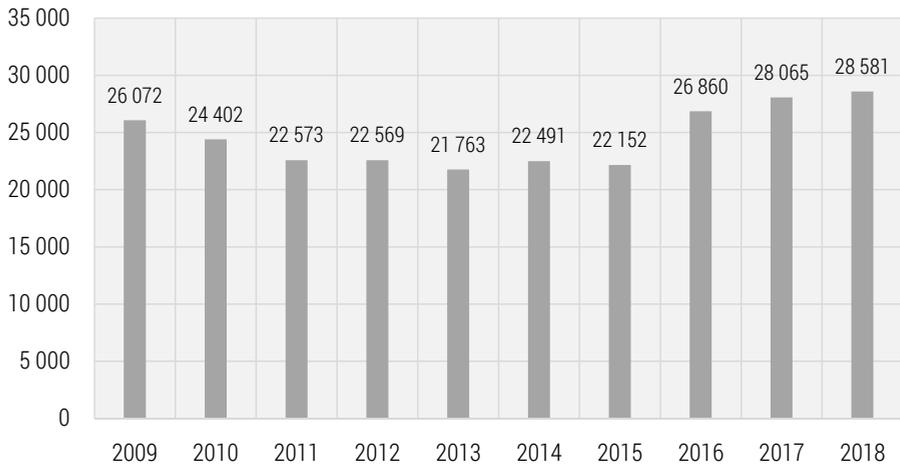


Figure 5. Land development decisions total

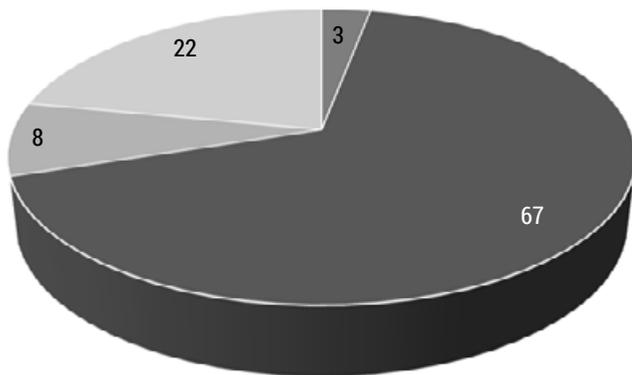
Source: author's work based on data from the Central Statistical Office.

Due to the subject of considerations undertaken within the framework of this work, special attention must be paid to the decision on zoning conditions (also: development conditions) – because it is a measure to change the purpose of land use in the absence of a local spatial development plan. The basic principles of its issuance are regulated by Article 61 of the Act of 27 March 2003 on spatial planning and development. In the judgment of 14 May 2015,



**Figure 6.** The decisions on the land location of public purpose investment

Source: author's work based on data from the Central Statistical Office.



- decision regarding the multi-family house
- decision regarding the single-family house
- decision regarding the service buildings
- decision regarding other buildings

**Figure 7.** The share of decisions regarding individual types of buildings in the total number in 2018 [%]

Source: author's work based on data from the Central Statistical Office.

II SA/Op 112/15, the Regional Administrative Court (WSA) in Opole stated that “the decision on development conditions is not discretionary; hence the competent authority should determine the development conditions if the investment intention satisfies all the conditions specified in Article 61(1) of

the Act on Combating Unfair Competition. A refusal may be refused only if the investment does not meet at least one of the statutory conditions”.

The statutory prerequisites for issuing a decision on land development conditions, apart from the principle of good neighbourliness, the need to have access to public roads and utilities, and compliance with separate regulations, are also the condition that the land does not require a permit to change its use for non-agricultural purposes issued by the minister in charge of rural development.

Taking into account the previous considerations regarding the conditions for obtaining the minister's consent, it should be stated that a decision on development conditions changing the use of land may be issued only in the case of soils of lower grades of land classification, whose change of use does not require the consent of the Minister for Rural Development.

However, if such consent is not required, a decision on land development and land use conditions is sufficient to change the use of agricultural land (Supreme Administrative Court judgment in Warsaw, 2010, II OSK 299/09). In other words, it is not possible to change the use of agricultural land for non-agricultural purposes by issuing a decision on development conditions in a situation where the land is not used for agricultural purposes:

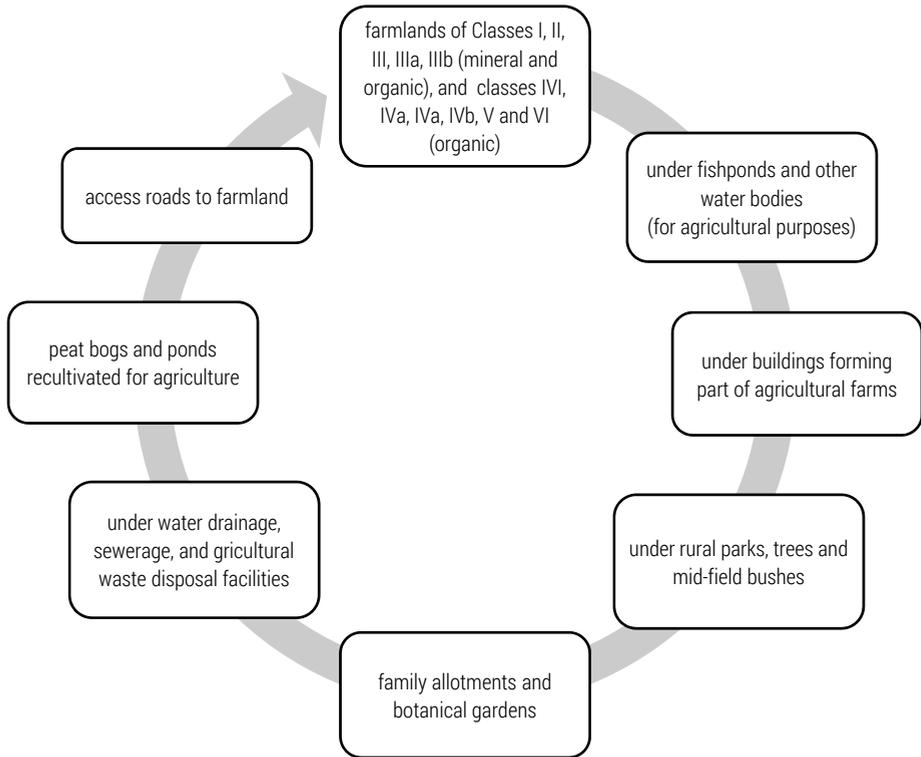
- the land is of high quality (I-III) and,
- there are no prerequisites under Article 7(2a) of the Act on the Protection of Agricultural and Forestry Lands (judgment of the Regional Administrative Court in Warsaw, 2009, IV SA/Wa 679/09).

In such a case, the investor must seek to adopt a local spatial development plan for his land, but if such a plan exists (but the land remains agricultural land under its provisions), it will be necessary to amend the plan, which does not procedurally differ from the proceedings for its adoption.

## The exclusion of land from agricultural production – the second stage of conversion

After the change of land use (as a reminder – either by way of a resolution/modification of the LSDP, or after the decision on development conditions becomes final), before the commencement of non-agricultural land use, the investor may be obliged to obtain an administrative decision on the exclusion of land from agricultural production.

An investor will be required to apply for such a decision if the agricultural land falls into the following categories:



**Figure 8.** The exclusion of land from agricultural production

Source: author's work based on art. 2 of the act of 3 February 1995 on the protection of agricultural and forestry land.

Unfortunately, the problem arises when the land has to be classified according to its origin (organic or mineral), in particular as regards lower categories of land (IV-VI). In practice, the owner often does not know what the origin of the soil is and therefore applies for land to be excluded from agricultural production 'just in case'. In such a case, the authority conducting the proceedings (the locally competent starost) should discontinue the proceedings to the appropriate extent (mineral soils) and inform the party about it in writing. The basis for determining the origin of soils are soil and agricultural maps, prepared and made available by the Chief Surveyor of the Country, and in case of doubt, the starost may additionally ask a soil expert to prepare an appropriate opinion (Wszótek et al., 2016, p. 4).

The decision to exclude land from agricultural production is subject to the payment of exclusion fees. We can divide them into one-off and annual fees. What is important, these receivables are reduced by the value of land, determined according to market prices applied in a given locality inland

trade, on the date of actual exclusion of this land from production. The relevant assessment report must be submitted by the applicant when applying for a decision to set the land aside from agricultural production. The fee rates vary from 437.175 PLN per 1 ha (best classes) to 87.435 PLN (worst class) For more specific information art. 12 of the act of 3 February 1995 on the protection of agricultural and forestry land. A one-off fee in the specified amount (reduced by the value of the land) is payable within 60 days from the date on which the decision to exclude a given land from agricultural production becomes final and binding. Annual fees (10% of the one-off fee) are payable for 10 years by 30 June each year. Transformation fees shall not be charged:

- investors whose land does not require a decision to exclude land from agricultural production,
- Investors intending to use their land for housing development are also exempt from the obligation to pay fees, however, up to a maximum of 0.05 ha (in the case of a single-family building) or 0.02 ha (for each residential unit in the case of a multi-family building).

The exclusion of land from agricultural production completes the procedure for converting agricultural land into non-agricultural purposes. A positive conclusion of this procedure allows the investor to apply for a building permit (Siwkowska, 2019, p. 42). However, one should not forget that the legal, actual exclusion of land from production may take place only when the decision on exclusion becomes final, i.e. when it is not effectively appealed against, or when a higher-level body maintains the decision of the first instance body (Supreme Administrative Court in Warsaw, 2016, OSK 224/15).

Finally, it requires an indication of the legal consequences that investors may face when they start non-agricultural use of agricultural land without the required decision. According to Article 28 of the Act on the protection of agricultural and forestry land, if it is found that land has been excluded from production contrary to the provisions of the Act, the perpetrator of the exclusion shall be charged twice the amount of the fee. There shall be no reduction in its amount by the value of the land, as in the case of a lawful exclusion. As indicated by the Supreme Administrative Court in Warsaw: "Deduction of receivables by the value of land is a solution adopted by the legislator for situations regulated in Article 12 of the Act of 3 February 1995 on the Protection of Agricultural and Forestry Lands (Journal of Laws of 2017, item 1161) (i.e. legal exclusion of land from production) and constitutes an extraordinarily "addition" to the receivables themselves, just as such a special "addition" is a doubling of receivables referred to in Article 28 paragraph 1 of the aforementioned Act. Article 12(6) and (11) of the Act do not apply to the determination of the fee pursuant to Article 28(1) of the Act – the fee referred to in

Article 28(1) of the Act cannot be reduced by the value of land determined in accordance with market prices applied in a given locality on the date of actual exclusion of that land from production, as is the case when a permit to exclude land from production was obtained (judgment of the Supreme Administrative Court in Warsaw, 2017, II OSK 985/15).

Moreover, if it is found that land designated in a local spatial development plan for non-agricultural purposes was excluded from production without a decision to exclude the land from agricultural production, such a decision is issued *ex officio*, increasing the amount due by 10%.

Therefore, it should be stated that the legislator, by introducing the above mentioned, very strict regulations, aimed at effectively stopping investors from arbitrary commencement of non-agricultural land use.

## Conclusions

The procedure for the transformation of agricultural land into non-agricultural land allows the investor to start non-agricultural land use. It should be noted, however, that for some categories of agricultural land (in particular the highest classes) the change of their designation for the majority of investors will, under the current law, be excessively difficult or even impossible. It may cause a halting of the process of gradual development of urban and rural areas in favour of maintaining strictly the agricultural function of land properties, which may adversely affect the sustainable development of these areas.

This is because, in the light of progressive changes in the Act on Protection of Agricultural and Forestry Lands, it is increasingly difficult to obtain a change in the use of agricultural land. Currently, the policy of the Polish State is focused on the protection of these lands, and the decisions made at the central level are discretionary, i.e. almost entirely dependent on the will of the authority.

Also, agricultural land covered by local spatial development plans is extremely difficult to “changing the status of farmland” in the Polish legal system. This must entail the whole procedure of changing the local plan, which, taking into account the time and costs, may in many cases turn out to be unrealistic (especially when one investor applies for a change of plan).

Not without significance for the process of land exclusion from agricultural production are also the extremely high fees associated with it. This may be a barrier that many investors will not be able to overcome on their own. On the other hand, the possibility of excluding agricultural land for housing purposes from agricultural production and the related exemption from the obligation to pay transformation fees should be assessed positively due to

the insufficient number of residential premises per capita in Poland. It seems that one should consider extending the exemption in this respect, because very often the possibility of paying such high fees may exceed the budget of potential investors, in particular in the context of other necessary expenses related to the investment process.

Finally, it should be noted that not only the Act on Protection of Agricultural and Forestry Lands provides (in some cases) for a facilitated way of changing the destination of agricultural land. As a result of the building firms' lobby in Poland, the Act of 5 July 2018 on facilitating the preparation and implementation of housing investments and accompanying investments (Journal of Laws of 2018, item 1496) – the so-called Special Construction Law – was passed.

Article 39 of the Special Act indicates that: “the provisions on the protection of agricultural land and forests concerning agricultural land do not apply to the housing or associated investment within the administrative boundaries of the cities. Such a solution, commonly referred to as “automatic reversal”, is provided only for developers building blocks of flats or houses according to the path provided by the Act (alternative to the regulations on planning and spatial development). Importantly, the possibility to avoid formalities and costs related to the exclusion of land from agricultural production has been created by the government only for investors building at least 10 single-family houses or 25 residential units. However, this does not undermine the fact that private investors cannot take advantage of the abovementioned Special Act, which makes it necessary to undergo the procedures described in this article.

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