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Surveying Protection of Agricultural Land in Poland

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Abstract

Ownership of agricultural property gives its owners special powers, but also imposes on them a number of restrictions arising from law. These restrictions apply to both how to acquire and sell such property. They provide additional protection of agricultural land and have a relationship not only with the EU subsidies for agricultural production but also the need for deliberate planning for the countryside.

First it should be noted the right of pre-emption of the real estate by the Agricultural Property Agency and the ability to block or cancel the sale if the seller and buyer do not comply with the required formalities. In most cases, the Agency is the seller, so it means that it can shape the rate of sales prices. On the other hand, as a unit under the Treasury it is obliged to comply with the law on public procurement and to protect the public interest. Legal issues related to the management shall be governed by national rules, adapted to the European directives and treaties.

Another issue is the agricultural property divisions, which are held in a simplified form, however, maintain the minimum area of land resulting from the surveying division. Such restrictions are to prevent excessive fragmentation of agricultural land. If the existing patchwork of land was made from too small plots, there is a possibility to make integration and exchange of land. It has the nature of the collective spatial effort, which effect will improve the area structure of agricultural holdings and shall be created more favorable conditions for the management of agriculture.

Important are also the possibilities of development the agricultural land. It can be done, only if the creation of a farm building will be used for agricultural production. Vital issue, maintained in this article, is also the issue of the exclusion of land from agricultural production in order to use them for non-agricultural holdings.

Keywords: Agricultural Land; divisions; Agricultural Property Agency.

1. Introduction

The definition of agricultural property largely specifies civil code [6]. According to this act of agricultural property (agricultural land) are properties that are or may be used to conduct manufacturing activities in agriculture in terms of plant and animal production, including the production of horticultural, orchard and fish. Act [11] clarifies the definition adding to agricultural land:

- referred to in land records [4], [5] as agricultural land (arable land, orchards, meadows, pastures, agricultural land built, land under ponds, land ditches and land wooded and bushy on the farm land)
- under the fish ponds and other water tanks, which can be used exclusively for the needs of agriculture,
- under belonging to the farm residential buildings and other buildings and installations used exclusively in agricultural production and the terms of the processing of agri-food,
- under the buildings and installations used directly for agricultural production considered as special department, pursuant to the provisions of the income tax from individuals and corporate income tax law,
- and others specified in this act.

Associated with agricultural property is the concept of the farm. According to [8] as such is considered to be the area of land classified in the register of land and buildings as farmland or as wooded land and shrubs on agricultural land, except land used for business activities other than farming, with a total area exceeding 1 ha or 1 ha conversion owned or held by a natural person, legal person or an organizational unit, including companies without legal personality.

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For agricultural land, according to the Land Administration Act [9], considered to be land designated in the plan of the local municipality for agricultural purposes. In the absence of a local plan^a agricultural land is considered to be the land disclosed in the real estate cadastre as farmland. Protecting agricultural land is mainly due to the wide dispersion of farms in Poland. Which is showed in Figure 1.

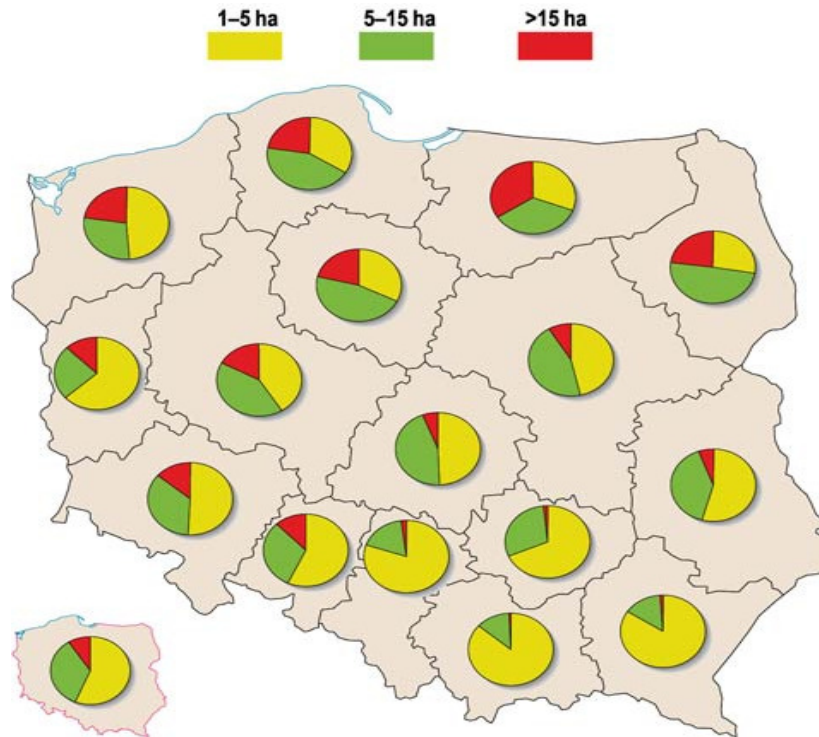


Fig. 1. The size of farms in Poland [3]

Protection of agricultural land consists essentially of the following activities [10]:

- reducing diverted them for non-agricultural or non-forest purposes,
- preventing degradation processes and devastation of agricultural land and damage to agricultural production, arising as a result of non-agricultural activities and mass movements of the earth,
- reclamation and development of land for agricultural purposes,
- maintaining the bogs and ponds as natural reservoirs,
- reducing the changes of the natural topography of the land.

For the protection of agricultural land can be regarded as rules of shaping the agricultural system as defined in the Act [13]. These include:

- improvement of the structure of farms,
- preventing excessive concentration of agricultural property,
- ensuring that agricultural activity on the farm by a qualified person.

The most important tools whose purpose is the protection of agricultural land according to the authors are:

- consolidation and land exchange,
- reduce divisions of agricultural land,
- the right of pre-emption of agricultural property by the Agricultural Property Agency,
- the need to disable agricultural land from agricultural production in the case of the investment.

For the above-mentioned tools related to the protection of agricultural land must add a special "protection" of persons engaged in agricultural activities. For this type of activities are mostly lower tax rates for agricultural land, lower insurance premiums persons engaged in agricultural activities or subsidies for agricultural production coming from the European Union and disposed of by the Agency for Restructuring and Modernization of Agriculture.

2. Trade in agricultural real estate in

The main selling part is the Agricultural Property Agency, which is a state legal person established for being on 15 July 2003 [13]. It over the responsibilities of the former Agricultural Property Agency of the State Treasury. The main task of the Agency is the implementation of tasks arising from the policy, in particular as regards [9]:

^a Preparation of local development plans in Poland is optional for most areas.

- creation and improvement of the structure of family farms ^b,
- creating conditions conducive to the rational use of the productive potential of the Agricultural Property Stock of the State Treasury,
- restructuring and privatization of State Treasury property used for agricultural purposes,
- real estate government and other assets of the State Treasury used for agricultural purposes trading,
- administration of property resources of the Treasury intended for agricultural purposes,
- security of Treasury assets,
- initiation of furnishing-agricultural land of the Treasury, and to promote the organization on the grounds of the Treasury of private farms,
- enforcement of rights of shares in companies breeding of crops and livestock farming, which are particular important for the national economy.

In 2013, the Agency sold 147.7 thousand hectares of land. This is the highest level of sales since 2003. Despite the crisis in the financial market, the prices of agricultural properties remain constant, or at least are not as sensitive to the economic situation, as the housing estate. In addition to selling the land shall be free of charge, which depletes the budget, but favors statutory purposes. Despite a free transfer, the Agency continues to bring big profits to the Treasury in 2013 was income of 2 billion PLN. At the current level of sales total privatization may take another 10 years. Assuming, however, as a criterion for assessing the fulfillment statutory duties [1].

Pre-emption of agricultural property by the ANR is perhaps one of the most important elements of the of protection of agricultural land system in Poland. Priority concerns the situation of the sale of such property by the natural or legal person [13]. The main condition here is divested area of agricultural property, which may not be less than 5 hectares.

The right of first refusal does not apply in cases where:

- the property is disposed of for the benefit of its previous tenant, which was part of his farm (part of the holding co-operative agricultural production ^c, if the lease agreement was made in writing form and lasted at least three years,
- agricultural property buyer is a person close to the transferor within the meaning of the Real Property Management [11]
- sale of agricultural property refers to land as a contribution to agricultural production cooperative member to another member of the cooperative,
- buyer of agricultural property is a cooperative agricultural production – when its member sells agricultural property as land contribution to the cooperative,
- agricultural property buyer is a local government unit ^d.

The right of priority in the acquisition of agricultural property with an area of more than 5 hectares Agricultural Property Agency shall also in the case of the sale of such property in a mode other than a contract of sale (eg by donation). Acquisition in that situation of agricultural property after payment of the Agency monetary equivalent properties, determined in accordance with the provisions of the Act [11]. In a situation where the price of the property far below market prices, the Agricultural Property Agency may ask the court to determine the value of the property. This value is determined in accordance with the principles laid down in the Act [11].

3. The divisions of agricultural property

Regulations designed to protect agricultural land can also be seen in the procedure division of property. Generally, in Poland, the division of the property (except for special cases such as the judicial division, or the division under a special law) is implemented by two procedures. The first procedure is an administrative procedure, endless administrative decision governed by the Act [11]. In this procedure, the approval authority design division, drawn by a surveyor, is the mayor of the commune (mayor, city president). This procedure are generally subject land other than agricultural and forestry. The main condition that must be complied with that the division was in this mode it is possible the division of compliance with the provisions of the local plan, in case of his absence of the decision of the zoning and land development ^e or others rules. In addition, each of the newly separated parcels must have access to a public road. The fulfillment of these conditions is evaluated by the approval authority of the division on the basis of pre-attached to the application design division. Feedback is in the form of a provision that serves the complaint.

This procedure is initiated at the request of the owner or lessee of the land (in the cases specified in the Act [11] may also be initiated ex officio). Distribution of agricultural land according to this procedure is possible only in two cases:

- separation of land for roads that are not necessary access roads to farms,
- separation of land with an area of less than 0.3000 hectares, while the secreted plot will be used to increase the property adjacent or adjustment of boundaries between adjacent property.

^b A farm run by an individual farmer in the total agricultural area is not greater than 300 ha.

^c Agricultural production cooperative - a cooperative farmers operating jointly brought by them to the cooperative land, and the land leased and acquired by the cooperative,

^d Units of local government in Poland are: municipalities, counties and state government

^e The decision of the zoning and land development is divided in practice on zoning decision and the decision to establish the location public purpose investment. These decisions are issued in the absence of a local plan under certain statutory conditions.

In the second situation, the decision approving the division of the property should be determined at the time of transfer of ownership to a separate part of the property. This period cannot be longer than 6 months. In case of failure to do so the decision becomes invalid. Based on the final administrative decision resulting from the distribution of changes are introduced to the real estate cadastre and land registers.

The second mode of division of property is called the common name of "agricultural mode". This is due to the fact that in this mode are made divisions of agricultural land and forest. This mode is a simple technical procedure geodesic, the effect of which is to reveal the changes in the real estate cadastre. The main condition for the fulfillment of which is required for the breakdown in this mode could be a need to release parcels of more than 0,3000 ha (not applicable to internal roads). In this procedure, changes to the real estate cadastre are carried out at the request of the parties to amend, to which is attached a draft division admitted to the geodetic district.

It should be noted that in practice it is often difficult to determine whether the property can be subject to division in administrative mode or in "agriculture". This is due to the act [12] according to which for most areas in Poland, preparation of local plans is not mandatory. Accordingly, to divide the property in the first place should determine whether a given area is a local plan that is developed, or if there is (in the absence of a plan) issued a decision on building conditions, or ultimately uphold the use of the property on the basis of cadastral data. Only having such information can be found in what mode can be made of the real estate division.

4. Merge and exchange of land

The purpose of land consolidation is to create favorable conditions for farming. It is implemented through [7]:

- improve the structure of farms,
- rational shaping of shredding and separation of land ^f,
- adjustment of property boundaries to the system of water management facilities, roads and terrain.

Merging includes the land situated in one or more villages, eventually parts thereof. This can be confusing because of the principle of keeping cadastre of real estate in Poland. According to the [4] surface units division of the country for the purpose of real estate cadastre are registered parcel of land, cadastral district and cadastral unit. Division of Cadastral country is hierarchical, meaning that the boundaries of the smaller units must coincide with the boundaries of the larger ones.

Registered parcel of land is a continuous area of land situated within the of one precincts, legally homogeneous separated from the environment by means of boundary lines. So far the boundaries of precincts in rural areas should be consistent with the borders of the village and villages [4]. Currently whereas precinct should include the area of the village and adjacent to the settlement unit and physiographic related objects. In special cases, a separate precincts may be part of the village in the limits of rural administrative unit [5]. Cadastral unit is an area of land located within the administrative boundaries of the municipality. This may mean that no change of borders division a registration if the merge involves more than one country will not be able to be realized. Alternatively, integration will have to be carried out while maintaining the existing distribution of cadastral boundaries.

Merge relates primarily undeveloped land. However, there is the possibility for merging developed land. Transferring them to another owner is permitted only with the consent of the previous owner on the condition that they will be demolished or the new owner will make the existing settlement of the buildings. Changing the boundaries of developed property can be made in the course of land consolidation, provided that it does not worsen the conditions of use of such property, in particular the access to buildings.

For land of which ownership can, with the consent of the co-owners, yielding distinct for each of them corresponding to the value of land in the ownership of shares. If the rational design of land belonging to the farms need to change their position by mutual exchange, such an exchange can be made on request of the owners of the land, and in the case of land Agricultural Property Stock of the State Treasury – with the consent of the Agency. Exchange may also be covered with buildings and land located in one or several municipalities. In the case of exchange of land with buildings value of these ones determined by the valuer on the principles laid down in the Act [11], unless the parties agree to a different settlement rules.

Merge and exchange of land is carried out and executes the district governor ^g. If the proceedings are to be covered land situated in two or more municipalities, responsible for the conduct of the governor, whose area of operations has the largest number of land to the proceedings, and if equal number of the governor, whose area of operations is the largest area of land acquired merging or replacement. Merging and replacing it is a task of the government administration financed mainly from the state budget (Table 1). The higher degree authority is voivode ^h. Works merge and exchange coordinates and performs with the help of the provincial government surveying offices and agricultural land and its affiliates.

^f Distribution of farm land in relation to developed land [7]

^g President of the local government district, ie, the average Polish political subdivisions.

^h Off-road government authority in the region, ie the largest Polish political subdivisions.

Table 1. Funding merge and exchange of land

The purpose of merge and exchange of land	Funding
typical	<p>The state budget with the possible involvement:</p> <ul style="list-style-type: none"> – Community public funds, – Other public funds, – State funds, – The means of local government budgets, – The owners of the land covered by the merge. <p>The investor or the competent authority for nature conservation that has occurred to merge</p>
in conjunction with the construction of the highway	General Directorate for National Roads and Motorways

The proceedings may be initiated at the request or ex officio. At the request of the majority of owners of farms, located in the projected area of the merge, or at the request of the owners of land with a total area of more than half the surface area of the proposed merge. Refusal reparcelling proceedings by way of a decision governor. From the office after obtaining the relevant opinion, if [7]:

- Land Agricultural Property Stock of the State Treasury, which the area exceeds 10% of the projected area of consolidation and exchange, and that cannot be rationally developed,
- haping the land in the proposed area of consolidation and exchange as a result of industrial activity, the course of existing or construction of public roads, railways, pipelines and ground water reservoirs or water management facilities have been or will be significantly impaired,
- integration and exchange will request the person whose land expanse require correction, while not impaired economic conditions, other participants,
- integration and exchange occurs investor, whose activity has caused or will cause significant deterioration tracts of land,
- to merge and exchange occurs competent authority in the field of nature conservation, where the use of land, on which are protected endangered species of plants and animals, or wildlife habitat has become impossible or significantly reduced.

The procedure begins with the decision to initiate the procedure reparcelling or removable. It is this provision governor. This might be done with the participation, i.e. the council participants merge. It is an advisory body, elected and recalled by the participants merge with each village covered by the merge.

Merge and exchange of land is carried out under the project, whose example is shown in Figure 2.

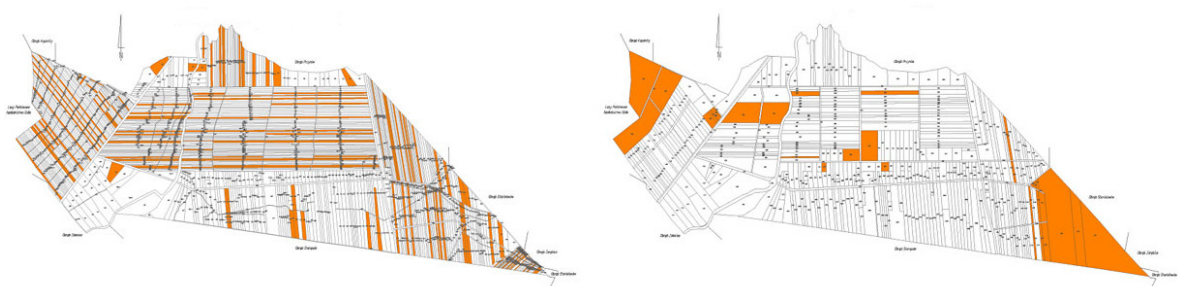


Fig. 2. Land consolidation project made by the Office of Geodesy Częstochowa Częstochowa Agricultural Areas – object Wiercica, the municipality Przyrów [2]

This sets out the proposed divisional boundaries of land and embracing the land in possession. The project to merge or exchange of land should take into account the findings of the local development plan. It must be designated on the ground and the participants produced shall merge or exchange of land. Landowners who are concerned may object to the project. Any change introduced to the project to merge or exchange of land, after his appointment on the ground and the presentation of the participants, require re- appointment on the ground and show the interested participants. To land consolidation project can be approved by the majority of participants in this process can not submit objections to it. While exchange project must be approved by all participants. The draft decision approves the governor. It is the basis for the disclosure of the new legal status of property registers and the introduction of the parties in possession of the land dedicated om. The existing load on the property is transferred from the land subject to merge or exchange for land dedicated as a result thereof.

5. Exclusion from agricultural production

If the owner of agricultural property is not a person with the status of the farmer, it requires buildings off the land from agricultural production. Such a procedure is performed on the basis of the Law on the protection of agricultural and forest land [6]. It must precede the issuance of the building permit.

Exclusion from agricultural production can take place only after the decision of county governor. The appellate entity is the Local Government Appealsⁱ. In case when the land lies within a national park, decision issued by the director of the park. The decision is not required if the agricultural land will be used for forestry purposes.

In the first place should be allocated for non-agricultural and non-forest land with are marked in the real estate cadastre as a wasteland. In their absence – other land with the lowest production suitability. Purpose of agricultural land classified as agricultural land classes I ÷ III, for non-agricultural purposes requires the consent of the minister responsible for rural development, after the opinion of the Speaker of the province. Reassignment is made in the zoning plan, drawn up in the manner specified in [12]. Conditions for granting the exemption decision for each class of land are summarized in Table 2.

Table 2. The decision to exclude land from agricultural production

Lands	Document
mineral and organic origin, belonging to classes I, II, III, IIIa, IIIb	Decision of governor (director of the national park), with the consent of the minister responsible for rural development
mineral and organic origin, belonging to classes IV, IVa, IVb, V, VI	Decision of governor (director of the national park) – the exemption request is binding and the decision is declaratory

A person who has been authorized to the exclusion of land from production, is obliged to pay for it claims, ie, one-time fee for permanent exclusion of land from production, and annual fees, in the amount of 10% of receivables. Such an obligation arises from the date of actual exclusion of land from agricultural production. The fee shall be paid within 60 days from the date on which the decision becomes final. The annual fee for the year shall be paid on or before June 30 of this year. Table 3 shows the amount of the fee for the exclusion of particular classes of agricultural land.

Table 3. Claims for exemption from the agricultural production of 1 ha of land

Arable land and orchards		Meadows and permanent pastures	
class	charge (EUR ^j)	class	charge (EUR)
formed from organic and mineral origin soils			
I	109 295	Ł i Ps I	109 295
II	94 723	Ł i Ps II	90 351
IIIa	80 149	Ł i Ps III	72 863
IIIb	65 577		
formed from organic soils			
IVa	51 005	Ł i Ps IV	43 719
IVb	36 433	Ł V	36 433
V	29 145	Ps V	29 145
VI	21 859	Ł i Ps VI	21 859

Obligation to pay fees and annual fees does not apply to the exclusion of land from agricultural production for housing construction:

- to 0.05 ha for single-family building,
- to 0.02 ha for each residential unit in the case of multi-family building.

ⁱ public authority to hear appeals of administrative decisions and complaints to the provisions of them

^j 1 EUR=4 PLN

There is also the possibility of an interim period of not more than 10 years, the exclusion of land from production to the extent necessary to:

- take immediate interventions needed to combat natural disasters and their consequences, as well as the removal of consequences of accident,
- prospecting for or exploration of hydrocarbons, coal, lignite, metal ores, except for bog iron ores, metals in their native ores of radioactive elements, native sulfur, rock salt, potassium salt, gypsum and anhydrite, gemstones.

In the case of non-durable exclusion of agricultural production annual fees shall be paid for the period of the exemption, but not longer than 20 years after the exclusion of land from agricultural production.

6. Conclusions

Fragmentation, especially in southern and eastern Poland, the structure of agricultural land results in the protection of these lands is necessary.

The main task of consolidation and exchange of land is to organize incorrect structure of agricultural parcels. Excessive their dispersion and fragmentation, leading to large tracts, causes a decrease in the profitability of agricultural production. However, even though the procedure merge and exchange is definitely the best way to change this state of affairs, it is the process itself is typically lengthy and expensive.

Exclusion of land from agricultural production is intended to prevent the allocation of agricultural land the best classes for investment purposes. In practice, the area exempt from the fee (500 m² for single-family homes and 200 m² for each place in the case of multi-family houses) is too small. Remaining after excluding the parcels of 1000 m² and 1500 m² of land no longer serve for agricultural production. Frequent disclosure in this case the agricultural land in the rest of the plot is fiction.

In the procedure division of property protection of agricultural land is mainly to reduce the possibility of the division of agricultural land. The division of such land is possible (with certain exceptions) only on the plot of land with an area of more than 3000 m². Prevent it is, the assumption from becoming too fragmentation of the land. However, it should be noted that the limit of 3000 m² seems too low. For many owners of agricultural land, in particular a prime location for distribution plot of 3000 m² is sufficient to make their sale at a high price.

Pre-emption of agricultural property by the Agricultural Property Agency in turn is a tool that allows the Treasury to scrutinize our marketing agricultural land on the surface. Real estate acquired for the Agency may be used for the implementation of a public investment.

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