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Main Directions and Normative Areas of Agricultural Land Protection

Główne kierunki i płaszczyzny normatywne ochrony gruntów rolnych

SUMMARY

The subject of the considerations presented in the article is the shape of modern regulations on the protection of agricultural land. The analysis is conducted primarily in the field of protective provisions regarding the so-called quantitative and qualitative protection of agricultural land, as well as economic instruments correlated with these provisions for the protection of agricultural land. Other regulatory areas, including predominantly the existing and discussed solutions of European Union law regarding closer linking of agricultural producer support instruments with requirements in the field of environmental protection, within the scope of the so-called conditionality and greening. The subject of the study is not only the analysis of traditional directions of agricultural land protection as a means of production in agriculture, but also an attempt to determine the areas and directions for further development of this regulation.

Keywords: agricultural land; environmental protection; protection of agricultural land; soil protection; legal regulations

In the contemporary debate on the causes, complexity and importance of anthropogenic impact on biosphere resources, attention is increasingly drawn to the complex relationship between the natural environment and agriculture. On the one hand, it seems that this is primarily due to the growing awareness that it is the limited character of natural resources which constitute the main barrier of increasing agricultural production, and on the other hand, it is impacted by the awareness of the intensity of agriculture's influence on the natural environment[1]. The significance

[1] M. Florek, *Funkcje i wykorzystanie wody w produkcji podstawowej i przetwórstwie żywności pochodzenia zwierzęcego*, „Przegląd Hodowlany" 2016, nr 6, p. 5. The author states that agriculture is

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of this issue is increasing in view of not only the expected, but already observed, deterioration of climate conditions for agricultural activities on a global scale, with a simultaneous increase in the human population[2], which obviously translates into an increase in the demand for agricultural products. Continuous expansion – on a global scale – of agricultural land takes place mainly at the expense of natural resources, and the growing intensification of agricultural production and concentration of crops of the most desirable plant species (e.g. soybeans or wheat) inevitably conflicts with the protection of biodiversity. Attention should also be paid to the surprisingly high share of agriculture in global greenhouse gas emissions contributing to climate change (incidentally, also significantly affecting agriculture itself)[3]. As a consequence, agricultural issues seem to be one of the most important and most current ecological, sociological and economic problems of modern times. It should be noted that this issue is extremely broad and multifaceted, as it covers not only the general laws of the biosphere, social and economic principles of agriculture, but also the complex relationships between them. An example of these relations is the matter of the protection of agricultural land, which is undoubtedly both one of the most important and, so far, irreplaceable means of agricultural production, as well as an important element of the natural environment.

The axiological foundations of modern legal regulations related to the protection of agricultural lands were primarily concerned with ensuring an appropriate area of adequate quality of land needed for conducting agricultural production activities. Both the general acreage of this type of land and their quality, understood as usefulness for conducting production activity in agriculture, determine the so-called food security, which is understood as creating the conditions for ensuring the right quantity and quality of food products for humanity[4]. However, due to the fact that agricultural land, being the most characteristic and in principle irreplaceable, means of production for agriculture, is also an important element of the natural environment. As such, the protection of agricultural land is also justified by the legislator's

responsible for 92% of the global trace of fresh water, understood as the amount of water consumed or contaminated, taking into account the full chain of the production process of a given product or service, i.e. the amount of water necessary to produce it (including direct and indirect water consumption of the product).

[2] A. Kagan, *Oddziaływanie rolnictwa na środowisko naturalne*, „Zagadnienia Ekonomiki Rolnej" 2011, nr 3, pp. 99–115 and literature cited therein.

[3] The share of agriculture (including forestry and non-agricultural land use) in global greenhouse gas emissions in 2015 was 24% – see J. Pawlak, *Poziom i struktura emisji gazów cieplarnianych w rolnictwie*, „Problemy Inżynierii Rolniczej" 2017, z. 4, p. 56. In the EU, this share is at the level of 8.72% (source: *Infografika: Emisje gazów cieplarnianych w Unii Europejskiej*, www.europarl.europa.eu/news/pl/headlines/society/20180301STO98928/infografika-emisje-gazow-cieplarnianych-w-unii-europejskiej [access: 10.02.2020]).

[4] More broadly, see J. Małysz, *Bezpieczeństwo żywnościowe strategiczną potrzebą ludzkości*, Warszawa 2008.

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pursuit of a number of values indicated in the Polish Constitution[5], such as e.g. environmental protection, the principle of sustainable development, or the pursuit of policies that ensure ecological security for present and future generations[6].

The progressing industrialization and urbanization, both on a national and global scale, as well as natural processes (or quasi-natural, since they are largely anthropogenic), such as the desertification of large areas due to global warming, or the increased frequency of natural disasters – drought, floods and other violent meteorological phenomena, have a negative impact on the natural environment, and at the same time reduce the area of land suitable for agricultural production. At the same time, demographic processes, constant civilization development of societies, an increase in industrialization and urbanization processes, and recent decades also globalization processes have been conducive to a steady increase in demand not only for agricultural food products, but also for agricultural products for other purposes. For example, the development of renewable energy based on subsidies common in highly developed countries, including on the so-called energy crops contributes to a further increase in the demand for arable land. Rapeseed production related to the production of esters added to diesel oil, or even the production of so-called bio-diesel, the production of bioethanol or biomass (used for so-called co-combustion or as a contribution to a biogas plant) is associated with the need to allocate large areas of arable land for this purpose. It is worth noting that in some countries supporting the development of solar energy, as well as construction of large solar power plants, it also often happens at the expense of arable land.

Referring to the demographic phenomena causing a steady increase in the demand for food which is the basic agricultural product, it should be pointed out that the number of Polish residents only increased in the last 40 years by about 4 million people. According to the Central Statistical Office data, in Poland in 1976 there were about 34.5 million people, and in 2016 – 38.4 million people[7]. At the same time, in a similar period, the percentage share of arable land in the total

[5] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, No. 78, item 483 as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.02.2020].

[6] In accordance with Article 5 of the Polish Constitution "[t]he Republic of Poland […] ensures environmental protection, guided by the principle of sustainable development", whereas in accordance with Article 74 of the Constitution, environmental protection is the responsibility of public authorities, which are obliged to pursue policies ensuring ecological security for present and future generations, and to support citizens' activities for the protection and improvement of the environment. This provision also makes clear that everyone has the right to be informed about the state and protection of the environment.

[7] GUS, *Ludność, ruch naturalny i migracje w latach 1946–2016*, https://stat.gov.pl/download/gfx/portalinformacyjny/pl/defaultaktualnosci/5468/16/1/1/tablica_2.xls [access: 10.02.2020].

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land area in Poland dropped from 60.3% to 51.6%[8]. In turn, the world's population increased from 4.453 billion in 1980 to 7.550 billion in 2017[9], so the increase reached almost 3.1 billion people (i.e. by about 70%). A clear trend of shrinking arable land in the world is noticeable in an even shorter period. Only in 2005–2015 the arable land area decreased globally from 4,940 to 4,868 million ha[10], i.e. by as much as 72 million ha[11].

At present, several major directions of agricultural land protection can be distinguished in Polish legislation. The basic legal act regulating the issues of the protection of agricultural and forest land is the Act of 3 February 1995 on the protection of agricultural and forest land. The normative grounds for the protection of agricultural land can also be found in the Act on Environmental Protection and in the Act on Nature Protection. It should be noted, however, that legal regulations in the field of protection of agricultural and forest land, as indicated by the evolution of normative solutions, are not directly subordinated to legal regulations in the field of nature and environmental protection[12]. Aside from the protection constituted by the Act on the Protection of Agricultural and Forest Land, the provisions of which focus on the so-called quantitative and qualitative protection, it is also important to protect agricultural structures consisting not so much in the protection of the land itself, as in maintaining the right conditions for its use in a rational manner and the manner consistent with the adopted system of political assumptions regarding agricultural sector. From this point of view, it seems reasonable that the grounds for the protection of agricultural land are both the provisions of the Act on Shaping the Agricultural System and the provisions of the Act of 21 August 1997 on Real Estate Management[13] regarding among others also restrictions on the division of agricultural real estate, as well as the provision of Article 213 of the Civil Code concerning the abolition of joint ownership of agricultural properties. The issue of the protection of agricultural land is also subject to regulations promoting the proper use of agricultural land. An example of regulations in this respect are the provisions implementing the so-called cross-compliance conditioning the disbursement of direct payments for maintaining the land in good condition. Finally, regulations regarding the protection of agricultural land can also be found in specialized sectoral

[8] GUS, *Ochrona środowiska*, Warszawa 2011. More broadly, see W. Dzun, *Zmiany skali wykorzystania zasobów gruntów rolnych w Polsce w procesie przemian systemowych i integracji z Unią Europejską*, „Zagadnienia Ekonomiki Rolnej" 2012, nr 1, pp. 18–39.

[9] GUS, *Rocznik Statystyki Międzynarodowej*, Warszawa 2018, table 12, pp. 22–23.

[10] *Ibidem*, table I. 25, p. 44.

[11] P. Czechowski, K. Marciniuk, *Ochrona gruntów rolnych i leśnych*, [in:] *Prawo rolne*, red. P. Czechowski, Warszawa 2019, p. 390.

[12] W. Radecki, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2009.

[13] Consolidated text Journal of Laws 2018, item 2204.

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laws related to the functioning of the mining industry, as well as the implementation of public investments of particular importance.

It should be noted that the legal protection of agricultural land uses many solutions similar to those characteristic of environmental protection regulations. This applies, above all, to the problem of opposing the dominance of negative factors of urbanization and industrialization. However, these solutions do not always converge. Regulations on environmental protection will prefer the development of organic farming – based on natural methods of farming, also taking into account biological progress, but not directly related to the protection of the soil's productive properties. On the other hand, the protection of agricultural species and the pursuit of increasing the efficiency of agricultural production requires the use of agrotechnical measures, including agrochemical ones, entailing not only the use of fertilizers or plant protection products, but above all, the creation of monocultures that are natural from the point of view of agricultural management, which is clearly in contradiction to the pursuit of protection of biodiversity. This example highlights the differences between legal regulations regarding environmental protection and the protection of agricultural land. The objectives of both legal regulations seem to be very similar, but they are not the same. The protection of agricultural land is primarily related to the protection of land productivity, while in principle it abstracts from other issues characteristic of regulations concerning environmental protection and nature protection.

On the systemic level, it is justified to claim that regulations regarding the protection of agricultural land constitute a *lex specialis* in relation to legal regulations in the field of environmental protection. At the same time, however, to the extent that they regulate the use of agricultural land for non-agricultural purposes, they seem to be more closely related to the provisions of the Act on Spatial Planning. In contrast to the environmental legal regulations of the above-mentioned statutes, this Act is regulated in principle solely for the purpose of protecting the land resources of Polish agriculture.

Despite the significant impact on the environmental law of European Union law[14], to date, the issue of agricultural land protection has not been covered by the European Union by a comprehensive legal act regulating aspects of land protection as an agricultural means of production. Although in the past work was undertaken on a draft of a directive of the European Parliament and of the Council on establishing a single framework for soil protection[15], it was finally decided to adopt a partial

[14] J. Sommer, *Wpływ prawa wspólnotowego na prawo ochrony środowiska w Polsce*, „Prawo i Polityka" 2004, nr 3.

[15] See proposal for a Directive of the European Parliament and of the Council establishing a framework for soil protection and amending Directive 2004/35/EC (COD 2006/0086), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52006PC0232 [access: 2.03.2020].

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solution consisting of the introduction of regulation, the main subject of which is soil protection against industrial pollution, leaving protection currently outside the scope of regulation soil against other hazards, in particular those regarding the unfavourable transformation of landmass, as well as before allocating agricultural land for non-agricultural purposes. In this context, however, the adoption of Directive 2010/75/EU of 24 November 2010 on industrial emissions[16], which also covers soil protection against pollution, should be noted. This directive introduces, for the first time in EU law, the definition of the concept of soil, which is considered to be the top layer of the earth's crust situated between the parent rock and a surface consisting of mineral particles, organic matter, water, air and living organisms (Article 3 (21) of the Directive)[17]. Although the scope of the regulation covered by the directive is quite wide, it should be emphasized that the main goal of the EU legislator was to harmonize national provisions in the field of soil protection, mainly targeting the pollution originating from industrial emissions[18]; at the same time, the soil protection issues in the context of the protection of agricultural land as an agricultural means of production still remain outside the scope comprehensive regulation of EU law[19].

The legal protection of agricultural land in Poland has a relatively short tradition. Apart from earlier fragmentary regulations, it was initiated by the entry into force of the Resolution No. 198 of the Council of Ministers of 12 July 1966 on the Protection of Agricultural Land[20]. However, we cannot speak about the comprehensive nature of legal solutions in the discussed field in the light of the Act of 26 October 1971 on the Protection of Agricultural and Forest Land and Land Reclamation[21], replaced by subsequent regulations: the Act of 26 March 1982 on the Protection of Agricultural and Forest Land[22] and Act currently in force from 3 February 1995 on the Protection of Agricultural and Forest Land[23]. The current Act regulates the principles of protection of both agricultural and forest land, at the same time defining the legal framework for activities in the field of land reclamation and improvement of land use value[24].

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[16] OJ L 334/17, 17.12.2010.

[17] D. Chojnacki, *O ochronie gleby w dyrektywie IED*, „EcoManager" 2011, nr 10.

[18] The issue of soil protection against threats other than industrial emissions is still the subject of legislative work. See working documents of the Committee on the Environment, Climate Change and Energy "Implementing the thematic strategy on soil", 14th Commission meeting of 28 June 2012, Committee of the Regions – ENVE-V-026.

[19] P. Czechowski, K. Marciniuk, *op. cit.*, p. 390.

[20] M.P. 1966, No. 40, item 200. See M. Błażejczyk, *Ochrona prawna gruntów rolnych*, Warszawa 19.

[21] Journal of Laws 1971 No. 27, item 249 as amended; Journal of Laws 1974, No. 39, item 230.

[22] Journal of Laws 1982, No. 11, item 79. See A. Wróbel, *Prawna ochrona gruntów rolnych w procesie inwestycyjnym*, Wrocław 1984.

[23] Consolidated text Journal of Laws 2017, item 1161.

[24] P. Czechowski, K. Marciniuk, *op. cit.*, p. 392.

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The legal protection of agricultural land resulting from the Act on the Protection of Agricultural and Forest Land is functional and comprehensive, although it should be noted that the provisions of this Act were closely linked to the provisions of the Act on Spatial Planning and Development. As a consequence, arable and forest land is protected under a separate legal regulation, the aim of which is to protect land primarily as a means of production.

The subject of protection constituted under the provisions of the Act on the Protection of Agricultural and Forestry Land is agricultural land. The statutory definition of this concept formulated in Article 2 of the Act, abstracts from the ownership criterion and refers primarily to the physicochemical features of the soil and its administrative and legal classification made in the land registry. It should be noted that when determining the subject of protection, the legislator intentionally did not use the concept of real estate formulated in the Civil Code. The concept of agricultural land within the meaning of the provisions of the Act on the Protection of Agricultural and Forestry Land does not contain elements indicating forms of ownership. It is an expression of a supra-proprietary approach to the concept of agricultural land. This is mainly due to the fact that currently, applicable legal regulations (as well as previous regulations) protect agricultural and forest land against the effects of urbanizing and industrializing factors with the help of administrative and legal mechanisms, regardless of whose ownership they are and regardless of which units are included in the production, or even regardless of whether the land in question is part of any production unit. As a consequence, the view seems to be justified that the concept of arable land within the meaning of protection legislation is presented as superior to such a concept of "agricultural land". According to the Act, the protection covers: lands specified in the land register as arable land[25]; lands under fishponds and other water reservoirs, used solely for the needs of agriculture; lands under residential buildings constituting farms and other buildings and equipment used exclusively for agricultural production and agri-food processing; lands for buildings and equipment used directly for agricultural production recognized as a special department, in accordance with the provisions on personal income tax and corporate income tax. The Act also protects: lands of rural parks and under wooded fields and shrubs, including windbreaks and anti-erosion devices; lands of allotment gardens and botanical gardens, under the devices: water drainage, flood and fire protection, agriculture water supply, sewage, and utilization sewage and waste for agriculture and rural residents; reclaimed lands for agriculture, peat bogs, and ponds; lands under access roads to agricultural land.

[25] Within the meaning of § 68 of the Regulation of the Minister of Regional Development and Construction of 29 March 2001 on the Registry of Land and Buildings (Journal of Laws 2001, No. 38, item 454) arable land, orchards, permanent meadows, permanent pasture, built-up agricultural land, land under ponds, and ditches.

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Legal protection of agricultural land based on the provisions of the Act on the Protection of Agricultural and Forestry Land is implemented in two areas: 1) as quantitative protection and 2) as so-called qualitative protection. Quantitative protection is directed at the regulation of activities that may result in a decrease in the area of arable land as a result of their allocation for non-agricultural purposes. This category of protective measures also includes measures aimed at reclamation of agricultural land previously used for other purposes. In turn, activities in the field of qualitative protection are mainly aimed at preventing deterioration (degradation) or loss (devastation) of the value in use of agricultural land, in particular as a result of deterioration of natural conditions or as a result of changes in the environment and industrial activity, as well as defective agricultural activity. Qualitative protection also includes activities promoting remediation understood as improving the physical and chemical properties of the soil, regulating water relations, restoring soil, strengthening the slopes and rebuilding the construction of necessary access roads to agricultural land. Activities intended to preserve peat bogs and waterholes as natural water reservoirs as well as to limit changes in the natural surface formation of the earth also fall into the same category[26].

The provisions on quantitative protection introduce a special control regime regarding the allocation of agricultural land for non-agricultural purposes, supplementing the provisions of the Act on Spatial Planning and Development[27] in this respect. In particular, the legislator pointed out that non-agricultural designation may be granted primarily for land qualified as wasteland in the land register, and if there are none – other lands with the lowest production suitability. Detailed legal regulation was also applied to the procedure for changing the use of agricultural land for other purposes, as well as measures aimed at the actual exclusion of land from agricultural production. The regulatory model for quantitative protection introduced by the Act, therefore, includes two stages of control: 1) control over land use for another purpose and 2) control over land exclusion from agricultural production.

It should also be noted that the intensity of protection is a derivative of the quality of the land that is the subject of this protection, while the measure of this quality – understood as usefulness for agricultural production – is the so-called

[26] Activities aimed at protecting forest land can be systematized in a similar way. Also in relation to these lands, actions are taken on the one hand to reduce their use for non-forest purposes (quantitative protection) as well as to prevent degradation and devastation of forest land and on the other hand damage to forest stands and forest production resulting from non-forest activities and mass movements, land, activities aimed at restoring the utility value of land that has lost the character of forest land as a result of non-forest activities and improving its value in use, measures to prevent the decrease in the productivity of these lands, as well as limiting changes in the natural shape of the earth's surface (qualitative protection).

[27] Act of 27 March 2003 on spatial planning and development (consolidated text Journal of Laws 2018, item 1945).

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soil quality class[28]. Thus, as a rule[29], changes in the purpose of agricultural lands constituting arable lands of classes I–III, as well as forest land can be made only under local spatial development plans adopted on the basis and in the manner provided for by the Act on Spatial Planning. Admittedly, both the adoption and amendment of local spatial development plans, constituting an act of local law, fall within the competence of the municipal bodies[30] referred to as the so-called planning authority of the municipality, it is the provisions of the Act on the Protection of Agricultural and Forest Land that the scope of this power with respect to the best agricultural land is significantly limited. According to the disposition of Article 7 (2) of the Act, the use of agricultural land constituting arable lands of classes I–III for non-agricultural purposes – requires the consent of the minister competent for rural development[31]. Such consent is expressed in the form of an administrative decision[32]. An application for the same shall be submitted by the head of the municipality acting on behalf of the municipality and should contain detailed justification for the need to change the designation of land for non-agricultural purposes, a list of the areas of such land, taking into account the bonitation classes of agricultural land and land habitat types, as well as the economic justification for the proposed purpose, taking into account in particular: the sum of receivables and annual fees for lands designed for non-agricultural and non-forest purposes, and the expected extent of losses that will be incurred by agriculture as a result of the negative impact of investments located on lands designed for non-agricultural purposes and not forested.

Municipal bodies have much more freedom in making decisions regarding the allocation of agricultural land with lower agricultural suitability for non-agricultural purposes (i.e. agricultural land of lower valuation classes)[33]. A change in the

[28] Soil classification of lands is carried out on the basis of the provisions of the regulation of the Council of Ministers of 12 September 2012 on Soil Classification of Lands (Journal of Laws 2012, item 1246).

[29] The exception to this rule concerns the so-called compact development areas (in Polish: *obszar zwartej zabudowy*) (Article 7 (2a)).

[30] These competences are divided between the head of the commune, mayor or city president, who is primarily responsible for developing the draft plan and conducting proceedings aimed at agreeing the proposed solutions with the competent authorities, as well as the council of the municipality (city), whose competences include primarily initiating the planning procedure and first of all, adopting resolutions on the approval of the project (adoption) of the local spatial development plan.

[31] Currently – the Minister of Agriculture and Rural Development. See regulation of the Prime Minister of 18 November 2011 on Detailed Scope of Activities of the Minister of Agriculture and Rural Development (Journal of Laws 2011, No. 248, item 1486).

[32] W. Radecki, *Ustawa o ochronie gruntów rolnych i leśnych. Komentarz*, Warszawa 2009, pp. 6–69.

[33] And also in relation to agricultural land constituting arable land, irrespective of their valuation class and area, located within the administrative boundaries of cities (see Article 5b of the Act on the Protection of Agricultural and Forest Land).

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purpose of such land for non-agricultural purposes may be made by means of an administrative act – a decision on the location of a public purpose investment or a zoning (outline planning) decision. In this case, the basis for making decisions in this regard will be the provisions of Chapter 5 of the Act on Spatial Planning and Development.

As mentioned, the impact of protective mechanisms in the field of quantitative protection is not limited to controlling changes in the use of agricultural land for other purposes. The subject of legal regulation is also the conditions under which, even after a formal change in the use of arable land for non-agricultural purposes, it is possible to actually commence land use other than agricultural, including arable land. Also, in this case, the legislator differentiates the scope of protection from the quality of the protected land. Thus, the exclusion from the production of land produced from soils of mineral and organic origin classified in classes I–IIIb and agricultural lands of classes IV–VI produced from soils of organic origin, may take place after the competent starost[34] has issued a decision authorizing such exclusion[35].

Protective measures in the field of quantitative protection of agricultural land include not only strictly administrative rationing, understood as actions in the field of I permit – I do not permit. Quantitative protection of excluding agricultural land from production is also implemented on the basis of economic instruments specified in the Act. The recipient of the permit to exclude land from agricultural production is obliged to pay the fees and charges specified in the Act – annual fees and charges. The amount and method of calculating these fees were shaped in such a way that even in cases where the exclusion of land from agricultural production was formally possible (i.e. after the land was changed for non-agricultural designation and after obtaining permission to start non-agricultural activities on it) the person intending to make such an exemption shall make an assessment of its merits from an economic point of view. Depending on the type of use and the bonitation class, the one-off payment for excluding 1 ha of agricultural land from production may vary from approx. PLN 88,000 (6th class land) to approx. PLN 440,000 (1st class land), so these fees are very steep. However, the rigor of this solution is mitigated in cases where the land excluded from production has a high market value (after its exclusion). Pursuant to the provisions of the Act, the amount of the indicated one-off payment is reduced by the value of land on the day it is excluded from agricultural production. Consequently, if the land has a high market value, the number of payments can be significantly reduced, and if the value of the land excluded from production is at least equal to the amount of the payment, this fee will not be due

[34] With regard to land within national parks, decisions on excluding land from production are issued by the directors of these parks.

[35] Soils of organic origin, unlike those of mineral origin, are soils formed with the participation of organic matter, in conditions of excessive moisture, peat and muck soils.

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at all. This mechanism is to prevent the exclusion from agricultural production of land which market value (after exclusion from production) will be lower than the amounts due indicated in the Act. It should be noted, however, that regardless of whether the amount of the one-off payment will be due in a given case, the person excluding agricultural land from production is obliged to pay the so-called annual fees for non-agricultural (and non-forest) use of land excluded from production, in the amount of 10% of the amount of one-off payment. These fees are payable for 10 years in the event of permanent exclusion of land from production, and in the event of a temporary exclusion – for the period of this exclusion which should be no longer than 20 years[36].

Finally, it should be mentioned that irrespective of the above-mentioned fees, the starosta issuing the permit to exclude land from agricultural production may impose on the person making such exclusion the obligation to remove and use for the purposes of improving the value in use of land a layer of humus soil from the agricultural land of classes I, II, IIIa, IIIb, III, IVa and IV and peat bogs.

Another manner of protective measures provided for in the Act on the Protection of Agricultural and Forestry land is the so-called qualitative protection. It mainly consists in preventing soil degradation and provides the basis for issuing a decision ordering reclamation measures. The Act in Article 20 (1) introduces the principle that the rehabilitation of agricultural land is primarily the responsibility of the person who led to the loss or reduction of the value in use of these lands. Reclamation of land, devastated or degraded by unknown people, or as a result of natural disasters or mass movements of land is carried out by the starosta.

The obligation to counteract soil degradation, in particular preventing erosion and mass soil movements, is primarily the responsibility of the land owner. As part of activities aimed at protecting agricultural land, the starosta may order the land owner to afforest or shrub the land or establish permanent grassland on it. Land owners with anti-erosion facilities are required to maintain and keep them in working order. It should also be noted that the provisions of the Act on the Protection of Agricultural Land provide the basis for determining specific management rules for agricultural land located in areas of limited use that can be designated around plants polluting the environment[37]. For this type of land, a management plan for these lands is being developed, at the cost of the operator of the industrial facility

[36] More broadly, see J. Bieluk, *Instrumenty finansowe ochrony gruntów rolnych i leśnych*, „Acta Universitatis Wratislaviensis. Prawo" 2015, nr 3656, pp. 13–24.

[37] The rules for creating restricted use areas are currently regulated by the Act of 27 April 2001 – Environmental Protection Law (Journal of Laws 2008, No. 25, item 150 as amended). Pursuant to the provisions of this Act, a limited use area is created around specific plants or facilities, if the ecological review or the environmental impact assessment of the project, or the post-implementation analysis show that despite the application of available technical, technological and organizational solutions, environmental quality standards outside the factory or other facility cannot be met.

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(a person whose activity may result in the loss or reduction of the value in use of the land). If the owner of the land in the protection zone suffered damage in the form of a reduction in the level of agricultural production, the operator of the industrial facility is obliged to pay appropriate compensation. In these zones, periodic testing of soil and plant contamination levels is also carried out, and contaminated land is excluded from production, with the consequences of such a decision being charged to the operator of the industrial facility responsible for the contamination.

As it results from the above review, the main directions and regulatory areas for the protection of agricultural land in Poland are determined by the Act on the Protection of Agricultural and Forest Land. This regulation, in terms of the protection of agricultural land from the point of view of what these lands provide as part of agricultural production, is undoubtedly comprehensive and functionally consistent. Additionally, what is worth emphasizing is the relative stability of the regulation – it has been in force for almost 25 years, and the changes introduced in it during this period did not change its basic assumptions. At the same time, it should be noted that the issue of agricultural land protection – in fact also in terms of their productive nature – is also subject to other regulations. In addition to the above-mentioned provisions on the protection of agricultural structures, one can indicate here the provisions related to direct payments to agricultural producers, including the so-called cross-compliance, as well as provisions regarding the so--called greening, i.e. the use of agricultural practices beneficial for the climate and the environment by agricultural producers[38]. Greening provisions are a mandatory component of the current direct payment system that has been introduced to improve environmental performance.

Greening is carried out by diversifying crops, maintaining permanent grasslands and maintaining ecological focus areas. These activities are undoubtedly convergent with the assumptions for the protection of agricultural land, but in this case, it is clearly seen that this protection not only takes into account the strictly productive features of agricultural land, but also takes more into account the needs of environmental protection. It should be noted that similar solutions are also to be maintained

[38] Greening payments are governed by the rules on direct payments under the CAP. These are primarily: Regulation (EU) No. 1307/2013 of the European Parliament and of the Council of 17 December 2013 laying down provisions on direct payments to farmers under support schemes under the common agricultural policy and repealing Council Regulation (EC) No. 637/2008 and Council Regulation (EC) No. 73/2009 (OJ EU L 347/608, 20.12.2013, pp. 608–670); Commission Delegated Regulation (EU) No. 639/2014 of 11 March 2014 on supplementing Regulation (EU) No. 1307/2013 of the European Parliament and of the Council establishing provisions for direct payments to farmers under support schemes under the common agricultural policy, and amending Annex X to that Regulation (OJ EU L 181/1, 20.06.2014, pp. 1 –47); Regulation of the European Commission 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No. 1307 of the European Parliament and of the Council 1307/2013 establishing provisions for direct payments to farmers under support schemes under the common agricultural policy (OJ EU L 181/74, 20.06.2014, pp. 74–81).

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in the new financial perspective of the European Union. Under the assumptions, the new "conditionality" framework of the future CAP is intended to support better soil quality and protection, as well as increased carbon absorption through better land use and crop management. It should be expected that the beneficiaries farmers' obligations regarding subsidies will be maintained, regarding compliance with Good Agricultural and Environmental Condition (GAEC) principles related to direct support of their income. GAEC principles are to include protection of peat bogs and wetlands, crop rotation (which is to replace crop diversity), minimal land use for cultivation to reduce soil degradation, and soil coverage. It seems that, apart from maintaining the current regulation of the Act on the Protection of Agricultural and Forest Land in the field of "traditional" directions for the protection of agricultural land, i.e. quantitative and qualitative protection, it should be expected that further development of legal regulations in the field of agricultural land protection will lead to closer linking this regulation with environmental protection regulations, at least in the scope of using more environmentally friendly and more sustainable ways of conducting agricultural production. At the same time, however, taking into account the impact of EU law on the legal situation of agricultural producers, and thus on the legal situation of owners and holders of agricultural land, it should be expected that further development of regulations concerning the protection of agricultural land will take place precisely in the area of EU law.

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STRESZCZENIE

Przedmiotem rozważań prezentowanych w artykule jest kształt współczesnej regulacji dotyczącej ochrony gruntów rolnych. Analiza prowadzona jest głównie w zakresie przepisów ochronnych dotyczących tzw. ochrony ilościowej i jakościowej gruntów rolnych, a także skorelowanych z tymi przepisami instrumentów ekonomicznych ochrony gruntów rolnych. Przedmiotem rozważań są również inne płaszczyzny regulacyjne, w tym przede wszystkim istniejące i dyskutowane rozwiązania prawa Unii Europejskiej dotyczące ściślejszego powiązania instrumentów wsparcia producentów rolnych z wymaganiami w zakresie ochrony środowiska naturalnego, w zakresie tzw. warunkowości i zazieleniania. Przedmiotem opracowania jest zarówno analiza tradycyjnych kierunków ochrony gruntów rolnych jako środka produkcji w rolnictwie, jak i próba określenia płaszczyzn dalszego rozwoju tej regulacji.

Słowa kluczowe: grunty rolne; ochrona środowiska; ochrona gruntów rolnych; ochrona gleby; regulacje prawne

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