

CONSOLIDATION OF AGRICULTURAL LAND IN POLAND – SELECTED LEGAL ISSUES

KONSOLIDÁCIA POĽNOHOSPODÁRSKEJ PÔDY V POĽSKU – VYBRANÉ PRÁVNE OTÁZKY

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I Introduction

The article discusses issues related to the fragmentation and consolidation of agricultural land in Poland. In view of climate change and the need to reduce the risks associated with it, properly structured agricultural land distribution facilitates farmers' planning and use of appropriate management tools. This is reflected, among other things, in the use of appropriate agrotechnical techniques, justified by soil quality, local environmental conditions, and economic considerations. The latter plays a very important role, as agricultural producers face not only production challenges, but also challenges related to the sustainability of their jobs and their families' livelihoods.

Land consolidation is seen as one of the ways to counteract climate change in relation to agricultural and non-agricultural land⁽¹⁾. In the case of the latter,

proper shaping allows, among other things, for the use of measures to slow down runoff and retain rainwater in specific locations by constructing appropriate water retention devices. In addition, it serves to combat water erosion (e.g., adapting the layout of roads and fields to the terrain and introducing tall or low vegetation that retains water and erosive debris) or wind erosion (using linear tree lines together with undergrowth). Furthermore, it is an instrument for shaping and protecting nature and the landscape, strengthening, among other things, areas of natural value⁽²⁾.

The aim of this article is to answer the question of what legal instruments have been adopted by the national legislature in order to improve the distribution of agricultural land in Poland. It also seeks to answer the question of whether these instruments are effective.

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1 Pijanowski (2021)

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2 Król (2022)

Abstract (EN)

The aim of the article was to answer the question of what legal instruments have been adopted by the national legislature to improve the distribution of agricultural land in Poland. The article also sought to answer the question of whether these instruments are effective. As the author notes in her conclusion, the legislator has implemented appropriate legal instruments for the consolidation of agricultural land. Support measures offered under the CAP should also contribute to improving the distribution of agricultural land. However, the fact that it is not known how many agricultural plots in the country should be subject to consolidation, or how much land has already been consolidated, is a drawback. As a result, it is not possible to clearly assess the effectiveness of the law in question.

Abstrakt (SK)

Cieľom článku bolo odpovedať na otázku, aké právne nástroje prijal národný zákonodarcia na zlepšenie rozdelenia poľnohospodárskej pôdy v Poľsku. Príspevok sa tiež snaží zodpovedať otázku, či sú tieto nástroje účinné. Ako autorka vo svojom závere uvádza, zákonodarcia zaviedol vhodné právne nástroje na konsolidáciu poľnohospodárskej pôdy. Podporné opatrenia ponúkané v rámci SPP by mali tiež prispieť k zlepšeniu rozdelenia poľnohospodárskej pôdy. Nevýhodou je však skutočnosť, že nie je známe, koľko poľnohospodárskych pozemkov v krajine by malo byť predmetom konsolidácie, alebo koľko pôdy už bolo konsolidované. V dôsledku toho nie je možné jasne posúdiť účinnosť predmetného zákona.

Keywords (EN)

land fragmentation, land consolidation, agricultural land protection, rural development, risk management

Kľúčové slová (SK)

fragmentácia pôdy, konsolidácia pôdy, ochrana poľnohospodárskej pôdy, rozvoj vidieka, riadenie rizík

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II Material and Methods

The issue of land consolidation in Poland is not new, although it remains highly relevant. It must be admitted, however, that it does not attract much scientific interest from lawyers specializing in agricultural law. The literature on the subject contains studies directly related to this issue, although due to the age of the basic normative act shaping land distribution in Poland, they have not been addressed very often in recent times. Nevertheless, the problem of land fragmentation does exist. Therefore, addressing this issue seems to fill a certain gap and justifies the need to deal with this topic.

Several research methods were used in the study. The basic method was a dogmatic analysis of the legal text. It was reinforced by a comparative analysis. This is due to the fact that the issues raised in the article, in particular, the need to refer to agricultural law through the prism of public law. In addition, in order to fully reflect the essence of the issues raised in the article, a descriptive method was also used, and a review of foreign and Polish literature on the subject was conducted.

III Results and Discussion

3.1 Land distribution in Poland

The discussion should begin with the statement that the proper distribution of agricultural land serves the effective, economical, and rational use of agricultural land. This is an assumption accepted in agricultural economics. However, it is necessary to explain how this should be understood. Namely, land distribution is nothing more than the “distribution of agricultural land.” This refers to the shape of the farm area and constitutes the layout of the farm’s land in relation to the farmstead⁽³⁾. Land distribution is, therefore, a collection of all land directly or indirectly used in the agricultural production process of a farm. It consists of agricultural land, one or more farmyards, and communication areas (usually roads or off-road routes) connecting these objects into a single economic whole⁽⁴⁾.

The distribution of farmland in Poland is very diverse. This is due to the significant concentration of settlements, the high diversity of the terrain, the high variability of soils, and the extensive checkerboard

pattern of arable and forest land. Currently, the average area of agricultural land on a farm in Poland in 2024 was 11.59 hectares (ha). However, there is a lack of precise and up-to-date statistical data providing the exact number and average area of registered plots that make up this average farm.

The phenomenon of land fragmentation is referred to in literature as a “checkerboard.” This concept was introduced into agricultural surveying by Koncent Zieliński⁽⁵⁾. This term refers to an area of land belonging to a single village, where the properties of individual owners are not located in a single contiguous “piece” (area) adjacent to residential buildings, but are fragmented into a larger number of plots, usually narrow and long, scattered over a large area and separated by plots belonging to different owners⁽⁶⁾. In addition, he distinguishes between a checkerboard of land use and soil quality classes. It is worth adding that the ownership checkerboard of land is divided according to administrative boundaries into an internal checkerboard of land (occurring within a village) and an external one. The latter may occur between villages, municipalities, counties, provinces, and even between countries.

Over many years, the causes of land fragmentation can be found in the negative effects of changes in ownership relations, most often caused by the transfer of real estate to heirs. This leads to the division and fragmentation of arable land.

It is worth noting that the current state of agricultural land fragmentation was also influenced by certain changes at the beginning of the 21st century related to the termination of short-term lease agreements for State Treasury land. As Ewa Kacprzak and Benicjusz Głębocki point out, this led to an increase in supply on the land market⁽⁷⁾. Almost simultaneously with accession to the European Union, the condition of Polish agriculture began to improve. The increase in the profitability of agricultural production encouraged farmers to expand the area of their farms, especially since EU subsidies were available to achieve this goal. Unfortunately, the expansion of farm size was accompanied by an increase in the fragmentation of land holdings and a deterioration in their layout⁽⁸⁾.

3 Regulation of the Minister of Agriculture and Food Economy of June 27, 1997 on the obligation to apply Polish Standards. Read more in the Legal Information System, Journal of Laws 1997 No. 83 item 535 – repealed acts.

4 Jadczyzyn, Woch (2017)

5 Dudzińska (2012)

6 *Ibid.*

7 Kacprzak, Głębocki (2017)

8 Kacprzak, Głębocki (2017).

3.2 The Concept of Land Consolidation

Improving land distribution and counteracting it from the point of view of agricultural management efficiency is mainly achieved through consolidation proceedings. Its primary goal is to shape land distribution to be as close to optimal as possible – from many points of view, of course, including in terms of agricultural activity. Land consolidation is the main measure in the land management process, shaping the use of agricultural production space⁽⁹⁾.

According to the Act of March 26, 1982, on land consolidation and exchange⁽¹⁰⁾, the main objective of consolidation is “(...) creating more favorable conditions for agriculture and forestry by improving the spatial structure of farms, forests, and forest land, rationally shaping land distribution, and adapting property boundaries to the system of water drainage facilities, roads, and terrain.” It is worth noting that consolidation proceedings are one of the most complex administrative matters.

At this point, it is worth taking a broader look at the concept of land consolidation⁽¹¹⁾. For example, the FAO defines consolidation as a comprehensive reallocation of land parcels, along with a wide range of other measures aimed at promoting rural development. Examples of such measures include village renewal, support for community-based agricultural processing, construction of rural roads, construction and renovation of irrigation and drainage systems, erosion control measures, environmental protection and improvements, including the designation of nature reserves, and the creation of social infrastructure. Furthermore, as Christian Niel Berlick notes, land consolidation is a key policy for the optimal use of production tools and facilities, and is also considered an essential step towards establishing developed agriculture⁽¹²⁾.

3.3 Consolidation of Agricultural Land – Historical Overview

The aforementioned Act on the Consolidation of Agricultural Land is not the first piece of legislation in Polish law concerning this issue.

The problem of farm parceling and attempts to rationalize agricultural areas were the reason for establishing regulations on this matter shortly after

Poland regained its independence⁽¹³⁾. The authorities at the time recognized this necessity due to, among other things, the impact on domestic agricultural land of three earlier legal systems of the partitioning powers, which differed significantly from each other. The result of the work related to the elimination of the checkerboard pattern of peasant land was the adoption of the Act of July 31, 1923, on land consolidation⁽¹⁴⁾. In its content, the legislator assumed that fragmented and scattered land, as well as excessively narrow land, would be consolidated by transforming it into areas that meet the requirements of proper management.

After the end of World War II, consolidation work was carried out on the basis of the 1923 Act⁽¹⁵⁾. However, the political conditions related to the concept of rural collectivization, i.e., the socialization of agriculture, had changed. This was reflected, among other things, in the provisions of the decree of August 16, 1949, on land exchange⁽¹⁶⁾, which for the first time introduced an instrument allowing for land exchange that still exists today. This instrument significantly favored the socialized sector at the expense of individual farms⁽¹⁷⁾.

Another normative act in the field of land consolidation was the Act of 1968 on land consolidation and exchange. In its content, the legislator adopted both institutions together for the first time. Although the normative solutions contained therein were in line with the agricultural policy of the time. Certain new regulations did not appear until the 1980s. At that time, the Act of 1982 on Land Consolidation and Exchange⁽¹⁸⁾, currently in force with amendments, was adopted. It should be noted that until Poland's accession to the EU, the normative solutions proposed in the Act did not enjoy particular interest among the local community. A certain change came with the gradual implementation of the Common Agricultural Policy and the support associated with it, as well as the increase in the importance and, above all, the value of agricultural land. At the same time, the context of land consolidation has changed⁽¹⁹⁾.

13 Decree of the Regency Council of the Kingdom of Poland on temporary provisions concerning Land Offices (Journal of Laws of 1918, No. 11, item 22).

14 Journal of Laws No. 92, item 118.

15 Decree of April 14, 1948, on adapting the rules of land consolidation provided for in the Act of July 31, 1923, on land consolidation (Journal of Laws No. 21, item 144) to the conditions arising in connection with the war

16 Journal of Laws of 1962, No. 46, item 226.

17 Król (2022)

18 Journal of Laws 1982 No. 11 item 80.

19 Janus, Markuszewska (2017)

9 Woch (2010)

10 Journal of Laws of 2023, item 1197.

11 FAO (n.d.)

12 Abbasia, Hosseinia, Samarib (2024)

Namely, land consolidation is no longer treated solely in technical and economic terms, but as an instrument for the comprehensive development of rural areas, taking into account social dimensions⁽²⁰⁾.

3.4 Legal Instruments Affecting the Distribution of Agricultural Land in Poland

In light of the applicable legal standards, the consolidation procedure is a multi-stage process. Essentially, there are two main stages in the consolidation process: the surveying stage and the post-consolidation stage. The first stage is provided for in Article 1(2)(8) of the Act and includes the work and activities necessary to: initiate the consolidation procedure, conduct the consolidation procedure, and disclose the decision approving the consolidation project in the land and mortgage registers.

Post-consolidation development, on the other hand, consists of the work specified in the decision approving the land consolidation project, enabling the participants in the consolidation to take possession of the land allocated to them as part of the consolidation proceedings. These consist of:

- a) the construction or reconstruction of access roads to agricultural and forest land and access roads to the buildings of individual consolidation participants;
- b) the correction of the course and improvement of the technical parameters of water drainage or other water facilities;
- c) the removal of unnecessary balks and roads and the performance of reclamation measures enabling the mechanical cultivation of land (Article 1(2)(9) of the Act).

The consolidation procedure and post-consolidation development are carried out and implemented by the Starosta (district administrator) as a government administration task financed from the state budget. Its participants may include owners, independent possessors, managers, or users of land located in the area of consolidation or exchange, as well as the National Agricultural Support Center. It begins in two ways: either at the request of farm owners or ex officio. In the latter case, consolidation is undertaken after obtaining the opinion of the village council, as well as social and professional farmers' organizations operating in the village, if: a) "state" land, whose area exceeds 10% of the planned consolidation area and cannot be rationally developed without consolidation; b) the layout of the land (the location of the farmland in relation to built-up land)

in the proposed consolidation area has been or will be significantly impaired as a result of industrial activity, the course of existing or planned public roads, railways, above-ground pipelines, and water reservoirs or drainage facilities; c) if the consolidation is requested by a person whose land requires improvement of its layout, and at the same time the consolidation will not worsen the farming conditions of other participants in the proceedings.

It is worth adding that an extremely important stage of preliminary work, preceding the application for a decision to initiate a consolidation procedure, is the preparation of the so-called assumptions for the land consolidation project. This involves defining the boundaries of the land consolidation area, conducting a diagnosis of the existing situation, describing the planned works, and indicating whether an environmental impact assessment should be carried out for the planned projects. The exchange may cover land located in one or more municipalities (Article 5(2) of the Act).

Pursuant to Article 6 of the Act, the decision to initiate consolidation proceedings should include, in particular:

1. the definition of the boundaries and area of the land consolidation or exchange;
2. a list of participants in the land consolidation or exchange;
3. the expected date of completion of the consolidation or exchange works.

The decision to initiate consolidation proceedings shall be made public by posting it for a period of 14 days on the notice board of the municipal office in whose area the land covered by the consolidation is located, and on the notice board in the village whose land forms the consolidation area, and by publication in the Public Information Bulletin on the website of the county office, and in the case of a decision by a higher authority, also in the Public Information Bulletin on the website of the office serving that authority. On the expiry of the specified deadline, the decision to initiate the consolidation proceedings and the decision of the higher authority shall be deemed to have been delivered to all participants in the consolidation.

After the consolidation proceedings have been initiated, the boundaries of the consolidation area are determined. The provisions of geodetic and cartographic law apply here. The district administrator notifies the owners of land adjacent to the boundaries of the consolidation area of the place and date of the proceedings in the form of a public notice. Before the land consolidation project is presented, the consolidation participant may submit proposals to the surveyor-consolidation designer regarding the method of separating the land in exchange for

20 Czarnecka, Krupowicz (2022)

the land previously owned, in particular with regard to its location (Article 7b of the Act). The decision to initiate consolidation proceedings may be appealed.

The land covered by the consolidation is assessed and the consolidation plan is drawn up by a surveyor-consolidation designer authorized by the district administrator, with the participation of a commission appointed by that authority to perform advisory functions.

The commission shall consist of:

1. all consolidation participants, and if the number of participants exceeds 10, a council of consolidation participants;
2. a representative of social and professional farmers' organizations;
3. a representative of the National Center participating in the consolidation;
4. a representative of the district administrator in whose area the land covered by the consolidation is located;
5. a representative of the agricultural chamber in whose area the land covered by the consolidation is located;
6. a representative of the municipality in whose territory the land covered by the consolidation is located;
7. the village administrator or a member of the village council of the village whose land forms the consolidation area.

Pursuant to Article 11 of the Act, the participants in the consolidation shall, by way of a resolution, determine the rules for land valuation. The results of the valuation of land, forests, orchards, gardens, hop fields, and other special crops shall be announced at a meeting of the participants in the consolidation, convened by the district administrator, and then made available for public inspection for a period of 7 days in the villages covered by the consolidation. At the meeting, the participants in the consolidation may raise objections to the valuation. If there are no objections, they express their consent in the form of a resolution, and each participant in the consolidation procedure has one vote (Article 13 of the Act).

In accordance with the principle contained in Article 14 of the Act, in exchange for orchards, gardens, hop fields, and other special crops, land of the same type and quality is allocated. If this is not possible, other land shall be allocated, and a cash payment shall be made, corresponding to the difference in the value of the tree stands, trees, and shrubs, as well as other components of the land. With the consent of the participant in the consolidation or exchange, other land corresponding to the value of the payment may be allocated. While maintaining the value of the land prior to consolidation, without the consent of the consolidation participant, the difference between the area of land allocated to him

and the area of land covered by the consolidation may not exceed:

1. 20% of the area of land covered by the consolidation;
2. 10% of the land previously owned with particularly high agricultural suitability or land designated for non-agricultural purposes in the local spatial development plan.

The land consolidation project should take into account the provisions of the local spatial development plan. Pursuant to Article 23, it specifies the proposed boundaries of the separated land and the following rules for taking possession of such land:

1. the crops of annual crops shall be harvested by the current owner of the land;
2. the crops of perennial crops shall be harvested by the current owner of the land by September 1 of the year following the completion of the consolidation, provided that the current owner of the land shall allow the participant in the consolidation to whom the land has been allocated to use the relevant area of his land for that period or settle accounts in this respect in another manner;
3. the current owner of developed land should, until the demolition or relocation of buildings, allow the consolidation participant to whom the land has been allocated to use the relevant area of their land or settle accounts for this in another way;
4. the method of settlement for the remaining parts of the land allocated to other participants in the consolidation may be determined by mutual agreement between the interested parties.

Importantly, the consolidation or exchange project is marked out on the land and presented to the participants in the consolidation, who have 14 days to submit their objections to the project in writing to the district administrator.

Any changes made to the consolidation project after it has been marked out on the ground and presented to the participants in the consolidation require it to be marked out again on the ground and presented to the interested participants.

Pursuant to Article 27, the project is approved if, after it has been presented, the majority of the participants in the consolidation have not raised any objections to it. The district administrator approves the project by way of a decision, and as a result, it constitutes the title for disclosing the new legal status in the land and mortgage registers and the basis for transferring the land allocated to the consolidation participants into their possession. Their introduction takes place at a meeting of participants convened by the district administrator. The date of the meeting is considered to be the date on which the participants

in the consolidation take possession of the newly allocated land.

Finally, it should be added that the consolidation is carried out on an estimated basis, which means that each participant receives land of equal estimated value in exchange for the land previously owned (Article 8 of the Act). If it is technically impossible or economically unjustified to allocate land of equal estimated value, a value with a difference not exceeding 3% is also considered to be of equal estimated value. Additional payments are also possible.

It is worth adding that the consolidation procedure is not fully regulated in the Act in question. This is due to the fact that the procedures indicated are administrative proceedings. The legislator shapes the specific activities of the authorities and participants, and the procedure itself is conducted on the basis of the Code of Administrative Procedure⁽²¹⁾. This results de facto from Article 33(1), which states that in matters not regulated by the Act, the provisions of the Code of Administrative Procedure shall apply. This also applies to the content of decisions approving consolidation projects⁽²²⁾.

IV Conclusions

Land fragmentation occurs in many EU countries, which has a negative impact on agriculture by reducing production efficiency, inefficient allocation of resources, and the resulting increase in costs, as well as difficulties in modernizing agriculture. However, it cannot be ignored that land consolidation is not always entirely beneficial for farmers.

Improving the flawed spatial organization of farms and thus reducing land fragmentation is undoubtedly only possible through comprehensive land consolidation. The normative solutions that have been adopted can serve this purpose. However, they also entail many problems. Land consolidation requires the consent of at least the majority of farmers to initiate the procedure. In addition, some farmers are exposed to the loss of some plots of land in order to obtain a larger and more profitable farm. This often causes them resentment and undermines their established interests. Nevertheless, it should be noted that the legislator has implemented appropriate legal instruments for the consolidation of agricultural land. Support measures offered under the CAP should also contribute to improving the distribution of agricultural land. However, the fact that it is not known how many

agricultural plots in the country should be subject to consolidation, or how much land has already been consolidated, is a drawback. As a result, it is not possible to clearly assess the effectiveness of the law in question.

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